

SENATE BILL NO. 493—COMMITTEE ON
COMMERCE, LABOR AND ENERGY

MARCH 25, 2013

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions concerning real property transactions. (BDR 54-642)

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 loans secured by a lien on real property in which investors hold the beneficial interests; revising provisions governing the reconveyance of a deed of trust; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes various requirements for mortgage loans in which a private investor holds the beneficial interest, including, without limitation, disclosure requirements and requirements for the servicing agreement. (NRS 645B.185, 645B.330, 645B.351, 645B.352, 645B.356) Existing law defines a "private investor" as a: (1) natural person who provides his or her own money for investment in a mortgage loan; and (2) two or more natural persons who jointly provide their own money for investment in a mortgage. (NRS 645B.01305) **Section 1** of this bill revises this definition to state that a private investor is any person, including, without limitation, business entities and other legal entities who provides his, her or its own money for investment in a mortgage loan so that the requirements applicable to a private investor apply whether the investor is a natural person or a business or other legal entity.

Existing law provides that if the beneficial interest in a mortgage loan belongs to more than one natural person, the holders of 51 percent or more of the outstanding principal balance may act on behalf of all the holders of the beneficial interests of record. (NRS 645B.340) **Section 2** of this bill revises this provision to specify that the holders of the beneficial interests whose interest represent 51 percent or more of the outstanding principal balance may act on behalf of all the holders of the beneficial interest of record.

Existing law establishes various procedures for the reconveyance of a deed of trust upon the payment, satisfaction or discharge of the obligation or debt secured by the deed of trust. (NRS 107.073, 107.077) **Section 3** of this bill establishes a procedure by which a trustor or the successor in interest of the trustor may cause



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the trustee to reconvey the deed of trust if: (1) the obligation or debt secured by the deed of trust has been paid in full or otherwise satisfied and the current beneficiary of the deed of trust cannot be located after a diligent search or refuses to execute and deliver to the trustee a proper request for reconveyance; or (2) a balance remains due on the obligation or debt secured by the deed of trust and the trustor or successor in interest of the trustor cannot locate the beneficiary of record after diligent search. Under **section 3**, the trustor or the successor in interest of the trustor must record a surety bond that meets certain requirements and a declaration signed under penalty of perjury which states certain information concerning the deed of trust. If the beneficiary of record does not object in writing to the execution and recording of a reconveyance within 30 days after the recording of the surety bond and declaration, the trustee must execute and record or cause to be recorded a reconveyance of the deed of trust and that reconveyance releases the lien of the deed of trust. **Section 3** also establishes a procedure by which the trustor or the successor in interest of the trustor may substitute the current trustee for the purposes of executing and recording the reconveyance if the current trustee cannot be located after diligent search.

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

Section 1. NRS 645B.01305 is hereby amended to read as follows:

645B.01305 “Private investor” means:

1. An investor ~~who is a natural person and~~ who provides ~~this or her~~ *the investor’s* own money for investment in a loan secured by a lien on real property; and

2. Two or more investors who are relatives and who jointly provide their own money for investment in a loan secured by a lien on real property, unless the investors are acting on behalf of a partnership, a corporation or some other separate legal entity.

Sec. 2. NRS 645B.340 is hereby amended to read as follows:

645B.340 1. Except as otherwise provided by law or by agreement between the parties and regardless of the date the interests were created, ~~if the beneficial interest in a loan belongs to more than one natural person,~~ the holders of *the beneficial interest in a loan whose interests represent* 51 percent or more of the outstanding principal balance may act on behalf of all the holders of the beneficial interests of record on matters which require the action of the holders of the beneficial interests in the loan, including, without limitation:

(a) The designation of a mortgage broker or mortgage agent, servicing agent or any other person to act on behalf of all the holders of the beneficial interests of record;

(b) The foreclosure of the property for which the loan was made;



(c) The sale, encumbrance or lease of real property owned by the holders resulting from a foreclosure or the receipt of a deed in lieu of a foreclosure in full satisfaction of a loan;

(d) The release of any obligation under a loan in return for an interest in equity in the real property or, if the loan was made to a person other than a natural person, an interest in equity of that entity; and

(e) The modification or restructuring of any term of the loan, deed of trust or other document relating to the loan, including, without limitation, changes to the maturity date, interest rate and the acceptance of payment of less than the full amount of the loan and any accrued interest in full satisfaction of the loan.

2. Any action which is taken pursuant to subsection 1 must be in writing.

3. The provisions of this section do not apply to a transaction involving two investors with equal interests.

Sec. 3. Chapter 107 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Whenever the debt or obligation secured by a deed of trust has been paid in full or otherwise satisfied and the current beneficiary of record cannot be located after diligent search as described in subsection 9 or refuses to execute and deliver a proper request to reconvey the estate in real property conveyed to the trustee by the grantor, as required by NRS 107.087, or whenever a balance, including, without limitation, principal and interest, remains due on the debt secured by the deed of trust and the trustor or the trustor's successor in interest cannot locate after diligent search the current beneficiary of record, the trustor or the trustor's successor in interest may record or cause to be recorded a surety bond that meets the requirements of subsection 2 and a declaration that meets the requirements of subsection 3.

2. The surety bond required by subsection 1 must:

(a) Be acceptable to the trustee;

(b) Be issued by a surety authorized to issue surety bonds in this State in an amount equal to the greater of:

(1) Two times the amount of the original obligation or debt secured by the deed of trust plus any principal amounts, including, without limitation, advances, indicated in a recorded amendment thereto; or

(2) One-and-a-half times the total amount computed pursuant to subparagraph (1) plus any accrued interest on that amount;

(c) Be conditioned on payment of any amount which the beneficiary recovers in an action to enforce the obligation or



1 *recover the debt secured by the deed of trust, plus costs and*
2 *reasonable attorney's fees;*

3 *(d) Be made payable to the trustee who executes a*
4 *reconveyance pursuant to subsection 4 and the beneficiary or the*
5 *beneficiary's successor in interest; and*

6 *(e) Contain a statement of:*

7 *(1) The recording date and instrument number or book and*
8 *page number of the recorded deed of trust;*

9 *(2) The names of the original trustor and beneficiary;*

10 *(3) The amount shown as the original principal amount*
11 *secured by the deed of trust; and*

12 *(4) The recording information and new principal amount*
13 *shown in any recorded amendment to the deed of trust.*

14 *3. The declaration required by subsection 1 must:*

15 *(a) Be signed under penalty of perjury by the trustor or the*
16 *trustor's successor in interest;*

17 *(b) State that it is recorded pursuant to this section;*

18 *(c) State the name of the original trustor;*

19 *(d) State the name of the beneficiary;*

20 *(e) State the name and address of the person making the*
21 *declaration;*

22 *(f) Except as otherwise provided in subsection 8, contain a*
23 *statement of the following, whichever is applicable:*

24 *(1) That the obligation or debt secured by the deed of trust*
25 *has been paid in full or otherwise satisfied and the current*
26 *beneficiary of record cannot be located after diligent search or*
27 *refuses to execute and deliver a proper request to reconvey the*
28 *estate in real property conveyed to the trustee by the grantor, as*
29 *required by NRS 107.087; or*

30 *(2) That a balance, including, without limitation, principal*
31 *and interest, remains due on the debt secured by the deed of trust*
32 *and the trustor or the trustor's successor in interest cannot locate*
33 *after diligent search the current beneficiary of record;*

34 *(g) Contain a statement that the declarant has mailed by*
35 *certified mail, return receipt requested, to the last known address*
36 *of the person to whom payments under the deed of trust were*
37 *made and to the last beneficiary of record at the address indicated*
38 *for such beneficiary on the instrument creating, assigning or*
39 *conveying the deed of trust, a notice of the recording of the surety*
40 *bond and declaration pursuant to this section, of the name and*
41 *address of the trustee, of the beneficiary's right to record a written*
42 *objection to the reconveyance of the deed of trust pursuant to this*
43 *section and of the requirement to notify the trustee in writing of*
44 *any such objection; and*



1 (h) Contain the date of the mailing of any notice pursuant to
2 this section and the name and address of each person to whom
3 such a notice was mailed.

4 4. Not earlier than 30 days after the recording of the surety
5 bond and declaration pursuant to subsections 1, 2 and 3, delivery
6 to the trustee of the fees charged by the trustee for the preparation,
7 execution or recordation of a reconveyance pursuant to subsection
8 7 of NRS 107.077, plus costs incurred by the trustee, and a
9 demand for reconveyance under NRS 107.077, the trustee shall
10 execute and record or cause to be recorded a reconveyance of the
11 deed of trust pursuant to NRS 107.077, unless the trustee has
12 received a written objection to the reconveyance of the deed of
13 trust from the beneficiary of record within 30 days after the
14 recording of the surety bond and declaration pursuant to
15 subsections 1, 2 and 3. The recording of a reconveyance pursuant
16 to this subsection has the same effect as a reconveyance of the
17 deed of trust pursuant to NRS 107.077 and releases the lien of the
18 deed of trust. A trustee is not liable to any person for the execution
19 and recording of a reconveyance pursuant to this section if the
20 trustee acted in reliance upon the substantial compliance with this
21 section by the trustor or the trustor's successor in interest. The
22 sole remedy for a person damaged by the reconveyance of a deed
23 of trust pursuant to this section is an action for damages against
24 the trustor or the person making the declaration described in
25 subsection 3 or an action against the surety bond.

26 5. Upon the recording of a reconveyance of the deed of trust
27 pursuant to subsection 4, interest no longer accrues on any
28 balance remaining due under the obligation or debt secured by the
29 deed of trust to the extent that the balance due has been stated in
30 the declaration described in subsection 3. Notwithstanding any
31 provision of chapter 120A of NRS, any amount of the balance
32 remaining due under the obligation or debt secured by the deed of
33 trust, including, without limitation, principal and interest, which is
34 remitted to the issuer of the surety bond described in subsection 2
35 in connection with the issuance of that surety bond must, if
36 unclaimed within 3 years after remittance, be property that is
37 presumed abandoned for the purposes of chapter 120A of NRS.
38 From the date on which the amount is paid or delivered to the
39 Administrator of Unclaimed Property pursuant to NRS 120A.570,
40 the issuer of the surety bond is relieved of any liability to pay to the
41 beneficiary or his or her heirs or successors in interest the amount
42 paid or delivered to the Administrator.

43 6. Any failure to comply with the provisions of this section
44 does not affect the rights of a bona fide purchaser or
45 encumbrancer for value.



7. This section shall not be deemed to create an exclusive procedure for the reconveyance of a deed of trust and the issuance of surety bonds and declarations to release the lien of a deed of trust, and shall not affect any other procedures, whether or not such procedures are set forth in statute, for the reconveyance of a deed of trust and the issuance of surety bonds and declaration to release the lien of a deed of trust.

8. For the purposes of this section, the trustor or the trustor's successor in interest may substitute the current trustee of record without conferring any duties upon that trustee other than duties which are incidental to the execution of a reconveyance pursuant to this section, if:

(a) The debt or obligation secured by a deed of trust has been paid in full or otherwise satisfied;

(b) The current trustee of record and the current beneficiary of record cannot be located after diligent search as described in subsection 9;

(c) The declaration filed pursuant to subsection 3:

(1) In addition to the information required to be stated in the declaration pursuant to subsection 3, states that the current trustee of record and the current beneficiary of record cannot be located after diligent search; and

(2) In lieu of the statement required by paragraph (f) of subsection 3, contains a statement that the obligation or debt secured by the deed of trust has been paid in full or otherwise satisfied and the current beneficiary of record cannot be located after diligent search or refuses to execute and deliver a proper request to reconvey the estate in real property conveyed to the trustee by the grantor, as required by NRS 107.087;

(d) The substitute trustee is a title insurer that agrees to accept the substitution, except that this paragraph does not impose a duty on a title insurer to accept the substitution; and

(e) The surety bond required by this section is for a period of not less than 5 years.

9. For the purposes of subsection 1, a diligent search has been conducted if:

(a) A notice stating the intent to record a surety bond and declaration pursuant to this section, the name and address of the trustee, the beneficiary's right to record a written objection to the reconveyance of the deed of trust pursuant to this section and the requirement to notify the trustee in writing of any such objection, has been mailed by certified mail, return receipt requested, to the last known address of the person to whom payments under the deed of trust were made and to the last beneficiary of record at the address indicated for such beneficiary



1 *on the instrument creating, assigning or conveying the deed of*
2 *trust.*

3 *(b) A search has been conducted of the telephone directory in*
4 *the city where the beneficiary of record or trustee of record,*
5 *whichever is applicable, maintained its last known address or*
6 *place of business.*

7 *(c) If the beneficiary of record or the beneficiary's successor*
8 *in interest, or the trustee of record or the trustee's successor in*
9 *interest, whichever is applicable, is a business entity, a search has*
10 *been conducted of the records of the Secretary of State and the*
11 *records of the agency or officer of the state of organization of the*
12 *beneficiary, trustee or successor, if known.*

13 *(d) If the beneficiary of record or trustee of record is a state or*
14 *national bank or state or federal savings and loan association, an*
15 *inquiry concerning the location of the beneficiary or trustee has*
16 *been made to the regulator of the bank or savings and loan*
17 *association.*

18 *10. As used in this section:*

19 *(a) "Surety" means a corporation authorized to transact surety*
20 *business in this State pursuant to NRS 679A.030 that:*

21 *(1) Is included in the United States Department of the*
22 *Treasury's Listing of Approved Sureties; and*

23 *(2) Issues a surety bond pursuant to this section that does*
24 *not exceed the underwriting limitations established for that surety*
25 *by the United States Department of the Treasury.*

26 *(b) "Surety bond" means a bond issued by a surety for the*
27 *reconveyance of a deed of trust pursuant to this section.*

28 **Sec. 4.** This act becomes effective on July 1, 2013.

