
ASSEMBLY BILL NO. 149—ASSEMBLYMEN BUCKLEY, OCEGUERA, CONKLIN, LESLIE, SMITH; AIZLEY, ANDERSON, ATKINSON, BOBZIEN, CLABORN, DENIS, DONDERO LOOP, GOICOECHEA, GRADY, HAMBRICK, HARDY, HOGAN, HORNE, KIHUEN, KIRKPATRICK, KOIVISTO, MANENDO, MASTROLUCA, MCCLAIN, MUNFORD, OHRENSCHALL, PARNELL, PIERCE, SEGERBLUM, SETTELMAYER, SPIEGEL AND STEWART

FEBRUARY 9, 2009

JOINT SPONSORS: SENATORS HORSFORD; AND COFFIN

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing foreclosures on property. (BDR 9-824)

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

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

AN ACT relating to real property; revising provisions governing foreclosures on property; providing for mediation under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law sets forth procedures governing foreclosures on real property upon
2 default. A trustee under a deed of trust has the power to sell the property to which
3 the deed of trust applies, subject to certain restrictions. (NRS 107.080, 107.085)
4 This bill establishes additional restrictions on the trustee’s power of sale with
5 respect to owner-occupied housing by providing a homeowner with the right to
6 request mediation under which he may receive a loan modification. Once a
7 homeowner requests mediation, no further action may be taken to exercise the
8 power of sale until the completion of the mediation. Each mediation must be
9 conducted by a senior justice, judge, hearing master or other designee pursuant to
10 rules adopted by the Nevada Supreme Court or an entity designated by the Nevada
11 Supreme Court.



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

1 **Section 1.** Chapter 107 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 1. *In addition to the requirements of NRS 107.085, the*
4 *exercise of the power of sale pursuant to NRS 107.080 with respect*
5 *to any trust agreement to which NRS 107.085 applies and which*
6 *concerns owner-occupied housing is subject to the provisions of*
7 *this section.*

8 2. *The trustee shall not exercise a power of sale pursuant to*
9 *NRS 107.080 unless the trustee includes in the notice required by*
10 *subsection 2 of NRS 107.085:*

11 (a) *Contact information which the grantor may use to reach a*
12 *person with authority to negotiate a loan modification on behalf of*
13 *the trustee;*

14 (b) *Contact information for at least one local housing*
15 *counseling agency approved by the United States Department of*
16 *Housing and Urban Development; and*

17 (c) *A form upon which the grantor may indicate his election to*
18 *enter into mediation or to waive mediation and one envelope*
19 *addressed to the trustee and one envelope addressed to the*
20 *Administrative Office of the Courts, which the grantor may use to*
21 *comply with the provisions of subsection 3.*

22 3. *The grantor shall, not later than 30 days after service of*
23 *the notice in the manner required by NRS 107.085, complete the*
24 *form required by paragraph (c) of subsection 2 and return the*
25 *form to the trustee by certified mail, return receipt requested. If*
26 *the grantor indicates on the form his election to enter into*
27 *mediation, the trustee shall file a copy of the form with the*
28 *Administrative Office of the Courts, which shall assign the matter*
29 *to a senior justice, judge, hearing master or other designee and*
30 *schedule the matter for mediation. No further action may be taken*
31 *to exercise the power of sale until the completion of the mediation.*
32 *If the grantor indicates on the form his election to waive*
33 *mediation or fails to return the form to the trustee as required by*
34 *this paragraph, no mediation is required.*

35 4. *Each mediation required by this section must be conducted*
36 *by a senior justice, judge, hearing master or other designee*
37 *pursuant to the rules adopted pursuant to subsection 7. The*
38 *trustee or his representative and the grantor or his representative*
39 *shall each attend the mediation. The trustee shall bring a copy of*
40 *the deed of trust and the mortgage note to the mediation. If the*
41 *trustee is represented at the mediation by another person, that*
42 *person must have authority to negotiate a loan modification on*



1 *behalf of the trustee or have access at all times during the*
2 *mediation to a person with such authority.*

3 *5. If the trustee or his representative fails to attend the*
4 *mediation, does not bring to the mediation each document*
5 *required by subsection 4 or does not have the authority or access*
6 *to a person with the authority required by subsection 4, the court*
7 *may issue an order requiring a loan modification in the manner*
8 *determined proper by the court.*

9 *6. If the grantor fails to attend the mediation, the court shall*
10 *dismiss the matter and the mediation shall be deemed completed*
11 *for the purposes of this section.*

12 *7. The Supreme Court or an entity designated by the Supreme*
13 *Court shall adopt rules necessary to carry out the provisions of*
14 *this section.*

15 **Sec. 2.** NRS 107.080 is hereby amended to read as follows:

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

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

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

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

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

36 (b) The beneficiary, the successor in interest of the beneficiary
37 or the trustee first executes and causes to be recorded in the office of
38 the recorder of the county wherein the trust property, or some part
39 thereof, is situated a notice of the breach and of his election to sell
40 or cause to be sold the property to satisfy the obligation; and

41 (c) Not less than 3 months have elapsed after the recording of
42 the notice.

43 3. The 15- or 35-day period provided in paragraph (a) of
44 subsection 2 commences on the first day following the day upon
45 which the notice of default and election to sell is recorded in the



1 office of the county recorder of the county in which the property is
2 located and a copy of the notice of default and election to sell is
3 mailed by registered or certified mail, return receipt requested and
4 with postage prepaid to the grantor, and to the person who holds the
5 title of record on the date the notice of default and election to sell is
6 recorded, at their respective addresses, if known, otherwise to the
7 address of the trust property. The notice of default and election to
8 sell must describe the deficiency in performance or payment and
9 may contain a notice of intent to declare the entire unpaid balance
10 due if acceleration is permitted by the obligation secured by the
11 deed of trust, but acceleration must not occur if the deficiency in
12 performance or payment is made good and any costs, fees and
13 expenses incident to the preparation or recordation of the notice and
14 incident to the making good of the deficiency in performance or
15 payment are paid within the time specified in subsection 2.

16 4. The trustee, or other person authorized to make the sale
17 under the terms of the trust deed or transfer in trust, shall, after
18 expiration of the 3-month period following the recording of the
19 notice of breach and election to sell, and before the making of
20 the sale, give notice of the time and place thereof by recording the
21 notice of sale and by:

22 (a) Providing the notice to each trustor and any other person
23 entitled to notice pursuant to this section by personal service or by
24 mailing the notice by registered or certified mail to the last known
25 address of the trustor and any other person entitled to such notice
26 pursuant to this section;

27 (b) Posting a similar notice particularly describing the property,
28 for 20 days successively, in three public places of the township or
29 city where the property is situated and where the property is to be
30 sold; and

31 (c) Publishing a copy of the notice three times, once each week
32 for 3 consecutive weeks, in a newspaper of general circulation in the
33 county where the property is situated.

34 5. Every sale made under the provisions of this section and
35 other sections of this chapter vests in the purchaser the title of the
36 grantor and his successors in interest without equity or right of
37 redemption. A sale made pursuant to this section may be declared
38 void by any court of competent jurisdiction in the county where the
39 sale took place if:

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

42 (b) Except as otherwise provided in subsection 6, an action is
43 commenced in the county where the sale took place within 90 days
44 after the date of the sale; and



1 (c) A notice of lis pendens providing notice of the pendency of
2 the action is recorded in the office of the county recorder of the
3 county where the sale took place within 30 days after
4 commencement of the action.

5 6. If proper notice is not provided pursuant to subsection 3 or
6 paragraph (a) of subsection 4 to the grantor, to the person who holds
7 the title of record on the date the notice of default and election to
8 sell is recorded, to each trustor or to any other person entitled to
9 such notice, the person who did not receive such proper notice may
10 commence an action pursuant to subsection 5 within 120 days after
11 the date on which the person received actual notice of the sale.

12 7. The sale of a lease of a dwelling unit of a cooperative
13 housing corporation vests in the purchaser title to the shares in the
14 corporation which accompany the lease.

15 **Sec. 3.** NRS 459.646 is hereby amended to read as follows:

16 459.646 1. A person who, without participating in the
17 management of a parcel of real property, holds or is the beneficiary
18 of evidence of title to the property primarily to protect a security
19 interest in the property is not a responsible party with respect to a
20 release of a hazardous substance on the property if:

21 (a) The owner of the property is relieved from liability under
22 NRS 459.610 to 459.658, inclusive, with respect to the release;

23 (b) The owner or holder of evidence of title did not cause the
24 release; and

25 (c) The owner or holder of evidence of title does not participate
26 actively in decisions concerning hazardous substances on the
27 property.

28 2. A lender to a prospective purchaser who has filed an
29 application to participate in the program pursuant to NRS 459.634
30 or a lender who forecloses his security interest in property pursuant
31 to NRS 40.430 to 40.450, inclusive, or 107.080 to 107.100,
32 inclusive, *and section 1 of this act*, and within a reasonable period
33 after the foreclosure, not to exceed 2 years, sells, transfers or
34 conveys the property to a prospective purchaser who has filed an
35 application to participate in the program pursuant to NRS 459.634 is
36 not a responsible party solely as a result of:

37 (a) Foreclosing a security interest in the property; or

38 (b) Making a loan to the prospective purchaser if the loan:

39 (1) Is to be used for acquiring property or removing or
40 remediating hazardous substances on property; and

41 (2) Is secured by the property that is to be acquired or on
42 which is located the hazardous substances that are to be removed or
43 remediated.



1 **Sec. 4.** This act becomes effective on July 1, 2009.

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