

ASSEMBLY BILL NO. 274—ASSEMBLYWOMAN
BUSTAMANTE ADAMS (BY REQUEST)

MARCH 15, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to real property.
(BDR 3-417)

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; revising provisions governing the amount of a deficiency judgment after the foreclosure of a mortgage or a deed of trust; revising provisions governing the amount of certain judgments against guarantors, sureties or other obligors of obligations secured by real property; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law generally provides that a judgment creditor or a beneficiary of a deed of trust may obtain a deficiency judgment after a foreclosure sale or trustee's sale of real property 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. Under existing law, the amount of a deficiency judgment awarded to a person who acquired the right to obtain the judgment from a person who previously held that right is limited to the amount by which the consideration paid for that right exceeds the greater of the fair market value of the property at the time of the foreclosure sale or the amount for which the property actually sold, with interest from the date of sale and reasonable costs. (NRS 40.459, 40.4636)

This bill revises provisions limiting the amount of a deficiency judgment awarded to a person who acquired the right to obtain the deficiency judgment from another person who previously held that right. The preamble of this bill states that the Legislature intended this limitation on the amount of a deficiency judgment to apply to any deficiency judgments awarded on or after June 10, 2011, the effective date of the provisions enacting the limitation. **Sections 2 and 3** of this bill specify that: (1) this limitation on the amount of a deficiency judgment is applicable when a creditor who did not make the loan but acquired or obtained its rights from another, in any manner, is seeking a deficiency judgment after a foreclosure sale or trustee's sale; and (2) the amount of the deficiency judgment is measured by the amount of



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the consideration exchanged for the rights. **Section 4** of this bill provides that this limitation on the amount of a deficiency judgment applies in an action against a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, to enforce an obligation to pay, satisfy or purchase all or part of the indebtedness or obligation. **Section 1** of this bill provides that at the hearing required to be held before a deficiency judgment is awarded, in addition to taking evidence concerning the fair market value of the real property sold, the court must take evidence concerning any consideration exchanged by a creditor who did not make the loan which is the basis of the claim for a deficiency judgment but who acquired or obtained its rights from another. Under **sections 5 and 6** of this bill, the provisions of this bill apply to any deficiency judgment awarded on or after July 1, 2013.

WHEREAS, The Legislature finds that it is critical to the recovery of the economy of this State that the provisions of NRS 40.457, paragraph (c) of subsection 1 of NRS 40.459, NRS 40.4636 and subsection 4 of NRS 40.495 be interpreted in accordance with the intent of the Legislature; and

WHEREAS, In response to the ongoing foreclosure crisis in this State and the severe, persistent and continuing obstacles this crisis imposes on the economic recovery of this State, the Legislature, in Assembly Bill No. 273 of the 2011 Session, enacted paragraph (c) of subsection 1 of NRS 40.459, NRS 40.4636 and subsection 4 of NRS 40.495 to limit the amount of a deficiency judgment awarded to a person who acquired the right to obtain the deficiency judgment from another person who previously held that right; and

WHEREAS, It is the intent of the Legislature that the provisions of paragraph (c) of subsection 1 of NRS 40.459, NRS 40.4636 and subsection 4 of NRS 40.495 apply to any deficiency judgment which is awarded on or after June 10, 2011, the date on which Assembly Bill No. 273 of the 2011 Legislative Session became effective; now, therefore,

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

Section 1. NRS 40.457 is hereby amended to read as follows:

40.457 1. Before awarding a deficiency judgment under NRS 40.455, the court shall hold a hearing and shall take evidence presented by either party concerning the fair market value of the property sold as of the date of foreclosure sale or trustee's sale ~~and~~ *and, if the creditor seeking the deficiency judgment did not make the loan which is the basis of the claim for a deficiency judgment, the consideration exchanged by that creditor to acquire or obtain its rights.* Notice of such hearing shall be served upon all defendants who have appeared in the action and against whom a deficiency



1 judgment is sought, or upon their attorneys of record, at least 15
2 days before the date set for hearing.

3 2. Upon application of any party made at least 10 days before
4 the date set for the hearing the court shall, or upon its own motion
5 the court may, appoint an appraiser to appraise the property sold as
6 of the date of foreclosure sale or trustee's sale. Such appraiser shall
7 file with the clerk the appraisal, which is admissible in evidence.
8 The appraiser shall take an oath that the appraiser has truly, honestly
9 and impartially appraised the property to the best of the appraiser's
10 knowledge and ability. Any appraiser so appointed may be called
11 and examined as a witness by any party or by the court. The court
12 shall fix a reasonable compensation for the appraiser, but the
13 appraiser's fee shall not exceed similar fees for similar services in
14 the county where the encumbered land is situated.

15 **Sec. 2.** NRS 40.459 is hereby amended to read as follows:

16 40.459 1. After the hearing, the court shall award a money
17 judgment against the debtor, guarantor or surety who is personally
18 liable for the debt. The court shall not render judgment for more
19 than:

20 (a) The amount by which the amount of the indebtedness which
21 was secured exceeds the fair market value of the property sold at the
22 time of the sale, with interest from the date of the sale;

23 (b) The amount which is the difference between the amount for
24 which the property was actually sold and the amount of the
25 indebtedness which was secured, with interest from the date of sale;
26 or

27 (c) If the ~~person~~ *creditor* seeking the judgment ~~acquired the~~
28 ~~right to obtain the judgment from a person who previously held that~~
29 ~~right,~~ *did not make the loan which is the basis of the claim for a*
30 *deficiency judgment but acquired or obtained its rights from*
31 *another, in any manner,* the amount by which the ~~amount of the~~
32 consideration ~~paid~~ *exchanged* for ~~that right~~ *such rights* exceeds
33 the *greater of the* fair market value of the property sold at the time
34 of sale or the amount for which the property was actually sold,
35 ~~whichever is greater,~~ with interest from the date of sale and
36 reasonable costs,

37 *whichever is the lesser amount.*

38 2. For the purposes of this section, the "amount of the
39 indebtedness" does not include any amount received by, or payable
40 to, the judgment creditor or beneficiary of the deed of trust pursuant
41 to an insurance policy to compensate the judgment creditor or
42 beneficiary for any losses incurred with respect to the property or
43 the default on the debt.



Sec. 3. NRS 40.4636 is hereby amended to read as follows:

40.4636 1. If a person to whom an obligation secured by a junior mortgage or lien on real property is owed:

(a) Files a civil action to obtain a money judgment against the debtor under that obligation after a foreclosure sale or a sale in lieu of a foreclosure sale; and

(b) Such action is not barred by NRS 40.430,

→ in determining the amount owed by the debtor, the court shall not include the amount of any proceeds received by, or payable to, the person pursuant to an insurance policy to compensate the person for losses incurred with respect to the property or the default on the obligation.

2. If:

(a) A ~~person acquired the right to enforce an obligation secured by~~ *creditor did not make the loan which is the basis for* a junior mortgage or lien on real property ~~from a person who previously held that right;~~ *but acquired or obtained its rights from another, in any manner;*

(b) The person files a civil action to obtain a money judgment against the debtor after a foreclosure sale or a sale in lieu of a foreclosure sale; and

(c) Such action is not barred by NRS 40.430,

→ the court shall not render judgment for more than the amount of the consideration ~~paid for that right;~~ *exchanged for such rights,* plus interest from the date on which the ~~person~~ *creditor* acquired the ~~right~~ *rights* and reasonable costs.

3. As used in this section, "obligation secured by a junior mortgage or lien on real property" includes, without limitation, an obligation which is not currently secured by a mortgage or lien on real property if the obligation:

(a) Is incurred by the debtor under an obligation which was secured by a mortgage or lien on real property; and

(b) Has the effect of reaffirming the obligation which was secured by a mortgage or lien on real property.

Sec. 4. NRS 40.495 is hereby amended to read as follows:

40.495 1. The provisions of NRS 40.475 and 40.485 may be waived by the guarantor, surety or other obligor only after default.

2. Except as otherwise provided in subsection ~~5~~ *6*, a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, may waive the provisions of NRS 40.430. If a guarantor, surety or other obligor waives the provisions of NRS 40.430, an action for the enforcement of that person's obligation to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a mortgage or lien upon real property may be maintained separately and independently from:



- 1 (a) An action on the debt;
- 2 (b) The exercise of any power of sale;
- 3 (c) Any action to foreclose or otherwise enforce a mortgage or
- 4 lien and the indebtedness or obligations secured thereby; and
- 5 (d) Any other proceeding against a mortgagor or grantor of a
- 6 deed of trust.

7 3. If the obligee maintains an action to foreclose or otherwise
8 enforce a mortgage or lien and the indebtedness or obligations
9 secured thereby, the guarantor, surety or other obligor may assert
10 any legal or equitable defenses provided pursuant to the provisions
11 of NRS 40.451 to 40.4639, inclusive.

12 4. If, before a foreclosure sale of real property, the obligee
13 commences an action against a guarantor, surety or other obligor,
14 other than the mortgagor or grantor of a deed of trust, to enforce an
15 obligation to pay, satisfy or purchase all or part of an indebtedness
16 or obligation secured by a mortgage or lien upon the real property:

17 (a) The court must hold a hearing and take evidence presented
18 by either party concerning the fair market value of the property as of
19 the date of the commencement of the action ~~and~~ *and, if the obligee*
20 *did not make the loan which is the basis of the indebtedness or*
21 *obligation, the consideration exchanged by the obligee to acquire*
22 *or obtain the obligee's rights.* Notice of such hearing must be
23 served upon all defendants who have appeared in the action and
24 against whom a judgment is sought, or upon their attorneys of
25 record, at least 15 days before the date set for the hearing.

26 (b) After the hearing, if the court awards a money judgment
27 against the guarantor, surety or other obligor who is personally
28 liable for the debt, the court must not render judgment for more
29 than:

30 (1) The amount by which the amount of the indebtedness
31 exceeds the fair market value of the property as of the date of the
32 commencement of the action; or

33 (2) If ~~if a foreclosure sale is concluded before a judgment is~~
34 ~~entered, the amount that is the difference between the amount for~~
35 ~~which the property was actually sold and the amount of the~~
36 ~~indebtedness which was secured,~~ *the obligee did not make the loan*
37 *which is the basis of the indebtedness or obligation but acquired*
38 *or obtained its rights from another, in any manner, the amount by*
39 *which the consideration exchanged for such rights exceeds the*
40 *greater of the fair market value of the property as of the date of*
41 *the commencement of the action, with interest from the date of*
42 *sale and reasonable costs,*

43 ➤ *whichever is the lesser amount.*

44 5. *If, before a foreclosure sale of real property, the obligee*
45 *commences an action against a guarantor, surety or other obligor,*



1 *other than the mortgagor or grantor of a deed of trust, to enforce*
2 *an obligation to pay, satisfy or purchase all or part of an*
3 *indebtedness or obligation secured by a mortgage or lien upon the*
4 *real property and a foreclosure sale is concluded before judgment*
5 *is entered in the action, the amount of the judgment in the action*
6 *is limited by the provisions of NRS 40.451 to 40.4639, inclusive.*

7 **6.** The provisions of NRS 40.430 may not be waived by a
8 guarantor, surety or other obligor if the mortgage or lien:

9 (a) Secures an indebtedness for which the principal balance of
10 the obligation was never greater than \$500,000;

11 (b) Secures an indebtedness to a seller of real property for which
12 the obligation was originally extended to the seller for any portion
13 of the purchase price;

14 (c) Is secured by real property which is used primarily for the
15 production of farm products as of the date the mortgage or lien upon
16 the real property is created; or

17 (d) Is secured by real property upon which:

18 (1) The owner maintains the owner's principal residence;

19 (2) There is not more than one residential structure; and

20 (3) Not more than four families reside.

21 ~~16.1~~ **7.** As used in this section, "foreclosure sale" has the
22 meaning ascribed to it in NRS 40.462.

23 **Sec. 5.** The amendatory provisions of this act apply to any
24 deficiency judgment awarded on or after July 1, 2013.

25 **Sec. 6.** This act becomes effective on July 1, 2013.

