

ASSEMBLY BILL NO. 195—ASSEMBLYMAN NELSON

FEBRUARY 26, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing deficiency judgments.
(BDR 3-865)

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. (NRS 40.455) **Section 1** of this bill removes the provision of existing law which provides that if a person acquired the right to obtain a deficiency judgment from another person, the amount of the deficiency judgment must not exceed the amount of the consideration paid for that right.

Section 2 of this bill removes the provision of existing law which provides that, under certain circumstances, a money judgment obtained by a creditor with a junior mortgage or other lien on real property may not exceed the amount of the consideration paid by the creditor for the right to enforce the obligation secured by the junior mortgage or lien.

Section 4 of this bill provides that this bill becomes effective upon passage and approval, and **section 3** of this bill provides that this bill applies only to a judgment awarded as the result of: (1) an action for judicial foreclosure commenced on or after the effective date of the bill; or (2) a notice of default and election to sell recorded on or after the effective date of the 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 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. For the purposes of this section, the “amount of the indebtedness” does not include any amount received by, or payable to, the judgment creditor or beneficiary of the deed of trust pursuant to an insurance policy to compensate the judgment creditor or beneficiary for any losses incurred with respect to the property or the default on the debt.

Sec. 2. 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. ~~[[~~

~~—(a) A person acquired the right to enforce an obligation secured by a junior mortgage or lien on real property from a person who previously held that right;~~



~~—(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, plus interest from the date on which the person acquired the right 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. 3. The amendatory provisions of this act apply to a judgment awarded as the result of:

1. An action for judicial foreclosure commenced on or after the effective date of this act.

2. A notice of default and election to sell recorded on or after the effective date of this act.

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

