



State of Nevada Foreclosure Mediation Program

March 15, 2012

Introduction

Chairman Capito, Ranking Member Maloney and members of the subcommittee, thank you for the opportunity to appear before you today. My name is Verise Campbell, and I am the Deputy Director of the State of Nevada Foreclosure Mediation Program. Prior to joining Nevada's Administrative Office of the Courts, I served as the Administrator for a large-scale international development company, as the Director of Administration for the Cosmopolitan Resort and Casino, and as a Deputy Municipal Clerk for a southern New Jersey Municipality.

The State of Nevada appreciates your willingness to come to our state and learn first-hand the nature of our foreclosure crisis. We hope you will come away with an appreciation for the hard work of many individuals who are providing help and assistance to homeowners in our state on a daily basis.

Background

Nevada has endured the nation's highest foreclosure rate for more than five years. Although the root cause of the problem is complex, two key factors seem to remain constant: high unemployment and negative equity. Nevada leads the nation in the number of negative equity mortgages, which are those home loans that are "underwater" or "upside down." It is estimated as many as 63 percent of Nevada homeowners are underwater and unable to refinance due to negative equity. In addition, it is estimated that Nevada has the nation's largest share of outstanding subprime and adjustable rate mortgages. These loans continue to adjust to new rates, and because of negative equity, borrowers are unable to refinance.



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Nevada's unemployment rate exceeds 12 percent and continues to fuel uncertainty in the housing market. The prospect for 30-day, 60-day and 90-day defaults remains high. High unemployment and a collapse of the housing market has left many Nevadans underwater; and many homeowners unable to pay their mortgages. All of these factors have and continue to make finding solutions to the foreclosure crisis a high priority for many groups who are working together in Nevada to tackle the problem.

Last weekend the State of Nevada Foreclosure Mediation Program was honored to participate in the Home Means Nevada event hosted by Nevada Governor Brian Sandoval. This event attracted more than 4,000 homeowners in Las Vegas to meet with lenders to discuss loan modifications and other alternatives to foreclosure. Such events are now commonplace in our state, but that was not always the case.

Foreclosure Mediation in Nevada

In 2008, homeowners began reporting difficulty in meeting with lenders to discuss their reasons or hardships that led to a default. In response to the foreclosure crisis, the 2009 Nevada Legislature passed AB 149, establishing the State of Nevada Foreclosure Mediation Program, which amended NRS 107.080 and 107.086, Nevada's non-judicial foreclosure statutes. The Nevada Supreme Court was tasked by the legislature with adopting rules to govern the Foreclosure Mediation Program, as well as designating an entity to serve as the mediation program administrative entity. The Administrative Offices of the Courts was chosen as that administrative entity. The primary focus of the Foreclosure Mediation Program is to provide a forum to bring eligible homeowners and lenders together to discuss alternatives to foreclosure in accordance with the governing foreclosure mediation statutes and rules.

The law creating the program, AB 149, specifically directed the State of Nevada Foreclosure Mediation Program to provide an opportunity for homeowners and lenders to meet and discuss foreclosure alternative options, whether it is a loan modification or an agreement to relinquish the home through a short sale or other alternatives.



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AB 149 went into effect July 1, 2009 and my first day on the job was July 1, 2009. The entire infrastructure of the State of Nevada Foreclosure Mediation Program had to be built, including establishing offices and hiring staff, creating forms, procedures and processes, and most importantly, identifying and establishing a pool of mediators. Despite the odds, our program held its first mediation session six weeks later. Through community, government and public collaboration, much work was done in those six weeks to develop our program.

The program initiated ongoing training opportunities for foreclosure mediation program mediators in partnership with staff from the United States Department of Housing and Urban Development, Freddie Mac, the United Trustee Association, as well as local agencies including the Clark County Neighborhood Justice Center, Legal Aid Center of Southern Nevada, Financial Guidance Center (formally known as Consumer Credit Counseling), the Nevada Foreclosure Prevention Task Force, and Nevada Legal Services. Professional backgrounds of the State of Nevada foreclosure mediators include senior judges and settlement conference judges, attorneys, real estate professionals, and professional mediators.

These training opportunities expose the mediators to current legislation, Supreme Court opinions relating to the Foreclosure Mediation Program, government and lender mortgage assistance programs, foreclosure fraud, homeowner education programs and mediation skills. The State of Nevada Foreclosure Mediation Program has worked with private lenders, Fannie Mae and HUD-approved counseling agencies to develop our curriculum. The Program enlists the feedback and suggestions from organizations such as those mentioned on a regular basis regarding the progress, challenges and changes of the Program to develop sustainable solutions. These partnerships continue to benefit our program and the participants of foreclosure mediation.



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Since September 2009, the program has held nearly 16,000 mediations with more than 11,000 of those mediations resulting in no foreclosure. As a non-judicial state, Nevada foreclosures filings typically begin with the filing of a Notice of Default with a County Recorder and conclude with a trustee sale. Once a notice of default is filed, a homeowner of an owner-occupied residential property in Nevada can choose to participate in our program, which essentially gives the homeowner an opportunity to actively participate in meaningful dialogue with their respective lender. Foreclosure mediation is cost effective and efficient.

To participate, eligible homeowners must submit an election form along with a non-refundable \$200 mediation fee. Once the homeowner indicates they wish to mediate, a matching \$200 fee is submitted to the program by the respective lender. Eligible homeowners also may choose to waive participation in the program. Homeowners and lenders usually meet within a six weeks after first contact with their assigned mediator.

Beneficiary Compliance Tied to Success

The success of our program is tied directly to the legislation. Certain requirements are placed on the lender once a homeowner requests mediation and these requirements dictate if a beneficiary will be allowed to proceed with foreclosure.

The law requires beneficiaries to: (1) attend the mediation; (2) bring each document required, including the original or a certified copy of the deed of trust, the mortgage note, and each assignment and endorsement of the deed of trust or mortgage note, as well as a current appraisal or brokers price opinion and confidential proposal; (3) participate in good faith; and (4) demonstrate the authority or access to a person with the authority to modify the loan.

If the documents are not produced, then the program will not allow the beneficiary to proceed to the trustee sale. In the first six months of our current fiscal year (FY 2012), between July 2011 and December 2011, beneficiaries were unable to produce the proper documents 36 percent of the time. The requirement to produce the proper documents took on added significance as the revelation of document robo signing by a number of



banks demonstrated a breakdown in the documentation process. Our requirement to produce original or certified documents ensures accountability on behalf of the lender.

Failure to comply with these requirements can result in sanctions on the beneficiary. A District Court judge can impose a fine and ultimately the beneficiary is unable to foreclose on the home. This was reaffirmed in two 2011 Nevada Supreme Court rulings, *Passillas v. HSBC Bank USA* and *Leyva v. National Default Service Corp.* In both of these cases the Nevada Supreme Court unanimously held that lenders must strictly comply with the Foreclosure Mediation Program's production of documents provisions, as well as the other statutory requirements. Failure to do so is sanctionable by the district courts. Failure by beneficiaries to comply with the statutory requirements will prohibit the beneficiary from concluding the foreclosure process.

Ironically, the requirement for proper documents has nearly halted the filings of notices of default in Nevada. In October 2011 a new law, AB 284, went into effect requiring a beneficiary to file a copy of the deed of trust, the mortgage note, and each assignment and endorsement of the deed of trust or mortgage note with the notice of default filing.

Last month, the Mortgage Bankers Association reported Nevada showed a large uptick in 90-day delinquencies. For the past few months, banks have indicated the requirements of AB 284 are too difficult with which to comply. Consequently, Nevada's foreclosure problem is masked as homeowners go into default, yet a notice of default is not filed by the bank. In September 2011, nearly 5,000 notices of default were filed in the state. The following month that number dropped to 40.

Foreclosure Mediation Furthers Communication

Bank and beneficiary representatives have indicated in recent weeks they will soon begin filing notices of default again in Nevada after a review of their documentation and the announcement of the federal agencies and state attorneys general historical mortgage servicing settlement in February 2012. Although Nevada's notices of default have climbed from the record low of 40 filings reported in October 2011, they are still relatively low (fewer than 400 for the month of February 2012).



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This is important for many homeowners in Nevada because the Foreclosure Mediation Election Form is included in the notice of default packet. In most instances, the Foreclosure Mediation Program offers the first and only opportunity for homeowners to meet face-to-face with a lender. Without the filing of a notice of default, it is up to the beneficiary to reach out and help homeowners before they reach default status. If this is not done, homeowners are left with the worry and frustration of not being able to meet their obligations or find a way to gracefully exit from the obligation.

Most homeowners want to resolve a default. Homeowners want alternatives to foreclosure and they want banks to consider loan modification through the various government and lending programs available to them. While the major lending institutions have instituted programs to assist homeowners, I often wonder if there is a unified plan throughout these vast and multi-layered organizations to reformulate policies and procedures and to create systems that will assist the organizations with compliance with Nevada's foreclosure laws and other related legislation across the nation.

The problem of communication between lender and homeowner remains due to the overwhelming number of homeowners in default or in danger of default. While banks are reaching out to homeowners, the numbers are overwhelming and homeowners are still finding it difficult to reach someone who can negotiate a loan modification or refinance. HUD-approved counseling, homeowner education, and programs such as the State of Nevada Foreclosure Mediation Program break down barriers to communication and bring parties together to discuss solutions.

Our program is identified as a model for four (4) other foreclosure mediation programs throughout the country including: Washington, DC and the states of Hawaii, Washington, and we learned just this week of Oregon. These programs have modeled their foreclosure mediation legislation after the Nevada law. We did not invent foreclosure mediation, and in fact borrowed from a number of other programs, including those in Ohio, Connecticut, and Philadelphia. We recognize that this is an



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ongoing process of learning and sharing as we work toward a common goal of reducing the number of foreclosures in Nevada and nationwide.

Conclusion


In closing, participation by homeowners and lenders in mediation programs has proven to be a successful method in bringing homeowners and lenders together to discuss alternatives to foreclosure and keep homeowners in their homes where possible. Our Program, however, is part of the foundation of what is required to rebuild the American dream of homeownership. We as a community, as a state, as a nation must keep the focus on strengthening foreclosure mediation program efforts around the country; improving communication and restoration of faith by the American people in mortgage and lending institutions; dramatically decrease unemployment and stabilize the housing market to truly make the necessary strides to turn this crisis into a triumph. Albeit difficult, it is not impossible if we remember that we all in this crisis, together. We are working hard together to build new “American Dreams” that still include home ownership.

Thank you for allowing me to address this committee.

**United States House of Representatives
Committee on Financial Services**

"TRUTH IN TESTIMONY" DISCLOSURE FORM

Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

1. Name: Verise V. Campbell	2. Organization or organizations you are representing: State of Nevada Foreclosure Mediation Program
3. Business Address and telephone number: <div style="background-color: black; width: 200px; height: 40px; margin: 10px 0;"></div>	
4. Have <u>you</u> received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify? <div style="display: flex; justify-content: space-between;"><input type="checkbox"/> Yes<input checked="" type="checkbox"/> No</div>	5. Have any of the <u>organizations you are representing</u> received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify? <div style="display: flex; justify-content: space-between;"><input type="checkbox"/> Yes<input checked="" type="checkbox"/> No</div>
6. If you answered .yes. to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets. <div style="height: 150px;"></div>	
7. Signature: <div style="text-align: center; font-size: 2em; color: blue;"></div>	

Please attach a copy of this form to your written testimony.