

ASSEMBLY BILL NO. 284—ASSEMBLYMEN
CONKLIN, HORNE; AND KIRKPATRICK

MARCH 15, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to real property.
(BDR 9-1083)

FISCAL NOTE: Effect on Local Government: Increases or Newly
Provides for Term of Imprisonment in County or City
Jail or Detention Facility.
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; revising provisions governing the recording of assignments of mortgages and deeds of trust; revising provisions governing the exercise of the power of sale under a deed of trust; revising provisions concerning the crimes of mortgage lending fraud and making a false representation concerning title to real property; providing civil and criminal penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the assignment of a mortgage or the beneficial interest in a deed of trust may be recorded. (NRS 106.210, 107.070) **Section 1** of this bill requires such an assignment to be recorded in the office of the county recorder of the county in which the real property is located.

Sections 4, 7 and 8 of this bill increase from \$500 to \$1,000 the civil liability of a mortgagee or trustee or beneficiary under a deed of trust who fails to discharge the mortgage or deed of trust within 21 days after the obligation secured by mortgage or deed of trust has been satisfied.

Section 6 of this bill prescribes certain duties of a trustee under a deed of trust and provides for a civil action against a trustee under certain circumstances.

Section 9 of this bill requires a notice of default and election to sell real property subject to a deed of trust to include an affidavit setting forth certain information concerning the deed of trust, the amounts due, the possession of the note and the deed of trust and the authority to foreclose. **Section 9** also provides for a civil action against a person who exercises the power of sale under a deed of trust without complying with the provisions of law governing the exercise of that power.



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Existing law authorizes certain persons to request a statement of the amount necessary to discharge a debt secured by a deed of trust. (NRS 107.210) **Section 12** of this bill adds to the information required to be provided in this statement: (1) the identity of the trustee, any trustee's agent, the current holder of the note, the beneficiary of record and the servicers of the debt; and (2) if the debt is in default, the amount in default, the principal, interest, default fees and the cost and fees associated with the exercise of a power of sale.

Section 13 of this bill revises provisions relating to the crime of mortgage lending fraud by: (1) providing that a person who commits mortgage lending fraud is subject to a civil penalty of not more than \$5,000; and (2) authorizing the owner or the holder of the beneficial interest in the real property to bring a civil action for damages suffered because of the conduct and for attorney's fees and costs.

Section 14 of this bill revises the crime of making a false representation concerning title and increases the penalty for such a crime from a gross misdemeanor to a category C felony. If the person engages in a pattern of making false representations concerning title, the person is guilty of a category B felony. In addition, a person who commits this crime is subject to a civil penalty of not more than \$5,000, and the owner or the holder of the beneficial interest in the real property may bring a civil action for damages suffered because of the false representation and for attorney's fees and costs.

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

Section 1. NRS 106.210 is hereby amended to read as follows:
106.210 1. Any assignment of a mortgage of real property, or of a mortgage of personal property or crops recorded prior to March 27, 1935, and any assignment of the beneficial interest under a deed of trust ~~[may]~~ **must** be recorded ~~[]~~ **in the office of the recorder of the county in which the property is located**, and from the time any of the same are so filed for record shall operate as constructive notice of the contents thereof to all persons. ***A mortgage of real property, or a mortgage of personal property or crops recorded prior to March 27, 1935, which has been assigned may not be enforced unless and until the assignment is recorded pursuant to this subsection. If the beneficial interest under a deed of trust has been assigned, the trustee under the deed of trust may not exercise the power of sale pursuant to NRS 107.080 unless and until the assignment is recorded pursuant to this subsection.***

2. Each such filing or recording ~~[shall]~~ **must** be properly indexed by the recorder.

Sec. 2. NRS 106.220 is hereby amended to read as follows:
106.220 1. Any instrument by which any mortgage or deed of trust of, lien upon or interest in real property is subordinated or waived as to priority, ~~[may,]~~ **must**, in case it concerns only one or more mortgages or deeds of trust of, liens upon or interests in real property, together with, or in the alternative, one or more mortgages of, liens upon or interests in personal property or crops, the



1 instruments or documents evidencing or creating which have been
2 recorded prior to March 27, 1935, be recorded ~~[.]~~ *in the office of the*
3 *recorder of the county in which the property is located*, and from
4 the time any of the same are so filed for record ~~[shall operate]~~
5 *operates* as constructive notice of the contents thereof to all persons.
6 *The instrument is not enforceable under this chapter or chapter*
7 *107 of NRS unless and until it is recorded.*

8 2. Each such filing or recording ~~[shall]~~ *must* be properly
9 indexed by the recorder.

10 **Sec. 3.** NRS 106.280 is hereby amended to read as follows:

11 106.280 Every certificate of discharge of a recorded mortgage,
12 and the proof or acknowledgment thereof, ~~[shall]~~ *must* be recorded
13 at full length, and a reference ~~[shall]~~ *must* be made to the *county*
14 book containing such record in the minutes of the discharge of such
15 mortgage made by the recorder upon the record thereof.

16 **Sec. 4.** NRS 106.290 is hereby amended to read as follows:

17 106.290 1. Within 21 calendar days after receiving written
18 notice that a debt secured by a mortgage has been paid or otherwise
19 satisfied or discharged, the mortgagee shall cause a discharge of the
20 mortgage to be recorded pursuant to NRS 106.260 or 106.270 if the
21 mortgagor, the mortgagor's heirs or assigns have fully performed
22 the conditions of the mortgage.

23 2. If a mortgagee fails to comply with the provisions of this
24 section, the mortgagee is liable in a civil action to the mortgagor, the
25 mortgagor's heirs or assigns for:

26 (a) The sum of ~~[\$500;]~~ *\$1,000;*

27 (b) Any actual damages caused by the failure of the mortgagee
28 to comply with the provisions of this section; and

29 (c) ~~[A reasonable]~~ *Reasonable* attorney's ~~[fee]~~ *fees* and the costs
30 of bringing the action.

31 3. Except as otherwise provided in this subsection, if a
32 mortgagee fails to cause a discharge of the mortgage to be recorded
33 pursuant to subsection 1 within 75 calendar days, a title insurer may
34 prepare and cause to be recorded a release of the mortgage. At least
35 30 calendar days before the recording of a release pursuant to this
36 subsection, the title insurer shall mail, by first-class mail, postage
37 prepaid, notice of the intention to record the release of the mortgage
38 to the mortgagor and mortgagee, or their successors in interest, at
39 the last known address of each such person. A release prepared and
40 recorded pursuant to this subsection shall be deemed a discharge of
41 the mortgage. The title insurer shall not cause a release to be
42 recorded pursuant to this subsection if the title insurer receives
43 written instructions to the contrary from the mortgagor, the
44 mortgagee or a successor in interest.

45 4. The release prepared pursuant to subsection 3 must set forth:



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- 1 (a) The name of the mortgagor;
 - 2 (b) The name of the mortgagee;
 - 3 (c) The recording reference to the mortgage;
 - 4 (d) A statement that the debt secured by the mortgage has been
 - 5 paid in full or otherwise satisfied or discharged;
 - 6 (e) The date and amount of payment or other satisfaction or
 - 7 discharge; and
 - 8 (f) The name and address of the title insurer issuing the release.
- 9 5. A release prepared and recorded pursuant to subsection 3
10 does not relieve a mortgagee of the requirements imposed by
11 subsections 1 and 2.

12 6. In addition to any other remedy provided by law, a title
13 insurer who improperly causes to be recorded a release of a
14 mortgage pursuant to this section is liable in a civil action for actual
15 damages and for a reasonable attorney's fee and the costs of
16 bringing the action to any person who is injured because of the
17 improper recordation of the release.

18 7. Any person who willfully violates this section is guilty of a
19 misdemeanor.

20 8. As used in this section, "title insurer" has the meaning
21 ascribed to it in NRS 692A.070.

22 **Sec. 5.** NRS 106.360 is hereby amended to read as follows:

23 106.360 1. A borrower may execute an instrument
24 encumbering the borrower's real property to secure future advances
25 from a lender within a mutually agreed maximum amount of
26 principal. *The instrument or an amendment to the instrument is*
27 *enforceable only if the instrument or the amendment is recorded*
28 *in the office of the county recorder of the county in which the real*
29 *property is located and the party seeking to enforce the instrument*
30 *or the amendment is an original party to the instrument or*
31 *amendment or the current assignee of record.*

32 2. The instrument must state clearly:

- 33 (a) That it secures future advances; and
- 34 (b) The maximum amount of principal to be secured.

35 3. The maximum amount of advances of principal to be
36 secured by the instrument may increase or decrease from time to
37 time by amendment of the instrument.

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

40 **1. *The trustee under a deed of trust must be:***

- 41 (a) *An attorney licensed to practice law in this State;*
- 42 (b) *A title insurer or title agent authorized to do business in*
43 *this State pursuant to chapter 692A of NRS; or*



1 (c) A person licensed pursuant to chapter 669 of NRS or a
2 person exempt from the provisions of chapter 669 of NRS
3 pursuant to paragraph (a) or (h) of subsection 1 of NRS 669.080.

4 2. A trustee under a deed of trust must not be the beneficiary
5 of the deed of trust for the purposes of exercising the power of sale
6 pursuant to NRS 107.080.

7 3. A trustee under a deed of trust must not:

8 (a) Lend its name or its corporate capacity to any person who
9 is not qualified to be the trustee under a deed of trust pursuant to
10 subsection 1.

11 (b) Act individually or in concert with any other person to
12 circumvent the requirements of subsection 1.

13 4. A beneficiary of record may replace its trustee with
14 another trustee. The appointment of a new trustee is not effective
15 until the substitution of trustee is recorded in the office of the
16 recorder of the county in which the real property is located.

17 5. The trustee does not have a fiduciary obligation to the
18 grantor or any other person having an interest in the property
19 which is subject to the deed of trust. The trustee shall act
20 impartially and in good faith with respect to the deed of trust and
21 shall act in accordance with the laws of this State. A rebuttable
22 presumption that a trustee has acted impartially and in good faith
23 exists if the trustee acts in compliance with the provisions of NRS
24 107.080. In performing acts required by NRS 107.080, the trustee
25 incurs no liability for any good faith error resulting from reliance
26 on information provided by the beneficiary regarding the nature
27 and the amount of the default under the obligation secured by the
28 deed of trust if the trustee corrects the good faith error not later
29 than 20 days after discovering the error.

30 6. If, in an action brought by a grantor, a person who holds
31 title of record or a beneficiary in the district court in and for the
32 county in which the real property is located, the court finds that
33 the trustee did not comply with this section, any other provision of
34 this chapter or any applicable provision of chapter 106 or 205 of
35 NRS, the court must award to the grantor, the person who holds
36 title of record or the beneficiary:

37 (a) Damages of \$5,000 or treble the amount of actual
38 damages, whichever is greater;

39 (b) An injunction enjoining the exercise of the power of sale
40 until the beneficiary, the successor in interest of the beneficiary or
41 the trustee complies with the requirements of subsections 2, 3
42 and 4; and



(c) *Reasonable attorney's fees and costs,*
→ *unless the court finds good cause for a different award.*

Sec. 7. NRS 107.077 is hereby amended to read as follows:

107.077 1. Within 21 calendar days after receiving written notice that a debt secured by a deed of trust made on or after October 1, 1991, has been paid or otherwise satisfied or discharged, the beneficiary shall deliver to the trustee or the trustor the original note and deed of trust, if the beneficiary is in possession of those documents, and a properly executed request to reconvey the estate in real property conveyed to the trustee by the grantor. If the beneficiary delivers the original note and deed of trust to the trustee or the trustee has those documents in his or her possession, the trustee shall deliver those documents to the grantor.

2. Within 45 calendar days after a debt secured by a deed of trust made on or after October 1, 1991, is paid or otherwise satisfied or discharged, and a properly executed request to reconvey is received by the trustee, the trustee shall cause to be recorded a reconveyance of the deed of trust.

3. If the beneficiary fails to deliver to the trustee a properly executed request to reconvey pursuant to subsection 1, or if the trustee fails to cause to be recorded a reconveyance of the deed of trust pursuant to subsection 2, the beneficiary or the trustee, as the case may be, is liable in a civil action to the grantor, his or her heirs or assigns in the sum of ~~[\$500,]~~ *\$1,000*, plus ~~[a]~~ reasonable attorney's ~~[fee]~~ *fees* and the costs of bringing the action, and the beneficiary or the trustee is liable in a civil action to any party to the deed of trust for any actual damages caused by the failure to comply with the provisions of this section and for ~~[a]~~ reasonable attorney's ~~[fee]~~ *fees* and the costs of bringing the action.

4. Except as otherwise provided in this subsection, if a reconveyance is not recorded pursuant to subsection 2 within:

(a) Seventy-five calendar days after the payment, satisfaction or discharge of the debt, if the payment, satisfaction or discharge was made on or after October 1, 1993; or

(b) Ninety calendar days after the payment, satisfaction or discharge of the debt, if the payment, satisfaction or discharge was made before October 1, 1993,

→ a title insurer may prepare and cause to be recorded a release of the deed of trust. At least 30 calendar days before the recording of a release pursuant to this subsection, the title insurer shall mail, by first-class mail, postage prepaid, notice of the intention to record the release of the deed of trust to the trustee, trustor and beneficiary of record, or their successors in interest, at the last known address of each such person. A release prepared and recorded pursuant to this subsection shall be deemed a reconveyance of a deed of trust. The



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1 title insurer shall not cause a release to be recorded pursuant to this
2 subsection if the title insurer receives written instructions to the
3 contrary from the trustee, the trustor, the owner of the land, the
4 holder of the escrow or the owner of the debt secured by the deed of
5 trust or his or her agent.

6 5. The release prepared pursuant to subsection 4 must set forth:

7 (a) The name of the beneficiary;

8 (b) The name of the trustor;

9 (c) The recording reference to the deed of trust;

10 (d) A statement that the debt secured by the deed of trust has
11 been paid in full or otherwise satisfied or discharged;

12 (e) The date and amount of payment or other satisfaction or
13 discharge; and

14 (f) The name and address of the title insurer issuing the release.

15 6. A release prepared and recorded pursuant to subsection 4
16 does not relieve a beneficiary or trustee of the requirements imposed
17 by subsections 1 and 2.

18 7. A trustee may charge a reasonable fee to the trustor or the
19 owner of the land for services relating to the preparation, execution
20 or recordation of a reconveyance or release pursuant to this section.
21 A trustee shall not require the fees to be paid before the opening of
22 an escrow, or earlier than 60 calendar days before the payment,
23 satisfaction or discharge of the debt secured by the deed of trust. If a
24 fee charged pursuant to this subsection does not exceed \$100, the
25 fee is conclusively presumed to be reasonable.

26 8. In addition to any other remedy provided by law, a title
27 insurer who improperly causes to be recorded a release of a deed of
28 trust pursuant to this section is liable for actual damages and for a
29 reasonable attorney's fee and the costs of bringing the action to any
30 person who is injured because of the improper recordation of the
31 release.

32 9. Any person who willfully violates this section is guilty of a
33 misdemeanor.

34 **Sec. 8.** NRS 107.078 is hereby amended to read as follows:

35 107.078 1. If a deed of trust made on or after October 1,
36 1995, authorizes the grantor to discharge in part the debt secured by
37 the deed of trust and the deed of trust authorizes a partial
38 reconveyance of the estate in real property in consideration of a
39 partial discharge, the beneficiary shall, within 21 calendar days after
40 receiving notice that the debt secured by the deed of trust has been
41 partially discharged, deliver to the trustee a properly executed
42 request for a partial reconveyance of the estate in real property
43 conveyed to the trustee by the grantor.

44 2. Within 45 calendar days after a debt secured by a deed of
45 trust made on or after October 1, 1995, is partially discharged and a



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1 properly executed request for a partial reconveyance is received by
2 the trustee, the trustee shall cause to be recorded a partial
3 reconveyance of the deed of trust.

4 3. If the beneficiary fails to deliver to the trustee a properly
5 executed request for a partial reconveyance pursuant to subsection
6 1, or if the trustee fails to cause to be recorded a partial
7 reconveyance of the deed of trust pursuant to subsection 2, the
8 beneficiary or the trustee, as the case may be, is liable in a civil
9 action to the grantor, the grantor's heirs or assigns in the amount of
10 ~~[\$500,]~~ \$1,000, plus ~~[a]~~ reasonable attorney's ~~[fee]~~ fees and the
11 costs of bringing the action, and the beneficiary or trustee is liable in
12 a civil action to any party to the deed of trust for any actual damages
13 caused by the failure to comply with the provisions of this section
14 and for ~~[a]~~ reasonable attorney's ~~[fee]~~ fees and the costs of bringing
15 the action.

16 4. Except as otherwise provided in this subsection, if a partial
17 reconveyance is not recorded pursuant to subsection 2 within 75
18 calendar days after the partial satisfaction of the debt and if the
19 satisfaction was made on or after October 1, 1995, a title insurer
20 may prepare and cause to be recorded a partial release of the deed of
21 trust. At least 30 calendar days before the recording of a partial
22 release pursuant to this subsection, the title insurer shall mail, by
23 first-class mail, postage prepaid, notice of the intention to record the
24 partial release of the deed of trust to the trustee, trustor and
25 beneficiary of record, or their successors in interest, at the last
26 known address of each such person. A partial release prepared and
27 recorded pursuant to this subsection shall be deemed a partial
28 reconveyance of a deed of trust. The title insurer shall not cause a
29 partial release to be recorded pursuant to this subsection if the title
30 insurer receives written instructions to the contrary from the trustee,
31 trustor, owner of the land, holder of the escrow or owner of the debt
32 secured by the deed of trust or his or her agent.

33 5. The release prepared pursuant to subsection 4 must set forth:

- 34 (a) The name of the beneficiary;
35 (b) The name of the trustor;
36 (c) The recording reference to the deed of trust;
37 (d) A statement that the debt secured by the deed of trust has
38 been partially discharged;
39 (e) The date and amount of partial payment or other partial
40 satisfaction or discharge;
41 (f) The name and address of the title insurer issuing the partial
42 release; and
43 (g) The legal description of the estate in real property which is
44 reconveyed.



6. A partial release prepared and recorded pursuant to subsection 4 does not relieve a beneficiary or trustee of the requirements imposed by subsections 1 and 2.

7. A trustee may charge a reasonable fee to the trustor or the owner of the land for services relating to the preparation, execution or recordation of a partial reconveyance or partial release pursuant to this section. A trustee shall not require the fees to be paid before the opening of an escrow or earlier than 60 calendar days before the partial payment or partial satisfaction or discharge of the debt secured by the deed of trust. If a fee charged pursuant to this subsection does not exceed \$100, the fee is conclusively presumed to be reasonable.

8. In addition to any other remedy provided by law, a title insurer who improperly causes to be recorded a partial release of a deed of trust pursuant to this section is liable for actual damages and for a reasonable attorney's fee and the costs of bringing the action to any person who is injured because of the improper recordation of the partial release.

9. Any person who willfully violates this section is guilty of a misdemeanor.


Sec. 9. NRS 107.080 is hereby amended to read as follows:

107.080 1. Except as otherwise provided in NRS **106.210**, 107.085 and 107.086, if any transfer in trust of any estate in real property is made after March 29, 1927, to secure the performance of an obligation or the payment of any debt, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which the transfer is security.

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

(a) Except as otherwise provided in paragraph (b), in the case of any trust agreement coming into force:

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

(2) On or after July 1, 1957, the grantor, the person who holds the title of record, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property has, for a period of 35 days, computed as prescribed in subsection 3, failed to make good the deficiency in performance or payment. 

(b) In the case of any trust agreement which concerns owner-occupied housing as defined in NRS 107.086, the grantor, the person who holds the title of record, a beneficiary under a



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subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property has, for a period that commences in the manner and subject to the requirements described in subsection 3 and expires 5 days before the date of sale, failed to make good the deficiency in performance or payment . ~~§~~

(c) The beneficiary, the successor in interest of the beneficiary or the trustee first executes and causes to be recorded in the office of the recorder of the county wherein the trust property, or some part thereof, is situated a notice of the breach and of the election to sell or cause to be sold the property to satisfy the obligation ~~[- and]~~ *which, except as otherwise provided in this paragraph, includes a notarized affidavit of authority to exercise the power of sale stating, based on personal knowledge and under the penalty of perjury:*

(1) The full name and business address of the trustee or the trustee's personal representative or assignee, the current holder of the note secured by the deed of trust, the current beneficiary of record and the servicers of the obligation or debt secured by the deed of trust;

(2) The full name and last known business address of every prior known beneficiary of the deed of trust;

(3) That the beneficiary under the deed of trust, the successor in interest of the beneficiary or the trustee is in actual or constructive possession of the note secured by the deed of trust;

(4) That the trustee has the authority to exercise the power of sale with respect to the property pursuant to the instruction of the beneficiary of record and the current holder of the note secured by the deed of trust;

(5) The amount in default, the principal amount of the obligation or debt secured by the deed of trust, a good faith estimate of all fees imposed and to be imposed because of the default and the costs and fees charged to the debtor in connection with the exercise of the power of sale; and

(6) The date, recordation number or other unique designation of the instrument that conveyed the interest of each beneficiary and a description of the instrument that conveyed the interest of each beneficiary.

↪ The affidavit described in this paragraph is not required for the exercise of the trustee's power of sale with respect to any trust agreement which concerns a time share within a time share plan created pursuant to chapter 119A of NRS if the power of sale is being exercised for the initial beneficiary under the deed of trust or an affiliate of the initial beneficiary.

(d) Not less than 3 months have elapsed after the recording of the notice.



* A B 2 8 4 R 1 *

3. The 15- or 35-day period provided in paragraph (a) of subsection 2, or the period provided in paragraph (b) of subsection 2, commences on the first day following the day upon which the notice of default and election to sell is recorded in the office of the county recorder of the county in which the property is located and a copy of the notice of default and election to sell is mailed by registered or certified mail, return receipt requested and with postage prepaid to the grantor or, to the person who holds the title of record on the date the notice of default and election to sell is recorded, and, if the property is operated as a facility licensed under chapter 449 of NRS, to the State Board of Health, at their respective addresses, if known, otherwise to the address of the trust property. The notice of default and election to sell must:

(a) Describe the deficiency in performance or payment and may contain a notice of intent to declare the entire unpaid balance due if acceleration is permitted by the obligation secured by the deed of trust, but acceleration must not occur if the deficiency in performance or payment is made good and any costs, fees and expenses incident to the preparation or recordation of the notice and incident to the making good of the deficiency in performance or payment are paid within the time specified in subsection 2; and

(b) If the property is a residential foreclosure, comply with the provisions of NRS 107.087.

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

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

(b) 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;

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

(d) If the property is a residential foreclosure complying with the provisions of NRS 107.087.



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5. Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption. A sale made pursuant to this section ~~[may]~~ **must** be declared void by any court of competent jurisdiction in the county where the sale took place if:

(a) The trustee or other person authorized to make the sale does not substantially comply with the provisions of this section or any applicable provision of NRS 107.086 and 107.087;

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

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

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

7. If, in an action brought by the grantor or the person who holds title of record in the district court in and for the county in which the real property is located, the court finds that the beneficiary, the successor in interest of the beneficiary or the trustee did not comply with any requirement of subsection 2, 3 or 4, the court must award to the grantor or the person who holds title of record:

(a) Damages of \$5,000 or treble the amount of actual damages, whichever is greater;

(b) An injunction enjoining the exercise of the power of sale until the beneficiary, the successor in interest of the beneficiary or the trustee complies with the requirements of subsections 2, 3 and 4; and

(c) Reasonable attorney's fees and costs, unless the court finds good cause for a different award. The remedy provided in this subsection is in addition to the remedy provided in subsection 5.

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

~~[8-]~~ 9. After a sale of property is conducted pursuant to this section, the trustee shall:



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

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

~~9.1~~ 10. If the successful bidder fails to record the trustee's deed upon sale pursuant to paragraph (b) of subsection ~~8.1~~ 9, the successful bidder:

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

(b) Is liable in a civil action for any actual damages caused by the failure to comply with the provisions of subsection ~~8.1~~ 9 and for reasonable attorney's fees and the costs of bringing the action.

~~10.1~~ 11. The county recorder shall, in addition to any other fee, at the time of recording a notice of default and election to sell collect:

(a) A fee of \$150 for deposit in the State General Fund.

(b) A fee of \$50 for deposit in the Account for Foreclosure Mediation, which is hereby created in the State General Fund. The Account must be administered by the Court Administrator, and the money in the Account may be expended only for the purpose of supporting a program of foreclosure mediation established by Supreme Court Rule.

➔ The fees collected pursuant to this subsection must be paid over to the county treasurer by the county recorder on or before the fifth day of each month for the preceding calendar month, and, except as otherwise provided in this subsection, must be placed to the credit of the State General Fund or the Account as prescribed pursuant to this subsection. The county recorder may direct that 1.5 percent of the fees collected by the county recorder be transferred into a special account for use by the office of the county recorder. The county treasurer shall, on or before the 15th day of each month, remit the fees deposited by the county recorder pursuant to this subsection to the State Controller for credit to the State General Fund or the Account as prescribed in this subsection.

~~11.1~~ 12. The beneficiary, the successor in interest of the beneficiary or the trustee who causes to be recorded the notice of default and election to sell shall not charge the grantor or the successor in interest of the grantor any portion of any fee required to be paid pursuant to subsection ~~10.1~~.



~~12.] 11.~~

13. As used in this section ~~[, “residential] :~~

(a) “**Residential** foreclosure” means the sale of a single family residence under a power of sale granted by this section. As used in this subsection, “single family residence”:

~~[(a)]~~ (1) Means a structure that is comprised of not more than four units.

~~[(b)]~~ (2) Does not include any time share or other property regulated under chapter 119A of NRS.

(b) “**Trustee**” means the trustee of record.

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

Sec. 12. NRS 107.210 is hereby amended to read as follows:

107.210 Except as otherwise provided in NRS 107.230 and 107.240, the beneficiary of a deed of trust secured on or after October 1, 1995, shall, within 21 days after receiving a request from a person authorized to make such a request pursuant to NRS 107.220, cause to be mailed, postage prepaid, or sent by facsimile machine to that person a statement of the amount necessary to discharge the debt secured by the deed of trust. The statement must set forth:

1. *The identity of the trustee or the trustee’s personal representative or assignee, the current holder of the note secured by the deed of trust, the beneficiary of record and the servicers of the obligation or debt secured by the deed of trust;*

2. The amount of money necessary to discharge the debt secured by the deed of trust on the date the statement is prepared by the beneficiary; ~~and~~

~~2.] 3.~~ The information necessary to determine the amount of money required to discharge the debt on a per diem basis for a period, not to exceed 30 days, after the statement is prepared by the beneficiary ~~[-]; and~~

4. *If the debt is in default, the amount in default, the principal amount of the obligation or debt secured by the deed of trust, the interest accrued and unpaid on the obligation or debt secured by the deed of trust, all fees imposed because of the default and the costs and fees charged to the debtor in connection with the exercise of the power of sale.*

Sec. 13. NRS 205.372 is hereby amended to read as follows:

205.372 1. A person who ~~[-, with the intent to defraud]~~ is a participant in a mortgage lending transaction ~~[-]~~ and who:

(a) Knowingly makes a false statement or misrepresentation concerning a material fact or ~~[deliberately]~~ knowingly conceals or fails to disclose a material fact;



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(b) Knowingly uses or facilitates the use of a false statement or misrepresentation made by another person concerning a material fact or ~~[deliberately]~~ knowingly uses or facilitates the use of another person's concealment or failure to disclose a material fact;

(c) Receives any proceeds or any other money in connection with a mortgage lending transaction that the person knows resulted from a violation of paragraph (a) or (b);

(d) Conspires with another person to violate any of the provisions of paragraph (a), (b) or (c); or

(e) Files or causes to be filed with a county recorder any document that the person knows to include a misstatement, misrepresentation or omission concerning a material fact,

↳ commits the offense of mortgage lending fraud which is a category C felony and, upon conviction, shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, or by a fine of not more than \$10,000, or by both fine and imprisonment.

2. A person who engages in a pattern of mortgage lending fraud or conspires or attempts to engage in a pattern of mortgage lending fraud is guilty of a category B felony and, upon conviction, shall be punished by imprisonment in the state prison for a minimum term of not less than 3 years and a maximum term of not more than 20 years, or by a fine of not more than \$50,000, or by both fine and imprisonment.

3. Each mortgage lending transaction in which a person violates any provision of subsection 1 constitutes a separate violation.

4. Except as otherwise provided in this subsection, if a lender or any agent of the lender is convicted of the offense of mortgage lending fraud in violation of this section, the mortgage lending transaction with regard to which the fraud was committed may be rescinded by the borrower within 6 months after the date of the conviction if the borrower gives written notice to the lender and records that notice with the recorder of the county in which the mortgage was recorded. A mortgage lending transaction may not be rescinded pursuant to this subsection if the lender has transferred the mortgage to a bona fide purchaser.

5. The Attorney General may investigate and prosecute a violation of this section.

6. *In addition to the criminal penalties imposed for a violation of this section, any person who violates this section is subject to a civil penalty of not more than \$5,000 for each violation. This penalty must be recovered in a civil action, brought in the name of the State of Nevada by the Attorney General. In*



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1 *such an action, the Attorney General may recover reasonable*
2 *attorney's fees and costs.*

3 7. *The owner or holder of the beneficial interest in real*
4 *property which is the subject of mortgage lending fraud may bring*
5 *a civil action in the district court in and for the county in which*
6 *the real property is located to recover any damages suffered by the*
7 *owner or holder of the beneficial interest plus reasonable*
8 *attorney's fees and costs.*

9 8. As used in this section:

10 (a) "Bona fide purchaser" means any person who purchases a
11 mortgage in good faith and for valuable consideration and who does
12 not know or have reasonable cause to believe that the lender or any
13 agent of the lender engaged in mortgage lending fraud in violation
14 of this section.

15 (b) "Mortgage lending transaction" means any transaction
16 between two or more persons for the purpose of making or
17 obtaining, attempting to make or obtain, or assisting another person
18 to make or obtain a loan that is secured by a mortgage or other lien
19 on residential real property. The term includes, without limitation:

20 (1) The solicitation of a person to make or obtain the loan;

21 (2) The representation or offer to represent another person to
22 make or obtain the loan;

23 (3) The negotiation of the terms of the loan;

24 (4) The provision of services in connection with the loan;
25 and

26 (5) The execution of any document in connection with
27 making or obtaining the loan.

28 (c) "Participant in a mortgage lending transaction" includes,
29 without limitation:

30 (1) A borrower as defined in NRS 598D.020;

31 (2) An escrow agent as defined in NRS 645A.010;

32 (3) A foreclosure consultant as defined in NRS 645F.320;

33 (4) A foreclosure purchaser as defined in NRS 645F.330;

34 (5) An investor as defined in NRS 645B.0121;

35 (6) A lender as defined in NRS 598D.050;

36 (7) A loan modification consultant as defined in
37 NRS 645F.365;

38 (8) A mortgage agent as defined in NRS 645B.0125;

39 (9) A mortgage banker as defined in NRS 645E.100; and

40 (10) A mortgage broker as defined in NRS 645B.0127.

41 (d) "Pattern of mortgage lending fraud" means one or more
42 violations of a provision of subsection 1 committed in two or more
43 mortgage lending transactions which have the same or similar
44 ~~intent,~~ *purposes*, results, accomplices, victims or methods of



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1 commission, or are otherwise interrelated by distinguishing
2 characteristics.

3 **Sec. 14.** NRS 205.395 is hereby amended to read as follows:

4 205.395 **1.** Every person who ~~[shall maliciously or~~
5 ~~fraudulently execute or file for record any instrument, or put~~
6 ~~forward any claim by which the right or title of another to any real~~
7 ~~property is, or purports to be, transferred, encumbered or clouded,~~
8 ~~shall be guilty of a gross misdemeanor.] :~~

9 (a) *Claims an interest in, or a lien or encumbrance against,*
10 *real property in a document that is recorded in the office of the*
11 *county recorder in which the real property is located and who*
12 *knows or has reason to know that the document is forged or*
13 *groundless, contains a material misstatement or false claim or is*
14 *otherwise invalid;*

15 (b) *Executes or notarizes a document purporting to create an*
16 *interest in, or a lien or encumbrance against, real property, that is*
17 *recorded in the office of the county recorder in which the real*
18 *property is located and who knows or has reason to know that the*
19 *document is forged or groundless, contains a material*
20 *misstatement or false claim or is otherwise invalid; or*

21 (c) *Causes a document described in paragraph (a) or (b) to be*
22 *recorded in the office of the county recorder in which the real*
23 *property is located and who knows or has reason to know that the*
24 *document is forged or groundless, contains a material*
25 *misstatement or false claim or is otherwise invalid,*

26 *↪ has made a false representation concerning title.*

27 **2.** *A person who makes a false representation concerning title*
28 *in violation of subsection 1 is guilty of a category C felony and*
29 *shall be punished as provided in NRS 193.130.*

30 **3.** *A person who engages in a pattern of making false*
31 *representations concerning title is guilty of a category B felony*
32 *and shall be punished by imprisonment in the state prison for a*
33 *minimum term of not less than 3 years and a maximum term of*
34 *not more than 20 years, or by a fine of not more than \$50,000, or*
35 *by both fine and imprisonment.*

36 **4.** *In addition to the criminal penalties imposed for a*
37 *violation of this section, any person who violates this section is*
38 *subject to a civil penalty of not more than \$5,000 for each*
39 *violation. This penalty must be recovered in a civil action, brought*
40 *in the name of the State of Nevada by the Attorney General. In*
41 *such an action, the Attorney General may recover reasonable*
42 *attorney's fees and costs.*

43 **5.** *Except as otherwise provided in this subsection, the owner*
44 *or holder of the beneficial interest in real property which is the*
45 *subject of a false representation concerning title may bring a civil*



1 *action in the district court in and for the county in which the real*
2 *property is located to recover any damages suffered by the owner*
3 *or holder of the beneficial interest plus reasonable attorney's fees*
4 *and costs. The owner or holder of the beneficial interest in the real*
5 *property must, before bringing a civil action pursuant to this*
6 *subsection, send a written request to the person who made the*
7 *false representation to record a document which corrects the false*
8 *representation. If the person records such a document not later*
9 *than 20 days after the date of the written request, the owner or*
10 *holder of the beneficial interest may not bring a civil action*
11 *pursuant to this subsection.*

12 6. As used in this section, "pattern of making false
13 representations concerning title" means one or more violations of
14 a provision of subsection 1 committed in two or more transactions:

15 (a) Which have the same or similar pattern, purposes, results,
16 accomplices, victims or methods of commission, or are otherwise
17 interrelated by distinguishing characteristics;

18 (b) Which are not isolated incidents within the preceding 4
19 years; and

20 (c) In which the aggregate loss or intended loss is more than
21 \$250.

22 **Sec. 14.5.** The amendatory provisions of:

23 1. Section 1 of this act apply only to an assignment of a
24 mortgage of real property, or of a mortgage of personal property or
25 crops recorded before March 27, 1935, and any assignment of the
26 beneficial interest under a deed of trust, which is made on or after
27 July 1, 2011.

28 2. Section 2 of this act apply only to an instrument by which
29 any mortgage or deed of trust of, lien upon or interest in real
30 property is subordinated or waived as to priority which is made on
31 or after July 1, 2011.

32 3. Section 5 of this act apply only to an instrument
33 encumbering a borrower's real property to secure future advances
34 from a lender within a mutually agreed maximum amount of
35 principal, or an amendment to such an instrument, which is made on
36 or after July 1, 2011.

37 4. Section 9 of this act apply only to a notice of default and
38 election to sell which is recorded pursuant to NRS 107.080, as
39 amended by section 9 of this act, on or after July 1, 2011.

40 **Sec. 15.** This act becomes effective on July 1, 2011.

