

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 or contractor designated by the  
12 county or city in which the property is located. Under **section 4**, each county and  
13 city must designate an agency or contractor to provide certifications that property is  
14 abandoned residential property, and that agency or contractor may charge the  
15 beneficiary a fee of not more than \$300 to provide such certifications. To elect to  
16 use the expedited procedure, the beneficiary must include with the notice of default



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

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31 expedited procedure are deemed to be withdrawn; and (2) the beneficiary is liable to  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38 withdrawn.

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

46 **Section 7** of this bill provides that this bill expires by limitation on June 30,  
47 2017, and thus, the authorization to use the expedited procedure for the exercise of  
48 the trustee's power of sale expires on that date.

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

1 **Section 1.** Chapter 107 of NRS is hereby amended by adding  
2 thereto 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*



1       ***(b) That the grantor or the successor in interest of the grantor***  
2 ***has surrendered as evidenced by a document signed by the grantor***  
3 ***or successor confirming the surrender or by the delivery of the***  
4 ***keys to the property to the beneficiary or that satisfies the***  
5 ***following conditions:***

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

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

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

13       ***(4) It appears, after reasonable inquiry, that there are no***  
14 ***children enrolled in school residing at the address of the***  
15 ***residential real property;***

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

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

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

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

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

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

39       ***(IV) The residential real property has been stripped of***  
40 ***copper or other materials, or interior fixtures to the property have***  
41 ***been removed;***

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



1           (VI) *The residential real property has been declared*  
2 *unfit for occupancy and ordered to remain vacant and unoccupied*  
3 *under an order issued by a municipal or county authority or a*  
4 *court of competent jurisdiction;*

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

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

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

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

19          (b) *The residential real property is occupied on a seasonal*  
20 *basis, but is otherwise secure;*

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

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

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

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

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

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



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

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

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

19       (a) *Determines that real property is abandoned residential*  
20 *property; and*

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

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

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

32       (a) *May enter the real property, but may not enter any dwelling*  
33 *or structure, to investigate whether the real property is abandoned*  
34 *residential property. Notwithstanding any other provision of law, a*  
35 *beneficiary and its agents who enter real property pursuant to this*  
36 *paragraph are not liable for trespass.*

37       (b) *May request a certification pursuant to subsection 4 from*  
38 *the agency or contractor designated by the applicable*  
39 *governmental entity pursuant to subsection 2.*

40       4. *Upon receipt of a request pursuant to paragraph (b) of*  
41 *subsection 3, the agency or contractor designated by the applicable*  
42 *governmental entity shall inspect the real property to determine*  
43 *the existence of two or more conditions pursuant to subparagraph*  
44 *(7) of paragraph (b) of subsection 1 of section 2 of this act. The*  
45 *designee and any employees of the designee may enter the real*



1 *property, but may not enter any dwelling or structure, to perform*  
2 *an inspection pursuant to this subsection, and the designee and*  
3 *any employees who enter real property pursuant to this subsection*  
4 *are not liable for any civil damages as a result of any act or*  
5 *omission, not amounting to gross negligence, or for trespass. If*  
6 *the designee or an employee of the designee determines that the*  
7 *real property is abandoned residential property, the designee shall*  
8 *serve a notice by first-class mail to the grantor or the successor in*  
9 *interest of the grantor and by posting the notice on the front door*  
10 *of the residence. The notice must provide that unless a lawful*  
11 *occupant of the real property contacts the designee within 30 days*  
12 *after service of the notice, the designee will issue a certification*  
13 *that the real property is abandoned residential property and that*  
14 *the beneficiary may use the certification to seek an expedited*  
15 *procedure for the exercise of the trustee's power of sale. If a*  
16 *grantor or the successor in interest of the grantor or a lawful*  
17 *occupant of the real property fails to contact the designee within*  
18 *30 days after service of the notice, the designee shall provide to the*  
19 *beneficiary a certification that the real property is abandoned*  
20 *residential property. The certification required by this subsection*  
21 *must:*

22 *(a) Be signed and verified by the designee or the employee or*  
23 *employees of the designee who inspected the real property;*

24 *(b) State that, upon information and belief of the designee,*  
25 *after investigation by the designee or the employee or employees of*  
26 *the designee, the real property is abandoned residential property;*  
27 *and*

28 *(c) State the conditions or circumstances supporting the*  
29 *determination that the property is abandoned residential property.*  
30 *Documentary evidence in support of such conditions or*  
31 *circumstances must be attached to the certification.*

32 *5. For an inspection, service of notice and issuance of a*  
33 *certification pursuant to subsection 4, the agency or contractor*  
34 *designated pursuant to subsection 2 by the applicable*  
35 *governmental entity may charge and receive from the beneficiary*  
36 *a fee of not more than \$300.*

37 *6. A beneficiary who elects to use an expedited procedure for*  
38 *the exercise of the trustee's power of sale pursuant to NRS*  
39 *107.080 must include, or cause to be included, with the notice of*  
40 *default and election to sell recorded pursuant to subsection 2 of*  
41 *NRS 107.080 an affidavit setting forth the facts supporting the*  
42 *determination that the real property is abandoned residential*  
43 *property and the certification provided to the beneficiary pursuant*  
44 *to subsection 4. The affidavit required by this subsection must:*

45 *(a) Be signed and verified by the beneficiary;*



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

4 (c) State the conditions or circumstances supporting the  
5 determination that the property is abandoned residential property.  
6 Documentary evidence in support of such conditions or  
7 circumstances must be attached to the affidavit.

8 7. If the notice of default and election to sell recorded  
9 pursuant to subsection 2 of NRS 107.080 includes the affidavit  
10 and certification described in subsection 6, before the sale, the  
11 grantor or a successor in interest of the grantor may record in the  
12 office of the county recorder in the county where the real property  
13 is located an affidavit stating that the real property is not  
14 abandoned residential property, unless the grantor or the  
15 successor in interest of the grantor has surrendered the property  
16 as evidenced by a document signed by the grantor or successor  
17 confirming the surrender or by the delivery of the keys to the real  
18 property to the beneficiary. Upon the recording of such an  
19 affidavit:

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

23 (b) The notice of default and election to sell and the affidavit  
24 and certification described in subsection 6 are deemed to be  
25 withdrawn.

26 8. If the notice of default and election to sell recorded  
27 pursuant to subsection 2 of NRS 107.080 includes the affidavit  
28 and certification described in subsection 6, the trustee's sale of the  
29 abandoned residential property must be conducted within 6  
30 months after the beneficiary received the certification. If the  
31 trustee's sale is not conducted within 6 months after the  
32 beneficiary received the certification:

33 (a) The notice of default and election to sell and the affidavit  
34 and certification described in subsection 6 are deemed to be  
35 withdrawn; and

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

38 9. The period specified in subsection 8 is tolled:

39 (a) If a borrower has filed a case under 11 U.S.C. Chapter 7,  
40 11, 12 or 13, until the bankruptcy court enters an order closing or  
41 dismissing the bankruptcy case or granting relief from a stay of  
42 the trustee's sale.

43 (b) If a court issues a stay or enjoins the trustee's sale, until  
44 the court issues an order granting relief from the stay or  
45 dissolving the injunction.



1 **10. As used in this section:**

2 **(a) "Applicable governmental entity" means:**

3 **(1) If the real property is within the boundaries of a city,**  
4 **the governing body of the city; and**

5 **(2) If the real property is not within the boundaries of a**  
6 **city, the board of county commissioners of the county in which the**  
7 **property is located.**

8 **(b) "Beneficiary" means the beneficiary of the deed of trust or**  
9 **the successor in interest of the beneficiary or any person**  
10 **designated or authorized to act on behalf of the beneficiary or its**  
11 **successor in interest.**

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

13 107.080 1. Except as otherwise provided in NRS 106.210,  
14 107.085 and 107.086, if any transfer in trust of any estate in real  
15 property is made after March 29, 1927, to secure the performance of  
16 an obligation or the payment of any debt, a power of sale is hereby  
17 conferred upon the trustee to be exercised after a breach of the  
18 obligation for which the transfer is security.

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

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

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

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

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

42 (c) The beneficiary, the successor in interest of the beneficiary  
43 or the trustee first executes and causes to be recorded in the office of  
44 the recorder of the county wherein the trust property, or some part  
45 thereof, is situated a notice of the breach and of the election to sell





1 or cause to be sold the property to satisfy the obligation which,  
2 except as otherwise provided in this paragraph, includes a notarized  
3 affidavit of authority to exercise the power of sale stating, based on  
4 personal knowledge and under the penalty of perjury:

5 (1) The full name and business address of the trustee or the  
6 trustee's personal representative or assignee, the current holder of  
7 the note secured by the deed of trust, the current beneficiary of  
8 record and the servicers of the obligation or debt secured by the  
9 deed of trust;

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

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

15 (4) That the trustee has the authority to exercise the power of  
16 sale with respect to the property pursuant to the instruction of the  
17 beneficiary of record and the current holder of the note secured by  
18 the deed of trust;

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

24 (6) The date, recordation number or other unique designation  
25 of the instrument that conveyed the interest of each beneficiary and  
26 a description of the instrument that conveyed the interest of each  
27 beneficiary.

28 ➔ The affidavit described in this paragraph is not required for the  
29 exercise of the trustee's power of sale with respect to any trust  
30 agreement which concerns a time share within a time share plan  
31 created pursuant to chapter 119A of NRS if the power of sale is  
32 being exercised for the initial beneficiary under the deed of trust or  
33 an affiliate of the initial beneficiary.

34 (d) Not less than 3 months have elapsed after the recording of  
35 the notice **H or, if the notice includes an affidavit and a**  
36 **certification indicating that, pursuant to section 4 of this act, an**  
37 **election has been made to use the expedited procedure for the**  
38 **exercise of the power of sale with respect to abandoned residential**  
39 **property, not less than 60 days have elapsed after the recording of**  
40 **the notice.**

41 3. The 15- or 35-day period provided in paragraph (a) of  
42 subsection 2, or the period provided in paragraph (b) of subsection  
43 2, commences on the first day following the day upon which the  
44 notice of default and election to sell is recorded in the office of the  
45 county recorder of the county in which the property is located and a



1 copy of the notice of default and election to sell is mailed by  
2 registered or certified mail, return receipt requested and with  
3 postage prepaid to the grantor or, to the person who holds the title of  
4 record on the date the notice of default and election to sell is  
5 recorded, and, if the property is operated as a facility licensed under  
6 chapter 449 of NRS, to the State Board of Health, at their respective  
7 addresses, if known, otherwise to the address of the trust property.  
8 The notice of default and election to sell must:

9 (a) Describe the deficiency in performance or payment and may  
10 contain a notice of intent to declare the entire unpaid balance due if  
11 acceleration is permitted by the obligation secured by the deed of  
12 trust, but acceleration must not occur if the deficiency in  
13 performance or payment is made good and any costs, fees and  
14 expenses incident to the preparation or recordation of the notice and  
15 incident to the making good of the deficiency in performance or  
16 payment are paid within the time specified in subsection 2; ~~and~~

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

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

24 4. The trustee, or other person authorized to make the sale  
25 under the terms of the trust deed or transfer in trust, shall, after  
26 expiration of the ~~3-month~~ applicable period *specified in*  
27 *paragraph (d) of subsection 2* following the recording of the notice  
28 of breach and election to sell, and before the making of the sale,  
29 give notice of the time and place thereof by recording the notice of  
30 sale and by:

31 (a) Providing the notice to each trustor, any other person entitled  
32 to notice pursuant to this section and, if the property is operated as a  
33 facility licensed under chapter 449 of NRS, the State Board of  
34 Health, by personal service or by mailing the notice by registered or  
35 certified mail to the last known address of the trustor and any other  
36 person entitled to such notice pursuant to this section;

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

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



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

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

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

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

15 (c) A notice of lis pendens providing notice of the pendency of  
16 the action is recorded in the office of the county recorder of the  
17 county where the sale took place within 30 days after  
18 commencement of the action.

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

26 7. If, in an action brought by the grantor or the person who  
27 holds title of record in the district court in and for the county in  
28 which the real property is located, the court finds that the  
29 beneficiary, the successor in interest of the beneficiary or the trustee  
30 did not comply with any requirement of subsection 2, 3 or 4, the  
31 court must award to the grantor or the person who holds title of  
32 record:

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

35 (b) An injunction enjoining the exercise of the power of sale  
36 until the beneficiary, the successor in interest of the beneficiary or  
37 the trustee complies with the requirements of subsections 2, 3 and 4;  
38 and

39 (c) Reasonable attorney's fees and costs,  
40 ↪ unless the court finds good cause for a different award. The  
41 remedy provided in this subsection is in addition to the remedy  
42 provided in subsection 5.

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



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

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

6 (b) Within 20 days after the date of the sale, deliver the trustee's  
7 deed upon sale to the successful bidder. Within 10 days after the  
8 date of delivery of the deed by the trustee, the successful bidder  
9 shall record the trustee's deed upon sale in the office of the county  
10 recorder of the county in which the property is located.

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

14 (a) Is liable in a civil action to any party that is a senior  
15 lienholder against the property that is the subject of the sale in a sum  
16 of up to \$500 and for reasonable attorney's fees and the costs of  
17 bringing the action; and

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

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

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

24 (b) A fee of \$45 for deposit in the Account for Foreclosure  
25 Mediation, which is hereby created in the State General Fund. The  
26 Account must be administered by the Court Administrator, and the  
27 money in the Account may be expended only for the purpose of  
28 supporting a program of foreclosure mediation established by  
29 Supreme Court Rule.

30 (c) A fee of \$5 to be paid over to the county treasurer on or  
31 before the fifth day of each month for the preceding calendar month.  
32 The county recorder may direct that 1.5 percent of the fees collected  
33 by the county recorder pursuant to this paragraph be transferred into  
34 a special account for use by the office of the county recorder. The  
35 county treasurer shall remit quarterly to the organization operating  
36 the program for legal services that receives the fees charged  
37 pursuant to NRS 19.031 for the operation of programs for the  
38 indigent all the money received from the county recorder pursuant  
39 to this paragraph.

40 12. The fees collected pursuant to paragraphs (a) and (b) of  
41 subsection 11 must be paid over to the county treasurer by the  
42 county recorder on or before the fifth day of each month for the  
43 preceding calendar month, and, except as otherwise provided in this  
44 subsection, must be placed to the credit of the State General Fund or  
45 the Account for Foreclosure Mediation as prescribed pursuant to



1 subsection 11. The county recorder may direct that 1.5 percent of  
2 the fees collected by the county recorder be transferred into a special  
3 account for use by the office of the county recorder. The county  
4 treasurer shall, on or before the 15th day of each month, remit the  
5 fees deposited by the county recorder pursuant to this subsection to  
6 the State Controller for credit to the State General Fund or the  
7 Account as prescribed in subsection 11.

8 13. The beneficiary, the successor in interest of the beneficiary  
9 or the trustee who causes to be recorded the notice of default and  
10 election to sell shall not charge the grantor or the successor in  
11 interest of the grantor any portion of any fee required to be paid  
12 pursuant to subsection 11.

13 14. As used in this section:

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

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

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

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

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

23 107.086 1. ~~##~~ *Except as otherwise provided in this*  
24 *subsection, in* addition to the requirements of NRS 107.085, the  
25 exercise of the power of sale pursuant to NRS 107.080 with respect  
26 to any trust agreement which concerns owner-occupied housing is  
27 subject to the provisions of this section. *The provisions of this*  
28 *section do not apply to the exercise of the power of sale if the*  
29 *notice of default and election to sell recorded pursuant to*  
30 *subsection 2 of NRS 107.080 includes an affidavit and a*  
31 *certification indicating that, pursuant to section 4 of this act, an*  
32 *election has been made to use the expedited procedure for the*  
33 *exercise of the power of sale with respect to abandoned residential*  
34 *property.*

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

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

40 (1) Contact information which the grantor or the person who  
41 holds the title of record may use to reach a person with authority to  
42 negotiate a loan modification on behalf of the beneficiary of the  
43 deed of trust;



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

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

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

14 (b) Serves a copy of the notice upon the Mediation  
15 Administrator; and

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

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

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

24 3. The grantor or the person who holds the title of record shall,  
25 not later than 30 days after service of the notice in the manner  
26 required by NRS 107.080, complete the form required by  
27 subparagraph (4) of paragraph (a) of subsection 2 and return the  
28 form to the trustee by certified mail, return receipt requested. If the  
29 grantor or the person who holds the title of record indicates on  
30 the form an election to enter into mediation, the trustee shall notify  
31 the beneficiary of the deed of trust and every other person with an  
32 interest as defined in NRS 107.090, by certified mail, return receipt  
33 requested, of the election of the grantor or the person who holds the  
34 title of record to enter into mediation and file the form with the  
35 Mediation Administrator, who shall assign the matter to a senior  
36 justice, judge, hearing master or other designee and schedule the  
37 matter for mediation. No further action may be taken to exercise the  
38 power of sale until the completion of the mediation. If the grantor or  
39 the person who holds the title of record indicates on the form an  
40 election to waive mediation or fails to return the form to the trustee  
41 as required by this subsection, the trustee shall execute an affidavit  
42 attesting to that fact under penalty of perjury and serve a copy of the  
43 affidavit, together with the waiver of mediation by the grantor or the  
44 person who holds the title of record, or proof of service on  
45 the grantor or the person who holds the title of record of the notice



\* S B 2 7 8 R 2 \*

1 required by subsection 2 of this section and subsection 3 of NRS  
2 107.080, upon the Mediation Administrator. Upon receipt of the  
3 affidavit and the waiver or proof of service, the Mediation  
4 Administrator shall provide to the trustee a certificate which  
5 provides that no mediation is required in the matter.

6 4. Each mediation required by this section must be conducted  
7 by a senior justice, judge, hearing master or other designee pursuant  
8 to the rules adopted pursuant to subsection 8. The beneficiary of the  
9 deed of trust or a representative shall attend the mediation. The  
10 grantor or a representative shall attend the mediation if the grantor  
11 elected to enter into mediation, or the person who holds the title of  
12 record or a representative shall attend the mediation if the person  
13 who holds the title of record elected to enter into mediation. The  
14 beneficiary of the deed of trust shall bring to the mediation the  
15 original or a certified copy of the deed of trust, the mortgage note  
16 and each assignment of the deed of trust or mortgage note. If the  
17 beneficiary of the deed of trust is represented at the mediation by  
18 another person, that person must have authority to negotiate a loan  
19 modification on behalf of the beneficiary of the deed of trust or have  
20 access at all times during the mediation to a person with such  
21 authority.

22 5. If the beneficiary of the deed of trust or the representative  
23 fails to attend the mediation, fails to participate in the mediation in  
24 good faith or does not bring to the mediation each document  
25 required by subsection 4 or does not have the authority or access to  
26 a person with the authority required by subsection 4, the mediator  
27 shall prepare and submit to the Mediation Administrator a petition  
28 and recommendation concerning the imposition of sanctions against  
29 the beneficiary of the deed of trust or the representative. The court  
30 may issue an order imposing such sanctions against the beneficiary  
31 of the deed of trust or the representative as the court determines  
32 appropriate, including, without limitation, requiring a loan  
33 modification in the manner determined proper by the court.

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

38 7. If the mediator determines that the parties, while acting in  
39 good faith, are not able to agree to a loan modification, the mediator  
40 shall prepare and submit to the Mediation Administrator a  
41 recommendation that the matter be terminated. The Mediation  
42 Administrator shall provide to the trustee a certificate which  
43 provides that the mediation required by this section has been  
44 completed in the matter.



1 8. The Supreme Court shall adopt rules necessary to carry out  
2 the provisions of this section. The rules must, without limitation,  
3 include provisions:

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

9 (b) Ensuring that mediations occur in an orderly and timely  
10 manner.

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

13 (d) Establishing procedures to protect the mediation process  
14 from abuse and to ensure that each party to the mediation acts in  
15 good faith.

16 (e) Establishing a total fee of not more than \$400 that may be  
17 charged and collected by the Mediation Administrator for mediation  
18 services pursuant to this section and providing that the responsibility  
19 for payment of the fee must be shared equally by the parties to the  
20 mediation.

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

23 (a) The grantor or the person who holds the title of record has  
24 surrendered the property, as evidenced by a letter confirming the  
25 surrender or delivery of the keys to the property to the trustee, the  
26 beneficiary of the deed of trust or the mortgagee, or an authorized  
27 agent thereof; or

28 (b) A petition in bankruptcy has been filed with respect to the  
29 grantor or the person who holds the title of record under chapter 7,  
30 11, 12 or 13 of Title 11 of the United States Code and the  
31 bankruptcy court has not entered an order closing or dismissing the  
32 case or granting relief from a stay of foreclosure.

33 10. A noncommercial lender is not excluded from the  
34 application of this section.

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

38 12. As used in this section:

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

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





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

5 **Sec. 6.5.** Nothing in this act shall be construed to limit the  
6 ability of a county or city to enforce any existing ordinance relating  
7 to abandoned property.

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

