

Since 1958  
**LEGAL AID CENTER**  
■■■■ of Southern Nevada

**FILED**

DEC 04 2013

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

To: Nevada Supreme Court.

Date: November 27, 2013

Re: ADKT 435 – Rule Changes for the Foreclosure Mediation Program

---

Legal Aid Center of Southern Nevada is the largest nonprofit legal aid organization in Nevada. In regards to foreclosure, our focus is to keep homeowners in their home if at all practical. In the Consumer Rights Project we assist homeowners who have elected mediation as well as represent homeowners through the Petition for Judicial Review. Over the last several years we have represented many homeowners that have elected mediation. We have taught the Homeowner Foreclosure Mediation Class to prepare homeowners for mediation. We have participated in the original Rules Committee to assist in developing the first set of rules for the Foreclosure Mediation Program.

The Legal Aid Center of Southern Nevada submits these comments regarding the rules changes.

- 1) **Proposed Rule 8:** The legislative intent of AB273 passed during the 2013 legislative session, was to encourage participation in the Foreclosure Mediation Program.

The proposed rules as currently written change the terminology from “election” to “enrollment.” But essentially they do nothing to encourage participation in the mediation program. Before we had an “election/waiver” form, and the proposed rules have an “enrollment/waiver” form.

The law clearly states that a homeowner can choose mediation by merely paying the fee. And although we recognize the need for a form we believe that a mere name change does nothing to promote participation in the program. At minimum, the waiver form should be different than an “enrollment” form.

The law expressly requires a waiver form. We should limit this form to the waiver.

The law also expressly requires a “notice” from the Administrator telling the homeowner that they will be enrolled in the program if they pay their share of the mediation fee (\$200.00). It would encourage the homeowner to participate if the homeowner could return copy of that notice with their \$200.00. That would encourage homeowners to participate.

RECEIVED  
DEC 02 2013  
TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
DEPUTY CLERK

18-36382

The rule should be written to encourage homeowners to enroll in the Foreclosure Mediation Program.

- 2) **Proposed Rule 12(8)(b)**: We object to this change that would allow the lender to provide “a copy of a recorded document” to satisfy the requirement for a certified copy.

The legislative history of AB149 clearly shows 1) the purpose of the “bill is to assist troubled homeowners” and 2) that the purpose of the document production requirement is to ensure that person with a vested interest in the process, the holder of the note, is the one that participates in the mediation process.

This rule change allows lenders to circumvent the intent of the mediation law. This rule seems to imply that ANY document that is recorded can be used to comply with the certified copy requirement.

Such a document should only be allowed if it is a copy of the document as it exists as of date the mediation. There are no safeguards in the rule to ensure that. These documents change as the note is sold, transferred or securitized. As of the date of the mediation, the overwhelming majority of the documents have been changed and appear differently than they would appear as of the date of inception. The note may be endorsed or an allonge may be attached. The Deed of Trust may have been stamped indicating that it was sold or assigned. In short, to determine the proper holder of the note or the deed of trust it is necessary to see the original or a copy as it exists today.

It should never apply to the note. Since the note changes as it moves through the process. A recorded copy of the note at the inception of the loan would be different after endorsements or allonges.

Even the Deed of trust would appear differently today than it does at the inception of the loan. Under Fannie and Freddie rules, additional information is added onto the note as it goes through the process. It may be bar-coded, or new ownership information appended.

What is needed for mediation is a certified copy of the note as it appears as of the date of mediation. If the lender wants to bring a copy, then someone must make a copy of the note as it exists today and certify that they did this. Allowing lenders to bring a copy from the recorders office that bears no resemblance to the actual document subverts the intent of the mediation law.

- 3) **Proposed Rule 12(7) and (8)**: Judicial Foreclosure. SB321

SB321 requires lenders to offer mediation in the event of a judicial foreclosure. We object to the proposed rules because they seem to exempt lenders, under a judicial foreclosure, from the document requirements of the current Foreclosure Mediation Program. They do not have to demonstrate that they are the proper party to come to mediation.

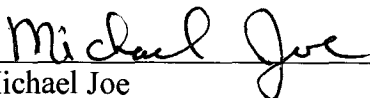
We believe the intent of the law was to allow homeowners to elect mediation under the program rules as they exist for all homeowners.

To provide a different set of rules for judicial foreclosures is both inefficient and undermines the intent of the law. The document requirements ensure that the lender participant is the proper person, that they are the holder of the note, and they are the proper party to offer or negotiate for a loan modification or other alternative.

The intent of SB321 was to allow homeowners to elect mediation in the same manner as homeowners could under non-judicial foreclosure.

- 4) Additionally, we are interested in participating during the hearing. We have notified the Clerk of our desire to participate.

Respectfully,

  
Michael Joe  
Legal Aid Center of Southern Nevada  
725 E. Charleston Blvd.  
Las Vegas, NV 89104  
702-386-1432  
[mjoe@lacs.nv.gov](mailto:mjoe@lacs.nv.gov)