

ASSEMBLY BILL NO. 226—ASSEMBLYMEN FRIERSON,
BROOKS, CARRILLO, SEGERBLOM; AND PIERCE

MARCH 2, 2011

Referred to Committee on Judiciary

SUMMARY—Revises various provisions governing landlords and tenants. (BDR 3-669)

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 property; revising various provisions governing landlords and tenants; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law generally authorizes a landlord to have a tenant removed from
2 rental property if the tenant defaults on rental payments and continues to occupy the
3 property. (NRS 40.253) **Section 1** of this bill revises the period in which a tenant is
4 removed from rental property after the sheriff or constable receives an order of
5 eviction from the court. Existing law also provides that a holdover tenant who
6 occupies rental property that is then sold as a residential foreclosure may be
7 removed from the property after receiving adequate notice of the change in
8 ownership of the property, as prescribed by law. (NRS 40.255) **Section 2** of this bill
9 authorizes such a removal of a holdover tenant when the tenant occupies rental
10 property that is then sold as a residential short sale.

11 Additionally, existing law provides tenants with certain remedies if a landlord
12 is required to provide certain essential services and fails to do so, or if the landlord
13 commits certain other acts that interfere with the tenant's use of the rental property.
14 (NRS 118A.380, 118A.390) **Section 6** of this bill extends certain remedies to
15 tenants when a landlord is required to provide essential items or services but fails to
16 do so. **Section 7** of this bill authorizes a tenant to recover immediate possession of
17 rental property if a landlord takes possession of the property in violation of NRS
18 118A.480, which prohibits a landlord from taking possession of the property unless
19 the landlord pursues an available legal remedy or the tenant surrenders possession
20 of or abandons the property.



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

Section 1. NRS 40.253 is hereby amended to read as follows:

40.253 1. Except as otherwise provided in subsection 10, in addition to the remedy provided in NRS 40.2512 and 40.290 to 40.420, inclusive, when the tenant of any dwelling, apartment, mobile home, recreational vehicle or commercial premises with periodic rent reserved by the month or any shorter period is in default in payment of the rent, the landlord or the landlord's agent, unless otherwise agreed in writing, may serve or have served a notice in writing, requiring in the alternative the payment of the rent or the surrender of the premises:

(a) At or before noon of the fifth full day following the day of service; or

(b) If the landlord chooses not to proceed in the manner set forth in paragraph (a) and the rent is reserved by a period of 1 week or less and the tenancy has not continued for more than 45 days, at or before noon of the fourth full day following the day of service.

➤ As used in this subsection, "day of service" means the day the landlord or the landlord's agent personally delivers the notice to the tenant. If personal service was not so delivered, the "day of service" means the day the notice is delivered, after posting and mailing pursuant to subsection 2, to the sheriff or constable for service if the request for service is made before noon. If the request for service by the sheriff or constable is made after noon, the "day of service" shall be deemed to be the day next following the day that the request is made for service by the sheriff or constable.

2. A landlord or the landlord's agent who serves a notice to a tenant pursuant to paragraph (b) of subsection 1 shall attempt to deliver the notice in person in the manner set forth in paragraph (a) of subsection 1 of NRS 40.280. If the notice cannot be delivered in person, the landlord or the landlord's agent:

(a) Shall post a copy of the notice in a conspicuous place on the premises and mail the notice by overnight mail; and

(b) After the notice has been posted and mailed, may deliver the notice to the sheriff or constable for service in the manner set forth in subsection 1 of NRS 40.280. The sheriff or constable shall not accept the notice for service unless it is accompanied by written evidence, signed by the tenant when the tenant took possession of the premises, that the landlord or the landlord's agent informed the tenant of the provisions of this section which set forth the lawful procedures for eviction from a short-term tenancy. Upon acceptance, the sheriff or constable shall serve the notice within



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1 48 hours after the request for service was made by the landlord or
2 the landlord's agent.

3 3. A notice served pursuant to subsection 1 or 2 must:

4 (a) Identify the court that has jurisdiction over the matter; and

5 (b) Advise the tenant of the tenant's right to contest the matter
6 by filing, within the time specified in subsection 1 for the payment
7 of the rent or surrender of the premises, an affidavit with the court
8 that has jurisdiction over the matter stating that the tenant has
9 tendered payment or is not in default in the payment of the rent.

10 4. If the tenant files such an affidavit at or before the time
11 stated in the notice, the landlord or the landlord's agent, after receipt
12 of a file-stamped copy of the affidavit which was filed, shall not
13 provide for the nonadmittance of the tenant to the premises by
14 locking or otherwise.

15 5. Upon noncompliance with the notice:

16 (a) The landlord or the landlord's agent may apply by affidavit
17 of complaint for eviction to the justice court of the township in
18 which the dwelling, apartment, mobile home or commercial
19 premises are located or to the district court of the county in which
20 the dwelling, apartment, mobile home or commercial premises are
21 located, whichever has jurisdiction over the matter. The court may
22 thereupon issue an order directing the sheriff or constable of the
23 county to remove the tenant ~~[within]~~ *not less than 24 hours and not*
24 *more than 48* hours after receipt of the order. The affidavit must
25 state or contain:

26 (1) The date the tenancy commenced.

27 (2) The amount of periodic rent reserved.

28 (3) The amounts of any cleaning, security or rent deposits
29 paid in advance, in excess of the first month's rent, by the tenant.

30 (4) The date the rental payments became delinquent.

31 (5) The length of time the tenant has remained in possession
32 without paying rent.

33 (6) The amount of rent claimed due and delinquent.

34 (7) A statement that the written notice was served on the
35 tenant in accordance with NRS 40.280.

36 (8) A copy of the written notice served on the tenant.

37 (9) A copy of the signed written rental agreement, if any.

38 (b) Except when the tenant has timely filed the affidavit
39 described in subsection 3 and a file-stamped copy of it has been
40 received by the landlord or the landlord's agent, and except when
41 the landlord is prohibited pursuant to NRS 118A.480, the landlord
42 or the landlord's agent may, in a peaceable manner, provide for the
43 nonadmittance of the tenant to the premises by locking or otherwise.

44 6. Upon the filing by the tenant of the affidavit permitted in
45 subsection 3, regardless of the information contained in the



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1 affidavit, and the filing by the landlord of the affidavit permitted by
2 subsection 5, the justice court or the district court shall hold a
3 hearing, after service of notice of the hearing upon the parties, to
4 determine the truthfulness and sufficiency of any affidavit or notice
5 provided for in this section. If the court determines that there is no
6 legal defense as to the alleged unlawful detainer and the tenant is
7 guilty of an unlawful detainer, the court may issue a summary order
8 for removal of the tenant or an order providing for the
9 nonadmittance of the tenant. If the court determines that there is a
10 legal defense as to the alleged unlawful detainer, the court shall
11 refuse to grant either party any relief, and, except as otherwise
12 provided in this subsection, shall require that any further
13 proceedings be conducted pursuant to NRS 40.290 to 40.420,
14 inclusive. The issuance of a summary order for removal of the
15 tenant does not preclude an action by the tenant for any damages or
16 other relief to which the tenant may be entitled. If the alleged
17 unlawful detainer was based upon subsection 5 of NRS 40.2514, the
18 refusal by the court to grant relief does not preclude the landlord
19 thereafter from pursuing an action for unlawful detainer in
20 accordance with NRS 40.251.

21 7. The tenant may, upon payment of the appropriate fees
22 relating to the filing and service of a motion, file a motion with the
23 court, on a form provided by the clerk of the court, to dispute the
24 amount of the costs, if any, claimed by the landlord pursuant to NRS
25 118.207 or 118A.460 for the inventory, moving and storage of
26 personal property left on the premises. The motion must be filed
27 within 20 days after the summary order for removal of the tenant or
28 the abandonment of the premises by the tenant, or within 20 days
29 after:

30 (a) The tenant has vacated or been removed from the premises;
31 and

32 (b) A copy of those charges has been requested by or provided
33 to the tenant,
34 ➔ whichever is later.

35 8. Upon the filing of a motion pursuant to subsection 7, the
36 court shall schedule a hearing on the motion. The hearing must be
37 held within 10 days after the filing of the motion. The court shall
38 affix the date of the hearing to the motion and order a copy served
39 upon the landlord by the sheriff, constable or other process server.
40 At the hearing, the court may:

41 (a) Determine the costs, if any, claimed by the landlord pursuant
42 to NRS 118.207 or 118A.460 and any accumulating daily costs; and

43 (b) Order the release of the tenant's property upon the payment
44 of the charges determined to be due or if no charges are determined
45 to be due.



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9. A landlord shall not refuse to accept rent from a tenant that is submitted after the landlord or the landlord's agent has served or had served a notice pursuant to subsection 1 if the refusal is based on the fact that the tenant has not paid collection fees, attorney's fees or other costs other than rent, a reasonable charge for late payments of rent or dishonored checks, or a security. As used in this subsection, "security" has the meaning ascribed to it in NRS 118A.240.

10. This section does not apply to the tenant of a mobile home lot in a mobile home park or to the tenant of a recreational vehicle lot in an area of a mobile home park in this State other than an area designated as a recreational vehicle lot pursuant to the provisions of subsection 6 of NRS 40.215.

Sec. 2. NRS 40.255 is hereby amended to read as follows:


40.255 1. Except as otherwise provided in 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 the person 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 the person, or against another person under whom the person 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 the person, or by another person under whom the person 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 the person, or by another person under whom the person claims, and the title under such sale has been perfected; or

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

2. If the property has been sold as a residential foreclosure  *or residential short sale*, 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 paragraph (b) or (c) of subsection 1 *or where the property or mobile home has been sold as a residential short sale* 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) For all periodic tenancies with a period of less than 1 month, after not less than the number of days in the period; and

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

3. During the notice period described in subsection 2:

(a) The new owner has the rights, obligations and liabilities of the previous owner or landlord pursuant to chapter 118A of NRS under the lease or rental agreement which the previous owner or landlord entered into with the tenant or subtenant regarding the property; and

(b) The tenant or subtenant continues to have the rights, obligations and liabilities that the tenant or subtenant had pursuant to chapter 118A of NRS under the lease or rental agreement which the tenant or subtenant entered into with the previous owner or landlord regarding the property.

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

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

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

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

5. If the property has been sold as a residential foreclosure in any of the cases described in paragraph (b) or (c) of subsection 1 ~~or if the property has been sold as a residential short sale~~, no person may enter a record of eviction for a tenant or subtenant who vacates a property during the notice period described in subsection 2.

6. If the property has been sold as a residential foreclosure in any of the cases described in paragraphs (b) or (c) of subsection 1 ~~or if the property has been sold as a residential short sale~~, nothing in this section shall be deemed to prohibit:

(a) The tenant from vacating the property at any time before the expiration of the notice period described in subsection 2 without any obligation to the new owner of a property purchased pursuant to a *residential* foreclosure sale , ~~or~~ trustee's sale ~~or~~ *residential short sale*; or

(b) The new owner of a property purchased pursuant to a *residential* foreclosure sale , ~~or~~ trustee's sale *or residential short sale* from:



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

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

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

8. As used in this section ~~["residential foreclosure"]~~ :

(a) *"Residential foreclosure"* means the sale of a single family residence pursuant to NRS 40.430 or under a power of sale granted by NRS 107.080.

(b) *"Residential short sale" means the sale of a single family residence by a borrower for an amount less than the outstanding balance owed to the lender on the loan secured by such property, where the lender or assignee of the lender agrees before the sale to accept less than the outstanding balance owed on the loan in full or partial satisfaction of the loan, and the borrower pays the proceeds from the sale to the lender or assignee of the lender.*

As used in this subsection, "single family residence" means a structure that is comprised of not more than four units.

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

"Essential item or service" includes:

1. Furniture, appliances or a functioning door lock; and

2. Heat, air-conditioning, running water, hot water, electricity, gas or another similar service.

Sec. 4. NRS 118A.020 is hereby amended to read as follows:

118A.020 As used in this chapter, unless the context otherwise requires, the *words and* terms defined in NRS 118A.030 to 118A.170, inclusive, *and section 3 of this act* have the meanings ascribed to them in those sections.

Sec. 5. NRS 118A.090 is hereby amended to read as follows:

118A.090 "Exclude" means to evict or to prohibit entry by locking doors or by otherwise blocking or attempting to block entry, or to make a dwelling unit uninhabitable by interrupting or causing the interruption of ~~electric, gas, water or other~~ *any* essential ~~services.~~ *item or service.*

Sec. 6. NRS 118A.380 is hereby amended to read as follows:

118A.380 1. If the landlord is required by the rental agreement or this chapter to supply ~~heat, air-conditioning, running water, hot water, electricity, gas, or another~~ *any* essential *item or* service and the landlord willfully or negligently fails to do so, causing the premises to become unfit for habitation, the tenant shall give written notice to the landlord specifying the breach. If the landlord does not adequately remedy the breach, or use his or her



1 best efforts to remedy the breach within 48 hours, except a Saturday,
2 Sunday or legal holiday, after it is received by the landlord, the
3 tenant may, in addition to any other remedy:

4 (a) Procure reasonable amounts of such essential *items or*
5 services during the landlord's noncompliance and deduct their
6 actual and reasonable cost from the rent;

7 (b) Recover actual damages, including damages based upon the
8 lack of use of the premises or the diminution of the fair rental value
9 of the dwelling unit;

10 (c) Withhold any rent that becomes due during the landlord's
11 noncompliance without incurring late fees, charges for notice or any
12 other charge or fee authorized by this chapter or the rental
13 agreement, until the landlord has attempted in good faith to restore
14 the essential *items or* services; or

15 (d) Procure other housing which is comparable during the
16 landlord's noncompliance, and the rent for the original premises
17 fully abates during this period. The tenant may recover the actual
18 and reasonable cost of that other housing which is in excess of the
19 amount of rent which is abated.

20 2. If the tenant proceeds under this section, the tenant may not
21 proceed under NRS 118A.350 and 118A.360 as to that breach.

22 3. The rights of the tenant under this section do not arise until
23 the tenant has given written notice as required by subsection 1,
24 except that the tenant may, without having given that notice:

25 (a) Recover damages as authorized under paragraph (b) of
26 subsection 1 if the landlord:

27 (1) Admits to the court that the landlord had knowledge of
28 the lack of such essential *items or* services; or

29 (2) Has received written notice of the uninhabitable
30 condition caused by such a lack from a governmental agency
31 authorized to inspect for violations of building, housing or health
32 codes.

33 (b) Withhold rent under paragraph (c) of subsection 1 if the
34 landlord:

35 (1) Has received written notice of the condition constituting
36 the breach from a governmental agency authorized to inspect for
37 violations of building, housing or health codes; and

38 (2) Fails to remedy or attempt in good faith to remedy the
39 breach within the time prescribed in the written notice of that
40 condition from the governmental agency.

41 4. The rights of the tenant under paragraph (c) of subsection 1
42 do not arise unless the tenant is current in the payment of rent at the
43 time of giving written notice pursuant to subsection 1.

44 5. If such a condition was caused by the deliberate or negligent
45 act or omission of the tenant, a member of his or her household or



1 other person on the premises with his or her consent, the tenant has
2 no rights under this section.

3 **Sec. 7.** NRS 118A.390 is hereby amended to read as follows:

4 118A.390 1. If the landlord unlawfully removes the tenant
5 from the premises or excludes the tenant by blocking or attempting
6 to block the tenant's entry upon the premises , ~~{or}~~ willfully
7 interrupts or causes or permits the interruption of any essential *item*
8 *or* service required by the rental agreement or this chapter ~~{or}~~ *or*
9 *otherwise recovers possession of the dwelling unit in violation of*
10 *NRS 118A.480*, the tenant may recover immediate possession
11 pursuant to subsection 4, proceed under NRS 118A.380 or terminate
12 the rental agreement and, in addition to any other remedy, recover
13 the tenant's actual damages, receive an amount not greater than
14 \$1,000 to be fixed by the court, or both.

15 2. In determining the amount, if any, to be awarded under
16 subsection 1, the court shall consider:

17 (a) Whether the landlord acted in good faith;

18 (b) The course of conduct between the landlord and the tenant;
19 and

20 (c) The degree of harm to the tenant caused by the landlord's
21 conduct.

22 3. If the rental agreement is terminated pursuant to subsection
23 1, the landlord shall return all prepaid rent and security recoverable
24 under this chapter.

25 4. Except as otherwise provided in subsection 5, the tenant may
26 recover immediate possession of the premises from the landlord by
27 filing a verified complaint for expedited relief for the unlawful
28 removal or exclusion of the tenant from the premises , ~~{or}~~ the
29 willful interruption of *any* essential ~~{services-}~~ *item or service or the*
30 *recovery of possession of the dwelling unit in violation of*
31 *NRS 118A.480*.

32 5. A verified complaint for expedited relief:

33 (a) Must be filed with the court within 5 judicial days after the
34 date of the unlawful act by the landlord, and the verified complaint
35 must be dismissed if it is not timely filed. If the verified complaint
36 for expedited relief is dismissed pursuant to this paragraph, the
37 tenant retains the right to pursue all other available remedies against
38 the landlord.

39 (b) May not be filed with the court if an action for summary
40 eviction or unlawful detainer is already pending between the
41 landlord and tenant, but the tenant may seek similar relief before the
42 judge presiding over the pending action.

43 6. The court shall conduct a hearing on the verified complaint
44 for expedited relief within 3 judicial days after the filing of the
45 verified complaint for expedited relief. Before or at the scheduled



1 hearing, the tenant must provide proof that the landlord has been
2 properly served with a copy of the verified complaint for expedited
3 relief. Upon the hearing, if it is determined that the landlord has
4 violated any of the provisions of subsection 1, the court may:

5 (a) Order the landlord to restore to the tenant the premises or
6 essential *items or* services, or both;

7 (b) Award damages pursuant to subsection 1; and

8 (c) Enjoin the landlord from violating the provisions of
9 subsection 1 and, if the circumstances so warrant, hold the landlord
10 in contempt of court.

11 7. The payment of all costs and official fees must be deferred
12 for any tenant who files a verified complaint for expedited relief.
13 After any hearing and not later than final disposition of the filing or
14 order, the court shall assess the costs and fees against the party that
15 does not prevail, except that the court may reduce them or waive
16 them, as justice may require.

17 **Sec. 8.** NRS 118A.480 is hereby amended to read as follows:

18 118A.480 The landlord shall not recover or take possession of
19 the dwelling unit by action or otherwise, including willful
20 diminution or interruption or causing or permitting the diminution
21 or interruption of any essential *item or* service required by the rental
22 agreement or this chapter, except:

23 1. By an action for possession or other civil action or summary
24 proceeding in which the issue of right of possession is determined;

25 2. When the tenant has surrendered possession of the dwelling
26 unit to the landlord; or

27 3. When the tenant has abandoned the dwelling unit as
28 provided in NRS 118A.450.

29 **Sec. 9.** NRS 118A.510 is hereby amended to read as follows:

30 118A.510 1. Except as otherwise provided in subsection 3,
31 the landlord may not, in retaliation, terminate a tenancy, refuse to
32 renew a tenancy, increase rent or decrease essential *items or*
33 services required by the rental agreement or this chapter, or bring or
34 threaten to bring an action for possession if:

35 (a) The tenant has complained in good faith of a violation of a
36 building, housing or health code applicable to the premises and
37 affecting health or safety to a governmental agency charged with the
38 responsibility for the enforcement of that code;

39 (b) The tenant has complained in good faith to the landlord or a
40 law enforcement agency of a violation of this chapter or of a
41 specific statute that imposes a criminal penalty;

42 (c) The tenant has organized or become a member of a tenant's
43 union or similar organization;

44 (d) A citation has been issued resulting from a complaint
45 described in paragraph (a);



(e) The tenant has instituted or defended against a judicial or administrative proceeding or arbitration in which the tenant raised an issue of compliance with the requirements of this chapter respecting the habitability of dwelling units;

(f) The tenant has failed or refused to give written consent to a regulation adopted by the landlord, after the tenant enters into the rental agreement, which requires the landlord to wait until the appropriate time has elapsed before it is enforceable against the tenant; or

(g) The tenant has complained in good faith to the landlord, a government agency, an attorney, a fair housing agency or any other appropriate body of a violation of NRS 118.010 to 118.120, inclusive, or the Fair Housing Act of 1968, 42 U.S.C. §§ 3601 et seq., or has otherwise exercised rights which are guaranteed or protected under those laws.

2. If the landlord violates any provision of subsection 1, the tenant is entitled to the remedies provided in NRS 118A.390 and has a defense in any retaliatory action by the landlord for possession.

3. A landlord who acts under the circumstances described in subsection 1 does not violate that subsection if:

(a) The violation of the applicable building, housing or health code of which the tenant complained was caused primarily by the lack of reasonable care by the tenant, a member of his or her household or other person on the premises with his or her consent;

(b) The tenancy is terminated with cause;

(c) A citation has been issued and compliance with the applicable building, housing or health code requires alteration, remodeling or demolition and cannot be accomplished unless the tenant's dwelling unit is vacant; or

(d) The increase in rent applies in a uniform manner to all tenants.

➔ The maintenance of an action under this subsection does not prevent the tenant from seeking damages or injunctive relief for the landlord's failure to comply with the rental agreement or maintain the dwelling unit in a habitable condition as required by this chapter.

