

SENATE BILL NO. 239—SENATOR ROBERSON

MARCH 10, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to real property.
(BDR 9-970)

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

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

AN ACT relating to real property; authorizing certain persons to file a notice to terminate an equity line of credit secured by a deed of trust or mortgage; authorizing certain persons to file a written instruction to suspend and close an equity line of credit secured by a deed of trust or mortgage; authorizing certain trustees to file a declaration of nonmonetary status under certain circumstances; revising provisions governing an action to declare void a trustee's sale; authorizing a beneficiary to substitute as trustee for the purpose of reconveying a deed of trust; providing that a failure to comply with the provisions of law governing a trustee's sale does not affect the validity of a sale in favor of a bona fide purchaser; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, within 21 days after receiving notice that a debt secured by
2 a mortgage has been paid or otherwise satisfied or discharged, the mortgagee is
3 required to record a discharge of the mortgage. (NRS 106.290) Existing federal law
4 relating to lending practices also specifies certain circumstances under which a
5 lender may reduce or terminate a home equity line of credit. (Truth in Lending Act,
6 12 C.F.R. Part 1026) **Section 1** of this bill authorizes certain persons to provide a
7 written request to terminate an equity line of credit secured by a deed of trust or
8 mortgage. **Section 1** also requires a lender upon receipt of such notice to: (1)
9 terminate the borrower's right to obtain advances under the equity line of credit; (2)
10 apply certain sums paid to the satisfaction of the equity line of credit; and (3) record
11 a reconveyance or certificate of discharge of the security instrument when the
12 balance becomes zero. **Section 1** also authorizes certain persons to provide a
13 written instruction from a borrower to suspend and close an equity line of credit



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14 secured by a deed of trust or mortgage. **Section 1** provides the content of the
15 written instruction and requires a lender upon receipt of such an instruction to
16 suspend the equity line of credit for a minimum of 30 days. When the lender is in
17 possession of both the instruction and payment, **section 1** requires the lender to: (1)
18 close the equity line of credit; and (2) release or reconvey the property securing the
19 equity line of credit.

20 Existing law: (1) prescribes certain qualifications and duties of a trustee under a
21 deed of trust; (2) provides for a civil action against a trustee under certain
22 circumstances; and (3) prohibits a beneficiary from reconveying a deed of trust,
23 unless the beneficiary meets certain qualifications to act as a trustee. (NRS
24 107.028) **Section 2** of this bill: (1) authorizes certain trustees to file a declaration of
25 nonmonetary status if the trustee is named as a party to a civil action under certain
26 circumstances; and (2) authorizes a party to the action to file an objection to a
27 trustee's declaration of nonmonetary status. If no such objection is timely made or
28 if a court does not determine that an objection is valid, the trustee is no longer
29 required to participate in the action and is not subject to any damages or attorney's
30 fees or costs. **Section 3** of this bill authorizes a beneficiary to substitute and act as
31 trustee for the purpose of partially or fully reconveying a deed of trust.

32 Existing law provides that a sale by the trustee under a deed of trust must be
33 declared void by a court of competent jurisdiction if: (1) the trustee or a person
34 authorized to make the sale does not substantially comply with certain provisions of
35 existing law governing the exercise of the trustee's power of sale; and (2) an action
36 is commenced in the county where the sale took place within 45 days after the date
37 of the sale or, if the notice of default and election to sell or the notice of sale is not
38 provided to certain persons in accordance with existing law, within 60 days after
39 the person received actual notice of sale. Existing law also requires a trustee or a
40 successful bidder at a trustee's sale of property to record a trustee's deed upon sale
41 not later than 30 days after the trustee's sale of the property. (NRS 107.080) Under
42 **section 4** of this bill: (1) not later than 5 days after a trustee's deed upon sale is
43 recorded, the trustee or successful bidder at the trustee's sale must post
44 conspicuously on the property a notice of trustee's sale, although failure to do so
45 does not affect the validity of a sale to a bona fide purchaser for value without
46 knowledge of the failure; (2) an action to declare void a trustee's sale must be
47 commenced within 30 days after the recording of the trustee's deed upon sale or, in
48 certain circumstances, within 90 days after the date of the sale; and (3) after the
49 expiration of the period for commencing an action to declare void a trustee's sale,
50 any failure to comply with a provision of existing law governing the exercise of the
51 trustee's power of sale does not affect the rights of a bona fide purchaser.

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

1 **Section 1.** Chapter 106 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *1. Upon receipt of a written request from an authorized*
4 *person to terminate an equity line of credit secured by a mortgage*
5 *or deed of trust, the lender shall:*

6 *(a) Terminate the borrower's right to obtain advances under*
7 *the borrower's equity line of credit;*



1 (b) Apply all sums subsequently paid by or on behalf of the
2 borrower in connection with the equity line of credit to the
3 satisfaction of the equity line of credit and other sums secured by
4 the related security instrument; and

5 (c) When the balance of all outstanding sums secured by the
6 related security instrument becomes zero, record a reconveyance
7 or certificate of discharge of the security instrument.

8 2. Upon receipt from an authorized person of an instruction
9 from a borrower to suspend and close an equity line of credit, the
10 lender shall suspend the equity line of credit for a minimum of 30
11 days if the instruction is:

12 (a) Prepared and presented to the lender by the authorized
13 person;

14 (b) Signed by the borrower; and

15 (c) Made in substantially the following form:
16

17 **BORROWER'S INSTRUCTION TO SUSPEND AND**
18 **CLOSE EQUITY LINE OF CREDIT**
19

20 *Lender: [Name of lender]*

21 *Borrower: [Name of borrower]*

22 *Account number of equity line of credit: [Account number]*

23 *Address of encumbered property: [Property address]*

24 *Escrow agent or settlement agent: [Name of agent]*
25

26 *In connection with a sale or refinance of the above-*
27 *referenced property, my escrow agent or settlement agent*
28 *has requested a payoff demand statement for the above-*
29 *described equity line of credit. I understand that my ability*
30 *to use this equity line of credit has been suspended for at*
31 *least 30 days to accommodate this pending transaction. I*
32 *understand that I cannot use any credit card, debit card or*
33 *check associated with this equity line of credit while it is*
34 *suspended, and all amounts of money will be due and*
35 *payable upon close of escrow. I also understand that when*
36 *payment is made in accordance with the payoff demand*
37 *statement, my equity line of credit will be closed. If any*
38 *amounts of money remain due after the payment is made, I*
39 *understand that I will remain personally liable for those*
40 *amounts of money even if the equity line of credit has been*
41 *closed and the property released.*
42

43 *This is my written authorization and instruction that you*
44 *are to close my equity line of credit and cause the secured*
45 *lien against this property to be released when you are in*



1 *receipt of both this instruction and payment in accordance*
2 *with your payoff demand statement.*

3
4 *(Date)*

5
6 *(Signature of each borrower)*

7
8 *3. If a lender is in receipt of an instruction from a borrower*
9 *to suspend and close an equity line of credit and payment in*
10 *accordance with the payoff demand statement, the lender shall:*

11 *(a) Close the equity line of credit; and*

12 *(b) Release or reconvey the property securing the equity line of*
13 *credit as provided in this chapter.*

14 *4. A lender may conclusively rely on a representation by the*
15 *authorized person that presents an instruction of a borrower to*
16 *suspend and close an equity line of credit that the instruction is*
17 *that of the borrower.*

18 *5. As used in this section:*

19 *(a) "Authorized person" includes:*

20 *(1) A title agent as defined in NRS 692A.060;*

21 *(2) A title insurer as defined in NRS 692A.070; and*

22 *(3) An escrow agency as defined in NRS 645A.010.*

23 *(b) "Receipt of a written request" includes confirmation by*
24 *facsimile, electronic record, as defined in NRS 719.090, or paper*
25 *copy sent by certified mail.*

26 **Sec. 2.** Chapter 107 of NRS is hereby amended by adding
27 thereto a new section to read as follows:

28 *1. If the trustee under a deed of trust is named in an action in*
29 *which the deed of trust is the subject and the trustee has a*
30 *reasonable belief that he or she has been named in the action*
31 *solely in his or her capacity as trustee and not as a result of any*
32 *wrongful act or omission made in the performance of his or her*
33 *duties as trustee, the trustee may, at any time, file a declaration of*
34 *nonmonetary status. The declaration must be served on the parties*
35 *in the manner prescribed by Rule 5 of the Nevada Rules of Civil*
36 *Procedure and must include:*

37 *(a) The status of the trustee as trustee under the deed of trust;*
38 *and*

39 *(b) The basis for the trustee's reasonable belief that he or she*
40 *has been named as a defendant in the action solely in his or her*
41 *capacity as trustee and not as a result of any wrongful act or*
42 *omission made in the performance of his or her duties as trustee.*

43 *2. Upon the filing of a declaration of nonmonetary status*
44 *pursuant to subsection 1, the time in which the trustee is required*
45 *to file an answer or any other responsive pleading is tolled until*



1 *notice is given of an order granting an objection to the declaration*
2 *of nonmonetary status, from which date the trustee has 30 days to*
3 *file an answer or any other responsive pleading to the complaint.*

4 *3. Any party that has appeared in an action described in*
5 *subsection 1 has 15 days after the date of service of the declaration*
6 *of nonmonetary status to file an objection. Any objection filed*
7 *pursuant to this subsection must set forth the factual basis on*
8 *which the objection is based and must be served on the trustee.*

9 *4. If a timely objection is made pursuant to subsection 3, the*
10 *court shall promptly examine the declaration of nonmonetary*
11 *status and the objection and shall issue an order as to the validity*
12 *of the objection. If the court determines the objection is valid, the*
13 *trustee is required to participate in the action.*

14 *5. If no objection is raised within the 15-day period pursuant*
15 *to subsection 3 or if the court determines the objection is invalid,*
16 *the trustee is not required to participate any further in the action*
17 *and is not subject to any money damages or attorney's fees or*
18 *costs, except that the trustee is required to respond to any*
19 *discovery request as a nonparty participant and is bound by any*
20 *court order relating to the deed of trust.*

21 *6. If, at any time during the proceedings under this section,*
22 *the parties to the action acquire newly discovered evidence*
23 *indicating the trustee should be made a participant in the action as*
24 *a result of the trustee's performance of his or her duties as trustee,*
25 *the parties may file a motion to amend the pleadings pursuant to*
26 *Rule 15 of the Nevada Rules of Civil Procedure.*

27 *7. For the purposes of this section, "trustee" includes any*
28 *agent or employee of the trustee who performs some or all the*
29 *duties of a trustee under this chapter and includes substitute*
30 *trustees and agents of the beneficiary or trustee.*

31 **Sec. 3.** NRS 107.028 is hereby amended to read as follows:

32 107.028 1. ~~The~~ **Except as otherwise provided in subsection**
33 **4, the** trustee under a deed of trust must be:

34 (a) An attorney licensed to practice law in this State;

35 (b) A title insurer or title agent authorized to do business in this
36 State pursuant to chapter 692A of NRS;

37 (c) A person licensed pursuant to chapter 669 of NRS;

38 (d) A domestic or foreign entity which holds a current state
39 business license issued by the Secretary of State pursuant to chapter
40 76 of NRS;

41 (e) A person who does business under the laws of this State, the
42 United States or another state relating to banks, savings banks,
43 savings and loan associations or thrift companies;

44 (f) A person who is appointed as a fiduciary pursuant to
45 NRS 662.245;



1 (g) A person who acts as a registered agent for a domestic or
2 foreign corporation, limited-liability company, limited partnership
3 or limited-liability partnership;

4 (h) A person who acts as a trustee of a trust holding real
5 property for the primary purpose of facilitating any transaction with
6 respect to real estate if he or she is not regularly engaged in the
7 business of acting as a trustee for such trusts;

8 (i) A person who engages in the business of a collection agency
9 pursuant to chapter 649 of NRS; or

10 (j) A person who engages in the business of an escrow agency,
11 escrow agent or escrow officer pursuant to the provisions of chapter
12 645A or 692A of NRS.

13 2. A trustee under a deed of trust must not be the beneficiary of
14 the deed of trust for the purposes of exercising the power of sale
15 pursuant to NRS 107.080.

16 3. A trustee under a deed of trust must not:

17 (a) Lend its name or its corporate capacity to any person who is
18 not qualified to be the trustee under a deed of trust pursuant to
19 subsection 1.

20 (b) Act individually or in concert with any other person to
21 circumvent the requirements of subsection 1.

22 4. A beneficiary of record may ~~replace~~ :

23 (a) *Replace* its trustee with another trustee ~~H~~ ; or

24 (b) *Substitute as trustee only for the purposes of executing a*
25 *substitution of trustee and a full or partial reconveyance of a deed*
26 *of trust.*

27 5. The appointment of a new trustee is not effective until the
28 substitution of trustee is recorded in the office of the recorder of the
29 county in which the real property is located.

30 ~~H~~ 6. The trustee does not have a fiduciary obligation to the
31 grantor or any other person having an interest in the property which
32 is subject to the deed of trust. The trustee shall act impartially and in
33 good faith with respect to the deed of trust and shall act in
34 accordance with the laws of this State. A rebuttable presumption
35 that a trustee has acted impartially and in good faith exists if the
36 trustee acts in compliance with the provisions of NRS 107.080. In
37 performing acts required by NRS 107.080, the trustee incurs no
38 liability for any good faith error resulting from reliance on
39 information provided by the beneficiary regarding the nature and the
40 amount of the default under the obligation secured by the deed of
41 trust if the trustee corrects the good faith error not later than 20 days
42 after discovering the error.

43 ~~H~~ 7. If, in an action brought by a grantor, a person who holds
44 title of record or a beneficiary in the district court in and for the
45 county in which the real property is located, the court finds that the



1 trustee did not comply with this section, any other provision of this
2 chapter or any applicable provision of chapter 106 or 205 of NRS,
3 the court must award to the grantor, the person who holds title of
4 record or the beneficiary:

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

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

11 (c) Reasonable attorney's fees and costs,

12 ➤ unless the court finds good cause for a different award.

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

14 107.080 1. Except as otherwise provided in NRS 106.210,
15 107.085 and 107.086, if any transfer in trust of any estate in real
16 property is made after March 29, 1927, to secure the performance of
17 an obligation or the payment of any debt, a power of sale is hereby
18 conferred upon the trustee to be exercised after a breach of the
19 obligation for which the transfer is security.

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

21 (a) Except as otherwise provided in paragraph (b), in the case of
22 any trust agreement coming into force:

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

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

35 (b) In the case of any trust agreement which concerns owner-
36 occupied housing as defined in NRS 107.086, the grantor, the
37 person who holds the title of record, a beneficiary under a
38 subordinate deed of trust or any other person who has a subordinate
39 lien or encumbrance of record on the property has, for a period that
40 commences in the manner and subject to the requirements described
41 in subsection 3 and expires 5 days before the date of sale, failed to
42 make good the deficiency in performance or payment.

43 (c) The beneficiary, the successor in interest of the beneficiary
44 or the trustee first executes and causes to be recorded in the office of
45 the recorder of the county wherein the trust property, or some part



1 thereof, is situated a notice of the breach and of the election to sell
2 or cause to be sold the property to satisfy the obligation which,
3 except as otherwise provided in this paragraph, includes a notarized
4 affidavit of authority to exercise the power of sale. Except as
5 otherwise provided in subparagraph (5), the affidavit required by
6 this paragraph must state under the penalty of perjury the following
7 information, which must be based on the direct, personal knowledge
8 of the affiant or the personal knowledge which the affiant acquired
9 by a review of the business records of the beneficiary, the successor
10 in interest of the beneficiary or the servicer of the obligation or debt
11 secured by the deed of trust, which business records must meet the
12 standards set forth in NRS 51.135:

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

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

28 (I) The holder of the instrument;

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

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

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

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

44 (II) The amount in default;



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

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

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

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

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

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

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

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

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

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

29 ➤ The affidavit described in this paragraph is not required for the
30 exercise of the trustee's power of sale with respect to any trust
31 agreement which concerns a time share within a time-share plan
32 created pursuant to chapter 119A of NRS if the power of sale is
33 being exercised for the initial beneficiary under the deed of trust or
34 an affiliate of the initial beneficiary.

35 (d) The beneficiary or its successor in interest or the servicer of
36 the obligation or debt secured by the deed of trust has instructed the
37 trustee to exercise the power of sale with respect to the property.

38 (e) Not less than 3 months have elapsed after the recording of
39 the notice or, if the notice includes an affidavit and a certification
40 indicating that, pursuant to NRS 107.130, an election has been made
41 to use the expedited procedure for the exercise of the power of sale
42 with respect to abandoned residential property, not less than 60 days
43 have elapsed after the recording of the notice.

44 3. The 15- or 35-day period provided in paragraph (a) of
45 subsection 2, or the period provided in paragraph (b) of subsection



1 2, commences on the first day following the day upon which the
2 notice of default and election to sell is recorded in the office of the
3 county recorder of the county in which the property is located and a
4 copy of the notice of default and election to sell is mailed by
5 registered or certified mail, return receipt requested and with
6 postage prepaid to the grantor or, to the person who holds the title of
7 record on the date the notice of default and election to sell is
8 recorded, and, if the property is operated as a facility licensed under
9 chapter 449 of NRS, to the State Board of Health, at their respective
10 addresses, if known, otherwise to the address of the trust property.
11 The notice of default and election to sell must:

12 (a) Describe the deficiency in performance or payment and may
13 contain a notice of intent to declare the entire unpaid balance due if
14 acceleration is permitted by the obligation secured by the deed of
15 trust, but acceleration must not occur if the deficiency in
16 performance or payment is made good and any costs, fees and
17 expenses incident to the preparation or recordation of the notice and
18 incident to the making good of the deficiency in performance or
19 payment are paid within the time specified in subsection 2;

20 (b) If the property is subject to the requirements of NRS 107.400
21 to 107.560, inclusive, contain the declaration required by subsection
22 6 of NRS 107.510;

23 (c) If, pursuant to NRS 107.130, an election has been made to
24 use the expedited procedure for the exercise of the power of sale
25 with respect to abandoned residential property, include the affidavit
26 and certification required by subsection 6 of NRS 107.130; and

27 (d) If the property is a residential foreclosure, comply with the
28 provisions of NRS 107.087.

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

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

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

44 (c) Publishing a copy of the notice three times, once each week
45 for 3 consecutive weeks, in a newspaper of general circulation in the



1 county where the property is situated or, if the property is a time
2 share, by posting a copy of the notice on an Internet website and
3 publishing a statement in a newspaper in the manner required by
4 subsection 3 of NRS 119A.560; and

5 (d) If the property is a residential foreclosure, complying with
6 the provisions of NRS 107.087.

7 5. Every sale made under the provisions of this section and
8 other sections of this chapter vests in the purchaser the title of the
9 grantor and any successors in interest without equity or right of
10 redemption. ~~1A~~ *Except as otherwise provided in subsection 7, a*
11 *sale made pursuant to this section must be declared void by any*
12 *court of competent jurisdiction in the county where the sale took*
13 *place if:*

14 (a) The trustee or other person authorized to make the sale does
15 not substantially comply with the provisions of this section or any
16 applicable provision of NRS 107.086 and 107.087;

17 (b) Except as otherwise provided in subsection 6, an action is
18 commenced in the county where the sale took place within ~~45~~ *30*
19 *days after the date ~~of the sale;~~ on which the trustee's deed upon*
20 *sale is recorded pursuant to subsection 10 in the office of the*
21 *county recorder of the county in which the property is located;* and

22 (c) A notice of lis pendens providing notice of the pendency of
23 the action is recorded in the office of the county recorder of the
24 county where the sale took place within ~~15~~ *5* days after
25 commencement of the action.

26 6. If proper notice is not provided pursuant to subsection 3 or
27 paragraph (a) of subsection 4 to the grantor, to the person who holds
28 the title of record on the date the notice of default and election to
29 sell is recorded, to each trustor or to any other person entitled to
30 such notice, the person who did not receive such proper notice may
31 commence an action pursuant to subsection 5 within ~~60~~ *90* days
32 after the date ~~on which the person received actual notice~~ of the
33 sale.

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

39 8. If, in an action brought by the grantor or the person who
40 holds title of record in the district court in and for the county in
41 which the real property is located, the court finds that the
42 beneficiary, the successor in interest of the beneficiary or the trustee
43 did not comply with any requirement of subsection 2, 3 or 4, the
44 court must award to the grantor or the person who holds title of
45 record:



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

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

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

11 ~~8-~~ 9. The sale of a lease of a dwelling unit of a cooperative
12 housing corporation vests in the purchaser title to the shares in the
13 corporation which accompany the lease.

14 ~~9-~~ 10. After a sale of property is conducted pursuant to this
15 section, the trustee shall:

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

19 (b) Within 20 days after the date of the sale, deliver the trustee's
20 deed upon sale to the successful bidder. Within 10 days after the
21 date of delivery of the deed by the trustee, the successful bidder
22 shall record the trustee's deed upon sale in the office of the county
23 recorder of the county in which the property is located.

24 ~~10-~~ 11. *Within 5 days after recording the trustee's deed*
25 *upon sale, the trustee or successful bidder, whoever recorded the*
26 *trustee's deed upon sale pursuant to subsection 10, shall cause a*
27 *copy of the trustee's deed upon sale to be posted conspicuously on*
28 *the property. The failure of a trustee or successful bidder to effect*
29 *the posting required by this subsection does not affect the validity*
30 *of a sale of the property to a bona fide purchaser for value without*
31 *knowledge of the failure.*

32 12. If the successful bidder fails to record the trustee's deed
33 upon sale pursuant to paragraph (b) of subsection ~~9-~~ 10, the
34 successful bidder:

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

39 (b) Is liable in a civil action for any actual damages caused by
40 the failure to comply with the provisions of subsection ~~9-~~ 10 and
41 for reasonable attorney's fees and the costs of bringing the action.

42 ~~11-~~ 13. The county recorder shall, in addition to any other
43 fee, at the time of recording a notice of default and election to sell
44 collect:

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



1 (b) A fee of \$45 for deposit in the Account for Foreclosure
2 Mediation, which is hereby created in the State General Fund. The
3 Account must be administered by the Court Administrator, and the
4 money in the Account may be expended only for the purpose of
5 supporting a program of foreclosure mediation established by
6 Supreme Court Rule.

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

17 ~~H2.1~~ 14. The fees collected pursuant to paragraphs (a) and (b)
18 of subsection ~~H1.1~~ 13 must be paid over to the county treasurer by
19 the county recorder on or before the fifth day of each month for the
20 preceding calendar month, and, except as otherwise provided in this
21 subsection, must be placed to the credit of the State General Fund or
22 the Account for Foreclosure Mediation as prescribed pursuant to
23 subsection ~~H1.1~~ 13. The county recorder may direct that 1.5 percent
24 of the fees collected by the county recorder be transferred into a
25 special account for use by the office of the county recorder. The
26 county treasurer shall, on or before the 15th day of each month,
27 remit the fees deposited by the county recorder pursuant to this
28 subsection to the State Controller for credit to the State General
29 Fund or the Account as prescribed in subsection ~~H1.1~~ 13.

30 ~~H3.1~~ 15. The beneficiary, the successor in interest of the
31 beneficiary or the trustee who causes to be recorded the notice of
32 default and election to sell shall not charge the grantor or the
33 successor in interest of the grantor any portion of any fee required to
34 be paid pursuant to subsection ~~H1.1~~ 13.

35 ~~H4.1~~ 16. As used in this section:

36 (a) "Residential foreclosure" means the sale of a single family
37 residence under a power of sale granted by this section. As used in
38 this paragraph, "single family residence":

39 (1) Means a structure that is comprised of not more than four
40 units.

41 (2) Does not include vacant land or any time share or other
42 property regulated under chapter 119A of NRS.

43 (b) "Trustee" means the trustee of record.



1 **Sec. 5.** NRS 645B.340 is hereby amended to read as follows:

2 645B.340 1. Except as otherwise provided by law or by
3 agreement between the parties and regardless of the date the
4 interests were created, if the beneficial interest in a loan or the
5 ownership interest in the real property previously securing the loan
6 belongs to more than one person, the holders of the beneficial
7 interest in a loan whose interests represent 51 percent or more of the
8 outstanding principal balance of the loan or the holders of 51
9 percent or more of the ownership interest in the real property, as
10 indicated on a trustee's deed upon sale recorded pursuant to
11 subsection ~~9~~ 10 of NRS 107.080, a deed recorded pursuant to
12 subsection 5 of NRS 40.430 or a deed in lieu of foreclosure, and any
13 subsequent deed selling, transferring or assigning an ownership
14 interest, may act on behalf of all the holders of the beneficial
15 interests or ownership interests of record on matters which require
16 the action of the holders of the beneficial interests in the loan or the
17 ownership interests in the real property, including, without
18 limitation:

19 (a) The designation of a mortgage broker or mortgage agent,
20 servicing agent or any other person to act on behalf of all the holders
21 of the beneficial interests or ownership interests of record;

22 (b) The foreclosure of the property for which the loan was made;

23 (c) The subsequent sale, transfer, encumbrance or lease of real
24 property owned by the holders resulting from a foreclosure or the
25 receipt of a deed in lieu of a foreclosure in full satisfaction of a loan,
26 to a bona fide purchaser or encumbrancer for value;

27 (d) The release of any obligation under a loan in return for an
28 interest in equity in the real property or, if the loan was made to a
29 person other than a natural person, an interest in equity of that
30 entity; and

31 (e) The modification or restructuring of any term of the loan,
32 deed of trust or other document relating to the loan, including,
33 without limitation, changes to the maturity date, interest rate and the
34 acceptance of payment of less than the full amount of the loan and
35 any accrued interest in full satisfaction of the loan.

36 2. A person designated to act pursuant to subsection 1 on
37 behalf of the holders of the beneficial interest in a loan or the
38 ownership interest in real property shall, not later than 30 days
39 before the date on which the holders will determine whether or not
40 to act pursuant to subsection 1, send a written notice of the action to
41 each holder of a beneficial interest or ownership interest at the
42 holder's last known address, by a delivery service that provides
43 proof of delivery or evidence that the notice was sent. The written
44 notice must state:



1 (a) The actions that will be taken on behalf of the holders who
2 consent to an action pursuant to this section, if the holders of the
3 beneficial interest in a loan whose interests represent 51 percent or
4 more of the outstanding principal balance of the loan or the holders
5 of 51 percent or more of the ownership interest in the real property
6 act pursuant to subsection 1;

7 (b) The actions that will be taken on behalf of the holders who
8 do not consent to an action pursuant to this section, if the holders of
9 the beneficial interest in a loan whose interests represent 51 percent
10 or more of the outstanding principal balance of the loan or the
11 holders of 51 percent or more of the ownership interest in the real
12 property act pursuant to subsection 1; and

13 (c) The amount of the costs or, if an amount is unknown, an
14 estimate of the amount of the costs that will be allocated to, or due
15 from, the holder and deducted from any proceeds owed to the
16 holder.

17 3. If real property is sold, transferred, encumbered or leased
18 pursuant to paragraph (c) of subsection 1, any beneficial interest in
19 the loan or ownership interest in the real property of a holder who
20 does not consent to the sale, transfer, encumbrance or lease,
21 including, without limitation, any interest of a tenant in common
22 who does not consent to the sale, transfer, encumbrance or lease,
23 must be sold, transferred, encumbered or leased by a reference to
24 this section and by the signatures on the necessary documents of the
25 holders consenting to the sale, transfer, encumbrance or lease of the
26 real property. The holders consenting to the sale, transfer,
27 encumbrance or lease of the real property shall designate a
28 representative to sign any necessary documents on behalf of the
29 holders who do not consent to the sale, transfer, encumbrance or
30 lease and, if the representative maintains written evidence of the
31 consent of the number of holders described in subsection 1, the
32 representative is not liable for any action taken pursuant to this
33 subsection.

34 4. Any action which is taken pursuant to subsection 1 must be
35 in writing.

36 5. The provisions of this section do not apply to a transaction
37 involving two investors with equal interests.

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



