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June 16, 2009

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

Dear Ms. Lindeman:

Please consider the following comments on the above-referenced Foreclosure Mediation Rules:

1. I suggest that the Rules require the Mediation Administrator to prepare a simple explanation of the foreclosure mediation process to accompany the mediation form required by AB 149.
2. Rule 5(b)(1): The rules should permit the Request for Mediation to be personally served by leaving the Request at a designated location in the County as an alternative to certified mail, return receipt requested.
3. Rule 5(d):
 - (a) This Rule requires the beneficiary or its representative to bring to the mediation "the original or a certified copy of the deed of trust, the mortgage note . . ." It is not clear whether "certified" modifies just "deed of trust" or all of the mentioned documents.
 - (b) While the Recorder is in a position to certify a copy of a recorded loan document (e.g., deed of trust), it is not clear who would certify the copy of an unrecorded loan document other than the lender/servicer itself. If non-recorded loan documents must be certified, I suggest a form of certification be developed which imposes adverse consequences for improper certification.

The beneficiary or its agent should also provide evidence of its authority to modify the loan, since the actual holder of the original promissory note is the person entitled to payment,

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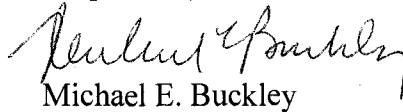
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Giorgi v. Pioneer Title Ins., §5 Nev. 319, 454 P 2d 104 (1969), and if the person participating in the mediation is not authorized by the holder of the original note the lender may not be bound by the mediation.

4. Rule 9. The last line refers to "service of the notice of default." This language should be clarified by providing whom is "served." AB 149, Section 2(a) and NRS 107.080(3) refers to mailing the notice of default to the borrower. Section 2(b) of AB 149 refers to serving the notice of default on the Mediation Administrator. NRS 107.085(2), as amended by Section 3 of AB 149, refers to a separate notice that must be served on the borrower. The present meaning of Rule 9 would seem to refer to the service on the Mediation Administrator.

Respectfully submitted,



Michael E. Buckley

MEB/bmc