



Bankers Advisory

COMPLIANCE MONITOR

August 10, 2015

Nevada Adopts Provisions Regarding Foreclosure Mediation Program

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The State of Nevada has recently updated various provisions regarding the foreclosure mediation program, including provisions that will abolish the program on June 30th, 2017.

Nevada law has created a foreclosure mediation program, which states that unless waived, mediation must be conducted as a condition of a judicial foreclosure proceeding, or the exercise of a power of sale affecting owner-occupied housing. The law has also established the Account for Foreclosure Mediation, which contains money that must be used exclusively for the maintenance of the program (NRS 107.080), and the Nevada Supreme Court is required to adopt rules to implement the program (NRS 40.437, 107.086).

Section 1 has been added to Chapter 107 of NRS, stating as follows:

1. A mortgagor under a mortgage secured by owner-occupied housing or a grantor, or the person who holds the title of record with respect to any trust agreement which concerns owner-occupied housing may initiate mediation to negotiate a loan modification under the mediation process set forth in NRS 107.086 if, on or before December 31, 2016:

(a) A local housing counseling agency approved by the United States Department of Housing and Urban Development certifies that the mortgagor, grantor or person who holds the title of record:

- (1) Has a documented financial hardship; and
- (2) Is in imminent risk of default; and

(b) The mortgagor, grantor or person who holds the title of record:

- (1) Submits a form prescribed by the Mediation Administrator indicating an election to enter into mediation pursuant to this section; and
- (2) Pays to the Mediation Administrator his or her share of the fee established pursuant to subsection 11 of NRS 107.086.

2. Upon satisfaction of the requirements of subsection 1, the Mediation Administrator shall notify the mortgage servicer, by certified mail, return receipt requested, of the enrollment of the mortgagor, grantor or person who holds the title of record to participate in mediation pursuant to this section and shall assign the matter to a senior justice, judge, hearing master or other designee and schedule the matter for mediation. The mortgage servicer shall notify the mortgagee or the beneficiary of the deed of trust, as applicable, and every other person with an interest as defined in NRS 107.090, by certified mail, return receipt requested, of the enrollment of the mortgagor, grantor or person who holds the title of record to participate in mediation.

3. Each mediation required by this section must be conducted in conformity with the requirements of subsections 5 and 6 of NRS 107.086.

4. 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 Mediation Administrator a recommendation that the matter be terminated. The Mediation Administrator shall, not later than 30 days after submittal of the mediator's recommendation that the matter be terminated, provide to the mortgage servicer a certificate which provides that the mediation required by this section has been completed in the matter. If the Mediation Administrator provides such a certificate, the requirement for mediation pursuant to NRS 107.086 is satisfied.

5. The certificate provided pursuant to subsection 4 must be in the same form as the certificate provided pursuant to subsection 8 of NRS 107.086, and may be recorded in the office of the county recorder in which the trust property, or some part thereof, is situated. The recording of the certificate in the office of the county recorder in which the trust property, or some part thereof, is situated shall be deemed to be the recording of the certificate required pursuant to subparagraph (2) of paragraph (d) of subsection 2 of NRS 107.086.

6. A noncommercial lender is not excluded from the application of this section.

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.

8. As used in this section:

(a) "Financial hardship" means a documented event that would prevent the long-term payment of any debt relating to a mortgage or deed of trust secured by owner-occupied housing, including, without limitation:

- (1) The death of the borrower or co-borrower;
- (2) Serious illness;
- (3) Divorce or separation; or
- (4) Job loss or a reduction in pay.

(b) "Imminent risk of default" means the inability of a grantor or the person who holds the title of record to make his or her mortgage payment within the next 90 days.

Section 10.5 of this bill authorizes the Court Administrator, under certain circumstances, to submit to the Interim Finance Committee a request for an allocation from the Contingency Account created by NRS 353.266 for deposit in the Account for Foreclosure Mediation.

Section 12 of this bill repeals the existing statutes providing for the foreclosure mediation program, effective on June 30, 2017, effectively ending the program on that date. Section 1 also expires by limitation on that date. Under sections 1, 2.5 and 8.5 of this bill, December 31, 2016, is the last date on which a homeowner can enroll in the foreclosure mediation program. Persons initiating foreclosures after December 1, 2016, need not provide notice of the mediation program.

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