

SENATE BILL NO. 172—COMMITTEE ON JUDICIARY

MARCH 9, 2005

Referred to Committee on Judiciary

SUMMARY—Provides that sale of real property under deed of trust must take place at courthouse of county where property is located. (BDR 9-1029)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: 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 deeds of trust; providing that the sale of real property under a deed of trust must take place at the courthouse of the county where the property, or any part thereof, is located; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law provides that certain deeds of trust may adopt by reference various covenants, agreements, obligations, rights and remedies which are set forth in statute. One such covenant provides that if real property is used as security for certain purposes and there is a default in the performance of the obligation or violation of any condition or covenant for which the property was used as security, the trustee may sell the property after recording and providing notice of the breach and his election to sell. (NRS 107.030) Existing law also provides that when real property is placed in trust to secure the performance of an obligation or the payment of any debt, the trustee is authorized to sell the property upon a breach of the obligation for which the property served as a security. To sell such property, the trustee must give notice of the breach and election to sell for a certain period. The sale is then made at the principal office of the trustee, if the notice so provides, whether or not the trustee's office is located in the county where the property is located. (NRS 107.080)

This bill provides in both provisions that the sale of real property as a result of a violation of a covenant or a breach in the performance of an obligation for which the real property is held as security in a deed of trust must be made at the courthouse of the county where the property, or any part thereof, is located.



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

1       **Section 1.** NRS 107.030 is hereby amended to read as follows:  
2       107.030 Every deed of trust made after March 29, 1927, may  
3 adopt by reference all or any of the following covenants,  
4 agreements, obligations, rights and remedies:

5       1. COVENANT NO. 1. That grantor agrees to pay and discharge  
6 at maturity all taxes and assessments and all other charges and  
7 encumbrances which now are or shall hereafter be, or appear to be, a  
8 lien upon the trust premises, or any part thereof; and that he will pay  
9 all interest or installments due on any prior encumbrance, and that in  
10 default thereof, beneficiary may, without demand or notice, pay the  
11 same, and beneficiary shall be sole judge of the legality or validity  
12 of such taxes, assessments, charges or encumbrances, and the  
13 amount necessary to be paid in satisfaction or discharge thereof.

14       2. COVENANT NO. 2. That the grantor will at all times keep the  
15 buildings and improvements which are now or shall hereafter be  
16 erected upon the premises insured against loss or damage by fire, to  
17 the amount of at least \$....., by some insurance company or  
18 companies approved by beneficiary, the policies for which insurance  
19 shall be made payable, in case of loss, to beneficiary, and shall be  
20 delivered to and held by the beneficiary as further security; and that  
21 in default thereof, beneficiary may procure such insurance, not  
22 exceeding the amount aforesaid, to be effected either upon the  
23 interest of trustee or upon the interest of grantor, or his assigns, and  
24 in their names, loss, if any, being made payable to beneficiary, and  
25 may pay and expend for premiums for such insurance such sums of  
26 money as the beneficiary may deem necessary.

27       3. COVENANT NO. 3. That if, during the existence of the trust,  
28 there be commenced or pending any suit or action affecting the  
29 conveyed premises, or any part thereof, or the title thereto, or if any  
30 adverse claim for or against the premises, or any part thereof, be  
31 made or asserted, the trustee or beneficiary may appear or intervene  
32 in the suit or action and retain counsel therein and defend same, or  
33 otherwise take such action therein as they may be advised, and may  
34 settle or compromise same or the adverse claim; and in that behalf  
35 and for any of the purposes may pay and expend such sums of  
36 money as the trustee or beneficiary may deem to be necessary.

37       4. COVENANT NO. 4. That the grantor will pay to trustee and to  
38 beneficiary respectively, on demand, the amounts of all sums of  
39 money which they shall respectively pay or expend pursuant to the  
40 provisions of the implied covenants of this section, or any of them,  
41 together with interest upon each of the amounts, until paid, from the  
42 time of payment thereof, at the rate of ..... percent per annum.



1        5. COVENANT NO. 5. That in case grantor shall well and truly  
2 perform the obligation or pay or cause to be paid at maturity the  
3 debt or promissory note, and all moneys agreed to be paid by him,  
4 and interest thereon for the security of which the transfer is made,  
5 and also the reasonable expenses of the trust in this section  
6 specified, then the trustee, its successors or assigns, shall reconvey  
7 to the grantor all the estate in the premises conveyed to the trustee  
8 by the grantor. Any part of the trust property may be reconveyed at  
9 the request of the beneficiary.

10      6. COVENANT NO. 6. That if default be made in the  
11 performance of the obligation, or in the payment of the debt, or  
12 interest thereon, or any part thereof, or in the payment of any of the  
13 other moneys agreed to be paid, or of any interest thereon, or if any  
14 of the conditions or covenants in this section adopted by reference  
15 be violated, and if the notice of breach and election to sell, required  
16 by this chapter, be first recorded, then trustee, its successors or  
17 assigns, on demand by beneficiary, or assigns, shall sell the above-  
18 granted premises, or such part thereof as in its discretion it shall find  
19 necessary to sell, in order to accomplish the objects of these trusts,  
20 in the manner following, namely:

21      The trustees shall first give notice of the time and place of such  
22 sale, in the manner provided by the laws of this State for the sale of  
23 real property under execution, and may from time to time postpone  
24 such sale by such advertisement as it may deem reasonable, or  
25 without further advertisement, by proclamation made to the persons  
26 assembled at the time and place previously appointed and advertised  
27 for such sale, and on the day of sale so advertised, or to which such  
28 sale may have been postponed, the trustee may sell the property so  
29 advertised, or any portion thereof, at public auction, at the time and  
30 place specified in the notice, ~~either in~~ *at the courthouse of* the  
31 county in which the property, or any part thereof, to be sold, is  
32 situated, ~~for at the principal office of the trustee, in its discretion,~~ to  
33 the highest cash bidder. The beneficiary, obligee, creditor, or the  
34 holder or holders of the promissory note or notes secured thereby  
35 may bid and purchase at such sale. The beneficiary may, after  
36 recording the notice of breach and election, waive or withdraw the  
37 same or any proceedings thereunder, and shall thereupon be restored  
38 to his former position and have and enjoy the same rights as though  
39 such notice had not been recorded.

40      7. COVENANT NO. 7. That the trustee, upon such sale, shall  
41 make (without warranty), execute and, after due payment made,  
42 deliver to purchaser or purchasers, his or their heirs or assigns, a  
43 deed or deeds of the premises so sold which shall convey to the  
44 purchaser all the title of the grantor in the trust premises, and shall  
45 apply the proceeds of the sale thereof in payment, firstly, of the



1 expenses of such sale, together with the reasonable expenses of the  
2 trust, including counsel fees, in an amount equal to .....  
3 percent of the amount secured thereby and remaining unpaid, which  
4 shall become due upon any default made by grantor in any of the  
5 payments aforesaid; and also such sums, if any, as trustee or  
6 beneficiary shall have paid, for procuring a search of the title to the  
7 premises, or any part thereof, subsequent to the execution of the  
8 deed of trust; and in payment, secondly, of the obligation or debts  
9 secured, and interest thereon then remaining unpaid, and the amount  
10 of all other moneys with interest thereon herein agreed or provided  
11 to be paid by grantor; and the balance or surplus of such proceeds of  
12 sale it shall pay to grantor, his heirs, executors, administrators or  
13 assigns.

14 8. COVENANT NO. 8. That in the event of a sale of the premises  
15 conveyed or transferred in trust, or any part thereof, and the  
16 execution of a deed or deeds therefor under such trust, the recital  
17 therein of default, and of recording notice of breach and election of  
18 sale, and of the elapsing of the 3-month period, and of the giving of  
19 notice of sale, and of a demand by beneficiary, his heirs or assigns,  
20 that such sale should be made, shall be conclusive proof of such  
21 default, recording, election, elapsing of time, and of the due giving  
22 of such notice, and that the sale was regularly and validly made on  
23 due and proper demand by beneficiary, his heirs and assigns; and  
24 any such deed or deeds with such recitals therein shall be effectual  
25 and conclusive against grantor, his heirs and assigns, and all other  
26 persons; and the receipt for the purchase money recited or contained  
27 in any deed executed to the purchaser as aforesaid shall be sufficient  
28 discharge to such purchaser from all obligation to see to the proper  
29 application of the purchase money, according to the trusts aforesaid.

30 9. COVENANT NO. 9. That the beneficiary or his assigns may,  
31 from time to time, appoint another trustee, or trustees, to execute the  
32 trust created by the deed of trust or other conveyance in trust. A  
33 copy of a resolution of the board of directors of beneficiary (if  
34 beneficiary be a corporation), certified by the secretary thereof,  
35 under its corporate seal, or an instrument executed and  
36 acknowledged by the beneficiary (if the beneficiary be a natural  
37 person), shall be conclusive proof of the proper appointment of such  
38 substituted trustee. Upon the recording of such certified copy or  
39 executed and acknowledged instrument, the new trustee or trustees  
40 shall be vested with all the title, interest, powers, duties and trusts in  
41 the premises vested in or conferred upon the original trustee. If there  
42 be more than one trustee, either may act alone and execute the trusts  
43 upon the request of the beneficiary, and all his acts thereunder shall  
44 be deemed to be the acts of all trustees, and the recital in any  
45 conveyance executed by such sole trustee of such request shall be



1 conclusive evidence thereof, and of the authority of such sole trustee  
2 to act.

3 **Sec. 2.** NRS 107.080 is hereby amended to read as follows:

4 107.080 1. Except as otherwise provided in NRS 107.085, if  
5 any transfer in trust of any estate in real property is made after  
6 March 29, 1927, to secure the performance of an obligation or the  
7 payment of any debt, a power of sale is hereby conferred upon the  
8 trustee to be exercised after a breach of the obligation for which  
9 the transfer is security.

10 2. The power of sale must not be exercised, however, until:

11 (a) In the case of any trust agreement coming into force:

12 (1) On or after July 1, 1949, and before July 1, 1957, the  
13 grantor, or his successor in interest, a beneficiary under a  
14 subordinate deed of trust or any other person who has a subordinate  
15 lien or encumbrance of record on the property, has for a period of 15  
16 days, computed as prescribed in subsection 3, failed to make good  
17 the deficiency in performance or payment; or

18 (2) On or after July 1, 1957, the grantor, or his successor in  
19 interest, a beneficiary under a subordinate deed of trust or any other  
20 person who has a subordinate lien or encumbrance of record on the  
21 property, has for a period of 35 days, computed as prescribed in  
22 subsection 3, failed to make good the deficiency in performance or  
23 payment;

24 (b) The beneficiary, the successor in interest of the beneficiary  
25 or the trustee first executes and causes to be recorded in the office of  
26 the recorder of the county wherein the trust property, or some part  
27 thereof, is situated a notice of the breach and of his election to sell  
28 or cause to be sold the property to satisfy the obligation; and

29 (c) Not less than 3 months have elapsed after the recording of  
30 the notice.

31 3. The 15- or 35-day period provided in paragraph (a) of  
32 subsection 2 commences on the first day following the day upon  
33 which the notice of default and election to sell is recorded in the  
34 office of the county recorder of the county in which the property is  
35 located and a copy of the notice of default and election to sell is  
36 mailed by registered or certified mail, return receipt requested and  
37 with postage prepaid to the grantor, and to the person who holds the  
38 title of record on the date the notice of default and election to sell is  
39 recorded, at their respective addresses, if known, otherwise to the  
40 address of the trust property. The notice of default and election to  
41 sell must describe the deficiency in performance or payment and  
42 may contain a notice of intent to declare the entire unpaid balance  
43 due if acceleration is permitted by the obligation secured by the  
44 deed of trust, but acceleration must not occur if the deficiency in  
45 performance or payment is made good and any costs, fees and



1 expenses incident to the preparation or recordation of the notice and  
2 incident to the making good of the deficiency in performance or  
3 payment are paid within the time specified in subsection 2.

4 4. The trustee, or other person authorized to make the sale  
5 under the terms of the trust deed or transfer in trust, shall, after  
6 expiration of the 3-month period following the recording of the  
7 notice of breach and election to sell, and before the making of the  
8 sale, give notice of the time and place thereof in the manner and for  
9 a time not less than that required by law for the sale or sales of real  
10 property upon execution. The sale itself ~~[may]~~ *must* be made at the  
11 ~~[office of the trustee, if the notice so provides, whether]~~ *courthouse*  
12 *of the county in which* the property ~~[so conveyed in trust is located~~  
13 ~~within the same county as the office of the trustee or not.] , or any~~  
14 *part thereof, is situated.*

15 5. Every sale made under the provisions of this section and  
16 other sections of this chapter vests in the purchaser the title of the  
17 grantor and his successors in interest without equity or right of  
18 redemption. The sale of a lease of a dwelling unit of a cooperative  
19 housing corporation vests in the purchaser title to the shares in the  
20 corporation which accompany the lease.





