

Amendment No. 489

Assembly Amendment to Assembly Bill No. 273	(BDR 3-561)
Proposed by: Assembly Committee on Commerce and Labor	
Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION		Initial and Date		SENATE ACTION		Initial and Date			
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) green bold italic underlining is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) green bold underlining is newly added transitory language.

BFG/BAW



Date: 4/22/2011

A.B. No. 273—Revises provisions governing deficiencies existing after foreclosure sales. (BDR 3-561)



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 ~~and~~ **and sales in lieu of 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; **limiting the amount of certain judgments against guarantors, sureties or other obligors of obligations secured by real property under certain circumstances;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a judgment creditor or a beneficiary of a deed of trust may obtain, after a hearing, a deficiency judgment after a foreclosure sale or trustee's sale if it appears from the sheriff's return or the recital of consideration in the trustee's deed that there is a deficiency of the proceeds of the sale and a balance remaining due the judgment creditor or beneficiary of the deed of trust. **Existing law requires a judgment creditor or beneficiary of a deed of trust to bring an action for such a deficiency judgment within 6 months after the foreclosure sale or trustee's sale.** For an obligation secured by a mortgage or deed of trust on or after October 1, 2009, a court may not award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if: (1) the creditor or beneficiary is a financial institution; (2) the real property is a single-family dwelling and the debtor or grantor was the owner of the property; (3) the debtor or grantor used the loan to purchase the property; (4) the debtor or grantor occupied the property continuously after obtaining the loan; and (5) the debtor or grantor did not refinance the loan. (NRS 40.455) ~~Section~~

Sections 3, 3.3 and 5.7 of this bill **enact similar provisions to govern deficiency judgments sought by junior lienholders after a foreclosure sale, a trustee's sale or any sale or deed in lieu of a foreclosure sale or trustee's sale.** **Section 3** provides that, if ~~these~~ **the** circumstances **prohibiting a deficiency judgment after a foreclosure sale or trustee's sale under current law** exist with respect to a junior lienholder, the creditor may not bring a civil action to recover the debt owed to it after a foreclosure sale ~~or~~ **a trustee's sale or a sale or deed in lieu of a foreclosure sale ~~or~~ or trustee's sale.**

Existing law authorizes a creditor under an obligation secured by a junior mortgage or deed of trust to bring an action to obtain a personal judgment against the debtor only if the action is commenced within 6 years after the date of the debtor's default. (NRS 11.190) Under sections 3.3 and 5.7 of this bill, if the real property securing such an obligation is the subject of a foreclosure sale, a trustee's sale or a sale or deed in lieu of such a sale, the creditor may bring an action to obtain a personal judgment against the debtor only if the action is brought within 6 months after the foreclosure sale, the trustee's sale or the sale in lieu of a foreclosure sale or trustee's sale.

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

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

Section 5.5 of this bill limits the amount of a judgment against a guarantor, surety or other obligor, other than a mortgagor or grantor of a deed of trust, in an action commenced before a foreclosure sale or trustee's sale to enforce the obligation to pay, satisfy or purchase all or part of an obligation secured by a mortgage or other lien on real property. Under section 5.5, the amount of the judgment may not exceed the lesser of: (1) the amount of the indebtedness minus the fair market value of the real property at the time of the commencement of the action; or (2) if a foreclosure sale or a trustee's sale is completed before the date on which judgment is entered, the amount of the indebtedness minus the amount for which the foreclosed property actually sold.

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

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

Section 1. Chapter 40 of NRS is hereby amended by adding thereto the provisions set forth as sections ~~1.2 and 3.1~~ 1.2 to 3.3, inclusive, of this act.

Sec. 1.2. As used in sections 1.2 to 3.3, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 1.4, 1.6 and 1.8 of this act have the meanings ascribed to them in those sections.

Sec. 1.4. "Foreclosure sale" has the meaning ascribed to it in NRS 40.462.

Sec. 1.6. "Mortgage or other lien" has the meaning ascribed to it in NRS 40.433.

1 Sec. 1.8. “Sale in lieu of a foreclosure sale” means a sale of real property
 2 pursuant to an agreement between a person to whom an obligation secured by a
 3 mortgage or other lien on real property is owed and the debtor of that obligation
 4 in which the sales price of the real property is insufficient to pay the full
 5 outstanding balance of the obligation and the costs of the sale. The term includes,
 6 without limitation, a deed in lieu of a foreclosure sale.

7 Sec. 2. 1. If a person to whom an obligation secured by a junior mortgage
 8 or lien on real property is owed ~~files~~ :

9 (a) Files a civil action to obtain a money judgment against the debtor under
 10 that obligation after a foreclosure sale or a sale in lieu of a foreclosure sale ~~is~~ ;
 11 and

12 (b) Such action is not barred by NRS 40.430.

13 ↳ in determining the amount owed by the debtor, the court shall not include the
 14 amount of any proceeds received by, or payable to, the person pursuant to an
 15 insurance policy to compensate the person for losses incurred with respect to the
 16 property or the default on the obligation.

17 2. If: ~~for a person~~

18 (a) ~~Acquired~~ A person acquired the right to enforce an obligation secured
 19 by a junior mortgage or lien on real property from a person who previously held
 20 that right; ~~and~~

21 (b) ~~Files~~ The person files a civil action to obtain a money judgment against
 22 the debtor after a foreclosure sale or a sale in lieu of a foreclosure sale ~~is~~ ; and

23 (c) Such action is not barred by NRS 40.430.

24 ↳ the court shall not render judgment for more than the amount of the
 25 consideration paid for that right, plus interest from the date ~~of the default~~ on
 26 which the person acquired the right and reasonable costs.

27 3. As used in this section ~~is~~

28 ~~(a) “Foreclosure sale” has the meaning ascribed to it in NRS 40.462.~~

29 ~~(b) “Sale in lieu of a foreclosure sale” includes, without limitation, a short~~
 30 ~~sale and a deed in lieu of a foreclosure sale.~~ ; “obligation secured by a junior
 31 mortgage or lien on real property” includes, without limitation, an obligation
 32 which is not currently secured by a mortgage or lien on real property if the
 33 obligation:

34 (a) Is incurred by the debtor under an obligation which was secured by a
 35 mortgage or lien on real property; and

36 (b) Has the effect of reaffirming the obligation which was secured by a
 37 mortgage or lien on real property.

38 Sec. 3. 1. A person to whom an obligation ~~described in paragraph (c) of~~
 39 ~~subsection 2 of NRS 40.462~~ secured by a junior mortgage or lien on real
 40 property is owed may not bring any action to enforce that obligation ~~is~~ even if the
 41 ~~proceeds of~~ after a foreclosure sale of the real property which secured that
 42 obligation or a sale in lieu of a foreclosure sale ~~are insufficient and a balance~~
 43 ~~remains due the person~~ if:

44 (a) The person is a financial institution;

45 (b) The real property which secured the obligation is a single-family dwelling
 46 and the debtor or grantor was the owner of the real property at the time of the
 47 foreclosure sale or sale in lieu of a foreclosure sale;

48 (c) The debtor or grantor used the amount of the obligation to purchase the
 49 real property;

50 (d) The debtor or grantor continuously occupied the real property as the
 51 debtor’s or grantor’s principal residence after securing the obligation; and

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

53 2. As used in this section ~~is~~

1 ~~“(a) “Financial,” “financial institution” has the meaning ascribed to it in~~
2 ~~NRS 363A.050.~~

3 ~~“(b) “Foreclosure sale” has the meaning ascribed to it in NRS 40.462.~~

4 ~~“(c) “Sale in lieu of a foreclosure sale” includes, without limitation, a short~~
5 ~~sale and a deed in lieu of a foreclosure sale.”~~

6 Sec. 3.3. A civil action not barred by NRS 40.430 or section 3 of this act by
7 a person to whom an obligation secured by a junior mortgage or lien on real
8 property is owed to obtain a money judgment against the debtor after a
9 foreclosure sale of the real property or a sale in lieu of a foreclosure sale may
10 only be commenced within 6 months after the date of the foreclosure sale or sale
11 in lieu of a foreclosure.

12 Sec. 4. [NRS 40.451 is hereby amended to read as follows:
13 ~~40.451 As used in NRS 40.451 to 40.462, inclusive, and sections 2 and 3 of~~
14 ~~this act, “indebtedness” means the principal balance of the obligation secured by a~~
15 ~~mortgage or other lien on real property, together with all interest accrued and~~
16 ~~unpaid prior to the time of foreclosure sale, all costs and fees of such a sale, all~~
17 ~~advances made with respect to the property by the beneficiary, and all other~~
18 ~~amounts secured by the mortgage or other lien on the real property in favor of the~~
19 ~~person seeking the deficiency judgment. Such amount constituting a lien is limited~~
20 ~~to the amount of the consideration paid by the lienholder.] (Deleted by~~
21 ~~amendment.)~~

22 Sec. 5. NRS 40.459 is hereby amended to read as follows:
23 40.459 1. After the hearing, the court shall award a money judgment against
24 the debtor, guarantor or surety who is personally liable for the debt. The court shall
25 not render judgment for more than:

26 ~~1. (a)~~ 1. (a) The amount by which the amount of the indebtedness which was
27 secured exceeds the fair market value of the property sold at the time of the sale,
28 with interest from the date of the sale; ~~for~~

29 ~~2. (b)~~ 2. (b) The amount which is the difference between the amount for which the
30 property was actually sold and the amount of the indebtedness which was secured,
31 with interest from the date of sale ~~for~~; or

32 (c) If the person seeking the judgment acquired the right to obtain the
33 judgment from a person who previously held that right, the amount by which the
34 amount of the consideration paid for that right exceeds the fair market value of
35 the property sold at the time of sale or the amount for which the property was
36 actually sold, whichever is greater, with interest from the date of sale and
37 reasonable costs,

38 whichever is the lesser amount.

39 2. For the purposes of this section, the “amount of the indebtedness” does
40 not include any amount received by, or payable to, the judgment creditor or
41 beneficiary of the deed of trust pursuant to an insurance policy to compensate the
42 judgment creditor or beneficiary for any losses incurred with respect to the
43 property or the default on the debt.

44 Sec. 5.5. NRS 40.495 is hereby amended to read as follows:

45 40.495 1. The provisions of NRS 40.475 and 40.485 may be waived by the
46 guarantor, surety or other obligor only after default.

47 2. Except as otherwise provided in subsection ~~4.4~~ 5, a guarantor, surety or
48 other obligor, other than the mortgagor or grantor of a deed of trust, may waive the
49 provisions of NRS 40.430. If a guarantor, surety or other obligor waives the
50 provisions of NRS 40.430, an action for the enforcement of that person’s obligation
51 to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a
52 mortgage or lien upon real property may be maintained separately and
53 independently from:

- 1 (a) An action on the debt;
2 (b) The exercise of any power of sale;
3 (c) Any action to foreclose or otherwise enforce a mortgage or lien and the
4 indebtedness or obligations secured thereby; and

5 (d) Any other proceeding against a mortgagor or grantor of a deed of trust.

6 3. If the obligee maintains an action to foreclose or otherwise enforce a
7 mortgage or lien and the indebtedness or obligations secured thereby, the guarantor,
8 surety or other obligor may assert any legal or equitable defenses provided pursuant
9 to the provisions of NRS 40.451 to 40.463, inclusive.

10 4. *If, before a foreclosure sale of real property, the obligee commences an*
11 *action against a guarantor, surety or other obligor, other than the mortgagor or*
12 *grantor of a deed of trust, to enforce an obligation to pay, satisfy or purchase all*
13 *or part of an indebtedness or obligation secured by a mortgage or lien upon the*
14 *real property, the court:*

15 *(a) Must hold a hearing and take evidence presented by either party*
16 *concerning the fair market value of the property as of the date of the*
17 *commencement of the action. Notice of such hearing must be served upon all*
18 *defendants who have appeared in the action and against whom a judgment is*
19 *sought, or upon their attorneys of record, at least 15 days before the date set for*
20 *the hearing.*

21 *(b) After the hearing, the court shall award a money judgment against the*
22 *debtor, guarantor or surety who is personally liable for the debt. The court must*
23 *not render judgment for more than:*

24 *(1) The amount by which the amount of the indebtedness exceeds the fair*
25 *market value of the property as of the date of the commencement of the action; or*

26 *(2) If a foreclosure sale is concluded before a judgment is entered, the*
27 *amount that is the difference between the amount for which the property was*
28 *actually sold and the amount of the indebtedness which was secured,*
29 *whichever is the lesser amount.*

30 5. The provisions of NRS 40.430 may not be waived by a guarantor, surety or
31 other obligor if the mortgage or lien:

32 (a) Secures an indebtedness for which the principal balance of the obligation
33 was never greater than \$500,000;

34 (b) Secures an indebtedness to a seller of real property for which the obligation
35 was originally extended to the seller for any portion of the purchase price;

36 (c) Is secured by real property which is used primarily for the production of
37 farm products as of the date the mortgage or lien upon the real property is created;
38 or

39 (d) Is secured by real property upon which:

40 (1) The owner maintains the owner's principal residence;

41 (2) There is not more than one residential structure; and

42 (3) Not more than four families reside.

43 6. *As used in this section, "foreclosure sale" has the meaning ascribed to it*
44 *in NRS 40.462.*

45 *Sec. 5.7. NRS 11.190 is hereby amended to read as follows:*

46 11.190 Except as otherwise provided in NRS 125B.050 and 217.007, *and*
47 *section 3.3 of this act*, actions other than those for the recovery of real property,
48 unless further limited by specific statute, may only be commenced as follows:

49 1. Within 6 years:

50 (a) An action upon a judgment or decree of any court of the United States, or
51 of any state or territory within the United States, or the renewal thereof.

1 (b) An action upon a contract, obligation or liability founded upon an
2 instrument in writing, except those mentioned in the preceding sections of this
3 chapter.

4 2. Within 4 years:

5 (a) An action on an open account for goods, wares and merchandise sold and
6 delivered.

7 (b) An action for any article charged on an account in a store.

8 (c) An action upon a contract, obligation or liability not founded upon an
9 instrument in writing.

10 (d) An action against a person alleged to have committed a deceptive trade
11 practice in violation of NRS 598.0903 to 598.0999, inclusive, but the cause of
12 action shall be deemed to accrue when the aggrieved party discovers, or by the
13 exercise of due diligence should have discovered, the facts constituting the
14 deceptive trade practice.

15 3. Within 3 years:

16 (a) An action upon a liability created by statute, other than a penalty or
17 forfeiture.

18 (b) An action for waste or trespass of real property, but when the waste or
19 trespass is committed by means of underground works upon any mining claim, the
20 cause of action shall be deemed to accrue upon the discovery by the aggrieved party
21 of the facts constituting the waste or trespass.

22 (c) An action for taking, detaining or injuring personal property, including
23 actions for specific recovery thereof, but in all cases where the subject of the action
24 is a domestic animal usually included in the term "livestock," which has a recorded
25 mark or brand upon it at the time of its loss, and which strays or is stolen from the
26 true owner without the owner's fault, the statute does not begin to run against an
27 action for the recovery of the animal until the owner has actual knowledge of such
28 facts as would put a reasonable person upon inquiry as to the possession thereof by
29 the defendant.

30 (d) Except as otherwise provided in NRS 112.230 and 166.170, an action for
31 relief on the ground of fraud or mistake, but the cause of action in such a case shall
32 be deemed to accrue upon the discovery by the aggrieved party of the facts
33 constituting the fraud or mistake.

34 (e) An action pursuant to NRS 40.750 for damages sustained by a financial
35 institution or other lender because of its reliance on certain fraudulent conduct of a
36 borrower, but the cause of action in such a case shall be deemed to accrue upon the
37 discovery by the financial institution or other lender of the facts constituting the
38 concealment or false statement.

39 4. Within 2 years:

40 (a) An action against a sheriff, coroner or constable upon liability incurred by
41 acting in his or her official capacity and in virtue of his or her office, or by the
42 omission of an official duty, including the nonpayment of money collected upon an
43 execution.

44 (b) An action upon a statute for a penalty or forfeiture, where the action is
45 given to a person or the State, or both, except when the statute imposing it
46 prescribes a different limitation.

47 (c) An action for libel, slander, assault, battery, false imprisonment or
48 seduction.

49 (d) An action against a sheriff or other officer for the escape of a prisoner
50 arrested or imprisoned on civil process.

51 (e) Except as otherwise provided in NRS 11.215, an action to recover damages
52 for injuries to a person or for the death of a person caused by the wrongful act or
53 neglect of another. The provisions of this paragraph relating to an action to recover

1 damages for injuries to a person apply only to causes of action which accrue after
2 March 20, 1951.

3 (f) An action to recover damages under NRS 41.740.

4 5. Within 1 year:

5 (a) An action against an officer, or officer de facto to recover goods, wares,
6 merchandise or other property seized by the officer in his or her official capacity, as
7 tax collector, or to recover the price or value of goods, wares, merchandise or other
8 personal property so seized, or for damages for the seizure, detention or sale of, or
9 injury to, goods, wares, merchandise or other personal property seized, or for
10 damages done to any person or property in making the seizure.

11 (b) An action against an officer, or officer de facto for money paid to the
12 officer under protest, or seized by the officer in his or her official capacity, as a
13 collector of taxes, and which, it is claimed, ought to be refunded.

14 **Sec. 6.** The amendatory provisions of this act apply only to an obligation
15 secured by a mortgage, deed of trust or other encumbrance upon real property on or
16 after ~~July 1, 2011~~ **the effective date of this act.**

17 **Sec. 7.** This act becomes effective ~~on July 1, 2011~~ **upon passage and**
18 **approval.**