

ASSEMBLY BILL NO. 273—ASSEMBLYMEN
EISEN; AND FRIERSON

MARCH 15, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the Foreclosure
Mediation Program. (BDR 9-719)

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 provisions governing
enrollment in the Foreclosure Mediation Program; and
providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law, the trustee under a deed of trust concerning owner-
2 occupied housing has the power to sell the property to which the deed of trust
3 applies, subject to certain restrictions. (NRS 107.080, 107.085, 107.086) One such
4 restriction requires the trustee under the deed of trust to include with the copy of the
5 notice of default and election to sell which is mailed to the homeowner: (1) a notice
6 provided by the Foreclosure Mediation Program Administrator indicating that the
7 grantor or the person who holds the title of record has the right to seek mediation;
8 and (2) a form on which a homeowner may request mediation under rules adopted
9 by the Nevada Supreme Court. Under existing law, a homeowner must elect to
10 participate by: (1) completing and returning to the trustee a form upon which the
11 homeowner elects to enter into mediation; and (2) paying his or her share of the fee
12 established under the rules adopted by the Nevada Supreme Court. (NRS 107.080,
13 107.086)

14 This bill revises provisions governing enrollment in the Foreclosure Mediation
15 Program. Under **sections 1 and 2** of this bill, a trustee under a deed of trust
16 concerning owner-occupied housing must send to the homeowner the notice
17 provided by the Mediation Administrator concurrently with, but separately from,
18 the copy of the notice of default and election to sell which is mailed to the
19 homeowner pursuant to existing law. **Section 2** further provides that a homeowner
20 will be enrolled in the Foreclosure Mediation Program unless: (1) he or she elects
21 to waive mediation; or (2) fails to pay his or her share of the fee established under
22 the rules adopted by the Nevada Supreme Court. If the homeowner waives
23 mediation, fails to pay his or her share of the fee or, if the homeowner is enrolled in
24 the Foreclosure Mediation Program, fails to appear at a scheduled mediation, the



25 Mediation Administrator must provide to the trustee a certificate authorizing the
26 continuation of the process to exercise the power of sale.

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

1 **Section 1.** 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
3 real property to secure the performance of an obligation or the
4 payment of a debt, the provisions of this section apply to the
5 exercise of a power of sale pursuant to NRS 107.080 only if:

6 (a) The trust agreement becomes effective on or after October 1,
7 2003, and, on the date the trust agreement is made, the trust
8 agreement is subject to the provisions of § 152 of the Home
9 Ownership and Equity Protection Act of 1994, 15 U.S.C. §
10 1602(bb), and the regulations adopted by the Board of Governors of
11 the Federal Reserve System pursuant thereto, including, without
12 limitation, 12 C.F.R. § 226.32; or

13 (b) The trust agreement concerns owner-occupied housing as
14 defined in NRS 107.086.

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

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

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

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

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

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

33 (2) If the trust agreement concerns owner-occupied housing
34 as defined in NRS 107.086:

35 (I) By personal service;

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



1 or the person who holds the title of record at his or her place of
2 residence or place of business; or

3 (III) If the place of residence or business cannot be
4 ascertained, or a person of suitable age or discretion cannot be found
5 there, by posting a copy in a conspicuous place on the trust property,
6 delivering a copy to a person there residing if the person can be
7 found and mailing a copy to the grantor or the person who holds the
8 title of record at the place where the trust property is situated; and

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

13
14 NOTICE
15 YOU ARE IN DANGER OF LOSING YOUR HOME!

16
17 ~~YOU MAY HAVE A RIGHT TO PARTICIPATE IN THE~~
18 ~~STATE OF NEVADA FORECLOSURE MEDIATION~~
19 ~~PROGRAM IF THE TIME TO REQUEST MEDIATION~~
20 ~~HAS NOT EXPIRED!~~

21
22 Your home loan is being foreclosed. In not less than 60 days
23 your home may be sold and you may be forced to move. For
24 help, call:

25
26 ~~State of Nevada Foreclosure Mediation Program~~ _____
27 Consumer Credit Counseling _____
28 The Attorney General _____
29 The Division of Mortgage Lending _____
30 The Division of Financial Institutions _____
31 Legal Services _____
32 Your Lender _____
33 Nevada Fair Housing Center _____
34

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

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

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

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

43 107.086 1. In addition to the requirements of NRS 107.085,
44 the exercise of the power of sale pursuant to NRS 107.080 with



1 respect to any trust agreement which concerns owner-occupied
2 housing is subject to the provisions of this section.

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

5 (a) ~~Includes with~~ *Provides to the grantor or the person who*
6 *holds the title of record the following information concurrently*
7 *with, but separately from,* the notice of default and election to sell
8 which is mailed to the grantor or the person who holds the title of
9 record as required by subsection 3 of NRS 107.080:

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

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

17 (3) A notice provided by the Mediation Administrator
18 indicating that the grantor or the person who holds the title of record
19 ~~has the right to seek~~ *will be enrolled to participate in* mediation
20 pursuant to this section ~~if~~ *if he or she pays to the Mediation*
21 *Administrator his or share of the fee established pursuant to*
22 *subsection 9;* and

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

30 (b) Serves a copy of the notice upon the Mediation
31 Administrator; and

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

34 (1) The certificate provided to the trustee by the Mediation
35 Administrator pursuant to subsection ~~3~~ 4 or ~~6~~ 7 which provides
36 that no mediation is required in the matter; or

37 (2) The certificate provided to the trustee by the Mediation
38 Administrator pursuant to subsection ~~7~~ 8 which provides that
39 mediation has been completed in the matter.

40 3. ~~The~~ *If the* grantor or the person who holds the title of
41 record *elects to waive mediation, he or she* shall, not later than 30
42 days after service of the notice in the manner required by NRS
43 107.080, complete the form required by subparagraph (4) of
44 paragraph (a) of subsection 2 and return the form to the trustee *and*
45 *the Mediation Administrator* by certified mail, return receipt



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

26 4. If the grantor or the person who holds the title of record
27 indicates on the form *required by subparagraph (4) of paragraph*
28 *(a) of subsection 2* an election to waive mediation or fails to ~~return~~
29 ~~the form to the trustee~~ *pay to the Mediation Administrator his or*
30 *her share of the fee established pursuant to subsection 9, as*
31 required by ~~this subsection, the trustee shall execute an affidavit~~
32 ~~attesting to that fact under penalty of perjury and serve a copy of the~~
33 ~~affidavit, together with the waiver of mediation by the grantor or~~
34 ~~the person who holds the title of record, or proof of service on the~~
35 ~~grantor or the person who holds the title of record of the notice~~
36 ~~required by subsection 2 of this section and subsection 3 of NRS~~
37 ~~107.080, upon the Mediation Administrator. Upon receipt of the~~
38 ~~affidavit and the waiver or proof of service.~~ *subsection 3, the*
39 Mediation Administrator shall provide to the trustee a certificate
40 which provides that no mediation is required in the matter.

41 ~~4.~~ 5. Each mediation required by this section must be
42 conducted by a senior justice, judge, hearing master or other
43 designee pursuant to the rules adopted pursuant to subsection ~~8.~~ 9.
44 The beneficiary of the deed of trust or a representative shall attend
45 the mediation. The grantor or ~~at~~ *his or her* representative, ~~shall~~



1 ~~attend the mediation if the grantor elected to enter into mediation,~~
2 or the person who holds the title of record or ~~{a}~~ *his or her*
3 representative, shall attend the mediation. ~~{if the person who holds~~
4 ~~the title of record elected to enter into mediation.}~~ The beneficiary
5 of the deed of trust shall bring to the mediation the original or a
6 certified copy of the deed of trust, the mortgage note and each
7 assignment of the deed of trust or mortgage note. If the beneficiary
8 of the deed of trust is represented at the mediation by another
9 person, that person must have authority to negotiate a loan
10 modification on behalf of the beneficiary of the deed of trust or have
11 access at all times during the mediation to a person with such
12 authority.

13 ~~{5}~~ 6. If the beneficiary of the deed of trust or the
14 representative fails to attend the mediation, fails to participate in the
15 mediation in good faith or does not bring to the mediation each
16 document required by subsection ~~{4}~~ 5 or does not have the
17 authority or access to a person with the authority required by
18 subsection ~~{4}~~ 5, the mediator shall prepare and submit to the
19 Mediation Administrator a petition and recommendation concerning
20 the imposition of sanctions against the beneficiary of the deed of
21 trust or the representative. The court may issue an order imposing
22 such sanctions against the beneficiary of the deed of trust or the
23 representative as the court determines appropriate, including,
24 without limitation, requiring a loan modification in the manner
25 determined proper by the court.

26 ~~{6}~~ 7. If the grantor or the person who holds the title of record
27 ~~{elected to enter into mediation and}~~ *is enrolled to participate in*
28 *mediation pursuant to this section but* fails to attend the mediation,
29 the Mediation Administrator shall provide to the trustee a certificate
30 which states that no mediation is required in the matter.

31 ~~{7}~~ 8. If the mediator determines that the parties, while acting
32 in good faith, are not able to agree to a loan modification, the
33 mediator shall prepare and submit to the Mediation Administrator a
34 recommendation that the matter be terminated. The Mediation
35 Administrator shall provide to the trustee a certificate which
36 provides that the mediation required by this section has been
37 completed in the matter.

38 ~~{8}~~ 9. The Supreme Court shall adopt rules necessary to carry
39 out the provisions of this section. The rules must, without limitation,
40 include provisions:

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



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

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

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

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

13 ~~19-1~~ **10.** Except as otherwise provided in subsection ~~11-1~~ **12,**
14 the provisions of this section do not apply if:

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

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

25 ~~10-1~~ **11.** A noncommercial lender is not excluded from the
26 application of this section.

27 ~~11-1~~ **12.** The Mediation Administrator and each mediator who
28 acts pursuant to this section in good faith and without gross
29 negligence are immune from civil liability for those acts.

30 ~~12-1~~ **13.** As used in this section:

31 (a) "Mediation Administrator" means the entity so designated
32 pursuant to subsection ~~8-1~~ **9.**

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

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

41 **Sec. 3.** The amendatory provisions of this act apply only with
42 respect to trust agreements for which a notice of default and election
43 to sell is recorded on or after October 1, 2013.



