

ASSEMBLY BILL NO. 273—ASSEMBLYMEN  
EISEN; AND FRIERSON

MARCH 15, 2013

Referred to Committee on Judiciary

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

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

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

AN ACT relating to real property; creating the Contingency Account for the Foreclosure Mediation Program; revising provisions governing enrollment in the Foreclosure Mediation Program; revising provisions governing the foreclosure of liens by an association of a common-interest community; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

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

14 This bill revises provisions governing enrollment in the Foreclosure Mediation  
15 Program. Under **sections 2 and 3** of this bill, a trustee under a deed of trust  
16 concerning owner-occupied housing must, in addition to including certain  
17 information concerning the Foreclosure Mediation Program with the copy of the  
18 notice of default and election which is mailed to the homeowner, send that  
19 information to the homeowner concurrently with, but separately from, the copy of  
20 the notice of default and election to sell. **Section 3** further provides that a



21 homeowner will be enrolled in the Foreclosure Mediation Program unless: (1) he or  
22 she elects to waive mediation; or (2) fails to pay his or her share of the fee  
23 established under the rules adopted by the Nevada Supreme Court. If the  
24 homeowner waives mediation, fails to pay his or her share of the fee or, if the  
25 homeowner is enrolled in the Foreclosure Mediation Program, fails to appear at a  
26 scheduled mediation, the Mediation Administrator must provide to the trustee a  
27 certificate authorizing the continuation of the process to exercise the power of sale.  
28 **Section 3** also establishes deadlines by which the Mediation Administrator must  
29 provide certain information to the trustee.

30 **Section 1** of this bill creates the Contingency Account for the Foreclosure  
31 Mediation Program. Under **section 1**, the Supreme Court administers the  
32 Contingency Account and money in the Contingency Account must be expended  
33 only to carry out the Foreclosure Mediation Program.

34 **Section 4** of this bill prohibits a homeowners' association from foreclosing its  
35 lien on a unit constituting owner-occupied housing while the unit's owner is  
36 eligible to participate or is participating in the Foreclosure Mediation Program.

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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. The Contingency Account for the Foreclosure Mediation*  
4 *Program is hereby created in the State General Fund.*

5 *2. The Supreme Court shall administer the Contingency*  
6 *Account. The money in the Contingency Account must be*  
7 *expended only for the purpose of carrying out the provisions of*  
8 *NRS 107.086 and any rules adopted by the Supreme Court to carry*  
9 *out the provisions of NRS 107.086.*

10 *3. The Supreme Court may apply for and accept gifts, grants*  
11 *and donations or other sources of money for deposit in the*  
12 *Contingency Account.*

13 *4. The interest and income earned on money in the*  
14 *Contingency Account, after deducting any applicable charges,*  
15 *must be credited to the Contingency Account.*

16 *5. Any money remaining in the Contingency Account at the*  
17 *end of a fiscal year does not revert to the State General Fund and*  
18 *the balance in the Contingency Account must be carried forward*  
19 *to the next fiscal year.*

20 **Sec. 2.** NRS 107.085 is hereby amended to read as follows:

21 107.085 1. With regard to a transfer in trust of an estate in  
22 real property to secure the performance of an obligation or the  
23 payment of a debt, the provisions of this section apply to the  
24 exercise of a power of sale pursuant to NRS 107.080 only if:

25 (a) The trust agreement becomes effective on or after October 1,  
26 2003, and, on the date the trust agreement is made, the trust  
27 agreement is subject to the provisions of § 152 of the Home



1 Ownership and Equity Protection Act of 1994, 15 U.S.C. §  
2 1602(bb), and the regulations adopted by the Board of Governors of  
3 the Federal Reserve System pursuant thereto, including, without  
4 limitation, 12 C.F.R. § 226.32; or

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

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

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

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

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

18 (a) Served upon the grantor or the person who holds the title of  
19 record:

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

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

27 (I) By personal service;

28 (II) If the grantor or the person who holds the title of  
29 record is absent from his or her place of residence or from his or her  
30 usual place of business, by leaving a copy with a person of suitable  
31 age and discretion at either place and mailing a copy to the grantor  
32 or the person who holds the title of record at his or her place of  
33 residence or place of business; or

34 (III) If the place of residence or business cannot be  
35 ascertained, or a person of suitable age or discretion cannot be found  
36 there, by posting a copy in a conspicuous place on the trust property,  
37 delivering a copy to a person there residing if the person can be  
38 found and mailing a copy to the grantor or the person who holds the  
39 title of record at the place where the trust property is situated; and

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



NOTICE  
YOU ARE IN DANGER OF LOSING YOUR HOME!

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

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

- ~~[State of Nevada Foreclosure Mediation Program]~~
- Consumer Credit Counseling \_\_\_\_\_
- The Attorney General \_\_\_\_\_
- The Division of Mortgage Lending \_\_\_\_\_
- The Division of Financial Institutions \_\_\_\_\_
- Legal Services \_\_\_\_\_
- Your Lender \_\_\_\_\_
- Nevada Fair Housing Center \_\_\_\_\_

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

5. This section does not prohibit a judicial foreclosure.

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

**Sec. 3.** NRS 107.086 is hereby amended to read as follows:

107.086 1. 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 is subject to the provisions of this section.

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 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 for at least one local housing counseling agency approved by the United States Department of Housing and Urban Development;



1 (3) A notice provided by the Mediation Administrator  
2 indicating that the grantor or the person who holds the title of record  
3 ~~has the right to seek~~ *will be enrolled to participate in* mediation  
4 pursuant to this section ~~if~~ *if he or she pays to the Mediation*  
5 *Administrator his or her share of the fee established pursuant to*  
6 *subsection 9;* and

7 (4) A form upon which the grantor or the person who holds  
8 the title of record may indicate an election ~~to enter into mediation~~  
9 ~~or~~ to waive mediation pursuant to this section and one envelope  
10 addressed to the trustee and one envelope addressed to the  
11 Mediation Administrator, which the grantor or the person who holds  
12 the title of record may use to comply with the provisions of  
13 subsection 3;

14 (b) *In addition to including the information described in*  
15 *paragraph (a) with the notice of default and election to sell which*  
16 *is mailed to the grantor or the person who holds the title of record*  
17 *as required by subsection 3 of NRS 107.080, provides to the*  
18 *grantor or the person who holds the title of record the information*  
19 *described in paragraph (a) concurrently with, but separately from,*  
20 *the notice of default and election to sell which is mailed to the*  
21 *grantor or the person who holds the title of record as required by*  
22 *subsection 3 of NRS 107.080;*

23 (c) Serves a copy of the notice upon the Mediation  
24 Administrator; and

25 ~~(e)~~ (d) Causes to be recorded in the office of the recorder of  
26 the county in which the trust property, or some part thereof, is  
27 situated:

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

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

34 3. ~~The~~ *If the* grantor or the person who holds the title of  
35 record *elects to waive mediation, he or she* shall, not later than 30  
36 days after service of the notice in the manner required by NRS  
37 107.080, complete the form required by subparagraph (4) of  
38 paragraph (a) of subsection 2 and return the form to the trustee *and*  
39 *the Mediation Administrator* by certified mail, return receipt  
40 requested. If the grantor or the person who holds the title of record  
41 ~~indicates on the form an election to enter into mediation, the~~  
42 ~~trustee~~ *does not elect to waive mediation, he or she shall, not later*  
43 *than 30 days after the service of the notice in the manner required*  
44 *by NRS 107.080, pay to the Mediation Administrator his or her*  
45 *share of the fee established pursuant to subsection 9. Upon receipt*



1 *of the share of the fee established pursuant to subsection 9 owed*  
2 *by the grantor or the person who holds title of record, the*  
3 *Mediation Administrator shall notify the ~~beneficiary of the deed of~~*  
4 *~~trust and every other person with an interest as defined in NRS~~*  
5 *~~107.090.] trustee, by certified mail, return receipt requested, of the~~*  
6 *~~election of the grantor or the person who holds the title of record to~~*  
7 *~~enter into] enrollment of the grantor or person who holds the title~~*  
8 *~~of record to participate in mediation pursuant to this section and~~*  
9 *~~file the form with the Mediation Administrator, who] shall assign~~*  
10 the matter to a senior justice, judge, hearing master or other  
11 designee and schedule the matter for mediation. ~~No] The trustee~~  
12 *shall notify the beneficiary of the deed of trust and every other*  
13 *person with an interest as defined in NRS 107.090, by certified*  
14 *mail, return receipt requested, of the enrollment of the grantor or*  
15 *the person who holds the title of record to participate in mediation.*  
16 *If the grantor or person who holds the title of record is enrolled to*  
17 *participate in mediation pursuant to this section, no further action*  
18 may be taken to exercise the power of sale until the completion of  
19 the mediation.

20 4. If the grantor or the person who holds the title of record  
21 indicates on the form *described in subparagraph (4) of paragraph*  
22 *(a) of subsection 2* an election to waive mediation or fails to ~~return~~  
23 ~~the form to the trustee] pay to the Mediation Administrator his or~~  
24 ~~her share of the fee established pursuant to subsection 9, as~~  
25 required by ~~this subsection, the trustee shall execute an affidavit~~  
26 ~~attesting to that fact under penalty of perjury and serve a copy of the~~  
27 ~~affidavit, together with the waiver of mediation by the grantor or~~  
28 ~~the person who holds the title of record, or proof of service on the~~  
29 ~~grantor or the person who holds the title of record of the notice~~  
30 ~~required by subsection 2 of this section and subsection 3 of NRS~~  
31 ~~107.080, upon the Mediation Administrator. Upon receipt of the~~  
32 ~~affidavit and the waiver or proof of service.] subsection 3, the~~  
33 Mediation Administrator shall , *not later than 60 days after the*  
34 *Mediation Administrator receives the form indicating an election*  
35 *to waive mediation or 90 days after the service of the notice in the*  
36 *manner required by NRS 107.080, whichever is earlier,* provide to  
37 the trustee a certificate which provides that no mediation is required  
38 in the matter.

39 ~~4.] 5.~~ Each mediation required by this section must be  
40 conducted by a senior justice, judge, hearing master or other  
41 designee pursuant to the rules adopted pursuant to subsection ~~8.] 9.~~  
42 The beneficiary of the deed of trust or a representative shall attend  
43 the mediation. The grantor or ~~a] his or her~~ representative , ~~shall~~  
44 ~~attend the mediation if the grantor elected to enter into mediation,]~~  
45 or the person who holds the title of record or ~~a] his or her~~



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

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

24 ~~{6.}~~ 7. If the grantor or the person who holds the title of record  
25 ~~{elected to enter into mediation and}~~ *is enrolled to participate in*  
26 *mediation pursuant to this section but* fails to attend the mediation,  
27 the Mediation Administrator shall , *not later than 30 days after the*  
28 *scheduled mediation*, provide to the trustee a certificate which  
29 states that no mediation is required in the matter.

30 ~~{7.}~~ 8. If the mediator determines that the parties, while acting  
31 in good faith, are not able to agree to a loan modification, the  
32 mediator shall prepare and submit to the Mediation Administrator a  
33 recommendation that the matter be terminated. The Mediation  
34 Administrator shall , *not later than 30 days after submittal of the*  
35 *mediator's recommendation that the matter be terminated*, provide  
36 to the trustee a certificate which provides that the mediation  
37 required by this section has been completed in the matter.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

41 **Sec. 4.** NRS 116.31162 is hereby amended to read as follows:

42 116.31162 1. Except as otherwise provided in subsection 4  
43 ~~4~~ and 5, in a condominium, in a planned community, in a  
44 cooperative where the owner's interest in a unit is real estate under  
45 NRS 116.1105, or in a cooperative where the owner's interest in a





1 unit is personal property under NRS 116.1105 and the declaration  
2 provides that a lien may be foreclosed under NRS 116.31162 to  
3 116.31168, inclusive, the association may foreclose its lien by sale  
4 after all of the following occur:

5 (a) The association has mailed by certified or registered mail,  
6 return receipt requested, to the unit's owner or his or her successor  
7 in interest, at his or her address, if known, and at the address of the  
8 unit, a notice of delinquent assessment which states the amount of  
9 the assessments and other sums which are due in accordance with  
10 subsection 1 of NRS 116.3116, a description of the unit against  
11 which the lien is imposed and the name of the record owner of the  
12 unit.

13 (b) Not less than 30 days after mailing the notice of delinquent  
14 assessment pursuant to paragraph (a), the association or other person  
15 conducting the sale has executed and caused to be recorded, with the  
16 county recorder of the county in which the common-interest  
17 community or any part of it is situated, a notice of default and  
18 election to sell the unit to satisfy the lien which must contain the  
19 same information as the notice of delinquent assessment and which  
20 must also comply with the following:

21 (1) Describe the deficiency in payment.

22 (2) State the name and address of the person authorized by  
23 the association to enforce the lien by sale.

24 (3) Contain, in 14-point bold type, the following warning:  
25

26 **WARNING! IF YOU FAIL TO PAY THE AMOUNT**  
27 **SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR**  
28 **HOME, EVEN IF THE AMOUNT IS IN DISPUTE!**  
29

30 (c) The unit's owner or his or her successor in interest has failed  
31 to pay the amount of the lien, including costs, fees and expenses  
32 incident to its enforcement, for 90 days following the recording of  
33 the notice of default and election to sell.

34 2. The notice of default and election to sell must be signed by  
35 the person designated in the declaration or by the association for that  
36 purpose or, if no one is designated, by the president of the  
37 association.

38 3. The period of 90 days begins on the first day following:

39 (a) The date on which the notice of default is recorded; or

40 (b) The date on which a copy of the notice of default is mailed  
41 by certified or registered mail, return receipt requested, to the unit's  
42 owner or his or her successor in interest at his or her address, if  
43 known, and at the address of the unit,

44 ➔ whichever date occurs later.



1 4. The association may not foreclose a lien by sale based on a  
2 fine or penalty for a violation of the governing documents of the  
3 association unless:

4 (a) The violation poses an imminent threat of causing a  
5 substantial adverse effect on the health, safety or welfare of the  
6 units' owners or residents of the common-interest community; or

7 (b) The penalty is imposed for failure to adhere to a schedule  
8 required pursuant to NRS 116.310305.

9 **5. *The association may not foreclose a lien by sale if:***

10 ***(a) The unit is owner-occupied housing encumbered by a deed***  
11 ***of trust;***

12 ***(b) The beneficiary under the deed of trust, the successor in***  
13 ***interest of the beneficiary or the trustee has recorded a notice of***  
14 ***default and election to sell with respect to the unit pursuant to***  
15 ***subsection 2 of NRS 107.080; and***

16 ***(c) The trustee of record has not recorded the certificate***  
17 ***provided to the trustee pursuant to subparagraph (1) or (2) of***  
18 ***paragraph (d) of subsection 2 of NRS 107.086.***

19 ***↳ As used in this subsection, "owner-occupied housing" has the***  
20 ***meaning ascribed to it in NRS 107.086.***

21 **Sec. 5.** The amendatory provisions of this act apply only with  
22 respect to trust agreements for which a notice of default and election  
23 to sell is recorded on or after October 1, 2013.

