

# The Nevada Foreclosure Process

- **Typical Nevada Foreclosure Time Frame:** *Approximately 120 days.*
- **Judicial Foreclosure Available?** : *Yes.*
- **Non-Judicial Foreclosure Available?** : *Yes.*
- **Types of Security Instruments Utilized:** *Mortgage and Deed of Trust.*
- **Right of Redemption Period Following Foreclosure?:** *Yes, in a judicial foreclosure only.*

Nevada foreclosure laws provide for both judicial (*i.e. court ordered*) and non-judicial foreclosures in the event that a borrower defaults on the obligations contained within a mortgage or deed of trust. Most foreclosures within Nevada are of the non-judicial variety and are conducted by a trustee at the direction of the lender pursuant to a power of sale contained within a deed of trust.

However, if the mortgage or deed of trust does not include such a power of sale clause or similar stipulation, a lender must seek a judicial foreclosure; requiring the lender to file suit against the defaulted borrower in court to obtain an Order of Sale and a Decree of Foreclosure. In such cases, the court has the option of awarding a right of redemption in favor of the defaulted borrower for period of up to one year depending upon various circumstances.

Non-judicial foreclosures in Nevada must be conducted in strict accordance with the terms and conditions as set forth in the power of sale clause and governing statutes.

The following is an overview of the Nevada's non-judicial foreclosure process:

1. Upon a default of the borrower's obligations under the terms of a Deed of Trust, the lender (or the trustee at the direction of lender) must execute a **Notice of Default and Election to Sell**. This Notice must describe the deficiency in performance or payment and may contain a notice of intent to declare the entire unpaid balance due if acceleration is permitted by the obligation secured by the deed of trust. Said Notice must be
  - a.) recorded in the public records of the County in which the real property is situate;
  - b.) sent via certified or registered mail to the borrower and to the current property owner at their addresses, if known; otherwise to the address of the property; and
  - c.) sent via certified or registered mail to each holder of a subordinate recorded lien against or a recorded interest in the subject property within 10 days of the recording and mailing described above.

Prior Nevada law provided that either the borrower or the holder of a subordinate recorded lien or interest had a period of 35 days to cure the deficiency (typically requiring the repayment of all back payments, trustee's fees and allowable expenses) and reinstate the Deed of Trust following the recordation and mailing of the Notice of Default and Election to Sell. **However, for defaults recorded on or after July 1, 2009 (in the case of owner-occupied housing), the period for reinstatement has been extended until 5 days prior to the date of the foreclosure sale.** (*NRS 107.080 and 107.090, Assembly Bill 147*)

2. After the expiration of a 3 month period following the recordation and mailing of the Notice of Default and Election to Sell, the Trustee shall execute a **Notice of Trustee's Sale**, which shall set forth the time and place of the sale. The Notice of Trustee's Sale must be:
  - a.) recorded in the public records of the County in which the real property is situate;
  - b.) sent via personal service or certified or registered mail to the original borrower, the current property owner at their addresses, if known; otherwise to the address of the property; and (at least 20 days prior to the sale) to each holder of a subordinate recorded lien against or a recorded interest in the subject property;
  - c.) posted for 20 successive days in 3 public places of the township or city where the property is situated; and

d.) published 3 times, once each week for 3 consecutive weeks, in a newspaper of general circulation in the county where the property is situated.  
(NRS 107.080 and 107.090)

3. The Trustee's Sale of the subject property must be made at the exact time, date and location set forth in the Notice of Trustee's Sale and must be in the form of an auction to the highest bidder. The sale may be postponed by oral proclamation up to 3 times, after which any subsequent sale must be made by after a new notice as described in paragraph 2, above. If no bids are received for the full amount due under the deed of trust, the foreclosing lender may purchase the subject property by credit bid. The successful purchaser will be entitled to receive a **Trustee's Deed Upon Sale**. A Trustee's Deed Upon Sale vests ownership of the subject property in the purchaser without equity or right of redemption by the prior owner or by junior lienholders.  
(NRS 107.080)

**Nevada Revised Statutes have been amended in 2009 by the following identified Assembly Bills and Senate Bills, providing in part:**

- (a) AB 149, amending Chapter 364 of Nevada Revised Statutes, effective July 1, 2009, provides among other matters that written notice of an Election/Waiver of Mediation Form must be provided to the Homeowner when foreclosing on owner occupied residential property. In addition, the Bill provides that no foreclosure may proceed on any owner occupied residential property in which a Notice of Default and Election to Sell was recorded on or after July 1, 2009, until the Trustee/Lender has obtained and recorded a Certificate issued by the Foreclosure Mediation Program Administrator indicating that no mediation is required or that a mediation has been completed. A copy of the Bill may be obtained from the following web site:

<http://www.leg.state.nv.us/75th2009/Reports>

Additional information regarding Nevada's Foreclosure Mediation Program can be found at the following web site:

<http://www.nevadajudiciary.us/index.php/foreclosuremediation>

- (b) AB 140, amending Chapter 484 of Nevada Revised Statutes, effective October 1, 2009 as to sections 1 thru 9, provides among other matters that a separate Notice of Trustee's Sale must be served on any tenant in actual occupation when foreclosing on owner occupied residential property. A copy of the Bill may be obtained from the following web site:

<http://www.leg.state.nv.us/75th2009/Reports>

- (c) AB 361, amending Chapter 248 of Nevada Revised Statutes, effective October 1, 2009, provides among other matters that a Lender conducting a foreclosure sale affecting a unit within a "Common Interest Community" is required to provide contact information of the foreclosing lender to the Association representing the Common Interest Community no later than 30 days after the recordation of a Notice of Default and Election to Sell pursuant to Nevada Revised Statutes, Section 107.080. A copy of the Bill may be obtained from the following web site:

<http://www.leg.state.nv.us/75th2009/Reports>

- (d) SB 128, amending Chapter 107 of Nevada Revised Statutes, effective July 1, 2009, provides among other matters that that a Trustees Deed upon foreclosure must be recorded in the office of the county recorder within 30 days following a foreclosure sale. A copy of the Bill may be obtained from the following web site:

<http://www.leg.state.nv.us/75th2009/Reports>

# About the Nevada Foreclosure Mediation Program

## **CREATING THE PROGRAM**

Assembly Bill 149 was passed by the Nevada Legislature during the 2009 session and signed by Governor Jim Gibbons. Its purpose is to address the foreclosure crisis head-on and to help keep Nevada families in their homes.

This law establishes a Foreclosure Mediation Program for owner-occupied residential properties that are subject to foreclosure notices – formally known as a *Notice of Default and Election to Sell* – filed on or after July 1, 2009. To qualify for the mediation program, a property must be a homeowner's primary residence and located in Nevada.

## **WHAT YOU NEED TO KNOW ABOUT FORECLOSURE MEDIATION**

Mediation is an alternative method to help parties resolve disputes by agreement with the help of trained mediators. Mediating a foreclosure action has its advantages. It is fast, inexpensive, and offers a flexibility that more formal processes do not.

Home foreclosures impact both the homeowner and the lender. Homeowners do not want to lose their homes and mortgage lenders do not want to be in the real estate business.

Both sides may benefit through foreclosure mediations.

## **WHY SHOULD YOU MEDIATE?**

**You can play a major role**, with the help of a trained mediator, in deciding the outcome of your individual dilemma. Mediation is a give-and-take process in which the parties work to reach a mutually acceptable resolution to a mutual problem. Resolutions reached through foreclosure mediations are compromises that offer advantages to lenders as well as homeowners.

If you have the ability to meet the other party half way, everyone may benefit.

- Can you, as a homeowner, make your mortgage payments if your home loan is modified?
- Can you, as a lender in today's real estate market, modify a loan to the extent that the homeowner can perform?

If the answers are YES, the Foreclosure Mediation Program may be able to save another Nevada home.

## **WORKING FOR A RESOLUTION**

Sometimes the parties will not be able to reach an agreement, even with the help of a trained mediator, and the home will be lost to foreclosure. That is a reality in today's economy.

But by working together to explore the various options, the hope is that a homeowner can avoid foreclosure and continue living in the home they purchased. If the mediation is successful, the homeowner may also avoid the stigma of foreclosure that can affect a person's ability to obtain credit for years to come.

However, if a homeowner does not have the financial ability to make mortgage payments, even if the loan is modified, foreclosure may ultimately result.

## **MEDIATION IS QUICK AND EFFICIENT**

Proposed Supreme Court rules limit mediations to four hours and require that mediations be conducted within 90 days of a foreclosure notice being filed.

Those same rules also require that all decision makers be present for the mediations. That means, if an agreement is reached, it can be finalized quickly.

## **MEDIATION IS COST EFFECTIVE**

Other than the filing fee paid by the lender, the cost of mediation is \$400, shared equally by the homeowner and the lender. Each party must pay their \$200 portion prior to the mediation.

A lawyer is not required to be present with you in the mediation process, but each side is welcome to have an attorney represent them.

## **AT THE CONCLUSION OF THE MEDIATION ...**

Within 10 days of the mediation, the mediator will prepare the necessary Statement of Agreement or Non-agreement and serve it on the parties. The original will be filed with the Foreclosure Mediation Program Administrator and the mediation will be closed. If there is an agreement, the parties will execute the appropriate documents. If there is no agreement, the parties will be free to pursue other legal remedies.

*(Source: Supreme Court of Nevada)*

# THE NEVADA FORECLOSURE PROCESS

(For Owner-Occupied Homes – Effective July 1, 2009)

