

Amendment No. 162

Senate Amendment to Senate Bill No. 200

(BDR 10-217)

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	<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.

DP/BAW



Date: 4/18/2011

S.B. No. 200—Makes various changes relating to time shares. (BDR 10-217)



SENATE BILL NO. 200—SENATOR SCHNEIDER

FEBRUARY 28, 2011

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to time shares. (BDR 10-217)

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 time shares; restricting the disclosure of certain information about owners of time shares; requiring certain mailings to owners of time shares upon request by an owner; allowing a notice of sale on the foreclosure of a time share to be given by posting on an Internet website under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 2 of this bill requires the manager or board of an association of a time-share plan to maintain a list of owners of time shares in the plan. **Section 2** also prohibits the manager or board from disclosing personal information about an owner without the prior written consent of the owner except under certain circumstances.

Section 3 of this bill requires the manager or board of an association of a time-share plan to: (1) mail certain materials to all owners on the list of owners of time shares in the plan upon the request of an owner under certain circumstances; ~~and~~ (2) provide an owner with the option to place certain limits on the information that may be provided to other owners; (3) provide an owner with a written disclosure regarding the potential effect of giving consent to publish or furnish information about the owner; and (4) establish procedures for such mailings.

Existing law requires that, among other forms of notice, a sale of a time share to satisfy a lien for unpaid assessments be noticed by publication in a newspaper under certain circumstances. (NRS 119A.560) **Section 4** of this bill authorizes, as an alternative to ~~that~~ the newspaper form of publication, such a notice of sale and a declaration in a form to be prepared by the Real Estate Division of the Department of Business and Industry to be posted on an Internet website if a statement of the Internet address is also published in a newspaper.

Existing law requires that, among other forms of notice, a sale of real property in foreclosure under a deed of trust be noticed by publication in a newspaper under certain circumstances. (NRS 107.080) **Section 5** of this bill authorizes, as an alternative to that form of publication, a notice of a time share in foreclosure under a deed of trust to be posted on an Internet website if a statement of the Internet address is also published in a newspaper.

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

1 **Section 1.** Chapter 119A of NRS is hereby amended by adding thereto the
2 provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2.** 1. *A manager or, if there is no manager, the board shall maintain*
4 *in the records of an association a complete list of the names and mailing*
5 *addresses of all owners. The list must be updated not less frequently than*
6 *quarterly.*

7 2. *If a time-share plan is part of a common-interest community governed by*
8 *chapter 116 of NRS, the names and addresses of delegates or representatives who*
9 *are elected pursuant to NRS 116.31105 or, if there are none, the name and*
10 *address of the association must appear on the list of owners of an association*
11 *organized under NRS 116.3101 in lieu of the names, addresses and other*
12 *personal information of the individual owners.*

13 3. *Notwithstanding any provision of the declaration or bylaws of a time-*
14 *share plan to the contrary, a manager or a board may not, except as otherwise*
15 *authorized or required by law, publish or furnish any information about any*
16 *owner to any other owner or any other person without the prior written consent*
17 *of the owner whose information is requested.*

18 4. *Before obtaining the written consent of an owner pursuant to subsection*
19 *3, a manager or a board shall provide the owner with:*

20 (a) *The option to limit the information about the owner that may be*
21 *published or furnished to any other owner or any other person:*

22 (1) *To exclusively the owner's name and mailing address; and*

23 (2) *For use only in legitimate matters of business of the association.*

24 (b) *The following written disclosure:*

25 *BY GIVING YOUR CONSENT TO PUBLISH OR FURNISH*
26 *INFORMATION ABOUT YOU FOR PURPOSES OTHER THAN*
27 *LEGITIMATE MATTERS OF BUSINESS OF THE ASSOCIATION,*
28 *THE INFORMATION COULD BE USED FOR COMMERCIAL OR*
29 *OTHER PURPOSES.*

30 5. *The provisions of this section ~~supersede~~:*

31 (a) *Do not restrict the use by a manager or a board of information about an*
32 *owner in the performance of their respective duties under the declaration of a*
33 *time share plan or as otherwise required by law.*

34 (b) *Supersede any provisions of chapter 82 of NRS to the contrary.*

35 **Sec. 3.** 1. *A manager or, if there is no manager, the board shall:*

36 (a) *Establish reasonable procedures by which owners may:*

37 (1) *Solicit votes or proxies from other owners; and*

38 (2) *Provide information to other owners with respect to legitimate matters*
39 *of business of the association.*

40 (b) *Mail to all persons included in the list of owners materials provided by an*
41 *owner upon the request of that owner if the purpose of the mailing is to advance*
42 *legitimate matters of business of the association, including, without limitation, a*
43 *solicitation of a proxy for any purpose, provided that the owner who requests the*
44 *mailing:*

45 (1) *Provides to the manager or board a separate copy of the materials for*
46 *each of the owners on the list or, if the mailing is to be transmitted electronically,*
47 *a single copy of the materials in an electronic format; and*
48
49

1 (2) Pays the association the actual costs of the mailing before the
2 mailing.

3 2. The board is responsible for determining whether a mailing requested
4 pursuant to this section advances legitimate matters of business of the
5 association.

6 3. The manager or board, as applicable, may determine the manner in
7 which a mailing may be accomplished.

8 4. For the purposes of this section, "mail" and "mailing" include, without
9 limitation, a distribution made by electronic or similar means, such as the
10 transmission of electronic mail as defined in NRS 41.715.

11 Sec. 4. NRS 119A.560 is hereby amended to read as follows:

12 119A.560 1. The power of sale may not be exercised until:

13 (a) The developer or the association, its agent or attorney has first executed and
14 caused to be recorded with the recorder of the county wherein the project is located
15 a notice of default and election to sell the time share or cause its sale to satisfy the
16 assessment lien; and

17 (b) The owner or his or her successor in interest has failed to pay the amount of
18 the lien, including costs, fees and expenses incident to its enforcement for 60 days
19 computed as prescribed in subsection 2.

20 2. The 60-day period provided in subsection 1 begins on the first day
21 following the day upon which the notice of default and election to sell is recorded
22 and a copy of the notice is mailed by certified or registered mail with postage
23 prepaid to the owner or to his or her successor in interest at the owner's address if
24 that address is known, otherwise to the address of the project. The notice must
25 describe the deficiency in payment.

26 3. The developer or the association, its agent or attorney shall, after expiration
27 of the 60-day period and before selling the time share, give notice of the time and
28 place of the sale in the manner and for a time not less than that required for the sale
29 of real property upon execution, except that ~~that~~ :

30 (a) A copy of the notice of sale must be mailed on or before the first
31 publication or posting required by NRS 21.130 by certified or registered mail with
32 postage prepaid to the owner or to his or her successor in interest at the owner's
33 address if that address is known, otherwise to the address of the project ~~that~~; and

34 (b) In lieu of publishing a copy of the notice of sale in a newspaper pursuant
35 to the provisions of NRS 21.130, the notice of sale may be given by posting a copy
36 of the notice and a declaration pursuant to NRS 53.045 in a form prescribed by
37 the Division pursuant to subsection 6 for 3 successive weeks on an Internet
38 website and publishing three times, once a week for 3 successive weeks, in a
39 newspaper, if there is one in the county, a statement, in at least 10-point bold
40 type, which includes, without limitation:

41 (1) A statement that the notice of sale for the foreclosure of the time
42 share is posted on an Internet website;

43 (2) The Internet address where the notice is posted; and

44 (3) The name and street address of the property in which the time share
45 is located.

46 4. The sale may be made at the office of the developer or the association if the
47 notice so provided, whether the project is located within the same county as the
48 office of the developer or the association or not.

49 ~~[4.]~~ 5. Every sale made under the provisions of NRS 119A.550 vests in the
50 purchaser the title of the owner without equity or right of redemption.

51 6. The Division shall prepare a form for a declaration pursuant to NRS
52 53.045 that a developer or association must post on an Internet website with a
53 notice of sale pursuant to paragraph (b) of subsection 3.

1 **Sec. 5.** NRS 107.080 is hereby amended to read as follows:

2 107.080 1. Except as otherwise provided in NRS 107.085 and 107.086, if
3 any transfer in trust of any estate in real property is made after March 29, 1927, to
4 secure the performance of an obligation or the payment of any debt, a power of sale
5 is hereby conferred upon the trustee to be exercised after a breach of the obligation
6 for which the transfer is security.

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

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

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

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

20 (b) In the case of any trust agreement which concerns owner-occupied housing
21 as defined in NRS 107.086, the grantor, the person who holds the title of record, a
22 beneficiary under a subordinate deed of trust or any other person who has a
23 subordinate lien or encumbrance of record on the property has, for a period that
24 commences in the manner and subject to the requirements described in subsection 3
25 and expires 5 days before the date of sale, failed to make good the deficiency in
26 performance or payment;

27 (c) The beneficiary, the successor in interest of the beneficiary or the trustee
28 first executes and causes to be recorded in the office of the recorder of the county
29 wherein the trust property, or some part thereof, is situated a notice of the breach
30 and of the election to sell or cause to be sold the property to satisfy the obligation;
31 and

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

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

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

51 (b) If the property is a residential foreclosure, comply with the provisions of
52 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 ~~or, if the property is a time share, by posting a copy of the notice on an Internet website and publishing a statement pursuant to the provisions of subsection 3 of NRS 119A.560;~~ and

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

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 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. 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. 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. If the successful bidder fails to record the trustee's deed upon sale pursuant to paragraph (b) of subsection 8, the successful bidder:

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

4 (b) Is liable in a civil action for any actual damages caused by the failure to
5 comply with the provisions of subsection 8 and for reasonable attorney's fees and
6 the costs of bringing the action.

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

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

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

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

25 11. The beneficiary, the successor in interest of the beneficiary or the trustee
26 who causes to be recorded the notice of default and election to sell shall not charge
27 the grantor or the successor in interest of the grantor any portion of any fee required
28 to be paid pursuant to subsection 10.

29 12. As used in this section, "residential foreclosure" means the sale of a single
30 family residence under a power of sale granted by this section. As used in this
31 subsection, "single family residence":

32 (a) Means a structure that is comprised of not more than four units.

33 (b) Does not include any time share or other property regulated under chapter
34 119A of NRS.