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Nevada Supreme Court Justices
Supreme Court of Nevada
201 South Carson St.
Carson City, NV 89701

To Whom It May Concern:

As a homeowner and a concerned citizen, I very much appreciate the time and effort of the Justices to fine-tune the Foreclosure Mediation Rules.

However, I still do not see the very much needed protections for Homeowners in this set of proposed amendments and I hope the Justices will include those protections as well because without them, the FMP Rules remain seriously skewed in favor of the banks and beneficiaries, especially those that are pursuing foreclosure illegally.

1. Homeowners need the FMP Rules to provide protections that stop the vicious cycle beneficiaries put many homeowners through, which result in homeowners paying for and attending multiple mediations, some of which result in the homeowners having to file petition for judicial review, possibly more than once, all with no satisfactory outcome.

I am a homeowner who has attended 3 mediations, one of which was court ordered. To each mediation (not only mine, but to those of other homeowners I have met who are in similar situations), the alleged beneficiaries or their representatives bring the same documents each time. In one case, the documents were obviously fraudulent. In my case, the Note contains a forgery of my signature and the alleged beneficiary has admitted in a court filing that the Assignment is incorrect. Yet, even after the beneficiaries lose the mediation, they just rescind the notice of default, then file a new notice of default, starting the vicious cycle again.

The FMP Rules need some teeth that stop this vicious cycle because it puts homeowners on a hamster wheel of repeat mediations that go nowhere with a lender who obviously does not have the right to negotiate and modify the loan.

The FMP Rules need to clearly state that if a beneficiary (or their representative) cannot provide positive, verifiable proof of right to foreclose within a specified period of time, let's say one to

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two years (12 to 24 months), they must rescind any outstanding notice of default and they must stop filing same.

At some point, homeowners need to obtain relief from this vicious cycle because it is not resolving the issue. In fact, it leaves homeowners with homes that have a clouded title, so they cannot sell them, so they cannot move to a state where they can obtain work, and if they want to remain in their home, they live with the constant concern that at any moment they may have to pay for yet another mediation or pay to file yet another petition for judicial review.

For homeowners who have proven that the beneficiary has no standing to foreclose, the FMP Rules need to provide relief that will allow the homeowners to do what is necessary to locate and negotiate with the true beneficiary or to do what is necessary to obtain clear title to their home.

2. Homeowners also need protection from mediators who lie on the Mediators Statement and from the FMP office itself, which backs up their mediators' lies. The mediator at my second mediation lied on the Mediator's Statement and ignored the forgery of my signature on the Note.

When I brought this to the attention of the FMP office, the FMP office backed the mediator and I was told that a certificate would issue. So, I, the homeowner, who was struggling to make ends meet financially, had to pay to file a Petition for Judicial Review, which resulted in the District Court Judge ordering a third mediation, which the beneficiary lost. But why should a homeowner have to go through all this when, by simply allowing the homeowner, the mediator, and the beneficiary to record the mediation, what really occurred at mediation would be clear and no one could lie.

The same mediator who conducted my second mediation, provided incorrect information on the Mediator's Statement for another homeowner, in spite of the fact that that homeowner was represented at mediation by an attorney. When that homeowner's attorney filed petition for judicial review, the District Court Judge ruled in favor of the homeowner.

That mediator should be barred from ever conducting any foreclosure mediations again. Yet, I believe he is still conducting them. Mediators should not be suspended. They should be permanently fired from the Program when they do not comport themselves according to the Rules.

The FMP Rules need to have teeth that protect homeowners from both mediators who lie and from the FMP office itself. What those rules can, legally, be is not within the scope of my knowledge. However, I believe it would be beneficial to record mediations because I know that if I had had a recording of what occurred at that second mediation, the mediator would not have been able to get away with lying on the mediator's statement or with lying to the FMP office

and I would not have had to go through Petition for Judicial Review. Homeowners need to be allowed to record the mediation, so that they have proof of what occurred and can use that proof if they need it, with the FMP office and in court.

Thank you for considering these suggestions.

In addition, I have read the entire 33 pages of the suggested amendments and I also would like to submit the following comments:

Rule 1.5 Recording
The mediation session(s) shall not be recorded.
Not cool. Especially when mediators lie...and homeowners often need proof in court of what really occurred at mediation.

Rule 3.1 mediator shall schedule mediation to *conclude* within 90 days of receipt of the assignment...

how does this dovetail with the 135 days?

(see Rule 13 Calendaring)
...a mediation will be calendared to conclude within 135 days following actual receipt by the Administrator, or designee, of the mediation fee and required documentation provided on behalf of the lender

It appears to be a discrepancy, but perhaps I do not follow how these numbers (90 and 135 days) work together.

Rule 3.2 define "cluster several mediations for a lender." (page 2)

Rule 4.3(2)(c) Mediator qualifications.
The Court, for good cause shown, may waive the minimum requirements set forth herein.

What constitutes 'good cause'? A definition would be helpful to those who want to be a mediator and are not licensed attorneys, judges, or experienced mediators.

Rule 4.6 This period of time should be extended to 3 to 5 years, just as is done in business regarding confidentiality agreements because 90 days is a minuscule amount of time for a mediator to wait and harm can still be done more easily to the party whose confidential material the mediator has in his or her possession.

Rule 4.7 Please specify to whom the phrase "the parties affected by such action(s)" refers. Does this phrase refer to the mediator whose appointment is revoked or to the homeowner who have

been adversely and/or negatively affected?

Rule 4.8 The suspension of a mediator being limited to a minimum of 60 days is not reasonable because if a mediator is suspended for not doing the right thing, for lying, for example, on the Mediator's Statement, that mediator has no right to continue being a mediator in the program and should be permanently fired from the Program. Such egregious behavior does not lend credibility to the Program and to allow a mediator who behaves so egregiously to continue to be a mediator casts serious doubts about the credibility of the Program.

Rule 6. Deposits; Failure to Pay.
What relief may be awarded to the homeowner if the beneficiary fails to pay?

Rule 7.3 Eligibility for the Foreclosure Mediation Program.
Why would a Certificate be issued for any residential property for which a request for mediation was not filed?

Also, when the trustee requests a Certificate, it would be prudent for the Administrator to notify the homeowner of the request and also to notify the homeowner as to whether a Certificate is being issued in response to the trustee's request. The reasoning for notifying the homeowner is because, on more than one occasion, the Administrator has issued Certificates that were not supposed to be issued just because the trustee requested the Certificate. Why this occurred has never been made clear to those homeowners affected and could, in future, cause one or more homeowners to lose their homes when they are not supposed to lose them.

Why would the issuance of any certificate be kept confidential from the homeowner? Such clandestine behavior is what has caused some homeowners to nearly lose their homes when the Administrator issued certificates that were not supposed to be issued.

Rule 8.1 Notice of Default and Election to Mediate.
What penalties or sanctions will be placed on any trustee or other person presenting a notice of default and election to sell for recording if they do not provide these documents to the homeowner not later than 10 days? There must be sanctions because the trustees have, in many cases, consistently bombarded homeowners with as many as 3, 4, 5, and 6 copies of the notice of default and election to sell and have only provided the 2 copies of the Election to Mediate forms nearly 3 weeks after recording the notice of default and election to sell. This has left those homeowners with only 3 to 7 days to request mediation. And, in many instances, homeowners were so tired of receiving the notice of default and election to sell that they didn't look at the 5th or 6th mailing, so they never knew that they had a right to request mediation. What penalties and/or sanctions will apply?

Rule 8.4 Notice of Default and Election to Mediate.
This rule states (emphasis mine):

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.**

If the lender/trustee/beneficiary fails to attend and participate at a mediation, why would a certificate be issued and why would a foreclosure sale be noticed? Or does the phrase "eligible participant" refer only to the homeowner? If so, please clarify by stating same.

Rule 8.5 Notice of Default and Election to Mediate.
Define 'regular communication with the homeowner.' Is this written communication, which would be helpful, as well as by telephone, if the homeowner calls the Program Office? Or is it only by telephone when the homeowner calls the Program office?

Rule 9. Option for Inclusion.
Do you mean prior to or after July 1, 2009?

Rule 10.1(a) Representation.
Suggest adding:
The mediator, the homeowner, or the homeowner's representative may request that the beneficiary provide proof of their identity and proof that the person appearing in person or by phone has the authority to negotiate and modify the loan secured by the deed of trust sough to be foreclosed, as well as the authority to negotiate all other alternatives to foreclosure.

This is of critical importance because at several mediations, the beneficiary's representative has been allowed to the leave the room to, ostensibly, speak with the person who has the authority to negotiate and modify the loan. In other instances, the beneficiary's representative has claimed that he/she has flown into town, yet has claimed to not have his/her identification with them. This leaves the homeowner wondering with whom are they negotiating? Wondering, has the beneficiary sent a shill?

At my third mediation, the representative that the bank sent to the mediation was unknown to Bank of America employees and managers in the branch where he claimed to work. He also claimed that he did not have any identification with him, yet he claimed to have flown into Reno for the mediation. To arrive by airplane, one must have identification. He didn't even have a business card.

Just assuming that the person attending the mediation is there because they're "authorized" is not effective. If the FMP Rules require that documents be proved to be authentic, then the FMP Rules also need to require that the person(s) attending the mediations are really who they say they are.

Rule 10.1(b)(c)(d) Representation
Do the words "eligible participant' refer to both parties or only to the homeowner? Please clearly specify.

Rationale for Change: These changes seek to provide more clarity on the necessary authority of the representative appearing on behalf of the beneficiary.

The Rationale for Change still needs clarification. How is this 'necessary authority' to be provided? Preferably with a letter signed by the President and CEO of the bank the representative claims to represent.

Rule 11.3 In some instances, the beneficiary's document requests have been burdensome and homeowners have not been able to provide the requested documents in the allotted 15 days. In these instances, the homeowners should be allotted additional time without fear of penalty at the mediation.

Rule 11.5 As in Rule 11.3 above:
In some instances, the beneficiary's document requests have been burdensome and homeowners have not been able to provide the requested documents in the allotted 15 days. In these instances, the homeowners should be allotted additional time without fear of penalty at the mediation.

Rule 11.6 Five (5) days is sometimes simply not enough time for homeowners to provide clarification and/or cure identified inadequacies. Homeowners in this situation quite often are working hard to make ends meet financially and/or may be suffering from illnesses or disabilities that make it difficult for them to provide the necessary information within only 5 days. Suggest 15 days, with an allotment for additional time if homeowners have difficulty obtaining the information without fear of penalty at the mediation.

I am not asking for indulgences here. I am asking for homeowners to be treated fairly and to be given every chance to comply.

Rule 11.7 (a)(b)(c)
It is important that the beneficiary provide the original mortgage note, deed of trust, and any assignments and endorsements because these documents have changed hands multiple times and so many lenders/beneficiaries are seeking to foreclose on properties that their companies no longer own. And also because it is much too easy today to forge documents electronically, especially for beneficiaries who have the money to pay experienced computer savvy people.

What, specifically, constitutes a certified copy? If it is a notarized signature, please specify that

here in this Rule.

Rule 11.8(d)
Delete 'If applicable' and state:
(d) The entire pooling and servicing agreement with the relevant portions of the pooling and servicing agreement highlighted for easy reference and power of attorney documents as provided in Rule 11.6(a).

Rule 11 8(d) references Rule 11.6(a)
Perhaps I missed this, but I cannot find a Rule 11.6(a).

Rule 11.8(f)(1)(2)(3)(4)
Suggest adding the following:
Beneficiary/trustee/lender must negotiate short sale timelines, and terms and conditions, in Rule 11.8(f)(1), the timeline and documents necessary in Rule 11.8(f)(2), any amounts that would be paid to the homeowner in Rule 11.8(f)(3), and any terms necessary for other alternatives to foreclosure in Rule 11.8(f)(4). Failure to do so will be considered failure to participate in good faith.

Rule 11.10
Suggest adding the following:

Beneficiary/lender/trustee must provide proof that the notary public who signs the certified copy is a real person and legally authorized as a notary public in the state in which they sign these documents. To be considered proof, a copy of the notary public's signature on the stationery of the Secretary of State with a letter from the Secretary of State's office verifying the authenticity of the provided signature.

Rule 11.10(d)
The original signature must be in blue ink.

Rule 11.11
I realize that NRS 104.3309 was written originally to probably provide for, in ordinary times, the unexpected and rare instance in which one of these documents was destroyed or lost. However, these are not ordinary times, and may lenders have either deliberately destroyed or misplaced/misfiled these documents. Providing them with the opportunity to claim protection under NRS 104.3309 for their deliberate misconduct does serious harm to homeowners.

Rule 11.12
Suggest adding the italicized and boldface type:
The beneficiary of the deed of trust or its representative shall produce
an appraisal ***or BPO*** done no more than 60 days before the commencement date of the

mediation.

What happens if the property does not sell?

Rule 11.12(b)
Why does the grantor have to file a petition for judicial review?
If the beneficiary fails to comply with the timelines, the mediation should be canceled and no certificate should issue.

Rule 11
Suggest adding a section 13
Rule 11.13 The mediator must keep the confidential proposals from both parties (the homeowner and the beneficiary) confidential at all times, unless one party or the other agrees to share it with the other party.

Rationale for Suggested Change: In some instances, mediators have shared the grantors/ homeowner's confidential proposal with the beneficiary without the homeowner's consent.

Rule 13. Calendaring
Rule 13.1 states that 'a mediation will be calendared to conclude within 135 days...'
Rule 13.2 states 'The mediation shall be scheduled to conclude within 90 days of mediator assignment.'

Which is it? 90 days or 135 days? Because if the mediator is assigned within 10 to 15 days of receipt of the Election to Mediate form by the Administrator from the homeowner, that would leave 120 to 125 days to meet the 135 day requirement.

Rule 14. Continuances.
Suggest adding a #5 to this Rule.
Rule 14.5 The mediator will provide both parties (grantor and beneficiary) with a copy of the mediator's statement and any attached agreement within 10 days of the mediation and, preferably, at the conclusion of the mediation because, generally, there is no need to delay.

Rule 15. Settlement/Resolution Before Mediation.
The mediator will provide both parties (grantor and beneficiary) with a copy of the mediator's statement and the attached agreement within 10 days of the mediation.

Rule 16. Temporary Agreements *or Agreements to Relinquish;* Expiration Date
Add a period after the word 'Date' in the Rule name.

Suggest renaming this Rule:
Agreements to Relinquish; Expiration Date because this is not a 'temporary' agreement or

Agreement to Accept a Deed in Lieu of Foreclosure.
If the name of this Rule is changed, all references to Temporary Agreements throughout the Rules would need to be changed, as well.

Perhaps I have missed something, however, my questions is: If the grantor/homeowner agrees to relinquish the property, is this not the same as a Deed in Lieu of Foreclosure? And, if this is so, why would a certificate issue? There would be no foreclosure.

Rule 21.7
Add, specifically:

...the Administrator, or designee, shall refrain from taking any action, including issuance of a certificate, which will adversely affect any party to the mediation.

Rule 21
Correct the typo in the **Rationale for Change** section:
Line 5: Change the word 'endure' to 'ensure' so that the second sentence reads as follows (emphasis mine):

"This notification will also assist the parties where a temporary agreement has been reached, to **ensure** that the parties know their rights to Petition for Judicial Review..."

Rule 22.2
Correct the typo in the first sentence.
Line 1: Change the word 'members' to 'member' so that the first sentence reads as follows (emphasis mine):
"Each appointed **member** serves . . . "

Suggest that members may not be reappointed within 2 years of their first term because to do otherwise is to contaminate the freshness of the board. Only the Foreclosure Mediation Program Manager should continue to serve to provide continuity.

Rule 22.2
Correct the typo in Line 4: Change the word 'filed' to 'filled' so that sentence 3 reads as follows (emphasis mine):
"Any vacancy occurring in the membership of the Committee must be **filled** in the same manner...

Rule 22.3
Suggest changing this Rule to read:
The Committee shall meet at least once every 2 months and may meet at such further times as deemed necessary by the Chair or by a majority vote of the members.

Rule 22.4
What is an 'office action'?
Is this phrase supposed to be 'official action'?
If so, please define what constitutes an "official action."

Rule 23.2 Post-Mediation Procedures.
Suggest that all mediation files be retained indefinitely by mediators, into perpetuity because these cases are taking an extraordinarily long time, sometimes years, to reach resolution.

The Program should provide a list of available programs to all homeowners who request mediation. The Program should mail this list to homeowners and should also keep this list available on the Program's web site.

Addendum B
Argues that short sales require a Title Insurance Carrier to review the title ... to determine if the sale can be insured with good title to the new owner. Research and news articles have repeatedly reported since, approximately, 2008 that the majority of the homes facing foreclosure do not have clear title. So how can a short sale or any solution other than to work out a solution that allows the homeowner to keep their home be satisfactory?

Regarding not allowing beneficiaries to use wholly-owned subsidiaries for appraisals is a good thing because it has come to public knowledge that many appraisers skewed the appraisals they wrote in favor of the beneficiaries/lenders/banks because they were afraid they'd lose the business from the beneficiaries/lenders/banks if they did not do so.

Attachment C
Timeline Summary:
Paragraph 2, Line 6, Sentence 3 (last sentence) mentions the beneficiary "obtaining their certificate." Once again, I do not understand why a certificate would be issued in response to a short sale.

I thank the Justices for their time and for considering my comments and suggestions.

Sincerely,

Carol Ranalli