

SENATE BILL NO. 67—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE GOVERNOR)

PREFILED DECEMBER 10, 2008

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing declarations of homestead. (BDR 10-440)

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 **fomitted-material** is material to be omitted.

AN ACT relating to declarations of homestead; requiring the Real Estate Division of the Department of Business and Industry to prescribe a form for such declarations; exempting declarations made on the prescribed form from certain formatting requirements for documents submitted for recording; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, the owner of property used as a homestead is authorized to
2 file a written declaration of homestead for that property, which protects up to
3 \$550,000 of equity in the property from forced sale, except in certain
4 circumstances. (Nev. Const. Art. 4, § 30; NRS 115.010, 115.020) The contents of
5 such a declaration are prescribed by law. (NRS 111.312, 115.020) **Section 1** of this
6 bill requires the Real Estate Division of the Department of Business and Industry,
7 after soliciting and considering recommendations from the county recorders, to
8 prescribe a form that may be used for filing a declaration of homestead. **Section 1**
9 also requires the Division and each county recorder to make the form available to
10 the public, free of charge.

11 To be valid under existing law, a declaration of homestead must be recorded by
12 the appropriate county recorder. (NRS 115.020) With certain exceptions,
13 documents submitted for recording are required to conform to specific formatting
14 requirements. (NRS 247.110) However, a county recorder is authorized to conform
15 the size of a declaration of homestead that does not meet those formatting
16 requirements so that the declaration is suitable for recording by a method used by
17 the recorder to preserve his records. (NRS 247.120) A county recorder is authorized
18 to charge an additional fee for recording a document that does not meet the
19 formatting requirements unless the document is specifically exempted.



(NRS 247.305) **Section 3** of this bill exempts declarations of homestead made on the prescribed form from conformance with those formatting requirements, and consequently, a county recorder is prohibited from charging the additional fee for recording such a declaration.

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

Section 1. Chapter 115 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The Real Estate Division of the Department of Business and Industry shall:

(a) Solicit recommendations from each county recorder concerning the design and contents of a form that may be used to make a declaration of homestead pursuant to NRS 115.020; and

(b) Prescribe such a form after considering all recommendations solicited pursuant to paragraph (a).

2. The form must provide for the inclusion of all information, statements and signatures required for a declaration pursuant to NRS 111.312 and 115.020.

3. The form must be made available, free of charge:

(a) By the Real Estate Division at its principal office designated pursuant to NRS 645.170 and at each branch office established pursuant to NRS 645.170 and on any website that it maintains on the Internet or its successor; and

(b) By each county recorder at his office and on any website maintained by him in his official capacity on the Internet or its successor.

Sec. 2. NRS 115.020 is hereby amended to read as follows:

115.020 1. The selection must be made by either the husband or wife, or both of them, or the single person, declaring an intention in writing to claim the property as a homestead. *The selection may be made on the form prescribed by the Real Estate Division of the Department of Business and Industry pursuant to section 1 of this act.*

2. The declaration must state:

(a) When made by a married person or persons, that they or either of them are married, or if not married, that he or she is a householder.

(b) When made by a married person or persons, that they or either of them, as the case may be, are, at the time of making the declaration, residing with their family, or with the person or persons under their care and maintenance, on the premises, particularly describing the premises.



(c) When made by any claimant under this section, that it is their or his intention to use and claim the property as a homestead.

3. The declaration must be signed by the person or persons making it ~~it~~ and acknowledged and recorded as conveyances affecting real property are required to be acknowledged and recorded. If the property declared upon as a homestead is the separate property of either spouse, both must join in the execution and acknowledgment of the declaration.

4. If a person solicits another person to allow the soliciting person to file a declaration of homestead on behalf of the other person and charges or accepts a fee or other valuable consideration for recording the declaration of homestead for the other person, the soliciting person shall, before the declaration is recorded or before the fee or other valuable consideration is charged to or accepted from the other person, provide that person with a notice written in bold type which states that:

(a) Except for the fee which may be charged by the county recorder for recording a declaration of homestead, a declaration of homestead may be recorded in the county in which the property is located without the payment of a fee; and

(b) The person may record the declaration of homestead on his own behalf.

➤ The notice must clearly indicate the amount of the fee which may be charged by the county recorder for recording a declaration of homestead.

5. The rights acquired by declaring a homestead are not extinguished by the conveyance of the underlying property in trust for the benefit of the person or persons who declared it. A trustee may by similar declaration claim property, held by him, as a homestead for the settlor or for one or more beneficiaries of the trust, or both, if the person or persons for whom the claim is made reside on or in the property.

6. A person who violates the provisions of subsection 4 is guilty of a misdemeanor.

Sec. 3. NRS 247.110 is hereby amended to read as follows:

247.110 1. When a document authorized, entitled or required by law to be recorded is deposited in the county recorder's office for recording, the county recorder shall:

(a) Endorse upon it the time when it was received, noting:

(1) The year, month, day, hour and minute of its reception;

(2) The document number; and

(3) The amount of fees collected for recording the document.

(b) Record the document without delay, together with the acknowledgments, proofs and certificates, written upon or annexed



1 to it, with the plats, surveys, schedules and other papers thereto
2 annexed, in the order in which the papers are received for recording.

3 (c) Note at the upper right corner of the record and upon the
4 document, except a map, so recorded the exact time of its reception
5 and the name of the person at whose request it was recorded.

6 (d) Upon request, place a stamp or other notation upon one copy
7 of the document presented at the time of recording to reflect the
8 information endorsed upon the original pursuant to subparagraphs
9 (1) and (2) of paragraph (a) and as evidence that he received the
10 original, and return the copy to the person who presented it.

11 2. In addition to the information described in paragraph (a) of
12 subsection 1, a county recorder may endorse upon a document the
13 book and page where the document is recorded.

14 3. Except as otherwise provided in this section, subsection 4 of
15 NRS 247.305 and NRS 111.366 to 111.3697, inclusive, a document,
16 except a map, certificate or affidavit of death, military discharge ,
17 *declaration of homestead made on a form prescribed pursuant to*
18 *section 1 of this act* or document regarding taxes that is issued by
19 the Internal Revenue Service of the United States Department of the
20 Treasury, that is submitted for recording must be on a form
21 authorized by NRS 104.9521 for the type of filing or must:

22 (a) Be on white, 20-pound paper that is 8 1/2 inches by 11
23 inches in size.

24 (b) Have a margin of 1 inch on the left and right sides and at the
25 bottom of each page.

26 (c) Have a space of 3 inches by 3 inches at the upper right
27 corner of the first page and have a margin of 1 inch at the top of
28 each succeeding page.

29 (d) Not be on sheets of paper that are bound together at the side,
30 top or bottom.

31 (e) Not contain printed material on more than one side of each
32 page.

33 (f) Not have any documents or other materials physically
34 attached to the paper.

35 (g) Not contain:

36 (1) Colored markings to highlight text or any other part of
37 the document;

38 (2) A stamp or seal that overlaps with text or a signature on
39 the document, except in the case of a validated stamp or seal of a
40 professional engineer or land surveyor who is licensed pursuant to
41 chapter 625 of NRS;

42 (3) Text that is smaller than a 10-point Times New Roman
43 font and is printed in any ink other than black; or

44 (4) More than nine lines of text per vertical inch.



- 1 4. The provisions of subsection 3 do not apply to a document
2 submitted for recording that has been filed with a court and which
3 conforms to the formatting requirements established by the court.
- 4 5. A document is recorded when the information required
5 pursuant to this section is placed on the document and is entered in
6 the record of the county recorder.

