

MOCK-UP

PROPOSED AMENDMENT 4533 TO  
ASSEMBLY BILL NO. 149  
FIRST REPRINT

PREPARED FOR ASSEMBLYWOMAN BUCKLEY  
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PREPARED BY THE LEGAL DIVISION

NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN  
CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE  
OFFICIAL AMENDMENT MAY DIFFER.

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed 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 that is proposed to be retained in this amendment; and (6) green bold is newly added transitory language.

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

- 1     **Section 1.** Chapter 107 of NRS is hereby amended by adding thereto  
2 a new section to read as follows:  
3     1. *In addition to the requirements of NRS 107.085, the exercise of*  
4 *the power of sale pursuant to NRS 107.080 with respect to any trust*  
5 *agreement which concerns owner-occupied housing is subject to the*  
6 *provisions of this section.*  
7     2. *The trustee shall not exercise a power of sale pursuant to NRS*  
8 *107.080 unless the trustee:*  
9     (a) *Includes in the notice required by subsection 2 of*  
10 *NRS 107.085:*  
11         (1) *Contact information which the grantor or the person who*  
12 *holds the title of record may use to reach a person with authority to*  
13 *negotiate a loan modification on behalf of the beneficiary of the deed of*  
14 *trust;*  
15         (2) *Contact information for at least one local housing counseling*  
16 *agency approved by the United States Department of Housing and Urban*  
17 *Development; and*

\*PROPOSED AMENDMENT TO AB149\*

Committee on Ways and Means  
Exhibit: F.P. 1 of 9, Date: 4/27/2009  
Submitted by: Chief Justice James Hardesty

1           (3) A form upon which the grantor or the person who holds the  
2 title of record may indicate his election to enter into mediation or to  
3 waive mediation and one envelope addressed to the trustee and one  
4 envelope addressed to the Mediation Administrator, which the grantor or  
5 the person who holds the title of record may use to comply with the  
6 provisions of subsection 3;

7           (b) Serves a copy of the notice upon the Mediation Administrator;  
8 and

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

11           (1) The certificate provided to the trustee by the Mediation  
12 Administrator pursuant to subsection 3 or 6 which provides that no  
13 mediation is required in the matter; or

14           (2) The certificate provided to the trustee by the Mediation  
15 Administrator pursuant to subsection 7 which provides that mediation  
16 has been completed in the matter.

17           3. The grantor and the person who holds the title of record shall,  
18 not later than 30 days after service of the notice upon him in the manner  
19 required by NRS 107.085, complete the form required by subparagraph  
20 (3) of paragraph (a) of subsection 2 and return the form to the trustee by  
21 certified mail, return receipt requested. If the grantor or the person who  
22 holds the title of record indicates on ~~the~~ his respective form his election  
23 to enter into mediation, the trustee shall notify the beneficiary of the  
24 deed of trust and every other person with an interest as defined in NRS  
25 107.090, by certified mail, return receipt requested, of the election of the  
26 grantor or the person who holds the title of record, or both, to enter into  
27 mediation and file a copy of the form with the district court of the county  
28 in which the trust property, or some part thereof, is situated, and with the  
29 Mediation Administrator, who shall assign the matter to a senior justice,  
30 judge, hearing master or other designee and schedule the matter for  
31 mediation. No further action may be taken to exercise the power of sale  
32 until the completion of the mediation. If both the grantor ~~indicates on~~  
33 ~~the form his~~ and the person who holds the title of record indicate on  
34 their respective forms their election to waive mediation or ~~fail~~ if both  
35 fail to return ~~the form~~ their respective forms to the trustee as required  
36 by this subsection, the trustee shall execute an affidavit attesting to that  
37 fact under penalty of perjury and serve a copy of the affidavit, together  
38 with the waiver of mediation by the grantor and the person who holds the  
39 title of record, or proof of service on the grantor and the person who  
40 holds the title of record of the notice required by subsection 2 of this  
41 section and subsection 2 of NRS 107.080, upon the Mediation  
42 Administrator. Upon receipt of the affidavit and the waiver or proof of  
43 service, the Mediation Administrator shall provide to the trustee a  
44 certificate which provides that no mediation is required in the matter.

1 4. Each mediation required by this section must be conducted by a  
2 senior justice, judge, hearing master or other designee pursuant to the  
3 rules adopted pursuant to subsection 8. The beneficiary of the deed of  
4 trust or his representative ~~and the grantor or his representative~~ shall  
5 ~~each~~ attend the mediation. The grantor or his representative shall  
6 attend the mediation if the grantor elected to enter into mediation, and  
7 the person who holds the title of record or his representative shall attend  
8 the mediation if the person who holds the title of record elected to enter  
9 into mediation. The beneficiary of the deed of trust shall bring to the  
10 mediation the original or a certified copy of the deed of trust, the  
11 mortgage note and each assignment of the deed of trust or mortgage  
12 note. If the beneficiary of the deed of trust is represented at the  
13 mediation by another person, that person must have authority to  
14 negotiate a loan modification on behalf of the beneficiary of the deed of  
15 trust or have access at all times during the mediation to a person with  
16 such authority.

17 5. If the beneficiary of the deed of trust or his representative fails to  
18 attend the mediation, fails to participate in the mediation in good faith or  
19 does not bring to the mediation each document required by subsection 4  
20 or does not have the authority or access to a person with the authority  
21 required by subsection 4, the mediator shall prepare and submit to the  
22 district court of the county in which the trust property, or some part  
23 thereof, is situated a recommendation concerning the imposition of  
24 sanctions against the beneficiary of the deed of trust or his  
25 representative. The court may issue an order imposing such sanctions  
26 against the beneficiary of the deed of trust or his representative as the  
27 court determines appropriate, including, without limitation, requiring a  
28 loan modification in the manner determined proper by the court.

29 6. If both the grantor and the person who holds the title of record  
30 elected to enter into mediation and both fail to attend the mediation, or if  
31 only one of them elected to enter into mediation and that person fails to  
32 attend the mediation, the Mediation Administrator shall provide to the  
33 trustee a certificate which states that no mediation is required in the  
34 matter.

35 7. If the mediator determines that the parties, while acting in good  
36 faith, are not able to agree to a loan modification, the mediator shall  
37 prepare and submit to the district court of the county in which the trust  
38 property, or some part thereof, is situated a recommendation that the  
39 matter be dismissed. The court shall issue an order dismissing the matter  
40 and the Mediation Administrator shall provide to the trustee a certificate  
41 which provides that the mediation required by this section has been  
42 completed in the matter.

43 8. The Supreme Court or an entity designated by the Supreme Court  
44 shall adopt rules necessary to carry out the provisions of this section.  
45 The rules must, without limitation, include provisions:

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

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

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

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

11 (e) Establishing a fee of not more than \$85 per hour that may be  
12 charged and collected by a mediator for a mediation pursuant to this  
13 section and providing that the responsibility for payment of the fee must  
14 be shared equally by the parties to the mediation.

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

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

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

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

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

32 12. As used in this section:

33 (a) “Mediation Administrator” means the entity so designated  
34 pursuant to subsection 8.

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

39 (c) “Owner-occupied housing” means housing that is occupied by  
40 ~~the~~ an owner as his primary residence. The term does not include any  
41 time share or other property regulated under chapter 119A of NRS.

42 **Sec. 2.** NRS 107.080 is hereby amended to read as follows:

43 107.080 1. Except as otherwise provided in NRS 107.085, *and*  
44 *section 1 of this act*, if any transfer in trust of any estate in real property is  
45 made after March 29, 1927, to secure the performance of an obligation or

1 the payment of any debt, a power of sale is hereby conferred upon the  
2 trustee to be exercised after a breach of the obligation for which the  
3 transfer is security.

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

5 (a) ~~For his successor in interest,~~ Except as otherwise provided in paragraph (b), in the case of  
6 any trust agreement coming into force:

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

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

19 (b) In the case of any trust agreement which concerns owner-  
20 occupied housing as defined in section 1 of this act, the grantor, the  
21 person who holds the title of record, a beneficiary under a subordinate  
22 deed of trust or any other person who has a subordinate lien or  
23 encumbrance of record on the property has, for a period that commences  
24 in the manner and subject to the requirements described in subsection 3  
25 and expires 5 business days before the date of sale, failed to make good  
26 the deficiency in performance or payment;

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

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

34 3. The 15- or 35-day period provided in paragraph (a) of subsection 2  
35 commences on the first day following the day upon which the notice of  
36 default and election to sell is recorded in the office of the county recorder  
37 of the county in which the property is located and a copy of the notice of  
38 default and election to sell is mailed by registered or certified mail, return  
39 receipt requested and with postage prepaid to the grantor ~~has,~~ has, and to the  
40 person who holds the title of record on the date the notice of default and  
41 election to sell is recorded, at their respective addresses, if known,  
42 otherwise to the address of the trust property. The notice of default and  
43 election to sell must describe the deficiency in performance or payment  
44 and may contain a notice of intent to declare the entire unpaid balance due  
45 if acceleration is permitted by the obligation secured by the deed of trust,

1 but acceleration must not occur if the deficiency in performance or  
2 payment is made good and any costs, fees and expenses incident to the  
3 preparation or recordation of the notice and incident to the making good of  
4 the deficiency in performance or payment are paid within the time  
5 specified in subsection 2.

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

12 (a) Providing the notice to each trustor and any other person entitled to  
13 notice pursuant to this section by personal service or by mailing the notice  
14 by registered or certified mail to the last known address of the trustor and  
15 any other person entitled to such notice pursuant to this section;

16 (b) Posting a similar notice particularly describing the property, for 20  
17 days successively, in three public places of the township or city where the  
18 property is situated and where the property is to be sold; and

19 (c) Publishing a copy of the notice three times, once each week for 3  
20 consecutive weeks, in a newspaper of general circulation in the county  
21 where the property is situated.

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

27 (a) The trustee or other person authorized to make the sale does not  
28 substantially comply with the provisions of this section;

29 (b) Except as otherwise provided in subsection 6, an action is  
30 commenced in the county where the sale took place within 90 days after  
31 the date of the sale; and

32 (c) A notice of lis pendens providing notice of the pendency of the  
33 action is recorded in the office of the county recorder of the county where  
34 the sale took place within 30 days after commencement of the action.

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

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

1     **Sec. 3.** NRS 107.085 is hereby amended to read as follows:

2     107.085 1. With regard to a transfer in trust of an estate in real  
3 property to secure the performance of an obligation or the payment of a  
4 debt, the provisions of this section apply to the exercise of a power of sale  
5 pursuant to NRS 107.080 only if:

6     (a) The trust agreement becomes effective on or after October 1, 2003

7 ~~;~~ and

8 ~~(b) On~~, and, on the date the trust agreement is made, the trust  
9 agreement is subject to the provisions of § 152 of the Home Ownership  
10 and Equity Protection Act of 1994, 15 U.S.C. § 1602(aa), and the  
11 regulations adopted by the Board of Governors of the Federal Reserve  
12 System pursuant thereto, including, without limitation, 12 C.F.R. § 226.32

13 ~~;~~ or

14     (b) *The trust agreement concerns owner-occupied housing as defined*  
15 *in section 1 of this act.*

16     2. The trustee shall not exercise a power of sale pursuant to NRS  
17 107.080 unless:

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

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

26     3. The notice described in subsection 2 must be:

27     (a) Served upon the grantor and the person who holds the title of  
28 record:

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

33     (2) If the trust agreement concerns owner-occupied housing as  
34 defined in section 1 of this act:

35     (I) By personal service;

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

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

1 and mailing a copy to the grantor or the person who holds the title of  
2 record at the place where the trust property is situated; and

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

6  
7 NOTICE  
8 YOU ARE IN DANGER OF LOSING YOUR HOME!

9  
10 Your home loan is being foreclosed. In 60 days your home will be sold and  
11 you will be forced to move. For help, call:

- 12 Consumer Credit Counseling \_\_\_\_\_
- 13 The Attorney General \_\_\_\_\_
- 14 The Division of Financial Institutions \_\_\_\_\_
- 15 Legal Services \_\_\_\_\_
- 16 Your Lender \_\_\_\_\_
- 17 Nevada Fair Housing Center \_\_\_\_\_

18  
19  
20 4. This section does not prohibit a judicial foreclosure.  
21 5. As used in this section, "unfair lending practice" means an unfair  
22 lending practice described in NRS 598D.010 to 598D.150, inclusive.

23 **Sec. 3.5. NRS 107.095 is hereby amended to read as follows:**

24 107.095 1. The notice of default required by NRS 107.080 must  
25 also be sent by registered or certified mail, return receipt requested and  
26 with postage prepaid, to each guarantor or surety of the debt. If the address  
27 of the guarantor or surety is unknown, the notice must be sent to the  
28 address of the trust property. Failure to give the notice, except as otherwise  
29 provided in subsection 3, releases the guarantor or surety from his  
30 obligation to the beneficiary, but does not affect the validity of a sale  
31 conducted pursuant to NRS 107.080 ~~not~~ or the obligation of any  
32 guarantor or surety to whom the notice was properly given.

33 2. Failure to give the notice of default required by NRS 107.090,  
34 except as otherwise provided in subsection 3, releases the obligation to the  
35 beneficiary of any person who has complied with NRS 107.090 and who is  
36 or may otherwise be held liable for the debt or other obligation secured by  
37 the deed of trust, but such a failure does not affect the validity of a sale  
38 conducted pursuant to NRS 107.080 ~~not~~ or the obligation of any person  
39 to whom the notice was properly given pursuant to this section or to NRS  
40 107.080 or 107.090.

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

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

44 (1) The expiration of the 15- or 35-day period described in  
45 paragraph (a) of subsection 2 of NRS 107.080; ~~not~~

1           (2) In the case of any trust agreement which concerns owner-  
2 occupied housing as defined in section 1 of this act, the expiration of the  
3 period described in paragraph (b) of subsection 2 of NRS 107.080; or

4           (3) Any extension of ~~that~~ the applicable period by the beneficiary;  
5 or

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

7           **Sec. 4.** Chapter 2 of NRS is hereby amended by adding thereto a new  
8 section to read as follows:

9           *The Supreme Court may adopt rules providing for voluntary*  
10 *mediation with respect to a homeowner who is not in default but is at risk*  
11 *of default.*

12           **Sec. 5.** NRS 459.646 is hereby amended to read as follows:

13           459.646 1. A person who, without participating in the management  
14 of a parcel of real property, holds or is the beneficiary of evidence of title  
15 to the property primarily to protect a security interest in the property is not  
16 a responsible party with respect to a release of a hazardous substance on  
17 the property if:

18           (a) The owner of the property is relieved from liability under NRS  
19 459.610 to 459.658, inclusive, with respect to the release;

20           (b) The owner or holder of evidence of title did not cause the release;  
21 and

22           (c) The owner or holder of evidence of title does not participate  
23 actively in decisions concerning hazardous substances on the property.

24           2. A lender to a prospective purchaser who has filed an application to  
25 participate in the program pursuant to NRS 459.634 or a lender who  
26 forecloses his security interest in property pursuant to NRS 40.430 to  
27 40.450, inclusive, or 107.080 to 107.100, inclusive, *and section 1 of this*  
28 *act*, and within a reasonable period after the foreclosure, not to exceed 2  
29 years, sells, transfers or conveys the property to a prospective purchaser  
30 who has filed an application to participate in the program pursuant to NRS  
31 459.634 is not a responsible party solely as a result of:

32           (a) Foreclosing a security interest in the property; or

33           (b) Making a loan to the prospective purchaser if the loan:

34           (1) Is to be used for acquiring property or removing or remediating  
35 hazardous substances on property; and

36           (2) Is secured by the property that is to be acquired or on which is  
37 located the hazardous substances that are to be removed or remediated.

38           **Sec. 6.** This act becomes effective on July 1, 2009.

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