

# CRAAN

Creditor's Rights Attorney Association of Nevada  
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Dear Gov. Sandoval:

I am writing to you on behalf of the Creditor's Right's Attorney Association of Nevada (CRAAN) a professional association comprised of attorney's who represent lenders, servicers and trustee's for Deeds of Trust.

We have been active in the foreclosure mediation process since its inception in Nevada, have affiliates/offices in other states that have foreclosure mediation programs (and those states that have no mediation programs); our members include people who have represented homeowners as well corporate entities. We have firsthand knowledge of what works and makes mediation work and what impedes loan modification or other resolution of a defaulted loan.

While we do not oppose a program that assists qualified borrowers in exploring foreclosure prevention alternatives, we have serious concerns about the cost, and effectiveness of the Nevada Foreclosure Mediation Program, especially considering the protections and opportunities afforded borrowers within the CFPB, Bankruptcy, Bankruptcy Mediation, and the Nevada Homeowners Bill of Rights; all of which afford homeowners protection and opportunities to resolve a defaulted loan at little or no cost to the state or the homeowner.

The Nevada program is extremely costly in comparison to the numbers of people it assists. Looking at the statistics from the last legislative session:

	Fiscal Yr 2013	Fiscal Yr 2014	Fy 2015- Dec
Number of NOD	18,655	11,558	6120
Mediations Held	1,411	1,894	509
% of Med to NOD	8%	16.5%	8.5%
Num. of Retention	216	273	63
% of Retention Agree.	15.3%	14.4%	12.4%

Accordingly, it appears, on average, only about 11% of the Notices of Default result in a mediation, and of those, on average less than 14% of those result in an agreement to retain the property.

First, there is no evidence to support that the number of defaults will reach 6,000 in each fiscal year as the number has been steadily declining. Second, the budget for the program is predicated on 26% election rate, a far higher number then I believe the program has ever seen.

The anticipated budget for the first year is \$879,972, with projected income of \$570,000 from Notices of Default being recorded and another \$160,000 from elections to mediate and forward an approximate surplus of \$300,000 from the prior program for a total of \$1,030,000. However, if you reduce that number by the actual election to mediate percentage, 11% (instead of +26%), the income from mediations drops

to \$66,000, a reduction of almost 1/3. If only 5,000 Notices of Default are recorded, even with surplus funded from the old program the program falls into the red, with total income of only \$841,000 and a budget of \$879,000. In the second year, using the same numbers, 5,000 Notices of Default, 11% election rate the program is even deeper in hole. The budget for the program does not take into consideration the extra cost to the court to process petitions for mediation and post mediation orders. Nor does it account for time spent making rules and setting up the unnecessarily complicated process.

Additionally, the number of people utilizing the program is very small, and the number of retention agreements from the program even smaller with an average of only 14% of the mediations resulting in retention agreements. That means is that if the program is retained based on the estimate of 6,000 Notices of Default, there will be 660 elections to mediate and, of those, only about 93 will reach an agreement to retain the property. Each of those people have other avenues to pursue foreclosure prevention alternatives at little or no cost to the State of Nevada. Under the CFPB beneficiaries are required to reach out to the borrower to pursue loss mitigation; every major servicer now has information on their website regarding how to pursue loss mitigation; the volume of homes in default have decreased to manageable levels increasing the ability of servicers to handle the requests. The Nevada Homeowners Bill of Rights prevents foreclosure from proceeding if foreclosure prevention alternatives are being pursued and provide for damages for any violations. Bankruptcy in Nevada has a highly effective mediation program, that not only allows borrowers to address the loan default, but requires credit education, and affords the borrowers the opportunity to address all their other debt.

One of the reasons the bankruptcy mediation is so successful is because by its very nature it ensures that modification is a possibility as people who cannot make a modified payment are weeded out of the program. In addition, because during the bankruptcy mediation process the borrower is required to pay the trustee and make payments the borrower gets back into the habit of making payments (thereby increasing the overall success rate of loan modification); the payments can be applied to decrease the default thereby potentially making the loan more modifiable; or if the loan is modified without additional payments passing on that dividend to other creditors. Bankruptcy mediation is also successful because both parties enter mediation with one goal, loan modification review; and extraneous questions regarding standing or authority don't bog down the process. Both sides understand the process and penalties and there is no benefit to lack of cooperation.

Based on recent reports, loan modifications are not the resolution to borrowers' financial problems that they appear to be. The *Fitch Report* (see attached Exhibit A) shows that modified loans have relatively fast re-default rates and the rate of loans modified in 2015 has been the highest of any since 2010.

**“Recent Modifications Re-Defaulting Faster:** Loans modified since 2014 have exhibited relatively fast re-default rates and the cumulative default rate of loans modified in 2015 has been the highest of any modification vintage since 2010. Relative to earlier modification vintages, the re-default rates reflect a higher percentage of borrowers that have had prior loan modifications, lower credit scores, higher capitalized amounts that result in increased principal balances, and lower payment reductions.

**Re-Default Risk Surfaces Quickly:** Modified loans that re-default typically do so relatively quickly. More than 75% of re-defaults occur in the first two years after modification.

**Key Re-Default Drivers:** Traditional loan attributes drive the re-default rate; loan-to-value (LTV) ratios and credit scores are key predictors of risk. However, loan modification terms play a significant role and there is direct correlation between the amount of the payment reduction and re-default rates. Borrowers who received multiple modifications have higher re-default rates.”

These factors that lead to increased rates of loan modification default are factors that can be addressed in the bankruptcy process, where the borrower has the protection of qualified counsel to address the impact of loan modification and modification requires court approval. An issue that continues to arise in mediation is borrowers utilizing “help” that don’t understand the borrower’s financial situation or finance in general resulting in borrowers accepting loan modifications that don’t resolve the borrowers overall financial situation resulting in rapid redefault. Part of the reason that Nevada’s foreclosure rate continues to be high is because we are repeatedly foreclosing on the same property.

SB490 will result in further delays in foreclosure while the trust deed beneficiaries and foreclosure trustees work through its implementation, and while those people whom the bill propose to grandfather in work through the process. SB490 has unclear provisions, which will result in delayed foreclosure starts, and delayed foreclosure has a serious economic impact on the Nevada real estate market and economy. Other markets where the foreclosure process was not impeded have worked through the backlog and normalized. Nevada is only now starting to normalize (though we are repeatedly foreclosing on the same properties as borrower pursue “better” loan modifications). Foreclosure is part of the normal market process. Borrowers who cannot afford to retain and maintain the property shouldn’t be allowed to perpetual delay foreclosure while they pursue, a longed for, but impossible alternative. Under the Nevada foreclosure mediation program borrowers can retain possession of real property without maintaining HOA dues payments, property taxes, sewer or garbage payments; while the beneficiary may ultimately make these payments the delay in payment of these costs trickle down to all citizens of Nevada through the increased costs of doing business when the budget can’t be maintained.

With Nevada’s education system ranking last, or close thereto, the funds spent on modifying a few hundred loans would be better spent on educating our children to avoid the default in the first place. help them prevent from getting in default in the first place.

Sincerely,

The membership of CRAAN