

ASSEMBLY BILL NO. 189—ASSEMBLYMEN HOGAN, KIHUEN,
PIERCE, OHRENSCHALL; DENIS, MANENDO AND MORTENSON

FEBRUARY 18, 2009

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing the eviction of tenants from property. (BDR 3-655)

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; extending the period of time that a tenant has to comply with certain notices and requirements to avoid being guilty of unlawful detainer; extending the period of time that a tenant has to comply with a notice to quit under certain circumstances; extending the period of time before which certain court orders become effective; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law provides several circumstances under which a tenant of real
2 property or a mobile home may be guilty of unlawful detainer. (NRS 40.2512,
3 40.2514, 40.2516) For example, existing law provides that a tenant of real property
4 is guilty of unlawful detainer if he: (1) fails to pay his rent; (2) fails to comply with
5 a written notice directing him to either pay the rent or surrender the property; and
6 (3) remains on the property for at least 5 days after the notice is served upon him.
7 (NRS 40.2512) **Section 1** of this bill amends existing law to extend the 5-day
8 period to 10 days so that such a tenant is not guilty of unlawful detainer until 10
9 days after the notice is served and he has failed to comply with the notice.

10 Existing law also provides that a tenant of real property or a mobile home is
11 guilty of unlawful detainer if he takes certain actions, including assigning or
12 subletting the property in violation of the lease, and he remains in possession of the
13 property after a 3 days’ notice to quit has been served upon him. (NRS 40.2514)
14 **Section 2** of this bill amends existing law to extend the 3 days’ notice to quit to a 5
15 days’ notice to quit. **Section 6** of this bill makes a similar change with respect to
16 cases in which the property has been sold. (NRS 40.255)

17 In addition, existing law provides that a tenant of real property is guilty of
18 unlawful detainer if he: (1) fails to perform certain conditions of the lease; (2) fails
19 to comply with a written notice directing him to perform the conditions or surrender



20 the property; and (3) remains on the property for at least 5 days after the notice is
21 served upon him. Further, existing law provides that the tenant or subtenant may
22 save the lease from forfeiture by performing the conditions within 3 days after the
23 notice is served. (NRS 40.2516) **Section 3** of this bill amends existing law to
24 extend, from 5 days to 10 days, the period during which such a tenant or subtenant
25 may remain on the property before becoming guilty of unlawful detainer. **Section 3**
26 also gives the tenant and subtenant 7 days, rather than 3 days, to perform the
27 condition and save the lease from forfeiture.

28 Existing law provides procedures for summary evictions and exclusions of
29 certain tenants who fail to pay their rent. (NRS 40.253) Specifically, existing law
30 authorizes a landlord to serve such a tenant with written notice directing the tenant
31 to pay the rent or surrender the property within 5 days after service of the notice.
32 **Section 4** of this bill extends that 5-day period to 10 days after service. Existing
33 law also provides that, under certain circumstances, the landlord may obtain an
34 order from the court directing the sheriff to remove the tenant within 24 hours after
35 receiving the order. **Section 4** revises existing law to provide that the sheriff may
36 not remove the tenant earlier than 5 days after the sheriff receives the order, unless
37 the rent is reserved by the week or less, in which case the sheriff may not remove
38 the tenant earlier than 2 days after receipt of the order. Finally, **section 4** provides
39 that if the court issues an order for summary removal of the tenant, the order will
40 not take effect for a certain period of time during which if the tenant pays the rent
41 and submits proof of the payment to the court, the order will not take effect at all.
42 (NRS 40.253)

43 **Section 5** of this bill amends existing law to extend the period during which a
44 tenant may file an affidavit contesting an unlawful detainer under certain
45 circumstances. (NRS 40.254)

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

1 **Section 1.** NRS 40.2512 is hereby amended to read as follows:
2 40.2512 A tenant of real property or a mobile home for a term
3 less than life is guilty of an unlawful detainer when he continues in
4 possession, in person or by subtenant, after default in the payment of
5 any rent and after a notice in writing, requiring in the alternative the
6 payment of the rent or the surrender of the detained premises,
7 remains uncomplied with for a period of ~~5 days, or in the case of a~~
8 ~~mobile home lot,~~ 10 days after service thereof. The notice may be
9 served at any time after the rent becomes due.

10 **Sec. 2.** NRS 40.2514 is hereby amended to read as follows:
11 40.2514 A tenant of real property or a mobile home for a term
12 less than life is guilty of an unlawful detainer when he:

- 13 1. Assigns or sublets the leased premises contrary to the
- 14 covenants of the lease;
- 15 2. Commits or permits waste thereon;
- 16 3. Sets up or carries on therein or thereon any unlawful
- 17 business;
- 18 4. Suffers, permits or maintains on or about the premises any
- 19 nuisance that consists of conduct or an ongoing condition which



1 constitutes an unreasonable obstruction to the free use of property
2 and causes injury and damage to other tenants or occupants of that
3 property or adjacent buildings or structures; or

4 5. Violates any of the provisions of NRS 453.011 to 453.552,
5 inclusive, except NRS 453.336, therein or thereon,

6 ➤ and remains in possession after service upon him of ~~5~~ 5 days'
7 notice to quit.

8 **Sec. 3.** NRS 40.2516 is hereby amended to read as follows:

9 40.2516 A tenant of real property or a mobile home for a term
10 less than life is guilty of an unlawful detainer when he continues in
11 possession, in person or by subtenant, after a neglect or failure to
12 perform any condition or covenant of the lease or agreement under
13 which the property or mobile home is held, other than those
14 mentioned in NRS 40.250 to 40.252, inclusive, and NRS 40.254,
15 and after notice in writing, requiring in the alternative the
16 performance of the condition or covenant or the surrender of the
17 property, served upon him, and, if there is a subtenant in actual
18 occupation of the premises, also upon the subtenant, remains
19 uncomplished with for ~~10~~ 10 days after the service thereof. Within ~~7~~
20 7 days after the service, the tenant, or any subtenant in actual
21 occupation of the premises, or any mortgagee of the term, or other
22 person, interested in its continuance, may perform the condition or
23 covenant and thereby save the lease from forfeiture, ~~7~~ but if the
24 covenants and conditions of the lease, violated by the lessee, cannot
25 afterwards be performed, then no notice need be given.

26 **Sec. 4.** NRS 40.253 is hereby amended to read as follows:

27 40.253 1. Except as otherwise provided in subsection 10, in
28 addition to the remedy provided in NRS 40.2512 and 40.290 to
29 40.420, inclusive, when the tenant of any dwelling, apartment,
30 mobile home, recreational vehicle or commercial premises with
31 periodic rent reserved by the month or any shorter period is in
32 default in payment of the rent, the landlord or his agent, unless
33 otherwise agreed in writing, may serve or have served a notice in
34 writing, requiring in the alternative the payment of the rent or the
35 surrender of the premises:

36 (a) At or before noon of the ~~fifth~~ 10th full day following the
37 day of service; or

38 (b) If the landlord chooses not to proceed in the manner set forth
39 in paragraph (a) and the rent is reserved by a period of 1 week or
40 less and the tenancy has not continued for more than 45 days, at or
41 before noon of the fourth full day following the day of service.

42 ➤ As used in this subsection, "day of service" means the day the
43 landlord or his agent personally delivers the notice to the tenant. If
44 personal service was not so delivered, the "day of service" means
45 the day the notice is delivered, after posting and mailing pursuant to



1 subsection 2, to the sheriff or constable for service if the request for
2 service is made before noon. If the request for service by the sheriff
3 or constable is made after noon, the “day of service” shall be
4 deemed to be the day next following the day that the request is made
5 for service by the sheriff or constable.

6 2. A landlord or his agent who serves a notice to a tenant
7 pursuant to paragraph (b) of subsection 1 shall attempt to deliver the
8 notice in person in the manner set forth in paragraph (a) of
9 subsection 1 of NRS 40.280. If the notice cannot be delivered in
10 person, the landlord or his agent:

11 (a) Shall post a copy of the notice in a conspicuous place on the
12 premises and mail the notice by overnight mail; and

13 (b) After the notice has been posted and mailed, may deliver the
14 notice to the sheriff or constable for service in the manner set forth
15 in subsection 1 of NRS 40.280. The sheriff or constable shall not
16 accept the notice for service unless it is accompanied by written
17 evidence, signed by the tenant when he took possession of the
18 premises, that the landlord or his agent informed the tenant of the
19 provisions of this section which set forth the lawful procedures for
20 eviction from a short-term tenancy. Upon acceptance, the sheriff or
21 constable shall serve the notice within 48 hours after the request for
22 service was made by the landlord or his agent.

23 3. A notice served pursuant to subsection 1 or 2 must:

24 (a) Identify the court that has jurisdiction over the matter; and

25 (b) Advise the tenant of his right to contest the matter by filing,
26 within the time specified in subsection 1 for the payment of the rent
27 or surrender of the premises, an affidavit with the court that has
28 jurisdiction over the matter stating that he has tendered payment or
29 is not in default in the payment of the rent.

30 4. If the tenant files such an affidavit at or before the time
31 stated in the notice, the landlord or his agent, after receipt of a file-
32 stamped copy of the affidavit which was filed, shall not provide for
33 the nonadmittance of the tenant to the premises by locking or
34 otherwise.

35 5. Upon noncompliance with the notice:

36 (a) The landlord or his agent may apply by affidavit of
37 complaint for eviction to the justice court of the township in which
38 the dwelling, apartment, mobile home or commercial premises are
39 located or to the district court of the county in which the dwelling,
40 apartment, mobile home or commercial premises are located,
41 whichever has jurisdiction over the matter. The court may thereupon
42 issue an order directing the sheriff or constable of the county to
43 remove the tenant ~~[within 24 hours]~~ *not earlier than 5 days* after
44 receipt of the order ~~[]~~ *or, if the rent is reserved by a period of 1*



1 *week or less, not earlier than 2 days after receipt of the order.* The
2 affidavit must state or contain:

3 (1) The date the tenancy commenced.

4 (2) The amount of periodic rent reserved.

5 (3) The amounts of any cleaning, security or rent deposits
6 paid in advance, in excess of the first month's rent, by the tenant.

7 (4) The date the rental payments became delinquent.

8 (5) The length of time the tenant has remained in possession
9 without paying rent.

10 (6) The amount of rent claimed due and delinquent.

11 (7) A statement that the written notice was served on the
12 tenant in accordance with NRS 40.280.

13 (8) A copy of the written notice served on the tenant.

14 (9) A copy of the signed written rental agreement, if any.

15 (b) Except when the tenant has timely filed the affidavit
16 described in subsection 3 and a file-stamped copy of it has been
17 received by the landlord or his agent, and except when the landlord
18 is prohibited pursuant to NRS 118A.480, the landlord or his agent
19 may, in a peaceable manner, provide for the nonadmittance of the
20 tenant to the premises by locking or otherwise.

21 6. Upon the filing by the tenant of the affidavit permitted in
22 subsection 3, regardless of the information contained in the
23 affidavit, and the filing by the landlord of the affidavit permitted by
24 subsection 5, the justice court or the district court shall hold a
25 hearing, after service of notice of the hearing upon the parties, to
26 determine the truthfulness and sufficiency of any affidavit or notice
27 provided for in this section. If the court determines that ~~[there]~~ :

28 (a) *There* is no legal defense as to the alleged unlawful detainer
29 and the tenant is guilty of an unlawful detainer, the court may issue
30 a summary order for removal of the tenant or an order providing for
31 the nonadmittance of the tenant. ~~[If the court determines that there]~~
32 *Except as otherwise provided in this paragraph, the order becomes*
33 *effective at noon on the date set forth in the notice served pursuant*
34 *to subsection 1 or 2 or at noon on the fifth day after the order is*
35 *issued, whichever is later. The order will not become effective if*
36 *the tenant tenders payment of the rent and submits proof of the*
37 *payment to the court before the order is to become effective*
38 *pursuant to this paragraph.*

39 (b) *There* is a legal defense as to the alleged unlawful detainer,
40 the court shall refuse to grant either party any relief ~~[.]~~ and, except
41 as otherwise provided in this subsection, shall require that any
42 further proceedings be conducted pursuant to NRS 40.290 to
43 40.420, inclusive.

44 ↪ The issuance of a summary order for removal of the tenant does
45 not preclude an action by the tenant for any damages or other relief



1 to which he may be entitled. If the alleged unlawful detainer was
2 based upon subsection 5 of NRS 40.2514, the refusal by the court to
3 grant relief does not preclude the landlord thereafter from pursuing
4 an action for unlawful detainer in accordance with NRS 40.251.

5 7. The tenant may, upon payment of the appropriate fees
6 relating to the filing and service of a motion, file a motion with the
7 court, on a form provided by the clerk of the court, to dispute the
8 amount of the costs, if any, claimed by the landlord pursuant to NRS
9 118A.460 for the inventory, moving and storage of personal
10 property left on the premises. The motion must be filed within 20
11 days after the summary order for removal of the tenant or the
12 abandonment of the premises by the tenant, or within 20 days after:

13 (a) The tenant has vacated or been removed from the premises;
14 and

15 (b) A copy of those charges has been requested by or provided
16 to the tenant,

17 ↪ whichever is later.

18 8. Upon the filing of a motion pursuant to subsection 7, the
19 court shall schedule a hearing on the motion. The hearing must be
20 held within 10 days after the filing of the motion. The court shall
21 affix the date of the hearing to the motion and order a copy served
22 upon the landlord by the sheriff, constable or other process server.
23 At the hearing, the court may:

24 (a) Determine the costs, if any, claimed by the landlord pursuant
25 to NRS 118A.460, and any accumulating daily costs; and

26 (b) Order the release of the tenant's property upon the payment
27 of the charges determined to be due or if no charges are determined
28 to be due.

29 9. A landlord shall not refuse to accept rent from a tenant that
30 is submitted after the landlord or his agent has served or had served
31 a notice pursuant to subsection 1 if the refusal is based on the fact
32 that the tenant has not paid collection fees, attorney's fees or other
33 costs other than rent, a reasonable charge for late payments of rent
34 or dishonored checks, or a security. As used in this subsection,
35 "security" has the meaning ascribed to it in NRS 118A.240.

36 10. This section does not apply to the tenant of a mobile home
37 lot in a mobile home park or to the tenant of a recreational vehicle
38 lot in an area of a mobile home park in this State other than an area
39 designated as a recreational vehicle lot pursuant to the provisions of
40 subsection 6 of NRS 40.215.

41 **Sec. 5.** NRS 40.254 is hereby amended to read as follows:

42 40.254 Except as otherwise provided by specific statute, in
43 addition to the remedy provided in NRS 40.251 and in NRS 40.290
44 to 40.420, inclusive, when the tenant of a dwelling unit which is
45 subject to the provisions of chapter 118A of NRS, part of a low-rent



1 housing program operated by a public housing authority, a mobile
2 home or a recreational vehicle is guilty of an unlawful detainer, the
3 landlord is entitled to the summary procedures provided in NRS
4 40.253 except that:

5 1. Written notice to surrender the premises must:

6 (a) Be given to the tenant in accordance with the provisions of
7 NRS 40.280;

8 (b) Advise the tenant of the court that has jurisdiction over the
9 matter; and

10 (c) Advise the tenant of his right to contest the notice by filing
11 within ~~5~~ 10 days an affidavit with the court that has jurisdiction
12 over the matter that he is not guilty of an unlawful detainer.

13 2. The affidavit of the landlord or his agent submitted to the
14 justice court or the district court must contain:

15 (a) The date when the tenancy commenced, the term of the
16 tenancy ~~and~~ and, if any, a copy of the rental agreement.

17 (b) The date when the tenancy or rental agreement allegedly
18 terminated.

19 (c) The date when the tenant became subject to the provisions of
20 NRS 40.251 to 40.2516, inclusive, together with any supporting
21 facts.

22 (d) The date when the written notice was given, a copy of the
23 notice and a statement that notice was served in accordance with
24 NRS 40.280.

25 (e) A statement that the claim for relief was authorized by law.

26 3. If the tenant is found guilty of unlawful detainer as a result
27 of his violation of any of the provisions of NRS 453.011 to 453.552,
28 inclusive, except NRS 453.336, the landlord is entitled to be
29 awarded any reasonable attorney's fees incurred by the landlord or
30 his agent as a result of a hearing, if any, held pursuant to subsection
31 6 of NRS 40.253 wherein the tenant contested the eviction.

32 **Sec. 6.** NRS 40.255 is hereby amended to read as follows:

33 40.255 1. Except as *otherwise* provided in subsection 2, in
34 any of the following cases, a person who holds over and continues
35 in possession of real property or a mobile home after a ~~3-day~~ 5-
36 *day* written notice to quit has been served upon him, and also upon
37 any subtenant in actual occupation of the premises, pursuant to NRS
38 40.280, may be removed as prescribed in NRS 40.290 to 40.420,
39 inclusive:

40 (a) Where the property or mobile home has been sold under an
41 execution against him or a person under whom he claims, and the
42 title under the sale has been perfected;

43 (b) Where the property or mobile home has been sold upon the
44 foreclosure of a mortgage, or under an express power of sale



1 contained therein, executed by him or a person under whom he
2 claims, and the title under the sale has been perfected;

3 (c) Where the property or mobile home has been sold under a
4 power of sale granted by NRS 107.080 to the trustee of a deed of
5 trust executed by such person or a person under whom he claims,
6 and the title under such sale has been perfected; or

7 (d) Where the property or mobile home has been sold by him or
8 a person under whom he claims, and the title under the sale has been
9 perfected.

10 2. This section does not apply to the tenant of a mobile home
11 lot in a mobile home park.

12 **Sec. 7.** This act becomes effective upon passage and approval.

