

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.

~

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:

- 1 **Section 1.** NRS 106.290 is hereby amended to read as follows:
2 106.290 ~~{If any mortgagee, or his personal representative or assignee,~~
3 ~~as the case may be, after a full performance of}~~
4 **1. Within 21 calendar days after receiving written notice that a debt**
5 **secured by a mortgage has been paid or otherwise satisfied or**
6 **discharged, the mortgagee shall cause a discharge of the mortgage to be**
7 **recorded pursuant to NRS 106.260 or 106.270 if the mortgagor, his heirs**
8 **or assigns have fully performed** the conditions of the mortgage . ~~{, whether~~
9 ~~before or after a breach thereof, shall, for the space of 7 days after being~~
10 ~~thereto requested, and after tender of his reasonable charges, refuse or~~
11 ~~neglect to execute and acknowledge, when necessary to entitle the same to~~
12 ~~record, a certificate of discharge or release thereof, he shall be}~~
13 **2. If a mortgagee fails to comply with the provisions of this section,**
14 **the mortgagee is liable in a civil action** to the mortgagor, his heirs or
15 assigns ~~{in the}~~ for:

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

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

5 **(c) A reasonable attorney's fee and the costs of bringing the action.**

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

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

20 **(a) The name of the mortgagor;**

21 **(b) The name of the mortgagee;**

22 **(c) The recording reference to the mortgage;**

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

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

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

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

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

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

37 **8. As used in this section, "title insurer" has the meaning ascribed to**
38 **it in NRS 692A.070.**

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

40 107.077 1. Within 21 calendar days after receiving written notice that
41 a debt secured by a deed of trust made on or after October 1, 1991, has
42 been paid or otherwise satisfied or discharged, the beneficiary shall deliver
43 to the trustee or the trustor the original note and deed of trust, if he is in

1 possession of those documents, and a properly executed request to
2 reconvey the estate in real property conveyed to the trustee by the grantor.
3 If the beneficiary delivers the original note and deed of trust to the trustee
4 or the trustee has those documents in his possession, the trustee shall
5 deliver those documents to the grantor.

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

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

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

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

24 (b) Ninety calendar days after the payment, satisfaction or discharge of
25 the debt, if the payment, satisfaction or discharge was made before October
26 1, 1993,

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

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

40 (a) The name of the beneficiary;

41 (b) The name of the trustor;

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

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

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

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

6 6. A release prepared and recorded pursuant to subsection 4 does not
7 relieve a beneficiary or trustee of the requirements imposed by subsections
8 1 and 2.

9 7. A trustee may charge a reasonable fee to the trustor or the owner of
10 the land for services relating to the preparation, execution or recordation of
11 a reconveyance or release pursuant to this section. A trustee shall not
12 require the fees to be paid before the opening of an escrow, or earlier than
13 60 calendar days before the payment, satisfaction or discharge of the debt
14 secured by the deed of trust. If a fee charged pursuant to this subsection
15 does not exceed \$100, the fee is conclusively presumed to be reasonable.

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

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

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

24 107.078 1. If a deed of trust made on or after October 1, 1995,
25 authorizes the grantor to discharge in part the debt secured by the deed of
26 trust and the deed of trust authorizes a partial reconveyance of the estate in
27 real property in consideration of a partial discharge, the beneficiary shall,
28 within 21 calendar days after receiving notice that the debt secured by the
29 deed of trust has been partially discharged, deliver to the trustee a properly
30 executed request for a partial reconveyance of the estate in real property
31 conveyed to the trustee by the grantor.

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

36 3. If the beneficiary fails to deliver to the trustee a properly executed
37 request for a partial reconveyance pursuant to subsection 1, or if the trustee
38 fails to cause to be recorded a partial reconveyance of the deed of trust
39 pursuant to subsection 2, the beneficiary or the trustee, as the case may be,
40 is liable in a civil action to the grantor, his heirs or assigns in the amount of
41 ~~[\$100,]~~ **\$500**, plus a reasonable attorney's fee and the costs of bringing the

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

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

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

- 22 (a) The name of the beneficiary;
- 23 (b) The name of the trustor;
- 24 (c) The recording reference to the deed of trust;
- 25 (d) A statement that the debt secured by the deed of trust has been
26 partially discharged;
- 27 (e) The date and amount of partial payment or other partial satisfaction
28 or discharge;
- 29 (f) The name and address of the title insurer issuing the partial release;
30 and
- 31 (g) The legal description of the estate in real property which is
32 reconveyed.

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

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

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

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

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

~