MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 55th Session
March 13, 1969

Meeting was called to order at 3:35 P.M. by Chairman Torvinen.

PRESENT: Torvinen, Kean, Fry, Reid, Prince, Bryan, Schouweiler, Lowman

ABSENT: Swackhamer

MR. TORVINEN: This is the day set for a hearing on AB 297, AB 298, AB 493, AB 494 and we will add AB 199.

MR. REID: There is another bill on this in the Senate. If these people know about it, I would like them to comment on that one, too. I would also like Mr. Van Patten to tell us how the California law is working.

MR. VAN PATTEN: Lawyer from California: The present law in Nevada is basically inadequate. It permits the creditor who forecloses under deed of trust to hold a sale and no one knows of it. He can get in 5 to 10% and then wait for the statute of limitations to run out and then bring suit against the borrower and recover the full amount. The debtor may lose his property at 10 cents on the dollar and yet end up having to pay the full amount of the debt later. Many times the creditor has collected twice and the debtor has lost twice. It is only because of the restraint and good sense of public relations of the banks and building and loan institutions that this has not happened oftener.

One safeguard against this "so-called" purchase money method - no deficiency judgment permitted then.

Mr. Hilbrecht's bill, AB 298, proposes to adopt this purchase money deed of trust for the method. In my experience, which is more than that of any other attorney in the State of California, and I have represented both sides, this is a strange method, a rather clumsy device. The only reason for it is a certain common law sanction which made it possible for it to be put into effect during the depression. I could talk for hours on purchase money deeds. It has a nice ring to it, but it is very difficult to determine. It is not an economical approach to this kind of thing because, simply be accident, some will fall into this category and some will not. While the deed is in your hands you cannot get a deficiency judgment. If you sell it to the bank, he may be able to exercise it. It has nothing to do with the borrower. In some states in the hands of the owner, in due course, it would be a purchase money deed.

Another problem: A third party lender comes in and loans the $70,000. In some states this would be a purchase money deed and in some states it would not. It was finally decided by the courts that in the hands of a third party purchase money deed still applies.

With AB 298 you are closing doors and it would take many many cases before an attorney could advise his client whether it was or was not purchase money deed, or trust.

AB 493 would have an adverse effect to some degree on lenders. We think that in so far as savings and loans are concerned, they are willing to live with this restriction.

After the deed of trust is sold, the deficiency judgment can only be the difference in amount of the sale and the value of the property. It doesn't hurt the debtor and it doesn't enable the creditor to deal unfairly. The debtor is not left to a haphazard situation.

AB 493 also provides that the debtor cannot be left hanging in limbo for a number of months. Action has to be started within three months. You are not faced with the problem of trying to find out what the property was worth say five years ago.

I believe that AB 493 would solve most of the problems. 494 is good if the committee feels that one should protect the small home buyer against deficiency judgment. This was the purpose of the California law. 494 does this for you.

One thing: There is a slight ambiguity in section 2 which ends with "under a contract of sale executed after Dec. 31, 1969." It should be made clear that this is talking about a secured instrument of sale. Also contract of sale that can be like a broker's contract of receipt. It should be clear we are referring here to the words "contract of sale" so add "all of the purchase price".

I think Clark Guild has pointed out to me there is a point of the Senate side, SB 35, which deals with deficiency judgment, sort of a shorthand version of the California law on this subject.

There are several things you should do. One, you should introduce fair market value for the protection of the debtor, same as in 493. However, it goes further and introduces the purchase money device which is not a good approach to the problem.

After 30 years in California, there have been cases interpreting different sections of this. We still do not know how the Supreme Court is going to interpret it. We have had three cases.

Second, you need a so-called judicial foreclosure procedure which applies to all. Provides for two trials. One, to provide valid deed of trust, then you get an interlocutory decree and then after the sale is held, two, they go back to decide what the fair market value was. Debtor still owes it, so a period of sometimes almost two years the property can be in the hands of a receiver. It is a very expensive process. It puts everyone to the burden of two trials. When you are all done, these are all court costs and the debtor ends up paying them.

This law is one which most of the attorneys in California think is a very bad law but we can't agree on how to change it. However, there is unanimous agreement that it is a bad law. This is one California law that Nevada should not copy.

MR. REID: What is in most of the other states?

MR. VAN PATTEN: Only eight or nine states that permit deeds of trust as opposed to mortgages so you are not really comparable to other states. Nevada is the only state which permits deficiency justment after sale of trust.

About 40 of the states have the fair market limitation. A foreclosed debtor should not have to rely on the vagaries of a trust sale.

MR. REID: Are there any states which have a law similar to that of California?

MR. VAN PATTEN: California is the only state that has all the protections and devices. They were adopted 1933-36 at a time when hundreds of foreclosures were going on. It was an emergency measure and there was not time to plan properly. I heard someone make the statement recently that the California law on this is the most completely unworkable law on anybody's books.

MR. KEAN: No one is in favor of deficiency judgments yet I detect you are in favor of some sort of one.

MR. VAN PATTEN: Yes, I am in favor of 493 and in my talks with the savings and loan people they are in favor of it even though it restricts them. They are feeling that more of these bad cases will come down and then there will be endless other bills trying to correct it.

MR. KEAN: On 494: You would continue to leave out the purchase money deed of trust?

MR. VAN PATTEN: Yes. It was politically designed to protect the small homeowners. It sometimes does protect and sometimes doesn't.

Let's assume a tract builder builds a number of homes and obtains a loan. Under purchase money that is not a deed of trust. But having the home buyer assume that deed of trust does not give him the protection of the purchase money deed of trust. However, if he takes out another loan, with another financial company, he would have that protection.

MR. KEAN: Would 494 have a tendency to dry up money?

MR. VAN PATTEN: It would not dry up first lien money for the deed of trust. However, it would probably dry up some secondary financing.

MR. TORVINEN: Primarily by the builders, the secondary financing?

MR. VAN PATTEN: No, it would not be the builders. A man has a mortgage on his home and he goes back for some new financing, maybe for a swimming pool or something. He would find it somewhat more difficult to get a second mortgage with 494, in effect, than without it.

MR. TORVINEN: Would it be the same situation with 493?

MR. VAN PATTEN: No, sir, it would not. The situation having to do with second mortgages: When he comes in, four times out of five, the lender is not looking to the property. He is primarily looking at the individual's possibilities for repaying the loan. The second mortgage on the home is simply for additional cover and for effect.

CLARK GUILD: Attorney representing Savings and Loans.
I asked Mr. Van Patten if there was any inconsistency in adopting 494 without 493 or vice versa. The way the two bills were drawn would there be an inconsistency?

MR. VAN PATTEN: It affects all debtors, home owners and commercial debtors, against an inequitable situation of an inadequate bid.

MR. GUILD: 494 could stand on itself then. 493 just gives some protection.

MR. REID: Could we logically adopt both? It wouldn't have to be one or the other, would it?

MR. VAN PATTEN: You could adopt both. 493 would correct the present situation. 494 defines whether the burden should be on the small home owner or on the creditor.

MR. GUILD: I disagree. I think if you pass both bills there would be a problem of interpretation. Section 1 of 494 says judgment deficiencies shall not be rendered but 493 sets up a system for getting these deficiencies.

MR. VAN PATTEN: 493 brings Nevada law into accord with the laws of most other states. 494 goes one step further than that. I am only speaking in favor of 493.

BRUCE BECKLEY: Attorney from Las Vegas for Savings and Loan companies. The position of the three Savings and Loan companies for which I am speaking is substantially the same as that of Mr. Van Patten. We are opposed to SB 35 and we are opposed to the California law, AB 298. Mr. Van Patten has given us some idea of the difficulties with this. It was only two years ago that we even knew that there was a deficiency judgment under a trust deed.

We do support 493 and believe it will go a long way in preventing serious inequities in sale of property. We do not take a position of support of 494. However, we think we could live with it if we had to.

We believe 493 will do the job here in the state.

MR. BRYAN: Is there a statute in another jurisdiction after which 493 has been patterned? If so, are there decisions to guide us?

MR. VAN PATTEN: Yes. 493 is virtually the same as in the fair market value protection in the California law and very much the same as about ten other states have.

MR. GUILD: There would be states, then, to give you previous judicial decisions.

EDWARD HALE: Attorney from Reno: One technical matter: I think the policy of this legislation is very good. However, it seems to me there is no technical definition of indebtedness. I would like to suggest the following seven things which should be included in a definition of "indebtedness." (Mr. Hale's statement attached to minutes.)

1. Property money
2. Interest
3. Costs. Cycle of consideration in the trustee deed. Cycle of consideration not necessary in indebtedness.
4. Trustee's fees should be included.
5. Advances made during the period of foreclosure, such as insurance and taxes.
6. Additional indebtedness under an omnibus clause.
7. Provisions for creditor holding 1st, 2nd, and 3rd loans.

It might be well to have an additional paragraph or section that defines and spells out these various classes of money that I have named.

MR. REID: Do you have a suggestion?

MR. HALE: (Read the provisions for this in SB 35). This language would make it clear as to the amount you could sue for.

MR. KEAN: Did I understand you correctly? Do you automatically pick up the second and third?

MR. HALE: If you own them.

We come down to the question of waiver. In California there is case law saying this legislation is a matter of state policy and is therefore not waiverable. If this bill is to be effective at all, it should say somewhere that any waiver is totally ineffective.

MR. REID: I would like to ask Mr. Beckley and Mr. Van Patten how they feel about this definition of "indebtedness."

MR. VAN PATTEN: In interpretation of this in California the indebtedness as secure has been interpreted to include the first five classes named. The sixth class is not included and as to the seventh class, the courts have held in two cases that it depends upon whether the foreclosure creditor actually was forced to buy the other lien to protect his rights.

The language suggested here might obviate a number of court decisions to secure the point.

On the waiver: If you would set up this protection for the borrower then you have a situation where the creditor could say to the borrower you get no further money unless you specifically waive and that would circumvent the entire law.

MR. BRYAN: I would like to ask Mr. Hale a question, and would like him to address his reply to the 7th definition. Assuming first lien holder secures 2nd and 3rd in lesser amounts?

MR. HALE: I cannot really contemplate that the foreclosing creditor would go around and acquire junior positions. Nobody in their right mind should do it that way. If they foreclosed on the first only, the second position would not be secured. We would very rarely have occasion to use the seventh class, but it should be in there.

MR. BRYAN: Do you have language to cover this?

MR. HALE: The whole purpose of this legislation is to obtain a fair thing for all.

MR. LAIOLO: President of Nevada Banker's Association.
We are here to recommend a fair bill eliminating unrestrictive deficiency judgments but still fair to all in Nevada and outside the state. We are actively engaged in developing outside sources of financing for our state. We must not pass anything that will restrict this in-flor of capital funds.

When we came down here we thought we were changing to eliminate deficiency judgments entirely but, since we are not, we think AB 493 will effectively do the job. We ask that Mr. Hale's recommendations be given every consideration.

We had help in our thinking from major lenders outside of Nevada. We were unable to read these bills to them in detail but we did tell them we were considering deficiency judgment legislation. We talked with American National Insurance Company and New York Insurance Company. They said they would take a good, long look before they would invest any more money in the state. But now I see you are just trying to eliminate the silence of the law and I think that is all right.

MR. KEAN: I have been in this room since 1955 and this problem has come before us periodically. There has always been the threat that it would dry up money. Your approach has been very refreshing and the committee appreciates it.

MR. GUILD: We have been talking about deficiency. Don't apply this to acceleration clauses.

MR. ART WOOD: Builder of Incline Village: Boise Development: At the present time we have $20,000,000 in development at Incline and expect to have $50,000,000. If you take these out of receivables and make them just land we will have a very difficult situation. A deficiency judgment of the difference between value and debt would take care of our problems.

AB 199: Voids certain acceleration clauses in mortgages and deeds of trust.

MR. TORVINEN: It is my opinion that legislation should be passed to cure a vice. People have been taking advantage of a situation. That is what I am trying to do in this bill. Perhaps you can suggest a different approach to the problem.

Under first lien, you must by law look first to security before you can take action against the executor of the note. Exorbitant fees are being demanded to change the name on the ledger card of the borrower.

I introduced this bill last session and it died. I was involved in a case where a man had a second trust deed with an acceleration clause. He went to the owner and said you are not going to sell this motel unless you sell it to Joe, my friend. If you do I will use my acceleration clause on you on the second. The account was paid up and always had been paid on a current basis. He was blackjacked under this clause for no apparent reason.

The purpose of trust deeds is to secure the holder of a note to get paid. The holder has only one basic right and that is to get his money. They are using these clauses for things other than security. I would like to see this vice cleared up someway. It is a vice. I recognize an area of inequity.

MR. GUILD: I invite your attention to the fact that you could create an abuse of the acceleration clause. This is a device that the lender uses to do something else. Banks use savings and Loan and loan short.

2-97

Insurance companies will use long-term capital to loan. Their interest rate on savings is extremely low. Our current interest rate on savings is 5.25%. You can see what would happen if you were tying us into these old loans. On a loan that we made in 1966 at 6 to 6½% we are paying 6¼ and earning 6½%. Economically, we cannot survive without some other help.

At the time of the sale, you have a whole new risk evaluation. At that time, because of the acceleration clause, we have a chance to adjust our interest rates. If this right is taken away from us, then you are forcing us into a short term loan situation. If you amortize a $15,000 house loan over five years monthly payments would be $301.

MR. TORVINEN: What you are doing is telling me that a blackjack is all right because it enables you to make more money. If you are right, how come it doesn't affect FHA and GI deals the same way?

MR. GUILD: They are government. They are bought and sold and discounted Insurance companies can live with lower yields.

MR. LAIOLO: I would like to ask Bill Savage to comment. His company has been responsible for investing $40,000,000 in Nevada over the past twenty years.

MR. SAVAGE: There is another side of this, the life insurance companies, and so on. The call clause came into effect because the companies wanted to know who their responsible party would be. The problem was the buyer was getting into something that was going to be problem because he had a restriction there on selling his property. He also has an equity in the property.

If he should sell without due consideration for the creditor, the creditor could be hurt. So could the seller. If the new buyer did not come across the seller could be in trouble.

We would represent that an acceleration clause is not unusual. They are a protection for the home buyer too. Loan institutions do not want to make a loan to one party and then suddenly find themselves with an unknown quantity, a new owner in the house. It is a two-sided thing that concerns both lender and buyer.

MR. VAN PATTEN: The institution should have some say as to who it's primary borrower is. He is the one who will take care of the property and make repairs and payments. If the acceleration clause were eliminated this situation would be greatly abused. If you could buy property and transfer it without the lender having any say in the matter, that would cause great problems.

There were two cases in New York recently in which the courts actually interpreted and held that the creditor and lender was obligated to act reasonably in giving or withholding consent for the transfer. The court struck down the clause because the lender did not give consent to the transfer to the new buyer.

The complaint here is to the unreasonable use of this right, not the right itself. The New York cases are the only ones I know that have not upheld the clause.

If this is aimed at the acceleration provision, the average portfolio yield on the 7 to 9 turnover rate would put the association in the position to roll over its portfolio every 7 to 9 years. If they could not do this, they would still have low interest rates on their books and would lose money. With an acceleration clause is the only way you can lend your money on a long term basis.

I agree that there have been a lot of cases of abuse. There have been four and five percent fees requested, but striking down the whole protection to the lenders is going too far.

DON WILKERSON: We represent the largest lender in the State of Nevada, Metropolitan Life. I talked to them about the acceleration clause. They like it because of the type of loans they make. Prior security of the loan is usually the management, not what it will cost to construct the building. They do not want anyone to buy the property because they might lose this security. It concerns more than just rates. It is necessary to secure the property.

MR. HALE: Speaking of the small lender who is required to take second paper, it is not so much credit, personal. It is a question of whether the debtor-buyer will be able to respond in event of acceleration. Who will get the house? Will they take care of the property? You have no control over the manner in which the house is treated and if you have to take it back you may have to spend two to three thousand dollars to get it back in shape to resell. The seller must have some type of control over the type of people in his property. That is his security.

MR. FRY: What would be the possibility of passing 493, together with 199. What would be the effect on lenders?

MR. LAIOLO: With Building and Loan Companies, much of their investing is done for homes and residential property. We, as bankers, do a lot of the bigger, commercial things. We have to have outside help with our financing. If the outside financing does not have this protection they will not come in and help us.

In my thinking, elimination of this clause in its entirety would severely impair, if not entirely dry up the investment of funds in this state by your large lenders. They must have this management control in their trust deeds.

MR. KEAN: Could we amend AB 199 to deny unreasonable denial of consent?

MR. TORVINEN: If you are going to do that, forget it. Reasonable and unreasonable is not a remedy.

MR. GUILD: I am wondering if your premise could not be attacked by regulation. Changing the name on the card could be regulated by the Commissioner but when you blanket out the acceleration clauses which we use as master trust and refer specifically to the document on record in our files that is serious. We like to have some control over the individual that is borrowing from us.

First, eliminating acceleration clauses would put an unfair burden on the Association. Second, I question the constitutionality of AB 199.

MR. TORVINEN: Do any other states outlaw acceleration clauses?

MR. VAN PATTEN: I can't say that there are none but I don't know of any. I surveyed for decisions but not for legislation.

ERNEST CUNO: In my experience in representing the Nevada Housing Industry, I feel that most buyers feel this acceleration clause is perfectly usual and reasonable. Since coming to Reno, I have observed that the turnover of homes is more rapid than the seven to nine years referred to previously here. Also, there is a higher incidence of questionable people trying to obtain loans. Without this clause, I wonder if there would not be a deterioration of the neighborhoods.

We also agree with the comments concerning AB 493. We would like to see it adopted.

MR. TORVINEN: I am resigned to the fact that we are going to have to let the bankers come up with something on this.

If I had a $25,000 house, 80% financed, and I gave the Savings & Loan the option of approving my buyer or taking back the house, I feel very sure they would approve the buyer.

MR. REID: Just how would this affect the Savings and Loan Companies?

MR. WILBUR E. JOHNSON: Vice President Nevada Savings and Loan Assoc. We would try to find some way to live with it. We would talk to Mr. Arnold. We might makes loans subject to renewal every five years. We are now averaging yields of 6.6. We have restrictions on how we can invest, also on what we can pay for savings. We would like to go into commercial loans but we can't because we are restricted on what we can pay on savings. With a 1 point spread, how long can you survive? This would create great problems for the Savings and Loan Commissioner.

The witnesses were excused at 4:15 P.M. and the Committee recessed until 4:35 P.M.

AB 297: Provides for the establishment of foreign trade zone corporations.

EARL HAWLEY: Las Vegas Attorney: I want you to know that I do represent people who would take advantage of this if it goes into effect.

This is an opportunity for Nevada to get in on something that looks like it will have a great potential in the form of industry. Why the Act? It is patterned after the New Jersey Act. There are 8 foreign trade zones in the United States and there are two applications pending. If we get ours in, it would make 11.

MR. REID: What is the longest time one has been in effect in another state?

MR. HAWLEY: There has been one in New York State since 1934. They amended it in 1950.

MR. KEAN: What is a foreign trade zone?

MR. HAWLEY: It is a special industrial, manufacturing area set aside,

and not considered a part of the United States, where raw goods and semi-finished goods may be brought from foreign countries to this state. They are allowed to operate in our state the same as if it were their own country.

This is not a free port bill, but will work hand in hand with the free port. In short, this should really be a shot-in-the-arm for the free port.

MR. REID: What does free port mean?

MR. HAWLEY: You can bring goods in here and store them tax-free.

MR. KEAN: Goods in transit, temporarily at rest.

MR. HAWLEY: They need not be in transit.

In order to have a foreign trade zone, you have to make application to Uncle Sam.

MR. KEAN: I import something with import duties and put it in this land with a fence around it. When I want to do something with it I take it outside the fence. Then what happens? I have developed a market so now what?

MR. HAWLEY: You pay the duties on it and take it to market. Or you can pay the import on it and then let it stay there. Instead of bringing the finished articles they bring in the raw goods and manufacture right in the foreign trade zone.

For example: Toyota has at this time been moved from California because of the tax to Florida. Florida immediately turned around and placed a tax. Now Toyota is looking to move again, probably into Georgia.

MR. KEAN: The free port law did not do much for awhile because of fear that Nevada would all of a sudden change and slap on a tax. Then we put it into our constitution and it started to work. Should this foreign trade zone be amended into the constitution?

MR. HAWLEY: No. We have to have this act to meet Uncle Sam's requirements.

MR. KEAN: The goods would be sitting on Nevada soil. Would they be subject to our property tax?

MR. HAWLEY: No. A foreign zone belongs to the United States and is not subject to property tax. With all of the 8 foreign zones, all are operating by some agency of the state or a municipality.

MR. KEAN: The free port did not see any success for some time.

MR. TORVINEN: In Florida it was not a foreign zone that was repealed. It was the free port thing.

MR. HAWLEY: That shows how the foreign zone works with the free port.

They first move the goods into the zone, then when they come out the import tax would go on the goods which came from Japan and then the finished goods can sit in free port until they are needed.

MR. SCHOUWEILER: What are we talking about. Generating business?

MR. HAWLEY: In 1967 New Orleans established a foreign trade zone. They moved $86,000,000 worth of merchandise in that year. It involved subzone naptha plants. All employees brought in were American. There was a great saving effect.

Lily Ann was seriously considering moving to Japan until she obtained a foreign trade zone in San Francisco.

MR. REID: If this is such a good deal, why haven't other states done it?

MR. HAWLEY: It has to be in conjunction with a free port. It was first thought that this would have to be an open-water sort of operation. But when we found that all the goods coming into the San Francisco foreign trade zone were being flown in, then we thought maybe we could do it. It is our belief that anything heavy will be brought in by jumbo jets.

You have to pay the custom agent's wages, his house and everything connected with the operation in the way of costs. We are trying to save any expense to the state for the first three years.

MR. KEAN: Do we have to have the free port law to make this work?

MR. HAWLEY: No. New Orleans rates second in the success of foreign trade zones and they do not have a free port law.

MR. KEAN: But it would make it even more successful, wouldn't it.

MR. HAWLEY: Oh, yes.

MR. REID: Is there some assumption that we would be approved by the Federal Government?

MR. HAWLEY: No. Each application is judged on its own merits.

MR. KEAN: If we pass this law it will be a fishing license to encourage other applications.

MR. REID: I move Do Pass AB 297.
MR. KEAN: I second the motion.
MOTION CARRIED UNANIMOUSLY.

MR. TORVINEN: I am going to ask Mr. Reid to take care of the amendments for 493.

AB 493: Limits amount of recovery under and provides standards for the rendition of deficiency judgments.

MR. BRYAN: I move Do Pass AB 493 with the proposed amendments: definition of "indebtedness" and waiver and subsection 7, lender being limited to actual out of pocket expenses that he may recover.

MR. LOWMAN: I second the motion.
MOTION CARRIED WITH MR. REID NOT VOTING.

MR. BRYAN: I move to Indefinitely Postpone AB 494, 298 and 199.
MR. LOWMAN: I second the motion.
MOTION CARRIED UNANIMOUSLY.

MR. TORVINEN: I have some proposed legislation here from Mr. Close. It removes judges from paying annual dues to the Bar Association.

MR. LOWMAN: I will have to vote No on that.

MR. REID: Let's put individuals names on that one.

AB 183: Prohibits probation for felon convicted more than once.

MR. LOWMAN: The thrust of this bill would not allow probation of a felon convicted more than once in a ten year period. The district attorneys and people from the Parole and Probation testified that ten years is too long. I have an amendment here changing this to five years. There may be probation if another crime was committed before his sentence. The felony is to be against the person.

MR. TORVINEN: I don't know whether simple assault should be in there.

MR. BRYAN: The amendments are well taken but a little involved to be studied orally.

MR. TORVINEN: I think the committee would like to sleep on these.

It was reaffirmed that the Assembly Committee on Judiciary will meet in the evenings of Tuesday, Wednesday and Thursday of next week, March 18th, 19th and 20th.

Meeting was adjourned at 5:15 P.M.

Whenever a money judgment is sought for the balance due upon an obligation for the payment of which a deed of trust or mortgage with power of sale upon real property or any interest therein was given, or for a balance due according to NRS 40.430, following the exercise of the power of sale in such deed of trust or mortgage, or the sale of the encumbered property under NRS 40.430, the court shall take evidence presented by either party concerning the fair market value of the property sold as of the date of the foreclosure sale. Before rendering any judgment, the court shall find the fair market value of the real property or interest therein sold at the time of sale. The court may render judgment for not more than the amount by which the entire amount of the indebtedness due at the time of sale exceeded the fair market value of the real property or interest therein sold at the time of the sale, with interest thereon from the date of the sale; provided, however, that in no event shall the amount of said judgment, exclusive of interest after the date of sale, exceed the difference between the amount for which the property was sold and the entire amount of the indebtedness secured by said deed of trust or mortgage. The terms indebtedness due and indebtedness secured by said deed of trust or mortgage, as used in this section, mean the principal balance of the obligation secured by such deed of trust or mortgage together with all interest accrued and unpaid prior to the time of sale, all costs and fees of such foreclosure, including trustees' fees and attorneys' fees, all advances made in respect to the property

by the beneficiary, including taxes, insurance, and all other advancements authorized by the deed of trust or mortgage, and any and all other indebtedness secured by the deed of trust or mortgage.* Any such action must be brought within three months of the time of sale under such deed of trust or mortgage, or sale pursuant to NRS 40.430. The provisions of this section shall apply only to deeds of trust and mortgages executed after the passage and approval of this act.

* and any ~~other~~ indebtedness secured by deed of trust, mortgage, or lien on the real property sold due and owing to the party seeking such money judgment from the party against whom the judgment is sought.