

ASSEMBLY BILL NO. 142—ASSEMBLYMAN O’NEILL

FEBRUARY 9, 2023

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing certain sales of property. (BDR 2-70)

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 property; authorizing certain sales of property to be conducted on an Internet website or other electronic medium under certain circumstances; revising the time and manner in which certain sales of property may be conducted; revising notice requirements relating to certain sales of property; prohibiting certain persons from becoming a purchaser or being interested in any purchase of certain sales of property; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires a sale of property under execution to be made: (1) at auction to the highest bidder; (2) between the hours of 9 a.m. and 5 p.m.; and (3) for sales of real property, at the courthouse of the county in which the property or some part thereof is situated. (NRS 21.150) **Section 2** of this bill: (1) eliminates the requirement concerning the time of day at which a sale must be conducted; (2) authorizes the officer conducting a sale to conduct the sale on an Internet website or other electronic medium; (3) authorizes a person who operates such an Internet website or other electronic medium to engage in certain activities concerning a sale; and (4) revises certain procedures for the conduct of a sale to account for sales conducted on an Internet website or other electronic medium.

Existing law requires a sale of property pursuant to a trustee’s power of sale to be made: (1) at auction to the highest bidder; (2) between the hours of 9 a.m. and 5 p.m.; and (3) for sales of real property, at the public location in the county designated by the governing body of the county for that purpose. (NRS 107.081) **Section 6** of this bill eliminates the requirement concerning the time of day at which a sale must be conducted. **Section 6** also authorizes the governing body of a county to authorize: (1) a sale to be conducted on an Internet website or other electronic medium; and (2) a person who operates such an Internet website or other electronic medium to engage in certain activities concerning a sale.



Existing law authorizes a deed of trust to adopt by reference certain covenants, including, among others, a covenant setting forth the process by which a sale of property pursuant to a trustee's power of sale may be conducted. (NRS 107.030) **Section 3** of this bill revises the process set forth in that covenant to account for sales conducted on an Internet website or other electronic medium.

Existing law sets forth certain requirements for a sale of property pursuant to a trustee's power of sale that is postponed by oral proclamation. (NRS 107.082) **Section 7** of this bill applies the same requirements to a sale of property pursuant to a trustee's power of sale that is held on an Internet website or other electronic medium and which is postponed by publication of a proclamation on the Internet website or other electronic medium.

Existing law requires certain actions to declare void a sale of property pursuant to a trustee's power of sale to be brought in the county in which the sale took place. (NRS 107.080, 107.0805) **Sections 4 and 5** of this bill require such actions to be brought instead in the county in which the property is located, to account for sales held on an Internet website or other electronic medium.

Existing law requires the sale of a unit in a common-interest community to satisfy a lien held by a unit-owners' association to be conducted: (1) between the hours of 9 a.m. and 5 p.m.; and (2) depending on the county in which the unit is located, at the courthouse in the county or at a public location in the county designated by the governing body of the county to conduct a sale of property pursuant to a trustee's power of sale. (NRS 116.31164) **Section 9** of this bill eliminates the requirement concerning the time of day at which a sale must be held. **Section 9** also authorizes the governing body of a county to authorize: (1) a sale to be conducted on an Internet website or other electronic medium; and (2) a person who operates an Internet website or other electronic medium to engage in certain activities concerning a sale. Finally, **section 9** revises procedures for the conduct of a sale to account for sales conducted on an Internet website or other electronic medium.

Sections 1, 4 and 8 of this bill revise certain requirements relating to the notice that is required before a sale of property under execution, a sale of property pursuant to a trustee's power of sale and a sale of a unit in a common-interest community to require the notice to include certain information concerning the Internet website or electronic medium on which the sale is to be held, if applicable.

Sections 2, 6 and 9 prohibit certain persons from becoming a purchaser at or being interested in any purchase at a sale of property under execution, a sale of property pursuant to a trustee's power of sale and a sale of a unit in a common-interest community.

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

Section 1. NRS 21.130 is hereby amended to read as follows:
21.130 1. Before the sale of property on execution, notice of the sale, in addition to the notice required pursuant to NRS 21.075 and 21.076, must be given as follows:

(a) In cases of perishable property, by posting written notice of the time and place of sale in three public places at the township or city where the sale is to take place **or, if the sale is to be conducted on an Internet website or other electronic medium, where the property is being stored pending the sale,** for such a time



as may be reasonable, considering the character and condition of the property.

(b) In case of other personal property, by posting a similar notice in three public places of the township or city where the sale is to take place **H or, if the sale is to be conducted on an Internet website or other electronic medium, where the property is being stored pending the sale,** not less than 5 or more than 10 days before the sale, and, in case of sale on execution issuing out of a district court, by the publication of a copy of the notice in a newspaper, if there is one in the county, at least twice, the first publication being not less than 10 days before the date of the sale.

(c) In case of real property, by:

(1) Personal service upon each judgment debtor or by registered mail to the last known address of each judgment debtor and, if the property of the judgment debtor is operated as a facility licensed under chapter 449 of NRS, upon the State Board of Health;

(2) Posting a similar notice particularly describing the property, for 20 days successively, in three public places of the township or city where the property is situated and where the property is to be sold **H or, if the sale is to be conducted on an Internet website or other electronic medium, where the property is situated;**

(3) Publishing a copy of the notice three times, once each week, for 3 successive weeks, in a newspaper, if there is one in the county. The cost of publication must not exceed the rate for legal advertising as provided in NRS 238.070. If the newspaper authorized by this section to publish the notice of sale neglects or refuses from any cause to make the publication, then the posting of notices as provided in this section shall be deemed sufficient notice. Notice of the sale of property on execution upon a judgment for any sum less than \$500, exclusive of costs, must be given only by posting in three public places in the county, one of which must be the courthouse;

(4) Recording a copy of the notice in the office of the county recorder;

(5) If the sale of property is a residential foreclosure, posting a copy of the notice in a conspicuous place on the property. In addition to the requirements of NRS 21.140, the notice must not be defaced or removed until the transfer of title is recorded or the property becomes occupied after completion of the sale, whichever is earlier; and

(6) In the case of a foreclosure sale, depositing in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice, addressed to:



(I) Each person who, in accordance with subsection 1 of NRS 107.090, has recorded a request for a copy of a notice of default or notice of sale with respect to the mortgage or other lien being foreclosed;

(II) Each other person with an interest in the real property whose interest or claimed interest is subordinate to the mortgage or other lien being foreclosed; and

(III) An association that, pursuant to subsection 4 of NRS 107.090, has recorded a request for a copy of the deed upon a foreclosure sale.

2. If the sale of property is a residential foreclosure, the notice must include, without limitation:

(a) The physical address of the property; and

(b) The contact information of the party who is authorized to provide information relating to the foreclosure status of the property.

3. If the sale of property is a residential foreclosure, a separate notice must be posted in a conspicuous place on the property and mailed, with a certificate of mailing issued by the United States Postal Service or another mail delivery service, to any tenant or subtenant, if any, other than the judgment debtor, in actual occupation of the premises not later than 3 business days after the notice of the sale is given pursuant to subsection 1. The separate notice must be in substantially the following form:

NOTICE TO TENANTS OF THE PROPERTY

Foreclosure proceedings against this property have started, and a notice of sale of the property to the highest bidder has been issued.

You may either: (1) terminate your lease or rental agreement and move out; or (2) remain and possibly be subject to eviction proceedings under chapter 40 of the Nevada Revised Statutes. Any subtenants may also be subject to eviction proceedings.

Between now and the date of the sale, you may be evicted if you fail to pay rent or live up to your other obligations to the landlord.

After the date of the sale, you may be evicted if you fail to pay rent or live up to your other obligations to the successful bidder, in accordance with chapter 118A of the Nevada Revised Statutes.



Under the Nevada Revised Statutes, eviction proceedings may begin against you after you have been given a notice to surrender.

If the property is sold and you pay rent by the week or another period of time that is shorter than 1 month, you should generally receive notice after not less than the number of days in that period of time.

If the property is sold and you pay rent by the month or any other period of time that is 1 month or longer, you should generally receive notice at least 60 days in advance.

Under Nevada Revised Statutes 40.280, notice must generally be served on you pursuant to chapter 40 of the Nevada Revised Statutes.

If the property is sold and a landlord, successful bidder or subsequent purchaser files an eviction action against you in court, you will be served with a summons and complaint and have the opportunity to respond. Eviction actions may result in temporary evictions, permanent evictions, the awarding of damages pursuant to Nevada Revised Statutes 40.360 or some combination of those results.

Under the Justice Court Rules of Civil Procedure:

(1) You will be given at least 10 days to answer a summons and complaint;

(2) If you do not file an answer, an order evicting you by default may be obtained against you;

(3) A hearing regarding a temporary eviction may be called as soon as 11 days after you are served with the summons and complaint; and

(4) A hearing regarding a permanent eviction may be called as soon as 20 days after you are served with the summons and complaint.

4. If the sale of property is to be conducted on an Internet website or other electronic medium, notice required pursuant to this section must specify:

(a) The Internet website or other electronic medium;

(b) The manner in which electronic bids will be accepted; and

(c) The period during which bids will be accepted.

5. The sheriff shall not conduct a sale of the property on execution or deliver the judgment debtor's property to the judgment



creditor if the judgment debtor or any other person entitled to notice has not been properly notified as required in this section and NRS 21.075 and 21.076.

~~15.1~~ 6. As used in this section:

(a) "Foreclosure sale" means the sale of real property pursuant to NRS 40.430.

(b) "Residential foreclosure" means the sale of a single family residence pursuant to NRS 40.430. As used in this subsection, "single family residence" means a structure that is comprised of not more than four units.

Sec. 2. NRS 21.150 is hereby amended to read as follows:

21.150 1. All sales of property under execution must be made at auction to the highest bidder. ~~Between the hours of 9 a.m. and 5 p.m. All~~ Except as otherwise provided in subsection 2, all sales of real property must be made at the courthouse of the county in which the property or some part thereof is situated.

2. *An officer conducting a sale of property under execution may conduct the sale on an Internet website or other electronic medium. In connection with such a sale, the officer may authorize the person who operates the Internet website or other electronic medium to:*

(a) *Collect deposits and payments made by a bidder, including, without limitation, payments made by wire transfer, electronic funds transfer or cashier's check;*

(b) *Settle the transaction; and*

(c) *Remit payment of the purchase price as directed by the officer.*

3. After sufficient property has been sold to satisfy the execution, more property must not be sold.

~~13.1~~ 4. The ~~officer holding the execution and the officer's deputy~~ following persons shall not become a purchaser or be interested in any purchase at ~~such~~ a sale ~~of property under execution~~:

(a) *The officer conducting the sale or the officer's deputy;*

(b) *An appraiser involved in the sale or a director, officer, employee, managing member or partner of the appraiser; or*

(c) *A person who operates an Internet website or other electronic medium involved in the sale or a director, officer, employee, managing member or partner of the person.*

~~14.1~~ 5. When the sale is of personal property capable of manual delivery ~~it shall~~:

(a) *If the sale is not being conducted on an Internet website or other electronic medium, the personal property must be in view of those who attend the sale;*



(b) *If the sale is being conducted on an Internet website or other electronic medium, a photograph of the personal property must be available to be viewed by any prospective purchaser of the personal property;* and

(c) *The personal property must* be sold in such parcels as are likely to bring the highest price.

~~{5-}~~ 6. Except as otherwise provided in subsection ~~{6-}~~ 7, when the sale is of real property and consisting of several known lots or parcels, they ~~{shall}~~ *must* be sold separately, or when a portion of such real property is claimed by a third person and the third party requires it to be sold separately, such portion ~~{shall}~~ *must* be thus sold. If the land to be sold under execution consists of a single parcel, or two or more contiguous parcels, situated in two or more counties, notice of the sale must be posted and published in each of such counties, as provided in this chapter. ~~{The}~~ *If the* judgment debtor ~~{-if}~~ *is* present at the sale ~~{-}~~ *or, for a sale conducted on an Internet website or other electronic medium, if the judgment debtor has made his or her wishes known, the judgment debtor* may also direct the order in which property, real or personal, ~~{shall}~~ *is to* be sold. When such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, the sheriff shall ~~{be bound to}~~ follow such directions.

~~{6-}~~ 7. The provisions of subsection ~~{5}~~ 6 do not apply to a sale pursuant to NRS 40.430.

Sec. 3. NRS 107.030 is hereby amended to read as follows:

107.030 Every deed of trust made after March 29, 1927, may adopt by reference all or any of the following covenants, agreements, obligations, rights and remedies:

1. COVENANT NO. 1. That grantor agrees to pay and discharge at maturity all taxes and assessments and all other charges and encumbrances which now are or shall hereafter be, or appear to be, a lien upon the premises, or any part thereof; and that grantor will pay all interest or installments due on any prior encumbrance, and that in default thereof, beneficiary may, without demand or notice, pay the same, and beneficiary shall be sole judge of the legality or validity of such taxes, assessments, charges or encumbrances, and the amount necessary to be paid in satisfaction or discharge thereof.

2. COVENANT NO. 2. That the grantor will at all times keep the buildings and improvements which are now or shall hereafter be erected upon the premises insured against loss or damage by fire, to the amount of at least \$....., by some insurance company or companies approved by beneficiary, the policies for which insurance shall be made payable, in case of loss, to beneficiary, and shall be delivered to and held by the beneficiary as further security; and that in default thereof, beneficiary may procure such insurance, not



1 exceeding the amount aforesaid, to be effected either upon the
2 interest of trustee or upon the interest of grantor, or his or her
3 assigns, and in their names, loss, if any, being made payable to
4 beneficiary, and may pay and expend for premiums for such
5 insurance such sums of money as the beneficiary may deem
6 necessary.

7 3. COVENANT NO. 3. That if, during the existence of the trust,
8 there be commenced or pending any suit or action affecting the
9 premises, or any part thereof, or the title thereto, or if any adverse
10 claim for or against the premises, or any part thereof, be made or
11 asserted, the trustee or beneficiary may appear or intervene in the
12 suit or action and retain counsel therein and defend same, or
13 otherwise take such action therein as they may be advised, and may
14 settle or compromise same or the adverse claim; and in that behalf
15 and for any of the purposes may pay and expend such sums of
16 money as the trustee or beneficiary may deem to be necessary.

17 4. COVENANT NO. 4. That the grantor will pay to trustee and to
18 beneficiary respectively, on demand, the amounts of all sums of
19 money which they shall respectively pay or expend pursuant to the
20 provisions of the implied covenants of this section, or any of them,
21 together with interest upon each of the amounts, until paid, from the
22 time of payment thereof, at the rate of percent per annum.

23 5. COVENANT NO. 5. That in case grantor shall well and truly
24 perform the obligation or pay or cause to be paid at maturity the
25 debt or promissory note, and all moneys agreed to be paid, and
26 interest thereon for the security of which the transfer is made, and
27 also the reasonable expenses of the trust in this section specified,
28 then the trustee, its successors or assigns, shall reconvey to the
29 grantor all the estate in the premises conveyed to the trustee by
30 the grantor. Any part of the trust property may be reconveyed at the
31 request of the beneficiary.

32 6. COVENANT NO. 6. That if default be made in the
33 performance of the obligation, or in the payment of the debt, or
34 interest thereon, or any part thereof, or in the payment of any of the
35 other moneys agreed to be paid, or of any interest thereon, or if any
36 of the conditions or covenants in this section adopted by reference
37 be violated, and if the notice of breach and election to sell, required
38 by this chapter, be first recorded, then trustee, its successors or
39 assigns, on demand by beneficiary, or assigns, shall sell the above-
40 granted premises, or such part thereof as in its discretion it shall find
41 necessary to sell, in order to accomplish the objects of these trusts,
42 in the manner following, namely:

43 The trustee shall first give notice of the time and place of such
44 sale, in the manner provided in NRS 107.080 and may postpone
45 such sale not more than three times by proclamation made to the



persons assembled at the time and place previously appointed and advertised for such sale ~~[-and on]~~ *or, if the sale is to be conducted on an Internet website or other electronic medium, by proclamation published on the Internet website or other electronic medium.* On the day ~~{of sale so}~~ advertised *[H for the sale]*, or to which such sale may have been postponed, the trustee may sell the property so advertised, or any portion thereof, at public auction, at the time and place specified in the notice, at a public location in the county in which the property, or any part thereof, to be sold, is situated *[H or, if authorized by the governing body of the county, on an Internet website or other electronic medium]*, to the highest cash bidder. The beneficiary, obligee, creditor, or the holder or holders of the promissory note or notes secured thereby may bid and purchase at such sale. The beneficiary may, after recording the notice of breach and election, waive or withdraw the same or any proceedings thereunder, and shall thereupon be restored to the beneficiary's former position and have and enjoy the same rights as though such notice had not been recorded.

7. COVENANT NO. 7. That the trustee, upon such sale, shall make (without warranty), execute and, after due payment made, deliver to purchaser or purchasers, his, her or their heirs or assigns, a deed or deeds of the premises so sold which shall convey to the purchaser all the title of the grantor in the premises, and shall apply the proceeds of the sale thereof in payment, firstly, of the expenses of such sale, together with the reasonable expenses of the trust, including counsel fees, in an amount equal to percent of the amount secured thereby and remaining unpaid or reasonable counsel fees and costs actually incurred, which shall become due upon any default made by grantor in any of the payments aforesaid; and also such sums, if any, as trustee or beneficiary shall have paid, for procuring a search of the title to the premises, or any part thereof, subsequent to the execution of the deed of trust; and in payment, secondly, of the obligation or debts secured, and interest thereon then remaining unpaid, and the amount of all other moneys with interest thereon herein agreed or provided to be paid by grantor; and the balance or surplus of such proceeds of sale it shall pay to grantor, his or her heirs, executors, administrators or assigns.

8. COVENANT NO. 8. That in the event of a sale of the premises, or any part thereof, and the execution of a deed or deeds therefor under such trust, the recital therein of default, and of recording notice of breach and election of sale, and of the elapsing of the 3-month period, and of the giving of notice of sale, and of a demand by beneficiary, his or her heirs or assigns, that such sale should be made, shall be conclusive proof of such default, recording, election, elapsing of time, and of the due giving of such



notice, and that the sale was regularly and validly made on due and proper demand by beneficiary, his or her heirs and assigns; and any such deed or deeds with such recitals therein shall be effectual and conclusive against grantor, his or her heirs and assigns, and all other persons; and the receipt for the purchase money recited or contained in any deed executed to the purchaser as aforesaid shall be sufficient discharge to such purchaser from all obligation to see to the proper application of the purchase money, according to the trusts aforesaid.

9. COVENANT NO. 9. That the beneficiary or his or her assigns may, from time to time, appoint another trustee, or trustees, to execute the trust created by the deed of trust. An instrument executed and acknowledged by the beneficiary is conclusive proof of the proper appointment of such substituted trustee. Upon the recording of such executed and acknowledged instrument, the new trustee or trustees shall be vested with all the title, interest, powers, duties and trusts in the premises vested in or conferred upon the original trustee. If there be more than one trustee, either may act alone and execute the trusts upon the request of the beneficiary, and all of the trustee's acts thereunder shall be deemed to be the acts of all trustees, and the recital in any conveyance executed by such sole trustee of such request shall be conclusive evidence thereof, and of the authority of such sole trustee to act.

Sec. 4. NRS 107.080 is hereby amended to read as follows:

107.080 1. Except as otherwise provided in NRS 106.210, 107.0805, 107.085 and 107.086, if any transfer in trust of any estate in real property is made after March 29, 1927, to secure the performance of an obligation or the payment of any debt, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which the transfer is security.

2. The power of sale must not be exercised, however, until:

(a) In the case of any deed of trust coming into force:

(1) On or after July 1, 1949, and before July 1, 1957, the grantor, the person who holds the title of record, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property has, for a period of 15 days, computed as prescribed in subsection 3, failed to make good the deficiency in performance or payment; or

(2) On or after July 1, 1957, the grantor, the person who holds the title of record, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property has, for a period of 35 days, computed as prescribed in subsection 3, failed to make good the deficiency in performance or payment.

(b) The beneficiary, the successor in interest of the beneficiary or the trustee first executes and causes to be recorded in the office of



1 the recorder of the county wherein the trust property, or some part
2 thereof, is situated a notice of the breach and of the election to sell
3 or cause to be sold the property to satisfy the obligation.

4 (c) The beneficiary or its successor in interest or the servicer of
5 the obligation or debt secured by the deed of trust has instructed the
6 trustee to exercise the power of sale with respect to the property.

7 (d) Not less than 3 months have elapsed after the recording of
8 the notice.

9 3. The 15- or 35-day period provided in paragraph (a) of
10 subsection 2 commences on the first day following the day upon
11 which the notice of default and election to sell is recorded in the
12 office of the county recorder of the county in which the property is
13 located and a copy of the notice of default and election to sell is
14 mailed by registered or certified mail, return receipt requested and
15 with postage prepaid to the grantor or, to the person who holds the
16 title of record on the date the notice of default and election to sell is
17 recorded, and, if the property is operated as a facility licensed under
18 chapter 449 of NRS, to the State Board of Health, at their respective
19 addresses, if known, otherwise to the address of the trust property
20 or, if authorized by the parties, delivered by electronic transmission.
21 The notice of default and election to sell must describe the
22 deficiency in performance or payment and may contain a notice of
23 intent to declare the entire unpaid balance due if acceleration is
24 permitted by the obligation secured by the deed of trust, but
25 acceleration must not occur if the deficiency in performance or
26 payment is made good and any costs, fees and expenses incident to
27 the preparation or recordation of the notice and incident to the
28 making good of the deficiency in performance or payment are paid
29 within the time specified in subsection 2.

30 4. The trustee, or other person authorized to make the sale
31 under the terms of the deed of trust, shall, after expiration of the
32 applicable period specified in paragraph (d) of subsection 2
33 following the recording of the notice of breach and election to sell,
34 and before the making of the sale, give notice of the time and place
35 thereof by recording the notice of sale and by:

36 (a) Providing the notice to each trustor, any other person entitled
37 to notice pursuant to this section and, if the property is operated as a
38 facility licensed under chapter 449 of NRS, the State Board of
39 Health, by personal service, by electronic transmission if authorized
40 by the parties or by mailing the notice by registered or certified mail
41 to the last known address of the trustor and any other person entitled
42 to such notice pursuant to this section;

43 (b) Posting a similar notice particularly describing the property,
44 for 20 days successively, in a public place in the county where the
45 property is situated; ~~and~~



(c) Publishing a copy of the notice three times, once each week for 3 consecutive weeks, in a newspaper of general circulation in the county where the property is situated or, if the property is a time share, by posting a copy of the notice on an Internet website and publishing a statement in a newspaper in the manner required by subsection 3 of NRS 119A.560 ~~{H}~~; and

(d) If the sale is to be conducted on an Internet website or other electronic medium, including in the notice:

(1) The Internet website or other electronic medium;

(2) The manner in which electronic bids will be accepted; and

(3) The period during which bids will be accepted.

5. Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption. Except as otherwise provided in subsection 7, a sale made pursuant to this section must be declared void by any court of competent jurisdiction in the county ~~{where}~~ *in which* the ~~{sale-took-place}~~ *property is located* if:

(a) The trustee or other person authorized to make the sale does not substantially comply with the provisions of this section;

(b) Except as otherwise provided in subsection 6, an action is commenced in the county ~~{where}~~ *in which* the ~~{sale-took-place}~~ *property is located* within 30 days after the date on which the trustee's deed upon sale is recorded pursuant to subsection 10 in the office of the county recorder of the county in which the property is located; and

(c) A notice of lis pendens providing notice of the pendency of the action is recorded in the office of the county recorder of the county ~~{where}~~ *in which* the ~~{sale-took-place}~~ *property is located* within 5 days after commencement of the action.

6. If proper notice is not provided pursuant to subsection 3 or paragraph (a) of subsection 4 to the grantor, to the person who holds the title of record on the date the notice of default and election to sell is recorded, to each trustor or to any other person entitled to such notice, the person who did not receive such proper notice may commence an action pursuant to subsection 5 within 90 days after the date of the sale.

7. Upon expiration of the time for commencing an action which is set forth in subsections 5 and 6, any failure to comply with the provisions of this section or any other provision of this chapter does not affect the rights of a bona fide purchaser as described in NRS 111.180.

8. If, in an action brought by the grantor or the person who holds title of record in the district court in and for the county in



1 which the real property is located, the court finds that the
2 beneficiary, the successor in interest of the beneficiary or the trustee
3 did not comply with any requirement of subsection 2, 3 or 4, the
4 court must award to the grantor or the person who holds title of
5 record:

6 (a) Damages of \$5,000 or treble the amount of actual damages,
7 whichever is greater;

8 (b) An injunction enjoining the exercise of the power of sale
9 until the beneficiary, the successor in interest of the beneficiary or
10 the trustee complies with the requirements of subsections 2, 3 and 4;
11 and

12 (c) Reasonable attorney's fees and costs,
13 ↪ unless the court finds good cause for a different award. The
14 remedy provided in this subsection is in addition to the remedy
15 provided in subsection 5.

16 9. The sale or assignment of a proprietary lease in a
17 cooperative vests in the purchaser or assignee title to the ownership
18 interest and votes in the cooperative association which accompany
19 the proprietary lease.

20 10. After a sale of property is conducted pursuant to this
21 section, the trustee shall:

22 (a) Within 30 days after the date of the sale, record the trustee's
23 deed upon sale in the office of the county recorder of the county in
24 which the property is located; or

25 (b) Within 20 days after the date of the sale, deliver the trustee's
26 deed upon sale to the successful bidder. Within 10 days after the
27 date of delivery of the deed by the trustee, the successful bidder
28 shall record the trustee's deed upon sale in the office of the county
29 recorder of the county in which the property is located.

30 11. Within 5 days after recording the trustee's deed upon sale,
31 the trustee or successful bidder, whoever recorded the trustee's deed
32 upon sale pursuant to subsection 10, shall cause a copy of the
33 trustee's deed upon sale to be posted conspicuously on the property.
34 The failure of a trustee or successful bidder to effect the posting
35 required by this subsection does not affect the validity of a sale of
36 the property to a bona fide purchaser for value without knowledge
37 of the failure.

38 12. If the successful bidder fails to record the trustee's deed
39 upon sale pursuant to paragraph (b) of subsection 10, the successful
40 bidder:

41 (a) Is liable in a civil action to any party that is a senior
42 lienholder against the property that is the subject of the sale in a sum
43 of up to \$500 and for reasonable attorney's fees and the costs of
44 bringing the action; and



(b) Is liable in a civil action for any actual damages caused by the failure to comply with the provisions of subsection 10 and for reasonable attorney's fees and the costs of bringing the action.

13. The county recorder shall, in addition to any other fee, at the time of recording a notice of default and election to sell collect:

(a) A fee of \$150 for deposit in the State General Fund.

(b) A fee of \$95 for deposit in the Account for Foreclosure Mediation Assistance, which is hereby created in the State General Fund. The Account must be administered by the Interim Finance Committee and the money in the Account may be expended only for the purpose of:

(1) Supporting a program of foreclosure mediation; and

(2) The development and maintenance of an Internet portal for a program of foreclosure mediation pursuant to subsection 16 of NRS 107.086.

(c) A fee of \$5 to be paid over to the county treasurer on or before the fifth day of each month for the preceding calendar month. The county recorder may direct that 1.5 percent of the fees collected by the county recorder pursuant to this paragraph be transferred into a special account for use by the office of the county recorder. The county treasurer shall remit quarterly to the organization operating the program for legal services that receives the fees charged pursuant to NRS 19.031 for the operation of programs for the indigent all the money received from the county recorder pursuant to this paragraph.

14. The fees collected pursuant to paragraphs (a) and (b) of subsection 13 must be paid over to the county treasurer by the county recorder on or before the fifth day of each month for the preceding calendar month, and, except as otherwise provided in this subsection, must be placed to the credit of the State General Fund or the Account for Foreclosure Mediation Assistance as prescribed ~~pursuant to~~ in subsection 13. The county recorder may direct that 1.5 percent of the fees collected by the county recorder be transferred into a special account for use by the office of the county recorder. The county treasurer shall, on or before the 15th day of each month, remit the fees deposited by the county recorder pursuant to this subsection to the State Controller for credit to the State General Fund or the Account as prescribed in subsection 13.

15. The beneficiary, the successor in interest of the beneficiary or the trustee who causes to be recorded the notice of default and election to sell shall not charge the grantor or the successor in interest of the grantor any portion of any fee required to be paid pursuant to subsection 13.



Sec. 5. NRS 107.0805 is hereby amended to read as follows:

107.0805 1. In addition to the requirements set forth in NRS 107.080, 107.085 and 107.086, the power of sale for a residential foreclosure is subject to the following requirements and conditions and must not be executed until:

(a) In the case of any deed of trust which concerns owner-occupied housing, the grantor, the person who holds the title of record, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property has, for a period that commences in the manner and subject to the requirements described in subsection 2 and expires 5 days before the date of sale, failed to make good the deficiency in performance or payment.

(b) The beneficiary, the successor in interest of the beneficiary or the trustee first executes and causes to be recorded in the office of the recorder of the county wherein the trust property, or some part thereof, is situated a notice of the breach and of the election to sell or cause to be sold the property pursuant to subsection 2 of NRS 107.080, together with a notarized affidavit of authority to exercise the power of sale. The affidavit required by this paragraph must state under penalty of perjury the following information, which must be based on the direct, personal knowledge of the affiant or the personal knowledge which the affiant acquired by a review of the business records of the beneficiary, the successor in interest of the beneficiary or the servicer of the obligation or debt secured by the deed of trust, which business records must meet the standards set forth in NRS 51.135:

(1) The full name and business address of the current trustee or the current trustee's personal representative or assignee, the current holder of the note secured by the deed of trust, the current beneficiary of record and the current servicer of the obligation or debt secured by the deed of trust.

(2) That the beneficiary under the deed of trust, the successor in interest of the beneficiary or the trustee is in actual or constructive possession of the note secured by the deed of trust or that the beneficiary or its successor in interest or the trustee is entitled to enforce the obligation or debt secured by the deed of trust. For the purposes of this subparagraph, if the obligation or debt is an instrument, as defined in subsection 2 of NRS 104.3103, a beneficiary or its successor in interest or the trustee is entitled to enforce the instrument if the beneficiary or its successor in interest or the trustee is:

(I) The holder of the instrument;

(II) A nonholder in possession of the instrument who has the rights of a holder; or



(III) A person not in possession of the instrument who is entitled to enforce the instrument pursuant to a court order issued under NRS 104.3309.

(3) That the beneficiary or its successor in interest, the servicer of the obligation or debt secured by the deed of trust or the trustee, or an attorney representing any of those persons, has sent to the obligor or borrower of the obligation or debt secured by the deed of trust a written statement of:

(I) That amount of payment required to make good the deficiency in performance or payment, avoid the exercise of the power of sale and reinstate the terms and conditions of the underlying obligation or debt existing before the deficiency in performance or payment, as of the date of the statement;

(II) The amount in default;

(III) The principal amount of the obligation or debt secured by the deed of trust;

(IV) The amount of accrued interest and late charges;

(V) A good faith estimate of all fees imposed in connection with the exercise of the power of sale; and

(VI) Contact information for obtaining the most current amounts due and the local or toll-free telephone number described in subparagraph (4).

(4) A local or toll-free telephone number that the obligor or borrower of the obligation or debt may call to receive the most current amounts due and a recitation of the information contained in the affidavit.

(5) The date and the recordation number or other unique designation of, and the name of each assignee under, each recorded assignment of the deed of trust. The information required to be stated in the affidavit pursuant to this subparagraph may be based on:

(I) The direct, personal knowledge of the affiant;

(II) The personal knowledge which the affiant acquired by a review of the business records of the beneficiary, the successor in interest of the beneficiary or the servicer of the obligation or debt secured by the deed of trust, which business records must meet the standards set forth in NRS 51.135;

(III) Information contained in the records of the recorder of the county in which the property is located; or

(IV) The title guaranty or title insurance issued by a title insurer or title agent authorized to do business in this State pursuant to chapter 692A of NRS.

2. The period provided in paragraph (a) of subsection 1 commences on the first day following the day upon which the notice of default and election to sell is recorded in the office of the county



recorder of the county in which the property is located and a copy of the notice of default and election to sell is mailed by registered or certified mail, return receipt requested and with postage prepaid, to the grantor or to the person who holds the title of record on the date the notice of default and election to sell is recorded, at their respective addresses, if known, otherwise to the address of the trust property or, if authorized by the parties, delivered by electronic transmission. In addition to meeting the requirements set forth in subsection 1 and NRS 107.080, the notice of default and election must:

(a) If the property is subject to the requirements of NRS 107.400 to 107.560, inclusive, contain the declaration required by subsection 6 of NRS 107.510; and

(b) Comply with the provisions of NRS 107.087.

3. In addition to providing notice pursuant to the requirements set forth in subsection 4 of NRS 107.080, the trustee, or other person authorized to make the sale under the terms of the deed of trust with respect to a residential foreclosure, shall, after expiration of the applicable period specified in paragraph (d) of subsection 2 of NRS 107.080, following the recording of the notice of breach and election to sell, and before the making of the sale, comply with the provisions of NRS 107.087.

4. In addition to the grounds provided in paragraph (a) of subsection 5 of NRS 107.080, a sale made pursuant to this section must be declared void by any court of competent jurisdiction in the county ~~[where the sale took place]~~ **in which the property is located** if the trustee or other person authorized to make the sale does not substantially comply with any applicable provisions set forth in NRS 107.086 and 107.087, and the applicant otherwise complies with subsection 5 of NRS 107.080.

Sec. 6. NRS 107.081 is hereby amended to read as follows:

107.081 1. All sales of property pursuant to NRS 107.080 must be made at auction to the highest bidder . ~~and must be made between the hours of 9 a.m. and 5 p.m. The agent holding the sale must not become a purchaser at the sale or be interested in any purchase at such a sale.~~

2. ~~[All]~~ **Except as otherwise provided in subsection 3, all** sales of real property must be made at the public location in the county designated by the governing body of the county for that purpose.

3. **The governing body of the county may authorize a sale of property pursuant to NRS 107.080 to be conducted on an Internet website or other electronic medium designated by the governing body. In connection with such a sale, the governing body of the county may authorize the person who operates the Internet website or other electronic medium to:**



(a) Collect deposits and payments made by a bidder, including, without limitation, payments made by wire transfer, electronic funds transfer or cashier's check;

(b) Settle the transaction; and

(c) Remit payment of the purchase price as directed by the agent holding the sale.

4. The following persons shall not become a purchaser at a sale of property pursuant to NRS 107.080 or be interested in any purchase at such a sale:

(a) The agent conducting the sale;

(b) An appraiser involved in the sale or a director, officer, employee, managing member or partner of the appraiser; or

(c) A person who operates an Internet website or other electronic medium involved in the sale or a director, officer, employee, managing member or partner of the person.

Sec. 7. NRS 107.082 is hereby amended to read as follows:

107.082 1. If a sale of property pursuant to NRS 107.080 is postponed by oral proclamation ~~or~~, *for a sale conducted on an Internet website or other electronic medium, by proclamation published on the Internet website or other electronic medium*, the sale must be postponed to a later date at the same time and ~~location.~~ *place.*

2. If such a sale has been postponed ~~by oral proclamation~~ *in the manner described in subsection 1* three times, any new sale information must be provided by notice as provided in NRS 107.080.

Sec. 8. NRS 116.311635 is hereby amended to read as follows:

116.311635 1. The association or other person conducting the sale shall also, after the expiration of the 90-day period described in paragraph (c) of subsection 1 of NRS 116.31162 and before selling the unit, give notice of the time and place of the sale by recording the notice of sale and by:

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

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

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

(1) A copy of the notice of sale must be mailed, on or before the date of first publication or posting, by certified or registered mail, return receipt requested, to the unit's owner or his or her



1 successor in interest at his or her address, if known, and to the
2 address of the unit; and

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

6 (d) Mailing, on or before the date of first publication or posting,
7 a copy of the notice by certified mail to:

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

11 (2) The holder of a security interest recorded before the
12 mailing of the notice of sale, at the address of the holder that is
13 provided pursuant to NRS 657.110 on the Internet website
14 maintained by the Division of Financial Institutions of the
15 Department of Business and Industry; and

16 (3) The Ombudsman.

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

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

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

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

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

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

30
31 **WARNING! A SALE OF YOUR PROPERTY IS**
32 **IMMINENT! UNLESS YOU PAY THE AMOUNT**
33 **SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE,**
34 **YOU COULD LOSE YOUR HOME, EVEN IF THE**
35 **AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE**
36 **THE SALE DATE. IF YOU HAVE ANY QUESTIONS,**
37 **PLEASE CALL (name and telephone number of the contact**
38 **person for the association). IF YOU NEED ASSISTANCE,**
39 **PLEASE CALL THE FORECLOSURE SECTION OF THE**
40 **OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE**
41 **DIVISION, AT (toll-free telephone number designated by the**
42 **Division) IMMEDIATELY.**
43

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



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

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

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

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

5. If the sale is to be conducted on an Internet website or other electronic medium, notice required pursuant to this section must include, without limitation:

(a) The Internet website or other electronic medium;

(b) The manner in which electronic bids will be accepted; and

(c) The period during which bids will be accepted.

Sec. 9. NRS 116.31164 is hereby amended to read as follows:

116.31164 1. The sale must be conducted in accordance with the provisions of this section.

2. If the holder of the security interest described in paragraph (b) of subsection 2 of NRS 116.3116 satisfies the amount of the association's lien that is prior to its security interest not later than 5 days before the date of sale, the sale may not occur unless a record of such satisfaction is recorded in the office of the county recorder of the county in which the unit is located not later than 2 days before the date of sale.

3. ~~{The}~~ **Except as otherwise provided in subsection 5, the** sale must be made **: {between the hours of 9 a.m. and 5 p.m. and:}**

(a) If the unit is located in a county whose population is less than 100,000, at the courthouse in the county in which the unit is located.

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

4. The sale may be conducted by the association, its agent or attorney, or a title insurance company or escrow agent licensed to do business in this State.

5. The governing body of the county in which the unit is located may authorize a person described in subsection 3 to conduct the sale on an Internet website or other electronic medium designated by the governing body. In connection with such a sale, the governing body may authorize the person who operates the Internet website or other electronic medium to:



(a) *Collect deposits and payments made by a bidder, including, without limitation, payments made by wire transfer, electronic funds transfer or cashier's check;*

(b) *Settle the transaction; and*

(c) *Remit payment of the purchase price as directed by the person conducting the sale.*

6. The association or other person conducting the sale may from time to time postpone the sale by such advertisement and notice as it considers reasonable or, without further advertisement or notice, by proclamation made to the persons assembled at the time and place previously set and advertised for the sale ~~or~~ *or, for a sale conducted on an Internet website or other electronic medium, by proclamation published on the Internet website or other electronic medium*, except that:

(a) If the sale is postponed by oral proclamation ~~or by proclamation published on the Internet website or other electronic medium~~, the sale must be postponed to a later date at the same time and ~~location;~~ *place*; and

(b) If such a date has been postponed ~~by oral proclamation~~ *in the manner described in paragraph (a)* three times, any new sale information must be provided by notice as provided in NRS 116.311635.

~~6.7.~~ 7. On the day of sale, at the time and place specified in the notice, the person conducting the sale:

(a) ~~shall~~ *For a sale that is not conducted on an Internet website or other electronic medium, shall* state to the persons assembled for the sale whether or not the holder of the security interest described in paragraph (b) of subsection 2 of NRS 116.3116 has satisfied the amount of the association's lien that is prior to that first security interest pursuant to subsection 3 of NRS 116.3116.

(b) *For a sale that is conducted on an Internet website or other electronic medium, shall publish the information described in paragraph (a) on the Internet website or other electronic medium.*

(c) Except as otherwise provided in subsection ~~7.8,~~ may sell the unit at public auction to the highest cash bidder.

~~7.8.~~ 8. The following persons may not purchase the unit:

(a) Any person who was involved in the process of foreclosing the association's lien pursuant to NRS 116.3116 to 116.31168, inclusive, including, without limitation:

(1) Any person who exercised discretion in any decision relating to the foreclosure of the lien and any person employed by such a person;

(2) A collection agency used by the association to collect an obligation relating to the unit;



(3) A community manager of the association and any of his or her assistants;

(4) A member of the executive board of the association; or

(5) An attorney who provided representation to any of the parties with regard to the foreclosure of the lien;

(b) Any person who is related by blood, adoption, marriage or domestic partnership within the third degree of consanguinity or affinity to a person set forth in paragraph (a); ~~for~~

(c) The person conducting the sale or any entity in which that person holds an interest ~~f~~;

~~—8.1 ;~~

(d) An appraiser involved in the sale or a director, officer, employee, managing member or partner of the appraiser; or

(e) A person who operated an Internet website or other electronic medium involved in the sale of a director, officer, employee, managing member or partner of the person.

9. After the sale, the person conducting the sale shall:

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

(b) Apply the proceeds of the sale for the following purposes in the following order:

(1) The reasonable expenses of sale;

(2) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by the declaration, reasonable attorney's fees and other legal expenses incurred by the association;

(3) Satisfaction of the association's lien;

(4) Satisfaction in the order of priority of any subordinate claim of record; and

(5) Remittance of any excess to the unit's owner.

Sec. 10. This act becomes effective on July 1, 2023.

