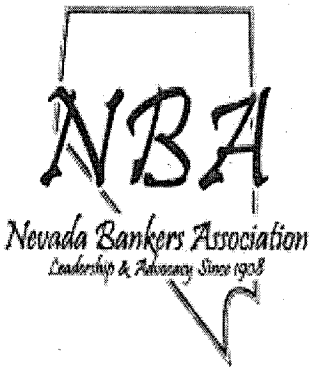

July 3, 2012

Tracie K. Lindeman
Clerk of the Supreme Court
201 South Carson Street
Carson City, Nevada 89701

Dear Ms. Lindeman:

On behalf of the members of the Nevada Bankers Association (NBA), I appreciate the opportunity to file these comments on the Proposed Rules on Foreclosure Mediation filed May 16, 2012. Several of the NBA's FDIC insured members have originated residential mortgages in Nevada while others are also servicers of Nevada mortgages. Unfortunately, many of the borrowers have defaulted on their obligations and the lenders and servicers have become participants in Nevada's Foreclosure Mediation Program (FMP).

The NBA concurs in and wholeheartedly endorses Attachment B to the proposed rule, Statement Against FMP Proposed Rule Changes III, and incorporates those comments herein.

The proposed revisions to the FMP create increasingly picayune and burdensome requirements for lenders and servicers without equivalent requirements/penalties for borrowers, effectively creating pitfalls for lenders at almost every step of the way, and making it more difficult for lenders to demonstrate "good faith" and obtain a mediation certificate. Some may argue it provides certain short-term solutions to the foreclosure crisis in Nevada by limiting or delaying foreclosures and providing temporary relief to troubled homeowners, the reality is that it comes with long-term costs. These laws make it less attractive for lenders to lend in Nevada which could stifle our State economy for many years to come. We respectfully submit that it is in our State's interest to ensure that Nevada's foreclosure mediation rules, as amended, are not so tedious for lenders that they repel residential lending in the State.

The proposed amendment to Rule 10(a) should be deleted because a beneficiary should not be required to demonstrate authority to negotiate "all other alternatives to foreclosure." There is no

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statutory right to a foreclosure alternative and no basis for the regulations to require such. For instance, there are only a handful of viable loan work-out options, many of which are not available to all customers due to their individual circumstances, and homeowner proposals are often not feasible (i.e.), non-borrower third parties who insist on a loan modification without assuming the loan, or homeowners who demand that the bank agree to sell the loan to a third party). Moreover, this phrase reaches beyond the scope of the mediation program, which was implemented primarily to promote loan modifications. See, e.g., NRS 107.086(4).

There has long been a disconnect between the documents required under the FMP and the documents needed by lenders to evaluate homeowners for loan work-out options under government programs. While we applaud Rule 11's attempt to tackle this issue, and the Rule contains some reasonable provisions about requests/exchange of documents/information needed by lenders, its numerous "estoppel"/bad faith provisions are too harsh and should be deleted. First, there are no comparable "estoppel" provisions for borrowers who fail to furnish required information. Indeed, the rule gives them a free pass if they look for necessary documents but are unable to find them. The requirements of government workout programs are not so accommodating for lenders. When a lender does not have the documents/information necessary to evaluate a borrower under a government program, it simply cannot do so. As drafted, this rule contains too many pre-mediation pitfalls and penalties for lenders and none for homeowners. Instead, the FMP should facilitate production of all necessary documents/information by all parties without prematurely penalizing any parties before they get to the mediation table.

There should be more flexibility under the FMP to continue mediation dates because mediations generally are not productive until the lender has sufficient time to review all required financial documents/information from the homeowner. Frequently, certain documents are missing, incomplete, erroneously completed, outdated, etc. Also, frequently documents submitted raise red flags, and lenders need supplemental documents to further resolve those issues. Meanwhile, documents may need to be resubmitted or updated because they become stale per the government program requirements. The 135 day limit of Rule 13 and the "extraordinary circumstance" and "10 day" provisions of Rule 14 are too rigid and often get in the way of ensuring that necessary documents/information are exchanged well in advance of the mediation, so that discussions at the mediation can be more productive.

Rule 14.3. If the parties agree to continue the mediation, the mediator should not be able to veto that stipulation because he doesn't think it is "necessary." Indeed, the mediator may simply desire to wrap up the mediation for self-interested reasons as mediators receive no additional compensation when a mediation is continued to the detriment of the borrower and lender.

There should be provisions under the FMP which preclude homeowners from pursuing sanctions against lenders (especially for very minor perceived errors) when the homeowner/borrower's violate the FMP requirements – for instance, and by analogy, when a party breaches a contract first, he cannot then sue for breach of contract. This should especially be so when a lender makes

a concerted post-mediation effort to pursue loan work-out alternatives after the mediation. There should also be provisions that penalize homeowners/borrowers who use the program for purposes other than to explore reasonable alternatives to foreclosure and when they file frivolous petitions for judicial review.

There should be a simple mechanism under the FMP whereby a lender who initially fails to fully comply with mediation requirements can restart the remediation process without penalties - so that "judicial review proceedings" are reserved for those cases where compliance with the mediation program requirements is truly contested. A provision like this would benefit the court by reducing the number of judicial review proceedings and would allow borrowers and lenders to avoid unnecessary costs of litigation.

The FMP should clarify when the program must issue a certificate. For instance, sometimes mediator statements aver misconduct by lenders that, per recent Nevada Supreme Court rulings, should not preclude issuance of a certificate - i.e., picayune disputes that a BPO does not strictly comply with NRS 645.2515, and a lender's failure to produce documents/information that are not required. Likewise, mediator statements often state that the lender did what it was required but note that the homeowner took issue with something which the mediator did not find persuasive enough to include in his/her report. Such statements should not prohibit the issuance of a certificate.

The FMP should specify certain presumptions about chain of title. For instance, notarized documents of public record should be deemed presumptively valid, absent any proof from the homeowner that there is a problem with chain of title. Additionally, when a lender shows up with an original note, endorsed in blank making the note bearer paper, enforceable by the party in possession (see NRS 104.1201(c), 104.3109 and 104.3405(2)), discussion about missing or invalid assignments are merely a diversion, as the right to enforce/foreclose is established.

Proposed Rule 23. The proposed rule should be stricken. Obtaining a certificate is no easy task under the mediation program and lenders should not be forced to redo the entire mediation process when the underlying notice of default is inadvertently rescinded and a new notice is recorded. The proposed rule is too harsh and unfair to lenders. When the prior notice of default is rescinded and a new notice is recorded, the certificate should be deemed to apply to the new notice of default or, alternatively, the lender should be permitted to reinstate the prior notice of default and rescind the new notice of default.

Proposed Rules 24 and 25. These proposed rules should be stricken to the extent they require lenders to evaluate borrowers under all government programs. Proposed Rule 24 presents concerns as Good Faith is subject to strict prescribed time frames standards as opposed to reasonableness standards. In addition, the "including but not limited to" language may conflict with the lender/servicers' investor guidelines. Homeowners may not want to be considered for those programs which often require a trial period arrangement. Additionally, homeowners often

apply for certain government programs prior to the mediation and are denied and it would be counterproductive to redo the same evaluation(s).

In conclusion, the Foreclosure Mediation Program needs changes, just not many of those in the proposal.

Thank you for your consideration.

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