

SENATE BILL NO. 33—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE OFFICE OF THE GOVERNOR)

PREFILED NOVEMBER 16, 2016

Referred to Committee on Judiciary

SUMMARY—Prohibits the foreclosure of real property owned by certain military personnel or their dependents in certain circumstances. (BDR 3-164)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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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; prohibiting the foreclosure of real property owned by certain military personnel or their dependents in certain circumstances; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 The federal Servicemembers Civil Relief Act, 50 U.S.C. § 3901 et seq.,
2 generally provides for the temporary suspension of certain judicial and
3 administrative proceedings and transactions that could adversely affect the civil
4 rights of a servicemember during his or her military service. (50 U.S.C. § 3902)
5 The Act provides that in any action filed during, or within 1 year after, a
6 servicemember’s period of military service to enforce an obligation on real or
7 personal property owned by a servicemember that: (1) originated before the period
8 of such military service and for which the servicemember is still obligated; and (2)
9 is secured by a mortgage, trust deed or other security in the nature of a mortgage, a
10 court is generally authorized or required, depending on the circumstances, to stay
11 the proceedings or adjust the obligation to preserve the interests of all parties. The
12 Act further provides that absent a court order or agreement, a sale, foreclosure or
13 seizure of property for a breach of any such obligation is not valid if it is made
14 during or within 1 year after the period of the servicemember’s military service.
15 Any person who knowingly makes or causes to be made a sale, foreclosure or
16 seizure of property in violation of such a provision, or knowingly attempts to do so,
17 is guilty of a misdemeanor. (50 U.S.C. § 3953) Additionally, the Act provides that
18 upon application to a court, a dependent of a servicemember is entitled to the
19 protections offered to a servicemember if the ability of the dependent to comply



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with certain obligations is materially affected by the servicemember's military service. (50 U.S.C. § 3959)

The provisions of the Act that grant protection from a sale, foreclosure or seizure of property for a period of 1 year after a servicemember's military service currently remain effective until December 31, 2017, and on January 1, 2018, the period of protection will decrease to 90 days. (Section 710(d) of the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, Public Law 112-154, 126 Stat. 1208; section 2 of the Foreclosure Relief and Extension for Servicemembers Act of 2015, Public Law 114-142, 130 Stat. 326)

This bill grants under Nevada law the period of protection currently provided under federal law. **Section 1** of this bill provides that if a mortgagor or grantor of a deed of trust under a residential mortgage loan is a servicemember or, in certain circumstances, a dependent of a servicemember, a person is prohibited from conducting a foreclosure sale during any period the servicemember is on active duty or deployment or for a period of 1 year immediately following the end of such active duty or deployment. **Section 1** also provides that in any civil action for a foreclosure sale that is filed against a servicemember or, if applicable, a dependent of a servicemember while the servicemember is on active duty or deployment or during the 1-year period immediately following the end of such active duty or deployment, the court is authorized or required, depending on the circumstances, to stay the proceedings in the action for a certain period or issue an order that conserves the interests of the parties unless the court determines that the ability of the servicemember or dependent to comply with the terms of the obligation secured by the residential mortgage loan is not materially affected by the servicemember's active duty or deployment. **Section 1** further provides that any such protection against foreclosure only applies to a residential mortgage loan that was secured before the servicemember was called to active duty or deployment. Finally, **section 1** provides that any person who knowingly conducts a foreclosure sale in violation of the provisions of **section 1** is guilty of a misdemeanor and is liable for actual damages, reasonable attorney's fees and costs incurred by the injured party.

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 a new section to read as follows:

1. Notwithstanding any other provision of law and except as otherwise ordered by a court of competent jurisdiction, if a borrower is a servicemember or, in accordance with subsection 5, a dependent of a servicemember, the mortgage servicer, mortgagee, trustee, beneficiary of the deed of trust or an authorized agent of such a person shall not conduct a foreclosure sale during any period that the servicemember is on active duty or deployment or for a period of 1 year immediately following the end of such active duty or deployment.

2. Except as otherwise provided in subsection 3, in any civil action for a foreclosure sale pursuant to NRS 40.430 involving a failure to make a payment required by a residential mortgage loan that is filed against a servicemember or, in accordance with subsection 5, a dependent of a servicemember, while the



1 *servicemember is on active duty or deployment or during the 1-*
2 *year period immediately following the end of such active duty or*
3 *deployment, the court may, on its own motion after a hearing, or*
4 *shall, on a motion or on behalf of the servicemember or dependent*
5 *of the servicemember, as applicable, do one or both of the*
6 *following:*

7 *(a) Stay the proceedings in the action until at least 1 year after*
8 *the end of the servicemember's active duty or deployment; or*

9 *(b) Issue another order that is equitable to conserve the*
10 *interests of the parties.*

11 *3. The provisions of subsection 2 do not apply if the court*
12 *determines that the ability of the servicemember or dependent of*
13 *the servicemember to comply with the terms of the obligation*
14 *secured by the residential mortgage loan is not materially affected*
15 *by the servicemember's active duty or deployment.*

16 *4. The provisions of this section apply only to a residential*
17 *mortgage loan that was secured by a servicemember or, in*
18 *accordance with subsection 5, a dependent of a servicemember,*
19 *before the servicemember was called to active duty or deployment.*

20 *5. Upon application to the court, a dependent of a*
21 *servicemember is entitled to the protections provided to a*
22 *servicemember pursuant to this section if the ability of the*
23 *dependent to make payments required by a residential mortgage*
24 *loan is materially affected by the servicemember's active duty or*
25 *deployment.*

26 *6. Any person who knowingly conducts a foreclosure sale in*
27 *violation of this section is:*

28 *(a) Guilty of a misdemeanor; and*

29 *(b) Liable for actual damages, reasonable attorney's fees and*
30 *costs incurred by the injured party.*

31 *7. As used in this section:*

32 *(a) "Active duty" means full-time duty status in the active*
33 *uniformed service of the United States, including members of the*
34 *National Guard and Reserve on active duty orders pursuant to 10*
35 *U.S.C. §§ 1209 and 1211.*

36 *(b) "Borrower" has the meaning ascribed to it in*
37 *NRS 107.410.*

38 *(c) "Dependent" has the meaning ascribed to it in 50 U.S.C. §*
39 *3911.*

40 *(d) "Deployment" means the movement or mobilization of a*
41 *servicemember from his or her home station to another location*
42 *for more than 90 days pursuant to military orders.*

43 *(e) "Military" means the Armed Forces of the United States, a*
44 *reserve component thereof or the National Guard.*



1 (f) *“Mortgage servicer” has the meaning ascribed to it in*
2 *NRS 107.440.*

3 (g) *“Residential mortgage loan” has the meaning ascribed to it*
4 *in NRS 107.450.*

5 (h) *“Servicemember” means a member of the military.*

6 **Sec. 2.** NRS 40.426 is hereby amended to read as follows:

7 40.426 As used in NRS 40.426 to 40.495, inclusive, *and*
8 *section 1 of this act*, unless the context otherwise requires, the
9 words and terms defined in NRS 40.427, 40.428 and 40.429 have
10 the meanings ascribed to them in those sections.

11 **Sec. 3.** NRS 40.430 is hereby amended to read as follows:

12 40.430 1. Except in cases where a person proceeds under
13 subsection 2 of NRS 40.495 or subsection 1 of NRS 40.512, and
14 except as otherwise provided in NRS 118C.220, there may be but
15 one action for the recovery of any debt, or for the enforcement of
16 any right secured by a mortgage or other lien upon real estate. That
17 action must be in accordance with the provisions of NRS 40.426 to
18 40.459, inclusive ~~H~~, *and section 1 of this act*. In that action, the
19 judgment must be rendered for the amount found due the plaintiff,
20 and the court, by its decree or judgment, may direct a sale of the
21 encumbered property, or such part thereof as is necessary, and apply
22 the proceeds of the sale as provided in NRS 40.462.

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

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

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

42 5. Within 30 days after a sale of property is conducted pursuant
43 to this section, the sheriff who conducted the sale shall record the
44 sale of the property in the office of the county recorder of the county
45 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, 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. 4. NRS 107.480 is hereby amended to read as follows:

107.480 1. In addition to the requirements of NRS 107.085 and 107.086, *and section 1 of this act*, the exercise of a trustee's power of sale pursuant to NRS 107.080 with respect to a deed of trust securing a residential mortgage loan is subject to the provisions of NRS 107.400 to 107.560, inclusive.

2. In addition to the requirements of NRS 40.430 to 40.4639, inclusive, *and section 1 of this act*, a civil action for a foreclosure sale pursuant to NRS 40.430 involving a failure to make a payment required by a residential mortgage loan is subject to the requirements of NRS 107.400 to 107.560, inclusive.

Sec. 5. NRS 107.500 is hereby amended to read as follows:

107.500 1. At least 30 calendar days before recording a notice of default and election to sell pursuant to subsection 2 of NRS 107.080 or commencing a civil action for a foreclosure sale pursuant to NRS 40.430 involving a failure to make a payment required by a residential mortgage loan and at least 30 calendar days after the borrower's default, the mortgage servicer, mortgagee or beneficiary of the deed of trust shall mail, by first-class mail, a notice addressed to the borrower at the borrower's primary address as indicated in the records of the mortgage servicer, mortgagee or beneficiary of the deed of trust, which contains:

(a) A statement that if the borrower is a servicemember or a dependent of a servicemember, he or she may be entitled to certain protections under the federal Servicemembers Civil Relief Act, 50 U.S.C. ~~Appx.~~ §§ ~~501~~ 3901 et seq., *and section 1 of this act*, regarding the servicemember's interest rate and the risk of foreclosure, and counseling for covered servicemembers that is available from Military OneSource and the United States Armed Forces Legal Assistance or any other similar agency.

(b) A summary of the borrower's account which sets forth:

(1) The total amount of payment necessary to cure the default and reinstate the residential mortgage loan or to bring the residential mortgage loan into current status;

(2) The amount of the principal obligation under the residential mortgage loan;



(3) The date through which the borrower's obligation under the residential mortgage loan is paid;

(4) The date of the last payment by the borrower;

(5) The current interest rate in effect for the residential mortgage loan, if the rate is effective for at least 30 calendar days;

(6) The date on which the interest rate for the residential mortgage loan may next reset or adjust, unless the rate changes more frequently than once every 30 calendar days;

(7) The amount of the prepayment fee charged under the residential mortgage loan, if any;

(8) A description of any late payment fee charged under the residential mortgage loan;

(9) A telephone number or electronic mail address that the borrower may use to obtain information concerning the residential mortgage loan; and

(10) The names, addresses, telephone numbers and Internet website addresses of one or more counseling agencies or programs approved by the United States Department of Housing and Urban Development.

(c) A statement of the facts establishing the right of the mortgage servicer, mortgagee or beneficiary of the deed of trust to cause the trustee to exercise the trustee's power of sale pursuant to NRS 107.080 or to commence a civil action for the recovery of any debt, or for the enforcement of any right, under a residential mortgage loan that is not barred by NRS 40.430.

(d) A statement of the foreclosure prevention alternatives offered by, or through, the mortgage servicer, mortgagee or beneficiary of the deed of trust.

(e) A statement that the borrower may request:

(1) A copy of the borrower's promissory note or other evidence of indebtedness;

(2) A copy of the borrower's mortgage or deed of trust;

(3) A copy of any assignment, if applicable, of the borrower's mortgage or deed of trust required to demonstrate the right of the mortgage servicer, mortgagee or beneficiary of the deed of trust to cause the trustee to exercise the trustee's power of sale pursuant to NRS 107.080 or to commence a civil action for the recovery of any debt, or for the enforcement of any right, under a residential mortgage loan that is not barred by NRS 40.430; and

(4) A copy of the borrower's payment history since the borrower was last less than 60 calendar days past due.

2. Unless a borrower has exhausted the process described in NRS 107.520 and 107.530 for applying for a foreclosure prevention alternative offered by, or through, the mortgage servicer, mortgagee or beneficiary of the deed of the trust, not later than 5 business days



1 after a notice of default and election to sell is recorded pursuant to
2 subsection 2 of NRS 107.080 or a civil action for the recovery of
3 any debt, or for the enforcement of any right, under a residential
4 mortgage loan that is not barred by NRS 40.430 is commenced, the
5 mortgage servicer, mortgagee or beneficiary of the deed of trust that
6 offers one or more foreclosure prevention alternatives must send to
7 the borrower a written statement:

8 (a) That the borrower may be evaluated for a foreclosure
9 prevention alternative or, if applicable, foreclosure prevention
10 alternatives;

11 (b) Whether a complete application is required to be submitted
12 by the borrower if the borrower wants to be considered for a
13 foreclosure prevention alternative; and

14 (c) Of the means and process by which a borrower may obtain
15 an application for a foreclosure prevention alternative.

16 **Sec. 6.** This act becomes effective upon passage and approval.

