

**Amendment No. 532**

Assembly Amendment to Assembly Bill No. 388 (BDR 10-568)

**Proposed by:** Assembly Committee on Judiciary

**Amendment Box:** Replaces Amendment No. 448.

**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/> _____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/> _____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/> _____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/> _____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/> _____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/> _____

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.

NCA



Date: 4/25/2011

A.B. No. 388—Revises provisions relating to real property. (BDR 10-568)



## ASSEMBLY BILL NO. 388—ASSEMBLYMAN OHRENSCHALL

MARCH 21, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to real property. (BDR 10-568)

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; ~~requiring the disclosure form required to be provided by the seller of residential property to include only certain information related to the residential property; prohibiting the unit owners' association of a common interest community from charging a unit's owner any costs of collecting a past due obligation other than costs related to the recording of certain documents; revising provisions governing the foreclosure of an association's lien based on a fine or penalty for a violation of the governing documents of the common interest community;~~ revising provisions governing the exercise of the power of sale under a deed of trust concerning owner-occupied real property; providing civil remedies for failure to comply with certain provisions governing the exercise of the power of sale under a deed of trust concerning owner-occupied real property; providing civil penalties; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

1 ~~Existing law requires the seller of residential property to serve on the purchaser or the~~  
2 ~~purchaser's agent a completed disclosure form regarding the residential property. (NRS~~  
3 ~~112.120) Section 1 of this bill requires the disclosure to include only information related to the~~  
4 ~~residential property and the homeowners' association for the residential property, if any.~~  
5 ~~Existing law authorizes the unit owners' association of a common interest community to~~  
6 ~~charge reasonable fees to cover the costs of collecting a past due financial obligation owed by~~  
7 ~~a unit's owner and requires the Commission for Common Interest Communities and~~  
8 ~~Condominium Hotels to adopt regulations establishing the amount of those fees. (NRS~~  
9 ~~116.310312) Section 2 of this bill prohibits an association from charging any costs of~~  
10 ~~collecting a past due financial obligation to a unit's owner other than certain recording fees.~~  
11 ~~Existing law prohibits the unit owners' association of a common interest community~~  
12 ~~from foreclosing on a unit based on an unpaid fine or penalty for a violation of the governing~~  
13 ~~documents unless: (1) the violation poses an imminent threat of causing a substantial adverse~~  
14 ~~effect on the health, safety or welfare of the units' owners or residents of the common interest~~  
15 ~~community; or (2) the penalty was imposed for failure to adhere to a construction schedule.~~  
16 ~~(NRS 116.31162) Section 3 of this bill removes the exceptions to the power to foreclose on a~~

~~unit based on an unpaid fine so that the association is prohibited from foreclosing on a unit based on any unpaid fine or penalty for a violation of the governing documents.]~~

Under existing law, the trustee under a deed of trust concerning owner-occupied housing has the power to sell the property to which the deed of trust applies, subject to certain restrictions. (NRS 107.080, 107.085, 107.086) Sections 4-22 of this bill establish additional restrictions on the trustee's power of sale with respect to owner-occupied housing which are based on Senate Bill No. 729 of the current session of the California Legislature, as amended. Section 23 of this bill provides that these additional restrictions apply only to a notice of default and election to sell which is recorded on or after July 1, 2011.

Section 13 prohibits the recording of a notice of default and election to sell unless reasonable and good faith efforts have been made to evaluate the borrower for all available alternatives to the exercise of the trustee's power of sale. Section 14 prohibits the recording of a notice of default and election to sell until the trustee, beneficiary or authorized agent complies with certain requirements regarding contact with, or attempts to contact, the borrower. Under section 15, if an eligible borrower requests, either orally or in writing, a loan modification, a notice of default and election to sell may not be recorded unless the borrower's application has been reviewed in good faith and a decision has been rendered on that application. Sections 17 and 19 require a declaration of compliance to be recorded with the notice of default and election to sell and section 17 provides a form for that declaration. Section 18: (1) authorizes a borrower to bring a civil action to enjoin a trustee's sale, to void a trustee's sale and to recover a specified amount of damages and reasonable attorney's fee and costs under certain circumstances; (2) authorizes the Attorney General to obtain civil penalties for violations of the provisions of this bill; and (3) provides that a violation of the provisions of this bill by a person which is licensed in this State is deemed to be a violation of the law governing that license.

Additionally, section 19: (1) requires a life-of-loan accounting containing certain information to be included with the copy of the notice of default and election to sell which is mailed to the borrower; and (2) prohibits the recording of a notice of sale if the borrower has entered into a contract to sell the property which has been approved by the lender or the borrower has requested approval of such a contract but the lender has not yet approved or disapproved the sale.

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

**Section 1.** ~~[NRS 113.130 is hereby amended to read as follows:~~

~~113.130 1. Except as otherwise provided in subsections 2 and 3:~~

~~(a) At least 10 days before residential property is conveyed to a purchaser:~~

~~(1) The seller shall complete a disclosure form regarding the residential property [i] which must include only information specifically and directly related to the residential property and, if the residential property is in a common interest community, the unit owners' association for that common interest community; and~~

~~(2) The seller or the seller's agent shall serve the purchaser or the purchaser's agent with the completed disclosure form.~~

~~(b) If, after service of the completed disclosure form but before conveyance of the property to the purchaser, a seller or the seller's agent discovers a new defect in the residential property that was not identified on the completed disclosure form or discovers that a defect identified on the completed disclosure form has become worse than was indicated on the form, the seller or the seller's agent shall inform the purchaser or the purchaser's agent of that fact, in writing, as soon as practicable after the discovery of that fact but in no event later than the conveyance of the~~

property to the purchaser. If the seller does not agree to repair or replace the defect, the purchaser may:

~~(1) Rescind the agreement to purchase the property; or~~

~~(2) Close escrow and accept the property with the defect as revealed by the seller or the seller's agent without further recourse;~~

~~2. Subsection 1 does not apply to a sale or intended sale of residential property:~~

~~(a) By foreclosure pursuant to chapter 107 of NRS;~~

~~(b) Between any co-owners of the property, spouses or persons related within the third degree of consanguinity;~~

~~(c) Which is the first sale of a residence that was constructed by a licensed contractor;~~

~~(d) By a person who takes temporary possession or control of or title to the property solely to facilitate the sale of the property on behalf of a person who relocates to another county, state or country before title to the property is transferred to a purchaser;~~

~~3. A purchaser of residential property may waive any of the requirements of subsection 1. Any such waiver is effective only if it is made in a written document that is signed by the purchaser and notarized;~~

~~4. If a sale or intended sale of residential property is exempted from the requirements of subsection 1 pursuant to paragraph (a) of subsection 2, the trustee and the beneficiary of the deed of trust shall, not later than at the time of the conveyance of the property to the purchaser of the residential property, provide written notice to the purchaser of any defects in the property of which the trustee or beneficiary, respectively, is aware;~~

~~5. As used in this section:~~

~~(a) "Common-interest community" has the meaning ascribed to it in NRS 116.021;~~

~~(b) "Unit-owners' association" has the meaning ascribed to it in NRS 116.011.} (Deleted by amendment.)~~

**Sec. 2. [NRS 116.310313 is hereby amended to read as follows:**

~~116.310313 1. An association may *not* charge a unit's owner [reasonable fees to cover] the costs of collecting any past due obligation [...] *except that an association may charge a unit's owner the fee charged to the association by a county recorder for the recording of any document related to the past due obligation and a reasonable recording fee.* The Commission shall adopt regulations establishing the amount of the [fees] *recording fee* that an association may charge pursuant to this section.~~

~~2. The provisions of this section apply to any costs of collecting a past due obligation charged to a unit's owner, regardless of whether the past due obligation is collected by the association itself or by any person acting on behalf of the association, including, without limitation, an officer or employee of the association, a community manager or a collection agency.~~

~~3. As used in this section:~~

~~(a) "Costs of collecting" includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation. The term does not include any costs incurred by an association if a lawsuit is filed to enforce any past due obligation or any costs awarded by a court.~~

~~(b) "Obligation" means any assessment, fine, construction penalty, fee, charge or interest levied or imposed against a unit's owner pursuant to any provision of this chapter or the governing documents.]~~ (Deleted by amendment.)

**Sec. 3.** ~~[NRS 116.31162 is hereby amended to read as follows:~~

~~116.31162 1. Except as otherwise provided in subsection 4, in a condominium, in a planned community, in a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's interest in a unit is personal property under NRS 116.1105 and the declaration provides that a lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the association may foreclose its lien by sale after all of the following occur:~~

~~(a) The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest, at his or her address, if known, and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit;~~

~~(b) Not less than 30 days after mailing the notice of delinquent assessment pursuant to paragraph (a), the association or other person conducting the sale has executed and caused to be recorded, with the county recorder of the county in which the common interest community or any part of it is situated, a notice of default and election to sell the unit to satisfy the lien which must contain the same information as the notice of delinquent assessment and which must also comply with the following:~~

~~(1) Describe the deficiency in payment;~~

~~(2) State the name and address of the person authorized by the association to enforce the lien by sale;~~

~~(3) Contain, in 14 point bold type, the following warning:~~

~~**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!**~~

~~(c) The unit's owner or his or her successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for 90 days following the recording of the notice of default and election to sell;~~

~~2. The notice of default and election to sell must be signed by the person designated in the declaration or by the association for that purpose or, if no one is designated, by the president of the association;~~

~~3. The period of 90 days begins on the first day following:~~

~~(a) The date on which the notice of default is recorded; or~~

~~(b) The date on which a copy of the notice of default is mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest at his or her address, if known, and at the address of the unit;~~

~~\*\*\*whichever date occurs later.~~

~~4. The association may not foreclose a lien by sale based on a fine or penalty for a violation of the governing documents of the association. [unless:~~

~~(a) The violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common interest community; or~~

~~(b) The penalty is imposed for failure to adhere to a schedule required pursuant to NRS 116.310305.]~~ (Deleted by amendment.)

1        Sec. 4. Chapter 107 of NRS is hereby amended by adding thereto the  
2        provisions set forth as sections 5 to 18, inclusive, of this act.

3        Sec. 5. As used in sections 5 to 18, inclusive, of this act, unless the context  
4        otherwise requires, the words and terms defined in sections 6 to 11, inclusive, of  
5        this act have the meanings ascribed to them in those sections.

6        Sec. 6. "Authorized agent" means an agent designated by a trustee or  
7        beneficiary to act on behalf of the trustee or beneficiary.

8        Sec. 7. "Beneficiary" means the beneficiary of a deed of trust which  
9        concerns owner-occupied housing.

10       Sec. 8. "Borrower" means the grantor of a deed of trust which concerns  
11       owner-occupied housing or the person who holds the title of record.

12       Sec. 9. "Mortgage servicer" means a person responsible for the day-to-day  
13       management of a mortgage loan account, including, without limitation,  
14       collecting and crediting periodic loan payments, handling any escrow account or  
15       enforcing mortgage loan terms either as the holder of the loan note or on behalf  
16       of the holder of the loan note.

17       Sec. 10. "Owner-occupied housing" has the meaning ascribed to it in NRS  
18       107.086.

19       Sec. 11. "Trustee" means the trustee under a deed of trust which concerns  
20       owner-occupied housing.

21       Sec. 12. 1. In addition to the requirements of NRS 107.085 and 107.086,  
22       the exercise of the power of sale pursuant to NRS 107.080 with respect to any  
23       trust agreement which concerns owner-occupied housing is subject to the  
24       provisions of sections 5 to 18, inclusive, of this act.

25       2. The provisions of sections 5 to 18, inclusive, of this act apply only to a  
26       deed of trust under a trust agreement which concerns owner-occupied housing.

27       Sec. 13. 1. A trustee, beneficiary or authorized agent shall not record a  
28       notice of default and election to sell pursuant to subsection 3 of NRS 107.080  
29       unless the trustee, beneficiary or authorized agent makes reasonable and good  
30       faith efforts to evaluate the borrower for all available loss mitigation options to  
31       avoid foreclosure.

32       2. This section must not be construed to require a trustee, beneficiary or  
33       authorized agent to act in a manner inconsistent with the terms of any applicable  
34       contract for the servicing of the loan at issue.

35       Sec. 14. 1. Except as otherwise provided in this section, a trustee,  
36       beneficiary or authorized agent shall not record a notice of default and election  
37       to sell pursuant to subsection 3 of NRS 107.080 until:

38       (a) Thirty days after initial contact is made with the borrower as required by  
39       subsection 2 or 30 days after satisfying the requirements of subsection 5; and

40       (b) If applicable, the requirements of section 15 of this act have been  
41       satisfied.

42       2. Except as otherwise provided in subsection 6, a beneficiary or its  
43       authorized agent shall contact the borrower in person or by telephone to assess  
44       the borrower's financial situation and to explore options to avoid the exercise of  
45       the trustee's power of sale pursuant to NRS 107.080. During the initial contact,  
46       the beneficiary or its authorized agent shall advise the borrower that he or she  
47       has the right to request a subsequent meeting and, if requested, the beneficiary or  
48       its authorized agent shall schedule the meeting to occur within 14 days. The  
49       assessment of the borrower's financial situation and the discussion of the options  
50       to avoid the exercise of the trustee's power of sale may occur during the initial  
51       contact or at the subsequent meeting scheduled for that purpose. In either case,  
52       the beneficiary or its authorized agent shall provide to the borrower the toll-free  
53       telephone number made available by the United States Department of Housing

1 and Urban Development to find a housing counseling agency certified by that  
2 Department and, if the borrower may be eligible for a loan modification, a  
3 deadline for the borrower to submit an initial application for a loan modification  
4 which must not be earlier than 45 days after the initial contact.

5 3. The loss mitigation personnel of the beneficiary or its authorized agent  
6 may participate by telephone during any contact required by this section.

7 4. A borrower may designate, in writing, a housing counseling agency  
8 certified by the United States Department of Housing and Urban Development,  
9 an attorney or any other advisor to discuss with the beneficiary or its authorized  
10 agent, on the borrower's behalf, the borrower's financial situation and options  
11 for the borrower to avoid the exercise of the trustee's power of sale. Contact with  
12 a person or agency designated by a borrower pursuant to this subsection satisfies  
13 the requirements of subsection 2. A loan modification or workout plan offered to  
14 a person or agency designated by a borrower pursuant to this subsection is  
15 subject to approval by the borrower.

16 5. Subject to the requirements of section 15 of this act and except as  
17 otherwise provided in subsection 6, even if the beneficiary or its authorized agent  
18 has not contacted the borrower as required by subsection 2, a notice of default  
19 may be recorded pursuant to subsection 3 of NRS 107.080 if the beneficiary or its  
20 authorized agent has taken all the following actions:

21 (a) The beneficiary or its authorized agent has mailed by registered or  
22 certified mail, return receipt requested and with postage prepaid, to the borrower  
23 a letter which includes:

24 (1) The toll-free telephone number made available by the United States  
25 Department of Housing and Urban Development to find a housing counseling  
26 agency certified by that Department; and

27 (2) If the borrower may be eligible for a loan modification, a deadline for  
28 the submission of an initial application for a loan modification which must not be  
29 earlier than 45 days after the date of the letter mailed pursuant to this paragraph  
30 or 45 days after the date on which the beneficiary or its authorized agent made  
31 initial contact with the borrower pursuant to subsection 2, whichever is earlier.

32 (b) After mailing the letter required by paragraph (a), the beneficiary or its  
33 authorized agent has attempted to contact the borrower by telephone at least 3  
34 times at different hours and on different days. Telephone calls made pursuant to  
35 this paragraph must be made to the primary telephone number of the borrower  
36 which is on file with the beneficiary. The beneficiary or its authorized agent  
37 satisfies the requirements of this paragraph if it determines, after attempting  
38 contact pursuant to this paragraph, that the primary telephone number of the  
39 borrower on file and any secondary telephone numbers on file have been  
40 disconnected.

41 (c) If the borrower does not respond within 2 weeks after the beneficiary or  
42 its authorized agent has satisfied the requirements of paragraph (b), the  
43 beneficiary or its authorized agent has mailed to the borrower, by registered or  
44 certified mail, return receipt requested and with postage prepaid, a letter which  
45 includes the information required by paragraph (a).

46 (d) The beneficiary or its authorized agent provides a means for the borrower  
47 to contact the beneficiary or its authorized agent in a timely manner, including,  
48 without limitation, a toll-free telephone number that will provide access to a live  
49 representative during business hours.

50 (e) The beneficiary or its authorized agent posts a prominent link on its  
51 Internet website, if any, to the following information:

52 (1) Options that may be available to borrowers who are unable to afford  
53 their mortgage payments and who wish to avoid the exercise of the trustee's



1 power of sale, and instructions to such borrowers advising them on steps to take  
2 to explore those options.

3 (2) A list of financial documents the borrower should collect and be  
4 prepared to present to the beneficiary or its authorized agent when discussing  
5 options for avoiding the exercise of the trustee's power of sale.

6 (3) A toll-free telephone number for borrowers who wish to discuss with  
7 the beneficiary or its authorized agent options for avoiding the exercise of the  
8 trustee's power of sale.

9 (4) The toll-free telephone number made available by the United States  
10 Department of Housing and Urban Development to find a housing counseling  
11 agency certified by that Department.

12 6. The requirements of subsections 1, 2 and 5 do not apply if the borrower:

13 (a) Has surrendered the property as evidenced by either a letter confirming  
14 the surrender or delivery of the keys to the property to the trustee, beneficiary or  
15 authorized agent;

16 (b) Has contracted with a person whose primary business is advising persons  
17 who have decided to leave their homes on how to extend the foreclosure process  
18 and avoid their contractual obligations to beneficiaries; or

19 (c) Has filed a petition pursuant to Title 11 of the United States Code and the  
20 bankruptcy court has not entered an order closing or dismissing the petition or  
21 granting relief from a stay of the trustee's sale.

22 Sec. 15. 1. Except as otherwise provided in this section, if an eligible  
23 borrower requests an application for a loan modification, either orally or in  
24 writing, not later than 90 days after the date on which the obligation became  
25 delinquent or not later than 45 days after the beneficiary or its authorized agent  
26 makes initial contact with the borrower pursuant to section 14 of this act,  
27 whichever is later, the trustee, beneficiary or authorized agent shall not record a  
28 notice of default and election to sell pursuant to subsection 3 of NRS 107.080  
29 unless and until it has, in good faith, reviewed the application, rendered a  
30 decision on the application and sent the borrower a denial explanation letter as  
31 required by section 16 of this act.

32 2. If a borrower requests a loan modification, either orally or in writing, by  
33 the deadline described in subsection 1, but does not initially submit all the  
34 documentation or information the beneficiary or its authorized agent requires to  
35 consider the borrower for a loan modification, the beneficiary or its authorized  
36 agent shall provide the borrower with a written notice that:

37 (a) Lists any supplemental documentation or information required; and

38 (b) Includes the deadline for providing that documentation or information,  
39 which must not be earlier than 30 calendar days from the date on which the  
40 borrower receives the notice.

41 3. Except as otherwise provided in this subsection, if a borrower requests a  
42 loan modification, either orally or in writing, within 15 days after receiving a  
43 copy of the notice of default and election to sell as required by subsection 3 of  
44 NRS 107.080 and submits a completed application for a loan modification within  
45 15 days after receiving application instructions from the mortgage servicer or any  
46 other application deadline communicated in writing by the mortgage servicer,  
47 whichever is later, the trustee, beneficiary or authorized agent shall not record a  
48 notice of sale pursuant to subsection 5 of NRS 107.080 until at least 10 business  
49 days after it has, in good faith, reviewed the application, rendered a decision on  
50 the application and sent the borrower a denial explanation letter in accordance  
51 with section 16 of this act. This subsection does not apply if a borrower applied  
52 for a loan modification before the notice of default and election to sell was



1 recorded pursuant to subsection 3 of NRS 107.080 and the trustee, beneficiary or  
2 authorized agent satisfied the requirements of sections 16 and 17 of this act.

3 4. If the mortgage servicer has signed a Making Home Affordable Servicer  
4 Participation Agreement with the Federal National Mortgage Association or is  
5 otherwise required to review the borrower's loan under the guidelines of the  
6 federal Making Home Affordable Modification Program, compliance with  
7 applicable rules of that program regarding deadlines and timeframes for the  
8 borrower to submit and complete an application for a loan modification satisfy  
9 the requirements of this section while that program remains in effect.

10 5. The provisions of this section must not be construed:

11 (a) To require a mortgage servicer to perform services in a manner  
12 inconsistent with the terms of any applicable contract for the servicing of the loan  
13 at issue.

14 (b) To diminish in any way the obligations of a trustee, beneficiary or  
15 authorized agent that has signed a Making Home Affordable Servicer  
16 Participation Agreement with the Federal National Mortgage Association or is  
17 otherwise required to review a loan under the guidelines of the federal Making  
18 Home Affordable Modification Program.

19 6. The requirements of this section do not apply if:

20 (a) The borrower has surrendered the property as evidenced by either a letter  
21 confirming the surrender or delivery of the keys to the property to the trustee,  
22 beneficiary or authorized agent; or

23 (b) The beneficiary or its authorized agent does not offer any loan  
24 modifications.

25 Sec. 16. 1. If a borrower who requests a loan modification, either orally  
26 or in writing, is denied either a permanent loan modification or a trial period  
27 plan through the federal Making Home Affordable Modification Program, the  
28 beneficiary or its authorized agent shall mail to the borrower by certified mail,  
29 not later than 10 business days following the denial, a denial explanation letter  
30 that states the reason or reasons for the denial.

31 2. If an application for a loan modification is denied because the borrower  
32 failed to provide all required documents or information by the applicable  
33 deadline set forth in subsection 2 of section 15 of this act, the denial explanation  
34 letter mailed pursuant to subsection 1 must:

35 (a) Indicate the deadline for the submission of the documents or  
36 information;

37 (b) List the documents or information that were not provided; and

38 (c) State that the application for a loan modification was denied for that  
39 reason.

40 3. If the borrower submits all required written application materials for a  
41 loan modification by the applicable deadline as set forth in subsection 2 or 3 of  
42 section 15 of this act and the application is denied, the denial explanation letter  
43 must include:

44 (a) The date on which the beneficiary or its authorized agent received the  
45 final materials required to complete its review of the borrower's application for a  
46 loan modification.

47 (b) The date on which the beneficiary or its authorized agent made the  
48 decision to deny the borrower's application for a loan modification.

49 (c) If the beneficiary or its authorized agent was required to consider the  
50 borrower for a loan modification under the guidelines of the federal Making  
51 Home Affordable Modification Program, the information required to be provided  
52 in the borrower notice described in the most current version of the Making Home

Affordable Program Handbook for Servicers of Non-GSE Mortgages and any subsequent amendments thereto.

(d) The reason or reasons the borrower did not qualify for a loan modification, including, as applicable:

(1) If the denial is based on any investor guideline or restriction on loan modifications, a description of the guideline or restriction that resulted in the denial with a copy of the applicable provision in the pooling and servicing agreement or other controlling document evidencing that guideline or restriction;

(2) If the denial is based on the borrower's income or expenses, the income and expense figures used to determine the borrower's qualification for a loan modification, including, without limitation, the borrower's gross and net monthly income, property taxes and hazard insurance premiums;

(3) If the denial is based on a determination that the net present value of the income stream expected from the modified loan is not greater than the net present value of the income stream that is expected from the loan without modification, all the inputs, assumptions and calculations used to make that determination; and

(4) If applicable, a finding that the borrower was previously offered a loan modification but failed to successfully make payments under the terms of the loan modification.

(e) The name and contact information of the holder of the note for the borrower's loan.

(f) A description of alternatives to avoid the exercise of the trustee's sale other than a loan modification for which the borrower may be eligible, if any, including, without limitation, other loan modification programs, a short sale, a deed in lieu of a trustee's sale or a forbearance, and a list of the steps the borrower must take to be considered for those options. If the borrower has already been approved for another alternative to the exercise of the trustee's sale, information necessary to participate in or complete the alternative should be included.

(g) Contact information which the borrower may use to reach the beneficiary or its authorized agent to discuss the reasons for the denial of the loan modification.

4. If a borrower is denied a loan modification and the beneficiary or its authorized agent sends a denial explanation letter pursuant to this section, the trustee, beneficiary or authorized agent may record a notice of default and election to sell pursuant to subsection 3 of NRS 107.080 even if the borrower initiates a dispute relating to the denial and the dispute has not yet been resolved.

Sec. 17. 1. After satisfying the requirements of sections 15 and 16 of this act, as applicable, a mortgage servicer shall take the following action to initiate the process of exercising the trustee's power of sale pursuant to NRS 107.080:

(a) Compile in one place a record demonstrating that the initial contact required by subsection 2 of section 14 of this act has occurred or the requirements of subsection 5 of section 14 of this act have been satisfied. The record must:

(1) Include the dates and times of, and addresses and telephone numbers used for, the contact or attempted contacts with the borrower, as well as a record of the good faith efforts undertaken pursuant to sections 13 and 15 of this act; and

(2) After the recording of a notice of default and election to sell pursuant to subsection 3 of NRS 107.080, be made available to the borrower within 10 business days after a written request for the record by the borrower; and

(b) Transmit to the trustee or its authorized agent a declaration of compliance that is signed on behalf of the mortgage servicer by a natural person having personal knowledge of the facts stated in the declaration, or by a natural person with authority to bind the mortgage servicer, who certifies that the declaration is based on records which were made in the regular course of business at or near the time of the events recorded. The declaration of compliance must be included as part of, or attached to, every notice of default and election to sell which is recorded pursuant to subsection 3 of NRS 107.080. A notice of default and election to sell which does not include the declaration of compliance described in this paragraph is void.

2. The declaration of compliance described in paragraph (b) of subsection 1 must be in substantially the following form:

### DECLARATION OF COMPLIANCE

#### I. BORROWER CONTACT

A. ( ) This loan is not subject to section 14 of this act pursuant to subsection 6 of section 14 of this act.

If item (I)(A) is checked, no further information regarding borrower contact is required. If item (I)(A) is not checked, complete item (I)(B).

B. ( ) This loan is subject to section 14 of this act, and the beneficiary or authorized agent has complied with the requirements of section 14 of this act by satisfying the applicable contact or due diligence requirements described in subsection 2 or 3 of section 14 of this act. If checked, insert the date that the applicable borrower contact requirements were completed here:

#### II. FORECLOSURE AVOIDANCE REVIEW

A. ( ) This loan is not subject to section 15 of this act pursuant to (check all that apply):

( ) Paragraph (a) of subsection 6 of section 15 of this act.

( ) Paragraph (b) of subsection 6 of section 15 of this act.

( ) Section 12 of this act.

If item (II)(A) is checked, no further information regarding borrower solicitation efforts is required. If item (II)(A) is not checked, complete item (II)(B).

B. ( ) This loan is subject to section 15 of this act (check only one):

( ) The borrower was evaluated for a loan modification, was not approved, and the beneficiary or authorized agent sent the borrower a denial explanation letter in compliance with the requirements of subsection 3 of section 16 of this act.

( ) The borrower did not submit all required written application materials by the applicable deadline, and the beneficiary or authorized agent sent the borrower a denial explanation letter in compliance with the requirements of subsection 2 of section 16 of this act.

( ) The borrower did not initiate an application for a loan modification by the applicable deadline.

( ) The borrower was offered a HAMP trial period plan, but did not accept the trial period plan or did not complete the plan.

( ) The borrower was offered a permanent loan modification, but the borrower did not accept the modification offered.

( ) The borrower was offered and accepted a permanent loan modification, but did not comply with the terms of the modification.

( ) The borrower communicated to the beneficiary or authorized agent that he or she does not intend to apply for loan modification.

### III. PROOF OF OWNERSHIP

( ) Attached is a copy of the note and all assignments and endorsements of the note, along with a declaration attesting to the existence and possession of the original note as well as all the assignments and endorsements, and certifying ownership of the mortgage and the right to foreclose.

( ) The trustee, beneficiary or any of their authorized agents are not reasonably able to obtain possession of the note and/or all assignments and endorsements thereof. Attached is a declaration of lost note that complies with the requirements of paragraph (b) of subsection 3 of NRS 107.080.

Sec. 18. 1. If the trustee, beneficiary or authorized agent records a notice of sale pursuant to subsection 5 of NRS 107.080:

(a) Without completing an evaluation of a timely completed application for a loan modification;

(b) Before the borrower's deadline for requesting and applying for a loan modification; or

(c) Without sending a denial explanation letter that materially complies with section 16 of this act,

↳ the borrower may seek an order in any court having jurisdiction to enjoin the exercise of the trustee's power of sale with respect to the property until any of these requirements not previously satisfied are satisfied.

#### 2. If:

(a) The trustee, beneficiary or authorized agent records a notice of default and election to sell pursuant to subsection 3 of NRS 107.080:

(1) Without completing its evaluation of the borrower's timely completed application for a loan modification;

(2) Before the borrower's deadline for requesting and applying for a loan modification; or

(3) Without sending a denial explanation letter that materially complies with section 16 of this act;

(b) The trustee, beneficiary or authorized agent causes the property at issue to be sold at a trustee's sale pursuant to NRS 107.080; and

(c) The property at issue is sold to a bona fide purchaser at a trustee's sale pursuant to NRS 107.080,

↳ the borrower may recover in a civil action which must be commenced within 1 year following the trustee's sale the greater of treble actual damages or statutory damages in the amount of \$15,000, plus reasonable attorney's fees and costs.

#### 3. If:

(a) The trustee, beneficiary or authorized agent records a notice of default and election to sell pursuant to subsection 3 of NRS 107.080:

(1) Without completing its evaluation of the borrower's timely completed application for a loan modification;

(2) Before the borrower's deadline for requesting and applying for a loan modification; or

(3) Without sending a denial explanation letter that materially complies with section 16 of this act;

(b) The trustee, beneficiary or authorized agent causes the property at issue to be sold at a trustee's sale pursuant to NRS 107.080; and

(c) Before commencement of an action pursuant to this subsection, the property at issue is sold by the trustee, beneficiary or authorized agent to a bona fide purchaser after a trustee's sale at which the trustee, beneficiary or authorized agent acquired title to the property.

↳ the borrower may recover in a civil action which must be commenced within 1 year following the trustee's sale the greater of treble actual damages or statutory damages in the amount of \$15,000, plus reasonable attorney's fees and costs. If the trustee, beneficiary or authorized agent had actual notice of the borrower's claim under this subsection before selling the property to a bona fide purchaser, the borrower is entitled to recover statutory damages in the amount of \$20,000 in addition to other damages recoverable under this subsection.

4. If the trustee, beneficiary or authorized agent:

(a) Records a notice of default and election to sell pursuant to subsection 3 of NRS 107.080:

(1) Without completing its evaluation of the borrower's timely completed application for a loan modification;

(2) Before the borrower's deadline for requesting and applying for a loan modification; or

(3) Without sending a denial explanation letter that materially complies with section 16 of this act;

(b) Causes the property at issue to be sold at a trustee's sale pursuant to NRS 107.080; and

(c) Acquired title to the property at the trustee's sale but has not sold the property to a bona fide purchaser.

↳ the borrower may, within 1 year following the trustee's sale, bring an action to void the trustee's sale, to enjoin the recording of any further notice of sale until at least 30 days after any requirement of sections 5 to 18, inclusive, of this act not previously satisfied is satisfied and for reasonable attorney's fees and costs.

5. If the mortgage servicer fails to cause the declaration of compliance required by section 17 of this act to be included with, or attached to, a notice of default and election to sell which is recorded pursuant to subsection 3 of NRS 107.080, the borrower may recover from the mortgage servicer statutory damages of not less than \$1,500 but not more than \$10,000, plus reasonable attorney's fees and costs. If the mortgage servicer records, or causes to be recorded, a materially false declaration of compliance, a borrower may recover from the mortgage servicer statutory damages of not less than \$10,000 but not more than \$25,000, plus attorney's fees and costs. For the purposes of this subsection, the declaration of compliance is not false if it lists any incorrect dates for the date that the requirements described in the declaration were completed, unless the mortgage servicer knowingly included the wrong date on the declaration.

6. A beneficiary or mortgage servicer is not civilly liable under subsections 2, 3 and 4 if, before commencement of an action by the borrower and not later than 180 days after the date of the trustee's sale pursuant to NRS 107.080:

1 (a) The trustee, beneficiary or authorized agent:  
2 (1) Voluntarily rescinds the trustee's sale before filing an unlawful  
3 detainer action against the borrower;

4 (2) Provides a written notice of that rescission to the borrower not later  
5 than 3 days after the rescission;

6 (3) Lists in the notice the steps the beneficiary or mortgage servicer will  
7 take before recording any further notice of sale;

8 (4) Materially complies with any requirements of sections 5 to 18,  
9 inclusive, of this act that were not previously satisfied not later than 30 days  
10 before recording any further notice of sale; and

11 (5) Sends the borrower a written communication stating that the  
12 beneficiary or mortgage servicer will not file an unlawful detainer action against  
13 the borrower before completing the steps set forth in the letter; or

14 (b) The trustee, beneficiary or authorized agent refrains from filing an  
15 unlawful detainer action against the borrower until at least 30 days after the  
16 beneficiary or mortgage servicer;

17 (1) Materially complies with all the applicable requirements of sections 5  
18 to 18, inclusive, of this act that were not previously satisfied and sends the  
19 borrower a written communication informing the borrower of the actions taken  
20 and the outcome of those actions, including, without limitation, any reason for  
21 the denial of a loan modification, if applicable; and

22 (2) Sends the borrower a written communication stating the steps that  
23 were taken and the outcome, including, without limitation, any reason for the  
24 denial of a loan modification, if applicable. If the beneficiary or mortgage  
25 servicer determines that the borrower qualifies for a loan modification, it shall  
26 rescind the trustee's sale and offer the borrower the loan modification.

27 7. A borrower shall not have any cause of action under this section for any  
28 failure or error that is technical or de minimis in nature.

29 8. A mortgage servicer, trustee, beneficiary or authorized agent who violates  
30 a provision of sections 5 to 18, inclusive, of this act is liable, in addition to any  
31 other penalty or remedy that may be provided by law, to a civil penalty of not  
32 more than \$10,000 for each violation and not more than \$25,000 for each  
33 violation involving the recording of a false or fraudulent declaration of  
34 compliance pursuant to section 17 of this act, which may be recovered by civil  
35 action on complaint of the Attorney General. All money collected as civil  
36 penalties pursuant to this section must be deposited in the State General Fund.

37 9. A trustee, beneficiary or authorized agent who is licensed by this State  
38 and who violates any provision of sections 5 to 18, inclusive, of this act shall be  
39 deemed to have violated the law governing that person's license and is subject to  
40 enforcement action by the licensing agency.

41 Sec. 19. NRS 107.080 is hereby amended to read as follows:

42 107.080 1. Except as otherwise provided in NRS 107.085 and 107.086, and  
43 sections 5 to 18, inclusive, of this act, if any transfer in trust of any estate in real  
44 property is made after March 29, 1927, to secure the performance of an obligation  
45 or the payment of any debt, a power of sale is hereby conferred upon the trustee to  
46 be exercised after a breach of the obligation for which the transfer is security.

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

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

50 (1) On or after July 1, 1949, and before July 1, 1957, the grantor, the  
51 person who holds the title of record, a beneficiary under a subordinate deed of trust  
52 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 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

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

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. ~~It and~~

(b) If the property is owner-occupied housing as defined in NRS 107.086, include, or have attached to it, the declaration of compliance required by section 16 of this act and proof of ownership of the note secured by the deed of trust. Proof of ownership of the note must include a copy of the note secured by the deed of trust, evidence of all assignments and endorsements of the deed of trust and the note secured by the deed of trust and a declaration which attests to the existence and possession of the note secured by the deed of trust and to all assignments and endorsements of that note and certifies ownership of the deed of trust and the right to exercise the trustee's power of sale. If this proof cannot be located, the trustee, beneficiary or authorized agent shall include with, or attach to, the notice of default and election to sell a declaration signed either by a natural person having personal knowledge of the facts stated within, or by a natural person with authority to bind the trustee, beneficiary or authorized agent, who certifies that the declaration is based upon records that were made in the



1 regular course of business at or near the time of the events recorded, including  
2 the following:

3 (1) Facts sufficient to show that the trustee, beneficiary or authorized  
4 agent has the right to enforce the note secured by the deed of trust;

5 (2) A statement that the person cannot reasonably obtain possession of  
6 the note and a description of the reasonable efforts made to obtain the note; and

7 (3) A description of the terms of the note and any riders attached thereto,  
8 including, without limitation:

9 (I) The date on which the note was executed;

10 (II) The parties to the note;

11 (III) The principal amount of the loan;

12 (IV) The amortization period of the loan;

13 (V) The initial interest rate of the loan and, if applicable, the initial  
14 date and the frequency of any adjustments to the interest rate, and the index and  
15 margin used to calculate the interest rate at the time of any scheduled  
16 adjustment; and

17 (VI) The expiration date of any interest-only period, if applicable.

18 ↪ This paragraph must not be construed in derogation of the parties' rights  
19 established under NRS 104.3309 or any similar right established under the law of  
20 this State.

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

23 4. If the property is owner-occupied housing as defined in NRS 107.086, the  
24 copy of the notice of default and election to sell which is mailed to the grantor or  
25 the person who holds the title of record pursuant to subsection 3 must include:

26 (a) An accounting of all payments made on the obligation secured by the  
27 deed of trust from the close of escrow to the date on which the notice of default  
28 and election to sell is recorded pursuant to subsection 3 in the form of a  
29 spreadsheet showing all account activity;

30 (b) An itemization and description of all late fees, late charges, appraisal  
31 fees, property inspection fees, forced placed insurance charges, legal fees and  
32 recoverable advances charged on the obligation secured by the deed of trust and  
33 an explanation of the reason for such charges;

34 (c) A copy of all interest rate adjustment notices and the two most recent  
35 escrow analysis notices sent to the grantor or the person who holds the title of  
36 record; and

37 (d) A breakdown of the current escrow charges which indicates how the  
38 charges are calculated and the reason for any increase in the charges within the  
39 preceding 24 months, and any shortage or surplus in the escrow account in the  
40 past three years.

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

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

51 (b) Posting a similar notice particularly describing the property, for 20 days  
52 successively, in three public places of the township or city where the property is  
53 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.

~~5~~ A notice of sale may not be recorded pursuant to this subsection if the grantor or the person who holds the title of record has entered into a contract to sell the property and the beneficiary of the deed of trust has approved the sale or the grantor or the person who holds the title of record has requested the beneficiary's approval of the sale but the beneficiary has not yet approved or disapproved the sale.

~~6~~ 6. 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 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 ~~7~~ and sections 5 to 18, inclusive, of this act;

(b) Except as otherwise provided in subsection ~~6~~ 7, 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~~ 7. If proper notice is not provided pursuant to subsection 3 or paragraph (a) of subsection ~~4~~ 5 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~~ 6 within 120 days after the date on which the person received actual notice of the sale.

~~7~~ 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~~ 10. If the successful bidder fails to record the trustee's deed upon sale pursuant to paragraph (b) of subsection ~~8~~ 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~~ 9 and for reasonable attorney's fees and the costs of bringing the action.

~~10~~ 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 ~~11.0~~

~~12.1~~ 11.  
13. As used in this section, "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) Means a structure that is comprised of not more than four units.

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

**Sec. 20. NRS 107.084 is hereby amended to read as follows:**

107.084 It is unlawful for a person to willfully remove or deface a notice posted pursuant to subsection ~~44~~ 5 of NRS 107.080, if done before the sale or, if the default is satisfied before the sale, before the satisfaction of the default. In addition to any other penalty, any person who violates this section is liable in the amount of \$500 to any person aggrieved by the removal or defacing of the notice.

**Sec. 21. NRS 107.087 is hereby amended to read as follows:**

107.087 1. In addition to the requirements of NRS 107.080, if the sale of property is a residential foreclosure, a copy of the notice of default and election to sell and the notice of sale must:

(a) Be posted in a conspicuous place on the property not later than 3 business days after the notice of default and election to sell or the notice of sale is recorded pursuant to NRS 107.080; and

(b) Include, without limitation:

(1) The physical address of the property; and

(2) The contact information of the trustee or the person conducting the foreclosure who is authorized to provide information relating to the foreclosure status of the property.

2. In addition to the requirements of NRS 107.084, the notices must not be defaced or removed until the transfer of title is recorded or the property becomes occupied after completion of the sale, whichever is earlier.

3. A separate notice must be posted in a conspicuous place on the property and mailed, with a certificate of mailing issued by the United States Postal Service or another mail delivery service, to any tenant or subtenant, if any, other than the grantor or the grantor's successor in interest, in actual occupation of the premises not later than 3 business days after the notice of the sale is given pursuant to

subsection ~~44~~ 5 of NRS 107.080. The separate notice must be in substantially the following form:

#### NOTICE TO TENANTS OF THE PROPERTY

Foreclosure proceedings against this property have started, and a notice of sale of the property to the highest bidder has been issued.

You may either: (1) terminate your lease or rental agreement and move out; or (2) remain and possibly be subject to eviction proceedings under chapter 40 of the Nevada Revised Statutes. Any subtenants may also be subject to eviction proceedings.

Between now and the date of the sale, you may be evicted if you fail to pay rent or live up to your other obligations to the landlord.

After the date of the sale, you may be evicted if you fail to pay rent or live up to your other obligations to the successful bidder, in accordance with chapter 118A of the Nevada Revised Statutes.

Under the Nevada Revised Statutes eviction proceedings may begin against you after you have been given a notice to quit.

If the property is sold and you pay rent by the week or another period of time that is shorter than 1 month, you should generally receive notice after not less than the number of days in that period of time.

If the property is sold and you pay rent by the month or any other period of time that is 1 month or longer, you should generally receive notice at least 60 days in advance.

Under Nevada Revised Statutes 40.280, notice must generally be served on you pursuant to chapter 40 of the Nevada Revised Statutes and may be served by:

(1) Delivering a copy to you personally in the presence of a witness;

(2) If you are absent from your place of residence or usual place of business, leaving a copy with a person of suitable age and discretion at either place and mailing a copy to you at your place of residence or business; or

(3) If your place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, posting a copy in a conspicuous place on the leased property, delivering a copy to a person residing there, if a person can be found, and mailing a copy to you at the place where the leased property is.

If the property is sold and a landlord, successful bidder or subsequent purchaser files an eviction action against you in court, you will be served with a summons and complaint and have the opportunity to respond. Eviction actions may result in temporary evictions, permanent evictions, the awarding of damages pursuant to Nevada Revised Statutes 40.360 or some combination of those results.

Under the Justice Court Rules of Civil Procedure:

(1) You will be given at least 10 days to answer a summons and complaint;

(2) If you do not file an answer, an order evicting you by default may be obtained against you;

(3) A hearing regarding a temporary eviction may be called as soon as 11 days after you are served with the summons and complaint; and

(4) A hearing regarding a permanent eviction may be called as soon as 20 days after you are served with the summons and complaint.

4. As used in this section, "residential foreclosure" has the meaning ascribed to it in NRS 107.080.

**Sec. 22. NRS 459.646 is hereby amended to read as follows:**

459.646 1. A person who, without participating in the management of a parcel of real property, holds or is the beneficiary of evidence of title to the property primarily to protect a security interest in the property is not a responsible party with respect to a release of a hazardous substance on the property if:

(a) The owner of the property is relieved from liability under NRS 459.610 to 459.658, inclusive, with respect to the release;

(b) The owner or holder of evidence of title did not cause the release; and

(c) The owner or holder of evidence of title does not participate actively in decisions concerning hazardous substances on the property.

2. A lender to a prospective purchaser who has filed an application to participate in the program pursuant to NRS 459.634 or a lender who forecloses his or her security interest in property pursuant to NRS 40.430 to 40.450, inclusive, or 107.080 to 107.110, inclusive, and sections 5 to 18, inclusive, of this act and within a reasonable period after the foreclosure, not to exceed 2 years, sells, transfers or conveys the property to a prospective purchaser who has filed an application to participate in the program pursuant to NRS 459.634 is not a responsible party solely as a result of:

(a) Foreclosing a security interest in the property; or

(b) Making a loan to the prospective purchaser if the loan:

(1) Is to be used for acquiring property or removing or remediating hazardous substances on property; and

(2) Is secured by the property that is to be acquired or on which is located the hazardous substances that are to be removed or remediated.

**Sec. 23. The amendatory provisions of sections 4 to 22, inclusive, of this act apply only with respect to trust agreements which concern owner-occupied housing, as defined in NRS 107.086, for which a notice of default is recorded on or after July 1, 2011.**

~~[Sec. 4.]~~ **Sec. 24.** This act becomes effective on July 1, 2011.