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IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ADOPTION OF RULES } ADKT 435
FOR FORECLOSURE MEDIATION }

FILED

Public Comment Hearing : June 26, 2009

JUN 23 2009

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

PUBLIC COMMENT

I am the president of Loan Modification Attorneys of Nevada (LMAN). We are a group of seven attorneys who formed this organization for the following purposes, as stated in our bylaws, set forth below.

Article I. Purposes

- a) To associate to protect the interests of Nevada citizens from unscrupulous, unauthorized and unlicensed legal and financial advice by organizations and individuals not licensed to conduct business or provide legal advice in the state of Nevada.
- b) To protect and increase equity in real estate for citizens of Nevada and to safeguard them from predatory lending
- c) To provide legal advice in the state of Nevada.

These are our comments and concerns which we asked be addressed in the upcoming public comments meeting.

- (1) Ensuring that the documents produced pursuant to Rule 7 are confidential.

For instance, the financial statement (Exhibit A) and the Housing Affordability Worksheet (Exhibit B) may be used by the lender/investor in a subsequent proceeding, say in a judgment debtors' examination if a deficiency judgment is obtained. In other words, this

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1 will tip off the lender about the collectability of a deficiency judgment and identify assets
2 which can be attached. Borrowers will be hesitant to produce documentation of their assets
3 if these disclosures can subsequently be used to either (1) justify seeking a deficiency
4 judgment or (2) identify assets for collection after a deficiency judgment.


5
6 (2) Requiring the original note and chain of title documents be produced.

7
8 Who can possibly "certify" the authenticity of an unrecorded note and the subsequent
9 assignments?

10 What happens to the foreclosure procedure and the subsequent rights of the parties if the
11 alleged current beneficiary of the Deed of Trust fails to produce the note or proof of
12 subsequent assignment? The Deed of Trust is simple as the original was recorded, but the
13 notes and assignments are generally not recorded. Maybe they should be required to be
14 recorded as part of the mediation process.

15
16 (3) Not requiring the homeowner to be in default before being entitled to demand mediation.

17
18 Borrowers will have an incentive to stop paying to force the lender/investor to commence
19 foreclosure proceedings, thus triggering the mandatory mediation of AB149, if mediation
20 is not made available for homeowners that struggling but still are current on their mortgages

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