

SENATE BILL NO. 128—SENATORS PARKS, CARLTON, HORSFORD, WIENER; AMODEI, BREEDEN, CEGAVSKE, COFFIN, COPENING, LEE, MATHEWS, MCGINNESS, NOLAN, SCHNEIDER AND WOODHOUSE (BY REQUEST)

FEBRUARY 11, 2009

JOINT SPONSORS: ASSEMBLYMEN CONKLIN, SEGERBLOM, ANDERSON, KOIVISTO, PIERCE; AIZLEY, BOBZIEN, BUCKLEY, DENIS, DONDERO LOOP, GRADY, LESLIE, MANENDO, MCCLAIN, OCEGUERA, OHRENSCHALL AND PARNELL

Referred to Committee on Commerce and Labor

SUMMARY—Requires certain persons to record foreclosure sales and sales of real property under a deed of trust within a certain period of time. (BDR 9-841)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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 property; requiring certain persons to record foreclosure sales and sales of real property under a deed of trust within a certain period of time after the sale; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for a trustee to execute a power of sale on real property after a breach of an obligation or payment of debt due to the trustee. **Section 1** of this bill amends existing law to: (1) require the trustee to record the sale of the property with the appropriate office of the county recorder within 30 days after the date of the sale or deliver, within 20 days after the date of the sale, the deed to the successful bidder, who must then record the deed with the appropriate office of the county recorder within 10 days after the date of delivery; and (2) make the successful bidder liable for certain damages for failure to cause such recordation. (NRS 107.080)

Existing law provides for a person to proceed on an action for the recovery of any debt or for the enforcement of any right secured by a mortgage or other lien upon real estate. **Section 2** of this bill amends existing law to require the sheriff



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13 who conducted a foreclosure sale pursuant to such an action to record the sale with
14 the appropriate office of the county recorder within 30 days after the date of the
15 sale. (NRS 40.430)

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

1 **Section 1.** NRS 107.080 is hereby amended to read as follows:
2 107.080 1. Except as otherwise provided in NRS 107.085, if
3 any transfer in trust of any estate in real property is made after
4 March 29, 1927, to secure the performance of an obligation or the
5 payment of any debt, a power of sale is hereby conferred upon the
6 trustee to be exercised after a breach of the obligation for which
7 the transfer is security.

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

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

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

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

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

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

29 3. The 15- or 35-day period provided in paragraph (a) of
30 subsection 2 commences on the first day following the day upon
31 which the notice of default and election to sell is recorded in the
32 office of the county recorder of the county in which the property is
33 located and a copy of the notice of default and election to sell is
34 mailed by registered or certified mail, return receipt requested and
35 with postage prepaid to the grantor, and to the person who holds the
36 title of record on the date the notice of default and election to sell is
37 recorded, at their respective addresses, if known, otherwise to the
38 address of the trust property. The notice of default and election to



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

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

15 (a) Providing the notice to each trustor and any other person
16 entitled to notice pursuant to this section by personal service or by
17 mailing the notice by registered or certified mail to the last known
18 address of the trustor and any other person entitled to such notice
19 pursuant to this section;

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

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

27 5. Every sale made under the provisions of this section and
28 other sections of this chapter vests in the purchaser the title of the
29 grantor and his successors in interest without equity or right of
30 redemption. A sale made pursuant to this section may be declared
31 void by any court of competent jurisdiction in the county where the
32 sale took place if:

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

35 (b) Except as otherwise provided in subsection 6, an action is
36 commenced in the county where the sale took place within 90 days
37 after the date of the sale; and

38 (c) A notice of lis pendens providing notice of the pendency of
39 the action is recorded in the office of the county recorder of the
40 county where the sale took place within 30 days after
41 commencement of the action.

42 6. If proper notice is not provided pursuant to subsection 3 or
43 paragraph (a) of subsection 4 to the grantor, to the person who holds
44 the title of record on the date the notice of default and election to
45 sell is recorded, to each trustor or to any other person entitled to



1 such notice, the person who did not receive such proper notice may
2 commence an action pursuant to subsection 5 within 120 days after
3 the date on which the person received actual notice of the sale.

4 7. The sale of a lease of a dwelling unit of a cooperative
5 housing corporation vests in the purchaser title to the shares in the
6 corporation which accompany the lease.

7 **8. After a sale of property is conducted pursuant to this**
8 **section, the trustee shall:**

9 **(a) Within 30 days after the date of the sale, record the**
10 **trustee's deed upon sale in the office of the county recorder of the**
11 **county in which the property is located; or**

12 **(b) Within 20 days after the date of the sale, deliver the**
13 **trustee's deed upon sale to the successful bidder. Within 10 days**
14 **after the date of delivery of the deed by the trustee, the successful**
15 **bidder shall record the trustee's deed upon sale in the office of the**
16 **county recorder of the county in which the property is located.**

17 **9. If the successful bidder fails to record the trustee's deed**
18 **upon sale pursuant to paragraph (b) of subsection 8, the**
19 **successful bidder:**

20 **(a) Is liable in a civil action to any party that is a senior**
21 **lienholder against the property that is the subject of the sale in a**
22 **sum of up to \$500 and for reasonable attorney's fees and the costs**
23 **of bringing the action; and**

24 **(b) Is liable in a civil action for any actual damages caused by**
25 **his failure to comply with the provisions of subsection 8 and for**
26 **reasonable attorney's fees and the costs of bringing the action.**

27 **Sec. 2.** NRS 40.430 is hereby amended to read as follows:

28 40.430 1. Except in cases where a person proceeds under
29 subsection 2 of NRS 40.495 or subsection 1 of NRS 40.512, there
30 may be but one action for the recovery of any debt, or for the
31 enforcement of any right secured by a mortgage or other lien upon
32 real estate. That action must be in accordance with the provisions of
33 NRS 40.430 to 40.459, inclusive. In that action, the judgment must
34 be rendered for the amount found due the plaintiff, and the court, by
35 its decree or judgment, may direct a sale of the encumbered
36 property, or such part thereof as is necessary, and apply the proceeds
37 of the sale as provided in NRS 40.462.

38 2. This section must be construed to permit a secured creditor
39 to realize upon the collateral for a debt or other obligation agreed
40 upon by the debtor and creditor when the debt or other obligation
41 was incurred.

42 3. A sale directed by the court pursuant to subsection 1 must be
43 conducted in the same manner as the sale of real property upon
44 execution, by the sheriff of the county in which the encumbered
45 land is situated, and if the encumbered land is situated in two or



1 more counties, the court shall direct the sheriff of one of the
2 counties to conduct the sale with like proceedings and effect as if
3 the whole of the encumbered land were situated in that county.

4 4. *Within 30 days after a sale of property is conducted*
5 *pursuant to this section, the sheriff who conducted the sale shall*
6 *record the sale of the property in the office of the county recorder*
7 *of the county in which the property is located.*

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

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

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

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

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

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

23 (f) For the exercise of any right or remedy authorized by chapter
24 104 of NRS or by the Uniform Commercial Code as enacted in any
25 other state.

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

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

29 (i) To enforce an agreement with a surety or guarantor if
30 enforcement of the mortgage or other lien has been automatically
31 stayed pursuant to 11 U.S.C. § 362 or pursuant to an order of a
32 federal bankruptcy court under any other provision of the United
33 States Bankruptcy Code for not less than 120 days following the
34 mailing of notice to the surety or guarantor pursuant to subsection 1
35 of NRS 107.095.

36 (j) To collect any debt, or enforce any right, secured by a
37 mortgage or other lien on real property if the property has been sold
38 to a person other than the creditor to satisfy, in whole or in part, a
39 debt or other right secured by a senior mortgage or other senior lien
40 on the property.

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

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



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

3 (n) Pursuant to NRS 40.507 or 40.508.

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

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

9 **Sec. 3.** This act becomes effective on July 1, 2009.

