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November 26, 2013

FILED

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

VIA OVERNIGHT DELIVERY:

Ms. Tracie K. Lindeman
Clerk of the Nevada Supreme Court
201 South Carson Street
Carson City, NV 89701

***Re: Comments on Proposed Amendments and Changes to the
Nevada Foreclosure Mediation Program Rules -
Hearing Scheduled for December 5, 2013***

Dear Ms. Lindeman:

Northwest Trustee Services, Inc.'s ("NWTS") acts as a foreclosure trustee in the state of Nevada. It is affiliated with the law firm of RCO Legal, which appears as counsel for lenders and servicers participating in the Nevada Foreclosure Mediation Program ("FMP"). Accordingly, we are familiar with the various statutes and rules associated with the FMP and would appreciate the opportunity to present some proposed amendments to the FMP Rules at the public hearing on the subject set for December 5, 2013.

In General

In general, we find the proposed amendments to the Rules to be considered on December 5, 2013 to be thoughtful and salutary. In particular, these proposed amendments provide clarity around several issues raised by the recent enactment of the Nevada Homeowner's Bill of Rights, Senate Bill 321 ("HOBR") and how to reconcile the HOBR and the FMP.

Proposed, Further Amendments to the FMP Rules

NWTS considers the proposed amendments to the FMP Rules to be beneficial to loan servicers, trustees, and borrowers because they resolve ambiguities about how to administer the FMP in light of the HOBR. In that same spirit, NWTS would respectfully suggest the following additional amendments to the proposed Rules:

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NWTS respectfully suggests that FMP Rule 2, subsection (3)(c) be amended to insert the words "a mistake" just before the word "oversight" in this subsection. This change is warranted in that
TRACIE K. LINDEMAN
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**Re: Foreclosure Mediation Program Rules, Proposed Amedments
Hearing Scheduled for December 5, 2013**

it clarifies that the FMP Administrator is authorized to ...”Take any action necessary to correct “clerical errors” in the Certificate arising from a **mistake**, oversight or omission for which the mediator or FMP staff is responsible.” Recently, the Administrator’s Staff issued a Certificate referencing a mistaken recorder’s document number, a recording number that did not correlate to the Deed of Trust being foreclosed on. Nonetheless, the Administrator’s staff declined to issue a new, correct Certificate and informed NWTs’s staff that **they** would need to file a rescission of the incorrect Certificate and then request a new, correct Certificate from the Administrator’s Office. This seems unnecessary and time consuming, and it is problematic to have a third party recording a rescission of a certificate issued by the Administrator’s Staff. While that act was authorized in this instance, it seems prudent to limit the ability to record rescissions of the acts of the Administrator’s Staff to that staff only. The existing Rule could be read to only specifically address errors of omission made by the Administrator’s staff. The proposed amendment would make it clear that affirmative mistakes made by the Administrator’s Staff should also be remedied by that Staff.

- **Rule 8, sub. (3)**

This subsection addresses the impact of rescission of a Notice of Default and Election to Sell (“NOD”) on the FMP. In short, if an NOD is rescinded, that rescission needs to be presented to the Administrator or his/her designee within ten days of recording. This provision is reasonable. However, this subsection as drafted provides that the mediation related to that NOD will proceed unless an agreement signed by all parties withdrawing from the FMP is submitted at the same time.

There does not seem to be a compelling reason to proceed to mediation related to a rescinded NOD, even in the absence of a written agreement from all parties. To foreclose a lender must have an NOD on record. If an NOD is rescinded, the foreclosure will not proceed. In the event of a new foreclosure after a rescission of an NOD, a lender or servicer will need to record a new NOD. That will carry with it the opportunity for a borrower to enroll in the FMP, so the opportunity to mediate will not be lost. Thus, conducting a mediation after rescission of the NOD which triggered the mediation seems unnecessarily time consuming and expensive. NWTs would respectfully suggest changing this subsection to read: **“If grantors or persons who hold title of record have timely 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 the County Recorder, the lender, servicer, trustee, or any of their agents shall, within 10 days of recording the Notice of Rescission, deposit with the Administrator, or designee, a copy of the recorded rescission.”**

In any event, NWTs would respectfully suggest that a new sentence be added which reads: **“For purposes of these Rules and the Foreclosure Mediation Program, rescission of a Notice of Default and Election to Sell will be deemed to also be a rescission of any related Notice of Sale.”** This change is necessary because the HOB requires lenders and servicers to rescind not just an NOD but also a Notice of Sale, under certain circumstances. However, there is no provision in Nevada law authorizing recording of a rescission of a Notice of Sale, and it is not clear how to accomplish such a rescission. Rescinding an NOD has the same practical impact on

**Re: Foreclosure Mediation Program Rules, Proposed Amedments
Hearing Scheduled for December 5, 2013**

a foreclosure that the rescission of an NOS would have, if such an action were authorized, and lenders or servicers should not be subject to any negative repercussions from a failure to rescind an NOS, since that action is not contemplated by existing law.

Proposed Rule 22, sub. (3)

The first sentence of Proposed Rule 22, subsection 3 reads, in relevant part: "All such petitions shall be filed within 30 days of the date that the party to mediation **received** the mediation statement from the administrator." NWTS would suggest changing the word "received" in this sentence to the phrase "was served with" the mediator statement. The change is warranted because the date the mediator's statement is **served** is easily ascertainable. It is much less clear when a party has **received**, or will actually receive, that statement.

Thank you for your consideration of these proposed amendments.

Very truly yours,

NORTHWEST TRUSTEE SERVICES, INC.

A handwritten signature in cursive script, appearing to read "Stephen T. Hicklin".

Stephen T. Hicklin, Esq.
General Counsel