

ASSEMBLY BILL NO. 431—COMMITTEE
ON COMMERCE AND LABOR

MARCH 25, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing real property.
(BDR 3-979)

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 awarded by a court after the foreclosure of a mortgage or a deed of trust; revising provisions governing the amount which a person holding a junior lien on real property may recover in a civil action under certain circumstances; 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 to the judgment creditor or beneficiary of the deed of trust. (NRS 40.455) Under existing law: (1) 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 trustee's sale or the amount for which the property actually sold, with interest from the date of sale and reasonable costs; and (2) the amount of a deficiency judgment must be reduced by the amount of any insurance proceeds received by, or payable to, the judgment creditor or the beneficiary of the deed of trust. (NRS 40.459) Existing law contains corresponding provisions governing the amount of a money judgment which may be awarded to a junior lienholder in certain actions brought after a foreclosure sale, a trustee's sale or a sale or deed in lieu of a foreclosure sale or trustee's sale. (NRS 40.4636)

Section 1 of this bill amends the provisions of existing law limiting the amount of a deficiency judgment awarded to a person who acquired the right to obtain the deficiency judgment from another person to specify that this limitation: (1) applies only if, after a foreclosure sale or trustee's sale, the judgment creditor or



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beneficiary of the deed of trust, transfers, for consideration, the right to obtain a deficiency judgment; (2) does not apply if a deficiency judgment is sought by a receiver or liquidator of certain financial institutions, a direct assignee of the receiver or liquidator or a subsidiary or affiliate of the direct assignee; and (3) applies only to certain residential property. **Section 1** also revises the provision of existing law requiring a deficiency judgment to be reduced by the amount of certain insurance proceeds to provide that the deficiency judgment must be reduced only by the amount received by, or payable to, the creditor pursuant to certain mortgage insurance policies. **Section 2** of this bill makes corresponding changes to the provisions of existing law governing the amount of a money judgment which may be awarded to a junior lienholder in certain actions brought after a foreclosure sale, a trustee's sale or a sale or deed in lieu of a foreclosure sale or trustee's sale.

Sections 3 and 4 of this bill provide that this bill: (1) becomes effective upon passage and approval; and (2) applies to all deficiency judgments unless a final judgment is entered and, if appealed, confirmed on appeal before the effective date of this act. Because the provisions of existing law governing the amount of a money judgment which may be awarded to a junior lienholder apply only to obligations secured by a mortgage, deed of trust or other encumbrance upon real property on or after June 10, 2011, **section 3** provides that the provisions of this bill amending those provisions apply only to obligations secured by a mortgage, deed of trust or other encumbrance upon real property on or after the effective date of this bill.

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

Section 1. NRS 40.459 is hereby amended to read as follows:

40.459 1. After the hearing, the court shall award a money judgment against the debtor, guarantor or surety who is personally liable for the debt. ~~{The}~~ *Except as otherwise provided in subsection 2, the* court shall not render judgment for more than:

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

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

~~—(c) If the person seeking the judgment acquired the right to obtain the judgment from a person who previously held that right, the amount by which the amount of the consideration paid for that right exceeds the fair market value of the property sold at the time of sale or the amount for which the property was actually sold, whichever is greater, with interest from the date of sale and reasonable costs.;~~

↳ whichever is the lesser amount.

2. *If:*

(a) *After the foreclosure sale or trustee's sale held pursuant to NRS 107.080, the judgment creditor or the beneficiary of the deed*



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1 of trust transfers, for consideration, the right to obtain a
2 deficiency judgment;

3 (b) The creditor applying for the deficiency judgment is not:

4 (1) A receiver or liquidator of a state bank appointed
5 pursuant to NRS 667.035 or any similar receiver or liquidator
6 appointed under the applicable federal law, rules or regulations as
7 a receiver or liquidator of a financial institution chartered or
8 licensed pursuant to federal law; or

9 (2) A direct assignee of a receiver or liquidator described in
10 subparagraph (1) or a subsidiary or affiliate of such a direct
11 assignee;

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

15 (d) The debtor or grantor used the amount for which the real
16 property was secured by the mortgage or deed of trust to purchase
17 the real property; and

18 (e) The debtor or grantor continuously occupied the real
19 property as the debtor's or grantor's principal residence after
20 securing the mortgage or deed of trust,

21 ➔ the court shall not render judgment for more than the amount
22 determined pursuant to subsection 1 or the amount of the
23 consideration exchanged for the right to obtain the deficiency
24 judgment, whichever is less. For the purposes of this subsection, if
25 the right to obtain a deficiency judgment is transferred as part of a
26 sale of a pool of loans, the amount of the consideration exchanged
27 for the right to obtain the deficiency judgment is determined by
28 dividing the amount of the loan for which a deficiency judgment is
29 sought by the total amount of all loans sold in the same
30 transaction or tranche, then multiplying that amount by the total
31 amount paid for that transaction or tranche.

32 3. For the purposes of this section, the "amount of the
33 indebtedness" does not include any amount received by, or payable
34 to, the judgment creditor or beneficiary of the deed of trust pursuant
35 to an insurance policy , or its equivalent, that is intended to
36 compensate the judgment creditor or beneficiary , or a predecessor
37 in interest of the judgment creditor or beneficiary, for ~~any losses~~
38 ~~incurred~~ amounts due with respect to ~~the property or the default~~
39 ~~on the debt.~~ mortgage principal, interest, or both mortgage
40 principal and interest, other than a loss-sharing agreement or
41 other similar agreement used by a receiver or liquidator of a state
42 bank appointed pursuant to NRS 667.035 or any similar receiver
43 or liquidator appointed under the applicable federal law, rules or
44 regulations as a receiver or liquidator of a financial institution
45 chartered or licensed pursuant to federal law. If a deficiency



1 *judgment is paid in full before the judgment creditor or*
2 *beneficiary receives any amounts due pursuant to the insurance*
3 *policy, or its equivalent, described in this subsection, the judgment*
4 *creditor or beneficiary must refund to the judgment debtor the*
5 *amount so received.*

6 **Sec. 2.** NRS 40.4636 is hereby amended to read as follows:

7 40.4636 1. If a ~~{person}~~ *creditor* to whom an obligation
8 secured by a junior mortgage or lien on real property is owed:

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

12 (b) Such action is not barred by NRS 40.430,
13 ↳ in determining the amount owed by the debtor, the court shall not
14 include ~~{the} any~~ amount ~~{of any proceeds}~~ received by, or payable
15 to, the ~~{person}~~ *creditor* pursuant to an insurance policy , *or its*
16 *equivalent, that is intended* to compensate the ~~{person}~~ *creditor, or*
17 *a predecessor in interest of the creditor,* for ~~{losses incurred}~~
18 ~~amounts due~~ with respect to ~~{the property or the default on the~~
19 ~~obligation.}~~ *mortgage principal, interest, or both mortgage*
20 *principal and interest, other than a loss-sharing agreement or*
21 *other similar agreement used by a receiver or liquidator of a state*
22 *bank appointed pursuant to NRS 667.035 or any similar receiver*
23 *or liquidator appointed under the applicable federal law, rules or*
24 *regulations as a receiver or liquidator of a financial institution*
25 *chartered or licensed pursuant to federal law. If a money*
26 *judgment is paid in full before the judgment creditor receives any*
27 *amounts due pursuant to the insurance policy, or its equivalent,*
28 *described in this subsection, the judgment creditor must refund to*
29 *the judgment debtor the amount so received.*

30 2. If:

31 (a) ~~{A person acquired the right to enforce}~~ *After a foreclosure*
32 *sale or a sale in lieu of a foreclosure sale, a creditor to whom an*
33 *obligation secured by a junior mortgage or lien on real property*
34 ~~{from a person who previously held that right;}~~ *transfers, for*
35 *consideration, the rights under that obligation;*

36 (b) The ~~{person}~~ *transferee* files a civil action to obtain a money
37 judgment against the debtor after a foreclosure sale or a sale in lieu
38 of a foreclosure sale ~~{}~~ and

39 ~~{(e) Such}~~ *such* action is not barred by NRS 40.430 ~~{}~~ ;

40 (c) *The civil action is not filed by:*

41 (1) *A receiver or liquidator of a state bank appointed*
42 *pursuant to NRS 667.035 or any similar receiver or liquidator*
43 *appointed under the applicable federal law, rules or regulations as*
44 *a receiver or liquidator of a financial institution chartered or*
45 *licensed pursuant to federal law; or*



(2) *A direct assignee of a receiver or liquidator described in subparagraph (1) or a subsidiary or affiliate of such a direct assignee;*

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

(e) *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; and*

(f) *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,*

↳ the court shall not render judgment for more than the amount of the consideration ~~paid for that right, plus interest from the date on which the person acquired the right and reasonable costs.~~ *exchanged for the rights under the obligation, whichever is less. For the purposes of this subsection, if the rights under an obligation are transferred as part of a sale of a pool of loans, the amount of the consideration exchanged for those rights is determined by dividing the amount of the loan for which a deficiency judgment is sought by the total amount of all loans sold in the same transaction or tranche, then multiplying that amount by the total amount paid for that transaction or tranche.*

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. 3. 1. The amendatory provisions of section 1 of this act apply to all deficiency judgments unless a final judgment is entered and, if appealed, confirmed on appeal before the effective date of this act.

2. The amendatory provisions of section 2 of this act apply only to an obligation secured by a mortgage, deed of trust or other encumbrance upon real property on or after the effective date of this act.

Sec. 4. This act becomes effective upon passage and approval.

