



Chief Justice Mark Gibbons  
 Nevada Supreme Court  
 201 South Carson Street  
 Carson City, Nevada 89701

March 16, 2010

Dear Chief Justice Gibbons,

**Re: Proposed Rule Changes Foreclosure Mediation**

The American Financial Services Association (AFSA) <sup>1</sup> is grateful for the opportunity to comment on Nevada's proposed amendments to the adopted rules for the foreclosure mediation program. Foreclosure is in nobody's best interest and our mortgage lending company members across the country are involved in unprecedented efforts aimed at keeping distressed borrowers in their homes. We believe that mediation can play an effective role as long as it does not unnecessarily prolong the foreclosure process or limit the room-to-manuever that the borrower has to resolve the issue.

The proposed rule changes contain elements that we welcome, including streamlining the system so Foreclosure Mitigation Program (FMP) certificates are not required for the sales of non-owner-occupied housing and allowing broker's price opinion letters in lieu of appraisals. Unfortunately, on top of these there are multiple areas of concern which, should these amendments be adopted, would have significant unintended consequences for lenders and for distressed borrowers. We ask that you take our comments into consideration as you continue your discussions on this subject.

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<sup>1</sup> The American Financial Services Association is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members are important sources of credit to the American consumer, providing approximately 20 percent of all consumer credit. AFSA member companies offer credit vehicle financing, cards, personal installment loans and mortgage loans. The Association encourages and maintains ethical business practices and supports financial education for consumers of all ages.

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

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We are strongly opposed to the extension of timelines for mediations to occur from 90 days to 135 days after a lender fee is received by the FMP (Rule 1.2). We believe that extending timeframes in this way simply delays the inevitable, incurring significant extra servicing costs for borrowers, allowing further property degradation, and causing extra angst and inconvenience for distressed borrowers. We urge that this issue is revisited.

The proposed rules allow a mediator to request that legal representatives for either the homeowner or lender provide proof of their license to practice law in Nevada (Rule 5.8 (c)). We strongly oppose this as it is a costly, inefficient and wasteful concept. Attorneys are not necessarily the best individuals to represent borrower or lender. Currently, AFSA members generally send Loss Mitigation specialists with deep expertise on the borrower's options and the authorization to act on behalf of the lender. These specialists attend mediation armed with the lender's best offer – which is on the table from the beginning. There is little or no negotiation at this stage and the borrower is free to reject the lender's offer. The additional cost on both sides of having Nevada-licensed attorneys brings absolutely no added benefit and simply incurs extra costs – for the borrower as well as the lender.

We are also deeply concerned with Rule 9, which would allow a second mediation if a lender does not make a temporary modification permanent after a homeowner fulfills all obligations of that agreement. We believe this particular rule steps outside of the bounds of “mediation” and interferes with contracting between borrower and lender. Lenders have contracts with borrowers that might be modified during mediation, but forcing lenders to perform permanent modifications is not the purpose of mediation. Mediations should allow borrowers and lenders to get together to reach a solution that is best for both parties. In many situations the borrower's economic situation is temporary. Forcing the lender to provide permanent relief to a temporary condition is unfair, particularly when one considers that there is a population of borrowers who will default on the modification. This rule does not increase the fairness or efficiency of the mediation process so has no place in these rules.



We respectfully urge that you to address these significant challenges with the proposed amendments to the rules. As laws mandating mediation appear in states across the nation, AFSA is making a distinction between those which, if passed into law, will genuinely build a meaningful interaction between lender and borrower and benefit both, and those bills and regulations which will simply slow down the foreclosure process, prolonging the disruption to the borrower and adding to the significant burden borne by the lender. Honing the proposed amendments to the rules in the way in which we recommend can go a long way toward ensuring that Nevada's mediation program falls into the former category.

Please do not hesitate to contact us should you have any questions.

Respectfully,

A handwritten signature in black ink, appearing to read "Danielle Fagre Arlowe", written in a cursive style.

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