

ASSEMBLY BILL NO. 560—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

MARCH 26, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Establishes requirements concerning agreements between debtors and third parties for assistance in the recovery of certain proceeds of a foreclosure sale. (BDR 3-502)

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; establishing requirements concerning agreements between debtors and third parties for assistance in the recovery of certain proceeds of a foreclosure sale; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, the balance of any proceeds of a foreclosure sale on real
2 property remaining after the payment of the expenses relating to the sale, the
3 obligation being enforced by the sale and any other obligations secured by the
4 property is required to be paid to the debtor or his successor in interest. (NRS
5 40.462) This bill authorizes a debtor and a third party to enter into an agreement
6 pursuant to which the third party assists the debtor in the recovery of the balance of
7 any proceeds due to the debtor after a foreclosure sale and establishes the
8 requirements for such an agreement. This bill also requires that fees charged by
9 third parties pursuant to such agreements must be reasonable and provides a
10 presumption that fees which exceed \$2,500 are unreasonable. A third party seeking
11 a fee that exceeds \$2,500 is authorized to apply to a court for permission to charge
12 the higher fee.



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

Section 1. Chapter 40 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this section, a debtor or his successor in interest may enter into an agreement with a third party that provides for the third party to assist in the recovery of any balance of the proceeds of a foreclosure sale due to the debtor or his successor in interest pursuant to paragraph (d) of subsection 2 of NRS 40.462.

2. An agreement pursuant to subsection 1:

(a) Must:

(1) Be in writing;

(2) Be signed by the debtor or his successor in interest; and

(3) Contain an acknowledgment of the signature of the debtor or his successor in interest by a notary public; and

(b) May not be entered into less than 30 days after the date on which the foreclosure sale was conducted.

3. Any agreement entered into pursuant to this section that does not comply with subsection 2 is void and unenforceable.

4. Any fee charged by a third party for services provided pursuant to an agreement entered into pursuant to this section must be reasonable. A fee that exceeds \$2,500, excluding attorney's fees and costs, is presumed to be unreasonable. A court shall not enforce an obligation to pay any unreasonable fee, but may require a debtor to pay a reasonable fee that is less than the amount set forth in the agreement.

5. A third party may apply to the court for permission to charge a fee that exceeds \$2,500. Any third party applying to the court pursuant to this subsection has the burden of establishing to the court that the fee is reasonable.

6. This section does not preclude a debtor or his successor in interest from contesting the reasonableness of any fee set forth in an agreement entered into pursuant to this section.

7. As used in this section:

(a) "Creditor" means a person due an obligation being enforced by a foreclosure sale conducted pursuant to NRS 40.451 to 40.462, inclusive.

(b) "Debtor" means a person, or the successor in interest of a person, who owes an obligation being enforced by a foreclosure sale conducted pursuant to NRS 40.451 to 40.462, inclusive.

(c) "Third party" means a person who is neither the debtor nor the creditor of a particular obligation being enforced by a



- 1 *foreclosure sale conducted pursuant to NRS 40.451 to 40.462,*
- 2 *inclusive.*



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