

ASSEMBLY BILL NO. 273—ASSEMBLYMEN
EISEN; AND FRIERSON

MARCH 15, 2013

Referred to Committee on Judiciary

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

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

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

AN ACT relating to real property; revising provisions governing
enrollment in the Foreclosure Mediation Program;
revising provisions governing the foreclosure of liens by
an association of a common-interest community; making
an appropriation; 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 4** of this bill prohibits a homeowners' association from foreclosing its
31 lien on a unit constituting owner-occupied housing while the unit's owner is
32 eligible to participate or is participating in the Foreclosure Mediation Program.

33 **Section 4.5** of this bill makes an appropriation of \$100 from the State General
34 Fund to the Account for Foreclosure Mediation to support the Foreclosure
35 Mediation Program.

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

1 **Section 1.** (Deleted by amendment.)

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

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

7 (a) The trust agreement becomes effective on or after October 1,
8 2003, 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(bb), 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 NRS 107.086.

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 the
21 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



1 such other manner as a court determines is reasonably calculated to
2 afford notice to the grantor or the person who holds the title of
3 record; or

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

6 (I) By personal service;

7 (II) If the grantor or the person who holds the title of
8 record is absent from his or her place of residence or from his or her
9 usual place of business, by leaving a copy with a person of suitable
10 age and discretion at either place and mailing a copy to the grantor
11 or the person who holds the title of record at his or her place of
12 residence or place of business; or

13 (III) If the place of residence or business cannot be
14 ascertained, or a person of suitable age or discretion cannot be found
15 there, by posting a copy in a conspicuous place on the trust property,
16 delivering a copy to a person there residing if the person can be
17 found and mailing a copy to the grantor or the person who holds the
18 title of record at the place where the trust property is situated; and

19 (b) In substantially the following form, with the applicable
20 telephone numbers and mailing addresses provided on the notice
21 and, except as otherwise provided in subsection 4, a copy of the
22 promissory note attached to the notice:
23

24 NOTICE
25 YOU ARE IN DANGER OF LOSING YOUR HOME!
26

27 ~~YOU MAY HAVE A RIGHT TO PARTICIPATE IN THE~~
28 ~~STATE OF NEVADA FORECLOSURE MEDIATION~~
29 ~~PROGRAM IF THE TIME TO REQUEST MEDIATION~~
30 ~~HAS NOT EXPIRED!~~
31

32 Your home loan is being foreclosed. In not less than 60 days
33 your home may be sold and you may be forced to move. For
34 help, call:
35

- 36 ~~State of Nevada Foreclosure Mediation Program~~ _____
- 37 Consumer Credit Counseling _____
- 38 The Attorney General _____
- 39 The Division of Mortgage Lending _____
- 40 The Division of Financial Institutions _____
- 41 Legal Services _____
- 42 Your Lender _____
- 43 Nevada Fair Housing Center _____



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

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

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

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

9 107.086 1. In addition to the requirements of NRS 107.085,
10 the exercise of the power of sale pursuant to NRS 107.080 with
11 respect to any trust agreement which concerns owner-occupied
12 housing is subject to the provisions of this section.

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

15 (a) Includes 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 as
17 required by subsection 3 of NRS 107.080:

18 (1) Contact information which the grantor or the person who
19 holds the title of record may use to reach a person with authority to
20 negotiate a loan modification on behalf of the beneficiary of the
21 deed of trust;

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

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

31 (4) A form upon which the grantor or the person who holds
32 the title of record may indicate an election ~~to enter into mediation~~
33 ~~or~~ to waive mediation pursuant to this section and one envelope
34 addressed to the trustee and one envelope addressed to the
35 Mediation Administrator, which the grantor or the person who holds
36 the title of record may use to comply with the provisions of
37 subsection 3;

38 (b) *In addition to including the information described in*
39 *paragraph (a) with the notice of default and election to sell which*
40 *is mailed to the grantor or the person who holds the title of record*
41 *as required by subsection 3 of NRS 107.080, provides to the*
42 *grantor or the person who holds the title of record the information*
43 *described in paragraph (a) concurrently with, but separately from,*
44 *the notice of default and election to sell which is mailed to the*



1 *grantor or the person who holds the title of record as required by*
2 *subsection 3 of NRS 107.080;*

3 (c) Serves a copy of the notice upon the Mediation
4 Administrator; and

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

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

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

14 3. ~~The~~ *If the* grantor or the person who holds the title of
15 record *elects to waive mediation, he or she* shall, not later than 30
16 days after service of the notice in the manner required by NRS
17 107.080, complete the form required by subparagraph (4) of
18 paragraph (a) of subsection 2 and return the form to the trustee *and*
19 *the Mediation Administrator* by certified mail, return receipt
20 requested. If the grantor or the person who holds the title of record
21 ~~indicates on the form an election to enter into mediation, the~~
22 ~~trustee~~ *does not elect to waive mediation, he or she shall, not later*
23 *than 30 days after the service of the notice in the manner required*
24 *by NRS 107.080, pay to the Mediation Administrator his or her*
25 *share of the fee established pursuant to subsection 9. Upon receipt*
26 *of the share of the fee established pursuant to subsection 9 owed*
27 *by the grantor or the person who holds title of record, the*
28 *Mediation Administrator* shall notify the ~~beneficiary of the deed of~~
29 ~~trust and every other person with an interest as defined in NRS~~
30 ~~107.090.~~ *trustee*, by certified mail, return receipt requested, of the
31 ~~election of the grantor or the person who holds the title of record to~~
32 ~~enter into~~ *enrollment of the grantor or person who holds the title*
33 *of record to participate in* mediation *pursuant to this section* and
34 ~~file the form with the Mediation Administrator, who~~ shall assign
35 the matter to a senior justice, judge, hearing master or other
36 designee and schedule the matter for mediation. ~~No~~ *The trustee*
37 *shall notify the beneficiary of the deed of trust and every other*
38 *person with an interest as defined in NRS 107.090, by certified*
39 *mail, return receipt requested, of the enrollment of the grantor or*
40 *the person who holds the title of record to participate in mediation.*
41 *If the grantor or person who holds the title of record is enrolled to*
42 *participate in mediation pursuant to this section, no* further action
43 may be taken to exercise the power of sale until the completion of
44 the mediation.



1 4. If the grantor or the person who holds the title of record
2 indicates on the form *described in subparagraph (4) of paragraph*
3 *(a) of subsection 2* an election to waive mediation or fails to ~~return~~
4 ~~the form to the trustee~~ *pay to the Mediation Administrator his or*
5 *her share of the fee established pursuant to subsection 9*, as
6 required by ~~this subsection, the trustee shall execute an affidavit~~
7 ~~attesting to that fact under penalty of perjury and serve a copy of the~~
8 ~~affidavit, together with the waiver of mediation by the grantor or~~
9 ~~the person who holds the title of record, or proof of service on the~~
10 ~~grantor or the person who holds the title of record of the notice~~
11 ~~required by subsection 2 of this section and subsection 3 of NRS~~
12 ~~107.080, upon the Mediation Administrator. Upon receipt of the~~
13 ~~affidavit and the waiver or proof of service.]~~ *subsection 3*, the
14 Mediation Administrator shall , *not later than 60 days after the*
15 *Mediation Administrator receives the form indicating an election*
16 *to waive mediation or 90 days after the service of the notice in the*
17 *manner required by NRS 107.080, whichever is earlier*, provide to
18 the trustee a certificate which provides that no mediation is required
19 in the matter.

20 ~~[4.]~~ 5. Each mediation required by this section must be
21 conducted by a senior justice, judge, hearing master or other
22 designee pursuant to the rules adopted pursuant to subsection ~~[8.]~~ 9.
23 The beneficiary of the deed of trust or a representative shall attend
24 the mediation. The grantor or ~~[a]~~ *his or her* representative , ~~[shall~~
25 ~~attend the mediation if the grantor elected to enter into mediation,]~~
26 or the person who holds the title of record or ~~[a]~~ *his or her*
27 representative , shall attend the mediation . ~~[if the person who holds~~
28 ~~the title of record elected to enter into mediation.]~~ The beneficiary
29 of the deed of trust shall bring to the mediation the original or a
30 certified copy of the deed of trust, the mortgage note and each
31 assignment of the deed of trust or mortgage note. If the beneficiary
32 of the deed of trust is represented at the mediation by another
33 person, that person must have authority to negotiate a loan
34 modification on behalf of the beneficiary of the deed of trust or have
35 access at all times during the mediation to a person with such
36 authority.

37 ~~[5.]~~ 6. If the beneficiary of the deed of trust or the
38 representative fails to attend the mediation, fails to participate in the
39 mediation in good faith or does not bring to the mediation each
40 document required by subsection ~~[4.]~~ 5 or does not have the
41 authority or access to a person with the authority required by
42 subsection ~~[4.]~~ 5, the mediator shall prepare and submit to the
43 Mediation Administrator a petition and recommendation concerning
44 the imposition of sanctions against the beneficiary of the deed of
45 trust or the representative. The court may issue an order imposing



1 such sanctions against the beneficiary of the deed of trust or the
2 representative as the court determines appropriate, including,
3 without limitation, requiring a loan modification in the manner
4 determined proper by the court.

5 ~~16-1~~ 7. If the grantor or the person who holds the title of record
6 ~~selected to enter into mediation and~~ *is enrolled to participate in*
7 *mediation pursuant to this section but* fails to attend the mediation,
8 the Mediation Administrator shall, *not later than 30 days after the*
9 *scheduled mediation*, provide to the trustee a certificate which
10 states that no mediation is required in the matter.

11 ~~17-1~~ 8. If the mediator determines that the parties, while acting
12 in good faith, are not able to agree to a loan modification, the
13 mediator shall prepare and submit to the Mediation Administrator a
14 recommendation that the matter be terminated. The Mediation
15 Administrator shall, *not later than 30 days after submittal of the*
16 *mediator's recommendation that the matter be terminated*, provide
17 to the trustee a certificate which provides that the mediation
18 required by this section has been completed in the matter.

19 ~~18-1~~ 9. The Supreme Court shall adopt rules necessary to carry
20 out the provisions of this section. The rules must, without limitation,
21 include provisions:

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

27 (b) Ensuring that mediations occur in an orderly and timely
28 manner.

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

31 (d) Establishing procedures to protect the mediation process
32 from abuse and to ensure that each party to the mediation acts in
33 good faith.

34 (e) Establishing a total fee of not more than \$400 that may be
35 charged and collected by the Mediation Administrator for mediation
36 services pursuant to this section and providing that the responsibility
37 for payment of the fee must be shared equally by the parties to the
38 mediation.

39 ~~19-1~~ 10. Except as otherwise provided in subsection ~~11-1~~ 12,
40 the provisions of this section do not apply if:

41 (a) The grantor or the person who holds the title of record has
42 surrendered the property, as evidenced by a letter confirming the
43 surrender or delivery of the keys to the property to the trustee, the
44 beneficiary of the deed of trust or the mortgagee, or an authorized
45 agent thereof; or



1 (b) A petition in bankruptcy has been filed with respect to the
2 grantor or the person who holds the title of record under chapter 7,
3 11, 12 or 13 of Title 11 of the United States Code and the
4 bankruptcy court has not entered an order closing or dismissing the
5 case or granting relief from a stay of foreclosure.

6 ~~10~~ 11. A noncommercial lender is not excluded from the
7 application of this section.

8 ~~11~~ 12. The Mediation Administrator and each mediator who
9 acts pursuant to this section in good faith and without gross
10 negligence are immune from civil liability for those acts.

11 ~~12~~ 13. As used in this section:

12 (a) "Mediation Administrator" means the entity so designated
13 pursuant to subsection ~~18~~ 9.

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

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

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

23 116.31162 1. Except as otherwise provided in subsection 4
24 ~~4~~ and 5, in a condominium, in a planned community, in a
25 cooperative where the owner's interest in a unit is real estate under
26 NRS 116.1105, or in a cooperative where the owner's interest in a
27 unit is personal property under NRS 116.1105 and the declaration
28 provides that a lien may be foreclosed under NRS 116.31162 to
29 116.31168, inclusive, the association may foreclose its lien by sale
30 after all of the following occur:

31 (a) The association has mailed by certified or registered mail,
32 return receipt requested, to the unit's owner or his or her successor
33 in interest, at his or her address, if known, and at the address of the
34 unit, a notice of delinquent assessment which states the amount of
35 the assessments and other sums which are due in accordance with
36 subsection 1 of NRS 116.3116, a description of the unit against
37 which the lien is imposed and the name of the record owner of the
38 unit.

39 (b) Not less than 30 days after mailing the notice of delinquent
40 assessment pursuant to paragraph (a), the association or other person
41 conducting the sale has executed and caused to be recorded, with the
42 county recorder of the county in which the common-interest
43 community or any part of it is situated, a notice of default and
44 election to sell the unit to satisfy the lien which must contain the



1 same information as the notice of delinquent assessment and which
2 must also comply with the following:

- 3 (1) Describe the deficiency in payment.
- 4 (2) State the name and address of the person authorized by
5 the association to enforce the lien by sale.
- 6 (3) Contain, in 14-point bold type, the following warning:

7
8 **WARNING! IF YOU FAIL TO PAY THE AMOUNT**
9 **SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR**
10 **HOME, EVEN IF THE AMOUNT IS IN DISPUTE!**
11

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

16 2. The notice of default and election to sell must be signed by
17 the person designated in the declaration or by the association for that
18 purpose or, if no one is designated, by the president of the
19 association.

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

- 21 (a) The date on which the notice of default is recorded; or
- 22 (b) The date on which a copy of the notice of default is mailed
23 by certified or registered mail, return receipt requested, to the unit's
24 owner or his or her successor in interest at his or her address, if
25 known, and at the address of the unit,

26 ↪ whichever date occurs later.

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

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

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

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

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

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

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



* A B 2 7 3 R 2 *

1 ↪ *As used in this subsection, “owner-occupied housing” has the*
2 *meaning ascribed to it in NRS 107.086.*

3 **Sec. 4.5.** 1. There is hereby appropriated from the State
4 General Fund to the Account for Foreclosure Mediation created by
5 NRS 107.080 the sum of \$100 for the purpose of supporting the
6 program of foreclosure mediation established by Supreme Court
7 Rule.

8 2. Any remaining balance of the appropriation made by
9 subsection 1 must not be committed for expenditure after June 30,
10 2015, by the entity to which the appropriation is made or any entity
11 to which money from the appropriation is granted or otherwise
12 transferred in any manner, and any portion of the appropriated
13 money remaining must not be spent for any purpose after
14 September 18, 2015, by either the entity to which the money was
15 appropriated or the entity to which the money was subsequently
16 granted or transferred, and must be reverted to the State General
17 Fund on or before September 18, 2015.

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

21 **Sec. 6.** 1. This section and section 4.5 of this act become
22 effective on July 1, 2013.

23 2. Sections 1 to 4, inclusive, and 5 of this act become effective
24 on October 1, 2013.

