

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ADOPTION
OF RULES FOR FORECLOSURE
MEDIATION

ADKT 0435

FILED

NOV 14 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

***ORDER SCHEDULING PUBLIC HEARING
AND REQUESTING PUBLIC COMMENT***

On June 30, 2009, this court adopted rules in order to implement the foreclosure mediation program established by Assembly Bill 149. This court has determined that it is necessary to consider amendments to the rules. The proposed amendments are attached as Exhibit A.

The Nevada Supreme Court will conduct a public hearing on the proposed amendments on Thursday, December 5, 2013, at 1:30 p.m. in the Nevada Supreme Court Courtroom, 200 Lewis Avenue, 17th Floor (Regional Justice Center), Las Vegas, Nevada. The hearing will be videoconferenced to the Nevada Supreme Court Courtroom, 201 South Carson Street, Carson City, Nevada.

Further, this court invites written comment from the bench, bar and public regarding the proposed rule amendments. An original and 8 copies of written comments are to be submitted to: Tracie K. Lindeman, Clerk of the Supreme Court, 201 South Carson Street, Carson City, Nevada 89701 by 5:00 p.m., November 27, 2013. Comments must be

submitted in hard-copy format. Comments submitted electronically will not be docketed. Persons interested in participating in the hearing must notify the Clerk no later than November 27, 2013.

Hearing date: December 5, 2013, at 1:30 p.m.
Supreme Court Courtroom
Regional Justice Center
200 Lewis Avenue, 17th Floor
Las Vegas, Nevada

Comment deadline: November 27, 2013, at 5:00 p.m.
Supreme Court Clerk's Office
201 South Carson Street
Carson City, Nevada 89701

DATED this 14th day of November, 2013.

 Pickering , C.J.

cc: All District Court Judges
Alan Lefebvre, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
Board of Governors, State Bar of Nevada
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Nevada Justice Association
Legal Aid Center of Southern Nevada
Nevada Legal Services
Washoe Legal Services
Volunteer Attorneys for Rural Nevadans
Nevada Association of Counties
Nevada Bankers Association
Nevada Land Title Association
Nevada Association of Realtors
Administrative Office of the Courts
Verise Campbell, Mediation Administrator

ADKT 435 FORECLOSURE MEDIATION PROGRAM
RULE AMENDMENTS

I. SCOPE OF RULES

Rule 1. The State of Nevada Foreclosure Mediation Program.

1. *Authority and scope.* Pursuant to the jurisdictional authority provided by Chapter 107 of the Nevada Revised Statutes and the Nevada Supreme Court's inherent power to create rules for the efficient administration of justice, these rules are enacted to apply to the mediation of any owner-occupied residential foreclosure arising from the recording of a notice of default and election to sell on or after July 1, 2009.

2. *Purpose.* The purpose of these rules is to provide for the orderly, timely, and cost-effective mediation of owner-occupied residential foreclosures which shall take place within 135 days following actual receipt by the Administrator, or designee, of the mediation fee and required documentation provided on behalf of the lender. The State of Nevada Foreclosure Mediation Program (hereafter referred to as the Foreclosure Mediation Program) encourages deed of trust beneficiaries (lenders) and homeowners (borrowers) to exchange information and proposals that may avoid foreclosure.

3. *Availability of program.* Subject to limited exceptions set forth in Rule 8(5) hereafter, the Foreclosure Mediation Program is mandatory when the grantor or person who holds title of record of an owner-occupied residence timely **requests mediation** completes enrollment.

4. *Time.* For purposes of calculating time under these rules, 6(a) and 6(e) of the Nevada Rules of Civil Procedure (NRCP) shall apply. These rules, as amended, apply to all mediations that have not yet been conducted by the mediator.

5. *Recording.* The mediation session(s) shall not be recorded.

Rule 2. Mediation Administrator and Designee.

1. *Appointment.* The Foreclosure Mediation Program Administrator (Administrator) shall be appointed by the Nevada Supreme Court (Court). The Administrator for the Foreclosure Mediation Program (Program) is the Administrative Office of the Courts (AOC).

2. *Authority.* The Administrator may appoint a Foreclosure Mediation Program Manager and support staff to assist in carrying out the goals and objectives of the Foreclosure Mediation Program. When the efficient administration of the program warrants, the Administrator may enter into contracts with third parties for training and other mediation-related services.

3. *Foreclosure Mediation Program Manager.* The Foreclosure Mediation Program Manager (FMP Manager) is the "designee" for the Administrator under these rules. In addition to his or her general duties, the FMP Manager shall:

(a) Ensure all program-approved forms are in compliance with these rules. The FMP Manager may reject any program-approved form substantially altered by a borrower, lender, trustee, or mediator and require resubmission on the appropriate program-approved form;

(b) Receive all affidavits and issue all certificates as may be required herein; and

(c) Take any action necessary to correct "clerical errors" in the Certificate arising from oversight or omission for which the mediator or FMP staff is responsible.

Rule 3. Presiding Mediator.

1. *Authority.* A foreclosure mediation must be conducted by either a senior judge, Supreme Court settlement conference judge, or other person designated by the Supreme Court. The presiding mediator shall have all requisite authority to conduct the foreclosure mediation. The mediator shall schedule each mediation to

conclude within 90 days of receipt of the assignment and shall notify the Administrator, or designee, of the outcome of each mediation.

2. *Assignment of presiding mediator.* No later than 10 days after receipt of the ~~[Election for Mediation]~~ Enrollment/Waiver of Mediation Form, and the fees from both parties pursuant to Rules 5 and 8(2) herein, the Administrator, or designee, shall randomly select and assign from the applicable geographic area a mediator to preside over the mediation. The assigned mediator will have 2 business days after receiving the assignment to determine and notify the Administrator, or designee, of a conflict requiring his or her recusal. Upon such notification, the Administrator, or designee, shall immediately and randomly select another mediator to conduct the mediation. The Administrator, or designee, may direct a mediator to cluster several mediations for a lender. Upon final selection of a mediator, the Administrator, or designee, shall send notice of the assignment to the parties.

3. *Panel of mediators.* The Administrator, or designee, shall maintain a list of mediators by geographic area available to hear foreclosure mediations. The list shall include all senior judges, Supreme Court settlement conference judges, and other persons who are appointed by the Court to serve as presiding mediators in the Foreclosure Mediation Program and are qualified pursuant to subsection 4 herein.

4. *Mediator qualifications.*

(a) Mediators must meet the following minimum qualifications:

(1) Be licensed to practice law in the State of Nevada; or

(2) Be an experienced mediator. For purposes of this subsection, an experienced mediator shall mean an individual who has participated in a mediation training program consisting of at least 40 hours of classroom and role playing and has conducted 10 mediations as a co-mediator or sole mediator.

(b) Additionally, all mediators must participate in approved annual continuing education program of at least 4 hours and consisting of education in

deeds of trust, promissory notes, loan modifications, Nevada foreclosure laws, and such other topics as determined necessary by the Court.

(c) The Court, for good cause shown, may waive the minimum requirements set forth herein.

5. *Appointment of mediators.*

(a) The Administrator, or designee, shall solicit and provide the Court with the names and qualifications of persons who have applied to become mediators. The Court shall review the qualifications and approve, deny, or continue the applicant's request to serve as a mediator. The term of appointment shall be 1 year.

(b) The list of Court-approved mediators shall be maintained by the Administrator.

(c) The Court-approved mediator must sign an FMP Mediator Code of Conduct annually or as needed.

Rule 4. Mediator Conduct, Disqualification, Recusal, Suspension and Termination.

1. Any mediator appointed pursuant to these rules is subject to Canon 1; Canon 2, Rules 2.1 through 2.9, 2.11, and 2.13 through 2.16; and Canon 3, Rules 3.1, 3.3, 3.5, 3.6, and 3.9 of the Nevada Code of Judicial Conduct as adopted or amended by the Supreme Court of Nevada.

2. Any mediator appointed pursuant to these rules is subject to the Model Standards of Conduct for Mediators as revised and adopted in 2005 by the American Arbitration Association, American Bar Association, and Association of Conflict Resolution.

3. Any mediator appointed pursuant to these rules is subject to the State of Nevada Foreclosure Mediation Program Mediator Code of Conduct as adopted or amended by the Supreme Court of Nevada and shall be required to sign the code of conduct before undertaking any assignments as a mediator.

4. Any mediator appointed pursuant to these rules must follow the foreclosure mediation statutes, program rules, and Nevada Supreme Court decisions interpreting same.

5. To the extent the model codes or canons conflict with Nevada statutes, rules, or Nevada Supreme Court decisions, the statutes, rules, and Nevada Supreme Court decisions control.

6. A mediator who has a personal or past or present significant professional relationship with any of the parties or a financial interest in the matter of the mediation shall immediately recuse himself or herself as a mediator in the particular case. Any mediator who has received material concerning a party that is designated confidential may not undertake representation adverse to that party in connection with a mediation under this program for a period of 90 days after the mediation, unless the party providing the confidential material waives this rule. In no event may a mediator, at any time, use confidential information provided to him or her as a mediator in the later representation of a party to a mediation.

7. Mediators serve at the pleasure of the Court and the Court may suspend or revoke the appointment of a mediator at any time. The suspension or revocation is effective immediately. The FMP Manager has authority to take any action necessary to accommodate the parties affected by such action(s).

8. The Administrator, or designee, may suspend or terminate a mediator from the program without cause at any time and may recommend to the Court revocation or suspension of the appointment. Any suspension of a mediator by the Administrator, or designee, is limited to a maximum of 60 days.

Rule 5. Fees for Presiding Mediators.

1. Mediators shall be compensated in the amount of \$400, with \$200 of the fee to be paid by the owner-occupant (as defined in Rule 7), and \$200 to be paid by the lender, unless otherwise stipulated. Each party must pay its respective \$200 fee at the entry point into the Foreclosure Mediation Program. Payment by the grantor

or person who holds title of record must occur by cashier check or money order made payable to the "State of Nevada Foreclosure Mediation Program," or, when available, electronic payment, or from an attorney's trust account and be made payable to the "State of Nevada Foreclosure Mediation Program."

2. An assigned mediator who recuses from participation at any time may not be compensated.

3. If a grantor makes payment directly to a trustee, the trustee shall immediately forward the payment, whether made in cash, by check, cashier's check, or money order, to the Administrator, or designee, together with the beneficiary of the deed of trust's payment of fees. However, if the payment to the trustee is made payable to the trustee, the trustee shall immediately deposit the funds in its account and submit the payment to the Administrator, or designee, together with the beneficiary of the deed of trust's portion of the fees.

4. For those limited situations where a refund may be appropriate, the Administrator shall establish refund policies and procedures.

Rule 6. Deposits; Failure to Pay.

1. If a party to a mediation fails to pay the \$200 toward the mediator's fee, the mediation may be terminated and relief awarded to the nondefaulting party, as may be deemed appropriate.

II. PARTICIPATION IN THE FORECLOSURE MEDIATION PROGRAM

Rule 7. Eligibility for the Foreclosure Mediation Program.

1. The program applies to any grantor or person (homeowner) who holds the title of record and is the owner-occupant of a residence as to which a notice of default and election to sell has been recorded on or after July 1, 2009. For purposes of these rules, an owner-occupant includes the trustee of a revocable or irrevocable trust if the trustor or a beneficiary of that trust resides in the residence at the time

of the recordation of the notice of default and election to sell. In such event, the trustee of the trust or his authorized representative shall represent the owner-occupant at the mediation and must execute all documents and forms required of owner-occupants by these rules.

2. "Owner-occupied housing" means housing that is occupied by an owner as his or her primary residence. This term does not include any time-share or other property regulated under NRS Chapter 119A, and/or a foreclosure initiated by a homeowner's association under NRS Chapter 116.

3. A Certificate from the Administrator, or designee, must be recorded prior to a trustee's sale being conducted on any owner-occupied housing. The Certificate may be requested by the trustee and, if requested, may be issued by the Administrator, or designee, on any residential property for which ~~[a request for mediation was not filed]~~ enrollment was not completed. However, there is no requirement that a Certificate be issued and recorded prior to a trustee's sale being conducted on any type of property other than owner-occupied housing. Any program-issued certificate is considered confidential until recorded.

Rule 8. Notice of Default and ~~[Election to Mediate]~~ Enrollment into Mediation.

1. Any trustee or other person presenting a notice of default and election to sell for recording in the Office of a County Recorder shall, not later than 10 days from presenting the Notice of Default for filing, send by certified or registered mail, return receipt requested, to the grantor or person who holds title of record of an owner-occupied residence, ~~[in addition to the documents required to be sent to the homeowner under]~~ copies of the Enrollment/Waiver of Mediation Form in the manner provided for by NRS 107.080, et. Seq. [2 copies of the Election of Mediation and instructions,] on a form provided by the Administrator, or designee, with the information indicated on the form to be provided by the trustee filled in. Along with the Notice of Default, the trustee must also provide the grantor

with a list of documents that may be required for mediation, which list has been pre-approved by the Administrator, or designee, of the Program. In addition, with each copy of the Enrollment/Waiver of Mediation Form the trustee must **[also]** provide the grantor with two envelopes: one pre-addressed to the Administrator, or designee, and the other pre-addressed to the trustee.

2. The mediation process under these rules shall be initiated by the preparation and delivery of an **[Election of Mediation]** Enrollment in Mediation by a grantor or person who holds title of record of an owner-occupied residence on “forms” provided by the Administrator, or designee, and payment of the fee required by Rule 5 herein.

(a) The eligible participant shall, not later than 30 days after the service upon him or her in the manner required by NRS 107.080 of the notice of default and election to sell, complete the **[Election/Waiver]** Enrollment/Waiver of Mediation Form and deliver it, along with the fee required under Rule 5, to the Administrator.

(b) The eligible participant shall also mail a copy of the **[Election/Waiver]** Enrollment/Waiver of Mediation to the trustee, by certified or registered mail, return receipt requested.

(c) As soon as the Administrator, or designee, receives an **[Election/Waiver]** Enrollment/Waiver of Mediation from an eligible participant, the Administrator, or designee, will notify the trustee of the receipt, including whether any fees were paid by the participant.

(d) The trustee shall, within 10 days of notice of the receipt of the **[Election of Mediation]** Enrollment in Mediation, deposit with the Administrator, or designee, the signed **[Election of Mediation]** Enrollment in Mediation, if the trustee has received a copy; a copy of the trustee’s Information on a form provided by the Administrator, or designee, including the name and address of the beneficiary of the deed of trust; a copy of the recorded Notice of Default; and the fees required in Rule 5 herein, including any fees received from the grantor. Any delay by the trustee in providing the required documents and information to the

Administrator, or designee, shall extend the time for mediation set forth in Rule 1(2).

3. If grantors or persons who hold the title of record have timely ~~[elected to participate]~~ completed enrollment in the program and the trustee presents a Rescission of a Notice of Default and Election to Sell for recording in the Office of a County Recorder, the lender must obtain the written agreement of grantors or persons who hold title of record to stop the mediation from proceeding. The lender shall, within 10 days of the recording of the Rescission, deposit with the Administrator, or designee, a copy of the recorded rescission, and, if applicable, the signed agreement between the lender and grantors or persons who hold title of record to withdraw from the Foreclosure Mediation Program ~~[process together with a copy of the recorded rescission]~~. Should the Administrator not receive the signed agreement within the time provided, the mediation process will continue as provided herein.

4. Failure by any eligible participant to timely deliver an ~~[Election of Mediation]~~ Enrollment in Mediation to the Administrator, or designee, or to attend and participate at a mediation scheduled under these rules shall result in the Administrator issuing a certificate stating no mediation is required, and that a foreclosure sale may be noticed according to law.

5. All grantors or persons who hold the title of record who have timely ~~[elected to participate]~~ completed enrollment in the Program may do so and are herein referenced as the eligible participants, except where:

(a) The grantor or the person who holds title of record has previously surrendered the real property that is the subject of the foreclosure proceedings, as evidenced by a letter signed by the grantor or the person who holds title of record confirming the surrender or delivery of the keys to the property to the trustee, the beneficiary of the deed of trust, or the mortgagee, or an authorized agent of any of these recipients; or

(b) A petition in bankruptcy under Chapters 7, 11, 12, or 13 of Title 11 of the United States Code has been filed with respect to the grantor or the person who holds title of record on or after July 1, 2009, and the bankruptcy court has not entered an order closing or dismissing the case, or granting relief from the automatic stay of the foreclosure.

(c) After enrollment, the grantor must provide notice to the Administrator within 5 (five) days of filing a Petition in Bankruptcy. If a mediation is convened, and it is determined the grantor filed a Petition in Bankruptcy without notifying the Administrator, upon an order closing or dismissing the case, or granting relief from the automatic stay, all fees previously paid shall be forfeited and the grantor may reenroll in mediation within 30 days.

Rule 9. [~~Option for Inclusion.~~] Judicial Foreclosures.

1. When commencing a civil action for a judicial foreclosure pursuant to NRS 40.430 affecting owner-occupied housing, a party must:

(a) Along with a copy of the complaint served on the mortgagor the plaintiff must include separate documents containing:

(1) Contact information which the grantor may use to reach a person with authority to negotiate a loan modification on behalf of the plaintiff;

(2) Contact information for at least one local housing counseling agency approved by the United States Department of Housing and Urban Development;

(3) A copy of a Notice/Enrollment Form from the Administrator indicating the grantor or the person who holds title of record will be enrolled to participate in mediation if he or she pays his or her share of the mediation fee pursuant to Rule 5 and returns the Enrollment Form; and

(4) A form upon which the grantor may indicate an election to waive mediation and one envelope addressed to the plaintiff and one envelope addressed to the Administrator, which the grantor may use to comply with the provisions of subsection 3;

(b) Submit a copy of the complaint to the Administrator

2. If the grantor of the person who holds title of record of an owner-occupied residence wishes to elect mediation, he shall not later than 30 days after the service upon him of the complaint, initiate mediation by (1) filing the Enrollment Form with the court, (2) payment of the mediation fee accompanied by a copy of the Enrollment Form sent to the Administrator or designee, and (3) returning a copy of the form to the plaintiff by certified mail, return receipt requested.

3. If the grantor or the person who holds title of record elects to enter the mediation program, then the plaintiff upon receipt of the Enrollment Form, shall file the Form with the Administrator along with the mediation fee.

4. At the conclusion of the mediation, the mediator shall file with the Administrator, or designee, on a form provided by the Administrator or designee, the original Mediator's Statement. Upon receipt of the Program Administrator, the beneficiary shall file a copy of the mediator statement with the court.

Rule 10. [Representation.]Option for Inclusion.

1. For any owner-occupied property located in Nevada where a Notice of Default is recorded prior to July 1, 2009, the grantor or person who holds the title of record (eligible participant) and the beneficiary of the deed of trust may agree in writing to enter the Foreclosure Mediation Program governed by NRS Chapter 107 and these rules. Notice and a copy of the option for inclusion letter signed by both parties must be provided to the Administrator, or designee.

2. For any owner-occupied property located in Nevada where a Notice of Default is recorded and the homeowner has failed to ~~[elect to mediate]~~ enroll in mediation within the time frame pursuant to Rule 8, the homeowner and beneficiary of the deed of trust may agree in writing to enter the Foreclosure Mediation Program.

3. The Administrator, or designee, will notify the parties of the option for inclusion who shall, within 10 days, forward the fees required in Rule 5 herein to the Administrator, or designee. Upon acceptance of the written stipulation and receipt of the required fees, the Administrator, or designee, shall appoint a mediator and the mediation process shall be conducted consistent with these rules.

Rule 11. ~~[Documents to Be Presented for the Mediation.]~~

Representation.

1. Both parties to a mediation should appear in person. However, a party may be represented by another person, subject to certain limitations, as follows:

(a) Beneficiary ~~[(lender)]~~. All beneficiaries of a deed of trust sought to be foreclosed against an eligible participant who has timely ~~[delivered an Election of Mediation]~~ enrolled in mediation shall participate in the Foreclosure Mediation Program, be represented at all times during a mediation by a person or persons who have the authority to negotiate and modify the loan secured by the deed of trust sought to be foreclosed. A beneficiary or its representative shall be physically present at mediation, ~~[or, if approved by the mediator in advance, and for good cause shown, may participate in the mediation by phone]~~. Physical presence of the beneficiary or its representative is satisfied by the physical presence of an authorized representative of the beneficiary, which may include counsel for the beneficiary. In addition to the documents required in Rule ~~[11]~~ 12 herein, the beneficiary must bring to the mediation the original or a certified copy of the deed of trust, the mortgage note, and each assignment of the deed of trust and each assignment and endorsement of the mortgage note.

(b) Eligible Participant (borrower). A borrower may also request that a representative accompany him or her and/or appear for him or her at the mediation. However, the borrower's representative must be either (i) an attorney who is licensed to practice law in Nevada; (ii) a person who is licensed to provide services as described in NRS Chapter 645F.310; or (iii) a U.S. Department of Housing and Urban Development (HUD) approved housing counselor employed by HUD certified Housing Counseling Agencies. The mediator may request that the borrower's representative provide proof of these requirements.

(c) An eligible participant may represent him or herself. In any circumstance where the eligible participant retains representation, his or her representative must meet the qualifications provided in Rule ~~[10]~~11(1)(a) and (b).

(d) An eligible participant may give power of attorney to someone else to represent them in mediation. If an eligible participant gives a power of attorney to someone to represent them in mediation and if that person is receiving any form of compensation, including commissions or fees associated with the sale or transfer of the property, then they must meet the qualifications provided in Rule ~~[10]~~11(1)(a) and (b).

III. REQUIRED MEDIATION DOCUMENTS

Rule 12. ~~[Location of Mediation]~~ Documents to Be Presented for the Mediation.

1. Immediately, or as soon as practicable after the mediator receives an assignment from the Administrator, the mediator shall either set an exchange of documents conference or speak separately with each party to ascertain whether the beneficiary of the deed of trust needs any information from the homeowner in order to make a final decision about a loan modification, short sale, or other alternative to foreclosure.

2. If the beneficiary of the deed of trust indicates that documents are required to determine eligibility for a loan modification, short sale, or other alternative to foreclosure, it shall prepare a list of the documents required and send it to both the mediator and homeowner via regular mail, or if agreed upon by the parties, electronic mail delivery. The list should indicate specifications concerning the documents such as time frame or scope, and shall be submitted to the mediator and the homeowner within 5 days of the document conference or call.

3. The homeowner shall use his or her best effort to submit the required documents in his or her possession to the mediator and beneficiary of the deed of trust within 15 days. The homeowner should also begin the process to obtain required documents not in his or her possession.

4. Upon receipt of the homeowner's initial submission of documents, the beneficiary of the deed of trust shall have 15 days to send a written request for additional or corrected documents to both the mediator and the homeowner. The request shall be sent via regular, or if agreed upon by the parties, electronic mail delivery. If the beneficiary of the deed of trust fails to request additional and/or corrected documents from the homeowner, it will be estopped from claiming that the review of any option was not possible.

5. The homeowner shall then have 15 days from the date the letter is received to submit the additional or corrected documents to the mediator and the beneficiary of the deed of trust, as well as any required documents that were not in their possession at the time of initial document submission, if obtained. Once the homeowner supplies additional and/or corrected documents, documentation will be deemed complete.

6. Within 5 days of receipt of the additional or corrected documents, the beneficiary of the deed of trust may request clarification regarding submitted documents and/or identification of inadequacies in previously requested and submitted documents. The homeowner will have 5 days to provide the beneficiary of the deed of trust with clarification and/or cure identified inadequacies.

7. Non-Judicial Foreclosure Only: The beneficiary of the deed of trust must prepare and submit, at least 10 days prior to the mediation, the following documents to the mediator and the homeowner:

(a) The original mortgage note or a certified copy of the mortgage note, together with each assignment or endorsement of said note, the original or a certified copy of the deed of trust, and a certified copy of each assignment of the deed of trust.

(b) The original or certified copy, if one was utilized, of any document utilized to assign or endorse the mortgage note or the deed of trust.

(c) If the beneficiary of the deed of trust is represented by a **[third party]** servicer at the time of mediation, the **[third party]** servicer must produce **[the original or certified]** a copy of the **[of]** agreement, or relevant portion thereof, which authorizes the **[third party]** servicer to represent the beneficiary at the mediation and authorizes the **[third party]** servicer to negotiate a loan modification on behalf of the beneficiary of the deed of trust.

(d) While photocopies of the original or certified copy will be allowed for document exchange prior to mediation, the original or certified copy must be presented at the mediation. All documents presented at mediation must satisfy the requirements provided in Rule **[11(10)]** 12(8) and Rule **[11(11)]** 12(9).

(e) Appraisal and/or Brokers Price Opinion (BPO) not more than 60 days old (prior to the date of mediation) that satisfies the requirements provided in Rule **[11(12)]** 12(11). The homeowner, if he or she so chooses, may bring his or her own Appraisal and/or BPO obtained at his or her own expense.

8. Non-Judicial Foreclosure Only: The requirement for a certified copy of the original mortgage note, deed of trust, each assignment of the deed of trust and each assignment and endorsement of the mortgage note, power of attorney, or other documents required by these rules is only satisfied when the mediator receives

(a) a statement under oath signed before a notary public pursuant to the provisions of NRS 240.1655(2), which includes:

~~[(a)]~~ (1) The name, address, company, capacity, and authority of the person making the certification;

~~[(b)]~~ (2) The person making the certification on behalf of the beneficiary is in actual possession of the original mortgage note, deed of trust, and each assignment and any endorsement of the mortgage note and assignment of deed of trust; and

~~[(c)]~~ (3) The attached copy of the mortgage note, deed of trust, and each assignment and any endorsement of the mortgage note and deed of trust are a true and correct copy of the original mortgage note, deed of trust, and assignment of the deed of trust in the possession of the person making the certification.

~~[(d)]~~ (4) The certification shall contain the original signature of the certifying party and the original seal and signature of the notary public. Each certified document must contain a separate certification.

(b) A copy of a recorded document certified by the recorder, or other designated entity, for the county in which the property is situated, pursuant to the practices and or policies of such county recorder of designated entity.

9. In the event of the loss or destruction of the original mortgage note, deed of trust, or assignment of the mortgage note or deed of trust, the mediator shall recognize a judicial order entered pursuant to NRS 104.3309 providing for the enforcement of a lost, destroyed, or stolen instrument.

10. The beneficiary of the deed of trust or its representative shall produce an appraisal ~~[done]~~ dated no more than 60 days before the commencement date of the mediation with respect to the real property that is the subject of the notice of default and shall prepare an estimate of the "short sale" value of the residence that it may be willing to consider as a part of the negotiation if loan modification is not agreed upon, and shall submit any conditions that must be met in order for a short sale to be approved. The beneficiary of the deed of trust must also be able to negotiate the following: (i) the listing price, (ii) the date by which the property will be listed for sale, (iii) a period of time in which the property will be marketed, (iv) a

specified period in which the beneficiary of the deed of trust has to determine whether to accept an offer to purchase the property, and (v) the maximum length of time escrow may last in order to complete the sale. All short sale agreements must state whether the deficiency is waived. All appraisals or BPOs must be performed by **[a] an independent third-party**~~[, independent appraiser]~~.

(a) If the grantor fails to meet conditions within the period allowed by the conditions, the beneficiary of the deed of trust may submit a request to the Mediation Administrator to issue a certificate to foreclose, unless such failure to close escrow is a result of the action or inaction of the beneficiary of the deed of trust.

(b) If the grantor or the person who holds the title of record believes that the beneficiary of the deed of trust failed to comply with the guidelines of the agreement for the sale, or that escrow did not close because of the action or inaction of the beneficiary of the deed of trust, the grantor or the person who holds the title of record may file a petition for judicial review pursuant to Rule 21.

11. The mediator may accept a Broker's Price Opinion letter (BPO) in addition to or in lieu of the appraisal described in this rule. In that case, the BPO must substantially comply with the provisions of NRS 645.2515.

IV. MEDIATION PROCEDURES

Rule 13. [~~Calendaring~~] Location of Mediation.

1. The presiding mediator shall designate the date, time, and place for the mediation after coordinating with the parties and then shall notify the parties in writing and forward a copy of the Mediation Scheduling Notice to the Administrator, or designee. When coordinating with the parties, the mediator shall contact the parties, via phone call or regular mail, to ascertain whether counsel has been retained. If counsel has been retained, the mediator shall coordinate with their schedules as well.

2. Upon request from the presiding mediator, the Program Administrator, or designee, shall assist in determining a suitable location for the mediation.

Rule 14. [~~Continuances.~~] Calendaring.

1. Unless otherwise stipulated by the parties and approved by the presiding mediator, or for good cause shown, a mediation will be calendared to conclude within 135 days following actual receipt by the Administrator, or designee, of the mediation fee and required documentation provided on behalf of the lender. Upon the completion of the mediation, the mediator shall prepare the Mediator's Statement in accordance with Rule [~~17~~] 18 herein.

2. Immediately, or as soon as practicable after the mediator receives an assignment from the Administrator, the mediator shall either set an exchange of documents conference or speak separately with each party to request the list of documents that are required for the beneficiary of the deed of trust to make a final decision about a loan modification, short sale, or other alternatives to foreclosure. The mediation shall be scheduled to conclude within 90 days of mediator assignment.

3. [~~Mediators shall schedule each mediation for a minimum of 4 hours.~~] Unless extended by the presiding mediator, the parties will be allowed up to 4 hours to present and conclude the mediation. However, a 4 hour mediation is not required.

4. The mediator may conduct more than one mediation in a day, but in no case shall the mediator conduct more than 2 mediations in a day without express written approval by the Administrator, or designee. Mediations shall take place between the hours of 8 a.m. and 5 p.m. Pacific [~~Standard~~] Time [~~(PST)~~], Monday through Friday (excluding legal holidays), unless otherwise agreed upon by the parties.

Rule 15. [~~Settlement/Resolution Before Mediation.~~] Continuances.

1. Prior to the mediation convening, a request for a continuance must be in writing and served on the presiding mediator and opposing party. Continuance of a mediation may be granted upon a showing of extraordinary circumstances or upon a written agreement of the parties. The request must set forth the extraordinary circumstances with particularity. A ruling by the presiding mediator granting a continuance prior to convening the mediation must state the nature of the extraordinary circumstances and provide at least 3 dates within the ensuing 10 days when the parties can conduct the mediation. The presiding mediator will then calendar the case for mediation on one of the specified dates and provide the Administrator, or designee, with notice of the new mediation date and the reasons for the granting of the continuance. Conflicts in the schedule of counsel shall not constitute extraordinary circumstances. When the continuance is the result of agreement of the parties, the continuance may be granted for up to 30 days. Notice of such agreement shall be provided by facsimile, electronic mail, and/or regular mail.

2. Once a mediation is convened, if a mediator believes a continuance of the mediation is necessary and the parties agree at the mediation that a continuance is necessary in order to achieve a meaningful result, a continued mediation may be scheduled within 30 days. ~~[One a]~~ Additional continuances may be permitted ~~[following that 30-day period for no more than 15 days]~~ if all parties consent, and the Beneficiary waives the calendaring provisions of Rule 14(1), if necessary.

3. The Program should not withhold the distribution of new assignments to a mediator for lack of resolution of existing cases when the cases were continued pursuant to this rule.

Rule 16. ~~[Temporary Agreements or Agreements to Relinquish; Expiration Date.] Settlement/Resolution Before Mediation.~~

1. In the event the foreclosure issues are resolved before the scheduled mediation, the parties must, not later than 2 business days prior to the scheduled

mediation date, advise the mediator of their settlement. The parties shall send to the mediator a copy of the settlement agreement to attach to the mediator's statement. If the matter has not been settled in writing and signed by both parties, the parties shall attend the mediation so that the record may be memorialized. Any settlement will not result in the refund of fees.

Rule 17. [~~Mediator's Statement.~~] Temporary Agreements or Agreements to Relinquish; Expiration Date.

1. The parties may enter into a temporary modification agreement to modify any term(s) of the loan agreement as a result of mediation under these rules. Temporary agreements include those where the owner-occupant agrees to retain the home or relinquish the home after a measurable time frame. The temporary agreement must be in writing and signed by the parties. The temporary agreement must also include an "expiration date." The expiration date is a date certain, and upon which the parties shall have complied with their obligations under the agreement.

2. Any agreement to relinquish the home must include a date or measurable time frame on which the certificate will issue. The date or measurable time frame, so identified shall be herein referenced as the "Certificate Issuance Date." The Administrator **[may]** shall issue the certificate on the day **[following]** of the certificate issuance date, or the next business day, if applicable. Nothing herein prevents a party from invoking Rule **[21]** 22.

(a) "Vacate Date" shall be defined as the date, agreed upon by the parties, by which the homeowner will leave the premises.

(b) "Certificate Issuance Date" shall be defined as the date on which the program **[will]** shall issue a certificate, or the next business day, if applicable.

3. If either party to a temporary modification agreement described in this rule fails to fulfill the obligations of that agreement, the aggrieved party may file a petition for judicial review as set forth in Rule **[21]** 22 herein. The petition must be

filed within 30 days following the expiration date of the temporary modification agreement, and regardless of whether the mediation has been concluded.

Rule 18. [~~Interpreter Services.~~] Mediator's Statement. Within 10 days after the conclusion of the mediation, the mediator must file with the Administrator, or designee, on a form provided by the Administrator, or designee, the original Mediator's Statement. The Mediator's Statement must include a true and correct copy of any agreement, including a temporary agreement, entered into between the parties during mediation. A copy of the Mediator's Statement and agreement must be served on all parties, at the conclusion of mediation or by regular mail, email or facsimile. A courtesy copy must be provided to the trustee by regular mail, email or facsimile.

Rule 19. [~~Confidentiality.~~] Interpreter Services.

1. Any party requiring interpreter services is responsible for contacting the Foreclosure Mediation Program staff to schedule an interpreter at least 21 days prior to the mediation.

2. The Administrator, or designee, shall maintain a list of interpreters qualified to interpret in mediations. The Administrator, or designee, is responsible for assigning the interpreter prior to the scheduled mediation and notifying the presiding mediator of the selection.

Rule 20. [~~Faesimiles.~~] Confidentiality.

1. All documents and discussions presented during the mediation shall be deemed confidential and inadmissible in any subsequent actions or proceedings, *except* in an action for judicial review according to these rules and any subsequent appeal. In that case, non-privileged evidence submitted for mediation is discoverable, with the exception of confidential information such as social security numbers, account numbers, and tax ID numbers pursuant to the redaction statute.

2. Nothing contained herein shall prevent the disclosure of such limited information by the mediator or parties as required by NRS Chapter 107.

**Rule 21. [~~Issuance of Certificates and Petition for Judicial Review~~]
Facsimiles.**

1. A facsimile of the Administrator's, or designee's signature for purposes of filing Foreclosure Mediation Program documents with the County Recorder, may be accepted as an original.

Rule 22. [~~Advisory Committee on the Foreclosure Mediation Program.~~] Issuance of Certificates and Petition for Judicial Review.

1. Upon the conclusion of the mediation, and upon the decision as to whether a Certificate shall issue, the Program shall notify, in writing, both the homeowner and the beneficiary of the deed of trust of the final outcome of the proceeding. The Program shall notify both participants of their right to file petition for judicial review as well as the provisions of the rule governing said petitions. If a temporary agreement is reached, the Program shall advise both parties that if either party fails to fulfill the obligations of that agreement, the aggrieved party may file a Petition for Judicial Review within 30 days of the expiration date of the temporary modification agreement or date of breach of a condition in the agreement.

2. A party to the mediation may file a petition for judicial review with the district court in the county where the notice of default was properly recorded. A hearing shall be held, to the extent that the court deems necessary, for the limited purposes of determining the beneficiary of the deed of trust's compliance in attending the mediation, having the authority or access to a person with the authority required by [~~subsection 4~~] Rule 11(1)(a), bringing to the mediation each document required by [~~subsection 4~~] Rule 11(1)(a), and participating in the mediation in good faith, compliance with the rules of the Program, enforcing agreements made between the parties within the Program, including temporary

agreements, and determining appropriate sanctions pursuant to NRS Chapter 107 as amended.

3. All such petitions shall be filed within 30 days of the date that the party to mediation received ~~[the notification of the issuance or non-issuance of a certificate]~~ the mediator statement from the Administrator. The ~~[notification of the issuance or non-issuance of a certificate]~~ mediation shall be reviewed by the district court within 60 days of the service of the petition in accordance with the Nevada Rules of Civil Procedure, NRS Chapter 107, and any local rule or administrative order adopted by a judicial district to adjudicate such petitions.

4. Petitions for judicial review shall be served on any party and/or person appearing at the mediation on behalf of a party, by certified or registered mail, return receipt requested.

5. A petition for judicial review that names the Administrator as a respondent must be served upon the Administrator at the Administrative Office of the Courts, 201 South Carson Street, Carson City, Nevada 89701, by certified or registered mail, return receipt requested.

6. Proceedings in the district court on a petition for judicial review shall be conducted de novo.

7. Upon receipt of notice of the filing of a petition for judicial review by the Administrator, and until final resolution of that action, the Administrator, or designee, shall refrain from taking any action which will adversely affect any party to the mediation.

8. The District Court Clerk shall provide to the Administrator, or designee, a copy of any Petition for Judicial Review and disposition thereof filed in accordance with these rules, within 10 days of the filing of such pleading or disposition. Also, the District Court Clerk may provide electronic access to these records for the Administrator, or designee.

9. The Mediation Administrator shall, not later than 30 days after submittal of the mediator's recommendation that the matter be terminated, or on the date

specified by the parties that a certificate be issued pursuant to Rule 17(2), provide to the trustee a certificate which provides that the mediation has been completed.

10. In judicial foreclosure actions, all petitions for judicial reviews filed pursuant to this Rule shall be filed in the same civil action as the judicial foreclosure action.

Rule 23. ~~[Other Programs.]~~ Advisory Committee on the Foreclosure Mediation Program.

1. There is hereby created the Advisory Committee on the Foreclosure Mediation Program. The Committee, which shall be appointed by the Nevada Supreme Court, shall consist of:

(a) The Foreclosure Mediation Program Manager, who shall serve as the Committee's chair;

(b) Two persons who serve as mediators in the Foreclosure Mediation Program;

(c) One person who is a representative of an organization or association that conducts business as a title company or serves as a trustee on deeds of trust;

(d) Two persons who regularly conduct residential mortgage lending in the State of Nevada;

(e) Two persons who have previously participated in the Foreclosure Mediation Program as owner-occupants of a residence;

(f) Two persons who are attorneys licensed in the State of Nevada and who regularly represent lenders in the Foreclosure Mediation Program;

(g) Two persons who are attorneys licensed in the State of Nevada and who regularly represent owner-occupants in the Foreclosure Mediation Program; and

(h) Two persons who are licensed real estate agents in the State of Nevada.

2. Each appointed member serves a term of 1 year. Members may be reappointed for additional terms of 1 year in the same manner as the original appointments. Any vacancy occurring in the membership of the Committee must be

filled in the same manner as the original appointment not later than 30 days after the vacancy occurs.

3. The Committee shall meet at least once every 2 months and may meet at such further times as deemed necessary by the Chair.

4. A majority of the members of the Committee constitutes a quorum for the transaction of business, and a majority of those members present at any meeting is sufficient for any official action by the Committee.

5. The Committee shall:

(a) Study the Foreclosure Mediation Program rules and make such recommendations to the Nevada Supreme Court as it deems appropriate;

(b) Evaluate the effectiveness, operation, policies, and practices of the Foreclosure Mediation Program and make such recommendations to the Nevada Supreme Court as it deems appropriate; and

(c) Identify state and federal programs related to the foreclosure of residences in Nevada, the modification of residential home loans or the resolution of mortgage foreclosures and make such recommendations to the Foreclosure Mediation Program and its mediators and participants as the Committee deems appropriate.

Rule 24. Other Programs. After establishing that the representative for the beneficiary of the deed of trust has the documents and the authority, the mediator shall discuss with parties whether borrower qualifies for HAMP, Hardest Hit Funds, Attorney General Settlement Programs, and any other program in existence at the time of the mediation when the homeowner meets the Program requirements.