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THIRD REPRINT

A.B. 149

ASSEMBLY BILL NO. 149—ASSEMBLYMEN BUCKLEY, OCEGUERA, CONKLIN, LESLIE, SMITH; AIZLEY, ANDERSON, ATKINSON, BOBZIEN, CLABORN, DENIS, DONDERO LOOP, GOICOECHEA, GRADY, HAMBRICK, HARDY, HOGAN, HORNE, KIHUEN, KIRKPATRICK, KOIVISTO, MANENDO, MASTROLUCA, MCCLAIN, MUNFORD, OHRENSCHALL, PARNELL, PIERCE, SEGERBLUM, SETTELMAYER, SPIEGEL AND STEWART

FEBRUARY 9, 2009

JOINT SPONSORS: SENATORS HORSFORD; AND COFFIN

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing foreclosures on property. (BDR 9-824)

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

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

AN ACT relating to real property; revising provisions governing foreclosures on property; providing for mediation 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. (NRS 107.080, 107.085)
4 **Section 1** of this bill establishes additional restrictions on the trustee's power of
5 sale with respect to owner-occupied housing by providing a grantor of a deed of
6 trust or the person who holds the title of record with the right to request mediation
7 under which he may receive a loan modification. Once mediation is requested, no
8 further action may be taken to exercise the power of sale until the completion of the
9 mediation. Each mediation must be conducted by a senior justice, judge, hearing
10 master or other designee pursuant to rules adopted by the Nevada Supreme Court,
11 and a fee of not more than \$85 per hour may be charged and collected for the
12 mediation. **Section 2** of this bill also restricts the trustee's power of sale with



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13 respect to owner-occupied housing by revising the period in which a deficiency in
14 performance or payment under the trust agreement may be made good before the
15 trustee may exercise that power. Similarly, **section 3** of this bill restricts
16 the trustee's power of sale with respect to owner-occupied housing by revising the
17 manner in which service of notice that a person is in danger of losing his home
18 must be made. In addition, **section 4** of this bill authorizes the Nevada Supreme
19 Court to adopt rules providing for voluntary mediation with respect to a
20 homeowner who is not in default but is at risk of default.

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. In addition to the requirements of NRS 107.085, the*
4 *exercise of the power of sale pursuant to NRS 107.080 with respect*
5 *to any trust agreement which concerns owner-occupied housing is*
6 *subject to the provisions of this section.*

7 *2. The trustee shall not exercise a power of sale pursuant to*
8 *NRS 107.080 unless the trustee:*

9 *(a) Includes with the notice of default and election to sell*
10 *which is mailed to the grantor or the person who holds the title of*
11 *record as required by subsection 3 of NRS 107.080:*

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

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

19 *(3) A form upon which the grantor or the person who holds*
20 *the title of record may indicate his election to enter into mediation*
21 *or to waive mediation and one envelope addressed to the trustee*
22 *and one envelope addressed to the Mediation Administrator,*
23 *which the grantor or the person who holds the title of record may*
24 *use to comply with the provisions of subsection 3;*

25 *(b) Serves a copy of the notice upon the Mediation*
26 *Administrator; and*

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

30 *(1) The certificate provided to the trustee by the Mediation*
31 *Administrator pursuant to subsection 3 or 6 which provides that*
32 *no mediation is required in the matter; or*



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

4 3. *The grantor or the person who holds the title of record*
5 *shall, not later than 30 days after service of the notice upon him in*
6 *the manner required by NRS 107.080, complete the form required*
7 *by subparagraph (3) of paragraph (a) of subsection 2 and return*
8 *the form to the trustee by certified mail, return receipt requested.*
9 *If the grantor or the person who holds the title of record indicates*
10 *on the form his election to enter into mediation, the trustee shall*
11 *notify the beneficiary of the deed of trust and every other person*
12 *with an interest as defined in NRS 107.090, by certified mail,*
13 *return receipt requested, of the election of the grantor or the*
14 *person who holds the title of record to enter into mediation and*
15 *file the form with the Mediation Administrator, who shall assign*
16 *the matter to a senior justice, judge, hearing master or other*
17 *designee and schedule the matter for mediation. No further action*
18 *may be taken to exercise the power of sale until the completion of*
19 *the mediation. If the grantor or the person who holds the title of*
20 *record indicates on the form his election to waive mediation or*
21 *fails to return the form to the trustee as required by this*
22 *subsection, the trustee shall execute an affidavit attesting to that*
23 *fact under penalty of perjury and serve a copy of the affidavit,*
24 *together with the waiver of mediation by the grantor or the person*
25 *who holds the title of record, or proof of service on the grantor or*
26 *the person who holds the title of record of the notice required by*
27 *subsection 2 of this section and subsection 3 of NRS 107.080,*
28 *upon the Mediation Administrator. Upon receipt of the affidavit*
29 *and the waiver or proof of service, the Mediation Administrator*
30 *shall provide to the trustee a certificate which provides that no*
31 *mediation is required in the matter.*

32 4. *Each mediation required by this section must be conducted*
33 *by a senior justice, judge, hearing master or other designee*
34 *pursuant to the rules adopted pursuant to subsection 8. The*
35 *beneficiary of the deed of trust or his representative shall attend*
36 *the mediation. The grantor or his representative shall attend the*
37 *mediation if the grantor elected to enter into mediation, or the*
38 *person who holds the title of record or his representative shall*
39 *attend the mediation if the person who holds the title of record*
40 *elected to enter into mediation. The beneficiary of the deed of trust*
41 *shall bring to the mediation the original or a certified copy of the*
42 *deed of trust, the mortgage note and each assignment of the deed*
43 *of trust or mortgage note. If the beneficiary of the deed of trust is*
44 *represented at the mediation by another person, that person must*
45 *have authority to negotiate a loan modification on behalf of the*



1 *beneficiary of the deed of trust or have access at all times during*
2 *the mediation to a person with such authority.*

3 *5. If the beneficiary of the deed of trust or his representative*
4 *fails to attend the mediation, fails to participate in the mediation in*
5 *good faith or does not bring to the mediation each document*
6 *required by subsection 4 or does not have the authority or access*
7 *to a person with the authority required by subsection 4, the*
8 *mediator shall prepare and submit to the Mediation Administrator*
9 *a petition and recommendation concerning the imposition of*
10 *sanctions against the beneficiary of the deed of trust or his*
11 *representative. The court may issue an order imposing such*
12 *sanctions against the beneficiary of the deed of trust or his*
13 *representative as the court determines appropriate, including,*
14 *without limitation, requiring a loan modification in the manner*
15 *determined proper by the court.*

16 *6. If the grantor or the person who holds the title of record*
17 *elected to enter into mediation and fails to attend the mediation,*
18 *the Mediation Administrator shall provide to the trustee a*
19 *certificate which states that no mediation is required in the matter.*

20 *7. If the mediator determines that the parties, while acting in*
21 *good faith, are not able to agree to a loan modification, the*
22 *mediator shall prepare and submit to the Mediation Administrator*
23 *a recommendation that the matter be terminated. The Mediation*
24 *Administrator shall provide to the trustee a certificate which*
25 *provides that the mediation required by this section has been*
26 *completed in the matter.*

27 *8. The Supreme Court shall adopt rules necessary to carry*
28 *out the provisions of this section. The rules must, without*
29 *limitation, include provisions:*

30 *(a) Designating an entity to serve as the Mediation*
31 *Administrator pursuant to this section. The entities that may be so*
32 *designated include, without limitation, the Administrative Office*
33 *of the Courts, the District Court of the county in which the*
34 *property is situated or any other judicial entity.*

35 *(b) Ensuring that mediations occur in an orderly and timely*
36 *manner.*

37 *(c) Requiring each party to a mediation to provide such*
38 *information as the mediator determines necessary.*

39 *(d) Establishing procedures to protect the mediation process*
40 *from abuse and to ensure that each party to the mediation acts in*
41 *good faith.*

42 *(e) Establishing a total fee of not more than \$400 that may be*
43 *charged and collected by the Mediation Administrator for*
44 *mediation services pursuant to this section and providing that the*



1 *responsibility for payment of the fee must be shared equally by the*
2 *parties to the mediation.*

3 **9. Except as otherwise provided in subsection 11, the**
4 **provisions of this section do not apply if:**

5 (a) *The grantor or the person who holds the title of record has*
6 *surrendered the property, as evidenced by a letter confirming the*
7 *surrender or delivery of the keys to the property to the trustee, the*
8 *beneficiary of the deed of trust or the mortgagee, or an authorized*
9 *agent thereof; or*

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

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

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

20 **12. As used in this section:**

21 (a) *“Mediation Administrator” means the entity so designated*
22 *pursuant to subsection 8.*

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

27 (c) *“Owner-occupied housing” means housing that is occupied*
28 *by an owner as his primary residence. The term does not include*
29 *any time share or other property regulated under chapter 119A of*
30 *NRS.*

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

32 107.080 1. Except as otherwise provided in NRS 107.085,
33 *and section 1 of this act*, if any transfer in trust of any estate in real
34 property is made after March 29, 1927, to secure the performance of
35 an obligation or the payment of any debt, a power of sale is hereby
36 conferred upon the trustee to be exercised after a breach of the
37 obligation for which the transfer is security.

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

39 (a) ~~Has~~ **Except as otherwise provided in paragraph (b), in** the
40 case of any trust agreement coming into force:

41 (1) On or after July 1, 1949, and before July 1, 1957, the
42 grantor, ~~for his successor in interest,~~ **the person who holds the title**
43 **of record**, a beneficiary under a subordinate deed of trust or any
44 other person who has a subordinate lien or encumbrance of record
45 on the property ~~is~~ **has** , for a period of 15 days, computed as



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1 prescribed in subsection 3, failed to make good the deficiency in
2 performance or payment; or

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

9 (b) *In the case of any trust agreement which concerns owner-*
10 *occupied housing as defined in section 1 of this act, the grantor,*
11 *the person who holds the title of record, a beneficiary under a*
12 *subordinate deed of trust or any other person who has a*
13 *subordinate lien or encumbrance of record on the property has,*
14 *for a period that commences in the manner and subject to the*
15 *requirements described in subsection 3 and expires 5 days before*
16 *the date of sale, failed to make good the deficiency in performance*
17 *or payment;*

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

23 ~~[(e)]~~ (d) Not less than 3 months have elapsed after the recording
24 of the notice.

25 3. The 15- or 35-day period provided in paragraph (a) of
26 subsection 2 , *or the period provided in paragraph (b) of*
27 *subsection 2*, commences on the first day following the day upon
28 which the notice of default and election to sell is recorded in the
29 office of the county recorder of the county in which the property is
30 located and a copy of the notice of default and election to sell is
31 mailed by registered or certified mail, return receipt requested and
32 with postage prepaid to the grantor ~~[-and]~~ *or* to the person who
33 holds the title of record on the date the notice of default and election
34 to sell is recorded, at ~~[their respective addresses,]~~ *his address*, if
35 known, otherwise to the address of the trust property. The notice of
36 default and election to sell must describe the deficiency in
37 performance or payment and may contain a notice of intent to
38 declare the entire unpaid balance due if acceleration is permitted by
39 the obligation secured by the deed of trust, but acceleration must not
40 occur if the deficiency in performance or payment is made good and
41 any costs, fees and expenses incident to the preparation or
42 recordation of the notice and incident to the making good of the
43 deficiency in performance or payment are paid within the time
44 specified in subsection 2.



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

7 (a) Providing the notice to each trustor and any other person
8 entitled to notice pursuant to this section by personal service or by
9 mailing the notice by registered or certified mail to the last known
10 address of the trustor and any other person entitled to such notice
11 pursuant to this section;

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

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

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

25 (a) The trustee or other person authorized to make the sale does
26 not substantially comply with the provisions of this section ~~§~~ *or*
27 *any applicable provision of section 1 of this act;*

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

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

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

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



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

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

6 (a) The trust agreement becomes effective on or after October 1,
7 2003 ~~[- and~~

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

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

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

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

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

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

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

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

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

36 ***(I) By personal service;***

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

43 ***(III) If the place of residence or business cannot be***
44 ***ascertained, or a person of suitable age or discretion cannot be***
45 ***found there, by posting a copy in a conspicuous place on the trust***



1 *property, delivering a copy to a person there residing if the person*
2 *can be found and mailing a copy to the grantor or the person who*
3 *holds the title of record at the place where the trust property is*
4 *situated;* and

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

8
9 NOTICE

10 YOU ARE IN DANGER OF LOSING YOUR HOME!

11
12 Your home loan is being foreclosed. In *not less than* 60 days your
13 home will be sold and you will be forced to move. For help, call:

- 14
- 15 Consumer Credit Counseling _____
- 16 The Attorney General _____
- 17 The Division of Financial Institutions _____
- 18 Legal Services _____
- 19 Your Lender _____
- 20 Nevada Fair Housing Center _____

21
22 4. This section does not prohibit a judicial foreclosure.

23 5. As used in this section, "unfair lending practice" means an
24 unfair lending practice described in NRS 598D.010 to 598D.150,
25 inclusive.

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

27 107.095 1. The notice of default required by NRS 107.080
28 must also be sent by registered or certified mail, return receipt
29 requested and with postage prepaid, to each guarantor or surety of
30 the debt. If the address of the guarantor or surety is unknown, the
31 notice must be sent to the address of the trust property. Failure to
32 give the notice, except as otherwise provided in subsection 3,
33 releases the guarantor or surety from his obligation to the
34 beneficiary, but does not affect the validity of a sale conducted
35 pursuant to NRS 107.080 ~~nor~~ or the obligation of any guarantor or
36 surety to whom the notice was properly given.

37 2. Failure to give the notice of default required by NRS
38 107.090, except as otherwise provided in subsection 3, releases the
39 obligation to the beneficiary of any person who has complied with
40 NRS 107.090 and who is or may otherwise be held liable for the
41 debt or other obligation secured by the deed of trust, but such a
42 failure does not affect the validity of a sale conducted pursuant to
43 NRS 107.080 ~~nor~~ or the obligation of any person to whom the
44 notice was properly given pursuant to this section or to NRS
45 107.080 or 107.090.



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

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

5 (1) The expiration of the 15- or 35-day period described in
6 *paragraph (a) of subsection 2 of NRS 107.080; ~~for~~*

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

11 (3) Any extension of ~~that~~ *the applicable* period by the
12 beneficiary; or

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

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

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

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

20 459.646 1. A person who, without participating in the
21 management of a parcel of real property, holds or is the beneficiary
22 of evidence of title to the property primarily to protect a security
23 interest in the property is not a responsible party with respect to a
24 release of a hazardous substance on the property if:

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

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

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

32 2. A lender to a prospective purchaser who has filed an
33 application to participate in the program pursuant to NRS 459.634
34 or a lender who forecloses his security interest in property pursuant
35 to NRS 40.430 to 40.450, inclusive, or 107.080 to 107.100,
36 inclusive, *and section 1 of this act*, and within a reasonable period
37 after the foreclosure, not to exceed 2 years, sells, transfers or
38 conveys the property to a prospective purchaser who has filed an
39 application to participate in the program pursuant to NRS 459.634 is
40 not a responsible party solely as a result of:

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

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

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



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

4 **Sec. 5.5.** The amendatory provisions of this act governing trust
5 agreements which concern owner-occupied housing, as defined in
6 section 1 of this act, apply only with respect to such agreements for
7 which a notice of default is recorded on or after July 1, 2009.

8 **Sec. 5.7.** Notwithstanding any provision of NRS 2.120 to the
9 contrary and in recognition of the emergency situation confronting
10 this State concerning mortgage foreclosures and the need to
11 implement the provisions of this act quickly, any rules adopted by
12 the Supreme Court pursuant to subsection 8 of section 1 of this act
13 take effect on the date specified by the Supreme Court in the order
14 adopting the rules, which in no event may be less than 30 days after
15 entry of the order.

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

