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ASSEMBLY BILL NO. 258—ASSEMBLYMEN HORNE, MANENDO;  
AIZLEY, ATKINSON, CONKLIN, DONDERO LOOP,  
HAMBRICK, HOGAN, KIHUEN, MUNFORD, OHRENSCHALL,  
SEGERBLOM, SPIEGEL AND STEWART

MARCH 6, 2009

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JOINT SPONSOR: SENATOR PARKS

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Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes concerning foreclosures and security deposits. (BDR 3-190)

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.

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AN ACT relating to property; allowing the new owner of real property or a mobile home after a foreclosure sale or trustee's sale to offer the tenant of the property a payment in exchange for the tenant vacating the property; requiring a security deposit received by a landlord to be placed in an escrow account; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

1 Existing law provides that after a foreclosure sale or trustee's sale, the new  
2 owner of real property or a mobile home may file an action to evict a tenant who  
3 holds over and continues to stay in the property after a 3-day written notice to quit  
4 has been served upon him. **Section 1** of this bill allows the new owner to offer the  
5 tenant a payment in exchange for vacating the property on a date earlier than the  
6 date on which the tenant may be evicted. **Section 1** also provides that such an offer,  
7 if in writing, constitutes an offer of judgment. Thus, if the tenant refuses the offer  
8 and does not obtain a more favorable judgment in an action to evict the tenant, the  
9 tenant must pay certain costs incurred by the new owner. (NRS 40.215-40.425)  
10 **Section 2** of this bill revises existing law to require a landlord who receives a  
11 security deposit from a tenant to place the security deposit in an escrow account  
12 and disclose to the tenant the location of the security deposit and any change  
13 thereof. (NRS 118A.242) **Section 2** also provides certain penalties for a landlord  
14 who fails to comply with these requirements.



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

1       **Section 1.** NRS 40.255 is hereby amended to read as follows:  
2       40.255 1. Except as *otherwise* provided in subsection ~~{2,}~~ **3**,  
3 in any of the following cases, a person who holds over and  
4 continues in possession of real property or a mobile home after a 3-  
5 day written notice to quit has been served upon him, and also upon  
6 any subtenant in actual occupation of the premises, pursuant to NRS  
7 40.280, may be removed as prescribed in NRS 40.290 to 40.420,  
8 inclusive:

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

12       (b) Where the property or mobile home has been sold upon the  
13 foreclosure of a mortgage, or under an express power of sale  
14 contained therein, executed by him or a person under whom he  
15 claims, and the title under the sale has been perfected;

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

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

23       2. *Nothing in this section shall be deemed to prohibit the new*  
24 *owner of a property purchased pursuant to a foreclosure sale or*  
25 *trustee's sale from offering a payment to the tenant or subtenant*  
26 *in exchange for vacating the premises on a date earlier than the*  
27 *date on which he may be removed pursuant to this section or NRS*  
28 *40.290 to 40.420, inclusive. Any such offer, if in writing,*  
29 *constitutes an offer of judgment for purposes of NRS 17.115 and*  
30 *any applicable rules of the court in which the action was*  
31 *commenced.*

32       3. This section does not apply to the tenant of a mobile home  
33 lot in a mobile home park.

34       **Sec. 2.** NRS 118A.242 is hereby amended to read as follows:

35       118A.242 1. The landlord may not demand or receive  
36 security, including the last month's rent, whose total amount or  
37 value exceeds 3 months' periodic rent.

38       2. *The landlord shall place each security received by him in*  
39 *an escrow account in a bank, credit union or savings and loan*  
40 *association in this State that is federally insured or insured by a*



1 *private insurer approved pursuant to NRS 678.755. The account*  
2 *must be designated as a security deposit account and may be used*  
3 *only as provided in this section. The landlord shall:*

4 (a) *Deposit the security in the escrow account not later than 2*  
5 *business days after the date on which the landlord receives the*  
6 *security from the tenant;*

7 (b) *Provide the tenant with a written receipt for the deposit of*  
8 *the security in the account;*

9 (c) *Disclose to the tenant the name, address and location of the*  
10 *financial institution in which the account is held and any change*  
11 *thereof; and*

12 (d) *Hold and administer the principal in the account for the*  
13 *benefit of the tenant.*

14 3. *If a landlord fails to place a security in an escrow account*  
15 *as required pursuant to subsection 2 or fails to disclose to a tenant*  
16 *the information set forth in subsection 2 concerning the account*  
17 *within 20 days after the tenant requests the information, the*  
18 *landlord forfeits the amount of the security. If the landlord fails to*  
19 *return the amount of a forfeited security to the tenant within 20*  
20 *days after the effective date of the forfeiture, the landlord must pay*  
21 *to the tenant double the amount of the security.*

22 4. Upon termination of the tenancy by either party for any  
23 reason, the landlord may claim of the security only such amounts as  
24 are reasonably necessary to remedy any default of the tenant in the  
25 payment of rent, to repair damages to the premises caused by the  
26 tenant other than normal wear and to pay the reasonable costs of  
27 cleaning the premises. The landlord shall provide the tenant with an  
28 itemized written accounting of the disposition of the security and  
29 return any remaining portion of the security to the tenant no later  
30 than 30 days after the termination of the tenancy by handing it to  
31 him personally at the place where the rent is paid, or by mailing it to  
32 him at his present address, or if that address is unknown, at the  
33 tenant's last known address.

34 ~~[3.]~~ 5. If the landlord fails or refuses to return the remainder of  
35 a security deposit within 30 days after the end of a tenancy, he is  
36 liable to the tenant for damages:

37 (a) In an amount equal to the entire deposit; and

38 (b) For a sum to be fixed by the court of not more than the  
39 amount of the entire deposit.

40 ~~[4.]~~ 6. In determining the sum, if any, to be awarded under  
41 paragraph (b) of subsection ~~[3.]~~ 5, the court shall consider:

42 (a) Whether the landlord acted in good faith;

43 (b) The course of conduct between the landlord and the tenant;

44 and



1 (c) The degree of harm to the tenant caused by the landlord's  
2 conduct.

3 ~~[5.]~~ 7. Except for an agreement which provides for a  
4 nonrefundable charge for cleaning, in a reasonable amount, no rental  
5 agreement may contain any provision characterizing any security  
6 under this section as nonrefundable or any provision waiving or  
7 modifying a tenant's rights under this section. Any such provision is  
8 void as contrary to public policy.

9 ~~[6.]~~ 8. The claim of a tenant to security to which he is entitled  
10 under this chapter takes precedence over the claim of any creditor of  
11 the landlord.

12 **Sec. 3.** NRS 118A.244 is hereby amended to read as follows:

13 118A.244 1. Upon termination of the landlord's interest in  
14 the dwelling unit, whether by sale, assignment, death, appointment  
15 of receiver or otherwise, the landlord or his agent shall, within a  
16 reasonable time, do one of the following, which relieves him of  
17 further liability with respect to the security:

18 (a) Notify the tenant in writing of the name, address and  
19 telephone number of his successor in interest, and that he has  
20 transferred to his successor in interest the portion of the security  
21 remaining after making any deductions allowed under  
22 NRS 118A.242.

23 (b) Return to the tenant the portion of the security remaining  
24 after making any deductions allowed under NRS 118A.242.

25 ➤ The successor has the rights, obligations and liabilities of the  
26 former landlord as to any securities which are owed under this  
27 section or NRS 118A.242 at the time of transfer ~~[.]~~, *including,*  
28 *without limitation, the obligation to place the security in an escrow*  
29 *account as required pursuant to NRS 118A.242.*

30 2. The landlord shall, before he records a deed transferring any  
31 dwelling unit:

32 (a) Transfer to his successor, in writing, the portion of any  
33 tenant's security deposit or other money held by him which remains  
34 after making any deductions allowed under NRS 118A.242; or

35 (b) Notify his successor in writing that he has returned all such  
36 deposits or portions thereof to the tenant.

