FORECLOSURE MEDIATION RULES

**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 (1) default or (2) imminent default and a documented financial hardship related to an owner-occupied residence on or after December 2, 2016, and not sold prior to June 12, 2017.

 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 District Court of the $25 filing fee and $250 mediation fees and required documentation. Home Means Nevada, Inc., or its successor organization 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 11 hereafter, the Foreclosure Mediation Program is mandatory when the grantor or person who holds title of record of an owner-occupied residence timely files the Petition for Mediation Assistance.

 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. Reserved.**

 **Rule 3. Presiding Mediator.**

 1. *Authority.* A foreclosure mediation must be conducted by either a senior justice, judge, hearing master, or other designee. 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 District Court of the outcome of each mediation.

2. *Assignment of presiding mediator.* No later than 10 days after receipt of the Petition for Mediation Assistance, and the fees from both parties pursuant to Rule 1(2) herein, the District Court 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 District Court of a conflict requiring his or her recusal. Upon such notification, the District Court shall immediately and randomly select another mediator to conduct the mediation. The District Court may direct a mediator to cluster several mediations for a lender. Upon final selection of a mediator, the District Court shall send notice of the assignment to the parties.

 3. *Panel of mediators.* The Administrative Office of the Courts shall maintain a list of mediators by geographic area available to hear foreclosure mediations. The list shall include 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 and provide proof as part of the application process:

 (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 biennial continuing education of at least 4 hours and consisting of education in the area of real property law, including but not limited to the following: deeds of trust, promissory notes, loan modifications, Nevada foreclosure law, Nevada Supreme Court updates and rulings on foreclosure mediation, district court mediation process and procedures, use and operation of any Portal operated by Home Means Nevada, Inc. (or its successor), mediation process and procedures and such other related topics as the court may approve. Proof of this continuing education must be submitted with the application.

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

 5. *Appointment of mediators.*

 (a) The Administrative Office of the Courts shall solicit applications annually 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 2 years.

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

 (c) The Court-approved mediator must sign a Mediator Code of Conduct biennially 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 Mediator Code of Conduct 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 District Court has authority to take any action necessary to accommodate the parties affected by such action(s).

 8. The Administrative Office of the Courts 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.

 **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. Any additional fees must be paid by the appropriate party at filing in District Court. Payment by the grantor or person who holds title of record must occur by cashier check, money order, or other payment options allowed by the District Court. All payments must be made payable to the “District Court Clerk.” When available, electronic payment from an attorney’s trust account must be made payable to the “District Court Clerk.”

 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 District Court, 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 District Court, 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 District Court shall establish refund policies and procedures.

 **Rule 6. Deposits; Failure to Pay.**

 1. If a party to a mediation fails to pay all the fees required pursuant to NRS 107.086 as well as other applicable statutes, 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 who is in any (1) default or (2) imminent default and has a documented financial hardship, related to an owner-occupied residence on or after December 2, 2016. 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 or her 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 Home Means Nevada, Inc., or its successor organization, 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 Home Means Nevada, Inc., or its successor organization, on any residential property for which a Petition for Mediation Assistance 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. Mediation Assistance.**

 1. A grantor or person who holds the title of record of an owner-occupied residence may participate in the Foreclosure Mediation Program:

 (a) Upon recommendation of a housing counselor or housing agency approved by the United States Department of Housing and Urban Development (HUD) pursuant to Rule 8(2);

 (b) Upon receiving a notice of default and election to sell pursuant to Rule 8(3);

 (c) Upon service of a complaint for judicial foreclosure pursuant to Rule 9; or

 (d) Upon mutual agreement of the parties pursuant to Rule 10.

 2. Pre-foreclosure.

 (a) Prior to September 1, 2017, each beneficiary of a Nevada deed of trust and mortgage servicer shall submit to Home Means Nevada, Inc., or its successor organization, an address, phone number and email address for receiving a copy of the Petition for Foreclosure Mediation Assistance pursuant to this section on a form provided by the District Court or via electronic transmission as authorized by the parties.

 (b) The grantor, or person who holds title of record, may file a Petition for Foreclosure Mediation Assistance when he or she is in imminent risk of default and has a documented financial hardship. In order to proceed under this paragraph, the grantor must:

 (1) File the petition with the District Court;

 (2) Pay the fees required under Rule 1(2);

 (3) Submit a certification by a housing counselor or housing agency approved by HUD (HUD Referral Form) that the grantor:

 (i) Has a documented financial hardship; and

 (ii) Is in imminent risk of default.

 (4) Serve a copy of the petition upon Home Means Nevada, Inc., or its successor organization, and the beneficiary of the deed of trust by certified mail, return receipt requested or, if authorized by the parties, by electronic transmission.

 (c) As soon as Home Means Nevada, Inc., or its successor organization, receives all documents specified in Rule 8(3)(b), it will notify the mortgage servicer and every other person with an interest as defined in NRS 107.090 of the petition via certified mail at the address provided pursuant to Rule (8)(3)(a). If the beneficiary has not registered with Home Means Nevada, Inc., or its successor organization, then Home Means Nevada, Inc., shall make the best effort to contact the mortgage servicer and persons with an interest using the contact information on the HUD Referral Form.

 (d) Within 10 days of notification by the Home Means Nevada, Inc., or its successor organization, of the petition, the mortgage servicer and any person with an interest shall prepare and submit an answer, the mediation fees required in Rule 1(2), and any other fees charged by the District Court. Any delay by the beneficiary in providing the required documents and information to the District Court shall extend the time for mediation set forth in Rule 1(2).

 (e) As used in this section:

 (1) “Financial hardship” means a documented event that would prevent the long-term payment of any debt relating to a mortgage or deed of trust secured by the owner-occupied housing, including, without limitation:

 (i) The death of the borrower or co-borrower;

 (ii) Serious illness;

 (iii) Divorce or separation;

 (iv) Job transfer of more than 60 miles, while maintaining the same home as primary residence;

 (v) Job loss or a reduction in pay; or

 (vi) Any other event that would prevent long-term payment.

 (2) “Imminent risk of default” means the inability of a grantor or the person who holds the title of record to make his or her mortgage payment within the next 90 days.

 3. Notice of default.

 (a) Any trustee or other person presenting a notice of default and election to sell for recording in the Office of a County Recorder shall, no later than 10 days from presenting the Notice of Default for filing, send by certified or registered mail, return receipt requested, or when available, electronic notification with prior authorization by parties, to the grantor or person who holds title of record of an owner-occupied residence, copies of the Petition for Mediation Assistance in the manner provided for by NRS 107.086(2).

 (b) The mediation process under these rules shall be initiated by the filing of a Petition for Mediation Assistance and delivery by certified mail, return receipt required or by electronic transmission if authorized by the parties by a grantor or person who holds title of record of an owner-occupied residence on “forms” provided by the District Court and payment of the fees required by Rule 1(2) herein.

 (1) 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 Petition for Mediation Assistance and deliver it, along with the fees required under Rule 1(2), to the District Court.

 (2) The eligible participant shall also mail a copy of the Petition for Mediation Assistance to Home Means Nevada, Inc., or its successor organization, and to the trustee, by certified or registered mail, return receipt requested or by electronic transmission if authorized by the parties.

 (3) The trustee shall, within 10 days of notice of the receipt of the Petition for Mediation Assistance, deposit with the District Court the signed answer for mediation; a copy of the recorded Notice of Default; the mediation fees required in Rule 1(2) herein, including any fees received from the grantor, or any other fees charged by the District Court. Any delay by the trustee in providing the required documents and information to the District Court shall extend the time for mediation set forth in Rule 1(2).

 (c) If grantors or persons who hold the title of record have timely filed the petition 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 District Court 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. Should the District Court not receive the signed agreement within the time provided, the mediation process will continue as provided herein.

 (d) Failure by an eligible participant to timely file a Petition for Mediation Assistance with the District Court or to attend and participate at a mediation scheduled under these rules shall result in the District Court providing a notice to Home Means Nevada, Inc., or its successor organization, which shall issue a certificate stating no mediation is required, and that a foreclosure sale may be noticed according to law.

**Rule 9. Judicial Foreclosures.**

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

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

 (1) Contact information that 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) Two copies of a Petition for Mediation Assistance from the District Court indicating the grantor or person who holds title of record will be enrolled to participate in mediation if he or she pays his or her share of the filing and mediation fees pursuant to Rule 1(2) and files the Petition for Mediation Assistance with the District Court; and

 (4) One envelope addressed to the plaintiff and one envelope addressed to Home Means Nevada, Inc., or its successor organization, which the grantor may use to comply with the provision of subsection 2 of this Rule.

(b) Submit a copy of the complaint to Home Means Nevada, Inc., or its successor organization.

2. If the grantor or the person who holds title of record of an owner-occupied residence wishes to complete mediation, he or she shall not later than the date on which an answer to the complaint is due, initiate mediation by:

(a) Filing the Petition for Mediation Assistance with the District Court;

(b) Paying the fees required under Rule 1(2); and

(c) Returning a copy of the petition to the plaintiff by certified mail, return receipt requested;

(d) Submit a copy of the petition to Home Means Nevada, Inc., or its successor organization, by certified mail, return receipt requested.

3. If the grantor or the person who holds title of record files the Petition for Mediation Assistance, then the plaintiff, upon receipt of the petition, shall file an answer with the District Court, along with the mediation fee. At this point, the foreclosure action will be stayed until the outcome of the mediation.

4. At the conclusion of the mediation, the mediator shall prepare and submit to the District Court the outcome of the mediation.

5. Upon receipt of the mediator’s statement, the District Court shall enter an order (1) describing the terms of any loan modification or settlement agreement, (2) dismissing the petition, or (3) detailing decisions regarding the imposition of sanctions as the District Court determines is appropriate.

**Rule 10. Option for Inclusion.**

1. For any owner-occupied property located in Nevada where a Notice of Default is recorded after December 2, 2016, 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 District Court.

2. For any owner-occupied property located in Nevada where a Notice of Default is recorded and the homeowner has failed to file a Petition for Mediation Assistance within the time frame pursuant to Rule 8, the homeowner and beneficiary of the deed of trust may agree in writing to participate in the Foreclosure Mediation Program.

3. Upon acceptance of the written stipulation, filing of the Petition for Mediation Assistance, and receipt of the required fees, the District Court shall appoint a mediator and the mediation process shall be conducted consistent with these rules.

**Rule 11. Exceptions to Enrollment.**

1. All grantors or persons who hold the title of record who have timely filed a Petition for Mediation Assistance 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 Chapter 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. After enrollment, the grantor must provide notice to the appropriate District Court within 5 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 District Court upon an order closing or dismissing the case, or granting relief from the automatic stay, all grantor fees previously paid shall be forfeited. Lender fees will be refunded. The grantor may refile a Petition for Mediation Assistance within 30 days of the order. A $500 fee with $250 paid by the grantor and $250 paid by the lender, unless otherwise stipulated, as well as all other associated filing fees, will be required upon the subsequent request for mediation.

**Rule 12. 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. All beneficiaries of a deed of trust that are seeking to foreclose against an eligible participant who has timely filed a Petition for Mediation Assistance shall participate in Foreclosure Mediation Assistance and be represented at all times during 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. 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 13 herein, the beneficiary must bring to the mediation the original or a certified copy of the deed of trust, the mortgage note, each assignment of the deed of trust and each assignment and endorsement of the mortgage note, and any documents created in connection with a loan modification.

(b) Eligibile 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 respresentative must be either:

 (1) An attorney who is licensed to practice law in Nevada;

 (2) A person who is licensed to provide services as described in NRS Chapter 645F.310; or

 (3) 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 himself or herself. In any circumstance where the eligible participant retains representation, his or her representative must meet the qualifications provided in Rule 12(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 12(1)(a) and (b).

**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 shall be exchanged via the state-sponsored portal unless otherwise authorized by the 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 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 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 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 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 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 authorized 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 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 Option (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 deed of trust in 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.

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.

**IV. MEDIATION PROCEDURES**

**Rule 14. 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 District Court. 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 District Court may allow the mediation to be held at the courthouse. The District Court will notify the presiding mediator of the place and time available for the mediation.

**Rule 15. 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 District Court of the mediation fees, including the filing fees for the petition, 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 19 herein. *[personal note-should be Rule 20]*

2. 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 request the list of documents that are required for the beneficiary of the deed of trust to make a final decision about loan modification, short sale, or other alternatives to foreclosure. The mediation shall be scheduled to conclude within 90 days of mediator assignment.

3. 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 District Court. Mediations shall take place between the hours of 8 a.m. and 5 p.m. Pacific Time, Monday through Friday (excluding legal holidays), unless otherwise agreed upon by the parties.

**Rule 16. 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 District Court 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 additional continuance may be permitted following that 30-day period for no more than 15 days.

3. The District Court 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 17. 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 18. 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 District Court may issue an order allowing for the certificate on the day of the certificate issuance date. Nothing herein prevents a party from invoking Rule 24.

(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 may issue a certificate.

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 an appeal. The appeal 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 19. 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 the parties whether the borrower qualifies for HAMP, Hardest Hit Funds, Attorney General Settlement Programs, or any other program in existence at the time of the mediation when the homeowner meets the program requirements.

**Rule 20. Mediation Conclusion.**

1. Within 10 days after the conclusion of the mediation, the mediator must file with the District Court the outcome of the mediation. 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.

2. Following submission of the mediator’s statement, within 10 days, either party may submit a request for appropriate relief.

3. Upon receipt of the mediator’s statement and any request for relief, the District Court shall enter an order (1) describing the terms of any loan modification or settlement agreement, (2) dismissing the petition, or (3) detailing decisions regarding the imposition of sanctions as the District Court determines is appropriate.

**Rule 21. Interpreter Services.**

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

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

**Rule 22. Confidentiality.**

1. All documents and discussions presented during the mediation shall be deemed confidential and inadmissible in any subsequent actions or proceedings, **except** in judicial foreclosure actions 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 23. Facsimiles.**

1. A facsimile of the Administrator’s or District Court Judge’s signature for purposes of filing Foreclosure Mediation Program documents with the County Recorder may be accepted as an original.

**Rule 24. Appeals.**

Appeals of the decisions of the District Court will follow appropriate civil appeals processes.

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