

**PREPARED TESTIMONY OF MICHAEL E. BUCKLEY  
IN SUPPORT OF SB 382**

**ASSEMBLY JUDICIARY COMMITTEE - APRIL 26, 2019**

This bill is presented by the members of the Executive Committee of the Real Property Section, not the Section itself and not the State Bar. The bill is similar to one supported by our Executive Committee with respect to NRS Chapter 40, which became law in 2015.<sup>1</sup> Since 2009, numerous changes and additions have been made to statutes covering real estate foreclosures and lender remedies. As a result, Chapter 107 has become quite complex. As we moved the numerous definitions in the Chapter into one section, we encountered other errors, which the bill corrects. The purpose of the bill is to make technical corrections, not to make new law.

By amendment Section 30.5 was added to the bill, making a technical change to Chapter 116. The Executive Committee takes no position on this addition.

**Section 1** gathers all the defined terms used more than once in Chapter 107 into one Section.

**Sections 2 and 3** amend NRS 107.025 and 107.027, governing creation of a security interest in a cooperative, one of the three types of Chapter 116 common-interest communities. These statutes were never updated after the passage of Chapter 116 in 1991. A similar change is made in **Section 9** (p. 17, lines 7-11).

In several places Chapter 107 uses inconsistent terms to describe the same thing. This can lead to confusion or inconsistent interpretations. The statutory changes in **Sections 4 - 6, 9 - 13, and 16** amend the statutes so that the references to deed of trust premises and the deed of trust itself are all the same.

**Premises.** The chapter uses the term "premises" on its own (e.g., p. 4, line 42; p. 7, line 12), referring to the property encumbered by the deed of trust, but also uses the terms "*trust premises*" (p. 4, line 33), "*conveyed premises*" (p. 5, line 11) and "*premises conveyed or transferred in trust*" (p. 6, line 39). This bill changes these terms to "premises."

**Deed of Trust.** Chapter 107 uses the term "deed of trust" on its own in several places,<sup>2</sup> a deed of trust, however, is also referred to in NRS 107.040 (**Section 5**) as a "*conveyance in trust*" (p. 7, lines 12-13, 32, 42; p. 8, line 5), in NRS 107.050 (**Section 6**) as a "*transfer in trust*" (p. 8, line 12), and in NRS 107.080, 107.0805, 107.085, 107.086 and 107.095 (**Sections 9, 10, 11, 12, 13, and 16**) as a "*trust agreement*" (p. 14, line 23; p. 18, line 42; p. 21, lines 40-42; p. 22, lines 3 and 23; p. 23, line 24; p. 29, line 10; p.35, line 18). The bill amends these statutes to use "deed of trust" throughout. This also eliminates any confusion between a trust agreement used for estate planning purposes and a deed of trust.

---

<sup>1</sup> 2015 Statutes of Nevada, Page 3336 (Chapter 518, SB 453).

<sup>2</sup> e.g., NRS 107.025, 107.027, 107.028.

The amendments in **Sections 7, 9 - 21, 24 - 26, and 32** are either to remove the definition that is now in Section 1 or to correct the reference to where the defined term is now located.

**Section 8** adds a defined term "condominium" used only in this section.

NRS 108.2405 permits an owner to waive its rights to protect itself from liens for tenant improvements by recording a notice of non-responsibility. **Section 22** amends the statute to permit a recorded waiver to cover not only a single work of improvement, but multiple works of improvement. The owner of a shopping mall or a resort hotel/casino might wish to waive its protection for more than one tenant.

**Section 23** amends a very old statute.<sup>3</sup> NRS 40.050 states that a mortgage is not a conveyance so as to permit the lender to take possession of the property without a foreclosure. A mortgage or deed of trust by statute also includes an assignment of leases and rents. Existing Nevada law permits the lender to enter the property to collect the rents, either on its own or through a court appointed receiver. The purpose of this change is to conform NRS 40.050 with these laws.

**Section 27** amends NRS 111.312, by changing the term "*grant, bargain or deed of sale*" to "*grant, bargain and sale deed*," the Nevada statutory special warranty deed.<sup>4</sup> The original language appears to have mistakenly transposed the words.

**Sections 28 and 29** address the exemption from Chapter 116 of commercial condominiums and commercial planned communities, two different types of common interest communities. As presently written, NRS 116.1201(2)(b) (**Section 29**) exempts commercial *planned communities*, but references *condominium* provisions. **Section 28** puts the existing planned community exemption in its own statute.

**Section 30** amends NRS 116.2117. A distinction exists between (i) the *fundamental use* of a unit in a common-interest community (for example, residential vs. commercial) ("Use Restriction") and (ii) an *occupancy restrictions*, such as number of pets or parking requirements ("Occupancy Restriction"). As currently constituted, no amendment may "change the uses to which any unit is restricted, in the absence of unanimous consent," which includes Occupancy Restrictions. This requirement was deleted by the 2009 Legislature and inexplicably added back in 2011. The proposed amendment removes the requirement of unanimous consent to change a use to which a unit is restricted. This amendment is consistent with the Uniform Law changes in 1994.

(In 2011, "grandfathering" language was added to NRS 116.2117(6) which prohibits application of Occupancy Restriction amendments that materially affected the "uses" of a unit for existing unit owners.)

**Section 31** (p. 50, line 42-44, p. 51, line 1) corrects a simple drafting error.

---

<sup>3</sup> The law already existed in 1911: [1911 CPA § 576; RL § 5518; NCL § 9065]

<sup>4</sup> NRS 111.170.