

ASSEMBLY BILL NO. 471—COMMITTEE ON COMMERCE AND LABOR

MARCH 18, 2009

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the sale of real property. (BDR 3-1138)

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

~

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

AN ACT relating to real property; providing that a deficiency in payment on a mortgage, deed of trust or other encumbrance may be cured under certain circumstances before foreclosure; providing that a court shall not award a deficiency judgment on the foreclosure of a mortgage or a deed of trust under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill provides a right to cure a deficiency in payment on a mortgage or other encumbrance before a judicial foreclosure sale at any time not later than 5 days before the date of sale.

Under existing law, a judgment creditor or a beneficiary of a deed of trust may obtain, after a hearing, a deficiency judgment after a foreclosure sale or trustee's sale if it appears from the sheriff's return or the recital of consideration in the trustee's deed that there is a deficiency of the proceeds of the sale and a balance remaining due the judgment creditor or beneficiary of the deed of trust. (NRS 40.455) **Section 2** of this bill provides that if the judgment creditor or the beneficiary of the deed of trust is a financial institution, a court may not award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if: (1) the real property is a single-family dwelling and the debtor or grantor was the owner of the property; (2) the debtor or grantor used the loan to purchase the property; (3) the debtor or grantor occupied the property continuously after obtaining the loan; and (4) the debtor or grantor did not refinance the loan.

Section 3 of this bill provides that the amendatory provisions of this bill apply only prospectively to obligations secured by a mortgage, deed of trust or other encumbrance upon real property on or after the effective date of this bill.



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

- 1 **Section 1.** NRS 40.430 is hereby amended to read as follows:
2 40.430 1. Except in cases where a person proceeds under
3 subsection 2 of NRS 40.495 or subsection 1 of NRS 40.512, there
4 may be but one action for the recovery of any debt, or for the
5 enforcement of any right secured by a mortgage or other lien upon
6 real estate. That action must be in accordance with the provisions of
7 NRS 40.430 to 40.459, inclusive. In that action, the judgment must
8 be rendered for the amount found due the plaintiff, and the court, by
9 its decree or judgment, may direct a sale of the encumbered
10 property, or such part thereof as is necessary, and apply the proceeds
11 of the sale as provided in NRS 40.462.
- 12 2. This section must be construed to permit a secured creditor
13 to realize upon the collateral for a debt or other obligation agreed
14 upon by the debtor and creditor when the debt or other obligation
15 was incurred.
- 16 3. *At any time not later than 5 business days before the date*
17 *of sale directed by the court, if the deficiency resulting in the*
18 *action for the recovery of the debt has arisen by failure to make a*
19 *payment required by the mortgage or other lien, the deficiency*
20 *may be made good by payment of the deficient sum and by*
21 *payment of any costs, fees and expenses incident to making the*
22 *deficiency good. If a deficiency is made good pursuant to this*
23 *subsection, the sale may not occur.*
- 24 4. A sale directed by the court pursuant to subsection 1 must be
25 conducted in the same manner as the sale of real property upon
26 execution, by the sheriff of the county in which the encumbered
27 land is situated, and if the encumbered land is situated in two or
28 more counties, the court shall direct the sheriff of one of the
29 counties to conduct the sale with like proceedings and effect as if
30 the whole of the encumbered land were situated in that county.
- 31 ~~[4.]~~ 5. As used in this section, an "action" does not include any
32 act or proceeding:
- 33 (a) To appoint a receiver for, or obtain possession of, any real or
34 personal collateral for the debt or as provided in NRS 32.015.
- 35 (b) To enforce a security interest in, or the assignment of, any
36 rents, issues, profits or other income of any real or personal
37 property.
- 38 (c) To enforce a mortgage or other lien upon any real or
39 personal collateral located outside of the State which does not,
40 except as required under the laws of that jurisdiction, result in a
41 personal judgment against the debtor.



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

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

(f) For the exercise of any right or remedy authorized by chapter 104 of NRS or by the Uniform Commercial Code as enacted in any other state.

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

(h) To draw under a letter of credit.

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

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

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

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

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

(n) Pursuant to NRS 40.507 or 40.508.

(o) Which is exempted from the provisions of this section by specific statute.

(p) To recover costs of suit, costs and expenses of sale, attorneys' fees and other incidental relief in connection with any action authorized by this subsection.

Sec. 2. NRS 40.455 is hereby amended to read as follows:

40.455 1. ~~Upon~~ *Except as otherwise provided in subsection 3, upon* application of the judgment creditor or the beneficiary of the deed of trust within 6 months after the date of the foreclosure sale or the trustee's sale held pursuant to NRS 107.080, respectively, and after the required hearing, the court shall award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if it appears from the sheriff's return or the recital of consideration in the trustee's deed that there is a deficiency of the



* A B 4 7 1 R 2 *

1 proceeds of the sale and a balance remaining due to the judgment
2 creditor or the beneficiary of the deed of trust, respectively.

3 2. If the indebtedness is secured by more than one parcel of
4 real property, more than one interest in the real property or more
5 than one mortgage or deed of trust, the 6-month period begins to run
6 after the date of the foreclosure sale or trustee's sale of the last
7 parcel or other interest in the real property securing the
8 indebtedness, but in no event may the application be filed more than
9 2 years after the initial foreclosure sale or trustee's sale.

10 3. *If the judgment creditor or the beneficiary of the deed of*
11 *trust is a financial institution, the court may not award a*
12 *deficiency judgment to the judgment creditor or the beneficiary of*
13 *the deed of trust, even if there is a deficiency of the proceeds of the*
14 *sale and a balance remaining due the judgment creditor or*
15 *beneficiary of the deed of trust, if:*

16 (a) *The real property is a single-family dwelling and the debtor*
17 *or grantor was the owner of the real property at the time of the*
18 *foreclosure sale or trustee's sale;*

19 (b) *The debtor or grantor used the amount for which the real*
20 *property was secured by the mortgage or deed of trust to purchase*
21 *the real property;*

22 (c) *The debtor or grantor continuously occupied the real*
23 *property as his principal residence after securing the mortgage or*
24 *deed of trust; and*

25 (d) *The debtor or grantor did not refinance the mortgage or*
26 *deed of trust after securing it.*

27 4. *As used in this section, "financial institution" has the*
28 *meaning ascribed to it in NRS 363A.050.*

29 **Sec. 3.** The amendatory provisions of this act apply only to an
30 obligation secured by a mortgage, deed of trust or other
31 encumbrance upon real property on or after October 1, 2009.

