

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ADOPTION
OF RULES FOR FORECLOSURE
MEDIATION

ADKT No. 435

FILED

FEB 16 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER AMENDING FORECLOSURE MEDIATION RULES

WHEREAS, on June 30, 2009, this court adopted rules for the foreclosure mediation program established by AB 149, and has subsequently amended those rules as necessary, and

WHEREAS, this court held a public hearing to consider further amendments to the rules on December 6, 2010, and

WHEREAS, this court has concluded that further amendment of the rules is warranted, accordingly

IT IS HEREBY ORDERED that the Foreclosure Mediation Rules are amended as set forth in Exhibit A.

IT IS FURTHER ORDERED that these amendments shall be effective March 1, 2011. The clerk of this court shall cause a notice of entry of this order to be published in the State Bar of Nevada's official publication. The clerk shall publish this order by disseminating copies of it to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court that she has accomplished the above-described publication of notice of entry and dissemination of

11-05029

this order shall be conclusive evidence of the adoption and publication of the foregoing rule amendment.

Dated this 16th day of February, 2011.

Douglas, C.J.
Douglas

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Brian Sandoval, Governor
Senator Steven Horsford
Senator Mike McGinness
Assemblyman John Ocegüera
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
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
Administrative Office of the Courts

EXHIBIT A

AMENDED FORECLOSURE MEDIATION RULES

I. SCOPE OF RULES

Rule 1. The State of Nevada 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 State of Nevada Foreclosure Mediation Program (hereafter referred to as 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]~~ Rule 8.5 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 (NRCP) shall apply. These rules, as amended, apply to all mediations that have not yet been conducted by the mediator.

5. Recording. ~~[Rule 8.6 The parties are prohibited from recording the mediation session for purposes for making a record for judicial review.]~~ The mediation session(s) shall not be recorded.

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) Receive all affidavits and issue all certificates as may be required herein;
and

(c) 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.

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]~~ Rules 5 and 8.2 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. Mediator Conduct, Disqualification, Recusal, Suspension and Termination

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. Any mediator who has received material concerning a party that is designated confidential under Rules 11.8 and/or 11.9 may not undertake representation adverse to that party in connection with a mediation under this program for a period of 90 days after the mediation, unless the party providing the confidential material waives this rule. In no event may a mediator, at any time, use confidential information provided to him or her as a mediator under Rules 11.8 and/or 11.9 in the later representation of a party to a mediation.

3. Mediators serve at the pleasure of the Court ~~[. Upon the recommendation of the Administrator, the]~~ and 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).

4. The Administrator or designee may suspend or terminate a mediator from the program without cause at any time and may recommend to the court revocation or suspension of the appointment. Any suspension of a mediator by the Administrator or designee is limited to a maximum of 60 days.

[Rule 16.] Rule 5. Fees for Presiding Mediators.

1. Mediators shall be compensated in the amount of \$400, ~~[paid equally by the parties unless otherwise stipulated.]~~ with \$200 of the fee to be paid by the

owner-occupant (as defined in Rule 7), and \$200 to be paid by the lender, unless otherwise stipulated. Each party must pay its respective ~~[\$200]~~ \$200 fee 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[,], or money order made [out] payable 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.]~~ and be made payable to the "State of Nevada Foreclosure Mediation Program."

2. An assigned mediator who recuses from participation at any time may not be compensated.

~~[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 policies and procedures.

~~[Rule 17.]~~ **Rule 6. 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.

II. PARTICIPATION IN THE FORECLOSURE MEDIATION PROGRAM

~~[Rule 5.]~~ **Rule 7. Eligibility for the Foreclosure Mediation Program.**

1. The program applies to any grantor or person (homeowner) 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. For purposes of these rules, an owner-occupant includes the trustee of a revocable or irrevocable trust if the trustor or a beneficiary of that trust resides in the residence at the time of the recordation of the notice of default and election to sell. In such event, the trustee of the trust or his authorized representative shall represent the owner-occupant at the mediation and must execute all documents and forms required of owner-occupants by these rules.

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. Any program-issued certificate is considered confidential until recorded.

Rule 8. Notice of Default and Election to Mediate.

[5]1. Any trustee or other person presenting a notice of default and election to sell for recording in the Office of a County Recorder shall, not 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]~~ 2 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 also provide the grantor with two envelopes: one preaddressed to the Administrator, or designee, and the other pre-addressed to the trustee.

2. 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]~~ Rule 5 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]~~ Rule 5, 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]~~ Rule 5 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.

3. 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 together with a copy of the recorded rescission. Should the Administrator not receive the signed agreement within the time provided, the mediation process will continue as provided herein.

4. 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.

5. 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.

[Rule 7.] Rule 9. 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] option for inclusion letter signed by both parties** must be provided to the Administrator or designee.

2. If the Administrator or designee in his or her discretion accepts the **[stipulation] option for inclusion letter** for mediation, he or she will notify the parties who shall, within 10 days, forward the fees required in **[Rule 16] Rule 5** herein to the Administrator or designee. Upon acceptance of the **[mediation]**

written stipulation 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.

[Rule 5.] Rule 10. Representation

1. 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 in Rule [8] 11 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 each endorsement of 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 10.1(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 10.1(a) and (b).

III. REQUIRED MEDIATION DOCUMENTS

[Rule 8.] Rule 11. Documents to Be Presented for the Mediation.

1. ~~[In addition to the documents set forth in Rule 5, the]~~ The parties shall ~~[prepare such papers and]~~ provide to the mediator, and ~~[exchange the items required to be exchanged with each]~~ exchange with [each] the other party the required documents using the most expeditious method available, at least 10 days prior to the mediation, ~~[and such other documents or estimates as the~~

~~mediator may later direct, but which at a minimum shall include the following:]~~ The mediator may request additional documents or estimates, which may be required by the lender for a party to participate in a government program. These documents at a minimum shall include the following, as outlined in Rules 11.2, 11.3 and 11.4:

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:]~~ to the mediator and provide to the lender the following documents:

(a) Financial Statement Form;

(b) Housing Affordability Form;

(c) Confidential Proposal document to resolve the foreclosure as provided in Rule 11.9.

3. The trustee or beneficiary of the deed of trust must prepare and submit the following documents to the mediator:

(a) The original or a certified copy of the deed of trust, the mortgage note, and each assignment of the deed of trust and each endorsement of the mortgage note that satisfies the requirements provided in Rule 11.4 or 11.5.

(b) Appraisal and/or Brokers Price Opinion (BPO) not more than 60 days old (prior to the date of mediation) that satisfies the requirements provided in Rule 11.6 and/or 11.7.

(c) Evaluative Methodology used to determine eligibility or no eligibility of the homeowner for a loan modification as provided in Rule 11.8.

(d) Confidential Proposal document to resolve the foreclosure as provided in Rule 11.9.

4. ~~[For purposes of this rule, a]~~ The requirement for a certified copy of the original mortgage note, deed of trust, and each assignment of the deed of trust and each endorsement of the 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.

(d) The certification shall contain the original signature of the certifying party and the original seal and signature of the notary public. Each certified document must contain a separate certification.

5. 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.

6. 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.

7. The mediator may, at 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 provisions of NRS 645.2515.

8. ~~[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.

9. Both parties to the mediation shall prepare and submit to the mediator in writing under confidential cover a nonbinding proposal for resolving the foreclosure.

IV. MEDIATION PROCEDURES

~~[Rule 13.]~~ Rule 12. Location of Mediation.

1. The presiding mediator shall designate the date, time, and place for the mediation ~~[in coordination]~~ after coordinating with the parties and then 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]~~ Administrator or designee shall assist in determining a suitable location for the mediation.

~~[Rule 5.9 & 11.]~~ Rule 13. Calendaring.

1. ~~[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.]~~ 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]~~ 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~~ 17 herein.

2. Mediators shall schedule each mediation for a minimum of 4 hours. Unless extended by the presiding mediator, the parties will be allowed up to 4 hours to present and conclude the mediation.

3. 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. Pacific Standard Time (PST), Monday through Friday (excluding legal holidays), unless otherwise agreed upon to by the parties.

[Rule 12.] Rule 14. 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 and served on the presiding mediator and opposing party. ~~[and set forth the extraordinary circumstances with particularity.]~~ The request must 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 9.] Rule 15. 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.] Rule 16. 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. Temporary agreements include those where the owner-occupant agrees to retain the home or relinquish the home after a measurable time frame. 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 or measureable time frame for the borrower to vacate the premises (e.g., "Vacate 10 days after the foreclosure sale"). The date or measurable time frame, so identified shall be herein referenced as the "Vacate Date." The Administrator may issue the certificate on the day following the vacate date. Nothing herein prevents a party from invoking Rule 21.

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]~~ Rule 21 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 14.]~~ **Rule 17. 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 the form provided by the Administrator, or designee, the original Mediator's Statement. [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. A copy of the Mediator's Statement and agreement must be served on all parties, at the conclusion of mediation or by regular mail, email or facsimile. A courtesy copy must be provided to the trustee by regular mail, email or facsimile.

~~[Rule 15.]~~ **Rule 18. Interpreter Services.**

1. Any party requiring interpreter services is responsible for contacting, scheduling, and ensuring 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 18.]~~ **Rule 19. 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.] Rule 20. 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.

[Rule 6.] Rule 21. 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 ~~[of actual receipt of]~~ that the party to mediation received the Mediator's Statement, ~~[and]~~ The Mediator's Statement 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.

7. The District Court Clerk shall provide to the Administrator or designee a copy of any Petition for Judicial Review and disposition thereof filed in accordance with these rules, within 10 days of the filing of such pleading or disposition. Also, the District Court Clerk may provide electronic access to these records for the Administrator or designee.

Rule 22. Advisory Committee on the Foreclosure Mediation Program.

1. There is hereby created the Advisory Committee on the Foreclosure Mediation Program. The Committee, which shall be appointed by the Nevada Supreme Court, shall consist of:

(a) The Foreclosure Mediation Program Manager, who shall serve as the Committee's chair;

(b) Two persons who serve as mediators in the Foreclosure Mediation Program;

(c) One person who is a representative of an organization or association that conducts business as a title company or serves as a trustee on deeds of trust;

(d) Two persons who regularly conduct residential mortgage lending in the State of Nevada;

(e) Two persons who have previously participated in the Foreclosure Mediation Program as owner-occupants of a residence;

(f) Two persons who are attorneys licensed in the State of Nevada and who regularly represent lenders in the Foreclosure Mediation Program;

(g) Two persons who are attorneys licensed in the State of Nevada and who regularly represent owner-occupants in the Foreclosure Mediation Program; and

(h) Two persons who are licensed real estate agents in the State of Nevada.

2. Each appointed member serves a term of 1 year. Members may be reappointed for additional terms of 1 year in the same manner as the original appointments. Any vacancy occurring in the membership of the Committee must be filled in the same manner as the original appointment not later than 30 days after the vacancy occurs.

3. The Committee shall meet at least once every 2 months and may meet at such further times as deemed necessary by the Chair.

4. A majority of the members of the Committee constitutes a quorum for the transaction of business, and a majority of those members present at any meeting is sufficient for any official action taken by the Committee.

5. The Committee shall:

(a) Study the Foreclosure Mediation Program rules and make such recommendations to the Nevada Supreme Court as it deems appropriate;

(b) Evaluate the effectiveness, operation, policies and practices of the Foreclosure Mediation Program and make such recommendations to the Nevada Supreme Court as it deems appropriate; and

(c) Identify state and federal programs related to the foreclosure of residences in Nevada, the modification of residential home loans or the resolution of mortgage foreclosures and make such recommendations to the Foreclosure

Mediation Program and its mediators and participants as the Committee deems appropriate.