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July 3, 2012

The Honorable Michael A. Cherry
Chief Justice of the Nevada Supreme Court
c/o Tracie K Lindeman
Clerk of the Supreme Court
201 South Carson Street
Carson City, NV 89701

RE: ADKT 435 May 15, 2012 Proposed Mediation Rule Changes

Dear Mr. Chief Justice:

I am writing on behalf of the millions of Nevadans who have been virtually ignored during the past four years as we all struggle to understand and respond to the economic crisis we are living through. I trust that you and the Associate Justices will give thoughtful consideration to the many proposed rule changes for the Nevada Foreclosure Mediation Program that you have received from many knowledgeable sources. I hope that you will also find my attached observations and recommendations helpful.

I would also like to be scheduled to speak during the public hearing scheduled for July 9th at 3:00 pm in Carson City. I will do my best to respect your preference that the public limit verbal comments to two or three minutes.

Sincerely,

Mary Law

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Attachment 1 – A Different Perspective and Observations
Attachment 2 – Proposed Fact Based Rule Changes

Attachment 1 RE: ADKT 435 May 15, 2012 Proposed Mediation Rule Changes

A DIFFERENT PERSPECTIVE AND OBSERVATIONS

As a financial analyst, planner and investor, I believe my broad based and generalist perspective of the economic crisis and the immediate issue of home foreclosures in Nevada may be of value to the Nevada Supreme Court Justices, members of the Administrative Office of the Court and the Foreclosure Mediation Program.

The first observation I would like to make is this: the majority of human beings don't like math. It is incumbent on those of us who do "like math" and use it to earn a living, do not abuse our talents in this field especially when it comes to the world of barter and exchange for goods and services. Unfortunately, some very bright and very talented folks developed extraordinary complex financial models for a host of purposes that were not tested or explained prior to being introduced into the workplace as the "next best step" in our increasing reliance on artificial intelligence instead of human intelligence. Using these models and doing a lot of fast talking, the unearned dependence on these models has led to "flash trading" and "flash crashing" of the Wall Street stock market and the ultimate "flash trading" and "flash crashing" of the delicate micro-markets for buying and selling real estate. People in positions of authority and oversight may have had doubts and questions about what was happening but for many reasons didn't do enough to stop the negative effect on the world economy and particularly the economy in the state of Nevada.

I have been concerned and frustrated since 2009 when programs began to be introduced with the good intention of "helping homeowners keep their homes". The insanity of it all is the false belief this could be done by replacing predatory sub-prime loans with more predatory sub-prime loans. By HUD definition, predatory simply means "a loan that deprives the homeowner of equity". Any qualified first level financial analyst could have looked at the examples of the programs being offered and informed the people in charge of those programs that focusing on "affordability" is not the solution, it is the cause of the crisis. Apparently, many senior level risk and business managers tried to do that but no one listened and we continue to be confronted with myths and mis-information about cause and cure.

Somehow in the middle of this confusion, individual homeowners and non-professional real estate investors were blamed, shamed and expected to pay for losses caused by risks they didn't intend to take and circumstances influenced by information they had no way of knowing. Most of us actually did our "due diligence" prior to signing our home loans but the best we could do wasn't enough to prevent being deceived by highly skilled and expert fraud and scam artist wearing expensive suits.

As taxpayers, we made a good faith effort to help the titans in the financial industry right the wrongs they had done. They have received TARP funds, immunity from prosecution for criminal offenses, and incentives to do what any other business would have to do at their own expense to succeed in a competitive market place.

This may have prevented big banks from failing but it did not stop big banks from taking undue advantage and reaping undue profits from their "retail" customers. We are the "retail customers" and are the ones who are not even allowed to invest in certain "mortgage backed securities" because they come with such high risk, require what is called "sophisticated investment wisdom" and more money than any of us will ever have. The "wisdom" is that the money they have is our money. We gave it to them when we paid interest on loans, contributed to pension plans, retirement plans and health care plans. We pay but don't get to play. Instead, retail customers and homeowners are expected to work miracles and turn one hard earned dollar into two so that we can recommit to pay twice or triple the value of what our homes are actually worth so that we will continue to support the bad habits of those at the top. This is not "wisdom", it's simply stupid. In light of all we know today and as crazy as it sounds, the truth is that the "responsible" homeowner is the one who is not paying their mortgage payment.

The questions we must ask today are not as much about the "cause" of all of our economic concerns but what we can do to turn the tide sooner rather than later.

The Nevada Foreclosure Mediation program had a marvelous "mission statement" which included the phrases "to tackle the foreclosure crisis head on" and "to help Nevada homeowners keep their homes". We may be the battle born state but after three years of "tackling" and being stonewalled by the big banks, we are battle worn. Many question the validity and vitality of the program. I believe they are wrong.

I believe the Mediation Program is an absolute necessity if there is to be any hope for Nevada homeowners to actual keep our homes. There are significant changes that must be made but the foundation is sound. At the last meeting of the Foreclosure Mediation Advisory Committee held June 21, 2012 it was obvious that everyone present from all sides is still hopeful there is a solution but they are very tired and therefore still unable to see the forest for the trees.

Their hope was expressed as a desire to have a "portal" for collecting and storing homeowner's financial information. There are many fatal flaws with that line of thinking but it would take an economist with the time and talent for making the complex simple and easy to understand to point them all out. The main one however is the same as noted above: wishful thinking isn't going to turn one dollar into two. The majority of Nevada homeowners simple do not have steady, reliable or rising incomes and no amount of data collection or manipulation is going to change that hard, harsh reality. In fact, the majority of our homeowners are aging baby boomers who are transitioning out of the workplace and are not being replaced with equal income earning families.

If collecting and analyzing homeowner's financial information down to the microcosmic level isn't going to fix the problem because it focuses on what we don't have, a better question becomes "what do we do with what we do have?"

A good place to start is with an open and honest evaluation of what is and what is not working before proceeding with further attempts to revise the Mediation Program rules and guidelines.

What's working: Good people are doing the best they can do with the time, tools and information they have been given. They need encouragement and support.

What's not working: A few bad people with undue power and influence are doing everything they can do to stop the good ones from doing the right things. They need a "proverbial slap upside the head" in the form of significant sanctions for failure to do what they are supposed to do.

Status: We are almost but not quite in "stalemate". Too many homeowners are still losing their homes and their equity in daily foreclosures and short sales. Other homeowners are living in involuntary servitude waiting for the bank to make their next move and either file a Notice of Default or take the alternative action of filing for a "judicial foreclosure". Some are already entangled in litigation that is too slow to be classified as "due process of law" and too expensive to be considered as the enactment of "justice for all".

The right thing for the millions of Nevada residents would be for all lenders to offer both principal and interest reduction home loans to everyone – including homeowners who are current and those who are not current on their loan payments. In other words, we need a "hard reset" or as one respected securities analyst put it "nobody is going to like it, but we need to declare a national chapter 11 bankruptcy". This doesn't mean everyone has to actually declare and seek relief through a traditional bankruptcy. It simply means that we could use the same procedures to separate "secured" from "unsecured" debt with the goal to be "forgiveness" of the unsecured portion and a fresh start based on a fair evaluation of both the real market value of the home and the actual investment made by both parties. The purpose of doing this is to have a basis for negotiating that is balanced instead of tilted unfavorably toward one side as it is today.

Under the current rules, the homeowner has to give up all of their rights and rely on what the banks claim is "proprietary information" so that the bank, not the homeowner, gets to decide what is right for the homeowner. The added insult to this injury is the homeowner gets blamed again when they prove once more that the banks don't know how to make these decisions and homeowners redefault on a deal that shouldn't have been made in the first place. Does anyone but me see the downward spiral that is happening here?

The flaw in the process is that the banks have been given all of the power and all of the say so regarding who qualifies for what and who doesn't. That isn't their job. Bankers are not the ones to decide for the homeowner what is in the homeowner's best interest and what they want to choose to do. These decisions are now and always will be the right and the responsibility of the homeowner. Clear separation of roles and responsibilities is a fundamental basic in all relationships and must be well documented in order to be restored.

A better process than what we have now would be for the current value of the home to be established first so that it could be equitably prorated among all investors including the primary investor (the homeowner). This may sound too complicated and frightening to actually implement but it really wouldn't be that hard to do and would certainly be better than the prolonged agony we all currently have to endure.

Additionally, the right thing for millions of Nevada residents would be for the Nevada Supreme Court Justices to use the full powers that have been invested in this panel of seven men and women to administer and to judge wisely on behalf of all people involved in the process– including bankers. The Nevada Legislature empowered our judges to take charge and write loan modification and order sanctions if necessary. It is now necessary.

We don't have time to waste waiting for cases to trickle up and down the halls of justice. We need clear and decisive "rules" that leave no doubt in anyone's mind that in the great state of Nevada we expect bankers to adhere not only to the letter of the law but to strive to adhere to the highest spirit of the law especially those concerning our property rights such as Truth in Advertising, Truth In Lending, Real Estate Settlement Procedures, the Uniform Commerce Code, Usury Laws and Fair Debt Collection.

The 1987 The Nevada Supreme Court restated what had been ingrained in our collective conscious since the founding of our country when they wrote "real property rights and its attributes are considered unique and the loss of real property rights results in irreparable harm" {Dixon v. Thatcher, 103 Nev. 414, 742 P.2d 1029 (1987) }

Property rights are so deeply embedded in all aspects of our western culture and traditions that they are even included in most if not all faith based doctrines and disciplines.

One example is found in the United Methodist Book of Discipline under "Our Doctrinal Standards and General Rules" in Article XV which reads:

"We believe God is the owner of all things and that the individual holding of property is lawful and is a sacred trust under God...All forms of property, whether private, corporate or public are to be held in solemn trust and used responsibly for human good under the sovereignty of God."

These words of wisdom date back to1784 and the beliefs of the founding father of the United Methodist church, John Wesley. I could continue to go back in time documenting the evolving sources of this thinking but that isn't the point. I don't believe that God will punish those who have broken the "solemn trust". I do believe God expects us to hold each other justly and fairly accountable and we aren't doing a real good job of that right now. At this moment in time, bankers believe they are our adversaries instead of our trusted advisors. They are free to make that choice but it isn't the smart choice.

The main thing is to acknowledge that irreparable harm has been done. Real money has been lost and it cannot be recovered. Real lives have been changed forever. The time and energy spent on defending our property rights instead of our other more productive pursuits cannot be returned. However, we can restore our core values and move forward basing our actions on timeless and essential best business practices and standards of excellent conduct. We can move forward with inspiration from the words inscribed on the seal of the Nevada Supreme court: Fiat Justitia – let justice be done!

I appreciate anyone who has taken the time to read this far and hope you realize that I'm not claiming to have all of the answers to all of the questions much less all of the solutions to all of the problems. I do hope that what I have written might spark innovative, creative and cooperative thinking that will serve to unite us in our common quest to leave this world a better place than it was when we arrived. I sincerely believe that working together with each other and for each other this is possible.

Respectfully submitted this 3rd day of July 2012

Mary Law

Attachment 2 RE: ADKT 435 May 15, 2012 Proposed Mediation Rule Changes

PROPOSED FACT BASED RULE CHANGES

Fact 1: ALL contracts come with an implied, if not written, good faith guarantee that they are subject to renegotiation. Changing terms and conditions is not merely usual and customary, it is necessary.

Action: Change the rules for "document exchange" to focus on traditional business standards of lenders making offers and borrowers making counter offers until a contractually binding "meeting of the minds" is reached. The purpose of mediation is to bring both parties to the table to conclude what could and should be a simple real estate deal. The only three variables that are relevant are 1) current and reasonable future value of the home 2) current non-usury interest rate 3) time period covered by the contract. In some circumstances, "sunk cost" i.e. cash invested by the homeowner and cash invested by the beneficiary, may also be relevant.

Fact 2: Homeowners owe nothing to anyone who cannot show proper documents to prove their claims.

Action:
Modify Rules 8, Rule 11(10.4 a through d) and other rules as necessary, so that the required beneficiary documentation proving chain of title and decision making authority is provided to the homeowner and the AOC, NVFMP Administrator or designee as deemed proper by the Justices so that prior to proceeding with any action against the homeowner this significant first step is completed. Note: Most homeowners are not qualified to determine authenticity or accuracy of these documents and require the protection of someone who does. Title company staff would normally perform this service and provide title insurance for a typical home sale and it's possible they could expand their services to cover "in place" authentication of a clean and clear chain of title as well. This extra step and the related expense has been caused by the lenders, their investors and or agents so it is therefore a cost they must bear.

Appropriate sanctions might be stated as:

If the holder of "notes and deeds of trust" can't prove legal chain of title before mediation or in 30 days or less after the servicer has been notified by the homeowner that they need help, the consequences are that any "beneficiary" will loose all right to have any claim on the property or other assets. The homeowner by default would then own the home free and clear.

If the holder can prove legal chain of title, they then must make available to the homeowner a "single point of contact" who is actually ready, willing and able to negotiate a principal reduction loan to market value at the prevailing 3.25% interest rate.

The big stinky elephant in the room that no one wants to discuss is the fact that for the 60% to 80% of loans that are owned or guaranteed by the GSE's Fannie Mae and Freddie Mac a gentleman named Edward DeMarco is apparently the only decider available to approve principal reductions and he isn't willing to do so. I don't know what the Nevada Supreme Court or Mediation Administration can do about that but perhaps you can figure something out that would encourage Mr. DeMarco to get on board with the plan that servers the greater good of all instead of his select few.

Another point that also needs to be made clear is that the claim "taxpayers" won't pay for principal reduction" is only a half truth. The rest of the truth is that we have no obligation to pay. The alternative is that the "banks" will have to sink or swim on their own. Big banks around the world are already being broken into smaller more manageable pieces and it is inevitable that it will happen to some U.S. banks as well.

Fact 3. Homeowners have no legal, moral or ethical obligation to submit personal, private and detailed financial information to anyone or any private entity.

Action:
Delete existing Rule 11 sections 1 through 6 and any other related rules that infringe on homeowners rights and personal responsibilities. Note: the so called "hardship" letter serves no useful purpose and is a gross violation of our basic human right for maintaining our privacy and dignity under duress. Credit reporting agencies provide sufficient information necessary for loan qualification evaluation and have eliminated the need for additional financial detail.

Ammend Rule 10 Section 1(b through e) to include the right of the homeowner to have available in person or by phone, anyone the homeowner deems to be a "trusted advisor" or "supporter". This may include qualified financial planners or counselors in addition to local realtors or merely a supportive friend. The desired goal: to protect the homeowner's rights and abilities to make a reasonable and well informed decisions without fear and coercion.

If there is a persistent and unchangeable belief that homeowners "must" submit financial details then at least add a rule that is consistent and in compliance with the existing laws, rules and guidelines that apply to all internet and hard copy forms of financial information collection and storage that include 1) the disclosure of the purpose for collecting this information, 2) the possible outcomes of providing the information and 3) the retention or destruction policy for protecting this information.

Fact 4. Homeowners have the right to have ALL options for keeping or surrendering their homes presented to them simultaneously with full, open, honest and easy to understand clarity.

Action:
Empower mediators to enforce the intent of the mediation as evidenced by the mediators statement that very clearly makes it appear to the homeowner that they will have the opportunity to discuss both retention and exit options. The AOC or FMP should retain the services of a qualified CPA firm to dispel the myths regarding "tax implications".

Clarify the role and responsibilities of the mediator. Apparently no one knows or agrees on the extent or limitations of the mediator's job.

Clarify the role and responsibilities of the district judges. Apparently no one knows or agrees on the extent or limitation of the judges powers to modify loans and or impose significant sanctions.

Fact 5: Homeowners have the right to rely on simple and straightforward language in both conversation and contracts. This right also needs to be extended to the documents explaining our laws and guidelines such as ADKT 0435.

Action:
Contract with a qualified and experienced business consulting firm to write the final rules and guidelines in a format that is "user friendly". We can all appreciate the rich heritage behind our archaic legal language and format but the current format is excessively convoluted and too confusing for the general public. The northern courts might benefit from leveraging the work done in the southern courts to make templates and forms more readily available. All might benefit from relaxing the rules of proper procedure just a little more so that folks like paralegals and support staff are not so afraid of "practicing law without a license" that they don't feel they can simply share basic information and answer typical questions.