

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 payment of certain obligations during participation 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



\* A B 2 7 3 R 3 \*

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: (1) establishes deadlines by which the Mediation Administrator  
29 must provide certain information to the trustee; (2) requires the trustee to provide  
30 notice of the compliance with the Foreclosure Mediation Program to a  
31 homeowners' association; and (3) requires a unit's owner to pay certain obligations  
32 during participation in the Foreclosure Mediation Program.

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

36 **Section 4.5** of this bill makes an appropriation of \$100 from the State General  
37 Fund to the Account for Foreclosure Mediation to support the Foreclosure  
38 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.** (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.



3. The notice described in subsection 2 must be:

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

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

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

(I) By personal service;

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

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

(b) In substantially the following form, with the applicable telephone numbers and mailing addresses provided on the notice and, except as otherwise provided in subsection 4, a copy of the 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 \_\_\_\_\_



1 Legal Services \_\_\_\_\_  
2 Your Lender \_\_\_\_\_  
3 Nevada Fair Housing Center \_\_\_\_\_  
4

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

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

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

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

13 107.086 1. In addition to the requirements of NRS 107.085,  
14 the exercise of the power of sale pursuant to NRS 107.080 with  
15 respect to any trust agreement which concerns owner-occupied  
16 housing is subject to the provisions of this section.

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

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

22 (1) Contact information which the grantor or the person who  
23 holds the title of record may use to reach a person with authority to  
24 negotiate a loan modification on behalf of the beneficiary of the  
25 deed of trust;

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

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

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

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



1 *grantor or the person who holds the title of record the information*  
2 *described in paragraph (a) concurrently with, but separately from,*  
3 *the notice of default and election to sell which is mailed to the*  
4 *grantor or the person who holds the title of record as required by*  
5 *subsection 3 of NRS 107.080;*

6 (c) Serves a copy of the notice upon the Mediation  
7 Administrator; and

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

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

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

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



1 may be taken to exercise the power of sale until the completion of  
2 the mediation.

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

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

39 ~~5.~~ **6.** If the beneficiary of the deed of trust or the  
40 representative fails to attend the mediation, fails to participate in the  
41 mediation in good faith or does not bring to the mediation each  
42 document required by subsection ~~4.~~ **5** or does not have the  
43 authority or access to a person with the authority required by  
44 subsection ~~4.~~ **5**, the mediator shall prepare and submit to the  
45 Mediation Administrator a petition and recommendation concerning



1 the imposition of sanctions against the beneficiary of the deed of  
2 trust or the representative. The court may issue an order imposing  
3 such sanctions against the beneficiary of the deed of trust or the  
4 representative as the court determines appropriate, including,  
5 without limitation, requiring a loan modification in the manner  
6 determined proper by the court.

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

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

21 ~~18-1~~ 9. *Upon receipt of the certificate provided to the trustee*  
22 *by the Mediation Administrator pursuant to subsection 4, 7 or 8, if*  
23 *the property is located within a common-interest community, the*  
24 *trustee shall notify the unit-owner's association organized under*  
25 *NRS 116.3101 of the existence of the certificate.*

26 *10. During the pendency of any mediation pursuant to this*  
27 *section, a unit's owner must continue to pay any obligation, other*  
28 *than any past due obligation.*

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

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

37 (b) Ensuring that mediations occur in an orderly and timely  
38 manner.

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

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

44 (e) Establishing a total fee of not more than \$400 that may be  
45 charged and collected by the Mediation Administrator for mediation



1 services pursuant to this section and providing that the responsibility  
2 for payment of the fee must be shared equally by the parties to the  
3 mediation.

4 ~~19.1~~ **12.** Except as otherwise provided in subsection ~~11.1~~ **14,**  
5 the provisions of this section do not apply if:

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

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

16 ~~10.1~~ **13.** A noncommercial lender is not excluded from the  
17 application of this section.

18 ~~11.1~~ **14.** The Mediation Administrator and each mediator who  
19 acts pursuant to this section in good faith and without gross  
20 negligence are immune from civil liability for those acts.

21 ~~12.1~~ **15.** As used in this section:

22 (a) *“Common-interest community” has the meaning ascribed*  
23 *to it in NRS 116.021.*

24 (b) “Mediation Administrator” means the entity so designated  
25 pursuant to subsection ~~18.~~

26 ~~—(b) 11.~~

27 (c) “Noncommercial lender” means a lender which makes a loan  
28 secured by a deed of trust on owner-occupied housing and which is  
29 not a bank, financial institution or other entity regulated pursuant to  
30 title 55 or 56 of NRS.

31 ~~1(e)~~ (d) *“Obligation” has the meaning ascribed to it in*  
32 *NRS 116.310313.*

33 (e) “Owner-occupied housing” means housing that is occupied  
34 by an owner as the owner’s primary residence. The term does not  
35 include vacant land or any time share or other property regulated  
36 under chapter 119A of NRS.

37 (f) *“Unit’s owner” has the meaning ascribed to it in*  
38 *NRS 116.095.*

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

40 116.31162 1. Except as otherwise provided in subsection 4  
41 ~~11~~ **and 5,** in a condominium, in a planned community, in a  
42 cooperative where the owner’s interest in a unit is real estate under  
43 NRS 116.1105, or in a cooperative where the owner’s interest in a  
44 unit is personal property under NRS 116.1105 and the declaration  
45 provides that a lien may be foreclosed under NRS 116.31162 to





1 116.31168, inclusive, the association may foreclose its lien by sale  
2 after all of the following occur:

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

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

19 (1) Describe the deficiency in payment.

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

22 (3) Contain, in 14-point bold type, the following warning:  
23

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

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

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

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

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

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

42 ↪ whichever date occurs later.

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



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

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

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

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

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

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

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

18 **Sec. 4.5.** 1. There is hereby appropriated from the State  
19 General Fund to the Account for Foreclosure Mediation created by  
20 NRS 107.080 the sum of \$100 for the purpose of supporting the  
21 program of foreclosure mediation established by Supreme Court  
22 Rule.

23 2. Any remaining balance of the appropriation made by  
24 subsection 1 must not be committed for expenditure after June 30,  
25 2015, by the entity to which the appropriation is made or any entity  
26 to which money from the appropriation is granted or otherwise  
27 transferred in any manner, and any portion of the appropriated  
28 money remaining must not be spent for any purpose after  
29 September 18, 2015, by either the entity to which the money was  
30 appropriated or the entity to which the money was subsequently  
31 granted or transferred, and must be reverted to the State General  
32 Fund on or before September 18, 2015.

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

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

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

