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TRACEY LINDEMAN
CLERK OF SUPERIOR COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

December 10, 2010

VIA FACSIMILE (775-684-1601) AND U.S. MAIL

Clerk of the Court
201 S. Carson Street
Carson City, NV 89701

ADKT 0435

Re: Proposed Revisions to the Nevada Foreclosure Mediation Rules

To whom it may concern:

After responding to several petitions for judicial review and having participated in multiple foreclosure mediation sessions on behalf of my clients, I have observed the following ambiguities and shortcomings in the current version of Nevada's Foreclosure Mediation Rules ("FMR"). I appreciate your consideration of the following issues:

A. Ambiguity about which documents must be provided and when, and to whom they must be provided. For instance, Rule 8 of the FMR discusses production, preparation and submission of documents, and "exchange [of] the items required to be exchanged," but fails to specify which documents must be provided to whom. The numbering of Rule 8 is also confusing, especially with subsection 1 ending in a colon. It is unclear which of the subsequent subsections should be considered a subpart of subsection 1. Finally, it is unclear whether the short sale value, appraisal, and housing affordability worksheet must be exchanged between the borrower and lender, and when. I recommend that the FMR be amended to clarify these issues.

B. Ambiguity about what is to happen when the mediator finds no bad faith and recommends no sanctions, but identifies technical failings. While NRS 107.086(7) appears to require issuance of a certificate of completion if there is no bad faith finding and the parties failed to come to an agreement, the foreclosure mediation program has been reluctant to issue certificates of completion if there is any technical deficiency, no matter how small, referenced on the mediator's statement. The absurd result is that the trustee's foreclosure rights over the subject property are stayed indefinitely. If, without a certificate, the trustee cannot foreclose. Moreover, the FMR do not provide a remedy for this situation, as petitions for judicial review are specifically limited to "determining bad faith, enforcing agreements made between the parties within the Program,

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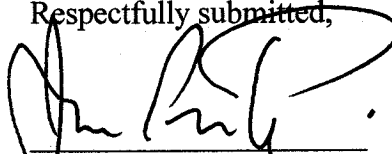
including temporary agreements, and determining appropriate sanctions, pursuant to NRS 107 as amended.” FMR Rule 6(1). I recommend that language be added to the FMR mandating that a certificate be issued, after the judicial review period has expired, absent a finding of bad faith by the mediator. The purpose of the FMRs is not to penalize/halt lenders for minor perceived technical violations; rather, it is to encourage meaningful exploration of alternatives to foreclosure, to the extent a borrower may qualify. When a beneficiary has done this, it should be permitted to proceed with foreclosure, even if there was a minor technical deficiency in the foreclosure mediation process.

C. Neutrality of the mediators. Whereas the purpose of the mediation program is to “encourage[] deed of trust beneficiaries (lenders) and homeowners (borrowers) to exchange information and proposals that may avoid foreclosure” (FMR Rule 1(2)), and mediators are to be governed by certain provisions of the Nevada Code of Judicial Conduct (FMR Rule 4), there have been numerous reports of individuals who serve as “mediators” whose neutrality is highly questionable, and who effectively misuse the program and deviate from its intended purposes. For instance, far too frequently, the mediator has a strong pro-borrower bent, and presses beneficiaries relentlessly even when beneficiaries have offered foreclosure alternatives that have been rejected. We recommend that additional language be added mandating the “neutrality” of the mediators.

D. Borrowers financial documents. One of the common shortcomings in foreclosure mediation proceedings is that borrowers financial documents are not always forwarded to counsel for the beneficiary – limiting loan modification review prior to the mediation. Because mediators are paid only a flat fee, they are not always amenable to continuing the mediation to another date, when needed documents have been furnished. We recommend that language be added mandating that borrowers provide documents to the beneficiary and its attorney well in advance of the mediation, and that borrowers provide any additional documents requested by the beneficiary within 3 days of any such request. Beneficiaries frequently require additional documentation that are not specifically mentioned in the FMRs. I recommend that the FMR be amended to account for that fact, so that beneficiaries can get all documents they reasonably need, well in advance of the mediation, to facilitate more meaningful loan modification reviews.

Thank you for your consideration of these issues. If you have any follow-up questions, please feel free to call me at (702) 252-5002.

Respectfully submitted,



Joseph T. Prete

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