

SENATE BILL NO. 321—SENATORS HARRIS, ROBERSON,
FARLEY, FORD, ATKINSON; AND WOODHOUSE

MARCH 16, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions concerning real property.
(BDR 9-728)

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

~

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

AN ACT relating to real property; authorizing a mortgagor or a grantor or person who holds title of record with respect to a deed of trust to initiate a mediation with the mortgagee or beneficiary of the deed of trust under certain circumstances; providing for the imposition of a fee for mediation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law sets forth procedures governing foreclosures on real property upon
2 default. A trustee under a deed of trust has the power to sell the property to which
3 the deed of trust applies, subject to certain restrictions. One such restriction on the
4 trustee's power of sale upon default with respect to owner-occupied housing is that
5 a trustee must initiate mediation with a grantor of a deed of trust or the person who
6 holds the title of record under which he or she may receive a loan modification.
7 (NRS 107.086)

8 This bill authorizes a mortgagor under a mortgage secured by owner-occupied
9 housing or a grantor or the person who holds the title of record with respect to a
10 deed of trust concerning owner-occupied housing to initiate the mediation process
11 if: (1) a local housing counseling agency approved by the United States Department
12 of Housing and Urban Development certifies that the mortgagor, grantor or person
13 who holds the title of record has a documented financial hardship and is in
14 imminent risk of default; (2) the mortgagor, grantor or other person files a form
15 with the Mediation Administrator indicating an election to enter into mediation; and
16 (3) the mortgagor, grantor or other person pays his or her share of the fee for the
17 mediation. Under this bill, if the parties participate in mediation in good faith, the
18 requirement of existing law to participate in mediation before a nonjudicial
19 foreclosure sale of the owner-occupied housing is satisfied.



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
2 thereto a new section to read as follows:

3 1. *A mortgagor under a mortgage secured by owner-occupied*
4 *housing or a grantor or the person who holds the title of record*
5 *with respect to any trust agreement which concerns owner-*
6 *occupied housing may initiate mediation to negotiate a loan*
7 *modification under the mediation process set forth in NRS*
8 *107.086 if:*

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

13 (1) *Has a documented financial hardship; and*

14 (2) *Is in imminent risk of default; and*

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

17 (1) *Submits a form prescribed by the Mediation*
18 *Administrator indicating an election to enter into mediation*
19 *pursuant to this section; and*

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

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

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

37 4. *If the mediator determines that the parties, while acting in*
38 *good faith, are not able to agree to a loan modification, the*
39 *mediator shall prepare and submit to the Mediation Administrator*
40 *a recommendation that the matter be terminated. The Mediation*
41 *Administrator shall, not later than 30 days after submittal of the*
42 *mediator's recommendation that the matter be terminated, provide*



* S B 3 2 1 R 1 *

1 *to the mortgage servicer a certificate which provides that the*
2 *mediation required by this section has been completed in the*
3 *matter. If the Mediation Administrator provides such a certificate,*
4 *the requirement for mediation pursuant to NRS 107.086 is*
5 *satisfied.*

6 *5. The certificate provided pursuant to subsection 4 must be*
7 *in the same form as the certificate provided pursuant to subsection*
8 *8 of NRS 107.086, and may be recorded in the office of the county*
9 *recorder in which the trust property is located, or some part*
10 *thereof, is situated. The recording of the certificate in the office of*
11 *the county recorder in which the trust property, or some part*
12 *thereof, is situated shall be deemed to be the recording of the*
13 *certificate required pursuant to subparagraph (2) of paragraph (d)*
14 *of subsection 2 of NRS 107.086.*

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

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

20 *8. As used in this section:*

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

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

26 *(2) Serious illness;*

27 *(3) Divorce or separation; or*

28 *(4) Job loss or a reduction in pay.*

29 *(b) "Imminent risk of default" means the inability of a grantor*
30 *or the person who holds the title of record to make his or her*
31 *mortgage payment within the next 90 days.*

32 *(c) "Mediation Administrator" has the meaning ascribed to it*
33 *in NRS 107.086.*

34 *(d) "Noncommercial lender" has the meaning ascribed to it in*
35 *NRS 107.086.*

36 *(e) "Owner-occupied housing" has the meaning ascribed to it*
37 *in NRS 107.086.*

38 **Sec. 1.5.** NRS 107.086 is hereby amended to read as follows:

39 107.086 1. Except as otherwise provided in this subsection **†**
40 *and subsection 4 of section 1 of this act*, in addition to the
41 requirements of NRS 107.085, the exercise of the power of sale
42 pursuant to NRS 107.080 with respect to any trust agreement which
43 concerns owner-occupied housing is subject to the provisions of this
44 section. The provisions of this section do not apply to the exercise of
45 the power of sale if the notice of default and election to sell recorded



1 pursuant to subsection 2 of NRS 107.080 includes an affidavit and a
2 certification indicating that, pursuant to NRS 107.130, an election
3 has been made to use the expedited procedure for the exercise of the
4 power of sale with respect to abandoned residential property.

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

7 (a) Includes with the notice of default and election to sell which
8 is mailed to the grantor or the person who holds the title of record as
9 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 will be enrolled to participate in mediation pursuant to this section if
20 he or she pays to the Mediation Administrator his or her share of the
21 fee established pursuant to subsection 11; and

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

28 (b) In addition to including the information described in
29 paragraph (a) with the notice of default and election to sell which is
30 mailed to the grantor or the person who holds the title of record as
31 required by subsection 3 of NRS 107.080, provides to the grantor or
32 the person who holds the title of record the information described in
33 paragraph (a) concurrently with, but separately from, the notice of
34 default and election to sell which is mailed to the grantor or the
35 person who holds the title of record as required by subsection 3 of
36 NRS 107.080;

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

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

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



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

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

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

40 5. Each mediation required by this section must be conducted
41 by a senior justice, judge, hearing master or other designee pursuant
42 to the rules adopted pursuant to subsection 11. The beneficiary of
43 the deed of trust or a representative shall attend the mediation. The
44 grantor or his or her representative, or the person who holds the title
45 of record or his or her representative, shall attend the mediation. The



1 beneficiary of the deed of trust shall bring to the mediation the
2 original or a certified copy of the deed of trust, the mortgage note
3 and each assignment of the deed of trust or mortgage note. If the
4 beneficiary of the deed of trust is represented at the mediation by
5 another person, that person must have authority to negotiate a loan
6 modification on behalf of the beneficiary of the deed of trust or have
7 access at all times during the mediation to a person with such
8 authority.

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

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

26 8. If the mediator determines that the parties, while acting in
27 good faith, are not able to agree to a loan modification, the mediator
28 shall prepare and submit to the Mediation Administrator a
29 recommendation that the matter be terminated. The Mediation
30 Administrator shall, not later than 30 days after submittal of the
31 mediator's recommendation that the matter be terminated, provide
32 to the trustee a certificate which provides that the mediation
33 required by this section has been completed in the matter.

34 9. Upon receipt of the certificate provided to the trustee by the
35 Mediation Administrator pursuant to subsection 4, 7 or 8, if the
36 property is located within a common-interest community, the trustee
37 shall notify the unit-owners' association organized under NRS
38 116.3101 of the existence of the certificate.

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

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



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

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

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

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

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

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

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

25 (b) A petition in bankruptcy has been filed with respect to the
26 grantor or the person who holds the title of record under chapter 7,
27 11, 12 or 13 of Title 11 of the United States Code and the
28 bankruptcy court has not entered an order closing or dismissing the
29 case or granting relief from a stay of foreclosure.

30 13. A noncommercial lender is not excluded from the
31 application of this section.

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

35 15. As used in this section:

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

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

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

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



* S B 3 2 1 R 1 *

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

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

7 **Sec. 2.** This act becomes effective on July 1, 2015.

⑩

