

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ADOPTION
OF RULES FOR FORECLOSURE
MEDIATION

ADKT No. 435

FILED

NOV 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT

BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER SCHEDULING PUBLIC HEARING

On June 30, 2009, this court adopted rules in order to implement the foreclosure mediation program established by Assembly Bill 149. This court has determined that it is necessary to consider amendments to the rules. The proposed amendments are attached as Exhibit A.

The Nevada Supreme Court will conduct a public hearing on the proposed amendments and forms. The hearing will be held on Monday December 6, 2010, at 2:00 p.m. in the Nevada Supreme Court Courtroom in the Regional Justice Center in Las Vegas, Nevada. The hearing will be videoconferenced to the Nevada Supreme Court Courtroom, 201 S. Carson Street, Carson City, Nevada.

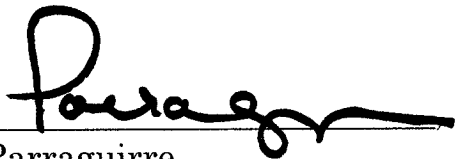
Further, this court invites written comment from the bench, bar and public regarding the proposed rule amendments and forms. An original and 8 copies of written comments are to be submitted to: Tracie K. Lindeman, Clerk of the Supreme Court, 201 South Carson Street, Carson City, Nevada 89701 by 5:00 p.m., December 10, 2010. Persons

interested in participating in the hearing must notify the Clerk no later than December 2, 2010.

Hearing date: December 6, 2010, at 2:00 p.m.
Supreme Court Courtroom
200 Lewis Avenue, 17th Floor
Regional Justice Center
Las Vegas, Nevada

Comment deadline: December 10, 2010, at 5:00 p.m.
Supreme Court Clerk's Office
201 South Carson Street
Carson City, Nevada 89701

DATED this 9th day of November, 2010.


Parraguirre C.J.

cc: Hon. Jim Gibbons, Governor
Senator Steven Horsford
Senator William Raggio
All District Court Judges
Cam Ferenbach, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
Board of Governors, State Bar of Nevada
Barbara Buckley, Esq.
Lorne J. Malkiewich, Legislative Counsel Bureau
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Nevada Justice Association
Legal Aid Center of Southern Nevada
Nevada Legal Services
Washoe Legal Services
Volunteer Attorneys for Rural Nevadans
Nevada Association of Counties
Nevada Bankers Association
Nevada Land Title Association
Nevada Association of Realtors
Administrative Office of the Courts
Verise Campbell, Mediation Administrator

EXHIBIT A

AMENDED FORECLOSURE MEDIATION RULES

(Revised Draft 10/21/2010)

I. SCOPE OF RULES

Rule 1. The Foreclosure Mediation Program.

1. *Authority and scope.* Pursuant to the jurisdictional authority provided by Chapter 107 of the Nevada Revised Statutes and the Nevada Supreme Court's inherent power to create rules for the efficient administration of justice, these rules are enacted to apply to the mediation of any owner-occupied residential foreclosure arising from the recording of a notice of default and election to sell on or after July 1, 2009.

2. *Purpose.* The purpose of these rules is to provide for the orderly, timely, and cost-effective mediation of owner-occupied residential foreclosures which shall take place within 135 days following actual receipt by the Administrator, or designee, of the mediation fee and required documentation provided on behalf of the lender. The Foreclosure Mediation Program encourages deed of trust beneficiaries (lenders) and homeowners (borrowers) to exchange information and proposals that may avoid foreclosure.

3. *Availability of program.* Subject to limited exceptions set forth in Rule 5 hereafter, the Foreclosure Mediation Program is mandatory when the grantor or person who holds title of record of an owner-occupied residence timely requests mediation.

4. *Time.* For purposes of calculating time under these rules, 6(a) and 6(e) of the Nevada Rules of Civil Procedure (NRCPP) shall apply. These rules, as amended, apply to all mediations that have not yet been conducted by the mediator.

Rule 2. Mediation Administrator and Designee.

1. *Appointment.* The Foreclosure Mediation Program Administrator (Administrator) shall be appointed by the Nevada Supreme Court (Court). The Administrator for the Foreclosure Mediation Program (Program) is the Administrative Office of the Courts (AOC).

2. *Authority.* The Administrator may appoint a Foreclosure Mediation Program Manager and support staff to assist in carrying out the goals and objectives of the Foreclosure Mediation Program. When the efficient administration of the program warrants, the Administrator may enter into contracts with third parties for training and other mediation-related services.

3. *Foreclosure Mediation Program Manager.* The Foreclosure Mediation Program Manager (FMP Manager) is the "designee" for the Administrator under these rules. In addition to his or her general duties, the FMP Manager shall:

(a) Ensure all program-approved forms are in compliance with these rules. The FMP Manager may reject any program-approved form substantially altered by a borrower, lender, trustee, or mediator and require resubmission on the appropriate program-approved form; and

(b) Take any action necessary to correct "clerical errors" in the Certificate arising from oversight or omission for which the mediator or FMP staff is responsible.

(c) For good cause the Administrator may temporarily discontinue assigning mediation cases to a mediator for a maximum of 60 days.

Rule 3. Presiding Mediator.

1. *Authority.* A foreclosure mediation must be conducted by either a senior judge, Supreme Court settlement conference judge, or other person designated by the Supreme Court. The presiding mediator shall have all requisite authority to conduct the foreclosure mediation. The mediator shall schedule each mediation to commence within 45 days of receipt of the assignment and shall notify the Administrator, or designee, of the outcome of each mediation.

2. *Assignment of presiding mediator.* No later than 10 days after receipt of the Election for Mediation, and the fees from both parties pursuant to Rules 5 (6) and 16 herein, the Administrator or designee shall randomly select and assign from the applicable geographic area a mediator to preside over the mediation. The assigned mediator will have 2 business days after receiving the assignment to determine and notify the Administrator or designee of a conflict requiring his or her recusal. Upon such notification, the Administrator or designee shall immediately and randomly select another mediator to conduct the mediation. The Administrator or designee may direct a mediator to cluster several mediations for a lender. Upon final selection of a mediator, the Administrator, or designee, shall send notice of the assignment to the parties.

3. *Panel of mediators.* The Administrator or designee shall maintain a list of mediators by geographic area available to hear foreclosure mediations. The list shall include all senior judges, Supreme Court settlement conference judges, and other persons who are appointed by the Court to serve as presiding mediators in the Foreclosure Mediation Program and are qualified pursuant to subsection 4 herein.

4. *Mediator qualifications.*

(a) Mediators must meet the following minimum qualifications:

(1) Be licensed to practice law in the State of Nevada; or

(2) Be an experienced mediator. For purposes of this subsection, an experienced mediator shall mean an individual who has participated in a mediation training program consisting of at least 40 hours of classroom and role playing and has conducted 10 mediations as a co-mediator or sole mediator.

(b) Additionally, all mediators must participate in a training program of at least 4 hours consisting of education in mortgages, deeds of trust, promissory notes, loan modifications, Nevada foreclosure laws, and such other topics as determined necessary by the Court.

(c) The Court, for good cause shown, may waive the minimum requirements set forth herein.

5. Appointment of mediators.

(a) The Administrator or designee shall solicit and provide the Court with the names and qualifications of persons who have applied to become mediators. The Court shall approve, deny, or continue the applicant's request to serve as a mediator. The term of appointment shall be 1 year.

(b) The Administrator or designee shall receive all affidavits and issue all certificates as may be required herein. The list of Court-approved mediators shall be maintained by the Administrator.

Rule 4. Conduct, Disqualification, and Recusal.

1. Any mediator appointed pursuant to these rules is subject to Canon 1, Canon 2, Rules 2.1 through 2.9, 2.11, and 2.13 through 2.16; and Canon 3, Rules 3.1, 3.3, 3.5, 3.6, and 3.9 of the Nevada Code of Judicial Conduct as adopted or amended by the Supreme Court of Nevada.

2. A mediator who has a personal or past or present significant professional relationship with any of the parties or a financial interest in the matter of the mediation shall immediately recuse himself or herself as a mediator in the particular case. For purposes of these rules a present significant professional relationship shall include representation of homeowners or lenders at mediations.

3. Mediators serve at the pleasure of the Court. Upon the recommendation of the Administrator, the Court may suspend or revoke the appointment of a mediator at any time. The suspension or revocation is effective immediately. The FMP Manager has authority to take any action necessary to accommodate the parties affected by such action(s).

II. PARTICIPATION IN THE FORECLOSURE MEDIATION PROGRAM

Rule 5. Eligibility for the Foreclosure Mediation Program.

1. The program applies to any grantor or person who holds the title of record and is the owner-occupant of a residence as to which a notice of default and election to sell has been recorded on or after July 1, 2009.

2. "Owner-occupied housing" means housing that is occupied by an owner as his or her primary residence. This term does not include any time-share or other property regulated under NRS Chapter 119A, and/or a foreclosure initiated by a homeowner's association under NRS Chapter 116.

3. A Certificate from the Administrator or designee must be recorded prior to a trustee's sale being conducted on any owner-occupied housing. The Certificate may be requested by the trustee and, if requested, may be issued by the Administrator or designee on any residential property for which a request for mediation was not filed. However, there is no requirement that a Certificate be issued and recorded prior to a trustee's sale being conducted on any type of property other than owner-occupied housing.

4. All grantors or persons who hold the title of record who have timely elected to participate in the program may do so and are herein referenced as the eligible participants, except where:

(a) The grantor or the person who holds title of record has previously surrendered the real property that is the subject of the foreclosure proceedings, as evidenced by a letter signed by the grantor or the person who holds title of record 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 of any of these recipients; or

(b) A petition in bankruptcy under Chapters 7, 11, 12, or 13 of Title 11 of the United States Code has been filed with respect to the grantor or the person who holds title of record on or after July 1, 2009, and the bankruptcy court has not entered an order closing or dismissing the case, or granting relief from the automatic stay of the foreclosure.

(c) The grantor or persons who hold title of record of an owner-occupied residence is a trust, in which case the trustee of such trust shall be the eligible participant. For purposes of this rule, the terms trust and settlor are defined as follows:

i. Trust is an entity created to hold assets for the benefit of certain persons or entities, with a trustee managing the trust. Most trusts are founded by the persons (called trustors or settlors) who execute a written declaration of trust which establishes the trust and spells out the terms and conditions upon which it will be conducted

ii. Settlor is the person who creates a trust by a written trust declaration, called a "Trustor". The settlor usually transfers the original assets into the trust.

5. Any trustee or other person presenting a notice of default and election to sell for recording in the Office of a County Recorder shall, no later than 10 days from presenting the Notice of Default for filing, send by certified or registered mail, return receipt requested, to the grantor or person who holds title of record of an owner-occupied residence, in addition to the documents required to be sent to the homeowner under NRS 107.080, two copies of the Election of Mediation and instructions, on a form provided by the Administrator or designee with the information indicated on the form to be provided by the trustee filled in. The trustee must also provide the grantor with one copy of the following forms: (i) a Financial Statement; and (ii) a Housing Affordability Worksheet, which forms have been pre-approved by the Administrator, or designee, of the Program. In addition, the trustee must provide the grantor with two envelopes: one pre-addressed to the Administrator, or designee, and the other pre-addressed to the trustee.

6. The mediation process under these rules shall be initiated by the preparation and delivery of an Election of Mediation by a grantor or person who holds title of record of an owner-occupied residence on "forms" provided by the Administrator or designee and payment of the fee required by Rule 16 herein.

(a) The eligible participant shall, not later than 30 days after the service upon him or her in the manner required by NRS 107.080 of the notice of default and

election to sell, complete the Election/Waiver of Mediation Form. If the eligible participant elects to mediate through the Program, they must also complete and submit the Financial Statement and the Housing Affordability Worksheet. The eligible participant must deliver these documents to the Administrator or designee together with the fees required under Rule 16, within the 30-day period.

(b) The eligible participant shall also mail a copy of the Election/Waiver of Mediation to the trustee, by certified or registered mail, return receipt requested.

(c) As soon as the Administrator or designee receives an Election/Waiver of Mediation from an eligible participant, the Administrator or designee will notify the trustee of the receipt, including whether any fees were paid by the participant.

(d) The trustee shall, within 10 days of notice of the receipt of the Election of Mediation, deposit with the Administrator, or designee, the signed Election of Mediation, if the trustee has received a copy; a copy of the trustee's Information on a form provided by the Administrator or designee including the name and address of the beneficiary of the deed of trust; a copy of the recorded Notice of Default; and the fees required in Rule 16 herein, including any fees received from the grantor. Any delay by the trustee in providing the required documents and information to the Administrator or designee, shall extend the time for mediation set forth in Rule 1(2).

7. If grantors or persons who hold the title of record have timely elected to participate in the program and the trustee presents a rescission of a notice of default and election to sell for recording in the Office of a County Recorder; the lender must obtain the written agreement of grantors or persons who hold title of record to stop the mediation from proceeding. The lender shall, within 10 days of the recording of the rescission, deposit with the Administrator, or designee, the signed agreement between the lender and grantors or persons who hold title of record to withdraw from the Foreclosure Mediation Program process. Should the Administrator not receive the signed agreement within the time provided, the mediation process will continue as provided herein.

7.8. Failure by any eligible participant to timely deliver an Election of Mediation to the Administrator or designee or to attend and participate at a mediation scheduled under these rules shall result in the Administrator issuing a certificate stating no mediation is required, and that a foreclosure sale may be noticed according to law.

8.9. Both parties to a mediation should appear in person. However, a party may be represented by another person, subject to certain limitations, as follows:

(a) Beneficiary (lender). All beneficiaries of a deed of trust sought to be foreclosed against an eligible participant who has timely delivered an Election of Mediation shall participate in the Foreclosure Mediation Program, be represented at all times during a mediation by a person or persons who have the authority to negotiate and modify the loan secured by the deed of trust sought to be foreclosed. A beneficiary or its representative shall be physically present, or, if approved by the mediator in advance, and for good cause shown, may participate in the mediation by phone. In addition to the documents required by Rule 8 herein, the beneficiary must

bring to the mediation the original or a certified copy of the deed of trust, the mortgage note, and each assignment of the deed of trust and the mortgage note.

(b) **Eligible Participant (borrower).** A borrower may also request that a representative accompany him or her and/or appear for him or her at the mediation. However, the borrower's representative must be either (i) an attorney who is licensed to practice law in Nevada, and/or (ii) a person who is licensed to provide services as described in NRS Chapter 645F.310, or (iii) a U.S. Department of Housing and Urban Development (HUD) approved housing counselor employed by HUD certified Housing Counseling Agencies. The mediator may request that the borrower's representative provide proof of these requirements.

(c) An eligible participant may represent him or herself. In any circumstance where the eligible participant retains representation, his or her representative must meet the qualifications provided in Rule 5.9(a) and (b).

(d) An eligible participant may give power of attorney to someone else to represent them in mediation. If an eligible participant gives a power of attorney to someone to represent them in mediation and if that person is receiving any form of compensation, including commissions or fees associated with the sale or transfer of the property, then they must meet the qualifications provided in Rule 5.9(a) and (b).

~~[9.]~~10. Unless extended for good cause by the presiding mediator, the mediation shall be concluded within 135 days following actual receipt by the Administrator, or designee, of the mediation fee and required documentation provided on behalf of the lender. Upon the completion of the mediation, the mediator shall prepare the Mediator's Statement in accordance with Rule 14 herein.

~~[10.]~~11. For purposes of this rule, a certified copy of the original mortgage note, deed of trust, and each assignment of the deed of trust and mortgage note is only satisfied when the mediator receives a statement under oath signed before a notary public pursuant to the provisions of NRS 240.1655(2), which includes:

(a) The name, address, capacity, and authority of the person making the certification;

(b) The person making the certification is in actual possession of the original mortgage note, deed of trust, and each assignment of the mortgage note and deed of trust; and

(c) The attached copy of the mortgage note, deed of trust, and each assignment of the mortgage note and deed of trust are a true and correct copy of the original mortgage note, deed of trust, and assignment of the deed of trust in the possession of the person making the certification.

~~[11.]~~12. In the event of the loss or destruction of the original mortgage note, deed of trust, or assignment of the mortgage note or deed of trust, the mediator shall recognize a judicial order entered pursuant to NRS 104.3309 providing for the enforcement of a lost, destroyed, or stolen instrument.

Rule 6. Petition for Judicial Review.

1. A party to the mediation may file a petition for judicial review with the district court in the county where the notice of default was properly recorded. A

hearing shall be held, to the extent that the court deems necessary, for the limited purposes of determining bad faith, enforcing agreements made between the parties within the Program, including temporary [~~modification~~] agreements, and determining appropriate sanctions pursuant to NRS Chapter 107 as amended.

2. All such petitions shall be filed within [~~15~~]30 days of the date a party to the mediation [~~of actual receipt of~~] received the mediator's statement and shall be reviewed by the district court within 60 days of the service of the petition in accordance with the Nevada Rules of Civil Procedure, NRS Chapter 107, and any local rule or administrative order adopted by a judicial district to adjudicate such petitions.

3. Petitions for judicial review shall be served on any party and/or person appearing at the mediation on behalf of a party, by certified or registered mail, return receipt requested.

4. A petition for judicial review that names the Administrator as a respondent must be served upon the Administrator at the Administrative Office of the Courts, 201 South Carson Street, Carson City, Nevada 89701, by certified or registered mail, return receipt requested.

5. Proceedings in the district court on a petition for judicial review shall be conducted de novo.

6. Upon receipt of notice of the filing of a petition for judicial review by the Administrator, and until final resolution of that action, the Administrator, or designee, shall refrain from taking any action which will adversely affect any party to the mediation.

Rule 7. Option for Inclusion.

1. For any owner-occupied property located in Nevada where a Notice of Default is recorded prior to July 1, 2009, the grantor or person who holds the title of record (eligible participant) and the beneficiary of the deed of trust may agree in writing to enter the Foreclosure Mediation Program governed by NRS Chapter 107 and these rules. Notice and a copy of the agreement must be provided to the Administrator or designee.

2. If the Administrator or designee in his or her discretion accepts the stipulation for mediation, he or she will notify the parties who shall, within 10 days, forward the fees required in Rule 16 herein to the Administrator or designee. Upon acceptance of the mediation and receipt of the required fees, the Administrator or designee shall appoint a mediator and the mediation process shall be conducted consistent with these rules.

III. MEDIATION PROCEDURES

Rule 8. Documents to Be Presented for the Mediation.

1. In addition to the documents set forth in Rule 5, the parties shall [~~prepare such papers and~~] provide to the mediator, and exchange such documents [~~the items required to be exchanged~~] with [~~each~~] the other party,

using the most expeditious method available, at least 10 days prior to the mediation, and such ~~[other]~~ additional documents or estimates as the mediator may later direct or may be required by a government program, but which at a minimum shall include the following:

2. The homeowner shall prepare and submit a Financial Statement and Housing Affordability Worksheet to include the information set forth in forms provided by the Administrator or designee, and in accordance with Rule 5(6) (a) herein.

3. The beneficiary of the deed of trust or its representative shall produce an appraisal done no more than 60 days before the commencement date of the mediation with respect to the real property that is the subject of the notice of default and shall prepare an estimate of the "short sale" value of the residence that it may be willing to consider as a part of the negotiation if loan modification is not agreed upon.

4. The mediator may, in his or her discretion, accept a broker's price opinion letter (BPO) in addition to or in lieu of the appraisal described in this rule. In that case, the BPO must comply with the new provisions of NRS 645.2515.

5. Both parties to the mediation shall prepare and submit to the mediator under confidential cover a nonbinding proposal for resolving the foreclosure. Additionally, the beneficiary of the deed of trust shall, under confidential cover, provide to the mediator the evaluative methodology used in determining the eligibility or noneligibility of the grantor or the person who holds the title of record for a loan modification.

6. The parties are prohibited from recording the mediation session for purposes for making a record for judicial review.

7. The mediator may conduct more than one mediation in a day, but in no case shall the mediator conduct more than 3 mediations in a day without express written approval by the Administrator, or designee. Mediations shall take place between the hours of 8 a.m. and 5 p.m., Monday through Friday (excluding legal holidays), unless otherwise agreed upon to by the parties.

Rule 9. Settlement/Resolution Before Mediation. In the event the foreclosure issues are resolved before the scheduled mediation, the parties must, no later than 2 business days prior to the scheduled mediation date, advise the mediator of their settlement. Any settlement will not result in the refund of fees.

Rule 10. Temporary [Modification] Agreements; Expiration Date.

1. The parties may enter into a temporary ~~[modification]~~ agreement to modify any term(s) of the loan agreement as a result of mediation under these rules. The temporary ~~modification~~ agreement must be in writing and signed by the parties. The temporary ~~[modification]~~ agreement must also include an "expiration date." The expiration date is a date certain, and upon which the parties shall have complied with their obligations under the agreement.

2. Any agreement to relinquish the home must include a date where the parties recognize that the owner occupant will vacate the residence, herein referenced as the vacate date. Signature to such an agreement by the parties shall represent an acknowledgement that after the vacate date, the trustee may petition the Administrator by Trustee Affidavit to obtain a certificate. Upon the Administrator's confirmation of the Trustee's compliance with the vacate date in the agreement; a certificate may be issued. Nothing herein prevents a party from invoking Rule 6.

~~[2.]~~3. If either party to a temporary [~~modification~~] agreement described in this rule, fails to fulfill the obligations of that agreement, the aggrieved party may file a petition for judicial review as set forth in Rule 6 herein. The petition must be filed within ~~[15]~~30 days following the expiration date of the temporary modification agreement, and regardless of whether the mediation has been concluded.

Rule 11. Calendaring.

1. Unless otherwise stipulated by the parties and approved by the presiding mediator, or for good cause shown, a mediation will be calendared to conclude on the 135th day following actual receipt by the Administrator, or designee, of the mediation fee and required documentation provided on behalf of the lender.

Rule 12. Continuances.

1. No request for a continuance of a mediation scheduled in the Foreclosure Mediation Program may be granted, except upon a showing of extraordinary circumstances, or upon a written agreement of the parties and the mediator. Notice of such agreement shall be provided by facsimile, electronic mail, and/or regular mail.

2. Absent a written agreement as provided herein, a request for a continuance must be in writing, served on the presiding mediator and opposing party, and set forth the extraordinary circumstances with particularity. A ruling by the presiding mediator granting a continuance must state the nature of the extraordinary circumstances and provide at least 3 dates within the ensuing 10 days when the parties can conduct the mediation. The presiding mediator will then calendar the case for mediation on one of the specified dates and provide the Administrator, or designee, with notice of the new mediation date and the reasons for the granting of the continuance. Conflicts in the schedule of counsel shall not constitute extraordinary circumstances.

Rule 13. Location of Mediation.

1. The presiding mediator shall designate the date, time, and place for the mediation in coordination with the parties and shall notify the parties in writing and forward a copy of the Mediation Scheduling Notice to the Administrator, or designee.

2. Upon request from the presiding mediator, the Program Manager shall assist in determining a suitable location for the mediation.

Rule 14. Time Limits and Mediator's Statement.

1. Unless extended by the presiding mediator, the parties will be allowed up to 4 hours to present and conclude the mediation.

2. Within 10 days after the conclusion of the mediation, the mediator must file with the Administrator, or designee, and serve on all parties a copy of the Mediator's Statement on a form provided by the Administrator, or designee, and provide a courtesy copy of the Statement to the trustee by regular mail, email, or facsimile. The Mediator's Statement must include a true and correct copy of any agreement, including a temporary modification agreement, entered into between the parties during mediation.

Rule 15. Interpreter Services.

1. Any party requiring interpreter services is responsible for contacting, scheduling, and insuring an interpreter is present for the mediation. The interpreter's compensation is the responsibility of the party requesting the service.

2. The Administrator, or designee, shall maintain a list of interpreters qualified to interpret in mediations. The list must be made available to the presiding mediator and parties.

Rule 16. Fees for Presiding Mediators.

1. Mediators shall be compensated in ~~[the]~~ an amount not to exceed [of] \$400 as provided in Rule 16(2). The \$400 fee shall be paid equally by the parties unless otherwise stipulated. Each party must pay its respective \$200 fee ~~[((\$200)]~~ at the entry point into the Foreclosure Mediation Program. ~~[The payments are nonrefundable.]~~ Payment by the grantor or person who holds title of record must occur by cashier check, money order made out to the "State of Nevada Foreclosure Mediation Program," or, when available, electronic payment, or from an attorney's trust account and be made directly to the Administrator, or designee.

2. The Administrator shall establish a Fee Schedule for the compensation of Mediators and publish the same at program offices and on the program website. The Fee Schedule shall take into account the level of effort required to schedule, convene and complete mediation. The fee for a mediation scheduled, convened and concluded by a mediator shall be \$400.

[2.]3. If a grantor makes payment directly to a trustee, the trustee shall immediately forward the payment, whether made in cash, by check, cashier's check, or money order, to the Administrator, or designee, together with the beneficiary of the deed of trust's payment of fees. However, if the payment to the trustee is made payable to the trustee, the trustee shall immediately deposit the funds in its account and submit the payment to the Administrator, or designee, together with the beneficiary of the deed of trust's portion of the fees.

4. For those limited situations where a refund may be appropriate, the Administrator shall establish refund policy and procedures. However, in no case where a mediator assignment occurred, is a refund authorized.

Rule 17. Deposits; Failure to Pay. If a party to a mediation fails to pay the \$200 toward the mediator's fee, the mediation may be terminated and relief awarded to the nondefaulting party, as may be deemed appropriate.

Rule 18. Confidentiality.

1. All documents and discussions presented during the mediation shall be deemed confidential and inadmissible in any subsequent actions or proceedings, *except* in an action for judicial review according to these rules. In that case, non-privileged evidence submitted for mediation is discoverable to the extent that it is relevant to a determination of bad faith, enforceability of agreements made between parties within the Program, including temporary modification agreements, and appropriate sanctions pursuant to NRS Chapter 107, as amended.

2. Nothing contained herein shall prevent the disclosure of such limited information by the mediator or parties as required by NRS Chapter 107.

Rule 19. Facsimiles. A facsimile of the Administrator, or designee's signature for purposes of filing Foreclosure Mediation Program documents with the County Recorder, may be accepted as an original.