

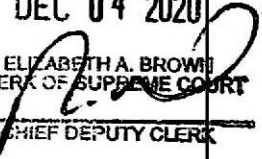
IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ADOPTION  
OF RULES FOR FORECLOSURE  
MEDIATION

ADKT 0435

**FILED**

DEC 04 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER AMENDING FORECLOSURE MEDIATION RULE 13*

WHEREAS, on September 25, 2020, Mark Gibbons, Associate Chief Justice, filed a petition in this court seeking to amend Foreclosure Mediation Rule 13 related to mediator qualifications and training; and

WHEREAS, this court considered public comment on the petition; and

WHEREAS, this court has determined that the proposed rule changes are warranted; accordingly,

IT IS HEREBY ORDERED that Foreclosure Mediation Rule 13 shall be amended and shall read as set forth in Exhibit A.

IT IS HEREBY FURTHER ORDERED that the rule amendments shall be effective 30 days after the date of this order. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and dissemination of

this order shall be conclusive evidence of the adoption and publication of the foregoing rule amendments.

Dated this 4<sup>TH</sup> day December, 2020.

Pickering, C.J.  
Pickering

Gibbons, J.  
Gibbons

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

Stiglich, J.  
Stiglich

Cadish, J.  
Cadish

Silver, J.  
Silver

cc: Eric Dobberstein, President, State Bar of Nevada  
Kimberly Farmer, Executive Director, State Bar of Nevada  
Home Means Nevada, Inc.  
Shannon M. Chambers, Nevada Labor Commissioner,  
Dept. of Business and Industry  
All District Court Judges  
All District Court Clerks  
All Court Administrators  
Clark County Bar Association  
Washoe County Bar Association  
First Judicial District Bar Association  
Legal Aid Center of Southern Nevada  
Nevada Legal Services  
Washoe Legal Services  
Southern Nevada Senior Law Program

Washoe County Senior Law Program  
Volunteer Attorneys for Rural Nevadans  
Nevada Association of Counties  
Nevada Bankers Association  
Nevada Land Title Association  
Administrative Office of the Courts

## EXHIBIT A

### AMENDMENT TO FORECLOSURE MEDIATION RULE 13

#### III. REQUIRED MEDIATION DOCUMENTS

##### **Rule 13. Documents to Be Presented for the Mediation.**

1. Immediately, or as soon as practicable after the mediator receives an assignment from the District Court, 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. The documents **[may]** shall be exchanged via **[~~electronic transmission as~~]** the state-sponsored portal unless otherwise authorized by the **[parties.]** District Court.

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 state-sponsored portal. 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.]~~ the state-sponsored portal. 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]~~ of the posting of the beneficiary's request on the state-sponsored portal 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]~~ the homeowner's 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. 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:]~~ homeowner through the state-sponsored portal:

(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) True and actual copies of any changes to said note, including the most recent loan modification, if one was utilized, and other agreements.

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

(e) While photocopies of the original or certified copy will be allowed for document ~~[exchange]~~ posting on the state-sponsored portal 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 13(8) and Rule 13(9).

(f) 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 13(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. 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:



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

(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

(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.

(b) 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.

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 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 an independent third party.

(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 District Court to issue a notice to Home Means Nevada, Inc., or its successor organization, 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 request the mediator recommend imposition of sanctions.

11. The documents shall be exchanged via the state-sponsored portal unless otherwise ordered by the District Court. The District Court may permit documents to be exchanged by means other than the state-sponsored portal if the homeowner is not represented in the mediation process and/or the homeowner certifies in the petition for foreclosure mediation assistance that use of the state-sponsored portal is not feasible. Relief from the utilization of the portal may only be authorized after the petition is answered for good cause shown.



~~[11.]~~ 12. The mediator may accept a 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.