

FILED

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TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
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Suggested Rule Changes

RE AB 149- ADKT 435

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**To: Nevada Supreme Court C/o Tracie K Lindeman, Clerk of the Supreme Court,
201 South Carson Street, Carson City, Nevada 89701; foreclose@nvcourts.nv.us;**

Date: 6/22/09

1. NEW RULE

Assuming AB 149 Section 1 subsection 8 (which gives the Court authority to adopt rules "necessary to carry out the provisions of this section") gives authority to the court to add items to those that the trustee must provide to the borrower listed in AB 149 Section 1 subsection 2 (a), I would suggest adding this rule:

Additional information to be provided by the trustee when serving the Notice of Default and Election to Sell.

"In addition to the contact information the grantor may use to reach a person with authority to negotiate a loan modification, including a fax number,

- (a) Describe the documents the grantor must send to such person to initiate any such loan modification process.
- (b) Indicate whether or not the loan is owned by Freddie Mac or Fannie Mae with a short description of the loan modification program(s) such entities use and the potential benefits for the homeowner with relevant web page information

A NEW RULE 5 (b) WITH OLD RULE 5 (b) RENUMBERED AS RULE 5 (c)

Contents of Request for Mediation Form

The Administrator shall develop the form "Request for Mediation". The Administrator may include on such form, without inclusion, information that

- (a) describes the mediation process and relevant time frames
- (b) That the grantor must submit the Request for Mediation within 30 days and that the active engagement of the servicer's loss mitigation department does not toll that period.
- (c) That the representative of the beneficiary may post pone the mediation process if the grantor is engaged in an active loss mitigation process with the servicer but is not required to do so

The form shall include one sentence in Spanish that indicates the import of the form and a contact number to which the Grantor may call to acquire a Spanish language explanation of the form.

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If the court does not have authority to develop the first rule (above), then the court might consider repeating (b) from that rule here.

The form shall state that the payment of a \$200 fee must accompany the Request for Mediation unless the Grantor's income is below 187% of poverty (\$2,271 for a family of two) in which case the Grantor shall submit an application for an In Forma Pauperas Petition which can be found on the Supreme Court's web site.

Note: I think it would serve the program well if the Form actively encouraged the use of the other resources (housing counseling, loss mitigation department) but cautioning them that mediation may be useful to them should the other loss mitigation efforts fail.

AMENDMENT TO OLD RULE 5 (b); NOW SUGGESTED TO BE RULE 5 (c)

A mediation under these Rules shall be commenced by the preparation and delivery of a Request for Mediation ~~on a form provided by the Administrator and either the payment of the fee required by Rule 14 herein or an In forma Pauperas Petition~~ describing that the persons income is less than 187% of poverty

Note: Many Seniors have relatively low fixed incomes which are none the less sufficient to support their mortgage payment if modified. Grantor portion of the fees could be incorporated into loan modification;

AMENDMENT TO RULE 7(b)

(b) The beneficiary of the deed of trust or its representative shall produce the following documents relevant to the any appraisals that it may have with respect to the residence the real property that is subject to the deed of trust upon which the Beneficiary is attempting to foreclose

- i. Any appraisals that it may have
- ii. ~~shall prepare~~ An estimate of the "short sale" value of the residence which it may be willing to consider as a part of the negotiation if loan modification is not agreed upon.
- iii. The net present value evaluation it has used to determine what loan modifications are provide a greater return then a foreclosure option.

If someone other than the beneficiary of the deed of trust represents such beneficiary, such person shall

- i. identify the beneficiary of the deed of trust.
- ii. provide that portion of the relevant pooling and servicing agreement that describes the scope of authority the beneficiary has given to the servicer of the loan to modify the loan

~~This next item may be too controversial or provocative. If it were included, it and sub i would better fit into Rule 5.~~

- iii. provide evidence of the authority that the beneficiary has given for the Notice of Default to be recorded and served

RULE 10: CONTINUANCE

Unless the parties stipulate for a continuance of a mediation scheduled in the foreclosure mediation program which is approved by the presiding mediator, no request for a continuance of a mediation scheduled in the foreclosure mediation program may be granted, except up a showing of extraordinary. . .

Note: If as common, the servicers post pone the issuance of a Notice of Sale and even after the Sale date is established, will continue the sale, if a bona fide process is underway to modify the loan. If it is the servicer who is agreeing to continue (stipulation) then this would not seem to intrude upon the existing contract.

DEFINITION OF BENEFICIARY OF THE DEED OF TRUST

Note: The following may be obvious, and perhaps it is addressed by the operation of other statutory provisions or these rules however the court may wish to make it clear. Many deed of trust documents indicate that the Beneficiary of the Deed of Trust is the Mortgage Electronic Registration System Inc. It should be made clear that such "placeholder" corporation is not the beneficiary of the deed of trust described in the statute or these rules