

SENATE BILL NO. 278—SENATORS FORD AND JONES

MARCH 15, 2013

JOINT SPONSORS: ASSEMBLYMEN HEALEY,
SPIEGEL; AND FRIERSON

Referred to Committee on Judiciary

SUMMARY—Establishes an expedited process for the foreclosure of abandoned residential property. (BDR 9-134)

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; establishing an expedited process for the foreclosure of abandoned residential property; authorizing a board of county commissioners or the governing body of an incorporated city to establish by ordinance a registry of abandoned residential real property and a registry of real property in danger of becoming abandoned; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law provides for a trustee under a deed of trust to exercise a power of
2 sale on real property after a breach of an obligation or payment of debt secured by
3 the deed of trust. (NRS 107.080) This bill establishes an expedited procedure for
4 the exercise of the power of sale with respect to abandoned residential property.
5 **Section 2** of this bill establishes the criteria to be used to determine whether
6 real property constitutes abandoned residential property. **Section 4** of this bill
7 authorizes a beneficiary of a deed of trust to elect to use an expedited procedure for
8 the exercise of the trustee’s power of sale if: (1) after an investigation of the
9 property, the beneficiary determines that the property is abandoned residential
10 property; and (2) the beneficiary receives a certification that the property is
11 abandoned residential property from an agency designated by the county or city in
12 which the property is located. Under **section 4**, each county and city must designate
13 an agency to provide certifications that property is abandoned residential property,
14 and that agency may charge the beneficiary a fee of not more than \$50 to provide
15 such certifications. To elect to use the expedited procedure, the beneficiary must
16 include with the notice of default and election to sell the certification of the agency



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17 designated by the county or city and an affidavit setting forth the circumstances and
18 conditions supporting the determination that the property is abandoned residential
19 property. If the certification and affidavit are included with the notice of default and
20 election to sell: (1) **section 5** of this bill authorizes a notice of the sale of the
21 property to be recorded not less than 60 days, rather than 3 months, after the
22 recording of the notice of default and election to sell; and (2) **section 6** of this bill
23 provides that the requirements relating to the Foreclosure Mediation Program are
24 inapplicable and that the trustee may exercise the power of sale by obtaining a
25 certificate from the Mediation Administrator.

26 Under **section 4**, if the trustee's sale is not conducted within 6 months after
27 receipt of a certification from the agency designated by the county or city: (1) the
28 notice of default and election to sell and the affidavit and certification to elect the
29 expedited procedure are deemed to be withdrawn; and (2) the beneficiary is liable
30 to the grantor or the successor in interest of the grantor for a civil penalty of not
31 more than \$500. **Section 4** further authorizes a grantor of a deed of trust or his or
32 her successor in interest to record an affidavit stating that the property is not
33 abandoned residential property and, if such an affidavit is recorded before the
34 trustee's sale of the property, the notice of default and election to sell and the
35 affidavit and certification to elect the expedited sale procedure are deemed to be
36 withdrawn.

37 **Section 3** of this bill: (1) authorizes a board of county commissioners or the
38 governing body of an incorporated city to establish a registry of abandoned
39 residential property and a registry of real property that is in danger of becoming
40 abandoned residential property; and (2) requires the affidavit and certification
41 required to elect the expedited sale procedure to be submitted to the entity
42 maintaining the registry of abandoned residential property for the jurisdiction in
43 which the property is located.

44 **Section 7** of this bill provides that this bill expires by limitation on June 30,
45 2017, and thus, the authorization to use the expedited procedure for the exercise of
46 the trustee's power of sale expires on that date.

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 the provisions set forth as sections 2, 3 and 4 of this act.

3 **Sec. 2.** *As used in this section and NRS 107.080 to 107.110,*
4 *inclusive, and sections 3 and 4 of this act, unless the context*
5 *otherwise requires:*

6 1. *"Abandoned residential property" means residential real*
7 *property:*

8 (a) *Consisting of not more than four family dwelling units or a*
9 *single-family residential unit, including, without limitation, a*
10 *condominium, townhouse or home within a subdivision, if the unit*
11 *is sold, leased or otherwise conveyed unit by unit, regardless of*
12 *whether the unit is part of a larger building or parcel that consists*
13 *of more than four units; and*

14 (b) *That the grantor or the successor in interest of the grantor*
15 *has surrendered as evidenced by a document signed by the grantor*
16 *or successor confirming the surrender or by the delivery of the*



1 keys to the property to the beneficiary or that satisfies the
2 following conditions:

3 (1) The residential real property is not currently occupied
4 as a principal residence by the grantor of the deed of trust, the
5 person who holds title of record or any lawful occupant;

6 (2) The obligation secured by the deed of trust is in default
7 and the deficiency in performance or payment has not been cured;

8 (3) The gas, electric and water utility services to the
9 residential real property have been terminated;

10 (4) It appears, after reasonable inquiry, that there are no
11 children enrolled in school residing at the address of the
12 residential real property;

13 (5) Payments pursuant to the federal Social Security Act,
14 including, without limitation, retirement and survivors' benefits,
15 supplemental security income benefits and disability insurance
16 benefits, payments for unemployment compensation or payments
17 for public assistance, as defined in NRS 422.050 and 422A.065,
18 are not currently being delivered, electronically or otherwise, to a
19 person who has registered the address of the residential real
20 property as his or her residence with the agency making the
21 payment;

22 (6) An owner of the residential real property is not
23 presently serving in the Armed Forces of the United States, a
24 reserve component thereof or the National Guard; and

25 (7) Two or more of the following conditions exist:

26 (I) Construction was initiated on the residential real
27 property and was discontinued before completion, leaving a
28 building unsuitable for occupancy, and no construction has taken
29 place for at least 6 months;

30 (II) Multiple windows on the residential real property
31 are boarded up or closed off or are smashed through, broken off
32 or unhinged, or multiple window panes are broken and
33 unrepaired;

34 (III) Doors on the residential real property are smashed
35 through, broken off, unhinged or continuously unlocked;

36 (IV) The residential real property has been stripped of
37 copper or other materials, or interior fixtures to the property have
38 been removed;

39 (V) Law enforcement officials have received at least one
40 report of trespassing or vandalism or other illegal acts being
41 committed at the residential real property within the immediately
42 preceding 6 months;

43 (VI) The residential real property has been declared
44 unfit for occupancy and ordered to remain vacant and unoccupied



1 under an order issued by a municipal or county authority or a
2 court of competent jurisdiction;

3 (VII) The local police, fire or code enforcement
4 authority has requested that the owner or any other interested or
5 authorized party secure the residential real property because the
6 local authority has declared the property to be an imminent
7 danger to the health, safety and welfare of the public; or

8 (VIII) The residential real property is open and
9 unprotected and in reasonable danger of significant damage
10 resulting from exposure to the elements or vandalism.

11 2. The term does not include residential real property if:

12 (a) There is construction, renovation or rehabilitation on the
13 residential real property that is proceeding diligently to
14 completion, and any building being constructed, renovated or
15 rehabilitated on the property is in substantial compliance with all
16 applicable ordinances, codes, regulations and laws;

17 (b) The residential real property is occupied on a seasonal
18 basis, but is otherwise secure;

19 (c) There are bona fide rental or sale signs on the residential
20 real property, or the property is listed on a Multiple Listing
21 Service, and the property is secure; or

22 (d) The residential real property is secure but is the subject of
23 a probate action, action to quiet title or any other ownership
24 dispute.

25 **Sec. 3. 1. A board of county commissioners or the**
26 **governing body of an incorporated city may establish by**
27 **ordinance:**

28 (a) A registry of abandoned residential property that contains
29 information concerning abandoned residential property located in
30 the county or city.

31 (b) A registry of residential property located in the county or
32 city that may be in danger of becoming abandoned residential
33 property.

34 2. If a beneficiary of a deed of trust, the successor in interest
35 of the beneficiary or the trustee includes with a notice of default
36 and election to sell recorded pursuant to subsection 2 of NRS
37 107.080 the affidavit and certification described in subsection 6 of
38 section 4 of this act and the county or city in which the abandoned
39 residential property is located has established a registry of
40 abandoned residential property, the beneficiary or its successor in
41 interest or the trustee must submit a copy of the affidavit and
42 certification to the entity maintaining the registry for the county or
43 city in which the abandoned residential property is located.

44 3. If a beneficiary of a deed of trust, the successor in interest
45 of the beneficiary or the trustee receives a copy of the affidavit



1 *described in subsection 7 of section 4 of this act, the beneficiary or*
2 *its successor in interest or the trustee must notify the entity*
3 *maintaining the registry for the county or city in which the*
4 *property described in the affidavit is located. Upon receiving such*
5 *a notification, the entity maintaining the registry must remove the*
6 *property from the registry.*

7 *4. If a property which has been removed from a registry*
8 *established pursuant to this section subsequently becomes*
9 *abandoned residential property or in danger of becoming*
10 *abandoned residential property, the property may be added to the*
11 *applicable registry in accordance with this section or the*
12 *requirements established for the registry by the board of county*
13 *commissioners or the governing body of an incorporated city.*

14 **Sec. 4. 1. A beneficiary may elect to use an expedited**
15 **procedure for the exercise of the trustee's power of sale pursuant**
16 **to NRS 107.080 if, after an investigation, the beneficiary:**

17 *(a) Determines that real property is abandoned residential*
18 *property; and*

19 *(b) Receives from the applicable governmental entity a*
20 *certification pursuant to subsection 4.*

21 *2. Each board of county commissioners of a county and each*
22 *governing body of an incorporated city shall designate an agency*
23 *to inspect real property upon receipt of a request pursuant to*
24 *paragraph (b) of subsection 3 and to provide certifications that*
25 *real property is abandoned residential property pursuant to*
26 *subsection 4.*

27 *3. If a beneficiary has a reasonable belief that real property*
28 *may be abandoned residential property, the beneficiary or its*
29 *agent:*

30 *(a) May enter the real property to investigate whether the real*
31 *property is abandoned residential property. Notwithstanding any*
32 *other provision of law, a beneficiary and its agents who enter real*
33 *property pursuant to this subsection are not liable for trespass.*

34 *(b) May request a certification pursuant to subsection 4 from*
35 *the agency designated by the applicable governmental entity*
36 *pursuant to subsection 2.*

37 *4. Upon receipt of a request pursuant to paragraph (b) of*
38 *subsection 3, the agency designated by the applicable*
39 *governmental entity shall inspect the real property. The agency*
40 *and any of its employees may enter the real property to perform an*
41 *inspection pursuant to this subsection, and the agency and any of*
42 *its employees who enter real property pursuant to this subsection*
43 *are not liable for trespass. If the agency or an employee of the*
44 *agency determines that the real property is abandoned residential*
45 *property, the agency shall serve a notice by first-class mail to the*



1 grantor or the successor in interest of the grantor and by posting
2 the notice on the front door of the residence. The notice must
3 provide that unless a lawful occupant of the real property contacts
4 the agency within 30 days after service of the notice, the agency
5 will issue a certification that the real property is abandoned
6 residential property and that the beneficiary may use the
7 certification to seek an expedited procedure for the exercise of the
8 trustee's power of sale. If a grantor or the successor in interest of
9 the grantor or a lawful occupant of the real property fails to
10 contact the agency within 30 days after service of the notice, the
11 agency shall provide to the beneficiary a certification that the real
12 property is abandoned residential property. The certification
13 required by this subsection must:

14 (a) Be signed and verified by the employee or employees of the
15 agency who inspected the real property;

16 (b) State that, upon information and belief of the agency, after
17 investigation by the employee or employees of the agency, the real
18 property is abandoned residential property; and

19 (c) State the conditions or circumstances supporting the
20 determination that the property is abandoned residential property.
21 Documentary evidence in support of such conditions or
22 circumstances must be attached to the certification.

23 5. For an inspection, service of notice and issuance of a
24 certification pursuant to subsection 4, the agency designated
25 pursuant to subsection 2 by the applicable governmental entity
26 may charge and receive from the beneficiary a fee of not more
27 than \$50.

28 6. A beneficiary who elects to use an expedited procedure for
29 the exercise of the trustee's power of sale pursuant to NRS
30 107.080 must include, or cause to be included, with the notice of
31 default and election to sell recorded pursuant to subsection 2 of
32 NRS 107.080 an affidavit setting forth the facts supporting the
33 determination that the real property is abandoned residential
34 property and the certification provided to the beneficiary pursuant
35 to subsection 4. The affidavit required by this subsection must:

36 (a) Be signed and verified by the beneficiary;

37 (b) State that, upon information and belief of the beneficiary
38 after investigation by the beneficiary or its agent, the property is
39 abandoned residential property; and

40 (c) State the conditions or circumstances supporting the
41 determination that the property is abandoned residential property.
42 Photographic or other documentary evidence in support of such
43 conditions or circumstances must be attached to the affidavit.

44 7. If the notice of default and election to sell recorded
45 pursuant to subsection 2 of NRS 107.080 includes the affidavit



1 and certification described in subsection 6, before the sale, the
2 grantor or a successor in interest of the grantor may record in the
3 office of the county recorder in the county where the real property
4 is located an affidavit stating that the real property is not
5 abandoned residential property, unless the grantor or the
6 successor in interest of the grantor has surrendered the property
7 as evidenced by a document signed by the grantor or successor
8 confirming the surrender or by the delivery of the keys to the real
9 property to the beneficiary. Upon the recording of such an
10 affidavit:

11 (a) The grantor or the successor in interest must mail by
12 registered or certified mail, return receipt requested, to the
13 beneficiary and the trustee a copy of the affidavit; and

14 (b) The notice of default and election to sell and the affidavit
15 and certification described in subsection 6 are deemed to be
16 withdrawn.

17 8. If the notice of default and election to sell recorded
18 pursuant to subsection 2 of NRS 107.080 includes the affidavit
19 and certification described in subsection 6, the trustee's sale of the
20 abandoned residential property must be conducted within 6
21 months after the beneficiary received the certification. If the
22 trustee's sale is not conducted within 6 months after the
23 beneficiary received the certification:

24 (a) The notice of default and election to sell and the affidavit
25 and certification described in subsection 6 are deemed to be
26 withdrawn; and

27 (b) The beneficiary is liable to the grantor or the successor in
28 interest of the grantor for a civil penalty of not more than \$500.

29 9. As used in this section:

30 (a) "Applicable governmental entity" means:

31 (1) If the real property is within the boundaries of a city,
32 the governing body of the city; and

33 (2) If the real property is not within the boundaries of a
34 city, the board of county commissioners of the county in which the
35 property is located.

36 (b) "Beneficiary" means the beneficiary of the deed of trust or
37 the successor in interest of the beneficiary or any person
38 designated or authorized to act on behalf of the beneficiary or its
39 successor in interest.

40 **Sec. 5.** NRS 107.080 is hereby amended to read as follows:

41 107.080 1. Except as otherwise provided in NRS 106.210,
42 107.085 and 107.086, if any transfer in trust of any estate in real
43 property is made after March 29, 1927, to secure the performance of
44 an obligation or the payment of any debt, a power of sale is hereby



1 conferred upon the trustee to be exercised after a breach of the
2 obligation for which the transfer is security.

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

4 (a) Except as otherwise provided in paragraph (b), in the case of
5 any trust agreement coming into force:

6 (1) On or after July 1, 1949, and before July 1, 1957, the
7 grantor, the person who holds the title of record, a beneficiary under
8 a subordinate deed of trust or any other person who has a
9 subordinate lien or encumbrance of record on the property has, for a
10 period of 15 days, computed as prescribed in subsection 3, failed to
11 make good the deficiency in performance or payment; or

12 (2) On or after July 1, 1957, the grantor, the person who
13 holds the title of record, a beneficiary under a subordinate deed of
14 trust or any other person who has a subordinate lien or encumbrance
15 of record on the property has, for a period of 35 days, computed as
16 prescribed in subsection 3, failed to make good the deficiency in
17 performance or payment.

18 (b) In the case of any trust agreement which concerns owner-
19 occupied housing as defined in NRS 107.086, the grantor, the
20 person who holds the title of record, a beneficiary under a
21 subordinate deed of trust or any other person who has a subordinate
22 lien or encumbrance of record on the property has, for a period that
23 commences in the manner and subject to the requirements described
24 in subsection 3 and expires 5 days before the date of sale, failed to
25 make good the deficiency in performance or payment.

26 (c) The beneficiary, the successor in interest of the beneficiary
27 or the trustee first executes and causes to be recorded in the office of
28 the recorder of the county wherein the trust property, or some part
29 thereof, is situated a notice of the breach and of the election to sell
30 or cause to be sold the property to satisfy the obligation which,
31 except as otherwise provided in this paragraph, includes a notarized
32 affidavit of authority to exercise the power of sale stating, based on
33 personal knowledge and under the penalty of perjury:

34 (1) The full name and business address of the trustee or the
35 trustee's personal representative or assignee, the current holder of
36 the note secured by the deed of trust, the current beneficiary of
37 record and the servicers of the obligation or debt secured by the
38 deed of trust;

39 (2) The full name and last known business address of every
40 prior known beneficiary of the deed of trust;

41 (3) That the beneficiary under the deed of trust, the successor
42 in interest of the beneficiary or the trustee is in actual or
43 constructive possession of the note secured by the deed of trust;

44 (4) That the trustee has the authority to exercise the power of
45 sale with respect to the property pursuant to the instruction of the



1 beneficiary of record and the current holder of the note secured by
2 the deed of trust;

3 (5) The amount in default, the principal amount of the
4 obligation or debt secured by the deed of trust, a good faith estimate
5 of all fees imposed and to be imposed because of the default and the
6 costs and fees charged to the debtor in connection with the exercise
7 of the power of sale; and

8 (6) The date, recordation number or other unique designation
9 of the instrument that conveyed the interest of each beneficiary and
10 a description of the instrument that conveyed the interest of each
11 beneficiary.

12 ➤ The affidavit described in this paragraph is not required for the
13 exercise of the trustee's power of sale with respect to any trust
14 agreement which concerns a time share within a time share plan
15 created pursuant to chapter 119A of NRS if the power of sale is
16 being exercised for the initial beneficiary under the deed of trust or
17 an affiliate of the initial beneficiary.

18 (d) Not less than 3 months have elapsed after the recording of
19 the notice ~~†~~ *or, if the notice includes an affidavit and a*
20 *certification indicating that, pursuant to section 4 of this act, an*
21 *election has been made to use the expedited procedure for the*
22 *exercise of the power of sale with respect to abandoned residential*
23 *property, not less than 60 days have elapsed after the recording of*
24 *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 subsection
27 2, commences on the first day following the day upon which the
28 notice of default and election to sell is recorded in the office of the
29 county recorder of the county in which the property is located and a
30 copy of the notice of default and election to sell is mailed by
31 registered or certified mail, return receipt requested and with
32 postage prepaid to the grantor or, to the person who holds the title of
33 record on the date the notice of default and election to sell is
34 recorded, and, if the property is operated as a facility licensed under
35 chapter 449 of NRS, to the State Board of Health, at their respective
36 addresses, if known, otherwise to the address of the trust property.
37 The notice of default and election to sell must:

38 (a) Describe the deficiency in performance or payment and may
39 contain a notice of intent to declare the entire unpaid balance due if
40 acceleration is permitted by the obligation secured by the deed of
41 trust, but acceleration must not occur if the deficiency in
42 performance or payment is made good and any costs, fees and
43 expenses incident to the preparation or recordation of the notice and
44 incident to the making good of the deficiency in performance or
45 payment are paid within the time specified in subsection 2; ~~†and†~~



1 (b) *If, pursuant to section 4 of this act, an election has been*
2 *made to use the expedited procedure for the exercise of the power*
3 *of sale with respect to abandoned residential property, include the*
4 *affidavit and certification required by subsection 6 of section 4 of*
5 *this act; and*

6 (c) If the property is a residential foreclosure, comply with the
7 provisions of NRS 107.087.

8 4. The trustee, or other person authorized to make the sale
9 under the terms of the trust deed or transfer in trust, shall, after
10 expiration of the ~~3-month~~ *applicable* period *specified in*
11 *paragraph (d) of subsection 2* following the recording of the notice
12 of breach and election to sell, and before the making of the sale,
13 give notice of the time and place thereof by recording the notice of
14 sale and by:

15 (a) Providing the notice to each trustor, any other person entitled
16 to notice pursuant to this section and, if the property is operated as a
17 facility licensed under chapter 449 of NRS, the State Board of
18 Health, by personal service or by mailing the notice by registered or
19 certified mail to the last known address of the trustor and any other
20 person entitled to such notice pursuant to this section;

21 (b) Posting a similar notice particularly describing the property,
22 for 20 days successively, in a public place in the county where the
23 property is situated;

24 (c) Publishing a copy of the notice three times, once each week
25 for 3 consecutive weeks, in a newspaper of general circulation in the
26 county where the property is situated or, if the property is a time
27 share, by posting a copy of the notice on an Internet website and
28 publishing a statement in a newspaper in the manner required by
29 subsection 3 of NRS 119A.560; and

30 (d) If the property is a residential foreclosure, complying with
31 the provisions of NRS 107.087.

32 5. Every sale made under the provisions of this section and
33 other sections of this chapter vests in the purchaser the title of the
34 grantor and any successors in interest without equity or right of
35 redemption. A sale made pursuant to this section must be declared
36 void by any court of competent jurisdiction in the county where the
37 sale took place if:

38 (a) The trustee or other person authorized to make the sale does
39 not substantially comply with the provisions of this section or any
40 applicable provision of NRS 107.086 and 107.087;

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

44 (c) A notice of lis pendens providing notice of the pendency of
45 the action is recorded in the office of the county recorder of the



1 county where the sale took place within 30 days after
2 commencement of the action.

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

10 7. If, in an action brought by the grantor or the person who
11 holds title of record in the district court in and for the county in
12 which the real property is located, the court finds that the
13 beneficiary, the successor in interest of the beneficiary or the trustee
14 did not comply with any requirement of subsection 2, 3 or 4, the
15 court must award to the grantor or the person who holds title of
16 record:

17 (a) Damages of \$5,000 or treble the amount of actual damages,
18 whichever is greater;

19 (b) An injunction enjoining the exercise of the power of sale
20 until the beneficiary, the successor in interest of the beneficiary or
21 the trustee complies with the requirements of subsections 2, 3 and 4;
22 and

23 (c) Reasonable attorney's fees and costs,

24 ↪ unless the court finds good cause for a different award. The
25 remedy provided in this subsection is in addition to the remedy
26 provided in subsection 5.

27 8. The sale of a lease of a dwelling unit of a cooperative
28 housing corporation vests in the purchaser title to the shares in the
29 corporation which accompany the lease.

30 9. After a sale of property is conducted pursuant to this section,
31 the trustee shall:

32 (a) Within 30 days after the date of the sale, record the trustee's
33 deed upon sale in the office of the county recorder of the county in
34 which the property is located; or

35 (b) Within 20 days after the date of the sale, deliver the trustee's
36 deed upon sale to the successful bidder. Within 10 days after the
37 date of delivery of the deed by the trustee, the successful bidder
38 shall record the trustee's deed upon sale in the office of the county
39 recorder of the county in which the property is located.

40 10. If the successful bidder fails to record the trustee's deed
41 upon sale pursuant to paragraph (b) of subsection 9, the successful
42 bidder:

43 (a) Is liable in a civil action to any party that is a senior
44 lienholder against the property that is the subject of the sale in a sum



1 of up to \$500 and for reasonable attorney's fees and the costs of
2 bringing the action; and

3 (b) Is liable in a civil action for any actual damages caused by
4 the failure to comply with the provisions of subsection 9 and for
5 reasonable attorney's fees and the costs of bringing the action.

6 11. The county recorder shall, in addition to any other fee, at
7 the time of recording a notice of default and election to sell collect:

8 (a) A fee of \$150 for deposit in the State General Fund.

9 (b) A fee of \$45 for deposit in the Account for Foreclosure
10 Mediation, which is hereby created in the State General Fund. The
11 Account must be administered by the Court Administrator, and the
12 money in the Account may be expended only for the purpose of
13 supporting a program of foreclosure mediation established by
14 Supreme Court Rule.

15 (c) A fee of \$5 to be paid over to the county treasurer on or
16 before the fifth day of each month for the preceding calendar month.
17 The county recorder may direct that 1.5 percent of the fees collected
18 by the county recorder pursuant to this paragraph be transferred into
19 a special account for use by the office of the county recorder. The
20 county treasurer shall remit quarterly to the organization operating
21 the program for legal services that receives the fees charged
22 pursuant to NRS 19.031 for the operation of programs for the
23 indigent all the money received from the county recorder pursuant
24 to this paragraph.

25 12. The fees collected pursuant to paragraphs (a) and (b) of
26 subsection 11 must be paid over to the county treasurer by the
27 county recorder on or before the fifth day of each month for the
28 preceding calendar month, and, except as otherwise provided in this
29 subsection, must be placed to the credit of the State General Fund or
30 the Account for Foreclosure Mediation as prescribed pursuant to
31 subsection 11. The county recorder may direct that 1.5 percent of
32 the fees collected by the county recorder be transferred into a special
33 account for use by the office of the county recorder. The county
34 treasurer shall, on or before the 15th day of each month, remit the
35 fees deposited by the county recorder pursuant to this subsection to
36 the State Controller for credit to the State General Fund or the
37 Account as prescribed in subsection 11.

38 13. The beneficiary, the successor in interest of the beneficiary
39 or the trustee who causes to be recorded the notice of default and
40 election to sell shall not charge the grantor or the successor in
41 interest of the grantor any portion of any fee required to be paid
42 pursuant to subsection 11.

43 14. As used in this section:



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1 (a) "Residential foreclosure" means the sale of a single family
2 residence under a power of sale granted by this section. As used in
3 this paragraph, "single family residence":

4 (1) Means a structure that is comprised of not more than four
5 units.

6 (2) Does not include vacant land or any time share or other
7 property regulated under chapter 119A of NRS.

8 (b) "Trustee" means the trustee of record.

9 **Sec. 6.** NRS 107.086 is hereby amended to read as follows:

10 107.086 1. ~~Has~~ *Except as otherwise provided in this*
11 *subsection, in* addition to the requirements of NRS 107.085, the
12 exercise of the power of sale pursuant to NRS 107.080 with respect
13 to any trust agreement which concerns owner-occupied housing is
14 subject to the provisions of this section. *The provisions of this*
15 *section do not apply to the exercise of the power of sale if the*
16 *notice of default and election to sell recorded pursuant to*
17 *subsection 2 of NRS 107.080 includes an affidavit and a*
18 *certification indicating that, pursuant to section 4 of this act, an*
19 *election has been made to use the expedited procedure for the*
20 *exercise of the power of sale with respect to abandoned residential*
21 *property.*

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

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

27 (1) Contact information which the grantor or the person who
28 holds the title of record may use to reach a person with authority to
29 negotiate a loan modification on behalf of the beneficiary of the
30 deed of trust;

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

34 (3) A notice provided by the Mediation Administrator
35 indicating that the grantor or the person who holds the title of record
36 has the right to seek mediation pursuant to this section; and

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

44 (b) Serves a copy of the notice upon the Mediation
45 Administrator; and



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

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

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

9 3. The grantor or the person who holds the title of record shall,
10 not later than 30 days after service of the notice in the manner
11 required by NRS 107.080, complete the form required by
12 subparagraph (4) of paragraph (a) of subsection 2 and return the
13 form to the trustee by certified mail, return receipt requested. If the
14 grantor or the person who holds the title of record indicates on
15 the form an election to enter into mediation, the trustee shall notify
16 the beneficiary of the deed of trust and every other person with an
17 interest as defined in NRS 107.090, by certified mail, return receipt
18 requested, of the election of the grantor or the person who holds the
19 title of record to enter into mediation and file the form with the
20 Mediation Administrator, who shall assign the matter to a senior
21 justice, judge, hearing master or other designee and schedule the
22 matter for mediation. No further action may be taken to exercise the
23 power of sale until the completion of the mediation. If the grantor or
24 the person who holds the title of record indicates on the form an
25 election to waive mediation or fails to return the form to the trustee
26 as required by this subsection, the trustee shall execute an affidavit
27 attesting to that fact under penalty of perjury and serve a copy of the
28 affidavit, together with the waiver of mediation by the grantor or the
29 person who holds the title of record, or proof of service on
30 the grantor or the person who holds the title of record of the notice
31 required by subsection 2 of this section and subsection 3 of NRS
32 107.080, upon the Mediation Administrator. Upon receipt of the
33 affidavit and the waiver or proof of service, the Mediation
34 Administrator shall provide to the trustee a certificate which
35 provides that no mediation is required in the matter.

36 4. Each mediation required by this section must be conducted
37 by a senior justice, judge, hearing master or other designee pursuant
38 to the rules adopted pursuant to subsection 8. The beneficiary of the
39 deed of trust or a representative shall attend the mediation. The
40 grantor or a representative shall attend the mediation if the grantor
41 elected to enter into mediation, or the person who holds the title of
42 record or a representative shall attend the mediation if the person
43 who holds the title of record elected to enter into mediation. The
44 beneficiary of the deed of trust shall bring to the mediation the
45 original or a certified copy of the deed of trust, the mortgage note



1 and each assignment of the deed of trust or mortgage note. If the
2 beneficiary of the deed of trust is represented at the mediation by
3 another person, that person must have authority to negotiate a loan
4 modification on behalf of the beneficiary of the deed of trust or have
5 access at all times during the mediation to a person with such
6 authority.

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

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

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

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

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

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

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

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



1 (e) Establishing a total fee of not more than \$400 that may be
2 charged and collected by the Mediation Administrator for mediation
3 services pursuant to this section and providing that the responsibility
4 for payment of the fee must be shared equally by the parties to the
5 mediation.

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

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

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

18 10. A noncommercial lender is not excluded from the
19 application of this section.

20 11. The Mediation Administrator and each mediator who acts
21 pursuant to this section in good faith and without gross negligence
22 are immune from civil liability for those acts.

23 12. As used in this section:

24 (a) "Mediation Administrator" means the entity so designated
25 pursuant to subsection 8.

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

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

34 **Sec. 7.** This act becomes effective on July 1, 2013, and expires
35 by limitation on June 30, 2017.

