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## Power of Attorney - March 2011



### Residential Foreclosures

How the mortgage process is changing in Nevada

by Matthew D. Saltzman, Esq.

The avalanche of foreclosures over the past few years has resulted in many changes to both the nation's banking laws and Nevada's residential mortgage foreclosure process. Many of these changes seek to provide greater protections to homeowners against perceived lender abuses. Stricter procedures on how banks can foreclose on a home may also be on the horizon.

Until the recent economic crisis, Nevada had a fast and streamlined foreclosure process that mostly developed during its years of relative prosperity and home value appreciation. Many states with large populations during the Great Depression gave homeowners certain rights allowing them to delay or avoid foreclosure (or deficiency judgments) in court actions. But Nevada maintained a non-judicial foreclosure process that allowed lenders to foreclose and obtain title to homes at a faster pace. However, the outcry from Nevada's homeowners facing foreclosure during the recent economic crisis spurred legislation to provide additional rights to homeowners, enabling them to seek mediation to "inspire" the mortgage lender to modify their mortgage terms in an effort to prevent foreclosure. However, the loan modification process that developed has been strewn with controversy, resulting in lawsuits alleging lenders misled consumers during the modification process.



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Foreclosure laws developed before the computerization of mortgage documents and the rapid assignment and syndication of mortgage debt. As a result, litigation has also commenced across the country against mortgage lenders for allegedly cutting corners and using improper documents during the overwhelming surge in foreclosures. The faulty and possibly fraudulent paperwork, including "robo-signed" documents, may constitute a violation of Nevada's deceptive trade

practices laws. Several state attorneys general, including Nevada's, have called on residential lenders to temporarily postpone foreclosures until it can be demonstrated that the lenders have fully complied with the state's laws. This has caused some banks to implement moratoriums on foreclosures while they reviewed their processes and determined how to reform procedures going forward. While many of these moratoriums have since ended, litigation over mortgage lending practices and foreclosure procedures continues.

The "robo-signing" and related foreclosure paperwork controversies could have significant and lingering effects on the real estate market. The validity of the title to homes now owned by banks or third party purchasers may be jeopardized if foreclosures occurred with improper

Residential Foreclosures

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paperwork. Questioning the validity of a completed foreclosure may offer a legal avenue for former homeowners on procedural grounds.

Possibly the hardest hit by claims of faulty foreclosure paperwork would be the title insurance companies that insured the new owner's title. Title insurers could be inundated with claims and may start to refrain from insuring titles on homes conveyed through foreclosure. Homes currently owned by banks may be held off the market until paperwork deficiencies can be remedied. Such delays, if widespread, could further postpone recovery in the real estate market. Should foreclosures artificially slow and then start up again, a new glut of bank owned homes could flood the market, driving prices down yet again. For home prices to stabilize and eventually increase, the foreclosure rate needs to decline and the surplus of bank owned home inventory needs to be cleared.

Efforts to protect homeowners from abuses and hold lenders accountable will likely continue to be debated by lawmakers as well as litigated in court. The ultimate effect of the recession and the changes in banking laws that it has prompted cannot be fully predicted. What can be assumed is that the foreclosure process in Nevada and other states will continue to evolve as a result of the overwhelming surge in residential foreclosure actions as well as ongoing allegations of misconduct by lenders. The question remains whether the reforms to our mortgage process will help homeowners or merely increase future home loan costs as lenders pass on the new regulatory burdens to consumers.

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