

LEGAL ISSUES IN FORECLOSURE

April 5, 2011



OBJECTIVE

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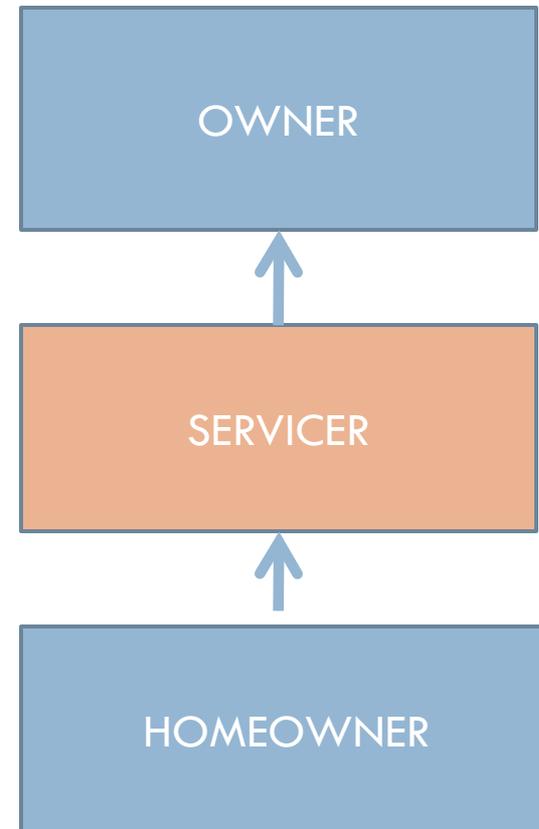
- ▣ Foreclosure in NV
- ▣ Nevada Foreclosure Mediation Program
- ▣ Tax Issues – Foreclosure/Short Sales
 - Strategic Default
- ▣ Pending Legislation
- ▣ Bankruptcy



The Players

3

- The Servicer
 - ▣ Collects \$ from you
 - ▣ Acts on behalf of the owner
 - ▣ Contract (PSA)
 - ▣ Foreclosing Trustee



Nevada Foreclosure Timeline

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111 Days



After the Trustee Sale



- Timeline
- New Owner
 - Lease
- Eviction
 - Process



FORECLOSURE ALTERNATIVES

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- **Nevada Foreclosure Mediation Program**

- **Short sale**
 - **Fannie Mae – 2 years**
- **Deed in lieu**

- **Bankruptcy**

- **Deed for lease**
 - **Fannie Mae**

- **Cash for keys**



Strategic Default

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- ▣ Fannie Mae
 - Threatening lawsuits
 - 7 years
- ▣ Congress – 2010
 - Bar government backed loans
 - Allow banks to sue, even in non-deficiency states
 - Passed House, Not Senate
- ▣ “Strategic Default” is not clear



DEFICIENCY

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- Current Law:
- Lender has up to 6 years to pursue a deficiency judgment following a short sale, but only 6 months following a foreclosure/trustee sale. On 2nd unsecured loans, the time period remains 6 years.

TAX IMPLICATIONS

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- After Foreclosure/Short Sale, Mortgage lender may send a 1099-A (foreclosure) or 1099-C – ‘forgiveness’
 - ▣ Still taxable income
 - ▣ Check for accuracy (amount forgiven/ value of home)
- Mortgage Forgiveness Debt Relief Act of 2007
 - Mortgage debt forgiven – Form 982
 - Only Primary home
 - Re-finances must be for home improvement
 - In effect until 2012
- Insolvency



See Tax Advisor for More Information

© LACSN

Credit Implications

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Approximate Credit Score Damage

- ▣ Late Payment – 80-100
- ▣ Trial Plan for Modification – 100-140
 - When considered negative
- ▣ Short Sale 120-130
- ▣ Foreclosure – 140-150
- ▣ Permanent Modification – no change
- ▣ Bankruptcy – 200-365



Pending Foreclosure Bills

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- ▣ AB 284
- ▣ SB 307 – Packet 30 days before Notice of Default
- ▣ SB 346 – Deficiency Judgments
 - Current: non-deficiency after Oct. 2009



WHAT IS MEDIATION?

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Mediation allows an *unbiased* third party (the mediator) to assist you and your lender to resolve the foreclosure.



THE LAW

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- NRS 107.086 and 107.087

- <http://www.leg.state.nv.us>

- Click on Law Library

- Click on Table of Contents

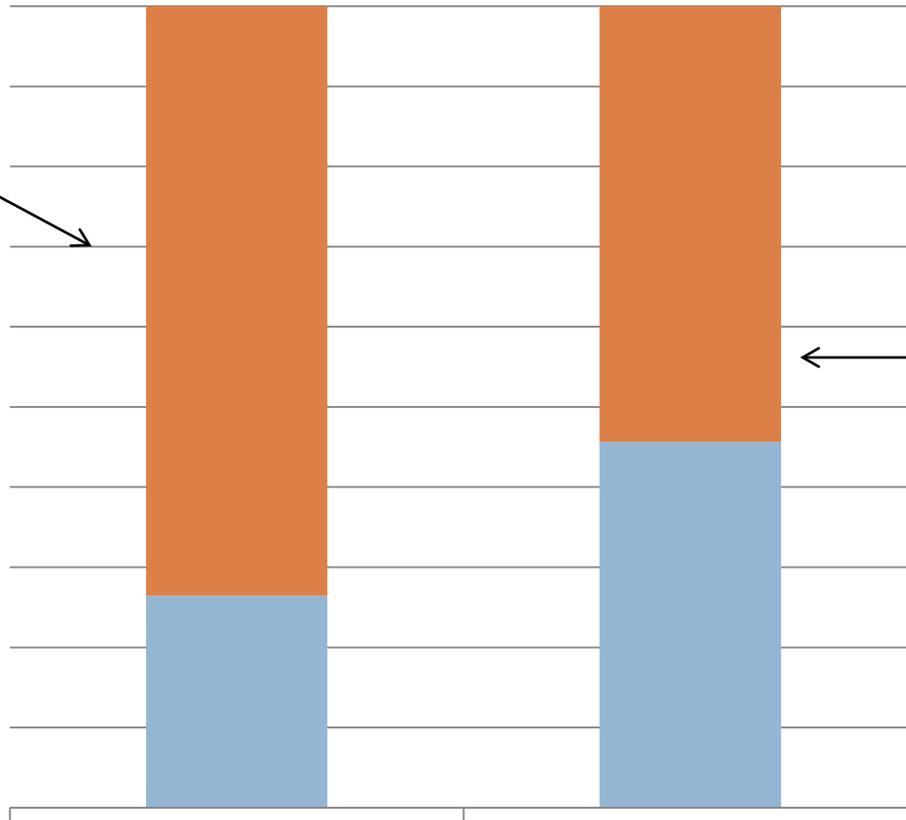
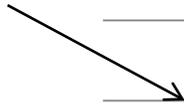
- Find Chapter 107 ...

- Or go to:

- http://www.leg.state.nv.us/75th2009/Bills/AB/AB149_EN.pdf



74%



**Still in
Home**

Agreements

61%

Mediation Reality

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- 270 - 300 Mediators
 - Lack of consistency
- Documents should matter
- Assembling a book makes a difference



Required and Suggested Documents

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- Sent to the Mediator & Trustee:
 - Financial Statement
 - Housing Affordability Worksheet
 - Signed Tax Return, Last 2 pay stubs, Last 2 months of Bank Statements
- Also exchange:
 - RMA
 - 4506-T
 - Utility bill, HOA statement/bill
 - Dodd Frank
 - Hardship letter & Explanatory letter
- To the MEDIATOR ONLY you proposal for resolving the mediation

At Least 10 business days in advance!!



Pending Mediation Bills

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AB 300

- Mediator Findings

- Petition for Judicial Review

- Rebuttable Presumption

AB 445

- Continuation of the Mediation



BANKRUPTCY

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- ▣ Generally does not save the home
- ▣ Chapter 7
 - walking away from the home
- ▣ Chapter 13
 - Reorganization
 - Strip the 2nd mortgage



SCAMS



LEGAL AID CENTER OF SOUTHERN NEVADA

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Free Community Service Classes

- Foreclosure Mediation
- Bankruptcy
 - ▣ Judgment Proof
- Family Law
- Small Claims
- Paternity/Custody

RESOURCES

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SELF HELP CENTER
ASK A LAWYER
PRO BONO

“AMERICAN DREAM”

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- What does it mean to own your own home?
 - Pride of home ownership.
 - Cheaper to own than rent because IRS gives tax breaks.
 - You can retire off the profits of your house.

