

Amendment No. 333

Assembly Amendment to Assembly Bill No. 195	(BDR 3-865)
<b>Proposed by:</b> Assembly Committee on Judiciary	
<b>Amends:</b> Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.



## 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~~ 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.

~~Section 2 of this bill removes the provision of existing law which~~ (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 ~~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 2 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.~~ (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; ~~for~~

(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 ~~for~~ ; 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~~ 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 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. If:

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

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

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

8 ~~the~~ (d) Such action is not barred by NRS 40.430.

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

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

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

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

19 Sec. 3. The amendatory provisions of:

20 1. Section 1 of this act apply to a judgment awarded as the result of:

21 ~~1. An action for judicial foreclosure commenced on or after the effective date~~  
22 ~~of this act.~~ awarded pursuant to NRS 40.459, as amended by section 1 of this  
23 act, on or after the effective date of this act, if the documents evidencing the  
24 debt are fully executed on or after July 1, 2011.

25 ~~2. [A notice of default and election to sell recorded on or after the effective~~  
26 ~~date of this act.]~~ Section 2 of this act apply to a judgment awarded pursuant to  
27 subsection 2 of NRS 40.4636, as amended by section 2 of this act, on or after  
28 the effective date of this act, if the documents evidencing the obligation are  
29 fully executed on or after July 1, 2011.

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