

SENATE BILL NO. 453—COMMITTEE ON JUDICIARY

MARCH 23, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to real property.
(BDR 3-1085)

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 relating to the “one action rule” for recovery of a debt secured by a mortgage or lien on real property; revising provisions governing certain actions to enforce an obligation or debt secured by a mortgage or deed of trust; revising provisions governing the election to participate in mediation in a judicial foreclosure action; revising provisions governing deficiency judgments; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law contains various provisions governing the enforcement of loans secured by deeds of trust or mortgages on real property, including, without limitation, provisions governing actions for the foreclosure of mortgages or deeds of trust, the conduct of foreclosure sales and the award of deficiency judgments, actions by holders of junior mortgages after foreclosure sales, the maintenance of property acquired at a foreclosure sale and the guarantors and sureties. (NRS 40.430-40.495) This bill revises these provisions of existing law.

Sections 2-5 and 16 of this bill transfer the definitions of various terms to new sections and apply these definitions to all provisions of existing law governing the enforcement of loans secured by deeds of trust or mortgages on real property. **Sections 8-15** of this bill make conforming changes so that the defined terms appear in the appropriate provisions of existing law.

Existing law contains the “one action rule,” which generally provides there may be only one action for the recovery of a debt, or the enforcement of a right, secured by a mortgage or other lien on real property, and that the action must be for the foreclosure of the real property securing the debt or obligation. (NRS 40.430) **Section 5.5** of this bill specifically provides that this rule is not applicable to an action for declaratory relief to ascertain the identity of the person who is entitled to



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enforce an instrument evidencing a debt or obligation secured by a mortgage or other lien on real property.

Existing law provides that in a judicial foreclosure action concerning owner-occupied property, the mortgagor may elect to participate in the Foreclosure Mediation Program. (NRS 40.437) **Section 6** of this bill incorporates in this provision the statutory changes made to the Foreclosure Mediation Program during the 2013 Legislative Session, and clarifies that a mortgagor, a grantor of a deed of trust or the person who holds title of record may enroll in the Program when a judicial foreclosure action is filed against him or her.

Section 7 of this bill revises the language of the provision of existing law governing the disposition of surplus money after a foreclosure sale to clarify the language and use terms that are defined in existing law.

Under existing law, to obtain a deficiency judgment after a foreclosure sale, a creditor must file an application with the court within 6 months after the date of the foreclosure sale. (NRS 40.455) Existing law further provides that in certain circumstances a creditor may bring an action against a guarantor, surety or other obligor who is not the borrower to enforce the obligation to pay, satisfy or purchase all or part of the obligation secured by a mortgage or lien on real property. (NRS 40.495) **Section 8** provides that the complaint or other pleading in this action constitutes the application for a deficiency judgment and, thus, the creditor is not required to file an application for a deficiency judgment after the foreclosure sale.

Existing law contains two sections which require a person who purchases or acquires vacant residential property at a foreclosure sale to maintain the property in accordance with certain standards. (NRS 40.464, 107.110) **Sections 12 and 16** combine these provisions into one section.

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

Section 1. Chapter 40 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. *As used in NRS 40.430 to 40.495, inclusive, and sections 3, 4 and 5 of this act, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Foreclosure sale” means the sale of real property to enforce an obligation secured by a mortgage or lien on the property, including the exercise of a trustee’s power of sale pursuant to NRS 107.080.*

Sec. 4. *“Mortgage or other lien” includes a deed of trust, but does not include a lien which arises pursuant to chapter 108 of NRS, pursuant to an assessment under chapter 116, 116B, 117, 119A or 278A of NRS or pursuant to a judgment or decree of any court of competent jurisdiction.*

Sec. 5. *“Sale in lieu of a foreclosure sale” means a sale of real property pursuant to an agreement between a person to whom an obligation secured by a mortgage or other lien on real property is owed and the debtor of that obligation in which the sales price*



of the real property is insufficient to pay the full outstanding balance of the obligation and the costs of the sale. The term includes, without limitation, a deed in lieu of a foreclosure sale.

Sec. 5.5. NRS 40.430 is hereby amended to read as follows:

40.430 1. Except in cases where a person proceeds under subsection 2 of NRS 40.495 or subsection 1 of NRS 40.512, and except as otherwise provided in NRS 118C.220, there may be but one action for the recovery of any debt, or for the enforcement of any right secured by a mortgage or other lien upon real estate. That action must be in accordance with the provisions of NRS 40.430 to 40.459, inclusive ~~H~~, *and sections 3, 4 and 5 of this act.* In that action, the judgment must be rendered for the amount found due the plaintiff, and the court, by its decree or judgment, may direct a sale of the encumbered property, or such part thereof as is necessary, and apply the proceeds of the sale as provided in NRS 40.462.

2. This section must be construed to permit a secured creditor to realize upon the collateral for a debt or other obligation agreed upon by the debtor and creditor when the debt or other obligation was incurred.

3. At any time not later than 5 business days before the date of sale directed by the court, if the deficiency resulting in the action for the recovery of the debt has arisen by failure to make a payment required by the mortgage or other lien, the deficiency may be made good by payment of the deficient sum and by payment of any costs, fees and expenses incident to making the deficiency good. If a deficiency is made good pursuant to this subsection, the sale may not occur.

4. A sale directed by the court pursuant to subsection 1 must be conducted in the same manner as the sale of real property upon execution, by the sheriff of the county in which the encumbered land is situated, and if the encumbered land is situated in two or more counties, the court shall direct the sheriff of one of the counties to conduct the sale with like proceedings and effect as if the whole of the encumbered land were situated in that county.

5. Within 30 days after a sale of property is conducted pursuant to this section, the sheriff who conducted the sale shall record the sale of the property in the office of the county recorder of the county in which the property is located.

6. As used in this section, an "action" does not include any act or proceeding:

(a) To appoint a receiver for, or obtain possession of, any real or personal collateral for the debt or as provided in NRS 32.015.

(b) To enforce a security interest in, or the assignment of, any rents, issues, profits or other income of any real or personal property.



(c) To enforce a mortgage or other lien upon any real or personal collateral located outside of the State which does not, except as required under the laws of that jurisdiction, result in a personal judgment against the debtor.

(d) For the recovery of damages arising from the commission of a tort, including a recovery under NRS 40.750, or the recovery of any declaratory or equitable relief.

(e) For the exercise of a power of sale pursuant to NRS 107.080.

(f) For the exercise of any right or remedy authorized by chapter 104 of NRS or by the Uniform Commercial Code as enacted in any other state **H** , *including, without limitation, an action for declaratory relief pursuant to chapter 30 of NRS to ascertain the identity of the person who is entitled to enforce an instrument pursuant to NRS 104.3309.*

(g) For the exercise of any right to set off, or to enforce a pledge in, a deposit account pursuant to a written agreement or pledge.

(h) To draw under a letter of credit.

(i) To enforce an agreement with a surety or guarantor if enforcement of the mortgage or other lien has been automatically stayed pursuant to 11 U.S.C. § 362 or pursuant to an order of a federal bankruptcy court under any other provision of the United States Bankruptcy Code for not less than 120 days following the mailing of notice to the surety or guarantor pursuant to subsection 1 of NRS 107.095.

(j) To collect any debt, or enforce any right, secured by a mortgage or other lien on real property if the property has been sold to a person other than the creditor to satisfy, in whole or in part, a debt or other right secured by a senior mortgage or other senior lien on the property.

(k) Relating to any proceeding in bankruptcy, including the filing of a proof of claim, seeking relief from an automatic stay and any other action to determine the amount or validity of a debt.

(l) For filing a claim pursuant to chapter 147 of NRS or to enforce such a claim which has been disallowed.

(m) Which does not include the collection of the debt or realization of the collateral securing the debt.

(n) Pursuant to NRS 40.507 or 40.508.

(o) Pursuant to an agreement entered into pursuant to NRS 361.7311 between an owner of the property and the assignee of a tax lien against the property, or an action which is authorized by NRS 361.733.

(p) Which is exempted from the provisions of this section by specific statute.



(q) To recover costs of suit, costs and expenses of sale, attorneys' fees and other incidental relief in connection with any action authorized by this subsection.

Sec. 6. NRS 40.437 is hereby amended to read as follows:

40.437 1. If ~~{a civil}~~ *an* action ~~{for a foreclosure sale}~~ pursuant to NRS 40.430 affecting owner-occupied housing is commenced in a court of competent jurisdiction:

(a) The copy of the complaint served on the mortgagor must include a separate document containing:

(1) Contact information which the mortgagor may use to reach a person with authority to negotiate a loan modification on behalf of the plaintiff;

(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 mortgagor ~~{has the right}~~ *will be enrolled to {seek} 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 of NRS 107.086;* and

(4) A form upon which the mortgagor may indicate an election to enter into mediation or to waive mediation pursuant to this section and one envelope addressed to the plaintiff and one envelope addressed to the Mediation Administrator, which the mortgagor may use to comply with the provisions of subsection 2; and

(b) The plaintiff must submit a copy of the complaint to the Mediation Administrator.

2. ~~{The}~~ *If the* mortgagor *elects to waive mediation, he or she* shall, not later than the date on which an answer to the complaint is due, complete the form required by subparagraph (4) of paragraph (a) of subsection 1 and file the form with the court and return a copy of the form to the plaintiff by certified mail, return receipt requested. If the mortgagor ~~{indicates on the form an election}~~ *does not elect to {enter into} waive mediation, he or she shall, not later than the date on which an answer to the complaint is due, pay to the Mediation Administrator his or her share of the fee established pursuant to subsection 11 of NRS 107.086. Upon receipt of the share of the fee established pursuant to subsection 11 of NRS 107.086 owed by the mortgagor, the Mediation Administrator shall notify the plaintiff, by certified mail, return receipt requested, of the enrollment of the mortgagor 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. Upon the plaintiff's receipt of such notice,* the plaintiff shall notify any



1 person with an interest as defined in NRS 107.090, by certified mail,
2 return receipt requested, of the election of the mortgagor to ~~enter~~
3 ~~into mediation and file the form with the Mediation Administrator,~~
4 ~~who shall assign the matter to a senior justice, judge, hearing master~~
5 ~~or other designee and schedule the matter for~~ **participate in**
6 mediation. The judicial foreclosure action must be stayed until the
7 completion of the mediation. If the mortgagor indicates on the form
8 ~~and~~ **required by subparagraph (4) of paragraph (a) of subsection 1**
9 **of his or her** election to waive mediation or fails to ~~file the form~~
10 ~~with the court and return a copy of the form to the plaintiff~~ **pay the**
11 **Mediation Administrator his or her share of the fee established**
12 **pursuant to subsection 11 of NRS 107.086,** as required by this
13 subsection, no mediation is required in the action ~~and~~ **and the action**
14 **pursuant to NRS 40.430 must proceed.**

15 3. Each mediation required by this section must be conducted
16 by a senior justice, judge, hearing master or other designee pursuant
17 to the rules adopted pursuant to subsection 11 of NRS 107.086. The
18 plaintiff or a representative, and the mortgagor or his or her
19 representative, shall attend the mediation. If the plaintiff is
20 represented at the mediation by another person, that person must
21 have authority to negotiate a loan modification on behalf of the
22 plaintiff or have access at all times during the mediation to a person
23 with such authority.

24 4. If the plaintiff or the representative fails to attend the
25 mediation, fails to participate in the mediation in good faith or does
26 not have the authority or access to a person with the authority
27 required by subsection 3, the mediator shall prepare and submit to
28 the Mediation Administrator and the court a petition and
29 recommendation concerning the imposition of sanctions against the
30 plaintiff or the representative. The court may issue an order
31 imposing such sanctions against the plaintiff or the representative as
32 the court determines appropriate, including, without limitation,
33 requiring a loan modification in the manner determined proper by
34 the court.

35 5. If the mortgagor ~~elects~~ **is enrolled** to ~~enter into~~
36 **participate in** mediation ~~and~~ **pursuant to this section but** fails to
37 attend the mediation, no mediation is required and the judicial
38 foreclosure action must proceed as if the mortgagor had ~~not~~
39 elected to ~~enter into~~ **wave** mediation.

40 6. If the mediator determines that the parties, while acting in
41 good faith, are not able to agree to a loan modification, the mediator
42 shall prepare and submit to the court and the Mediation
43 Administrator a recommendation that the mediation be terminated.
44 The court may terminate the mediation and proceed with the judicial
45 foreclosure action.



7. The rules adopted by the Supreme Court pursuant to subsection 11 of NRS 107.086 apply to a mediation conducted pursuant to this section, and the Supreme Court may adopt any additional rules necessary to carry out the provisions of this section.

8. Except as otherwise provided in subsection 10, the provisions of this section do not apply if:

(a) The mortgagor 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 defendant under 11 U.S.C. Chapter 7, 11, 12 or 13 and the bankruptcy court has not entered an order closing or dismissing the case or granting relief from a stay of foreclosure.

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

10. 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.

11. As used in this section:

(a) "Mediation Administrator" has the meaning ascribed to it in NRS 107.086.

(b) *"Mortgagor" includes the grantor of a deed of trust or the person who holds the title of record to the real property.*

(c) "Noncommercial lender" has the meaning ascribed to it in NRS 107.086.

~~(c)~~ (d) "Owner-occupied housing" has the meaning ascribed to it in NRS 107.086.

Sec. 7. NRS 40.440 is hereby amended to read as follows:

40.440 ~~If there is surplus money remaining after payment of the amount due on the mortgage or other lien, with costs,]~~
Following a foreclosure sale, the court may cause the ~~[same]~~
proceeds of the foreclosure sale to be paid to the ~~[person]~~ *persons* entitled to it pursuant to NRS 40.462, and in the meantime may direct it to be deposited in court.

Sec. 8. NRS 40.455 is hereby amended to read as follows:

40.455 1. Except as otherwise provided in subsection 3, upon application of the judgment creditor or the beneficiary of the deed of trust within 6 months after the date of the foreclosure sale ~~[for the trustee's sale held pursuant to NRS 107.080, respectively,]~~ and after the required hearing, the court shall award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if it appears from the sheriff's return or the recital of consideration in the trustee's deed that there is a deficiency of the proceeds of the sale



1 and a balance remaining due to the judgment creditor or the
2 beneficiary of the deed of trust, respectively.

3 2. If the indebtedness is secured by more than one parcel of
4 real property, more than one interest in the real property or more
5 than one mortgage or deed of trust, the 6-month period begins to run
6 after the date of the foreclosure sale ~~for trustee's sale~~ of the last
7 parcel or other interest in the real property securing the
8 indebtedness, but in no event may the application be filed more than
9 2 years after the initial foreclosure sale . ~~for trustee's sale.~~

10 3. If the judgment creditor or the beneficiary of the deed of
11 trust is a financial institution, the court may not award a deficiency
12 judgment to the judgment creditor or the beneficiary of the deed of
13 trust, even if there is a deficiency of the proceeds of the sale and a
14 balance remaining due the judgment creditor or beneficiary of the
15 deed of trust, if:

16 (a) The real property is a single-family dwelling and the debtor
17 or grantor was the owner of the real property at the time of the
18 foreclosure sale ; ~~for trustee's sale;~~

19 (b) The debtor or grantor used the amount for which the real
20 property was secured by the mortgage or deed of trust to purchase
21 the real property;

22 (c) The debtor or grantor continuously occupied the real
23 property as the debtor's or grantor's principal residence after
24 securing the mortgage or deed of trust; and

25 (d) The debtor or grantor did not refinance the mortgage or deed
26 of trust after securing it.

27 4. *For purposes of an action against a guarantor, surety or*
28 *other obligor of an indebtedness or obligation secured by a*
29 *mortgage or lien upon real property pursuant to NRS 40.495, the*
30 *term "application" includes, without limitation, a complaint or*
31 *other pleading to collect the indebtedness or obligation which is*
32 *filed before the date and time of the foreclosure sale unless a*
33 *judgment has been entered in such action as provided in*
34 *paragraph (b) of subsection 4 of NRS 40.495.*

35 5. As used in this section, "financial institution" has the
36 meaning ascribed to it in NRS 363A.050.

37 **Sec. 9.** NRS 40.457 is hereby amended to read as follows:

38 40.457 1. Before awarding a deficiency judgment under NRS
39 40.455, the court shall hold a hearing and shall take evidence
40 presented by either party concerning the fair market value of the
41 property sold as of the date of foreclosure sale . ~~for trustee's sale.~~
42 Notice of such hearing shall be served upon all defendants who have
43 appeared in the action and against whom a deficiency judgment is
44 sought, or upon their attorneys of record, at least 15 days before the
45 date set for hearing.



2. Upon application of any party made at least 10 days before the date set for the hearing the court shall, or upon its own motion the court may, appoint an appraiser to appraise the property sold as of the date of foreclosure sale . ~~for trustee's sale.~~ Such appraiser shall file with the clerk the appraisal, which is admissible in evidence. The appraiser shall take an oath that the appraiser has truly, honestly and impartially appraised the property to the best of the appraiser's knowledge and ability. Any appraiser so appointed may be called and examined as a witness by any party or by the court. The court shall fix a reasonable compensation for the appraiser, but the appraiser's fee shall not exceed similar fees for similar services in the county where the encumbered land is situated.

Sec. 10. NRS 40.458 is hereby amended to read as follows:

40.458 1. If the judgment creditor or the beneficiary of the deed of trust who applies for a deficiency judgment is a banking or other financial institution, the court may not award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if:

(a) The real property is a single-family dwelling and the debtor or the grantor of the deed of trust was the owner of the real property at the time of the sale in lieu of a foreclosure sale;

(b) The debtor or grantor used the amount for which the real property was secured by the mortgage or deed of trust to purchase the real property;

(c) The debtor or grantor continuously occupied the real property as the debtor's or grantor's principal residence after securing the mortgage or deed of trust;

(d) The debtor or grantor and the banking or other financial institution entered into an agreement to sell the real property secured by the mortgage or deed of trust to a third party for an amount less than the indebtedness secured thereby; and

(e) The agreement entered into pursuant to paragraph (d):

(1) Does not state the amount of money still owed to the banking or other financial institution by the debtor or grantor or does not authorize the banking or other financial institution to recover that amount from the debtor or grantor; and

(2) Contains a conspicuous statement that has been acknowledged by the signature of the banking or other financial institution and the debtor or grantor which provides that the banking or other financial institution has waived its right to recover the amount owed by the debtor or grantor and which sets forth the amount of recovery that is being waived.

2. As used in this section ~~f~~:

~~—(a) “Banking”~~ , **“banking** or other financial institution” means any bank, savings and loan association, savings bank, thrift



company, credit union or other financial institution that is licensed, registered or otherwise authorized to do business in this State.

~~“(b) “Sale in lieu of a foreclosure sale” means a sale of real property pursuant to an agreement between a person to whom an obligation secured by a mortgage or other lien on real property is owed and the debtor of that obligation in which the sales price of the real property is insufficient to pay the full outstanding balance of the obligation and the costs of the sale. The term includes, without limitation, a deed in lieu of foreclosure.”]~~

Sec. 11. NRS 40.462 is hereby amended to read as follows:

40.462 1. Except as otherwise provided by specific statute, this section governs the distribution of the proceeds of a foreclosure sale. The provisions of NRS 40.455, 40.457 and 40.459 do not affect the right to receive those proceeds, which vests at the time of the foreclosure sale. The purchase of any interest in the property at the foreclosure sale, and the subsequent disposition of the property, does not affect the right of the purchaser to the distribution of proceeds pursuant to paragraph (c) of subsection 2, or to obtain a deficiency judgment pursuant to NRS 40.455, 40.457 and 40.459.

2. The proceeds of a foreclosure sale must be distributed in the following order of priority:

(a) Payment of the reasonable expenses of taking possession, maintaining, protecting and leasing the property, the costs and fees of the foreclosure sale, including reasonable trustee’s fees, applicable taxes and the cost of title insurance and, to the extent provided in the legally enforceable terms of the mortgage or lien, any advances, reasonable attorney’s fees and other legal expenses incurred by the foreclosing creditor and the person conducting the foreclosure sale.

(b) Satisfaction of the obligation being enforced by the foreclosure sale.

(c) Satisfaction of obligations secured by any junior mortgages or liens on the property, in their order of priority.

(d) Payment of the balance of the proceeds, if any, to the debtor or the debtor’s successor in interest.

➤ If there are conflicting claims to any portion of the proceeds, the person conducting the foreclosure sale is not required to distribute that portion of the proceeds until the validity of the conflicting claims is determined through interpleader or otherwise to the person’s satisfaction.

3. A person who claims a right to receive the proceeds of a foreclosure sale pursuant to paragraph (c) of subsection 2 must, upon the written demand of the person conducting the foreclosure sale, provide:



(a) Proof of the obligation upon which the claimant claims a right to the proceeds; and

(b) Proof of the claimant's interest in the mortgage or lien, unless that proof appears in the official records of a county in which the property is located.

➤ Such a demand is effective upon personal delivery or upon mailing by registered or certified mail, return receipt requested, to the last known address of the claimant. Failure of a claimant to provide the required proof within 15 days after the effective date of the demand waives the claimant's right to receive those proceeds.

~~[4.—As used in this section, “foreclosure sale” means the sale of real property to enforce an obligation secured by a mortgage or lien on the property, including the exercise of a trustee’s power of sale pursuant to NRS 107.080.]~~

Sec. 12. NRS 40.464 is hereby amended to read as follows:

40.464 1. Any vacant residential property purchased or acquired by a person at a foreclosure sale ~~[pursuant to NRS 40.430]~~ must be maintained by that person in accordance with subsection 2.

2. In addition to complying with any other ordinance or rule as required by the applicable governmental entity, the purchaser shall care for the exterior of the property, including, without limitation:

(a) Limiting the excessive growth of foliage which would otherwise diminish the value of that property or of the surrounding properties;

(b) Preventing trespassers from remaining on the property;

(c) Preventing mosquito larvae from growing in standing water; and

(d) Preventing any other condition that creates a public nuisance.

3. If a person violates subsection 2, the applicable governmental entity shall mail to the last known address of the person, by certified mail, a notice:

(a) Describing the violation;

(b) Informing the person that a civil penalty may be imposed pursuant to this section unless the person acts to correct the violation within 14 days after the date of receipt of the notice and completes the correction within 30 days after the date of receipt of the notice; and

(c) Informing the person that the person may contest the allegation pursuant to subsection 4.

4. If a person, within 5 days after a notice is mailed to the person pursuant to subsection 3, requests a hearing to contest the allegation of a violation of subsection 2, the applicable governmental entity shall apply for a hearing before a court of competent jurisdiction.



5. Except as otherwise provided in subsection 8, in addition to any other penalty, the applicable governmental entity may impose a civil penalty of not more than \$1,000 per day for a violation of subsection 2:

(a) Commencing on the day following the expiration of the period of time described in subsection 3; or

(b) If the person requested a hearing pursuant to subsection 4, commencing on the day following a determination by the court in favor of the applicable governmental entity.

6. The applicable governmental entity may waive or extend the period of time described in subsection 3 if:

(a) The person to whom a notice is sent pursuant to subsection 3 makes a good faith effort to correct the violation; and

(b) The violation cannot be corrected in the period of time described in subsection 3.

7. Any penalty collected by the applicable governmental entity pursuant to this section must be directed to local nuisance abatement programs.

8. The applicable governmental entity may not assess any penalty pursuant to this section in addition to any penalty prescribed by a local ordinance. This section shall not be deemed to preempt any local ordinance.

9. If the applicable governmental entity assesses any penalty pursuant to this section, any lien related thereto must be recorded in the office of the county recorder.

10. As used in this section, "applicable governmental entity" means:

(a) If the property is within the boundaries of a city, the governing body of the city; and

(b) If the property is not within the boundaries of a city, the board of county commissioners of the county in which the property is located.

Sec. 13. NRS 40.495 is hereby amended to read as follows:

40.495 1. The provisions of NRS 40.475 and 40.485 may be waived by the guarantor, surety or other obligor only after default.

2. Except as otherwise provided in subsection 5, a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, may waive the provisions of NRS 40.430. If a guarantor, surety or other obligor waives the provisions of NRS 40.430, an action for the enforcement of that person's obligation to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a mortgage or lien upon real property may be maintained separately and independently from:

(a) An action on the debt;

(b) The exercise of any power of sale;



(c) Any action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby; and

(d) Any other proceeding against a mortgagor or grantor of a deed of trust.

3. If the obligee maintains an action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby, the guarantor, surety or other obligor may assert any legal or equitable defenses provided pursuant to the provisions of NRS 40.451 to 40.4639, inclusive.

4. If, before a foreclosure sale of real property, the obligee commences an action against a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, to enforce an obligation to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a mortgage or lien upon the real property:

(a) The court must hold a hearing and take evidence presented by either party concerning the fair market value of the property as of the date of the commencement of the action. Notice of such hearing must be served upon all defendants who have appeared in the action and against whom a judgment is sought, or upon their attorneys of record, at least 15 days before the date set for the hearing.

(b) After the hearing, if the court awards a money judgment against the guarantor, surety or other obligor who is personally liable for the debt, the court must not render judgment for more than:

(1) The amount by which the amount of the indebtedness exceeds the fair market value of the property as of the date of the commencement of the action; or

(2) If a foreclosure sale is concluded before a judgment is entered, the amount that is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured,

↳ whichever is the lesser amount.

5. The provisions of NRS 40.430 may not be waived by a guarantor, surety or other obligor if the mortgage or lien:

(a) Secures an indebtedness for which the principal balance of the obligation was never greater than \$500,000;

(b) Secures an indebtedness to a seller of real property for which the obligation was originally extended to the seller for any portion of the purchase price;

(c) Is secured by real property which is used primarily for the production of farm products as of the date the mortgage or lien upon the real property is created; or

(d) Is secured by real property upon which:

(1) The owner maintains the owner's principal residence;

(2) There is not more than one residential structure; and



1 (3) Not more than four families reside.

2 ~~[6. As used in this section, "foreclosure sale" has the meaning~~
3 ~~ascribed to it in NRS 40.462.]~~

4 **Sec. 14.** NRS 107.140 is hereby amended to read as follows:

5 107.140 1. No provision of the laws of this State may be
6 construed to require a sale in lieu of a foreclosure sale to be an
7 arm's length transaction or to prohibit a sale in lieu of a foreclosure
8 sale that is not an arm's length transaction.

9 2. As used in this section, "sale in lieu of a foreclosure sale"
10 has the meaning ascribed to it in ~~[NRS 40.4634.]~~ **section 5 of this**
11 **act.**

12 **Sec. 15.** NRS 107.420 is hereby amended to read as follows:

13 107.420 "Foreclosure prevention alternative" means a
14 modification of a loan secured by the most senior residential
15 mortgage loan on the property or any other loss mitigation option.
16 The term includes, without limitation, a sale in lieu of a foreclosure
17 sale, as defined in ~~[NRS 40.4634.]~~ **section 5 of this act.**

18 **Sec. 16.** NRS 40.433, 40.4631, 40.4632, 40.4633, 40.4634 and
19 107.110 are hereby repealed.

LEADLINES OF REPEALED SECTIONS

40.433 "Mortgage or other lien" defined.

40.4631 Definitions.

40.4632 "Foreclosure sale" defined.

40.4633 "Mortgage or other lien" defined.

40.4634 "Sale in lieu of a foreclosure sale" defined.

107.110 Maintenance of residential property purchased at
trustee's sale.

