

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 sale in lieu of a foreclosure 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 3.5** 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 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 sale in lieu of a foreclosure 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 sale in lieu of a foreclosure 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 sale in lieu of a foreclosure sale on real property secured by a residential mortgage loan when the person fails to respond to an offer for a sale in lieu of a foreclosure 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) *“Sale in lieu of a foreclosure sale” means a sale of real property pursuant to an agreement between a person to whom an obligation secured by a mortgage or other lien on real property is owed and the debtor of that obligation in which the sales price of the real property is insufficient to pay the full outstanding balance*



1 *of the obligation and the costs of the sale. The term includes,*
2 *without limitation, a deed in lieu of foreclosure.*

3 **Sec. 3.5.** Chapter 40 of NRS is hereby amended by adding
4 thereto a new section to read as follows:

5 **1.** *If the judgment creditor or the beneficiary of the deed of*
6 *trust who applies for a deficiency judgment is a banking or other*
7 *financial institution, the court may not award a deficiency*
8 *judgment to the judgment creditor or the beneficiary of the deed of*
9 *trust if:*

10 (a) *The real property is a single-family dwelling and the debtor*
11 *or the grantor of the deed of trust was the owner of the real*
12 *property at the time of the sale in lieu of a foreclosure sale;*

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

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

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

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

24 (1) *Does not state the amount of money still owed to the*
25 *banking or other financial institution by the debtor or grantor or*
26 *does not authorize the banking or other financial institution to*
27 *recover that amount from the debtor or grantor; and*

28 (2) *Contains a conspicuous statement that has been*
29 *acknowledged by the signature of the debtor or grantor which*
30 *provides that the banking or other financial institution has waived*
31 *its right to recover the amount owed by the debtor or grantor and*
32 *which sets forth the amount of recovery that is being waived.*

33 **2.** *As used in this section:*

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

38 (b) *"Sale in lieu of a foreclosure sale" means a sale of real*
39 *property pursuant to an agreement between a person to whom an*
40 *obligation secured by a mortgage or other lien on real property is*
41 *owed and the debtor of that obligation in which the sales price of*
42 *the real property is insufficient to pay the full outstanding balance*
43 *of the obligation and the costs of the sale. The term includes,*
44 *without limitation, a deed in lieu of foreclosure.*

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



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1 **Sec. 5.** This act becomes effective upon passage and approval.

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