

CHAPTER.....

AN ACT relating to real property; revising provisions relating to the foreclosure of real property; authorizing electronic delivery of certain notices 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. (NRS 107.080) **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. **Sections 1 and 1.5** also authorize the electronic delivery of a notice of default and election to sell real property, if authorized by the parties.

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; (3) serving upon certain persons a copy of a petition to participate in mediation, by certified mail or, if authorized by the parties, electronically; and (4) developing and maintaining an Internet portal for the purpose of streamlining the foreclosure mediation process. 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 or, if authorized by the parties, electronically; and (3) pay his or her share of the mediation fee. **Section 2** increases the fee for mediation services from \$400 to \$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; (3) requires the Account to be administered by the Interim Finance Committee; and (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 the Internet portal for a program of foreclosure mediation required pursuant to **section 2**. **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)

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

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 and of the election to sell or cause to be sold the property pursuant to subsection 2 of NRS 107.080, together with a notarized affidavit of authority to exercise the power of sale. The affidavit required by this paragraph must state under 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) That 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.

2. The period provided in paragraph (a) of subsection 1, 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, at their respective addresses, if known, otherwise to the address of the trust property or, if authorized by the parties delivered by electronic transmission. In addition to meeting the requirements set forth in subsection 1 and NRS 107.080, the notice of default and election must:

(a) 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;

(b) 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

(c) Comply with the provisions of NRS 107.087.

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

4. In addition to the grounds provided in paragraph (a) of subsection 5 of NRS 107.080, 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 the trustee or other person authorized to make the sale does not substantially comply with any applicable provisions set forth in NRS 107.086 and 107.087, and the applicant otherwise complies with subsection 5 of NRS 107.080.

5. 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" has the meaning ascribed in NRS 107.080.

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

107.080 1. Except as otherwise provided in NRS 106.210, 107.085 and 107.086, ***and section 1 of this act***, 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~~ **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)~~ (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 ~~†~~ *or, if authorized by the parties, delivered by electronic transmission.* The notice of default and election to sell must ~~†~~

~~—(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 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 *, by electronic transmission if authorized by the parties* 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; *and*

(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. ~~f. 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. Except as otherwise provided in subsection 7, 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 ; ~~for 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 30 days after the date on which the trustee's deed upon sale is recorded pursuant to subsection 10 in the office of the county recorder of the county in which the property is located; 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 5 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 90 days after the date of 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 pursuant to subsection 18 of NRS 107.086.*

(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 ~~land 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 *, or delivered by electronic transmission if authorized by the parties,* 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 or, if authorized by the parties, by electronic transmission, and* pays to the ~~{Mediation Administrator}~~ *district court* his or her share of the fee established pursuant to subsection ~~{H;}~~ 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 *or delivered by electronic transmission, as applicable*, 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 *or delivered by electronic transmission, as applicable*, 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 *or delivering by electronic transmission, as applicable*, 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 ~~+~~ *or, if authorized by the parties, by electronic transmission*. 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 the notice in the manner required by NRS 107.080 , ~~for December 31, 2016, whichever is earlier, pay to the Mediation Administrator~~ *petition the district court to participate in mediation pursuant to this section, at the time of filing such a petition, pay to the clerk of the court a fee of \$25 and* his or her share of the fee established pursuant to subsection ~~11~~ 12. *The grantor or the person who holds the title of record shall serve a copy of the petition, by certified mail, return receipt requested or, if authorized by the parties, by electronic transmission, upon the beneficiary of the deed of trust and Home Means Nevada, Inc., or its successor organization. Upon receipt of the* ~~share of the fee established pursuant to subsection 11 owed by the grantor or the person who holds title of record,~~ *copy of the petition, the Mediation Administrator* *Home Means Nevada, Inc., or its successor organization*, shall notify the trustee ~~+~~ *and every other person with an interest as defined in NRS 107.090*, by certified mail, return receipt requested ~~+~~ *or, if authorized by the parties, by electronic transmission*, of the ~~enrollment~~ *petition* of the grantor or person who holds the title of record to participate in mediation pursuant to this section . ~~and~~ *Upon receipt of a petition pursuant to this section, the district court* shall assign the matter to a senior justice, judge, hearing master or other designee and schedule the matter for mediation. ~~The trustee shall notify the beneficiary of the deed of trust and every other person with an interest as defined in NRS 107.090, by certified mail, return receipt requested, of the enrollment of the grantor or the person who holds the title of record to participate in mediation.~~ If the grantor or person who holds the title of record ~~is enrolled~~ *satisfies the requirements of this*



subsection to participate in mediation pursuant to this section, no further action may be taken to exercise the power of sale until the completion of the mediation.

4. If the grantor or the person who holds the title of record indicates on the form described in subparagraph ~~4~~ (5) of paragraph (a) of subsection 2 an election to waive mediation ~~or~~, *fails to petition the district court pursuant to subsection 3 or* fails to pay to the ~~Mediation Administrator~~ *district court* his or her share of the fee established pursuant to subsection ~~11~~ 12 as required by subsection 3, ~~the Mediation Administrator~~ *Home Means Nevada, Inc., or its successor organization*, shall, not later than 60 days after ~~the Mediation Administrator~~ *Home Means Nevada, Inc., or its successor organization*, receives the form indicating an election to waive mediation or 90 days after the service of the notice in the manner required by NRS 107.080, whichever is earlier, provide to the trustee a certificate which provides that no mediation is required in the matter.

5. 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 ~~11~~ 12. The beneficiary of the deed of trust or a representative shall attend the mediation. The grantor or his or her representative, or the person who holds the title of record or his or her representative, shall attend the mediation. The beneficiary of the deed of trust shall bring to the mediation the original or a certified copy of the deed of trust, the mortgage note, ~~and~~ each assignment of the deed of trust or mortgage note ~~and~~ *any documents created in connection with a loan modification*. If the beneficiary of the deed of trust is represented at the mediation by another person, that person must have authority to negotiate a loan modification on behalf of the beneficiary of the deed of trust or have access at all times during the mediation to a person with such authority.

6. If the beneficiary of the deed of trust or the representative fails to attend the mediation, fails to participate in the mediation in good faith or does not bring to the mediation each document required by subsection 5 or does not have the authority or access to a person with the authority required by subsection 5, the mediator shall prepare and submit to the ~~Mediation Administrator~~ *district court* a ~~petition and~~ recommendation concerning the imposition of sanctions against the beneficiary of 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*, 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.

~~{H0}~~ 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.

~~{H1}~~ 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]~~ **\$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.***

~~[2]~~ (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 ~~[4]~~ 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.

~~[3]~~ 14. A noncommercial lender is not excluded from the application of this section.

~~[4. The Mediation Administrator and each]~~

15. ***Each*** mediator who acts pursuant to this section in good faith and without gross negligence are immune from civil liability for those acts.

~~[5]~~ 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. Home Means Nevada, Inc., or its successor organization, shall develop and maintain an Internet portal for a program of foreclosure mediation to streamline the process of foreclosure mediation. Home Means Nevada, Inc., or its successor organization shall:

(a) Make available on the Internet portal the option to receive by electronic transmission any notification required as part of the process of foreclosure mediation;

(b) Require authorization in writing from any party who wants to receive notification by electronic transmission; and

(c) Authorize notification by electronic transmission at each stage of the process of foreclosure mediation.

19. 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 : ~~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 ~~11~~ *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 or, if authorized by the parties, by electronic transmission.*

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 ~~;~~ *or, if authorized by the parties, by electronic transmission*, 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 ~~;~~ *or, if authorized by the parties, by electronic transmission*, 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 ~~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 ~~submittal 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 ~~or~~ *or, if authorized by the parties, by electronic transmission* 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 ~~or, if authorized by the parties, by electronic transmission~~. 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 ~~H~~ or, if authorized by the parties, by electronic transmission, 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 ~~H~~ or, if authorized by the parties, by electronic transmission, 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 ~~{H}~~ **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 ~~or~~ *or, if the authorized by the parties, delivered by electronic*



transmission, 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 **or delivering by electronic transmission** 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 **†† or delivered by electronic transmission, as applicable**, 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 **or deliver by electronic transmission** to a unit's owner or his or her successor in interest a letter of its intent to mail **or deliver by electronic transmission** a notice of delinquent assessment pursuant to paragraph (a) of subsection 1, mail **or deliver by electronic transmission** 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 **†† or, if authorized by the parties, delivers by electronic transmission:**

- (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 **†† or delivered by electronic transmission, as applicable**, 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 **or delivered by electronic transmission, as applicable**, 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.

7. 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 (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 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. 9.5. 1. Notwithstanding any other provision of law, a person may enroll in the Foreclosure Mediation Program if:

(a) The person otherwise could have enrolled in the Foreclosure Mediation Program after December 31, 2016, or was mailed a notice of default and election to sell pursuant to NRS 107.080 after December 2, 2016;

(b) Before the effective date of this act, the person received a notice of default required by NRS 107.080 or a civil action was commenced against the person pursuant to NRS 40.430; and

(c) Before the effective date of this act, the property has not been sold.

2. A person described in subsection 1 shall have until 30 days after the effective date of this act to enroll in the Foreclosure Mediation Program.

Sec. 10. 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.



