
ASSEMBLY BILL NO. 273—COMMITTEE
ON COMMERCE AND LABOR

MARCH 15, 2011

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing deficiencies existing after foreclosure sales. (BDR 3-561)

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 real property; revising provisions governing the amount which a person holding a junior lien on real property may recover in a civil action under certain circumstances; prohibiting certain persons holding a junior lien on certain residential property from bringing a civil action under certain circumstances; revising provisions governing the amount of a deficiency judgment after the foreclosure of a mortgage or a deed of trust; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law, a judgment creditor or a beneficiary of a deed of trust may
2 obtain, after a hearing, a deficiency judgment after a foreclosure sale or trustee’s
3 sale if it appears from the sheriff’s return or the recital of consideration in the
4 trustee’s deed that there is a deficiency of the proceeds of the sale and a balance
5 remaining due the judgment creditor or beneficiary of the deed of trust. For an
6 obligation secured by a mortgage or deed of trust on or after October 1, 2009, a
7 court may not award a deficiency judgment to the judgment creditor or a
8 beneficiary of the deed of trust if: (1) the creditor or beneficiary is a financial
9 institution; (2) the real property is a single-family dwelling and the debtor or
10 grantor was the owner of the property; (3) the debtor or grantor used the loan to
11 purchase the property; (4) the debtor or grantor occupied the property continuously
12 after obtaining the loan; and (5) the debtor or grantor did not refinance the loan.
13 (NRS 40.455) **Section 3** of this bill provides that, if these circumstances exist with
14 respect to a junior lienholder, the creditor may not bring a civil action to recover the
15 debt owed to it after a foreclosure sale, short sale or deed in lieu of a foreclosure
16 sale.



17 Under existing law, the amount of a deficiency judgment after a foreclosure
18 sale or a trustee's sale may not exceed the lesser of: (1) the amount of the
19 indebtedness minus the fair market value of the foreclosed property at the time of
20 the sale; or (2) the amount of the indebtedness minus the amount for which the
21 foreclosed property actually sold. (NRS 40.459) **Section 5** of this bill provides that,
22 for a deficiency judgment sought by a secured creditor after a foreclosure sale or
23 trustee's sale, the amount of the deficiency judgment must be reduced by the
24 amount of any insurance proceeds received by, or payable to, the creditor. **Section**
25 **2** of this bill enacts a corresponding provision for money judgments sought against
26 a debtor by a junior lienholder after a foreclosure sale, short sale or deed in lieu of a
27 foreclosure sale.

28 **Sections 2 and 5** also limit the recovery of a creditor who acquired the right to
29 obtain payment for an obligation secured by the real property from another person
30 who owned that obligation. If the creditor is seeking a deficiency judgment after a
31 foreclosure sale or a trustee's sale, **section 5** provides that the creditor may not a
32 receive an amount which exceeds the lesser of: (1) the consideration paid for the
33 obligation minus the fair market value of the property at the time of the foreclosure
34 sale, with interest from the date of sale and reasonable costs; or (2) the
35 consideration paid for the obligation minus the amount for which the property
36 actually sold, with interest from the date of sale and reasonable costs. If the creditor
37 is a junior lienholder who filed a civil action to obtain a money judgment against
38 the debtor, **section 2** provides that the creditor may not receive an amount greater
39 than the consideration paid for the obligation, with interest from the date of the
40 default and reasonable costs.

41 **Section 6** of this bill provides that the amendatory provisions of this bill apply
42 only prospectively to obligations secured by a mortgage, deed of trust or other
43 encumbrance upon real property on or after July 1, 2011.

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

1 **Section 1.** Chapter 40 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2. 1.** *If a person to whom an obligation secured by a*
4 *junior mortgage or lien on real property is owed files a civil action*
5 *to obtain a money judgment against the debtor after a foreclosure*
6 *sale or a sale in lieu of a foreclosure sale, in determining the*
7 *amount owed by the debtor, the court shall not include the amount*
8 *of any proceeds received by, or payable to, the person pursuant to*
9 *an insurance policy to compensate the person for losses incurred*
10 *with respect to the property or the default on the obligation.*

11 **2.** *If a person:*

12 *(a) Acquired the right to enforce an obligation secured by a*
13 *junior mortgage or lien on real property from a person who*
14 *previously held that right; and*

15 *(b) Files a civil action to obtain a money judgment against the*
16 *debtor after a foreclosure sale or a sale in lieu of a foreclosure*
17 *sale,*



1 ↪ *the court shall not render judgment for more than the amount*
2 *of the consideration paid for that right, plus interest from the date*
3 *of the default and reasonable costs.*

4 3. *As used in this section;*

5 (a) *“Foreclosure sale” has the meaning ascribed to it in*
6 *NRS 40.462.*

7 (b) *“Sale in lieu of a foreclosure sale” includes, without*
8 *limitation, a short sale and a deed in lieu of a foreclosure sale.*

9 **Sec. 3.** 1. *A person to whom an obligation described in*
10 *paragraph (c) of subsection 2 of NRS 40.462 is owed may not*
11 *bring any action to enforce that obligation, even if the proceeds of*
12 *a foreclosure sale of the real property which secured that*
13 *obligation or a sale in lieu of a foreclosure sale are insufficient*
14 *and a balance remains due the person, if:*

15 (a) *The person is a financial institution;*

16 (b) *The real property which secured the obligation is a single-*
17 *family dwelling and the debtor or grantor was the owner of the*
18 *real property at the time of the foreclosure sale or sale in lieu of a*
19 *foreclosure sale;*

20 (c) *The debtor or grantor used the amount of the obligation to*
21 *purchase the real property;*

22 (d) *The debtor or grantor continuously occupied the real*
23 *property as the debtor’s or grantor’s principal residence after*
24 *securing the obligation; and*

25 (e) *The debtor or grantor did not refinance the obligation after*
26 *securing it.*

27 2. *As used in this section:*

28 (a) *“Financial institution” has the meaning ascribed to it in*
29 *NRS 363A.050.*

30 (b) *“Foreclosure sale” has the meaning ascribed to it in*
31 *NRS 40.462.*

32 (c) *“Sale in lieu of a foreclosure sale” includes, without*
33 *limitation, a short sale and a deed in lieu of a foreclosure sale.*

34 **Sec. 4.** NRS 40.451 is hereby amended to read as follows:

35 40.451 As used in NRS 40.451 to 40.463, inclusive, *and*
36 *sections 2 and 3 of this act*, “indebtedness” means the principal
37 balance of the obligation secured by a mortgage or other lien on real
38 property, together with all interest accrued and unpaid prior to the
39 time of foreclosure sale, all costs and fees of such a sale, all
40 advances made with respect to the property by the beneficiary, and
41 all other amounts secured by the mortgage or other lien on the real
42 property in favor of the person seeking the deficiency judgment.
43 Such amount constituting a lien is limited to the amount of the
44 consideration paid by the lienholder.



1 **Sec. 5.** NRS 40.459 is hereby amended to read as follows:

2 40.459 **1.** After the hearing, the court shall award a money
3 judgment against the debtor, guarantor or surety who is personally
4 liable for the debt. The court shall not render judgment for more
5 than:

6 ~~1.1~~ **(a)** The amount by which the amount of the indebtedness
7 which was secured exceeds the fair market value of the property
8 sold at the time of the sale, with interest from the date of the sale;

9 ~~1.2~~ **(b)** The amount which is the difference between the amount
10 for which the property was actually sold and the amount of the
11 indebtedness which was secured, with interest from the date of sale
12 ~~1.3~~; or
13 ~~1.4~~; or

14 **(c)** *If the person seeking the judgment acquired the right to*
15 *obtain the judgment from a person who previously held that right,*
16 *the amount by which the amount of the consideration paid for that*
17 *right exceeds the fair market value of the property sold at the time*
18 *of sale or the amount for which the property was actually sold,*
19 *whichever is greater, with interest from the date of sale and*
20 *reasonable costs,*

21 ↳ whichever is the lesser amount.

22 **2.** *For the purposes of this section, the “amount of the*
23 *indebtedness” does not include any amount received by, or*
24 *payable to, the judgment creditor or beneficiary of the deed of*
25 *trust pursuant to an insurance policy to compensate the judgment*
26 *creditor or beneficiary for any losses incurred with respect to the*
27 *property or the default on the debt.*

28 **Sec. 6.** The amendatory provisions of this act apply only to an
29 obligation secured by a mortgage, deed of trust or other
30 encumbrance upon real property on or after July 1, 2011.

31 **Sec. 7.** This act becomes effective on July 1, 2011.

