

SENATE BILL NO. 172—COMMITTEE ON JUDICIARY

MARCH 9, 2005

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to sale of real property under deed of trust. (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; 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)

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.



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

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

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

11 107.030 Every deed of trust made after March 29, 1927, may
12 adopt by reference all or any of the following covenants,
13 agreements, obligations, rights and remedies:

14 1. COVENANT NO. 1. That grantor agrees to pay and discharge
15 at maturity all taxes and assessments and all other charges and
16 encumbrances which now are or shall hereafter be, or appear to be, a
17 lien upon the trust premises, or any part thereof; and that he will pay
18 all interest or installments due on any prior encumbrance, and that in
19 default thereof, beneficiary may, without demand or notice, pay the
20 same, and beneficiary shall be sole judge of the legality or validity
21 of such taxes, assessments, charges or encumbrances, and the
22 amount necessary to be paid in satisfaction or discharge thereof.

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

36 3. COVENANT NO. 3. That if, during the existence of the trust,
37 there be commenced or pending any suit or action affecting the
38 conveyed premises, or any part thereof, or the title thereto, or if any
39 adverse claim for or against the premises, or any part thereof, be
40 made or asserted, the trustee or beneficiary may appear or intervene
41 in the suit or action and retain counsel therein and defend same, or
42 otherwise take such action therein as they may be advised, and may
43 settle or compromise same or the adverse claim; and in that behalf



1 and for any of the purposes may pay and expend such sums of
2 money as the trustee or beneficiary may deem to be necessary.

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

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

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

29 The trustees shall first give notice of the time and place of such
30 sale, in the manner provided ~~[by the laws of this State for the sale of~~
31 ~~real property under execution,]~~ **in NRS 107.080** and may ~~[from time~~
32 ~~to time]~~ postpone such sale ~~[by such advertisement as it may deem~~
33 ~~reasonable, or without further advertisement,]~~ **not more than three**
34 **times** by proclamation made to the persons assembled at the time
35 and place previously appointed and advertised for such sale, and on
36 the day of sale so advertised, or to which such sale may have been
37 postponed, the trustee may sell the property so advertised, or any
38 portion thereof, at public auction, at the time and place specified in
39 the notice, ~~[either]~~ **at a public location** in the county in which the
40 property, or any part thereof, to be sold, is situated, ~~[or at the~~
41 ~~principal office of the trustee, in its discretion,]~~
42 bidder. The beneficiary, obligee, creditor, or the holder or holders of
43 the promissory note or notes secured thereby may bid and purchase
44 at such sale. The beneficiary may, after recording the notice of
45 breach and election, waive or withdraw the same or any proceedings



1 thereunder, and shall thereupon be restored to his former position
2 and have and enjoy the same rights as though such notice had not
3 been recorded.

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

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

39 9. COVENANT NO. 9. That the beneficiary or his assigns may,
40 from time to time, appoint another trustee, or trustees, to execute the
41 trust created by the deed of trust or other conveyance in trust. A
42 copy of a resolution of the board of directors of beneficiary (if
43 beneficiary be a corporation), certified by the secretary thereof,
44 under its corporate seal, or an instrument executed and
45 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



1 with postage prepaid to the grantor, and to the person who holds the
2 title of record on the date the notice of default and election to sell is
3 recorded, at their respective addresses, if known, otherwise to the
4 address of the trust property. The notice of default and election to
5 sell must describe the deficiency in performance or payment and
6 may contain a notice of intent to declare the entire unpaid balance
7 due if acceleration is permitted by the obligation secured by the
8 deed of trust, but acceleration must not occur if the deficiency in
9 performance or payment is made good and any costs, fees and
10 expenses incident to the preparation or recordation of the notice and
11 incident to the making good of the deficiency in performance or
12 payment are paid within the time specified in subsection 2.

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

23 (a) *Providing the notice to each trustor and any other person*
24 *entitled to notice pursuant to this section by personal service or by*
25 *mailing the notice by registered or certified mail to the last known*
26 *address of the trustor and any other person entitled to such notice*
27 *pursuant to this section;*

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

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

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



- 1 corporation vests in the purchaser title to the shares in the
- 2 corporation which accompany the lease.

