

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 or a lien against a unit in a common-interest community 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.

~

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; prohibiting the foreclosure of a lien against a unit in a common-interest community 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



* S B 3 3 R 1 *

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

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

29 **Section 1** of this bill grants under Nevada law the period of protection currently
30 provided under federal law. **Section 1** provides that if a mortgagor or grantor of a
31 deed of trust under a residential mortgage loan is a servicemember or, in certain
32 circumstances, a dependent of a servicemember, a person is generally prohibited
33 from initiating or directing or authorizing another person to initiate a foreclosure
34 sale during any period the servicemember is on active duty or deployment or for a
35 period of 1 year immediately following the end of such active duty or deployment.
36 **Section 1** also provides that in any civil action for a foreclosure sale that is filed
37 against a servicemember or, if applicable, a dependent of a servicemember while
38 the servicemember is on active duty or deployment or during the 1-year period
39 immediately following the end of such active duty or deployment, the court is
40 authorized or required, depending on the circumstances, to stay the proceedings in
41 the action for a certain period or adjust the obligation to preserve the interests of the
42 parties unless the court determines that the ability of the servicemember or
43 dependent to comply with the terms of the obligation secured by the residential
44 mortgage loan is not materially affected by the servicemember's active duty or
45 deployment. **Section 1** additionally provides that any such protection against
46 foreclosure only applies to a residential mortgage loan that was secured before the
47 servicemember was called to active duty or deployment. **Section 1** further provides
48 that any person who knowingly initiates or directs or authorizes another person to
49 initiate a foreclosure sale in violation of the provisions of **section 1**, other than a
50 trustee who initiates a foreclosure sale pursuant to the direction or authorization of
51 another person, is guilty of a misdemeanor and may be liable for actual damages,
52 reasonable attorney's fees and costs incurred by the injured party. In imposing any
53 such liability and determining whether to reduce such liability, a court is required to
54 take into consideration any due diligence used by the person before he or she
55 initiated or directed or authorized another person to initiate the foreclosure sale.
56 Finally, **section 1** provides that any applicable statute of limitations or period
57 within which a servicemember is required to submit proof of service that is
58 prescribed by state law is tolled during the period of protection provided pursuant
59 to **section 1**.

60 **Section 5.3** of this bill applies the applicable provisions set forth in **section 1** to
61 the foreclosure of a lien of a unit-owners' association against a unit in a common-
62 interest community and provides that if a unit's owner or his or her successor in
63 interest is a servicemember or, in certain circumstances, a dependent of a
64 servicemember, an association is generally prohibited from initiating the
65 foreclosure of a lien by sale during any period the servicemember is on active duty
66 or deployment or for a period of 1 year immediately following the end of such
67 active duty or deployment. **Section 5.3** also requires a unit-owners' association to:
68 (1) inform each unit's owner or his or her successor in interest that if the person is a
69 servicemember or a dependent of a servicemember, he or she may be entitled to
70 certain protections pursuant to **section 5.3**; and (2) give the person the opportunity



* S B 3 3 R 1 *

to provide any information required to enable the association to verify whether the person is entitled to the protections set forth in **section 5.3**, including, without limitation, the social security number and date of birth of the person. **Section 5.3** also requires that before an association takes certain action relating to the foreclosure of a lien by sale, the association must, if such information is provided, verify whether a unit's owner or his or her successor in interest is entitled to the protections set forth in **section 5.3** or, if such information is not provided, make a good faith effort to verify whether a unit's owner or his or her successor in interest is entitled to such protections.

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, a person shall not initiate or direct or authorize another person to initiate 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 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 may, on its own motion after a hearing, or shall, on a motion or on behalf of the servicemember or dependent of the servicemember, as applicable, do one or both of the following:

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

(b) Adjust the obligation to preserve the interests of the parties.

3. The provisions of subsection 2 do not apply if the court determines that the ability of the servicemember or dependent of the servicemember 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.

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



1 5. Upon application to the court, a dependent of a
2 servicemember is entitled to the protections provided to a
3 servicemember pursuant to this section if the ability of the
4 dependent to make payments required by a residential mortgage
5 loan is materially affected by the servicemember's active duty or
6 deployment.

7 6. Except as otherwise provided in subsection 7, any person
8 who knowingly initiates or directs or authorizes another person to
9 initiate a foreclosure sale in violation of this section:

10 (a) Is guilty of a misdemeanor; and

11 (b) May be liable for actual damages, reasonable attorney's
12 fees and costs incurred by the injured party.

13 7. The provisions of subsection 6 do not apply to a trustee
14 who initiates a foreclosure sale pursuant to the direction or
15 authorization of another person.

16 8. In imposing liability pursuant to paragraph (b) of
17 subsection 6, a court shall, when determining whether to reduce
18 such liability, take into consideration any due diligence used by
19 the person before he or she initiated or directed or authorized
20 another person to initiate the foreclosure sale.

21 9. Notwithstanding any other provision of law, any applicable
22 statute of limitations or period within which a servicemember is
23 required to submit proof of service that is prescribed by state law is
24 tolled during the period of protection provided to a servicemember
25 or dependent of a servicemember pursuant to this section.

26 10. As used in this section:

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

31 (b) "Borrower" has the meaning ascribed to it in
32 NRS 107.410.

33 (c) "Dependent" has the meaning ascribed to it in 50 U.S.C. §
34 3911.

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

38 (e) "Initiate a foreclosure sale" means to commence a civil
39 action for a foreclosure sale pursuant to NRS 40.430 or, in the
40 case of the exercise of a trustee's power of sale pursuant to NRS
41 107.080, to execute and cause to be recorded in the office of the
42 county recorder a notice of the breach and of the election to sell or
43 cause to be sold the property pursuant to paragraph (c) of
44 subsection 2 of NRS 107.080.



1 (f) *“Military” means the Armed Forces of the United States, a*
2 *reserve component thereof or the National Guard.*

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 (i) *“Trustee” means a person described in NRS 107.028.*

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

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

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

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

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

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

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

43 5. Within 30 days after a sale of property is conducted pursuant
44 to this section, the sheriff who conducted the sale shall record the



* S B 3 3 R 1 *

1 sale of the property in the office of the county recorder of the county
2 in which the property is located.

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

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

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

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

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

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

18 (f) For the exercise of any right or remedy authorized by chapter
19 104 of NRS or by the Uniform Commercial Code as enacted in any
20 other state, including, without limitation, an action for declaratory
21 relief pursuant to chapter 30 of NRS to ascertain the identity of the
22 person who is entitled to enforce an instrument pursuant to
23 NRS 104.3309.

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

26 (h) To draw under a letter of credit.

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

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

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

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

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



* S B 3 3 R 1 *

(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;



* S B 3 3 R 1 *

(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



* S B 3 3 R 1 *

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

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

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

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

18 **Sec. 5.3.** Chapter 116 of NRS is hereby amended by adding
19 thereto a new section to read as follows:

20 *1. Notwithstanding any other provision of law and except as*
21 *otherwise provided in subsection 2 or ordered by a court of*
22 *competent jurisdiction, if a unit's owner or his or her successor in*
23 *interest is a servicemember or, in accordance with subsection 3, a*
24 *dependent of a servicemember, an association shall not initiate the*
25 *foreclosure of a lien by sale during any period that the*
26 *servicemember is on active duty or deployment or for a period of 1*
27 *year immediately following the end of such active duty or*
28 *deployment.*

29 *2. The provisions of subsection 1 do not apply if a court*
30 *determines that the ability of the servicemember or dependent of*
31 *the servicemember to comply with the terms of the obligation*
32 *secured by the lien of a unit-owners' association is not materially*
33 *affected by the servicemember's active duty or deployment.*

34 *3. Upon application to the court, a dependent of a*
35 *servicemember is entitled to the protections provided to a*
36 *servicemember pursuant to this section if the ability of the*
37 *dependent to make payments required by a lien of a unit-owners'*
38 *association is materially affected by the servicemember's active*
39 *duty or deployment.*

40 *4. An association shall:*

41 *(a) Inform each unit's owner or his or her successor in*
42 *interest that if the person is a servicemember or a dependent of a*
43 *servicemember, he or she may be entitled to certain protections*
44 *pursuant to this section; and*



1 (b) Give the person the opportunity to provide any information
2 required to enable the association to verify whether he or she is
3 entitled to the protections set forth in this section, including,
4 without limitation, the social security number and date of birth of
5 the person.

6 5. Before an association takes any action pursuant to
7 paragraph (a) of subsection 4 of NRS 116.31162, if information
8 required to verify whether a unit's owner or his or her successor
9 in interest is entitled to the protections set forth in this section:

10 (a) Has been provided to the association pursuant to
11 subsection 4, the association must verify whether the person is
12 entitled to the protections set forth in this section.

13 (b) Has not been provided to the association pursuant to
14 subsection 4, the association must make a good faith effort to
15 verify whether the person is entitled to the protections set forth in
16 this section.

17 6. Any person who knowingly initiates the foreclosure of a
18 lien by sale in violation of this section:

19 (a) Is guilty of a misdemeanor; and

20 (b) May be liable for actual damages, reasonable attorney's
21 fees and costs incurred by the injured party.

22 7. In imposing liability pursuant to paragraph (b) of
23 subsection 6, a court shall, when determining whether to reduce
24 such liability, take into consideration any due diligence used by
25 the person before he or she initiated the foreclosure of the lien by
26 sale.

27 8. Notwithstanding any other provision of law, any applicable
28 statute of limitations or period within which a servicemember is
29 required to submit proof of service that is prescribed by state law is
30 tolled during the period of protection provided to a servicemember
31 or dependent of a servicemember pursuant to this section.

32 9. As used in this section:

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

37 (b) "Dependent" has the meaning ascribed to it in 50 U.S.C. §
38 3911.

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

42 (d) "Initiate the foreclosure of a lien by sale" means to take
43 any action in furtherance of foreclosure of a lien by sale after
44 taking the actions set forth in paragraph (a) of subsection 4 of
45 NRS 116.31162.



1 (e) *“Military” means the Armed Forces of the United States, a*
2 *reserve component thereof or the National Guard.*

3 (f) *“Servicemember” means a member of the military.*

4 Sec. 5.7. NRS 116.31162 is hereby amended to read as
5 follows:

6 116.31162 1. Except as otherwise provided in subsection 5, 6
7 or 7, in a condominium, in a planned community, in a cooperative
8 where the owner’s interest in a unit is real estate under NRS
9 116.1105, or in a cooperative where the owner’s interest in a unit is
10 personal property under NRS 116.1105 and the declaration provides
11 that a lien may be foreclosed under NRS 116.31162 to 116.31168,
12 inclusive, *and section 5.3 of this act*, the association may foreclose
13 its lien by sale after all of the following occur:

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

22 (b) Not less than 30 days after mailing the notice of delinquent
23 assessment pursuant to paragraph (a), the association or other person
24 conducting the sale has executed and caused to be recorded, with the
25 county recorder of the county in which the common-interest
26 community or any part of it is situated, a notice of default and
27 election to sell the unit to satisfy the lien which must contain the
28 same information as the notice of delinquent assessment and which
29 must also comply with the following:

30 (1) Describe the deficiency in payment.

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

33 (I) The amount of the association’s lien that is prior to the
34 first security interest on the unit pursuant to subsection 3 of NRS
35 116.3116 as of the date of the notice;

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

40 (III) The amount of the lien described in sub-
41 subparagraph (I) that is attributable to amounts described in NRS
42 116.310312 as of the date of the notice; and

43 (IV) The amount of the lien described in sub-
44 subparagraph (I) that is attributable to the costs of enforcing the
45 association’s lien as of the date of the notice.



* S B 3 3 R 1 *

(3) State that:

(I) If the holder of the first security interest on the unit does not satisfy 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; and

(II) If, not later than 5 days before the date of the sale, the holder of the first security interest on the unit satisfies the amount of the association's lien that is prior to that first security interest pursuant to subsection 3 of NRS 116.3116 and, not later than 2 days before the date of the sale, a record of such satisfaction is recorded in the office of the recorder of the county in which the unit is located, the association may foreclose its lien by sale but the sale may not 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.

(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 5 days before the date of sale, failed to pay the assessments and other sums that are due to the association in accordance with subsection 1 of NRS 116.3116.

(e) 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, an affidavit which states, based on the direct, personal knowledge of the affiant, the personal knowledge which the affiant acquired by a review of a trustee sale guarantee or a similar product or the personal knowledge which the affiant acquired by a review of the business records of the association or other person conducting the sale, which business records must meet the standards set forth in NRS 51.135, the following:

(1) The name of each holder of a security interest on the unit to which the notice of default and election to sell and the notice of



1 sale was mailed, as required by subsection 2 of NRS 116.31163 and
2 paragraph (d) of subsection 1 of NRS 116.311635; and

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

5 2. The notice of default and election to sell must be signed by
6 the person designated in the declaration or by the association for that
7 purpose or, if no one is designated, by the president of the
8 association.

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

11 (a) The date on which the notice of default and election to sell is
12 recorded; or

13 (b) The date on which a copy of the notice of default and
14 election to sell is mailed by certified or registered mail, return
15 receipt requested, to the unit's owner or his or her successor in
16 interest at his or her address, if known, and at the address of the unit,
17 ↪ whichever date occurs later.

18 4. An association may not mail to a unit's owner or his or her
19 successor in interest a letter of its intent to mail a notice of
20 delinquent assessment pursuant to paragraph (a) of subsection 1,
21 mail the notice of delinquent assessment or take any other action to
22 collect a past due obligation from a unit's owner or his or her
23 successor in interest unless **⚡ the association has complied with**
24 ***the provisions of subsections 4 and 5 of section 5.3 of this act and:***

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

27 (1) A schedule of the fees that may be charged if the unit's
28 owner fails to pay the past due obligation;

29 (2) A proposed repayment plan; and

30 (3) A notice of the right to contest the past due obligation at a
31 hearing before the executive board and the procedures for requesting
32 such a hearing; and

33 (b) Within 30 days after the date on which the information
34 described in paragraph (a) is mailed, the past due obligation has not
35 been paid in full or the unit's owner or his or her successor in
36 interest has not entered into a repayment plan or requested a hearing
37 before the executive board. If the unit's owner or his or her
38 successor in interest requests a hearing or enters into a repayment
39 plan within 30 days after the date on which the information
40 described in paragraph (a) is mailed and is unsuccessful at the
41 hearing or fails to make a payment under the repayment plan within
42 10 days after the due date, the association may take any lawful
43 action pursuant to subsection 1 to enforce its lien.

44 5. The association may not foreclose a lien by sale if the
45 association has not mailed a copy of the notice of default and



1 election to sell and a copy of the notice of sale to each holder of a
2 security interest on the unit in the manner and subject to the
3 requirements set forth in subsection 2 of NRS 116.31163 and
4 paragraph (d) of subsection 1 of NRS 116.311635.

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

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

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

13 7. The association may not foreclose a lien by sale if the
14 association has received notice pursuant to NRS 107.086 that the
15 unit is subject to foreclosure mediation pursuant to that section,
16 unless:

17 (a) The trustee of record has recorded the certificate provided to
18 the trustee pursuant to subparagraph (1) or (2) of paragraph (e) of
19 subsection 2 of NRS 107.086; or

20 (b) The unit's owner has failed to pay to the association any
21 amounts enforceable as assessments pursuant to subsection 1 of
22 NRS 116.3116 that become due during the pendency of foreclosure
23 mediation pursuant to NRS 107.086, other than past due obligations
24 as described in subsection 10 of NRS 107.086.

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

