

Amendment No. 679

Senate Amendment to Assembly Bill No. 273 First Reprint (BDR 3-561)

Proposed by: Senate Committee on Judiciary**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

BFG/BJE



Date: 5/28/2011

A.B. No. 273—Revises provisions governing deficiencies existing after foreclosure sales and sales in lieu of foreclosure sales. (BDR 3-561)



ASSEMBLY BILL NO. 273—COMMITTEE
ON COMMERCE AND LABOR

MARCH 15, 2011

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing deficiencies existing after foreclosure sales and sales in lieu of foreclosure sales. (BDR 3-561)

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 real property; revising provisions governing the amount which a person holding a junior lien on real property may recover in a civil action under certain circumstances; prohibiting certain persons holding a junior lien on certain residential property from bringing a civil action under certain circumstances; revising provisions governing the amount of a deficiency judgment after the foreclosure of a mortgage or a deed of trust; limiting the amount of certain judgments against guarantors, sureties or other obligors of obligations secured by real property under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a judgment creditor or a beneficiary of a deed of trust may obtain, after a hearing, a deficiency judgment after a foreclosure sale or trustee's sale if it appears from the sheriff's return or the recital of consideration in the trustee's deed that there is a deficiency of the proceeds of the sale and a balance remaining due the judgment creditor or beneficiary of the deed of trust. Existing law requires a judgment creditor or beneficiary of a deed of trust to bring an action for such a deficiency judgment within 6 months after the foreclosure sale or trustee's sale. For an obligation secured by a mortgage or deed of trust on or after October 1, 2009, a court may not award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if: (1) the creditor or beneficiary is a financial institution; (2) the real property is a single-family dwelling and the debtor or grantor was the owner of the property; (3) the debtor or grantor used the loan to purchase the property; (4) the debtor or grantor occupied the property continuously after obtaining the loan; and (5) the debtor or grantor did not refinance the loan. (NRS 40.455)

Sections 3, 3.3 and 5.7 of this bill enact similar provisions to govern deficiency judgments sought by junior lienholders after a foreclosure sale, a trustee's sale or any sale or deed in lieu of a foreclosure sale or trustee's sale. **Section 3** provides that, if the circumstances prohibiting a deficiency judgment after a foreclosure sale or trustee's sale under current law exist with respect to a junior lienholder, the creditor may not bring a civil action to recover the debt owed to it after a foreclosure sale, a trustee's sale or a sale or deed in lieu of a foreclosure sale or trustee's sale.

Existing law authorizes a creditor under an obligation secured by a junior mortgage or deed of trust to bring an action to obtain a personal judgment against the debtor only if the action is commenced within 6 years after the date of the debtor's default. (NRS 11.190) Under sections 3.3 and 5.7 of this bill, if the real property securing such an obligation is the subject of a foreclosure sale, a trustee's sale or a sale or deed in lieu of such a sale, the creditor may bring an action to obtain a personal judgment against the debtor only if the action is brought within 6 months after the foreclosure sale, the trustee's sale or the sale in lieu of a foreclosure sale or trustee's sale.

Under existing law, the amount of a deficiency judgment after a foreclosure sale or a trustee's sale may not exceed the lesser of: (1) the amount of the indebtedness minus the fair market value of the foreclosed property at the time of the sale; or (2) the amount of the indebtedness minus the amount for which the foreclosed property actually sold. (NRS 40.459) Section 5 of this bill provides that, for a deficiency judgment sought by a secured creditor after a foreclosure sale, trustee's sale or sale in lieu of a foreclosure sale or trustee's sale, the amount of the deficiency judgment must be reduced by the amount of any insurance proceeds received by, or payable to, the creditor. Section 2 of this bill enacts a corresponding provision for money judgments sought against a debtor by a junior lienholder after a foreclosure sale, a trustee's sale or a sale or deed in lieu of a foreclosure sale or trustee's sale.

Sections 2 and 5 also limit the recovery of a creditor who acquired the right to obtain payment for an obligation secured by the real property from another person who owned that obligation. If the creditor is seeking a deficiency judgment after a foreclosure sale, a trustee's sale or a sale in lieu of a foreclosure sale or trustee's sale, section 5 provides that the creditor may not receive an amount which exceeds the lesser of: (1) the consideration paid for the obligation minus the fair market value of the property at the time of the foreclosure sale, with interest from the date of sale and reasonable costs; or (2) the consideration paid for the obligation minus the amount for which the property actually sold, with interest from the date of sale and reasonable costs. If the creditor is a junior lienholder who filed a civil action to obtain a money judgment against the debtor, section 2 provides that the creditor may not receive an amount greater than the consideration paid for the obligation, with interest from the date on which the person acquired the right to obtain payment and reasonable costs.

Section 5.5 of this bill limits the amount of a judgment against a guarantor, surety or other obligor, other than a mortgagor or grantor of a deed of trust, in an action commenced before a foreclosure sale or trustee's sale to enforce the obligation to pay, satisfy or purchase all or part of an obligation secured by a mortgage or other lien on real property. Under section 5.5, the amount of the judgment may not exceed the lesser of: (1) the amount of the indebtedness minus the fair market value of the real property at the time of the commencement of the action; or (2) if a foreclosure sale or a trustee's sale is completed before the date on which judgment is entered, the amount of the indebtedness minus the amount for which the foreclosed property actually sold.

Section 6 of this bill provides that the amendatory provisions of ~~this bill~~ : (1) sections 1-3 apply only prospectively to obligations secured by a mortgage, deed of trust or other encumbrance upon real property on or after the effective date of this bill ~~4~~ ; (2) sections 3.3 and 5.7 apply only to an action commenced after a foreclosure sale or sale in lieu of a foreclosure sale that occurs on or after July 1, 2011; and (3) section 5.5 apply only to an action against a guarantor, surety or other obligor commenced on or after the effective date of this bill. Under section 7 of this bill, the amendatory provisions of section 5 become effective upon passage and approval and thus apply to a deficiency judgment awarded on or after that effective date.

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

1 **Section 1.** Chapter 40 of NRS is hereby amended by adding thereto the
2 provisions set forth as sections 1.2 to 3.3, inclusive, of this act.

3 **Sec. 1.2.** *As used in sections 1.2 to 3.3, inclusive, of this act, unless the*
4 *context otherwise requires, the words and terms defined in sections 1.4, 1.6 and*
5 *1.8 of this act have the meanings ascribed to them in those sections.*

6 **Sec. 1.4.** *“Foreclosure sale” has the meaning ascribed to it in NRS 40.462.*

7 **Sec. 1.6.** *“Mortgage or other lien” has the meaning ascribed to it in NRS*
8 *40.433.*

9 **Sec. 1.8.** *“Sale in lieu of a foreclosure sale” means a sale of real property*
10 *pursuant to an agreement between a person to whom an obligation secured by a*
11 *mortgage or other lien on real property is owed and the debtor of that obligation*
12 *in which the sales price of the real property is insufficient to pay the full*
13 *outstanding balance of the obligation and the costs of the sale. The term includes,*
14 *without limitation, a deed in lieu of a foreclosure sale.*

15 **Sec. 2. 1.** *If a person to whom an obligation secured by a junior mortgage*
16 *or lien on real property is owed:*

17 (a) *Files a civil action to obtain a money judgment against the debtor under*
18 *that obligation after a foreclosure sale or a sale in lieu of a foreclosure sale; and*

19 (b) *Such action is not barred by NRS 40.430,*
20 *↪ in determining the amount owed by the debtor, the court shall not include the*
21 *amount of any proceeds received by, or payable to, the person pursuant to an*
22 *insurance policy to compensate the person for losses incurred with respect to the*
23 *property or the default on the obligation.*

24 **2.** *If:*

25 (a) *A person acquired the right to enforce an obligation secured by a junior*
26 *mortgage or lien on real property from a person who previously held that right;*

27 (b) *The person files a civil action to obtain a money judgment against the*
28 *debtor after a foreclosure sale or a sale in lieu of a foreclosure sale; and*

29 (c) *Such action is not barred by NRS 40.430,*
30 *↪ the court shall not render judgment for more than the amount of the*
31 *consideration paid for that right, plus interest from the date on which the person*
32 *acquired the right and reasonable costs.*

33 **3.** *As used in this section, “obligation secured by a junior mortgage or lien*
34 *on real property” includes, without limitation, an obligation which is not*
35 *currently secured by a mortgage or lien on real property if the obligation:*

36 (a) *Is incurred by the debtor under an obligation which was secured by a*
37 *mortgage or lien on real property; and*

38 (b) *Has the effect of reaffirming the obligation which was secured by a*
39 *mortgage or lien on real property.*

40 **Sec. 3. 1.** *A person to whom an obligation secured by a junior mortgage*
41 *or lien on real property is owed may not bring any action to enforce that*
42 *obligation after a foreclosure sale of the real property which secured that*
43 *obligation or a sale in lieu of a foreclosure sale if:*

44 (a) *The person is a financial institution;*

45 (b) *The real property which secured the obligation is a single-family dwelling*
46 *and the debtor or grantor was the owner of the real property at the time of the*
47 *foreclosure sale or sale in lieu of a foreclosure sale;*

48 (c) *The debtor or grantor used the amount of the obligation to purchase the*
49 *real property;*

1 *(d) The debtor or grantor continuously occupied the real property as the*
2 *debtor's or grantor's principal residence after securing the obligation; and*

3 *(e) The debtor or grantor did not refinance the obligation after securing it.*

4 2. As used in this section, "financial institution" has the meaning ascribed
5 to it in NRS 363A.050.

6 **Sec. 3.3.** *A civil action not barred by NRS 40.430 or section 3 of this act by*
7 *a person to whom an obligation secured by a junior mortgage or lien on real*
8 *property is owed to obtain a money judgment against the debtor after a*
9 *foreclosure sale of the real property or a sale in lieu of a foreclosure sale may*
10 *only be commenced within 6 months after the date of the foreclosure sale or sale*
11 *in lieu of a foreclosure.*

12 **Sec. 4.** (Deleted by amendment.)

13 **Sec. 5.** NRS 40.459 is hereby amended to read as follows:

14 40.459 1. After the hearing, the court shall award a money judgment against
15 the debtor, guarantor or surety who is personally liable for the debt. The court shall
16 not render judgment for more than:

17 ~~1. (a)~~ The amount by which the amount of the indebtedness which was
18 secured exceeds the fair market value of the property sold at the time of the sale,
19 with interest from the date of the sale; ~~for~~

20 ~~—2. (b)~~ The amount which is the difference between the amount for which the
21 property was actually sold and the amount of the indebtedness which was secured,
22 with interest from the date of sale ~~1. (a)~~; or

23 *(c) If the person seeking the judgment acquired the right to obtain the*
24 *judgment from a person who previously held that right, the amount by which the*
25 *amount of the consideration paid for that right exceeds the fair market value of*
26 *the property sold at the time of sale or the amount for which the property was*
27 *actually sold, whichever is greater, with interest from the date of sale and*
28 *reasonable costs,*

29 ~~—~~ whichever is the lesser amount.

30 2. *For the purposes of this section, the "amount of the indebtedness" does*
31 *not include any amount received by, or payable to, the judgment creditor or*
32 *beneficiary of the deed of trust pursuant to an insurance policy to compensate the*
33 *judgment creditor or beneficiary for any losses incurred with respect to the*
34 *property or the default on the debt.*

35 **Sec. 5.5.** NRS 40.495 is hereby amended to read as follows:

36 40.495 1. The provisions of NRS 40.475 and 40.485 may be waived by the
37 guarantor, surety or other obligor only after default.

38 2. Except as otherwise provided in subsection ~~4. (a)~~ 5, a guarantor, surety or
39 other obligor, other than the mortgagor or grantor of a deed of trust, may waive the
40 provisions of NRS 40.430. If a guarantor, surety or other obligor waives the
41 provisions of NRS 40.430, an action for the enforcement of that person's obligation
42 to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a
43 mortgage or lien upon real property may be maintained separately and
44 independently from:

45 (a) An action on the debt;

46 (b) The exercise of any power of sale;

47 (c) Any action to foreclose or otherwise enforce a mortgage or lien and the
48 indebtedness or obligations secured thereby; and

49 (d) Any other proceeding against a mortgagor or grantor of a deed of trust.

50 3. If the obligee maintains an action to foreclose or otherwise enforce a
51 mortgage or lien and the indebtedness or obligations secured thereby, the guarantor,
52 surety or other obligor may assert any legal or equitable defenses provided pursuant
53 to the provisions of NRS 40.451 to 40.463, inclusive.

4. If, before a foreclosure sale of real property, the obligee commences an action against a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, to enforce an obligation to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a mortgage or lien upon the real property, ~~the court~~

~~(a) Must:~~

(a) The court must hold a hearing and take evidence presented by either party concerning the fair market value of the property as of the date of the commencement of the action. Notice of such hearing must be served upon all defendants who have appeared in the action and against whom a judgment is sought, or upon their attorneys of record, at least 15 days before the date set for the hearing.

(b) After the hearing, if the court ~~shall award~~ awards a money judgment against the debtor, guarantor or surety who is personally liable for the debt, ~~the~~ the court must not render judgment for more than:

(1) The amount by which the amount of the indebtedness exceeds the fair market value of the property as of the date of the commencement of the action; or

(2) If a foreclosure sale is concluded before a judgment is entered, the amount that is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured,

whichever is the lesser amount.

5. The provisions of NRS 40.430 may not be waived by a guarantor, surety or other obligor if the mortgage or lien:

(a) Secures an indebtedness for which the principal balance of the obligation was never greater than \$500,000;

(b) Secures an indebtedness to a seller of real property for which the obligation was originally extended to the seller for any portion of the purchase price;

(c) Is secured by real property which is used primarily for the production of farm products as of the date the mortgage or lien upon the real property is created; or

(d) Is secured by real property upon which:

(1) The owner maintains the owner's principal residence;

(2) There is not more than one residential structure; and

(3) Not more than four families reside.

6. As used in this section, "foreclosure sale" has the meaning *ascribed to it in NRS 40.462.*

Sec. 5.7. NRS 11.190 is hereby amended to read as follows:

11.190 Except as otherwise provided in NRS 125B.050 and 217.007, **and section 3.3 of this act**, actions other than those for the recovery of real property, unless further limited by specific statute, may only be commenced as follows:

1. Within 6 years:

(a) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.

(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

2. Within 4 years:

(a) An action on an open account for goods, wares and merchandise sold and delivered.

(b) An action for any article charged on an account in a store.

(c) An action upon a contract, obligation or liability not founded upon an instrument in writing.

(d) An action against a person alleged to have committed a deceptive trade practice in violation of NRS 598.0903 to 598.0999, inclusive, but the cause of action shall be deemed to accrue when the aggrieved party discovers, or by the exercise of due diligence should have discovered, the facts constituting the deceptive trade practice.

3. Within 3 years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for waste or trespass of real property, but when the waste or trespass is committed by means of underground works upon any mining claim, the cause of action shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the waste or trespass.

(c) An action for taking, detaining or injuring personal property, including actions for specific recovery thereof, but in all cases where the subject of the action is a domestic animal usually included in the term "livestock," which has a recorded mark or brand upon it at the time of its loss, and which strays or is stolen from the true owner without the owner's fault, the statute does not begin to run against an action for the recovery of the animal until the owner has actual knowledge of such facts as would put a reasonable person upon inquiry as to the possession thereof by the defendant.

(d) Except as otherwise provided in NRS 112.230 and 166.170, an action for relief on the ground of fraud or mistake, but the cause of action in such a case shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the fraud or mistake.

(e) An action pursuant to NRS 40.750 for damages sustained by a financial institution or other lender because of its reliance on certain fraudulent conduct of a borrower, but the cause of action in such a case shall be deemed to accrue upon the discovery by the financial institution or other lender of the facts constituting the concealment or false statement.

4. Within 2 years:

(a) An action against a sheriff, coroner or constable upon liability incurred by acting in his or her official capacity and in virtue of his or her office, or by the omission of an official duty, including the nonpayment of money collected upon an execution.

(b) An action upon a statute for a penalty or forfeiture, where the action is given to a person or the State, or both, except when the statute imposing it prescribes a different limitation.

(c) An action for libel, slander, assault, battery, false imprisonment or seduction.

(d) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

(e) Except as otherwise provided in NRS 11.215, an action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another. The provisions of this paragraph relating to an action to recover damages for injuries to a person apply only to causes of action which accrue after March 20, 1951.

(f) An action to recover damages under NRS 41.740.

5. Within 1 year:

(a) An action against an officer, or officer de facto to recover goods, wares, merchandise or other property seized by the officer in his or her official capacity, as tax collector, or to recover the price or value of goods, wares, merchandise or other personal property so seized, or for damages for the seizure, detention or sale of, or

1 injury to, goods, wares, merchandise or other personal property seized, or for
2 damages done to any person or property in making the seizure.

3 (b) An action against an officer, or officer de facto for money paid to the
4 officer under protest, or seized by the officer in his or her official capacity, as a
5 collector of taxes, and which, it is claimed, ought to be refunded.

6 **Sec. 6.** The amendatory provisions of §

7 1. Sections 1 to 3, inclusive, of this act apply only to an obligation secured
8 by a mortgage, deed of trust or other encumbrance upon real property on or after
9 the effective date of this act.

10 2. Sections 3.3 and 5.7 of this act apply only to an action commenced
11 after a foreclosure sale or sale in lieu of a foreclosure sale that occurs on or
12 after July 1, 2011.

13 3. Section 5.5 of this act apply only to an action against a guarantor,
14 surety or other obligor commenced on or after the effective date of this act.

15 **Sec. 7.** 1. This section and sections 1 to 3, inclusive, 5, 5.5 and 6 of this
16 act ~~becomes~~ become effective upon passage and approval.

17 2. Sections 3.3 and 5.7 of this act become effective on July 1, 2011.