

SENATE BILL NO. 306—SENATORS FORD AND HAMMOND

MARCH 16, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to liens on real property located within a common-interest community. (BDR 10-55)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to common-interest communities; revising provisions governing a unit-owners' association's lien on a unit for certain amounts due to the association; revising provisions governing the foreclosure of an association's lien; requiring the trustee under a deed of trust securing real property to provide a homeowners' association certain notice concerning the Foreclosure Mediation Program under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a unit-owners' association has a lien on a unit for certain amounts due to the association and may foreclose its lien through a nonjudicial foreclosure sale. (NRS 116.3116-116.31168) Generally, the association's lien is not prior to a first security interest on the unit recorded before the date on which the amount sought to be enforced became delinquent. However, the association's lien is prior to the first security interest on the unit to the extent of certain maintenance and abatement charges and a certain amount of assessments for common expenses. The portion of the association's lien that is prior to the first security interest on the unit is commonly referred to as the "super-priority lien." (NRS 116.3116) In *SFR Investments Pool 1, LLC v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014), the Nevada Supreme Court held that the foreclosure of the super-priority lien by the association extinguishes the first security interest on the unit.

This bill amends various provisions governing the association's super-priority lien and the procedures required for an association to foreclose its lien. **Section 1** of this bill authorizes a limited amount of the costs of enforcing the association's lien to be included in the super-priority lien. **Section 1** also specifically states that an association, a member of the association's executive board, an officer or employee of the association or the community manager of the association is not required to be



* S B 3 0 6 *

a licensed debt collection agency or contract with a licensed debt collection agency to collect amounts included in the association's lien until a notice and default and election to sell the unit to enforce the lien is recorded. Finally, **section 1** specifically states that any payment of an amount included in the association's lien by the holder of a subordinate lien on the unit becomes a debt due from the unit's owner to the holder of the lien.

Sections 2-7 of this bill revise provisions governing the procedures for the foreclosure of the association's lien. **Sections 2-4** revise provisions relating to the notice of the association's foreclosure required to be given to the holders of recorded security interests on the unit. Under **sections 2 and 3**, an association is required to mail by certified or registered mail, return receipt requested, not later than 10 days after recording the notice of default and election to sell, a copy of the notice to each holder of a security interest recorded before the association recorded the notice. **Section 4** similarly requires the association to mail by certified or registered mail, return receipt requested, not later than 10 days after recording notice of the foreclosure sale of the unit, a copy of the notice of sale to each holder of a security interest recorded before the association recorded the notice of sale.

Section 2 also: (1) specifically states that the mailing of the copy of the notice of default and election to sell and the copy of the notice of sale to each holder of a recorded security interest is a condition which must be satisfied before the association may sell the unit; and (2) requires the association to record an affidavit stating the name of each holder of a recorded security interest to whom a copy of the notice of default and election to sell and notice of sale was mailed and the address to which those notices were sent. **Section 4** further requires the publishing, posting and giving of notice of the foreclosure sale of a unit by an association in a manner similar to the publishing, posting and giving of notice of the nonjudicial foreclosure sale of real property secured by a deed of trust.

Sections 5 and 6 revise provisions relating to the foreclosure sale of a unit by an association. **Section 5** requires the sale to be conducted at the same location that a nonjudicial foreclosure sale of real property secured by a deed of trust must be conducted and requires that the sale be commercially reasonable. **Section 5** also removes provisions authorizing the association or person conducting the sale to postpone a sale and, instead, requires notice of a rescheduled sale to be given in the same manner that notice of the sale is given. **Section 6** provides that if the holder of the first security interest pays the amount of the super-priority lien not later than 10 days before the date of sale, the foreclosure of the association's lien does not extinguish the first security interest. **Section 6** also provides that after a sale of a unit to enforce the association's lien, the unit's owner or a holder of a security interest on the unit may redeem the unit by paying certain amounts to the purchaser within 60 days after the sale. If the unit's owner redeems the unit, the unit's owner is restored to his or her ownership of the unit. If a holder of a security interest on the unit redeems the unit, that holder becomes the owner of the unit. **Section 6** further provides that upon expiration of the redemption period, any failure to comply with the requirements of existing law for the foreclosure of the association's lien does not affect the rights of a bona fide purchaser or encumbrancer for value.

Existing law further provides that if a unit is subject to the Foreclosure Mediation Program, a unit-owners' association may not foreclose its lien on the unit until the trustee has recorded the required certificate. (NRS 107.086, 116.31162) **Section 2** revises the language of existing law and specifies that a unit-owners' association may foreclose its lien on a unit that is subject to the Foreclosure Mediation Program if the unit's owner has failed to pay amounts that became due to the association during the pendency of the mediation. **Section 8** of this bill requires the trustee under a deed of trust to notify the association that a unit



73 is subject to the Foreclosure Mediation Program, and to notify the association that
74 the trustee has received the required certificate from the Program.

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

1 **Section 1.** NRS 116.3116 is hereby amended to read as
2 follows:

3 116.3116 1. The association has a lien on a unit for any
4 construction penalty that is imposed against the unit's owner
5 pursuant to NRS 116.310305, any assessment levied against that
6 unit or any fines imposed against the unit's owner from the time the
7 construction penalty, assessment or fine becomes due. Unless the
8 declaration otherwise provides, any penalties, fees, charges, late
9 charges, fines and interest charged pursuant to paragraphs (j) to (n),
10 inclusive, of subsection 1 of NRS 116.3102 *and any costs of*
11 *collecting a past due obligation charged pursuant to NRS*
12 *116.310313* are enforceable as assessments under this section. If an
13 assessment is payable in installments, the full amount of the
14 assessment is a lien from the time the first installment thereof
15 becomes due.

16 2. A lien under this section is prior to all other liens and
17 encumbrances on a unit except:

18 (a) Liens and encumbrances recorded before the recordation of
19 the declaration and, in a cooperative, liens and encumbrances which
20 the association creates, assumes or takes subject to;

21 (b) A first security interest on the unit recorded before the date
22 on which the assessment sought to be enforced became delinquent
23 or, in a cooperative, the first security interest encumbering only the
24 unit's owner's interest and perfected before the date on which the
25 assessment sought to be enforced became delinquent ~~{-}~~, *except that*
26 *a lien under this section is prior to a security interest described in*
27 *this paragraph to the extent set forth in subsection 3;* and

28 (c) Liens for real estate taxes and other governmental
29 assessments or charges against the unit or cooperative.

30 ~~{-The lien is also}~~

31 3. *A lien under this section is* prior to all security interests
32 described in paragraph (b) *of subsection 2* to the extent of ~~{any}~~ :

33 (a) *Any* charges incurred by the association on a unit pursuant to
34 NRS 116.310312 ~~{and to the extent of the}~~ ;

35 (b) *The unpaid amount of* assessments for common expenses
36 based on the periodic budget adopted by the association pursuant to
37 NRS 116.3115 ~~{which would have become due in the absence of~~
38 ~~acceleration during the 9 months immediately preceding institution~~



~~of an action to enforce the lien,]~~, not to exceed 9 months of such assessments; and

(c) The costs incurred by the association to enforce the lien in an amount not to exceed the amounts set forth in subsection 5,

↪ unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) *of subsection 2* must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding *the recording of a notice of default and election to sell pursuant to paragraph (b) of subsection 1 of NRS 116.31162 or the* institution of ~~[an]~~ *a judicial* action to enforce the lien.

4. This ~~[subsection]~~ *section* does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

~~[3-]~~ 5. *The amount of the costs of enforcing the association's lien that are prior to the security interest described in paragraph (b) of subsection 2 must not exceed the actual costs incurred by the association, must not include more than one trustee's sale guaranty and must not exceed:*

(a) *For a demand or intent to lien letter, \$150.*

(b) *For a notice of delinquent assessment, \$325.*

(c) *For an intent to record a notice of default letter, \$90.*

(d) *For a notice of default, \$400.*

(e) *For a trustee's sale guaranty, \$400.*

↪ *No costs of enforcing the association's lien, other than the costs described in this subsection, and no amount of attorney's fees may be included in the amount of the association's lien that is prior to the security interest described in paragraph (b) of subsection 2.*

6. *Notwithstanding any other provision of law, an association, or member of the executive board, officer, employee or unit's owner of the association, acting under the authority of this chapter or the governing documents of the association, or the community manager of the association, or any employee, agent or affiliate of the community manager, while engaged in the management of the common-interest community governed by the association, is not required to be licensed as a collection agency pursuant to chapter 649 of NRS or hire or contract with a collection agency licensed pursuant to chapter 649 to collect*



amounts due to the association in accordance with subsection 1 before the recording of a notice of default and election to sell pursuant to paragraph (b) of subsection 1 of NRS 116.31162.

7. The holder of the security interest described in paragraph (b) of subsection 2 or the holder's authorized agent may establish an escrow account, loan trust account or other impound account for advance contributions for the payment of assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 if the unit's owner and the holder of that security interest consent to the establishment of such an account. If such an account is established, payments from the account for assessments for common expenses must be made in accordance with the same due dates as apply to payments of such assessments by a unit's owner.

~~{4}~~ 8. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

~~{5}~~ 9. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

~~{6}~~ 10. A lien for unpaid assessments is extinguished unless *a notice of default and election to sell is recorded as required by paragraph (b) of subsection 1 of NRS 116.31162, or judicial* proceedings to enforce the lien are instituted , within 3 years after the full amount of the assessments becomes due.

~~{7}~~ 11. This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

~~{8}~~ 12. A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

~~{9}~~ 13. The association, upon written request, shall furnish to a unit's owner a statement setting forth the amount of unpaid assessments against the unit. If the interest of the unit's owner is real estate or if a lien for the unpaid assessments may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board and every unit's owner.

~~{10}~~ 14. In a cooperative, upon nonpayment of an assessment on a unit, the unit's owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and:



(a) In a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, the association's lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive.

(b) In a cooperative where the owner's interest in a unit is personal property under NRS 116.1105, the association's lien:

(1) May be foreclosed as a security interest under NRS 104.9101 to 104.9709, inclusive; or

(2) If the declaration so provides, may be foreclosed under NRS 116.31162 to 116.31168, inclusive.

~~11.1~~ **15.** In an action by an association to collect assessments or to foreclose a lien created under this section, the court may appoint a receiver to collect all rents or other income from the unit alleged to be due and owing to a unit's owner before commencement or during pendency of the action. The receivership is governed by chapter 32 of NRS. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to NRS 116.3115.

16. *Notwithstanding any other provision of law, any payment of an amount due to an association in accordance with subsection 1 by the holder of any lien or encumbrance on a unit that is subordinate to the association's lien under this section becomes a debt due from the unit's owner to the holder of the lien or encumbrance.*

Sec. 2. NRS 116.31162 is hereby amended to read as follows:

116.31162 1. Except as otherwise provided in subsection 5 ~~for 6,~~ **6 or 7**, in a condominium, in a planned community, in a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's interest in a unit is personal property under NRS 116.1105 and the declaration provides that a lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the association may foreclose its lien by sale after all of the following occur:

(a) The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest, at his or her address, if known, and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

(b) Not less than 30 days after mailing the notice of delinquent assessment pursuant to paragraph (a), the association or other person conducting the sale has executed and caused to be recorded, with the



county recorder of the county in which the common-interest community or any part of it is situated, a notice of default and election to sell the unit to satisfy the lien which must contain the same information as the notice of delinquent assessment and which must also comply with the following:

(1) Describe the deficiency in payment.

(2) *State the total amount of the deficiency in payment, with a separate statement of:*

(I) The amount of the association's lien that is prior to the first security interest on the unit pursuant to subsection 3 of NRS 116.3116 as of the date of the notice;

(II) The amount of the lien described in subparagraph (I) that is attributable to assessments based on the periodic budget adopted by the association pursuant to NRS 116.3115 as of the date of the notice;

(III) The amount of the lien described in subparagraph (I) that is attributable to amounts described in NRS 116.310312 as of the date of the notice; and

(IV) The amount of the lien described in subparagraph (I) that is attributable to the costs of enforcing the association's lien as of the date of the notice.

(3) State that if the holder of the first security interest on the unit does not pay the amount of the association's lien that is prior to that first security interest pursuant to subsection 3 of NRS 116.3116, the association may foreclose its lien by sale and that the sale may extinguish the first security interest as to the unit.

(4) State the name and address of the person authorized by the association to enforce the lien by sale.

~~1~~(3) (5) Contain, in 14-point bold type, the following warning:

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

(c) The unit's owner or his or her successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for 90 days following the recording of the notice of default and election to sell.

(d) The unit's owner or his or her successor in interest, or the holder of a recorded security interest on the unit, has, for a period which commences in the manner and subject to the requirements described in subsection 3 and which expires 10 days before the date of sale, failed to pay the assessments and other



1 *sums that are due to the association in accordance with subsection*
2 *1 of NRS 116.3116.*

3 *(e) The association or other person conducting the sale has*
4 *executed and caused to be recorded, with the county recorder of*
5 *the county in which the common-interest community or any part*
6 *of it is situated, an affidavit which states, based on the direct,*
7 *personal knowledge of the affiant or the personal knowledge*
8 *which the affiant acquired by a review of the business records of*
9 *the association or other person conducting the sale, which*
10 *business records must meet the standards set forth in NRS 51.135,*
11 *the following:*

12 *(1) The name of each holder of a security interest on the*
13 *unit to which the notice of default and election to sell and the*
14 *notice of sale was mailed, as required by subsection 2 of NRS*
15 *116.31163 and paragraph (d) of subsection 1 of NRS 116.311635;*
16 *and*

17 *(2) The address at which the notices were mailed to each*
18 *such holder of a security interest.*

19 2. The notice of default and election to sell must be signed by
20 the person designated in the declaration or by the association for that
21 purpose or, if no one is designated, by the president of the
22 association.

23 3. The period of 90 days *described in paragraph (c) of*
24 *subsection 1* begins on the first day following:

25 (a) The date on which the notice of default *and election to sell* is
26 recorded; or

27 (b) The date on which a copy of the notice of default *and*
28 *election to sell* is mailed by certified or registered mail, return
29 receipt requested, to the unit's owner or his or her successor in
30 interest at his or her address, if known, and at the address of the unit,
31 ➤ whichever date occurs later.

32 4. An association may not mail to a unit's owner or his or her
33 successor in interest a letter of its intent to mail a notice of
34 delinquent assessment pursuant to paragraph (a) of subsection 1,
35 mail the notice of delinquent assessment or take any other action to
36 collect a past due obligation from a unit's owner or his or her
37 successor in interest unless ~~[(a)]~~:

38 *(a) Not* earlier than 60 days after the obligation becomes past
39 due, the association mails to the address on file for the unit's owner:

40 ~~[(a)]~~ *(1)* A schedule of the fees that may be charged if the unit's
41 owner fails to pay the past due obligation;

42 ~~[(b)]~~ *(2)* A proposed repayment plan; and

43 ~~[(e)]~~ *(3)* A notice of the right to contest the past due obligation
44 at a hearing before the executive board and the procedures for
45 requesting such a hearing ~~[(e)]~~; and



(b) Within 30 days after the date on which the information described in paragraph (a) is mailed, the past due obligation has not been paid in full or the unit's owner or his or her successor in interest has not entered into a repayment plan or requested a hearing before the executive board. If the unit's owner or his or her successor in interest requests a hearing or enters into a repayment plan within 30 days after the date on which the information described in paragraph (a) is mailed and is unsuccessful at the hearing or fails to make a payment under the repayment plan within 10 days after the due date, the association may take any lawful action pursuant to subsection 1 to enforce its lien.

5. The association may not foreclose a lien by sale if the association has not mailed a copy of the notice of default and election to sell and a copy of the notice of sale to each holder of a security interest on the unit in the manner and subject to the requirements set forth in subsection 2 of NRS 116.31163 and paragraph (d) of subsection 1 of 116.311635.

6. The association may not foreclose a lien by sale based on a fine or penalty for a violation of the governing documents of the association unless:

(a) The violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community; or

(b) The penalty is imposed for failure to adhere to a schedule required pursuant to NRS 116.310305.

~~[6.] 7. The association may not foreclose a lien by sale if [:~~
~~—(a) The unit is owner-occupied housing encumbered by a deed of trust;~~

~~—(b) The beneficiary under the deed of trust, the successor in interest of the beneficiary or the trustee has recorded a notice of default and election to sell with respect to the unit pursuant to subsection 2 of NRS 107.080; and~~

~~—(c) The] the association has received notice pursuant to NRS 107.086 that the unit is subject to foreclosure mediation pursuant to that section, unless:~~

(a) The trustee of record has ~~[not]~~ recorded the certificate provided to the trustee pursuant to subparagraph (1) or (2) of paragraph ~~[(d)] (e)~~ of subsection 2 of NRS 107.086 ~~[:~~

~~→ As used in this subsection, "owner-occupied housing" has the meaning ascribed to it in NRS 107.086.] ; or~~

(b) The unit's owner has failed to pay to the association any amounts enforceable as assessments pursuant to subsection 1 of NRS 116.3116 that become due during the pendency of



foreclosure mediation pursuant to NRS 107.086, other than past due obligations as described in subsection 10 of NRS 107.086.

Sec. 3. NRS 116.31163 is hereby amended to read as follows:

116.31163 The association or other person conducting the sale shall also mail, within 10 days after the notice of default and election to sell is recorded, a copy of the notice by ~~[first-class]~~ *certified or registered mail, return receipt requested*, to:

1. Each person who has requested notice pursuant to NRS ~~[107.090 or]~~ 116.31168;

2. ~~[Any]~~ *Each* holder of a recorded security interest encumbering the unit's owner's interest ~~[who has notified the association, 30 days]~~ *which was recorded* before the recordation of the notice of default ~~[, of the existence of the security interest;]~~ *or, if the holder of the security interest has a registered agent in this State, the registered agent of the holder of the security interest;* and

3. A purchaser of the unit, ~~[if the unit's owner has notified the association, 30 days]~~ *to whom the association has been requested*, before the recordation of the notice ~~[, that the unit is the subject of a contract of sale and the association has been requested]~~ *of default*, to furnish the certificate required by *subsection 3 of* NRS 116.4109.

Sec. 4. NRS 116.311635 is hereby amended to read as follows:

116.311635 1. The association or other person conducting the sale shall also, after the expiration of the ~~[90 days]~~ *90-day period described in paragraph (c) of subsection 1 of NRS 116.31162* and before selling the unit ~~[-~~

~~—(a) Give]~~ *, give* notice of the time and place of the sale ~~[in the manner and for a time not less than that required by law for the sale of real property upon execution, except that in lieu of following the procedure for service on a judgment debtor pursuant to NRS 21.130, service must be made on]~~ *by recording the notice of sale and by:*

(a) Posting a similar notice particularly describing the unit, for 20 days consecutively, in a public place in the county where the unit is situated;

(b) Publishing a copy of the notice three times, once each week for 3 consecutive weeks, in a newspaper of general circulation in the county where the unit is situated;

(c) Notifying the unit's owner *or his or her successor in interest* as follows:

(1) A copy of the notice of sale must be mailed, on or before the date of first publication or posting, by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest at his or her address, if known, and to the address of the unit; and



(2) A copy of the notice of sale must be served, on or before the date of first publication or posting, in the manner set forth in subsection 2; and

~~[(b) Mail,]~~

(d) Mailing, on or before the date of first publication or posting, a copy of the notice by certified or registered mail, return receipt requested, to:

(1) Each person entitled to receive a copy of the notice of default and election to sell notice under NRS 116.31163;

(2) The holder of a **recorded** security interest ~~for the purchaser of the unit, if either of them has notified the association, recorded~~ before the mailing of the notice of sale **or, if the holder of the security interest has a registered agent in this State, the registered agent of the holder of the security interest; [, of the existence of the security interest, lease or contract of sale, as applicable; and]**

(3) A purchaser of the unit to whom the association has been requested, before the mailing of the notice of sale, to furnish the certificate required by subsection 3 of NRS 116.4109; and

(4) The Ombudsman.

2. In addition to the requirements set forth in subsection 1, a copy of the notice of sale must be served:

(a) By a person who is 18 years of age or older and who is not a party to or interested in the sale by personally delivering a copy of the notice of sale to an occupant of the unit who is of suitable age; or

(b) By posting a copy of the notice of sale in a conspicuous place on the unit.

3. Any copy of the notice of sale required to be served pursuant to this section must include:

(a) The amount necessary to satisfy the lien as of the date of the proposed sale; and

(b) The following warning in 14-point bold type:

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL (name and telephone number of the contact person for the association). IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE



DIVISION, AT (toll-free telephone number designated by the Division) IMMEDIATELY.

4. Proof of service of any copy of the notice of sale required to be served pursuant to this section must consist of:

(a) A certificate of mailing which evidences that the notice was mailed through the United States Postal Service; or

(b) An affidavit of service signed by the person who served the notice stating:

(1) The time of service, manner of service and location of service; and

(2) The name of the person served or, if the notice was not served on a person, a description of the location where the notice was posted on the unit.

Sec. 5. NRS 116.31164 is hereby amended to read as follows:

116.31164 1. *Every aspect of a sale or other disposition of a unit pursuant to NRS 116.3116 to 116.31168, inclusive, including, without limitation, the method, advertising, time, date, place and terms, must be commercially reasonable.*

2. The sale must be ~~conducted~~ *made between the hours of 9 a.m. and 5 p.m. and:*

(a) *If the unit is located in a county whose population is less than 100,000, at the courthouse* in the county in which the ~~common-interest community~~ unit or part of it is ~~situated, and~~ located.

(b) *If the unit is located in a county whose population is 100,000 or more, at the public location in the county designated by the governing body of the county to conduct a sale of real property pursuant to NRS 107.080.*

3. *The sale* may be conducted by the association, its agent or attorney, or a title insurance company or escrow agent licensed to do business in this State, except that the ~~sale may be made at the office of the association if the notice of the sale so provided, whether the unit is located within the same county as the office of the association or not.~~ *person conducting the sale may not become a purchaser at the sale or be interested in any purchase at such a sale.*

4. The association or other person conducting the sale may ~~from time to time~~ *not* postpone the sale ~~by such advertisement and notice as it considers reasonable or, without further advertisement or notice, by proclamation made to the persons assembled at the time and place previously set and advertised for the sale.~~

~~—2.]~~ *, but may reschedule the sale by providing notice of the rescheduled sale in accordance with NRS 116.311635.*



5. On the day of sale , ~~for originally advertised or to which the sale is postponed,~~ at the time and place specified in the notice , ~~for postponement,~~ the person conducting the sale may sell the unit at public auction to the highest cash bidder. Unless otherwise provided in the declaration or by agreement, the association may purchase the unit and hold, lease, mortgage or convey it. The association may purchase by a credit bid up to the amount of the unpaid assessments and any permitted costs, fees and expenses incident to the enforcement of its lien.

~~[3.] 6. After the sale, the person conducting the sale shall [:~~
~~— (a) Make, execute and, after payment is made, deliver to the purchaser, or his or her successor or assign, a deed without warranty which conveys to the grantee all title of the unit's owner to the unit;~~
~~— (b) Deliver a copy of the deed to the Ombudsman within 30 days after the deed is delivered to the purchaser, or his or her successor or assign;]:~~

(a) Comply with the provisions of subsection 2 of NRS 116.31166; and

~~[(e)]~~ *(b) Apply the proceeds of the sale for the following purposes in the following order:*

- (1) The reasonable expenses of sale;*
- (2) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by the declaration, reasonable attorney's fees and other legal expenses incurred by the association;*
- (3) Satisfaction of the association's lien;*
- (4) Satisfaction in the order of priority of any subordinate claim of record; and*
- (5) Remittance of any excess to the unit's owner.*

Sec. 6. NRS 116.31166 is hereby amended to read as follows:

116.31166 1. Every sale of a unit pursuant to NRS 116.31162 to 116.31168, inclusive, vests in the purchaser the title of the unit's owner subject to the right of redemption provided by this section. If the holder of the security interest described in paragraph (b) of subsection 2 of NRS 116.3116 satisfies the amount of the association's lien that is prior to its security interest not later than 10 days before the date of sale and a record of such payment is recorded in the office of the county recorder of the county in which the unit is located not later than 5 days before the date of sale, the sale of the unit does not extinguish that security interest to any extent.

2. After the sale conducted pursuant to NRS 116.31164, the person conducting the sale shall:



(a) Give to the purchaser a certificate of the sale containing:

(1) A particular description of the unit sold;

(2) The price bid for the unit;

(3) The whole price paid; and

(4) A statement that the unit is subject to redemption; and

(b) Record a copy of the certificate in the office of the county recorder of the county in which the unit or part of it is located.

3. A unit sold pursuant to NRS 116.31162 to 116.31168, inclusive, may be redeemed by the unit's owner whose interest in the unit was extinguished by the sale, or his or her successor in interest, or any holder of a recorded security interest that is subordinate to the lien on which the unit was sold, or that holder's successor in interest. The unit's owner whose interest in the unit was extinguished, the holder of the recorded security interest on the unit or a successor in interest of those persons may redeem the property at any time within 60 days after the sale by paying the purchaser the amount of his or her purchase price, with interest at the rate of 1 percent per month thereon in addition, to the time of redemption, plus:

(a) The amount of any assessment, taxes or payments toward liens which were created before the purchase and which the purchaser may have paid thereon after the purchase, and interest on such amount;

(b) If the purchaser is also a creditor having a prior lien to that of the redemptioner, other than the association's lien under which the purchase was made, the amount of such lien, and interest on such amount; and

(c) The amount expended by the purchaser to:

(1) Maintain and improve the unit in accordance with the standards set forth in the governing documents, including, without limitation, any provisions governing maintenance, standing water or snow removal; and

(2) Remove or abate a public nuisance of the unit, including, without limitation, a public nuisance which:

(I) Is visible from any common area of the community or public streets;

(II) Threatens the health or safety of the residents of the common-interest community; or

(III) Results in blighting or deterioration of the unit or surrounding area.

4. If a unit is redeemed by a holder of a recorded security interest on the unit, the holder of another recorded security interest on the unit that is subordinate to the lien under which the unit was sold, or that holder's successor in interest, may, within 30 days after the last redemption, again redeem it from the last



1 *redemption on paying the sum paid on the last redemption, and*
2 *interest at the rate of 2 percent per month thereon in addition, and*
3 *the amount of any assessment or taxes which the last*
4 *redemption may have paid thereon after the redemption by him*
5 *or her, and interest on that amount, and, in addition, the amount*
6 *of any lien held by the last redemption before his or her own*
7 *lien, with interest, but the association's lien under which the unit*
8 *was sold is not required to be so paid as a lien.*

9 5. *The unit's owner whose interest in the unit was*
10 *extinguished by the sale may redeem the unit from the purchaser*
11 *or from any redemption by payment of the amount required to*
12 *redeem the unit pursuant to subsection 3 or 4, as applicable, at*
13 *any time within 60 days after the date of the sale or 30 days after*
14 *the last redemption by a holder of security interest, whichever is*
15 *later.*

16 6. *The payment of a redemption amount must be made to the*
17 *purchaser or to the holder of a security interest who last redeemed*
18 *the unit.*

19 7. *Notice of redemption must be served by the person*
20 *redeeming the unit on the person who conducted the sale and on*
21 *the person from whom the unit is redeemed, together with:*

22 (a) *If the person redeeming the unit is the unit's owner whose*
23 *interest in the unit was extinguished by the sale or his or her*
24 *successor in interest, a certified copy of the deed to the unit and, if*
25 *the person redeeming the unit is the successor of that unit's*
26 *owner, a copy of any document necessary to establish that the*
27 *person is the successor of the unit's owner.*

28 (b) *If the person redeeming the unit is the holder of a recorded*
29 *security interest on the unit or the holder's successor in interest:*

30 (1) *An original or certified copy of the deed of trust*
31 *securing the unit or a certified copy of any other recorded security*
32 *interest of the holder.*

33 (2) *A copy of any assignment necessary to establish the*
34 *claim of the person redeeming the unit, verified by the affidavit of*
35 *that person, or that person's agent, or of a subscribing witness*
36 *thereto.*

37 (3) *An affidavit by the person redeeming the unit, or that*
38 *person's agent, showing the amount then actually due on the lien.*

39 8. *If the unit's owner whose interest in the unit was*
40 *extinguished by the sale redeems the property as provided in this*
41 *section:*

42 (a) *The effect of the sale is terminated, and the unit's owner is*
43 *restored to his or her interest in the unit; and*

44 (b) *The person to whom the redemption amount was paid must*
45 *execute and deliver to the unit's owner a certificate of redemption,*



acknowledged or approved before a person authorized to take acknowledgements of conveyances of real property, and the certificate must be recorded in the office of the recorder of the county in which the unit or part of the unit is situated.

9. If the holder of a recorded security interest redeems the unit as provided in this section and the period for a successive redemption pursuant to subsection 4 or 5 has expired, the person conducting the sale shall:

(a) Make, execute and, if the amount required to redeem the unit is paid to the person from whom the unit is redeemed, deliver to the person who redeemed the unit or his or her successor or assign, a deed without warranty which conveys to the person who redeemed the unit all title of the unit's owner to the unit; and

(b) Deliver a copy of the deed to the Ombudsman within 30 days after the deed is delivered to the person who redeemed the unit, or his or her successor or assign.

10. If no redemption is made within 60 days after the date of sale, the person conducting the sale shall:

(a) Make, execute and, if payment is made, deliver to the purchaser, or his or her successor or assign, a deed without warranty which conveys to the purchaser all title of the unit's owner to the unit; and

(b) Deliver a copy of the deed to the Ombudsman within 30 days after the deed is delivered to the purchaser, or his or her successor or assign.

11. The recitals in a deed made pursuant to ~~[NRS 116.31164]~~ subsection 9 or 10 of:

(a) Default, the mailing of the notice of delinquent assessment, and the ~~mailing and~~ recording of the notice of default and election to sell;

(b) The elapsing of the ~~[90 days; and]~~ 90-day period set forth in paragraph (c) of subsection 1 of NRS 116.31162;

(c) The ~~[giving]~~ recording, mailing, publishing and posting of the notice of sale ~~[;]~~;

(d) The failure to pay the assessments and other sums which are due in accordance with subsection 1 of NRS 116.3116 before the expiration of the period described in paragraph (d) of subsection 1 of NRS 116.31162; and

(e) The recording of the affidavit required to be recorded pursuant to paragraph (e) of subsection 1 of NRS 116.31162,

→ are conclusive proof of the matters recited.

~~[2.—Such a]~~

12. A deed containing ~~[those]~~ the recitals set forth in subsection 11 is conclusive against the unit's former owner, his or her heirs and assigns, and all other persons. The receipt for the



1 purchase money contained in such a deed is sufficient to discharge
2 the purchaser from obligation to see to the proper application of the
3 purchase money.

4 ~~[3. The sale of a unit pursuant to NRS 116.31162, 116.31163
5 and 116.31164 vests in the purchaser the title of the unit's owner
6 without equity or right of redemption.]~~

7 *13. Upon the expiration of the redemption period provided in
8 this section, any failure to comply with the provisions of NRS
9 116.3116 to 116.31168, inclusive, does not affect the rights of a
10 bona fide purchaser or bona fide encumbrancer for value.*

11 **Sec. 7.** NRS 116.31168 is hereby amended to read as follows:

12 116.31168 1. ~~[The provisions of NRS 107.090 apply to the
13 foreclosure of an association's lien as if a deed of trust were being
14 foreclosed. The request must identify the lien by stating the names
15 of the unit's owner and the common interest community.~~

16 ~~—2. An association may, after recording a notice of default and
17 election to sell, waive the default and withdraw the notice or any
18 proceeding to foreclose. The association is thereupon restored to its
19 former position and has the same rights as though the notice had not
20 been recorded.] A person with an interest or any other person who
21 is or may be held liable for any amounts which are the subject of
22 the association's lien pursuant to NRS 116.3116 or the servicer of
23 a loan secured by a deed of trust or mortgage on real property
24 which is subject to such lien desiring a copy of a notice of default
25 and election to sell or notice of sale under the association's lien
26 may record in the office of the county recorder of the county in
27 which any part of the real property is situated an acknowledged
28 request for a copy of the notice of default and election to sell or
29 the notice of sale. The request must:~~

30 ~~(a) State the name and address of the person requesting copies
31 of the notices;~~

32 ~~(b) Identify the recorded instrument by stating the names of
33 the parties thereto, the date of recordation and the recording
34 information where it is recorded; and~~

35 ~~(c) The names of the unit's owner and the common-interest
36 community.~~

37 *2. The association or other person authorized to record the
38 notice of default and election to sell shall, within 10 days after the
39 notice is recorded and mailed pursuant to NRS 116.31162, cause
40 to be deposited in the United States mail an envelope, registered or
41 certified, return receipt requested and with postage prepaid,
42 containing a copy of the notice, addressed to each person who has
43 recorded a request for a copy of the notice.*

44 *3. The association or other person authorized to make the
45 sale shall, at least 20 days before the date of sale, cause to be*



1 *deposited in the United States mail an envelope, registered or*
2 *certified, return receipt requested and with postage prepaid,*
3 *containing a copy of the notice of time and place of sale,*
4 *addressed to each person described in subsection 2.*

5 4. As used in this section:

6 (a) *“Person with an interest” means any person who has or*
7 *claims any right, title or interest in, or lien or charge upon, a unit*
8 *being foreclosed pursuant to NRS 116.31162 to 116.31168,*
9 *inclusive.*

10 (b) *“Recorded instrument” means:*

11 (1) *A mortgage, deed of trust, trust deed, security deed,*
12 *contract for deed, land sales contract, lease intended as security,*
13 *assignment of lease or rents intended as security, pledge of an*
14 *ownership interest in an association and any other consensual lien*
15 *or contract for retention of title intended as security for an*
16 *obligation or otherwise constituting a security interest on a unit;*
17 *or*

18 (2) *A lease or other agreement providing for the occupancy*
19 *of a unit,*

20 *↳ which instrument or some memorandum thereof has been*
21 *recorded in the office of the county recorder of the county in*
22 *which any part of the unit is located.*

23 **Sec. 8.** NRS 107.086 is hereby amended to read as follows:

24 107.086 1. Except as otherwise provided in this subsection,
25 in addition to the requirements of NRS 107.085, the exercise of the
26 power of sale pursuant to NRS 107.080 with respect to any trust
27 agreement which concerns owner-occupied housing is subject to the
28 provisions of this section. The provisions of this section do not
29 apply to the exercise of the power of sale if the notice of default and
30 election to sell recorded pursuant to subsection 2 of NRS 107.080
31 includes an affidavit and a certification indicating that, pursuant to
32 NRS 107.130, an election has been made to use the expedited
33 procedure for the exercise of the power of sale with respect to
34 abandoned residential property.

35 2. The trustee shall not exercise a power of sale pursuant to
36 NRS 107.080 unless the trustee:

37 (a) Includes with the notice of default and election to sell which
38 is mailed to the grantor or the person who holds the title of record as
39 required by subsection 3 of NRS 107.080:

40 (1) Contact information which the grantor or the person who
41 holds the title of record may use to reach a person with authority to
42 negotiate a loan modification on behalf of the beneficiary of the
43 deed of trust;



(2) Contact information for at least one local housing counseling agency approved by the United States Department of Housing and Urban Development;

(3) A notice provided by the Mediation Administrator indicating that the grantor or the person who holds the title of record will be enrolled to participate in mediation pursuant to this section if he or she pays to the Mediation Administrator his or her share of the fee established pursuant to subsection 11; and

(4) A form upon which the grantor or the person who holds the title of record may indicate an election to waive mediation pursuant to this section and one envelope addressed to the trustee and one envelope addressed to the Mediation Administrator, which the grantor or the person who holds the title of record may use to comply with the provisions of subsection 3;

(b) In addition to including the information described in paragraph (a) with the notice of default and election to sell which is mailed to the grantor or the person who holds the title of record as required by subsection 3 of NRS 107.080, provides to the grantor or the person who holds the title of record the information described in paragraph (a) concurrently with, but separately from, the notice of default and election to sell which is mailed to the grantor or the person who holds the title of record as required by subsection 3 of NRS 107.080;

(c) Serves a copy of the notice upon the Mediation Administrator; ~~and~~

(d) *If the owner-occupied housing is located within a common-interest community, notifies the unit-owners' association of the common-interest community, not later than 10 days after mailing the copy of the notice of default and election to sell as required by subsection 3 of NRS 107.080, that the exercise of the power of sale is subject to the provisions of this section; and*

(e) Causes to be recorded in the office of the recorder of the county in which the trust property, or some part thereof, is situated:

(1) The certificate provided to the trustee by the Mediation Administrator pursuant to subsection 4 or 7 which provides that no mediation is required in the matter; or

(2) The certificate provided to the trustee by the Mediation Administrator pursuant to subsection 8 which provides that mediation has been completed in the matter.

3. If the grantor or the person who holds the title of record elects to waive mediation, he or she shall, not later than 30 days after service of the notice in the manner required by NRS 107.080, complete the form required by subparagraph (4) of paragraph (a) of subsection 2 and return the form to the trustee and the Mediation Administrator by certified mail, return receipt requested. If the



grantor or the person who holds the title of record does not elect to waive mediation, he or she shall, not later than 30 days after the service of the notice in the manner required by NRS 107.080, pay to the Mediation Administrator his or her share of the fee established pursuant to subsection 11. Upon receipt of the share of the fee established pursuant to subsection 11 owed by the grantor or the person who holds title of record, the Mediation Administrator shall notify the trustee, by certified mail, return receipt requested, of the enrollment of the grantor or person who holds the title of record to participate in mediation pursuant to this section and shall assign the matter to a senior justice, judge, hearing master or other designee and schedule the matter for mediation. The trustee shall notify the beneficiary of the deed of trust and every other person with an interest as defined in NRS 107.090, by certified mail, return receipt requested, of the enrollment of the grantor or the person who holds the title of record to participate in mediation. If the grantor or person who holds the title of record is enrolled to participate in mediation pursuant to this section, no further action may be taken to exercise the power of sale until the completion of the mediation.

4. If the grantor or the person who holds the title of record indicates on the form described in subparagraph (4) of paragraph (a) of subsection 2 an election to waive mediation or fails to pay to the Mediation Administrator his or her share of the fee established pursuant to subsection 11, as required by subsection 3, the Mediation Administrator shall, not later than 60 days after the Mediation Administrator receives the form indicating an election to waive mediation or 90 days after the service of the notice in the manner required by NRS 107.080, whichever is earlier, provide to the trustee a certificate which provides that no mediation is required in the matter.

5. Each mediation required by this section must be conducted by a senior justice, judge, hearing master or other designee pursuant to the rules adopted pursuant to subsection 11. The beneficiary of the deed of trust or a representative shall attend the mediation. The grantor or his or her representative, or the person who holds the title of record or his or her representative, shall attend the mediation. The beneficiary of the deed of trust shall bring to the mediation the original or a certified copy of the deed of trust, the mortgage note and each assignment of the deed of trust or mortgage note. If the beneficiary of the deed of trust is represented at the mediation by another person, that person must have authority to negotiate a loan modification on behalf of the beneficiary of the deed of trust or have access at all times during the mediation to a person with such authority.



6. If the beneficiary of the deed of trust or the representative fails to attend the mediation, fails to participate in the mediation in good faith or does not bring to the mediation each document required by subsection 5 or does not have the authority or access to a person with the authority required by subsection 5, the mediator shall prepare and submit to the Mediation Administrator a petition and recommendation concerning the imposition of sanctions against the beneficiary of the deed of trust or the representative. The court may issue an order imposing such sanctions against the beneficiary of the deed of trust or the representative as the court determines appropriate, including, without limitation, requiring a loan modification in the manner determined proper by the court.

7. If the grantor or the person who holds the title of record is enrolled to participate in mediation pursuant to this section but fails to attend the mediation, the Mediation Administrator shall, not later than 30 days after the scheduled mediation, provide to the trustee a certificate which states that no mediation is required in the matter.

8. If the mediator determines that the parties, while acting in good faith, are not able to agree to a loan modification, the mediator shall prepare and submit to the Mediation Administrator a recommendation that the matter be terminated. The Mediation Administrator shall, not later than 30 days after submittal of the mediator's recommendation that the matter be terminated, provide to the trustee a certificate which provides that the mediation required by this section has been completed in the matter.

9. Upon receipt of the certificate provided to the trustee by the Mediation Administrator pursuant to subsection 4, 7 or 8, if the property is located within a common-interest community, the trustee shall *, not later than 10 days after receipt of the certificate,* notify the ~~[unit owner's]~~ *unit-owners'* association ~~[organized under NRS 116.3101]~~ of the existence of the certificate.

10. During the pendency of any mediation pursuant to this section, a unit's owner must continue to pay any obligation, other than any past due obligation.

11. The Supreme Court shall adopt rules necessary to carry out the provisions of this section. The rules must, without limitation, include provisions:

(a) Designating an entity to serve as the Mediation Administrator pursuant to this section. The entities that may be so designated include, without limitation, the Administrative Office of the Courts, the district court of the county in which the property is situated or any other judicial entity.

(b) Ensuring that mediations occur in an orderly and timely manner.



(c) Requiring each party to a mediation to provide such information as the mediator determines necessary.

(d) Establishing procedures to protect the mediation process from abuse and to ensure that each party to the mediation acts in good faith.

(e) Establishing a total fee of not more than \$400 that may be charged and collected by the Mediation Administrator for mediation services pursuant to this section and providing that the responsibility for payment of the fee must be shared equally by the parties to the mediation.

12. Except as otherwise provided in subsection 14, the provisions of this section do not apply if:

(a) The grantor or the person who holds the title of record has surrendered the property, as evidenced by a letter confirming the surrender or delivery of the keys to the property to the trustee, the beneficiary of the deed of trust or the mortgagee, or an authorized agent thereof; or

(b) A petition in bankruptcy has been filed with respect to the grantor or the person who holds the title of record under chapter 7, 11, 12 or 13 of Title 11 of the United States Code and the bankruptcy court has not entered an order closing or dismissing the case or granting relief from a stay of foreclosure.

13. A noncommercial lender is not excluded from the application of this section.

14. The Mediation Administrator and each mediator who acts pursuant to this section in good faith and without gross negligence are immune from civil liability for those acts.

15. As used in this section:

(a) “Common-interest community” has the meaning ascribed to it in NRS 116.021.

(b) “Mediation Administrator” means the entity so designated pursuant to subsection 11.

(c) “Noncommercial lender” means a lender which makes a loan secured by a deed of trust on owner-occupied housing and which is not a bank, financial institution or other entity regulated pursuant to title 55 or 56 of NRS.

(d) “Obligation” has the meaning ascribed to it in NRS 116.310313.

(e) “Owner-occupied housing” means housing that is occupied by an owner as the owner’s primary residence. The term does not include vacant land or any time share or other property regulated under chapter 119A of NRS.

(f) *“Unit-owners’ association” has the meaning ascribed to it in NRS 116.011.*



1 (g) “Unit’s owner” has the meaning ascribed to it in
2 NRS 116.095.

3 **Sec. 9.** 1. Subsections 1 to 6, inclusive, of NRS 116.31162
4 and NRS 116.31163, as amended by sections 2 and 3 of this act,
5 respectively, apply only to a notice of default and election to sell
6 that is recorded pursuant to paragraph (b) of subsection 1 of
7 NRS 116.31162, as amended by section 2 of this act, on or after
8 October 1, 2015.

9 2. Subsection 7 of NRS 116.31162 and NRS 107.086, as
10 amended by sections 2 and 8 of this act, respectively, apply if a
11 notice of default and election to sell is recorded pursuant to NRS
12 107.080, on or after October 1, 2015.

13 3. NRS 116.311635 and 116.31164, as amended by sections 4
14 and 5 of this act, respectively, apply only if a notice of sale is
15 recorded pursuant to NRS 116.311635, as amended by section 4 of
16 this act, on or after October 1, 2015.

17 4. NRS 116.31166, as amended by section 6 of this act, applies
18 only to a sale of a unit pursuant to NRS 116.31162 to 116.31168,
19 inclusive, as amended by sections 2 to 7, inclusive, of this act,
20 respectively, which occurs on or after October 1, 2015.

