

Senate Bill No. 172–Committee on Judiciary

CHAPTER.....

AN ACT relating to deeds of trust; revising provisions relating to the sale of real property under a deed of trust; 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 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 in certain smaller counties at the courthouse in the county where the property, or any part thereof, is located or, in a county with a population of 100,000 or more, at the public location in the county designated by the governing body of the county for that purpose. This bill also revises the provisions relating to the notice of the sale of real property under a deed of trust. This bill provides that any person who willfully removes or defaces a notice of sale before the sale is complete or before the satisfaction of the default is liable to the aggrieved party. This bill further provides that all sales of real property under a deed of trust must be made at auction to the highest bidder. This bill provides that such a sale may be postponed by oral proclamation and imposes certain requirements for the postponement of a sale. This bill establishes procedures for the sale of property and the recovery of certain losses when a purchaser refuses to pay the amount he bid at the auction. These provisions are modeled after provisions concerning the sale of property upon execution of a judgment. (NRS 21.130-21.160)

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

**Section 1.** Chapter 107 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

**Sec. 2.** *A person who willfully removes or defaces a notice posted pursuant to subsection 4 of NRS 107.080, if done before the sale or, if the default is satisfied before the sale, before the satisfaction of the default, is liable in the amount of \$500 to any person aggrieved by the removal or defacing of the notice.*

**Sec. 3. 1.** *All sales of property pursuant to NRS 107.080 must be made at auction to the highest bidder and must be made between the hours of 9 a.m. and 5 p.m. The agent holding the sale must not become a purchaser at the sale or be interested in any purchase at such a sale.*

*2. All sales of real property must be made:*

*(a) In a county with a population of less than 100,000, at the courthouse in the county in which the property or some part thereof is situated.*

*(b) In a county with a population of 100,000 or more, at the public location in the county designated by the governing body of the county for that purpose.*

**Sec. 4. 1.** *If a sale of property pursuant to NRS 107.080 is postponed by oral proclamation, the sale must be postponed to a later date at the same time and location.*

*2. If such a sale has been postponed by oral proclamation three times, any new sale information must be provided by notice as provided in NRS 107.080.*

**Sec. 5. 1.** *If a purchaser refuses to pay the amount bid by him for the property struck off to him at a sale pursuant to NRS 107.080, the agent may again sell the property to the highest bidder, after again giving the notice previously provided.*

*2. If any loss is incurred from the purchaser refusing to pay his bid, the agent may recover the amount of the loss, with costs, for the benefit of the party aggrieved, by motion upon previous notice of 5 days to the purchaser, before any court of competent jurisdiction.*

*3. The court shall proceed in a summary manner in the hearing and disposition of such a motion, and give judgment and issue execution therefor forthwith, but the refusing purchaser may request a jury. The same proceedings may be had against any subsequent purchaser who refuses to pay, and the agent may, in his discretion, thereafter reject the bid of any person so refusing.*

*4. An agent is not liable for any amount other than the amount bid by the second or subsequent purchaser and the amount collected from the purchaser who refused to pay.*

**Sec. 6.** NRS 107.030 is hereby amended to read as follows:

107.030 Every deed of trust made after March 29, 1927, may adopt by reference all or any of the following covenants, agreements, obligations, rights and remedies:

1. COVENANT NO. 1. That grantor agrees to pay and discharge at maturity all taxes and assessments and all other charges and encumbrances which now are or shall hereafter be, or appear to be, a lien upon the trust premises, or any part thereof; and that he will pay all interest or installments due on any prior encumbrance, and that in default thereof, beneficiary may, without demand or notice, pay the

same, and beneficiary shall be sole judge of the legality or validity of such taxes, assessments, charges or encumbrances, and the amount necessary to be paid in satisfaction or discharge thereof.

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

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

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

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

6. COVENANT NO. 6. That if default be made in the performance of the obligation, or in the payment of the debt, or interest thereon, or any part thereof, or in the payment of any of the other moneys agreed to be paid, or of any interest thereon, or if any of the conditions or covenants in this section adopted by reference

be violated, and if the notice of breach and election to sell, required by this chapter, be first recorded, then trustee, its successors or assigns, on demand by beneficiary, or assigns, shall sell the above-granted premises, or such part thereof as in its discretion it shall find necessary to sell, in order to accomplish the objects of these trusts, in the manner following, namely:

The trustees shall first give notice of the time and place of such sale, in the manner provided ~~[by the laws of this State for the sale of real property under execution,]~~ **in NRS 107.080** and may ~~[from time to time]~~ postpone such sale ~~[by such advertisement as it may deem reasonable, or without further advertisement,]~~ **not more than three times** by proclamation made to the persons assembled at the time and place previously appointed and advertised for such sale, and on the day of sale so advertised, or to which such sale may have been postponed, the trustee may sell the property so advertised, or any portion thereof, at public auction, at the time and place specified in the notice, ~~[either]~~ **at a public location** in the county in which the property, or any part thereof, to be sold, is situated, ~~[for at the principal office of the trustee, in its discretion,]~~ to the highest cash bidder. The beneficiary, obligee, creditor, or the holder or holders of the promissory note or notes secured thereby may bid and purchase at such sale. The beneficiary may, after recording the notice of breach and election, waive or withdraw the same or any proceedings thereunder, and shall thereupon be restored to his former position and have and enjoy the same rights as though such notice had not been recorded.

7. COVENANT NO. 7. That the trustee, upon such sale, shall make (without warranty), execute and, after due payment made, deliver to purchaser or purchasers, his or their heirs or assigns, a deed or deeds of the premises so sold which shall convey to the purchaser all the title of the grantor in the trust premises, and shall apply the proceeds of the sale thereof in payment, firstly, of the expenses of such sale, together with the reasonable expenses of the trust, including counsel fees, in an amount equal to ..... percent of the amount secured thereby and remaining unpaid, which shall become due upon any default made by grantor in any of the payments aforesaid; and also such sums, if any, as trustee or beneficiary shall have paid, for procuring a search of the title to the premises, or any part thereof, subsequent to the execution of the deed of trust; and in payment, secondly, of the obligation or debts secured, and interest thereon then remaining unpaid, and the amount of all other moneys with interest thereon herein agreed or provided to be paid by grantor; and the balance or surplus of such proceeds of sale it shall pay to grantor, his heirs, executors, administrators or assigns.

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

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

**Sec. 7.** NRS 107.080 is hereby amended to read as follows:

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

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

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

(1) On or after July 1, 1949, and before July 1, 1957, the grantor, or his successor in interest, a beneficiary under a subordinate deed of trust or any other person who has a subordinate

lien or encumbrance of record on the property, has for a period of 15 days, computed as prescribed in subsection 3, failed to make good the deficiency in performance or payment; or

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

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

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

3. The 15- or 35-day period provided in paragraph (a) of subsection 2 commences on the first day following the day upon which the notice of default and election to sell is recorded in the office of the county recorder of the county in which the property is located and a copy of the notice of default and election to sell is mailed by registered or certified mail, return receipt requested and with postage prepaid to the grantor, and to the person who holds the title of record on the date the notice of default and election to sell is recorded, at their respective addresses, if known, otherwise to the address of the trust property. The notice of default and election to sell must describe the deficiency in performance or payment and may contain a notice of intent to declare the entire unpaid balance due if acceleration is permitted by the obligation secured by the deed of trust, but acceleration must not occur if the deficiency in performance or payment is made good and any costs, fees and expenses incident to the preparation or recordation of the notice and incident to the making good of the deficiency in performance or payment are paid within the time specified in subsection 2.

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

*(a) Providing the notice to each trustor and any other person entitled to notice pursuant to this section by personal service or by*

*mailing the notice by registered or certified mail to the last known address of the trustor and any other person entitled to such notice pursuant to this section;*

*(b) Posting a similar notice particularly describing the property, for 20 days successively, in three public places of the township or city where the property is situated and where the property is to be sold; and*

*(c) Publishing a copy of the notice three times, once each week for 3 consecutive weeks, in a newspaper of general circulation in the county where the property is situated.*

5. Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and his successors in interest without equity or right of redemption. *A person who purchases property pursuant to this section is not a bona fide purchaser, and the sale may be declared void if the trustee or other person authorized to make the sale does not substantially comply with the provisions of this section.* The sale of a lease of a dwelling unit of a cooperative housing corporation vests in the purchaser title to the shares in the corporation which accompany the lease.

