SENATE BILL NO. 96–SENATOR SHAFFER

FEBRUARY 4, 1999

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to liability of mortgagee or trustee for deed of trust who fails to record discharge of mortgage or deed of trust when underlying debt is satisfied. (BDR 9-1185)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets **[**~~omitted material~~**]** is material to be omitted.

AN ACT relating to real property; revising the provisions relating to the liability of a mortgagee or trustee for a deed of trust who fails to record the discharge of the mortgage or deed of trust when the underlying debt is satisfied; authorizing a title insurer under certain circumstances to record a release of a mortgage if the underlying debt is satisfied and the mortgagee has failed to record the discharge of the mortgage as required; providing penalties; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 106.290 is hereby amended to read as follows:

106.290 **[**~~If any mortgagee, or his personal representative or assignee, as the case may be, after a full performance of~~**]**

1. Within 21 calendar days after receiving written notice that a debt secured by a mortgage has been paid or otherwise satisfied or discharged, the mortgagee shall cause a discharge of the mortgage to be recorded pursuant to NRS 106.260 or 106.270 if the mortgagor, his heirs or assigns have fully performed the conditions of the mortgage ***.*** **[**~~, whether before or after a breach thereof, shall, for the space of 7 days after being thereto requested, and after tender of his reasonable charges, refuse or neglect to execute and acknowledge, when necessary to entitle the same to record, a certificate of discharge or release thereof, he shall be~~**]**

2. If a mortgagee fails to comply with the provisions of this section, the mortgagee is liable ***in a civil action*** to the mortgagor, his heirs or assigns **[**~~in the~~**]** ***for:***

(a) The sum of ~~[$100, and also for all]~~ ***$500;***

(b) Any actual damages ~~[occasioned by such neglect or refusal.]~~ ***caused by the failure of the mortgagee to comply with the provisions of this section; and***

(c) A reasonable attorney’s fee and the costs of bringing the action.

3. Except as otherwise provided in this subsection, if a mortgagee fails to cause a discharge of the mortgage to be recorded pursuant to subsection 1 within 75 calendar days, a title insurer may prepare and cause to be recorded a release of the mortgage. At least 30 calendar days before the recording of a release pursuant to this subsection, the title insurer shall mail, by first-class mail, postage prepaid, notice of the intention to record the release of the mortgage to the mortgagor and mortgagee, or their successors in interest, at the last known address of each such person. A release prepared and recorded pursuant to this subsection shall be deemed a discharge of the mortgage. The title insurer shall not cause a release to be recorded pursuant to this subsection if the title insurer receives written instructions to the contrary from the mortgagor, the mortgagee or a successor in interest.

4. The release prepared pursuant to subsection 3 must set forth:

(a) The name of the mortgagor;

(b) The name of the mortgagee;

(c) The recording reference to the mortgage;

(d) A statement that the debt secured by the mortgage has been paid in full or otherwise satisfied or discharged;

(e) The date and amount of payment or other satisfaction or discharge; and

(f) The name and address of the title insurer issuing the release.

5. A release prepared and recorded pursuant to subsection 3 does not relieve a mortgagee of the requirements imposed by subsections 1 and 2.

6. In addition to any other remedy provided by law, a title insurer who improperly causes to be recorded a release of a mortgage pursuant to this section is liable in a civil action for actual damages and for a reasonable attorney’s fee and the costs of bringing the action to any person who is injured because of the improper recordation of the release.

7. Any person who willfully violates this section is guilty of a misdemeanor.

8. As used in this section, “title insurer” has the meaning ascribed to it in NRS 692A.070.

Sec. 2. NRS 107.077 is hereby amended to read as follows:

107.077 1. Within 21 calendar days after receiving written notice that a debt secured by a deed of trust made on or after October 1, 1991, has been paid or otherwise satisfied or discharged, the beneficiary shall deliver to the trustee or the trustor the original note and deed of trust, if he is in possession of those documents, and a properly executed request to reconvey the estate in real property conveyed to the trustee by the grantor. If the beneficiary delivers the original note and deed of trust to the trustee or the trustee has those documents in his possession, the trustee shall deliver those documents to the grantor.

2. Within 45 calendar days after a debt secured by a deed of trust made on or after October 1, 1991, is paid or otherwise satisfied or discharged, and a properly executed request to reconvey is received by the trustee, the trustee shall cause to be recorded a reconveyance of the deed of trust.

3. If the beneficiary fails to deliver to the trustee a properly executed request to reconvey pursuant to subsection 1, or if the trustee fails to cause to be recorded a reconveyance of the deed of trust pursuant to subsection 2, the beneficiary or the trustee, as the case may be, is liable in a civil action to the grantor, his heirs or assigns in the sum of **[**~~$100,~~**]** ***$500,*** plus a reasonable attorney's fee and the costs of bringing the action, and he is liable in a civil action to any party to the deed of trust for any actual damages caused by his failure to comply with the provisions of this section and for a reasonable attorney's fee and the costs of bringing the action.

4. Except as otherwise provided in this subsection, if a reconveyance is not recorded pursuant to subsection 2 within:

(a) Seventy-five calendar days after the payment, satisfaction or discharge of the debt, if the payment, satisfaction or discharge was made on or after October 1, 1993; or

(b) Ninety calendar days after the payment, satisfaction or discharge of the debt, if the payment, satisfaction or discharge was made before October 1, 1993,

a title insurer may prepare and cause to be recorded a release of the deed of trust. At least 30 calendar days before the recording of a release pursuant to this subsection, the title insurer shall mail, by first-class mail, postage prepaid, notice of the intention to record the release of the deed of trust to the trustee, trustor and beneficiary of record, or their successors in interest, at the last known address of each such person. A release prepared and recorded pursuant to this subsection shall be deemed a reconveyance of a deed of trust. The title insurer shall not cause a release to be recorded pursuant to this subsection if the title insurer receives written instructions to the contrary from the trustee, the trustor, the owner of the land, the holder of the escrow or the owner of the debt secured by the deed of trust or his agent.

5. The release prepared pursuant to subsection 4 must set forth:

(a) The name of the beneficiary;

(b) The name of the trustor;

(c) The recording reference to the deed of trust;

(d) A statement that the debt secured by the deed of trust has been paid in full or otherwise satisfied or discharged;

(e) The date and amount of payment or other satisfaction or discharge; and

(f) The name and address of the title insurer issuing the release.

6. A release prepared and recorded pursuant to subsection 4 does not relieve a beneficiary or trustee of the requirements imposed by subsections 1 and 2.

7. A trustee may charge a reasonable fee to the trustor or the owner of the land for services relating to the preparation, execution or recordation of a reconveyance or release pursuant to this section. A trustee shall not require the fees to be paid before the opening of an escrow, or earlier than 60 calendar days before the payment, satisfaction or discharge of the debt secured by the deed of trust. If a fee charged pursuant to this subsection does not exceed $100, the fee is conclusively presumed to be reasonable.

8. In addition to any other remedy provided by law, a title insurer who improperly causes to be recorded a release of a deed of trust pursuant to this section is liable for actual damages and ***for*** a reasonable attorney's fee ***and the costs of bringing the action*** to any person who is injured because of the improper recordation of the release.

9. Any person who willfully violates this section is guilty of a misdemeanor.

Sec. 3. NRS 107.078 is hereby amended to read as follows:

107.078 1. If a deed of trust made on or after October 1, 1995, authorizes the grantor to discharge in part the debt secured by the deed of trust and the deed of trust authorizes a partial reconveyance of the estate in real property in consideration of a partial discharge, the beneficiary shall, within 21 calendar days after receiving notice that the debt secured by the deed of trust has been partially discharged, deliver to the trustee a properly executed request for a partial reconveyance of the estate in real property conveyed to the trustee by the grantor.

2. Within 45 calendar days after a debt secured by a deed of trust made on or after October 1, 1995, is partially discharged and a properly executed request for a partial reconveyance is received by the trustee, the trustee shall cause to be recorded a partial reconveyance of the deed of trust.

3. If the beneficiary fails to deliver to the trustee a properly executed request for a partial reconveyance pursuant to subsection 1, or if the trustee fails to cause to be recorded a partial reconveyance of the deed of trust pursuant to subsection 2, the beneficiary or the trustee, as the case may be, is liable in a civil action to the grantor, his heirs or assigns in the amount of **[**~~$100,~~**]** ***$500,*** plus a reasonable attorney's fee and the costs of bringing the

action, and he is liable in a civil action to any party to the deed of trust for any actual damages caused by his failure to comply with the provisions of this section and for a reasonable attorney's fee and the costs of bringing the action.

4. Except as otherwise provided in this subsection, if a partial reconveyance is not recorded pursuant to subsection 2 within 75 calendar days after the partial satisfaction of the debt and if the satisfaction was made on or after October 1, 1995, a title insurer may prepare and cause to be recorded a partial release of the deed of trust. At least 30 calendar days before the recording of a partial release pursuant to this subsection, the title insurer shall mail, by first-class mail, postage prepaid, notice of the intention to record the partial release of the deed of trust to the trustee, trustor and beneficiary of record, or their successors in interest, at the last known address of each such person. A partial release prepared and recorded pursuant to this subsection shall be deemed a partial reconveyance of a deed of trust. The title insurer shall not cause a partial release to be recorded pursuant to this subsection if the title insurer receives written instructions to the contrary from the trustee, trustor, owner of the land, holder of the escrow or owner of the debt secured by the deed of trust or his agent.

5. The release prepared pursuant to subsection 4 must set forth:

(a) The name of the beneficiary;

(b) The name of the trustor;

(c) The recording reference to the deed of trust;

(d) A statement that the debt secured by the deed of trust has been partially discharged;

(e) The date and amount of partial payment or other partial satisfaction or discharge;

(f) The name and address of the title insurer issuing the partial release; and

(g) The legal description of the estate in real property which is reconveyed.

6. A partial release prepared and recorded pursuant to subsection 4 does not relieve a beneficiary or trustee of the requirements imposed by subsections 1 and 2.

7. A trustee may charge a reasonable fee to the trustor or the owner of the land for services relating to the preparation, execution or recordation of a partial reconveyance or partial release pursuant to this section. A trustee shall not require the fees to be paid before the opening of an escrow or earlier than 60 calendar days before the partial payment or partial satisfaction or discharge of the debt secured by the deed of trust. If a fee charged pursuant to this subsection does not exceed $100, the fee is conclusively presumed to be reasonable.

8. In addition to any other remedy provided by law, a title insurer who improperly causes to be recorded a partial release of a deed of trust pursuant to this section is liable for actual damages and ***for*** a reasonable attorney's fee ***and the costs of bringing the action*** to any person who is injured because of the improper recordation of the partial release.

9. Any person who willfully violates this section is guilty of a misdemeanor.

Sec. 4. The amendatory provisions of this act do not apply to offenses or violations that are committed before October 1, 1999.

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