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June 16, 2009

**FILED**

**JUN 16 2009**

Via email: [smacdonald@nvcourts.nv.gov](mailto:smacdonald@nvcourts.nv.gov)

Sheila MacDonald  
Nevada Supreme Court  
Administrative Office of the Courts  
Lead Court Services Analyst  
201 South Carson Street, Suite 250  
Carson City, NV 89701

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

**Re: ADKT No. 435-Comments on Foreclosure Mediation Rules**

Dear Ms. MacDonald:

I have the following comments on the proposed Foreclosure Mediation Rules filed with ADKT No. 435 which I submit for consideration by the Court:

1. Rule 3(c)(1)(b) I think should read "If not a graduate of an accredited law school nor authorized to practice law in any state, be an experienced mediator".

The reference to subparagraph (c) should be to subparagraph (b).

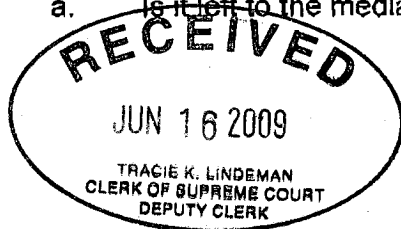
2. Rule 5(a)(2), second line, strike the word "grantor" and insert "an Eligible Participant".

3. Rule 5(b)(1), third line, the reference to NRS 108.070 should be to NRS 107.080.

4. Rule 5(d)(1), first line, replace "grantor" with "Eligible Participant".

5. Rule 5(d)(2) provides if the beneficiaries of the deed of trust fail to participate in the mediation or bring requisite documents, the mediator shall prepare and submit a petition and recommendation to the Administrator concerning the imposition of sanctions against the beneficiaries.

a. Is it left to the mediator's discretion to propose a sanction?



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b. Are there any limits or guidelines with respect to the sanctions a mediator may propose?

6. Under Rule 5(d)(3), it appears the petition referred to in Rule 5 (d)(2) would be addressed to the District Court in the county where the notice of default was recorded.

a. A petition to the District Court would seem to fall under and be governed by the Nevada Rules of Civil Procedure and be subject to early case conference rules, the discovery rules, etc. Is that what is intended?

b. If not, what procedural rules govern the District Court's consideration of the "petition"? What notice and opportunity to be heard is given to the beneficiary and the Eligible Participants before the District Court enters an order imposing sanctions under Section 5 of AB 149?

c. Is the consideration of the "petition" by the District Court in the nature of a review of an administrative proceeding, an appeal from an arbitration award, a de novo hearing on the sanctions recommended by the mediator, or some other type of a civil action?

e. My concern is that there are no uniform procedural rules the District Courts follow when asked to consider petitions referred to them. Unless the foreclosure sale is stayed, it can occur within a little more than three weeks after the end of the 90 days after the notice of default is recorded. The Eligible Participant may be able to get a temporary restraining order and a preliminary injunction staying the sale until the petition can be heard, but that could be costly. Are there going to be additional rules that will establish procedural rules for considering the petitions that will apply to all District Courts?

6. Rule 6, fourth line, refers to "NRS 107". Should that reference be to "NRS Chapter 107"?

7. Rule 7(a) refers to an Exhibit A and an Exhibit B. There were no exhibits attached to the copy of the Petition which I received. Are those exhibits available?

8. Rule 7(b) requires the beneficiary to produce appraisals. The Eligible Participant should also be required to produce any appraisals that any party may have.

Respectfully submitted,



F. DeArmond Sharp

FDS\jep

cc: Real Estate Executive Committee (via email)

**Facsimile Transmission From: F. DeArmond Sharp, Esq.**

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**Date: June 16, 2009**

**Our Ref. File: ADKT No. 435 - Comments**

**To: Clerk, Nevada Supreme Court**

**Facsimile No.: 775-684-1601**

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**Please see my attached comments regarding the ADKT No. 435.**

If you do not receive 3 pages, (including this page), please telephone or FAX immediately. Our FAX operator's telephone number is (775) 329-3151.

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