
SENATE BILL NO. 128—SENATORS PARKS, CARLTON, HORSFORD,
WIENER; AMODEI, BREEDEN, CEGAVSKE, COFFIN,
COPENING, LEE, MATHEWS, MCGINNESS, NOLAN,
SCHNEIDER AND WOODHOUSE (BY REQUEST)

FEBRUARY 11, 2009

JOINT SPONSORS: ASSEMBLYMEN CONKLIN, SEGERBLOM,
ANDERSON, KOIVISTO, PIERCE; AIZLEY, BOBZIEN,
BUCKLEY, DENIS, DONDERO LOOP, GRADY, LESLIE,
MANENDO, MCCLAIN, OCEGUERA, OHRENSCHALL AND
PARNELL

Referred to Committee on Commerce and Labor

SUMMARY—Requires certain persons to record foreclosure sales
and sales of real property under a deed of trust
within a certain period of time. (BDR 9-841)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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; requiring certain persons to record
foreclosure sales and sales of real property under a deed
of trust within a certain period of time after the sale; and
providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law provides for a trustee to execute a power of sale on real property
2 after a breach of an obligation or payment of debt due to the trustee. **Section 1** of
3 this bill amends existing law to require: (1) the beneficiary of the deed of trust to
4 pay all sums of money necessary to acquire a clear title to the property and to
5 record the deed of trust; and (2) the trustee to record the sale of the property with
6 the appropriate office of the county recorder within 30 days after the date of the
7 sale. (NRS 107.080)
8 Existing law provides for a person to proceed on an action for the recovery of
9 any debt or for the enforcement of any right secured by a mortgage or other lien
10 upon real estate. **Section 2** of this bill amends existing law to require the sheriff
11 who conducted a foreclosure sale pursuant to such an action to record the sale with



12 the appropriate office of the county recorder within 30 days after the date of the
13 sale. (NRS 40.430)

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

1 **Section 1.** NRS 107.080 is hereby amended to read as follows:
2 107.080 1. Except as otherwise provided in NRS 107.085, if
3 any transfer in trust of any estate in real property is made after
4 March 29, 1927, to secure the performance of an obligation or the
5 payment of any debt, a power of sale is hereby conferred upon the
6 trustee to be exercised after a breach of the obligation for which
7 the transfer is security.
8 2. The power of sale must not be exercised, however, until:
9 (a) In the case of any trust agreement coming into force:
10 (1) On or after July 1, 1949, and before July 1, 1957, the
11 grantor, or his successor in interest, a beneficiary under a
12 subordinate deed of trust or any other person who has a subordinate
13 lien or encumbrance of record on the property, has for a period of 15
14 days, computed as prescribed in subsection 3, failed to make good
15 the deficiency in performance or payment; or
16 (2) On or after July 1, 1957, the grantor, or his successor in
17 interest, a beneficiary under a subordinate deed of trust or any other
18 person who has a subordinate lien or encumbrance of record on the
19 property, has for a period of 35 days, computed as prescribed in
20 subsection 3, failed to make good the deficiency in performance or
21 payment;
22 (b) The beneficiary, the successor in interest of the beneficiary
23 or the trustee first executes and causes to be recorded in the office of
24 the recorder of the county wherein the trust property, or some part
25 thereof, is situated a notice of the breach and of his election to sell
26 or cause to be sold the property to satisfy the obligation; and
27 (c) Not less than 3 months have elapsed after the recording of
28 the notice.
29 3. The 15- or 35-day period provided in paragraph (a) of
30 subsection 2 commences on the first day following the day upon
31 which the notice of default and election to sell is recorded in the
32 office of the county recorder of the county in which the property is
33 located and a copy of the notice of default and election to sell is
34 mailed by registered or certified mail, return receipt requested and
35 with postage prepaid to the grantor, and to the person who holds the
36 title of record on the date the notice of default and election to sell is
37 recorded, at their respective addresses, if known, otherwise to the
38 address of the trust property. The notice of default and election to
39 sell must describe the deficiency in performance or payment and



1 may contain a notice of intent to declare the entire unpaid balance
2 due if acceleration is permitted by the obligation secured by the
3 deed of trust, but acceleration must not occur if the deficiency in
4 performance or payment is made good and any costs, fees and
5 expenses incident to the preparation or recordation of the notice and
6 incident to the making good of the deficiency in performance or
7 payment are paid within the time specified in subsection 2.

8 4. The trustee, or other person authorized to make the sale
9 under the terms of the trust deed or transfer in trust, shall, after
10 expiration of the 3-month period following the recording of the
11 notice of breach and election to sell, and before the making of the
12 sale, give notice of the time and place thereof by recording
13 the notice of sale and by:

14 (a) Providing the notice to each trustor and any other person
15 entitled to notice pursuant to this section by personal service or by
16 mailing the notice by registered or certified mail to the last known
17 address of the trustor and any other person entitled to such notice
18 pursuant to this section;

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

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

26 5. Every sale made under the provisions of this section and
27 other sections of this chapter vests in the purchaser the title of the
28 grantor and his successors in interest without equity or right of
29 redemption. A sale made pursuant to this section may be declared
30 void by any court of competent jurisdiction in the county where the
31 sale took place if:

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

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

37 (c) A notice of lis pendens providing notice of the pendency of
38 the action is recorded in the office of the county recorder of the
39 county where the sale took place within 30 days after
40 commencement of the action.

41 6. If proper notice is not provided pursuant to subsection 3 or
42 paragraph (a) of subsection 4 to the grantor, to the person who holds
43 the title of record on the date the notice of default and election to
44 sell is recorded, to each trustor or to any other person entitled to
45 such notice, the person who did not receive such proper notice may



1 commence an action pursuant to subsection 5 within 120 days after
2 the date on which the person received actual notice of the sale.

3 7. The sale of a lease of a dwelling unit of a cooperative
4 housing corporation vests in the purchaser title to the shares in the
5 corporation which accompany the lease.

6 **8. *Within 30 days after a sale of property is conducted***
7 ***pursuant to this section:***

8 ***(a) The beneficiary shall pay all sums of money necessary to***
9 ***acquire a clear title to the property and to record the deed of trust;***
10 ***and***

11 ***(b) The trustee shall record the sale of the property in the***
12 ***office of the county recorder of the county in which the property is***
13 ***located.***

14 **Sec. 2.** NRS 40.430 is hereby amended to read as follows:

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

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

29 3. A sale directed by the court pursuant to subsection 1 must be
30 conducted in the same manner as the sale of real property upon
31 execution, by the sheriff of the county in which the encumbered
32 land is situated, and if the encumbered land is situated in two or
33 more counties, the court shall direct the sheriff of one of the
34 counties to conduct the sale with like proceedings and effect as if
35 the whole of the encumbered land were situated in that county.

36 4. ***Within 30 days after a sale of property is conducted***
37 ***pursuant to this section, the sheriff who conducted the sale shall***
38 ***record the sale of the property in the office of the county recorder***
39 ***of the county in which the property is located.***

40 5. As used in this section, an "action" does not include any act
41 or proceeding:

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



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

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

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

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

12 (f) For the exercise of any right or remedy authorized by chapter
13 104 of NRS or by the Uniform Commercial Code as enacted in any
14 other state.

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

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

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

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

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

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

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

37 (n) Pursuant to NRS 40.507 or 40.508.

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

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

43 **Sec. 3.** This act becomes effective on July 1, 2009.

