

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) 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 form of publication, such a notice of sale 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.



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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
2 adding thereto the 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*
4 *shall maintain in the records of an association a complete list of*
5 *the names and addresses of all owners. The list must be updated*
6 *not less frequently than quarterly.*

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

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

20 4. *The provisions of this section supersede any provisions of*
21 *chapter 82 of NRS to the contrary.*

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

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

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

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

28 (b) *Mail to all persons included in the list of owners materials*
29 *provided by an owner upon the request of that owner if the*
30 *purpose of the mailing is to advance legitimate matters of business*
31 *of the association, including, without limitation, a solicitation of a*
32 *proxy for any purpose, provided that the owner who requests the*
33 *mailing:*

34 (1) *Provides to the manager or board a separate copy of the*
35 *materials for each of the owners on the list or, if the mailing is to*
36 *be transmitted electronically, a single copy of the materials in an*
37 *electronic format; and*

38 (2) *Pays the association the actual costs of the mailing*
39 *before the mailing.*



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

4 3. *For the purposes of this section, "mail" and "mailing"*
5 *include, without limitation, a distribution made by electronic or*
6 *similar means, such as the transmission of electronic mail as*
7 *defined in NRS 41.715.*

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

9 119A.560 1. The power of sale may not be exercised until:

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

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

19 2. The 60-day period provided in subsection 1 begins on the
20 first day following the day upon which the notice of default and
21 election to sell is recorded and a copy of the notice is mailed by
22 certified or registered mail with postage prepaid to the owner or to
23 his or her successor in interest at the owner's address if that address
24 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,
27 after expiration of the 60-day period and before selling the time
28 share, give notice of the time and place of the sale in the manner and
29 for a time not less than that required for the sale of real property
30 upon execution, except that ~~that~~:

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

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

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

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



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

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

~~4-1~~ 5. Every sale made under the provisions of NRS 119A.550 vests in the purchaser the title of the owner without equity or right of redemption.

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

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

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

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

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

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

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



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(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; and

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

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

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

(b) Posting a similar notice particularly describing the property, for 20 days successively, in three public places of the township or city where the property is situated and where the property is to be sold;

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



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1 *share, by posting a copy of the notice on an Internet website*
2 *pursuant to the provisions of subsection 3 of NRS 119A.560;* and

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

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

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

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

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

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

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

31 8. After a sale of property is conducted pursuant to this section,
32 the trustee shall:

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

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

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

44 (a) Is liable in a civil action to any party that is a senior
45 lienholder against the property that is the subject of the sale in a sum



1 of up to \$500 and for reasonable attorney's fees and the costs of
2 bringing the action; and

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

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

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

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

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

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

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

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

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

