

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) Existing law further 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. (NRS 40.459) **Sections 1, 3 and 4** of this bill provide that this provision applies only to deficiency judgments awarded on or after the passage and approval of this bill in a deficiency judgment proceeding to enforce: (1) any debt secured by property upon which the debtor or a guarantor or surety of the debt maintains his or her principal residence, there is not more than one residential structure and not more than four families reside; and (2) any debt secured by any other property if the documents evidencing the debt were fully executed on or before July 1, 2011.

Existing law provides that, under certain circumstances, a money judgment obtained by a creditor with a junior mortgage or 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. (NRS 40.4636) **Sections 2-4** of this bill provide that this limitation applies only to a money judgment awarded on or after the passage and approval of this bill in a civil action to enforce: (1) any obligation secured by a junior mortgage or lien on real property upon which the debtor or a guarantor or surety of the debt maintains his or her principal residence,



there is not more than one residential structure and not more than four families reside; and (2) any obligation secured by a junior mortgage or lien on any other real property if the documents evidencing the obligation were fully executed on or before July 1, 2011.

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}~~

2. Except as otherwise provided in subsection 3, 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,

↳ whichever is the lesser amount.

3. If the debt was secured by property upon which the debtor, guarantor or surety maintains his or her principal residence, there is not more than one residential structure and not more than four families reside, 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;

(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-}~~ 4. 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



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1 to an insurance policy to compensate the judgment creditor or
2 beneficiary for any losses incurred with respect to the property or
3 the default on the debt.

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

5 40.4636 1. If a person to whom an obligation secured by a
6 junior mortgage or lien on real property is owed:

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

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

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

16 2. If:

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

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

23 *(c) The obligation was secured by a junior mortgage or lien on*
24 *real property upon which the debtor maintains his or her principal*
25 *residence, there is not more than one residential structure and not*
26 *more than four families reside; and*

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

28 ➔ the court shall not render judgment for more than the amount of
29 the consideration paid for that right, plus interest from the date on
30 which the person acquired the right and reasonable costs.

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

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

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

39 **Sec. 3.** The amendatory provisions of:

40 1. Section 1 of this act apply to a judgment awarded pursuant
41 to NRS 40.459, as amended by section 1 of this act, on or after the
42 effective date of this act, if the documents evidencing the debt are
43 fully executed on or after July 1, 2011.

44 2. Section 2 of this act apply to a judgment awarded pursuant
45 to subsection 2 of NRS 40.4636, as amended by section 2 of this act,



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- 1 on or after the effective date of this act, if the documents evidencing
- 2 the obligation are fully executed on or after July 1, 2011.
- 3 **Sec. 4.** This act becomes effective upon passage and approval.

