

THE SUPREME COURT OF THE STATE OF NEVADA

FILED

SEP 07 2009

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

IN THE MATTER OF THE ADOPTION OF)
RULES FOR FORECLOSURE MEDIATION)

ADKT No.: 435

COMMENTS REGARDING THE ADOPTION OF RULES FOR FORECLOSURE
MEDIATION

Legal Aid Center of Southern Nevada, by and through its attorney, Michael Joe, submits the following comments on the proposed amendments to the rules and forms as set forth in ADKT No. 435

1. Rule 5, paragraph 4 (a) should track the language of the statute and provide:

“Send by certified or registered mail, return receipt requested, to the Grantor or person who holds the title of record of an owner occupied residence, two copies of the election of mediation and instructions, an envelope pre-addressed to the Trustee, an envelope pre-addressed to the Program Administrator and other documents as required to be sent to the Homeowner under NRS 107.080.”

The present language in the rule does not indicate that the service must be by certified or registered mail and misstates the documents that are required.

2. Election/Waiver of Mediation Form

a. On the instruction form for the Election/Waiver of Mediation Form, the “to the Homeowner” language is confusing in that it indicates that a Homeowner is not eligible to participate in the program if they filed bankruptcy on or after July 1, 2009. The law provides

1 mandatory mediation for those Homeowners who have a Notice of Default issued after July
2 1, 2009, and the program's eligibility is not impacted by any bankruptcy filing on that date.

3 The language should read as follows:

4 "You may not be eligible to participate in this program if you filed bankruptcy, unless
5 you have been discharged from the bankruptcy or the court has entered an order allowing
6 you to be part of the Nevada Foreclosure Mediation Program".
7

8 b. In the third paragraph, the form will be sent from the Trustee and not the Lender.

9 c. Instead of stating "you cannot begin this process yourself by using this form" it
10 should be clarified to say that you should not submit the form until the Trustee has
11 provided it to you. In the event the Trustee has not provided a form to a Homeowner,
12 the Homeowner should contact the Foreclosure Administrator so that the Homeowner
13 can obtain a form. It is important to inform a Homeowner what to do if they are not
14 served a form and yet are in the timeframe required for them to file a form in order to
15 participate in the program.
16

17 d. On the ninth full paragraph starting with "sign each form", these words can be
18 eliminated as they are already included in the previous paragraph.
19

20 3. On all forms, including the Selection of Mediator, a Notice of Appointment of Mediator,
21 it would be prudent to add a line to identify the Servicer as they would likely be
22 participating in the process.
23

24 4. Mediation Scheduling Notice

25 a. On page 2, line 1, the language states "shall result in the Mediator preparing and
26 submitting a statement to the Foreclosure Mediation Program Manager the facts
27
28

1 which may result in an inability to proceed with the foreclosure” this language is
2 imprecise and should be modified to:

3 “shall result in the Mediator preparing and submitting to the Foreclosure Mediation
4 Program Manager a denial of the certificate to proceed with the foreclosure.”

5 b. On page 2, first full paragraph, the language should be modified to require the
6 parties to exchange documents with each other as well as providing them to the
7 Foreclosure Mediation Administrator as is consistent with the Rule.

8
9 5. Mediator Statement. This form should be revised for further clarity and form should
10 provide a listing of attendees and who they represented in the mediation. The options
11 should be provided as follows:

12 The Mediator files the following report of the proceedings:

13
14 ___ The Beneficiary failed to bring all the original or certified copy of the deed of
15 trust, the mortgage note, and each assignment of the deed of trust and mortgage
16 documents to the mediation. A certificate should not issue.

17
18 ___ The Beneficiary did not have the required authority or access to a person with the
19 required authority to participate in the mediation. A certificate should not issue.

20 ___ The Beneficiary failed to participate in good faith. A certificate should not be
21 issued

22 ___ The parties resolved this matter. No further action is required.

23
24 ___ The parties participated in good faith, but were unable to agree to a loan
25 modification or make other arrangements.

26 ___ The Grantor failed to attend.

27 ___ The Grantor failed to participate in good faith.
28

1 6. Certificate

2 The first and the third option should be combined.

3 7. Mediation Agreement

- 4 a. The Mediation Agreement should include the attendees and who they represented.
5
6 b. The options should be revised as follows:

7 The Parties that reached an agreement and the basic provisions are set forth below:

8 Property Owner to retain possession by:

- 9 Loan Modification
10 Repayment Plan
11 Forbearance Agreement,
12
13 Other

14 The terms are as follows:

15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____

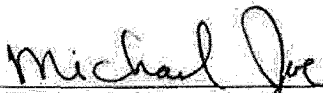
24 Property Owner to vacate property by:

- 25 Short Sale
26 Deed in Lieu
27 Cash for Keys
28 Other

The terms are as follows:

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Dated this 31st day of August, 2009.



Michael Joe, Esq.
**LEGAL AID CENTER OF
SOUTHERN NEVADA, INC.**