

SENATE BILL NO. 249—SENATOR BEERS

MARCH 21, 2005

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing foreclosure sales of real property and sales of real property under execution. (BDR 3-908)

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 real property; providing the circumstances and manner in which a foreclosure sale of real property may be orally postponed; providing that a sale of real property under execution must take place at a public location in the county where the property, or some part thereof, is situated; 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 40.430 is hereby amended to read as follows:
2 40.430 1. Except in cases where a person proceeds under
3 subsection 2 of NRS 40.495 or subsection 1 of NRS 40.512, there
4 may be but one action for the recovery of any debt, or for the
5 enforcement of any right secured by a mortgage or other lien upon
6 real estate. That action must be in accordance with the provisions of
7 ~~this section and NRS 40.433~~ **NRS 40.430** to 40.459, inclusive. In
8 that action, the judgment must be rendered for the amount found due
9 the plaintiff, and the court, by its decree or judgment, may direct a
10 sale of the encumbered property, or such part thereof as is
11 necessary, and apply the proceeds of the sale as provided in
12 NRS 40.462.
13 2. This section must be construed to permit a secured creditor
14 to realize upon the collateral for a debt or other obligation agreed



1 upon by the debtor and creditor when the debt or other obligation
2 was incurred.

3 3. A sale directed by the court pursuant to subsection 1 must be
4 conducted in the same manner as the sale of real property upon
5 execution, by the sheriff of the county in which the encumbered
6 land is situated, and if the encumbered land is situated in two or
7 more counties, the court shall direct the sheriff of one of the
8 counties to conduct the sale with like proceedings and effect as if
9 the whole of the encumbered land were situated in that county.

10 4. *The sheriff conducting the sale of real property pursuant*
11 *to subsection 3 may postpone the sale by public announcement at*
12 *the time and location the sale should have taken place when there*
13 *are no bidders, when the amount offered is grossly inadequate or*
14 *for any other reason that prevents the sale from taking place on*
15 *the day fixed. The sheriff, without further notice, may postpone*
16 *the sale to a later date to be held at the same time and location the*
17 *sale should have taken place but may not postpone the sale more*
18 *than three times or for more than 90 days without being required*
19 *to give any further notice thereof. If the sale is postponed more*
20 *than three times or for more than 90 days, a new notice of the sale*
21 *must be given pursuant to the provisions of NRS 21.130.*

22 5. As used in this section, an "action" does not include any act
23 or proceeding:

24 (a) To appoint a receiver for, or obtain possession of, any real or
25 personal collateral for the debt or as provided in NRS 32.015.

26 (b) To enforce a security interest in, or the assignment of, any
27 rents, issues, profits or other income of any real or personal
28 property.

29 (c) To enforce a mortgage or other lien upon any real or
30 personal collateral located outside of the State which does not,
31 except as required under the laws of that jurisdiction, result in a
32 personal judgment against the debtor.

33 (d) For the recovery of damages arising from the commission of
34 a tort, including a recovery under NRS 40.750, or the recovery of
35 any declaratory or equitable relief.

36 (e) For the exercise of a power of sale pursuant to NRS 107.080.

37 (f) For the exercise of any right or remedy authorized by chapter
38 104 of NRS or by the Uniform Commercial Code as enacted in any
39 other state.

40 (g) For the exercise of any right to set off, or to enforce a pledge
41 in, a deposit account pursuant to a written agreement or pledge.

42 (h) To draw under a letter of credit.

43 (i) To enforce an agreement with a surety or guarantor if
44 enforcement of the mortgage or other lien has been automatically
45 stayed pursuant to 11 U.S.C. § 362 or pursuant to an order of a



1 federal bankruptcy court under any other provision of the United
2 States Bankruptcy Code for not less than 120 days following the
3 mailing of notice to the surety or guarantor pursuant to subsection 1
4 of NRS 107.095.

5 (j) To collect any debt, or enforce any right, secured by a
6 mortgage or other lien on real property if the property has been sold
7 to a person other than the creditor to satisfy, in whole or in part, a
8 debt or other right secured by a senior mortgage or other senior lien
9 on the property.

10 (k) Relating to any proceeding in bankruptcy, including the
11 filing of a proof of claim, seeking relief from an automatic stay and
12 any other action to determine the amount or validity of a debt.

13 (l) For filing a claim pursuant to chapter 147 of NRS or to
14 enforce such a claim which has been disallowed.

15 (m) Which does not include the collection of the debt or
16 realization of the collateral securing the debt.

17 (n) Pursuant to NRS 40.507 or 40.508.

18 (o) Which is exempted from the provisions of this section by
19 specific statute.

20 (p) To recover costs of suit, costs and expenses of sale,
21 attorneys' fees and other incidental relief in connection with any
22 action authorized by this subsection.

23 **Sec. 2.** NRS 21.130 is hereby amended to read as follows:

24 21.130 1. Before the sale of property on execution, notice of
25 the sale, in addition to the notice required pursuant to NRS 21.075
26 and 21.076, must be given as follows:

27 (a) In cases of perishable property, by posting written notice of
28 the time and place of sale in three public places at the township or
29 city where the sale is to take place, for such a time as may be
30 reasonable, considering the character and condition of the property.

31 (b) In case of other personal property, by posting a similar
32 notice in three public places of the township or city where the sale is
33 to take place, not less than 5 nor more than 10 days before the sale,
34 and, in case of sale on execution issuing out of a district court, by
35 the publication of a copy of the notice in a newspaper, if there is one
36 in the county, at least twice, the first publication being not less than
37 10 days before the date of the sale.

38 (c) In case of real property, by:

39 (1) Personal service upon each judgment debtor or by
40 **certified or** registered mail to the last known address of each
41 judgment debtor;

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



1 (3) Publishing a copy of the notice three times, once each
2 week, for 3 successive weeks, in a newspaper, if there is one in the
3 county. The cost of publication must not exceed the rate for legal
4 advertising as provided in NRS 238.070. If the newspaper
5 authorized by this section to publish the notice of sale neglects or
6 refuses from any cause to make the publication, then the posting of
7 notices as provided in this section shall be deemed sufficient notice.
8 Notice of the sale of property on execution upon a judgment for any
9 sum less than \$500, exclusive of costs, must be given only by
10 posting in three public places in the county, one of which must be
11 the courthouse.

12 2. The sheriff shall not conduct a sale of the property on
13 execution or deliver the judgment debtor's property to the judgment
14 creditor if the judgment debtor has not been properly notified as
15 required in this section and NRS 21.075 and 21.076.

16 **Sec. 3.** NRS 21.150 is hereby amended to read as follows:

17 21.150 **1.** All sales of property under execution shall be made
18 at auction to the highest bidder, and shall be made between the
19 hours of 9 a.m. and 5 p.m. After sufficient property has been sold to
20 satisfy the execution, no more shall be sold. Neither the officer
21 holding the execution nor his deputy shall become a purchaser or be
22 interested in any purchase at such sale.

23 **2.** When the sale is of personal property capable of manual
24 delivery, it shall be in view of those who attend the sale and be sold
25 in such parcels as are likely to bring the highest price. ~~[- and when]~~

26 **3. When** the sale is of real property and consisting of several
27 known lots or parcels, they shall be sold separately, or when a
28 portion of such real property is claimed by a third person and he
29 requires it to be sold separately, such portion shall be thus sold.

30 **4.** All sales of real property shall be made at ~~[the courthouse~~
31 ~~or]~~ **a public location in** the county in which the property, or some
32 part thereof, is situated. If the land to be sold under execution
33 consists of a single parcel, or two or more contiguous parcels,
34 situated in two or more counties, notice of the sale must be posted
35 and published in each of such counties, as provided in this chapter.

36 **5.** The judgment debtor, if present at the sale, may also direct
37 the order in which property, real or personal, shall be sold. When
38 such property consists of several known lots or parcels, or of articles
39 which can be sold to advantage separately, the sheriff shall be bound
40 to follow such directions.

