

SENATE BILL NO. 414—COMMITTEE ON
COMMERCE, LABOR AND ENERGY

MARCH 28, 2011

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions relating to financial institutions.
(BDR 55-1107)

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 financial institutions; prohibiting a banking or other financial institution from unreasonably delaying a response to an offer for a short sale on real property secured by a residential mortgage loan; prohibiting a banking or other financial institution from obtaining a deficiency judgment in certain circumstances; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, a judgment creditor or a beneficiary of a deed of trust may
2 obtain, after a hearing, a deficiency judgment after a foreclosure sale or trustee's
3 sale if it appears from the sheriff's return or the recital of consideration in the
4 trustee's deed that there is a deficiency of the proceeds of the sale and a balance
5 remaining due the judgment creditor or beneficiary of the deed of trust. For an
6 obligation secured by a mortgage or deed of trust on or after October 1, 2009, a
7 court may not award a deficiency judgment to the judgment creditor or the
8 beneficiary of the deed of trust if: (1) the creditor or beneficiary is a financial
9 institution; (2) the real property is a single-family dwelling and the debtor or
10 grantor was the owner of the property; (3) the debtor or grantor used the loan to
11 purchase the property; (4) the debtor or grantor occupied the property continuously
12 after obtaining the loan; and (5) the debtor or grantor did not refinance the loan.
13 (NRS 40.455) **Section 4** of this bill prohibits a court from awarding a deficiency
14 judgment to the judgment creditor or the beneficiary of the deed of trust if: (1) the
15 creditor or beneficiary is a banking or other financial institution; (2) the real
16 property is a single-family dwelling and the debtor or grantor was the owner of the
17 property; (3) the debtor or grantor used the loan to purchase the property; (4) the
18 debtor or grantor occupied the property continuously after obtaining the loan; (5)
19 the debtor or grantor and the banking or other financial institution entered into an



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agreement, commonly known as a short sale, to sell the real property to a third party for less than the indebtedness; and (6) the agreement does not state the amount of money still owed by the debtor or grantor or does not authorize the banking or other financial institution to recover that money, and contains a statement that the banking or other financial institution has waived its right to recover the amount owed. **Section 3** of this bill prohibits a banking or other financial institution or its officers, managers or employees from unreasonably delaying its response to an offer for a short sale on real property secured by a residential mortgage loan.

Under existing law, a violation of **section 3** constitutes a misdemeanor and, in addition to any criminal penalty, is punishable by an administrative fine of not more than \$10,000. (NRS 668.112, 668.115)

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

Section 1. Chapter 668 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. (Deleted by amendment.)

Sec. 3. 1. *A banking or other financial institution, or an officer, manager or employee of a banking or other financial institution, shall not unreasonably delay responding to an offer for a short sale on real property secured by a residential mortgage loan.*

2. *For the purposes of this section, a person is presumed to have unreasonably delayed responding to an offer for a short sale on real property secured by a residential mortgage loan when the person fails to respond to an offer for a short sale with an acceptance or rejection of the offer within 90 days after receipt of the offer, unless the parties have agreed in writing to a delay of more than 90 days after receipt of the offer.*

3. As used in this section:

(a) *“Banking or other financial institution” means any bank, savings and loan association, savings bank, thrift company, credit union or other financial institution that is licensed, registered or otherwise authorized to do business in this State.*

(b) *“Indebtedness” has the meaning ascribed to it in NRS 40.451.*

(c) *“Residential mortgage loan” has the meaning ascribed to it in NRS 645B.0132.*

(d) *“Short sale” means an agreement between a banking or other financial institution and an owner of real property to sell the real property secured by a residential mortgage loan to a third party for an amount less than the indebtedness secured thereby.*



Sec. 4. NRS 40.455 is hereby amended to read as follows:

40.455 1. Except as otherwise provided in subsection 3 **H or 4**, upon application of the judgment creditor or the beneficiary of the deed of trust within 6 months after the date of the foreclosure sale or the trustee's sale held pursuant to NRS 107.080, respectively, and after the required hearing, the court shall award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if it appears from the sheriff's return or the recital of consideration in the trustee's deed that there is a deficiency of the proceeds of the sale and a balance remaining due to the judgment creditor or the beneficiary of the deed of trust, respectively.

2. If the indebtedness is secured by more than one parcel of real property, more than one interest in the real property or more than one mortgage or deed of trust, the 6-month period begins to run after the date of the foreclosure sale or trustee's sale of the last parcel or other interest in the real property securing the indebtedness, but in no event may the application be filed more than 2 years after the initial foreclosure sale or trustee's sale.

3. If the judgment creditor or the beneficiary of the deed of trust is a financial institution **H as defined in NRS 363A.050**, the court may not award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust, even if there is a deficiency of the proceeds of the sale and a balance remaining due the judgment creditor or beneficiary of the deed of trust, if:

(a) The real property is a single-family dwelling and the debtor or grantor was the owner of the real property at the time of the foreclosure sale or trustee's sale;

(b) The debtor or grantor used the amount for which the real property was secured by the mortgage or deed of trust to purchase the real property;

(c) The debtor or grantor continuously occupied the real property as the debtor's or grantor's principal residence after securing the mortgage or deed of trust; and

(d) The debtor or grantor did not refinance the mortgage or deed of trust after securing it.

4. If the judgment creditor or the beneficiary of the deed of trust is a banking or other financial institution, the court may not award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if:

(a) The real property is a single-family dwelling and the debtor or grantor was the owner of the real property at the time of the foreclosure sale or trustee's sale;

(b) The debtor or grantor used the amount for which the real property was secured by the mortgage or deed of trust to purchase the real property;



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1 (c) The debtor or grantor continuously occupied the real
2 property as the debtor's or grantor's principal residence after
3 securing the mortgage or deed of trust;

4 (d) The debtor or grantor and the banking or other financial
5 institution entered into an agreement to sell the real property
6 secured by the mortgage or deed of trust to a third party for an
7 amount less than the indebtedness secured thereby; and

8 (e) The agreement entered into pursuant to paragraph (d):

9 (1) Does not state the amount of money still owed to the
10 banking or other financial institution by the debtor or grantor or
11 does not authorize the banking or other financial institution to
12 recover that amount from the debtor or grantor ~~H~~; and

13 (2) Contains a conspicuous statement that has been
14 acknowledged by the signature of the debtor or grantor which
15 provides that the banking or other financial institution has waived
16 its right to recover the amount owed by the debtor or grantor and
17 which sets forth the amount of recovery that is being waived.

18 5. As used in this section, "banking or other financial
19 institution" ~~has the meaning ascribed to it in NRS 363A.050.~~
20 means any bank, savings and loan association, savings bank, thrift
21 company, credit union or other financial institution that is
22 licensed, registered or otherwise authorized to do business in this
23 State.

