

ASSEMBLY BILL NO. 282—ASSEMBLYMEN SEAMAN, SHELTON, FIORE, JONES, DOOLING; DICKMAN, ELLISON, GARDNER, HAMBRICK, HICKEY, O’NEILL, OSCARSON, SILBERKRAUS, STEWART, TROWBRIDGE, WHEELER AND WOODBURY

MARCH 13, 2015

JOINT SPONSOR: SENATOR SETTELMEYER

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing real property. (BDR 3-855)

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

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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 mediation of a judicial foreclosure action; revising provisions requiring certain actions related to the foreclosure of owner-occupied property securing a residential mortgage loan to be rescinded after a certain period; revising provisions governing civil actions brought by a borrower for certain violations of law governing the foreclosure of owner-occupied property securing a residential mortgage loan; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

- 1 Existing law provides that in a judicial foreclosure action concerning owner-
- 2 occupied property, the mortgagor may elect to participate in the program of
- 3 foreclosure mediation. (NRS 40.437) **Section 1** of this bill removes provisions
- 4 governing the process of such mediation and the documents required to be brought
- 5 to the mediation. **Section 1** instead requires the Nevada Supreme Court to adopt
- 6 rules governing the mediation.
- 7 Under existing law, a foreclosure sale may not occur and any notice of default
- 8 and election to sell must be rescinded if: (1) a notice of sale is not recorded within 9
- 9 months after a notice of default and election to sell is recorded; or (2) a foreclosure
- 10 sale is not conducted within 90 days after a notice of sale is recorded. The 9-month
- 11 and 90-day periods are tolled: (1) if the borrower has filed a bankruptcy case, until



12 the bankruptcy court has closed or dismissed the bankruptcy or granted relief from  
13 a stay of foreclosure or trustee's sale; (2) if the property being foreclosed is subject  
14 to mediation under the program of foreclosure mediation or any judicially required  
15 settlement program, the conclusion of the mediation or participation in the  
16 settlement program; or (3) if a borrower has submitted an application for a  
17 foreclosure prevention alternative, until the date on which the disposition of the  
18 application is final. (NRS 107.550) **Section 2** of this bill: (1) revises the tolling  
19 period; and (2) specifically states the calendar days included within the tolling  
20 period.

21 Existing law provides that under certain circumstances, a borrower under a  
22 residential mortgage loan may bring a civil action to recover his or her actual  
23 economic damages resulting from a material violation of certain provisions  
24 governing the foreclosure of the borrower's residence by a mortgage servicer,  
25 mortgagee, beneficiary of a deed of trust or an authorized agent of such a person. In  
26 such a civil action, the court may award to a prevailing borrower attorney's fees  
27 and costs. In addition, if the court finds that the material violation was intentional  
28 or reckless, or resulted from willful misconduct by a mortgage servicer, mortgagee,  
29 beneficiary of a deed of trust or an authorized agent of such a person, the court may  
30 award the borrower the greater of treble actual damages or statutory damages of  
31 \$50,000. (NRS 107.560) **Section 3** of this bill revises this provision to provide that  
32 the court may award the borrower the greater of treble actual damages or statutory  
33 damages of \$5,000. **Section 3** further removes the provision authorizing the court  
34 to award reasonable attorney's fees and costs so that other provisions of existing  
35 law which authorize the court to award reasonable attorney's fees and costs to a  
36 prevailing party will be applicable.

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

1 **Section 1.** NRS 40.437 is hereby amended to read as follows:

2 40.437 1. If a civil action for a foreclosure sale pursuant to  
3 NRS 40.430 affecting owner-occupied housing is commenced in a  
4 court of competent jurisdiction:

5 (a) The copy of the complaint served on the mortgagor must  
6 include a separate document containing:

7 (1) Contact information which the mortgagor may use to  
8 reach a person with authority to negotiate a loan modification on  
9 behalf of the plaintiff;

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

13 (3) A notice provided by the Mediation Administrator  
14 indicating that the mortgagor has the right to seek mediation  
15 pursuant to this section; and

16 (4) A form upon which the mortgagor may indicate an  
17 election to enter into mediation or to waive mediation pursuant to  
18 this section and one envelope addressed to the plaintiff and one  
19 envelope addressed to the Mediation Administrator, which the



1 mortgagor may use to comply with the provisions of subsection 2;  
2 and

3 (b) The plaintiff must submit a copy of the complaint to the  
4 Mediation Administrator.

5 2. The mortgagor shall, not later than the date on which an  
6 answer to the complaint is due, complete the form required by  
7 subparagraph (4) of paragraph (a) of subsection 1 and file the form  
8 with the court and return a copy of the form to the plaintiff by  
9 certified mail, return receipt requested. If the mortgagor indicates on  
10 the form an election to enter into mediation, the plaintiff shall notify  
11 any person with an interest as defined in NRS 107.090, by certified  
12 mail, return receipt requested, of the election of the mortgagor to  
13 enter into mediation and file the form with the Mediation  
14 Administrator, who shall assign the matter to a senior justice, judge,  
15 hearing master or other designee and schedule the matter for  
16 mediation. ~~[The judicial foreclosure action must be stayed until the  
17 completion of the mediation.]~~ If the mortgagor indicates on the form  
18 an election to waive mediation or fails to file the form with the court  
19 and return a copy of the form to the plaintiff as required by this  
20 subsection, no mediation is required in the action.

21 3. Each mediation required by this section must be conducted  
22 by a senior justice, judge, hearing master or other designee pursuant  
23 to the rules adopted *by the Supreme Court* pursuant to subsection  
24 ~~[11 of NRS 107.086.]~~ 4. The plaintiff or a representative, and the  
25 mortgagor or his or her representative, shall attend the mediation. If  
26 the plaintiff is represented at the mediation by another person, that  
27 person must have authority to negotiate a loan modification on  
28 behalf of the plaintiff or have access at all times during the  
29 mediation to a person with such authority.

30 4. ~~[If the plaintiff or the representative fails to attend the  
31 mediation, fails to participate in the mediation in good faith or does  
32 not have the authority or access to a person with the authority  
33 required by subsection 3, the mediator shall prepare and submit to  
34 the Mediation Administrator and the court a petition and  
35 recommendation concerning the imposition of sanctions against the  
36 plaintiff or the representative. The court may issue an order  
37 imposing such sanctions against the plaintiff or the representative as  
38 the court determines appropriate, including, without limitation,  
39 requiring a loan modification in the manner determined proper by  
40 the court.~~

41 ~~—5. If the mortgagor elected to enter into mediation and fails to  
42 attend the mediation, no mediation is required and the judicial  
43 foreclosure action must proceed as if the mortgagor had not elected  
44 to enter into mediation.~~



~~6. If the mediator determines that the parties, while acting in good faith, are not able to agree to a loan modification, the mediator shall prepare and submit to the court and the Mediation Administrator a recommendation that the mediation be terminated. The court may terminate the mediation and proceed with the judicial foreclosure action.~~

~~7.] The [rules adopted by the Supreme Court pursuant to subsection 11 of NRS 107.086 apply to a mediation conducted pursuant to this section, and the] Supreme Court [may] shall adopt any [additional] rules necessary to carry out the provisions of this section.~~

~~[8.] 5.~~ Except as otherwise provided in subsection ~~[10.] 7,~~ the provisions of this section do not apply if:

(a) The mortgagor has surrendered the property, as evidenced by a letter confirming the surrender or delivery of the keys to the property to the trustee, the beneficiary of the deed of trust or the mortgagee, or an authorized agent thereof; or

(b) A petition in bankruptcy has been filed with respect to the defendant under 11 U.S.C. Chapter 7, 11, 12 or 13 and the bankruptcy court has not entered an order closing or dismissing the case or granting relief from a stay of foreclosure.

~~[9.] 6.~~ A noncommercial lender is not excluded from the application of this section.

~~[10.] 7.~~ The Mediation Administrator and each mediator who acts pursuant to this section in good faith and without gross negligence are immune from civil liability for those acts.

~~[11.] 8.~~ As used in this section:

(a) "Mediation Administrator" has the meaning ascribed to it in NRS 107.086.

(b) "Noncommercial lender" has the meaning ascribed to it in NRS 107.086.

(c) "Owner-occupied housing" has the meaning ascribed to it in NRS 107.086.

**Sec. 2.** NRS 107.550 is hereby amended to read as follows:

107.550 1. A civil action for a foreclosure sale pursuant to NRS 40.430 involving a failure to make a payment required by a residential mortgage loan must be dismissed without prejudice, any notice of default and election to sell recorded pursuant to subsection 2 of NRS 107.080 or any notice of sale recorded pursuant to subsection 4 of NRS 107.080 must be rescinded, and any pending foreclosure sale must be cancelled, if:

(a) The borrower accepts a permanent foreclosure prevention alternative;



1 (b) A notice of sale is not recorded within ~~[9 months]~~ **1 year**  
2 after the notice of default and election to sell is recorded pursuant to  
3 subsection 2 of NRS 107.080; or

4 (c) A foreclosure sale is not conducted within ~~[90 calendar days]~~  
5 **1 year** after a notice of sale is recorded pursuant to subsection 4 of  
6 NRS 107.080.

7 2. The periods specified in paragraphs (b) and (c) of subsection  
8 ~~1 [are tolled:~~

9 ~~—(a) If] must be calculated without including:~~

10 (a) **Any calendar days during which a petition for bankruptcy**  
11 **filed by a borrower [has filed a case] under 11 U.S.C. Chapter 7, 11,**  
12 **12 or 13, [until the bankruptcy court enters an order closing or**  
13 **dismissing the bankruptcy case or granting relief from a stay of**  
14 **foreclosure or trustee's sale;] is pending.**

15 (b) If mediation pursuant to NRS 107.086 is required, ~~[until]~~  
16 **any calendar days occurring during the period beginning on the**  
17 **date on which a copy of the notice of default and election to sell is**  
18 **mailed to the borrower as required by subsection 3 of NRS**  
19 **107.080 and ending on the date that is 30 calendar days after** the  
20 date on which the Mediation Administrator, as defined in NRS  
21 107.086, issues the certificate that mediation has been completed in  
22 the matter. ~~[;]~~

23 (c) ~~[If mediation pursuant to NRS 40.437 is required or if a~~  
24 ~~court orders participation in a settlement program, until the date on~~  
25 ~~which the mediation or participation in a settlement program is~~  
26 ~~terminated; or]~~ **Any calendar days occurring during the period**  
27 **beginning on the date on which a stay of a foreclosure proceeding**  
28 **or foreclosure sale is ordered by a court and ending on the date**  
29 **that is 30 days after the expiration of the stay.**

30 (d) ~~[If a borrower has submitted an]~~ **Any calendar days during**  
31 **which a complete or incomplete** application for a foreclosure  
32 prevention alternative ~~[, until the date on which:~~

33 ~~—(1) A written offer for a foreclosure prevention alternative is~~  
34 ~~submitted to the borrower;~~

35 ~~—(2) A written statement of the denial of the application has~~  
36 ~~been submitted to the borrower pursuant to subsection 4 of NRS~~  
37 ~~107.530, and any appeal period pursuant to subsection 5 of NRS~~  
38 ~~107.530 has expired; or~~

39 ~~—(3) If the borrower has appealed the denial of an application~~  
40 ~~for a foreclosure prevention alternative, a written offer for a~~  
41 ~~foreclosure prevention alternative or a written denial of the appeal is~~  
42 ~~submitted to the borrower.] **submitted by the borrower is pending**~~  
43 **without decision.**

44 3. If, pursuant to subsection 1, a civil action is dismissed, a  
45 notice of default and election to sell recorded pursuant to



1 subsection 2 of NRS 107.080 or any notice of sale recorded  
2 pursuant to subsection 4 of NRS 107.080 is rescinded, or any  
3 pending foreclosure sale is cancelled, the mortgagee or beneficiary  
4 of the deed of trust is thereupon restored to its former position and  
5 has the same rights as though an action for a judicial foreclosure had  
6 not been commenced or a notice of default and election to sell had  
7 not been recorded.

8 **Sec. 3.** NRS 107.560 is hereby amended to read as follows:

9 107.560 1. If a trustee's deed upon sale has not been  
10 recorded, a borrower may bring an action for injunctive relief to  
11 enjoin a material violation of NRS 107.400 to 107.560, inclusive. If  
12 a sheriff has not recorded the certificate of the sale of the property, a  
13 borrower may obtain an injunction to enjoin a material violation of  
14 NRS 107.400 to 107.560, inclusive. An injunction issued pursuant  
15 to this subsection remains in place and any foreclosure sale must be  
16 enjoined until the court determines that the mortgage servicer,  
17 mortgagee, beneficiary of the deed of trust or an authorized agent of  
18 such a person has corrected and remedied the violation giving rise to  
19 the action for injunctive relief. An enjoined person may move to  
20 dissolve an injunction based on a showing that the material violation  
21 has been corrected and remedied.

22 2. After a trustee's deed upon sale has been recorded or after a  
23 sheriff has recorded the certificate of the sale of the property, a  
24 borrower may bring a civil action in the district court in the county  
25 in which the property is located to recover his or her actual  
26 economic damages resulting from a material violation of NRS  
27 107.400 to 107.560, inclusive, by the mortgage servicer, mortgagee,  
28 beneficiary of the deed of trust or an authorized agent of such a  
29 person, if the material violation was not corrected and remedied  
30 before the recording of the trustee's deed upon sale or the recording  
31 of the certificate of sale of the property pursuant to NRS 40.430. If  
32 the court finds that the material violation was intentional or reckless,  
33 or resulted from willful misconduct by a mortgage servicer,  
34 mortgagee, beneficiary of the deed of trust or an authorized agent of  
35 such a person, the court may award the borrower the greater of  
36 treble actual damages or statutory damages of ~~[\$50,000.]~~ \$5,000.

37 3. A mortgage servicer, mortgagee, beneficiary of the deed of  
38 trust or an authorized agent of such a person is not liable for any  
39 violation of NRS 107.400 to 107.560, inclusive, that it has corrected  
40 and remedied, or that has been corrected and remedied on its behalf  
41 by a third party, before the recording of the trustee's deed upon sale  
42 or the recording of the certificate of sale of the property pursuant to  
43 NRS 40.430.



1 4. A violation of NRS 107.400 to 107.560, inclusive, does not  
2 affect the validity of a sale to a bona fide purchaser for value and  
3 any of its encumbrancers for value without notice.

4 5. A signatory to a consent judgment entered in the case  
5 entitled United States of America et al. v. Bank of America  
6 Corporation et al., filed in the United States District Court for the  
7 District of Columbia, case number 1:12-cv-00361 RMC, that is in  
8 compliance with the relevant terms of the Settlement Term Sheet of  
9 that consent judgment with respect to the borrower while the  
10 consent judgment is in effect is deemed to be in compliance with  
11 NRS 107.400 to 107.560, inclusive, and is not liable for a violation  
12 of NRS 107.400 to 107.560, inclusive. If, on or after October 1,  
13 2013, the consent judgment is modified or amended to permit  
14 compliance with the relevant provisions of 12 C.F.R. Part 1024,  
15 commonly known as Regulation X, and 12 C.F.R. Part 1026,  
16 commonly known as Regulation Z, as those regulations are  
17 amended by the Final Servicing Rules issued by the Consumer  
18 Financial Protection Bureau in 78 Federal Register 10,696 on  
19 February 14, 2013, and any amendments thereto, to supersede some  
20 or all of the relevant terms of the Settlement Term Sheet of the  
21 consent judgment:

22 (a) A signatory who is in compliance with the modified or  
23 amended Settlement Term Sheet of the consent judgment while the  
24 consent judgment is in effect is deemed to be in compliance with  
25 NRS 107.400 to 107.560, inclusive, and is not liable for a violation  
26 of NRS 107.400 to 107.560, inclusive.

27 (b) Any mortgage servicer, mortgagee or beneficiary of the deed  
28 of trust or an authorized agent of such a person who complies with  
29 the relevant provisions of 12 C.F.R. Part 1024, commonly known as  
30 Regulation X, and 12 C.F.R. Part 1026, commonly known as  
31 Regulation Z, as those regulations are amended by the Final  
32 Servicing Rules issued by the Consumer Financial Protection  
33 Bureau in 78 Federal Register 10,696 on February 14, 2013, and any  
34 amendments thereto, is deemed to be in compliance with NRS  
35 107.400 to 107.560, inclusive, and is not liable for a violation of  
36 NRS 107.400 to 107.560, inclusive.

37 6. ~~{A court may award a prevailing borrower costs and~~  
38 ~~reasonable attorney's fees in an action brought pursuant to this~~  
39 ~~section.~~

40 ~~—7.}~~ The rights, remedies and procedures provided by this  
41 section are in addition to and independent of any other rights,  
42 remedies or procedures provided by law.

