

ASSEMBLY BILL NO. 288—ASSEMBLYMEN JONES; DICKMAN,
FLORES, GARDNER AND TROWBRIDGE

MARCH 13, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to residential mortgage
loans. (BDR 9-896)

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

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

AN ACT relating to real property; revising exceptions to certain requirements related to the servicing of residential mortgage loans and the foreclosure of owner-occupied housing securing a residential mortgage loan; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law provides that a signatory to the consent judgment entered in the
2 case entitled *United States of America et al. v. Bank of America Corporation et al.*,
3 who complies with the Settlement Term Sheet under that judgment is deemed to be
4 in compliance with certain provisions of state law governing the servicing of
5 residential mortgage loans. However, if that consent judgment is modified or
6 amended to permit compliance with the Final Servicing Rules issued by the federal
7 Consumer Financial Protection Bureau to supersede the terms of the Settlement
8 Term Sheet of the consent judgment: (1) a signatory to the consent judgment who is
9 in compliance with the modified or amended Settlement Term Sheet is deemed to
10 be in compliance with certain provisions of state law governing the servicing of
11 residential mortgage loans; and (2) any other person who complies with the Final
12 Servicing Rules is deemed to be in compliance with those provisions of state law.
13 This bill amends this provision to specifically state that any mortgage servicer,
14 mortgagee, beneficiary of a deed of trust or an authorized agent of such a person is
15 deemed to be in compliance with existing state law if the servicer, mortgagee,
16 beneficiary or authorized agent complies with the Final Servicing Rules. This bill
17 further provides that if the Final Servicing Rules are repealed or held invalid, or
18 otherwise lapse, the servicer, mortgagee, beneficiary or authorized agent is subject
19 to the provisions of state law.



* A B 2 8 8 R 1 *

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

- 1 **Section 1.** NRS 107.560 is hereby amended to read as follows:
2 107.560 1. If a trustee's deed upon sale has not been
3 recorded, a borrower may bring an action for injunctive relief to
4 enjoin a material violation of NRS 107.400 to 107.560, inclusive. If
5 a sheriff has not recorded the certificate of the sale of the property, a
6 borrower may obtain an injunction to enjoin a material violation of
7 NRS 107.400 to 107.560, inclusive. An injunction issued pursuant
8 to this subsection remains in place and any foreclosure sale must be
9 enjoined until the court determines that the mortgage servicer,
10 mortgagee, beneficiary of the deed of trust or an authorized agent of
11 such a person has corrected and remedied the violation giving rise to
12 the action for injunctive relief. An enjoined person may move to
13 dissolve an injunction based on a showing that the material violation
14 has been corrected and remedied.
- 15 2. After a trustee's deed upon sale has been recorded or after a
16 sheriff has recorded the certificate of the sale of the property, a
17 borrower may bring a civil action in the district court in the county
18 in which the property is located to recover his or her actual
19 economic damages resulting from a material violation of NRS
20 107.400 to 107.560, inclusive, by the mortgage servicer, mortgagee,
21 beneficiary of the deed of trust or an authorized agent of such a
22 person, if the material violation was not corrected and remedied
23 before the recording of the trustee's deed upon sale or the recording
24 of the certificate of sale of the property pursuant to NRS 40.430. If
25 the court finds that the material violation was intentional or reckless,
26 or resulted from willful misconduct by a mortgage servicer,
27 mortgagee, beneficiary of the deed of trust or an authorized agent of
28 such a person, the court may award the borrower the greater of
29 treble actual damages or statutory damages of \$50,000.
- 30 3. A mortgage servicer, mortgagee, beneficiary of the deed of
31 trust or an authorized agent of such a person is not liable for any
32 violation of NRS 107.400 to 107.560, inclusive, that it has corrected
33 and remedied, or that has been corrected and remedied on its behalf
34 by a third party, before the recording of the trustee's deed upon sale
35 or the recording of the certificate of sale of the property pursuant to
36 NRS 40.430.
- 37 4. A violation of NRS 107.400 to 107.560, inclusive, does not
38 affect the validity of a sale to a bona fide purchaser for value and
39 any of its encumbrancers for value without notice.
- 40 5. A signatory to a consent judgment entered in the case
41 entitled United States of America et al. v. Bank of America
42 Corporation et al., filed in the United States District Court for the



1 District of Columbia, case number 1:12-cv-00361 RMC, that is in
2 compliance with the relevant terms of the Settlement Term Sheet of
3 that consent judgment with respect to the borrower while the
4 consent judgment is in effect is deemed to be in compliance with
5 NRS 107.400 to 107.560, inclusive, and is not liable for a violation
6 of NRS 107.400 to 107.560, inclusive. If, on or after October 1,
7 2013, the consent judgment is modified or amended to permit
8 compliance with the relevant provisions of 12 C.F.R. Part 1024,
9 commonly known as Regulation X, and 12 C.F.R. Part 1026,
10 commonly known as Regulation Z, as those regulations are
11 amended by the Final Servicing Rules issued by the Consumer
12 Financial Protection Bureau in 78 Federal Register 10,696 *and*
13 *10,902* on February 14, 2013, and any amendments thereto, to
14 supersede some or all of the relevant terms of the Settlement Term
15 Sheet of the consent judgment ~~†~~

16 ~~—(a) A†~~, a signatory who is in compliance with the modified or
17 amended Settlement Term Sheet of the consent judgment while the
18 consent judgment is in effect is deemed to be in compliance with
19 NRS 107.400 to 107.560, inclusive, and is not liable for a violation
20 of NRS 107.400 to 107.560, inclusive.

21 ~~†(b)†~~ 6. Any mortgage servicer, mortgagee or beneficiary of
22 the deed of trust or an authorized agent of such a person who
23 complies with the relevant provisions of 12 C.F.R. Part 1024,
24 commonly known as Regulation X, and 12 C.F.R. Part 1026,
25 commonly known as Regulation Z, as those regulations are
26 amended by the Final Servicing Rules issued by the Consumer
27 Financial Protection Bureau in 78 Federal Register 10,696 *and*
28 *10,902* on February 14, 2013, and any amendments thereto, is
29 deemed to be in compliance with NRS 107.400 to 107.560,
30 inclusive, and is not liable for a violation of NRS 107.400 to
31 107.560, inclusive.

32 ~~†6†~~ *If the Final Servicing Rules issued by the Consumer*
33 *Financial Protection Bureau are repealed or held invalid, or if*
34 *there is otherwise any lapse of those rules, any mortgage servicer,*
35 *mortgagee or beneficiary of the deed of trust or an authorized*
36 *agent of such a person is subject to the provisions of NRS 107.400*
37 *to 107.560, inclusive, but for a foreclosure that is already pending*
38 *at the time that the Final Servicing Rules are repealed or held*
39 *invalid or at the time there is a lapse of those rules, the mortgage*
40 *servicer, mortgagee or beneficiary of the deed of trust or the*
41 *authorized agent is only subject to the provisions of NRS 107.400*
42 *to 107.560, inclusive, with respect to any remaining requirements*
43 *for a foreclosure of owner-occupied housing securing a residential*
44 *mortgage loan.*



1 7. A court may award a prevailing borrower costs and
2 reasonable attorney's fees in an action brought pursuant to this
3 section.

4 ~~7.1~~ 8. The rights, remedies and procedures provided by this
5 section are in addition to and independent of any other rights,
6 remedies or procedures provided by law.

