

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; revising provisions relating to bona fide purchasers and encumbrancers of real property; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

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 authorize the holders of 51 percent or more of the ownership interest in the real property previously securing the loan to act on behalf of all the holders of the ownership interests of record. **Section 2** also: (1) requires that certain written notice of the proposed action be provided to each holder of a beneficial interest in the loan or an ownership interest in the real property; and (2) specifies the manner in which the interests of the minority of persons who do not consent to a sale, transfer, encumbrance or lease of the real property are sold, transferred, encumbered or leased.

Existing law prohibits a mortgage broker from placing a private investor or arranging to place a private investor into a limited-liability, business trust or other business entity before a foreclosure of real property unless the mortgage broker complies with certain requirements. (NRS 645B.356) **Section 2.5** of this bill: (1) specifies that these requirements apply if private investors own real property because of a foreclosure sale or receipt of a deed in lieu of a foreclosure sale in full satisfaction of a loan; and (2) provides that a certain majority of the private investors may place the loan or the real property into a limited-liability company,



business trust or other business entity on behalf of all the private investors. **Section 2.5** also specifies the manner in which the interests of the minority of private investors who do not consent to the placement are placed in the limited-liability company, business trust or other business entity.

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 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.

Existing law provides that a conveyance of any estate or interest in lands, and any charge upon lands, is void if it is made with the intent to defraud prior or subsequent purchasers of the same lands. (NRS 111.175) Under existing law, such a conveyance or charge is not deemed fraudulent in favor of certain subsequent purchasers, unless the subsequent purchaser was privy to the fraud intended. (NRS 111.180) **Section 3.5** of this bill: (1) defines the circumstances under which a purchaser of an estate or interest in real property is a bona fide purchaser of the property; and (2) provides that a conveyance of an estate or interest in real property, or a charge upon real property, is not deemed fraudulent in favor of a bona fide purchaser unless the subsequent purchaser had actual knowledge, constructive notice or reasonable cause to know of the intended fraud.

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

Section 1. (Deleted by amendment.)

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 *or the ownership interest in the real property previously securing the 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 *of the loan or the holders of 51 percent or more of the ownership interest in the real property, as indicated on a trustee's deed upon sale recorded*



1 *pursuant to subsection 9 of NRS 107.080, a deed recorded*
2 *pursuant to subsection 5 of NRS 40.430 or a deed in lieu of*
3 *foreclosure, and any subsequent deed selling, transferring or*
4 *assigning an ownership interest, may act on behalf of all the*
5 holders of the beneficial interests *or ownership interests* of record
6 on matters which require the action of the holders of the beneficial
7 interests in the loan *† or the ownership interests in the real*
8 *property, including, without limitation:*

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

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

13 (c) The *subsequent* sale, *transfer*, encumbrance or lease of real
14 property owned by the holders resulting from a foreclosure or the
15 receipt of a deed in lieu of a foreclosure in full satisfaction of a loan
16 *†, to a bona fide purchaser or encumbrancer for value;*

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

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

26 2. *A person designated to act pursuant to subsection 1 on*
27 *behalf of the holders of the beneficial interest in a loan or the*
28 *ownership interest in real property shall, not later than 30 days*
29 *before the date on which the holders will determine whether or not*
30 *to act pursuant to subsection 1, send a written notice of the action*
31 *to each holder of a beneficial interest or ownership interest at the*
32 *holder's last known address, by a delivery service that provides*
33 *proof of delivery or evidence that the notice was sent. The written*
34 *notice must state:*

35 (a) *The actions that will be taken on behalf of the holders who*
36 *consent to an action pursuant to this section, if the holders of the*
37 *beneficial interest in a loan whose interests represent 51 percent*
38 *or more of the outstanding principal balance of the loan or the*
39 *holders of 51 percent or more of the ownership interest in the real*
40 *property act pursuant to subsection 1;*

41 (b) *The actions that will be taken on behalf of the holders who*
42 *do not consent to an action pursuant to this section, if the holders*
43 *of the beneficial interest in a loan whose interests represent 51*
44 *percent or more of the outstanding principal balance of the loan*



1 *or the holders of 51 percent or more of the ownership interest in*
2 *the real property act pursuant to subsection 1; and*

3 *(c) The amount of the costs or, if an amount is unknown, an*
4 *estimate of the amount of the costs that will be allocated to, or due*
5 *from, the holder and deducted from any proceeds owed to the*
6 *holder.*

7 *3. If real property is sold, transferred, encumbered or leased*
8 *pursuant to paragraph (c) of subsection 1, any beneficial interest*
9 *in the loan or ownership interest in the real property of a holder*
10 *who does not consent to the sale, transfer, encumbrance or lease,*
11 *including, without limitation, any interest of a tenant in common*
12 *who does not consent to the sale, transfer, encumbrance or lease,*
13 *must be sold, transferred, encumbered or leased by a reference to*
14 *this section and by the signatures on the necessary documents of*
15 *the holders consenting to the sale, transfer, encumbrance or lease*
16 *of the real property. The holders consenting to the sale, transfer,*
17 *encumbrance or lease of the real property shall designate a*
18 *representative to sign any necessary documents on behalf of the*
19 *holders who do not consent to the sale, transfer, encumbrance or*
20 *lease and, if the representative maintains written evidence of the*
21 *consent of the number of holders described in subsection 1, the*
22 *representative is not liable for any action taken pursuant to this*
23 *subsection.*

24 *4. Any action which is taken pursuant to subsection 1 must be*
25 *in writing.*

26 ~~13-1~~ *5. The provisions of this section do not apply to a*
27 *transaction involving two investors with equal interests.*

28 **Sec. 2.5.** NRS 645B.356 is hereby amended to read as follows:

29 645B.356 1. A mortgage broker shall not place or arrange to
30 place a private investor into a limited-liability company, business
31 trust or other entity before *or after* foreclosure of the real property
32 securing the loan *, or receipt of a deed in lieu of foreclosure in full*
33 *satisfaction of a loan secured by the real property,* unless the
34 mortgage broker:

35 (a) Provides a copy of the organizational documents of the
36 limited-liability company, business trust or other entity to each
37 investor not later than 5 days before the ~~investor transfers his or~~
38 ~~her~~ *transfer of the* interest in the loan ~~[-and]~~ *or the interest in the*
39 *real property;*

40 (b) *Obtains the written authorization of a sufficient number of*
41 *the investors to act on behalf of all the investors pursuant to NRS*
42 *645B.340; and*

43 (c) Obtains the written authorization of each investor ~~[who~~
44 ~~wishes to]~~ *consenting to the* transfer *of* his or her interest in the loan



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1 *or in the real property* to the limited-liability company, business
2 trust or other entity.

3 2. *If a private investor is placed into a limited-liability*
4 *company, business trust or other entity pursuant to subsection 1,*
5 *any beneficial interest in a loan or ownership interest in real*
6 *property of the private investor who does not consent to the*
7 *placement, including, without limitation, any interest of a tenant*
8 *in common who does not consent to the placement, must be placed*
9 *in the limited-liability company, business trust or other entity by a*
10 *reference to this section and by the signatures on the necessary*
11 *documents of the investors consenting to the placement. The*
12 *investors who consent to an action pursuant to subsection 1 shall*
13 *designate a representative to sign any necessary documents on*
14 *behalf of the investors who do not consent to the action, and if the*
15 *representative maintains written evidence of the consent of the*
16 *number of investors described in paragraph (b) of subsection 1,*
17 *the representative is not liable for any action taken pursuant to*
18 *this subsection.*

19 3. The documents provided to each investor pursuant to
20 paragraph (a) of subsection 1 must clearly and concisely state any
21 fees which will be paid to the mortgage broker by the limited-
22 liability company, business trust or other entity, and the sections of
23 the documents that state fees must be initialed by the investor †.

24 ~~—3.†~~ *and any representative designated pursuant to subsection 2.*

25 4. A mortgage broker or mortgage agent shall not act as the
26 attorney-in-fact or the agent of a private investor for the signing or
27 dating of the written authorization.

28 †† 5. Any term of a contract or other agreement that attempts
29 to alter or waive the requirements of this section is void.

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

32 1. *Whenever the debt or obligation secured by a deed of trust*
33 *has been paid in full or otherwise satisfied and the current*
34 *beneficiary of record cannot be located after diligent search as*
35 *described in subsection 9 or refuses to execute and deliver a*
36 *proper request to reconvey the estate in real property conveyed to*
37 *the trustee by the grantor, as required by NRS 107.077, or*
38 *whenever a balance, including, without limitation, principal and*
39 *interest, remains due on the debt secured by the deed of trust and*
40 *the trustor or the trustor's successor in interest cannot locate after*
41 *diligent search the current beneficiary of record, the trustor or the*
42 *trustor's successor in interest may record or cause to be recorded*
43 *a surety bond that meets the requirements of subsection 2 and a*
44 *declaration that meets the requirements of subsection 3.*

45 2. *The surety bond recorded pursuant to subsection 1 must:*



1 (a) *Be acceptable to the trustee;*

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

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

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

11 (c) *Be conditioned on payment of any amount which the*
12 *beneficiary recovers in an action to enforce the obligation or*
13 *recover the debt secured by the deed of trust, plus costs and*
14 *reasonable attorney's fees;*

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

18 (e) *Contain a statement of:*

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

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

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

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

26 3. *The declaration recorded pursuant to subsection 1 must:*

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

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

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

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

32 (e) *State the name and address of the person making the*
33 *declaration;*

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

36 (1) *That the obligation or debt secured by the deed of trust*
37 *has been paid in full or otherwise satisfied and the current*
38 *beneficiary of record cannot be located after diligent search or*
39 *refuses to execute and deliver a proper request to reconvey the*
40 *estate in real property conveyed to the trustee by the grantor, as*
41 *required by NRS 107.077; or*

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



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(g) Contain a statement that the declarant has 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 on the instrument creating, assigning or conveying the deed of trust, a notice of the recording of the surety bond and declaration pursuant to this section, of the name and address of the trustee, of the beneficiary's right to record a written objection to the reconveyance of the deed of trust pursuant to this section and of the requirement to notify the trustee in writing of any such objection; and

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

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

5. Upon the recording of a reconveyance of the deed of trust pursuant to subsection 4, interest no longer accrues on any balance remaining due under the obligation or debt secured by the deed of trust to the extent that the balance due has been stated in the declaration described in subsection 3. Notwithstanding any provision of chapter 120A of NRS, any amount of the balance remaining due under the obligation or debt secured by the deed of trust, including, without limitation, principal and interest, which is remitted to the issuer of the surety bond described in subsection 2



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1 *in connection with the issuance of that surety bond must, if*
2 *unclaimed within 3 years after remittance, be property that is*
3 *presumed abandoned for the purposes of chapter 120A of NRS.*
4 *From the date on which the amount is paid or delivered to the*
5 *Administrator of Unclaimed Property pursuant to NRS 120A.570,*
6 *the issuer of the surety bond is relieved of any liability to pay to the*
7 *beneficiary or his or her heirs or successors in interest the amount*
8 *paid or delivered to the Administrator.*

9 6. *Any failure to comply with the provisions of this section*
10 *does not affect the rights of a bona fide purchaser or*
11 *encumbrancer for value.*

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

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

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

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

29 (c) *The declaration filed pursuant to subsection 3:*

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

34 (2) *In lieu of the statement required by paragraph (f) of*
35 *subsection 3, contains a statement that the obligation or debt*
36 *secured by the deed of trust has been paid in full or otherwise*
37 *satisfied and the current beneficiary of record cannot be located*
38 *after diligent search or refuses to execute and deliver a proper*
39 *request to reconvey the estate in real property conveyed to the*
40 *trustee by the grantor, as required by NRS 107.077;*

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

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



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

3 (a) A notice stating the intent to record a surety bond and
4 declaration pursuant to this section, the name and address of the
5 trustee, the beneficiary's right to record a written objection to
6 the reconveyance of the deed of trust pursuant to this section and
7 the requirement to notify the trustee in writing of any such
8 objection, has been mailed by certified mail, return receipt
9 requested, to the last known address of the person to whom
10 payments under the deed of trust were made and to the last
11 beneficiary of record at the address indicated for such beneficiary
12 on the instrument creating, assigning or conveying the deed of
13 trust.

14 (b) A search has been conducted of the telephone directory in
15 the city where the beneficiary of record or trustee of record,
16 whichever is applicable, maintained its last known address or
17 place of business.

18 (c) If the beneficiary of record or the beneficiary's successor
19 in interest, or the trustee of record or the trustee's successor in
20 interest, whichever is applicable, is a business entity, a search has
21 been conducted of the records of the Secretary of State and the
22 records of the agency or officer of the state of organization of the
23 beneficiary, trustee or successor, if known.

24 (d) If the beneficiary of record or trustee of record is a state or
25 national bank or state or federal savings and loan association, an
26 inquiry concerning the location of the beneficiary or trustee has
27 been made to the regulator of the bank or savings and loan
28 association.

29 10. As used in this section:

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

32 (1) Is included in the United States Department of the
33 Treasury's Listing of Approved Sureties; and

34 (2) Issues a surety bond pursuant to this section that does
35 not exceed the underwriting limitations established for that surety
36 by the United States Department of the Treasury.

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

39 Sec. 3.5. NRS 111.180 is hereby amended to read as follows:

40 111.180 1. Any purchaser who purchases an estate or
41 interest in any real property in good faith and for valuable
42 consideration and who does not have actual knowledge,
43 constructive notice of, or reasonable cause to know that there
44 exists a defect in, or adverse rights, title or interest to, the real
45 property is a bona fide purchaser.



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1 2. No ~~{such}~~ conveyance ~~{,}~~ *of an estate or interest in real*
2 *property*, or charge ~~{,}~~ *upon real property*, shall be deemed
3 fraudulent in favor of a ~~{subsequent}~~ *bona fide* purchaser ~~{who shall~~
4 ~~have legal notice thereof at the time of the purchase by the~~
5 ~~subsequent purchaser,}~~ unless it ~~{shall appear}~~ *appears* that the
6 ~~{grantee}~~ *subsequent purchaser* in such conveyance, or person to be
7 benefited by such charge, ~~{was privy to}~~ *had actual knowledge,*
8 *constructive notice or reasonable cause to know of* the fraud
9 intended.
10 **Sec. 4.** This act becomes effective on July 1, 2013.

