

ASSEMBLY BILL NO. 140—COMMITTEE ON COMMERCE AND LABOR
(ON BEHALF OF THE LEGISLATIVE COMMISSION’S SUBCOMMITTEE
TO STUDY MORTGAGE LENDING AND HOUSING ISSUES)

FEBRUARY 6, 2009

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions relating to
foreclosures of real property. (BDR 54-228)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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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; creating the Office of the
Ombudsman for Foreclosures; revising provisions relating
to a notice of sale of real property under execution;
establishing the crime of defacing a notice of sale of real
property under execution or a notice of sale of real
property pursuant to a trustee’s power of sale; establishing
rights and duties of a purchaser of real property pursuant
to a foreclosure sale and establishing rights and duties of a
tenant in possession of such property; revising provisions
relating to a sale of real property pursuant to a trustee’s
power of sale; requiring a landlord to make certain
disclosures to a prospective tenant; and providing other
matters properly relating thereto.

Legislative Counsel’s Digest:

1 **Section 1** of this bill creates the Office of the Ombudsman for Foreclosures to
2 provide information relating to the foreclosure process. **Sections 2 and 7** of this bill
3 revise existing law by requiring that a notice of sale of real property under
4 execution or a notice of sale of real property pursuant to a trustee’s power of sale be
5 served upon the State Board of Health if the real property is operated as a licensed
6 health facility. **Sections 2 and 7** also require such notices to include the contact
7 information for the Office of the Ombudsman for Foreclosures and the lender’s loss
8 mitigation department. **Sections 2 and 7** further require a separate notice to be
9 served upon any tenant or subtenant, other than the judgment debtor, in actual
10 occupation of the real property subject to a notice of sale under execution or a
11 notice of sale pursuant to a trustee’s power of sale to inform the tenant or subtenant



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that the property is subject to a notice of sale. (NRS 21.130, 107.080) **Sections 3 and 8** of this bill make it unlawful for a person to willfully remove or deface a notice of sale under execution or a notice of sale pursuant to a trustee's power of sale which is posted on real property. (NRS 21.140, 107.084) **Sections 4 and 6** of this bill require the purchaser of a vacant residential property at a foreclosure sale or a trustee's sale to maintain the exterior of the property. **Sections 4 and 6** also authorize the appropriate governmental entity to assess a civil penalty of up to \$1,000 per day, under certain circumstances, for failure to maintain the property.

Existing law provides that a person who holds over and continues in possession of real property that has been foreclosed after a 3-day notice to quit has been served upon him may be removed. (NRS 40.255) **Section 5** of this bill provides that a tenant or subtenant, other than the person whose name appears on the mortgage or deed of trust, may be removed only after the expiration of a specified period not to exceed 60 days. **Section 5** also requires the tenant or subtenant who remains in occupation of the real property to remit rent to the new owner of the property pending expiration of the specified period. **Section 5** further prohibits any person from entering a record of eviction for a tenant or subtenant who vacates the property within the specified period. Finally, **section 5** allows the new owner of the real property to negotiate a new purchase, lease or rental agreement with the tenant or subtenant in occupation of the property or to offer a payment in exchange for the tenant or subtenant vacating the property on a date earlier than the end of the specified period.

Section 9 of this bill requires a landlord to disclose in writing to a prospective tenant if the property to be leased or rented is the subject of foreclosure proceedings. **Section 9** also makes it a deceptive trade practice for any landlord to willfully fail to make such a disclosure.

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

Section 1. Chapter 645F of NRS is hereby amended by adding thereto a new section to read as follows:

1. The Office of the Ombudsman for Foreclosures is hereby created within the Division.

2. The Commissioner shall appoint the Ombudsman.

3. The Ombudsman must be qualified by training and experience to perform the duties and functions of his office.

4. The Ombudsman shall:

(a) Assist homeowners to understand their rights and responsibilities with respect to the foreclosure process in this State by providing any relevant information, including, without limitation, an explanation of the applicable provisions of NRS and the time frame within which the foreclosure process occurs; and

(b) Perform such other tasks as are necessary to carry out his duties and the functions of his office.

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

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



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

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

(c) In case of real property, by:

(1) Personal service upon each judgment debtor or by registered mail to the last known address of each judgment debtor ~~and~~ **and, if the property of the judgment debtor is operated as a facility licensed under chapter 449 of NRS, upon the State Board of Health;**

(2) 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~~

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

(4) Posting a copy of the notice in a conspicuous place on the property.

2. **The notice must include, without limitation:**

(a) The contact information of the Office of the Ombudsman for Foreclosures; and

(b) The contact information of the lender's loss mitigation department, if any, or any other person associated with the lender who may provide information relating to the foreclosure status of the property.

3. A separate notice must be served by personal delivery or by certified mail, return receipt requested, to any tenant or subtenant, if any, other than the judgment debtor, in actual occupation of the premises at the same time the notice of the sale is given pursuant



1 *to subsection 1. The separate notice must include, without*
2 *limitation:*

3 *(a) A statement informing the tenant or subtenant that:*

4 *(1) A notice of the sale of the property has been issued;*

5 *(2) The tenant or subtenant may either terminate the lease*
6 *or rental agreement or, if the tenant or subtenant chooses to*
7 *remain in occupation of the premises, the tenant or subtenant will*
8 *be subject to eviction proceedings; and*

9 *(3) The provisions of chapter 40 of NRS govern the*
10 *applicable eviction proceedings; and*

11 *(b) An explanation of the eviction procedures and the time*
12 *frame within which the eviction may occur.*

13 *4. The sheriff shall not conduct a sale of the property on*
14 *execution or deliver the judgment debtor's property to the judgment*
15 *creditor if the judgment debtor or any other person entitled to*
16 *notice has not been properly notified as required in this section and*
17 *NRS 21.075 and 21.076.*

18 *5. As used in this section, "loss mitigation department"*
19 *means the department of the lender which is responsible for*
20 *overseeing the delinquency of loans prior to the initiation of*
21 *foreclosure proceedings.*

22 **Sec. 3.** NRS 21.140 is hereby amended to read as follows:

23 21.140 1. An officer selling without the notice prescribed by
24 NRS 21.075, 21.076 and 21.130 forfeits \$500 to the aggrieved
25 party, in addition to his actual damages.

26 2. ~~[A] It is unlawful for a~~ person ~~to~~ willfully ~~taking~~ take
27 down or ~~defacing~~ deface the notice posted pursuant to NRS
28 21.130, if done before the sale or, if the judgment is satisfied before
29 sale, before the satisfaction of the judgment. ~~[, forfeits]~~ In addition
30 to any other penalty, any person who violates this subsection shall
31 forfeit \$500 to the aggrieved party.

32 **Sec. 4.** Chapter 40 of NRS is hereby amended by adding
33 thereto a new section to read as follows:

34 1. Any vacant residential property purchased or acquired by a
35 person at a foreclosure sale pursuant to NRS 40.430 must be
36 maintained by that person in accordance with subsection 2.

37 2. In addition to complying with any other ordinance or rule
38 as required by the applicable governmental entity, the purchaser
39 shall care for the exterior of the property, including, without
40 limitation:

41 *(a) Limiting the excessive growth of foliage which would*
42 *otherwise diminish the value of surrounding properties;*

43 *(b) Preventing trespassers from remaining on the property;*

44 *(c) Preventing mosquito larvae from growing in standing*
45 *water; and*



1 (d) Preventing any other condition that creates a public
2 nuisance.

3 3. If a person violates subsection 2, the applicable
4 governmental entity shall mail to the last known address of the
5 person, by first-class mail, a notice:

6 (a) Describing the violation;

7 (b) Informing the person that a civil penalty may be imposed
8 pursuant to this section unless the person acts to correct the
9 violation within 14 days after the date of receipt of the notice and
10 completes the correction within 30 days after the date of receipt of
11 the notice; and

12 (c) Informing the person that he may contest the allegation
13 pursuant to subsection 4.

14 4. If a person, within 5 days after a notice is mailed to him
15 pursuant to subsection 3, requests a hearing to contest the
16 allegation of a violation of subsection 2, the applicable
17 governmental entity shall apply for a hearing before a court of
18 competent jurisdiction.

19 5. Except as otherwise provided in subsection 8, in addition to
20 any other penalty, the applicable governmental entity may impose
21 a civil penalty of not more than \$1,000 per day for a violation of
22 subsection 2:

23 (a) Commencing on the day following the expiration of the
24 period of time described in subsection 3; or

25 (b) If the person requested a hearing pursuant to subsection 4,
26 commencing on the day following a determination by the court in
27 favor of the applicable governmental entity.

28 6. The applicable governmental entity may waive or extend
29 the period of time described in subsection 3 if:

30 (a) The person to whom a notice is sent pursuant to subsection
31 3 makes a good faith effort to correct the violation; and

32 (b) The violation cannot be corrected in the period of time
33 described in subsection 3.

34 7. Any penalty collected by the applicable governmental entity
35 pursuant to this section must be directed to local nuisance
36 abatement programs.

37 8. The applicable governmental entity may not assess any
38 penalty pursuant to this section in addition to any penalty
39 prescribed by a local ordinance. This section shall not be deemed
40 to preempt any local ordinance.

41 9. As used in this section, "applicable governmental entity"
42 means:

43 (a) If the property is within the boundaries of a city, the
44 governing body of the city;



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(b) If the property is not within the boundaries of a city, the board of county commissioners of the county in which the property is located; and

(c) If the property is within a common-interest community, the executive board of the association.

Sec. 5. NRS 40.255 is hereby amended to read as follows:

40.255 1. Except as provided in ~~[subsection]~~ *subsections 2* ~~[.]~~ *and 7*, in any of the following cases, a person who holds over and continues in possession of real property or a mobile home after a 3-day written notice to quit has been served upon him ~~[, and also upon any subtenant in actual occupation of the premises, pursuant to NRS 40.280,]~~ may be removed as prescribed in NRS 40.290 to 40.420, inclusive:

(a) Where the property or mobile home has been sold under an execution against him or a person under whom he claims, and the title under the sale has been perfected;

(b) Where the property or mobile home has been sold upon the foreclosure of a mortgage, or under an express power of sale contained therein, executed by him or a person under whom he claims, and the title under the sale has been perfected;

(c) Where the property or mobile home has been sold under a power of sale granted by NRS 107.080 to the trustee of a deed of trust executed by such person or a person under whom he claims, and the title under such sale has been perfected; or

(d) Where the property or mobile home has been sold by him or a person under whom he claims, and the title under the sale has been perfected.

2. *A tenant or subtenant in actual occupation of the premises, other than a person whose name appears on the mortgage or deed, who holds over and continues in possession of real property or a mobile home in any of the cases described in subsection 1 may be removed as prescribed in NRS 40.290 to 40.420, inclusive, after receiving a notice of the change of ownership of the real property or mobile home and after the expiration of a notice period beginning on the date the notice was received by the tenant or subtenant and expiring:*

(a) Except as otherwise provided in paragraph (b), for all periodic tenancies with a period of less than 60 days, after not less than the number of days in the period;

(b) For month-to-month tenancies after not less than 30 days; and

(c) For all other periodic tenancies or tenancies at will, after not less than 60 days.

3. *During the notice period described in subsection 2:*



1 (a) *The new owner has the rights, obligations and liabilities of*
2 *the previous owner or landlord under the lease or rental*
3 *agreement which the previous owner or landlord entered into with*
4 *the tenant or subtenant regarding the property; and*

5 (b) *The tenant or subtenant continues to have the rights,*
6 *obligations and liabilities he had under the lease or rental*
7 *agreement which he entered into with the previous owner or*
8 *landlord regarding the property.*

9 4. *The notice described in subsection 2 must contain a*
10 *statement:*

11 (a) *Providing the contact information of the new owner to*
12 *whom rent should be remitted;*

13 (b) *Notifying the tenant or subtenant that the lease or rental*
14 *agreement he entered into with the previous owner or landlord of*
15 *the property continues in effect through the notice period*
16 *described in subsection 2; and*

17 (c) *Notifying the tenant or subtenant that failure to pay rent to*
18 *the new owner or comply with any other term of the agreement or*
19 *applicable law constitutes a breach of the lease or rental*
20 *agreement and may result in eviction proceedings.*

21 5. *No person may enter a record of eviction for a tenant or*
22 *subtenant who vacates a property during the notice period*
23 *described in subsection 2.*

24 6. *Nothing in this section shall be deemed to prohibit the new*
25 *owner of a property purchased pursuant to a foreclosure sale or*
26 *trustee's sale from:*

27 (a) *Negotiating a new purchase, lease or rental agreement with*
28 *the tenant or subtenant; or*

29 (b) *Offering a payment to the tenant or subtenant in exchange*
30 *for vacating the premises on a date earlier than the expiration of*
31 *the notice period described in subsection 2.*

32 7. *This section does not apply to the tenant of a mobile home*
33 *lot in a mobile home park.*

34 **Sec. 6.** *Chapter 107 of NRS is hereby amended by adding*
35 *thereto a new section to read as follows:*

36 1. *Any vacant residential property purchased or acquired by a*
37 *person at a trustee's sale pursuant to NRS 107.080 must be*
38 *maintained by that person in accordance with subsection 2.*

39 2. *In addition to complying with any other ordinance or rule*
40 *as required by the applicable governmental entity, the purchaser*
41 *shall care for the exterior of the property, including, without*
42 *limitation:*

43 (a) *Limiting the excessive growth of foliage which would*
44 *otherwise diminish the value of surrounding properties;*

45 (b) *Preventing trespassers from remaining on the property;*



1 (c) Preventing mosquito larvae from growing in standing
2 water; and

3 (d) Preventing any other condition that creates a public
4 nuisance.

5 3. If a person violates subsection 2, the applicable
6 governmental entity shall mail to the last known address of the
7 person, by first-class mail, a notice:

8 (a) Describing the violation;

9 (b) Informing the person that a civil penalty may be imposed
10 pursuant to this section unless the person acts to correct the
11 violation within 14 days after the date of receipt of the notice and
12 completes the correction within 30 days after the date of receipt of
13 the notice; and

14 (c) Informing the person that he may contest the allegation
15 pursuant to subsection 4.

16 4. If a person, within 5 days after a notice is mailed to him
17 pursuant to subsection 3, requests a hearing to contest the
18 allegation of a violation of subsection 2, the applicable
19 governmental entity shall apply for a hearing before a court of
20 competent jurisdiction.

21 5. Except as otherwise provided in subsection 8, in addition to
22 any other penalty, the applicable governmental entity may impose
23 a civil penalty of not more than \$1,000 per day for a violation of
24 subsection 2:

25 (a) Commencing on the day following the expiration of the
26 period of time described in subsection 3; or

27 (b) If the person requested a hearing pursuant to subsection 4,
28 commencing on the day following a determination by the court in
29 favor of the applicable governmental entity.

30 6. The applicable governmental entity may waive or extend
31 the period of time described in subsection 3 if:

32 (a) The person to whom a notice is sent pursuant to subsection
33 3 makes a good faith effort to correct the violation; and

34 (b) The violation cannot be corrected in the period of time
35 described in subsection 3.

36 7. Any penalty collected by the applicable governmental entity
37 pursuant to this section must be directed to local nuisance
38 abatement programs.

39 8. The applicable governmental entity may not assess any
40 penalty pursuant to this section in addition to any penalty
41 prescribed by a local ordinance. This section shall not be deemed
42 to preempt any local ordinance.

43 9. As used in this section, "applicable governmental entity"
44 means:



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1 (a) *If the property is within the boundaries of a city, the*
2 *governing body of the city;*

3 (b) *If the property is not within the boundaries of a city, the*
4 *board of county commissioners of the county in which the*
5 *property is located; and*

6 (c) *If the property is within a common-interest community, the*
7 *executive board of the association.*

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

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

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

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

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

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

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

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

36 3. The 15- or 35-day period provided in paragraph (a) of
37 subsection 2 commences on the first day following the day upon
38 which the notice of default and election to sell is recorded in the
39 office of the county recorder of the county in which the property is
40 located and a copy of the notice of default and election to sell is
41 mailed by registered or certified mail, return receipt requested and
42 with postage prepaid to the grantor, ~~and~~ to the person who holds
43 the title of record on the date the notice of default and election to
44 sell is recorded ~~and~~ *and, if the property is operated as a facility*
45 *licensed under chapter 449 of NRS, to the State Board of Health,*



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

11 4. The trustee, or other person authorized to make the sale
12 under the terms of the trust deed or transfer in trust, shall, after
13 expiration of the 3-month period following the recording of the
14 notice of breach and election to sell, and before the making of
15 the sale, give notice of the time and place thereof by recording the
16 notice of sale and by:

17 (a) Providing the notice to each trustor , ~~and~~ any other person
18 entitled to notice pursuant to this section *and, if the property is*
19 *operated as a facility licensed under chapter 449 of NRS, the State*
20 *Board of Health*, by personal service or by mailing the notice by
21 registered or certified mail to the last known address of the trustor
22 and any other person entitled to such notice pursuant to this section;

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

27 (c) Publishing a copy of the notice three times, once each week
28 for 3 consecutive weeks, in a newspaper of general circulation in the
29 county where the property is situated ~~[-]~~; *and*

30 (d) *Posting a copy of the notice in a conspicuous place on the*
31 *property.*

32 5. *The notice of sale must include, without limitation:*

33 (a) *The contact information of the Office of the Ombudsman*
34 *for Foreclosures; and*

35 (b) *The contact information of the lender's loss mitigation*
36 *department, if any, or any other person associated with the lender*
37 *who may provide information relating to the foreclosure status of*
38 *the property.*

39 6. *A separate notice must be served by personal delivery or by*
40 *certified mail, return receipt requested, to any tenant or subtenant,*
41 *if any, other than the judgment debtor, in actual occupation of the*
42 *premises at the same time the notice of the sale is given pursuant*
43 *to subsection 4. The separate notice must include, without*
44 *limitation:*

45 (a) *A statement informing the tenant or subtenant that:*



- 1 (1) *A notice of the sale of the property has been issued;*
2 (2) *The tenant or subtenant may either terminate the lease*
3 *or rental agreement or, if the tenant or subtenant chooses to*
4 *remain in occupation of the premises, the tenant or subtenant will*
5 *be subject to eviction proceedings; and*
6 (3) *The provisions of chapter 40 of NRS govern the*
7 *applicable eviction proceedings; and*
8 (b) *An explanation of the eviction procedures and the time*
9 *frame within which the eviction may occur.*

10 7. Every sale made under the provisions of this section and
11 other sections of this chapter vests in the purchaser the title of the
12 grantor and his successors in interest without equity or right of
13 redemption. A sale made pursuant to this section may be declared
14 void by any court of competent jurisdiction in the county where the
15 sale took place if:

16 (a) The trustee or other person authorized to make the sale does
17 not substantially comply with the provisions of this section;

18 (b) Except as otherwise provided in subsection ~~[6-]~~ 8, an action
19 is commenced in the county where the sale took place within 90
20 days after the date of the sale; and

21 (c) A notice of lis pendens providing notice of the pendency of
22 the action is recorded in the office of the county recorder of the
23 county where the sale took place within 30 days after
24 commencement of the action.

25 ~~[6-]~~ 8. If proper notice is not provided pursuant to subsection 3
26 or paragraph (a) of subsection 4 to the grantor, to the person who
27 holds the title of record on the date the notice of default and election
28 to sell is recorded, to each trustor or to any other person entitled to
29 such notice, the person who did not receive such proper notice may
30 commence an action pursuant to subsection ~~[5]~~ 7 within 120 days
31 after the date on which the person received actual notice of the sale.

32 ~~[7-]~~ 9. The sale of a lease of a dwelling unit of a cooperative
33 housing corporation vests in the purchaser title to the shares in the
34 corporation which accompany the lease.

35 10. *As used in this section, "loss mitigation department"*
36 *means the department of the lender which is responsible for*
37 *overseeing the delinquency of loans prior to the initiation of*
38 *foreclosure proceedings.*

39 Sec. 8. NRS 107.084 is hereby amended to read as follows:

40 107.084 ~~[A]~~ *It is unlawful for a person ~~[who]~~ to willfully*
41 *~~[removes]~~ remove or ~~[defaces]~~ deface a notice posted pursuant to*
42 *subsection 4 of NRS 107.080, if done before the sale or, if the*
43 *default is satisfied before the sale, before the satisfaction of the*
44 *default . ~~[I]~~ In addition to any other penalty, any person who*



1 *violates this section* is liable in the amount of \$500 to any person
2 aggrieved by the removal or defacing of the notice.

3 **Sec. 9.** Chapter 118A of NRS is hereby amended by adding
4 thereto a new section to read as follows:

5 *1. A landlord shall disclose in writing to a prospective tenant*
6 *if the property to be leased or rented is the subject of any*
7 *foreclosure proceedings.*

8 *2. A willful violation of subsection 1 constitutes a deceptive*
9 *trade practice for the purposes of NRS 598.0903 to 598.0999,*
10 *inclusive.*

