

Amendment No. CA17

Conference Committee Amendment to Senate Bill No. 402 Second Reprint	(BDR 9-1090)
Proposed by: Conference Committee	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

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/BJE



Date: 6/6/2011

S.B. No. 402—Revises provisions relating to real property. (BDR 9-1090)



SENATE BILL NO. 402—COMMITTEE ON JUDICIARY

MARCH 28, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to real property. (BDR 9-1090)

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 relating to covenants that may be adopted by reference in a deed of trust; providing methods by which assumption fees for a change of parties in a deed of trust may be set; ~~requiring a foreclosure sale of commercial property to be held in a public location specified in certain recorded documents;~~ **revising provisions relating to past due financial obligations owed by units' owners in common-interest communities;** revising provisions relating to accounting for impound accounts for the payment of certain obligations relating to certain real property; providing a civil penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 1 and 2 of this bill amend a statutory covenant that may be adopted by reference in a deed of trust to allow the parties thereto the alternatives of paying, in connection with a trustee's sale, either reasonable counsel fees and actual costs incurred or counsel fees in an amount equal to a specified percentage of the property secured by the deed of trust.

Section 3 of this bill sets forth certain methods of specifying assumption fees for a change in parties in a deed of trust.

~~Section 4 of this bill requires a foreclosure sale of commercial property to be conducted at the public location specified in the notice of sale recorded by the trustee of a trust deed or transfer in trust.~~

Existing law requires the Commission for Common-Interest Communities and Condominium Hotels to adopt regulations establishing the amount of the fees that may be charged to a unit's owner to cover the costs of collecting a past due financial obligation owed to an association of a common-interest community. (NRS 116.310313) Section 5.2 of this bill removes this requirement and establishes limits on the amount that a unit's owner may be charged to cover the costs of collecting such obligations. Section 5.2 provides that: (1) the fees charged to a unit's owner for collection services in connection with the collection of a past due obligation must not exceed \$1,500 except that the amount charged in connection with the collection of a past due fine must not exceed \$600; (2) the amount charged a unit's owner to cover certain costs incurred in connection with the collection of a past due obligation must not exceed \$1,000; (3) the management company fee must not exceed \$200; and (4) the association may charge a unit's owner for attorney's fees in connection with the collection of a past due obligation

23 only if the attorney's fees are incurred in certain circumstances related to litigation.
24 Furthermore, section 5.2 requires the association to offer a payment plan to a unit's
25 owner under certain circumstances and establishes a \$100 limit on the fee charged by the
26 association to administer the payment plan. Under section 5.2, an association may not
27 record a lien in connection with a past due financial obligation until 4 months after the
28 account of the unit's owner first had a past due balance.

29 Existing law provides that an association has a lien on a unit for certain charges
30 imposed against a unit's owner and that a certain amount of that lien has priority over
31 the first security interest on the unit under certain circumstances. (NRS 116.3116)

32 Section 5.4 of this bill revises provisions governing the amount of the association's lien
33 which is entitled to priority over the first security interest on the unit to include the
34 amount of certain costs of collecting a past due obligation authorized to be charged by
35 the unit's owner pursuant to the amendatory provisions of section 5.2.

36 Existing law authorizes an association to foreclose its lien by sale under certain
37 circumstances. (NRS 116.31162-116.31168) Section 5.6 of this bill prohibits an
38 association from recording the notice of default and election to sell the unit unless: (1)
39 the executive board authorizes the foreclosure of the association's lien on the unit; and
40 (2) at least 6 months have passed since the date on which the account of the unit's owner
41 first had a past due balance or the date on which the past due obligation exceeds \$500.

42 Sections 5 and 6 of this bill revise provisions relating to accountings for impound
43 accounts for the payment of certain obligations relating to certain real property.

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

1 **Section 1.** NRS 107.030 is hereby amended to read as follows:

2 107.030 Every deed of trust made after March 29, 1927, may adopt by
3 reference all or any of the following covenants, agreements, obligations, rights and
4 remedies:

5 1. COVENANT NO. 1. That grantor agrees to pay and discharge at maturity all
6 taxes and assessments and all other charges and encumbrances which now are or
7 shall hereafter be, or appear to be, a lien upon the trust premises, or any part
8 thereof; and that grantor will pay all interest or installments due on any prior
9 encumbrance, and that in default thereof, beneficiary may, without demand or
10 notice, pay the same, and beneficiary shall be sole judge of the legality or validity
11 of such taxes, assessments, charges or encumbrances, and the amount necessary to
12 be paid in satisfaction or discharge thereof.

13 2. COVENANT NO. 2. That the grantor will at all times keep the buildings and
14 improvements which are now or shall hereafter be erected upon the premises
15 insured against loss or damage by fire, to the amount of at least \$....., by some
16 insurance company or companies approved by beneficiary, the policies for which
17 insurance shall be made payable, in case of loss, to beneficiary, and shall be
18 delivered to and held by the beneficiary as further security; and that in default
19 thereof, beneficiary may procure such insurance, not exceeding the amount
20 aforesaid, to be effected either upon the interest of trustee or upon the interest of
21 grantor, or his or her assigns, and in their names, loss, if any, being made payable to
22 beneficiary, and may pay and expend for premiums for such insurance such sums of
23 money as the beneficiary may deem necessary.

24 3. COVENANT NO. 3. That if, during the existence of the trust, there be
25 commenced or pending any suit or action affecting the conveyed premises, or any
26 part thereof, or the title thereto, or if any adverse claim for or against the premises,
27 or any part thereof, be made or asserted, the trustee or beneficiary may appear or

1 intervene in the suit or action and retain counsel therein and defend same, or
2 otherwise take such action therein as they may be advised, and may settle or
3 compromise same or the adverse claim; and in that behalf and for any of the
4 purposes may pay and expend such sums of money as the trustee or beneficiary
5 may deem to be necessary.

6 4. COVENANT NO. 4. That the grantor will pay to trustee and to beneficiary
7 respectively, on demand, the amounts of all sums of money which they shall
8 respectively pay or expend pursuant to the provisions of the implied covenants of
9 this section, or any of them, together with interest upon each of the amounts, until
10 paid, from the time of payment thereof, at the rate of percent per annum.

11 5. COVENANT NO. 5. That in case grantor shall well and truly perform the
12 obligation or pay or cause to be paid at maturity the debt or promissory note, and all
13 moneys agreed to be paid, and interest thereon for the security of which the transfer
14 is made, and also the reasonable expenses of the trust in this section specified, then
15 the trustee, its successors or assigns, shall reconvey to the grantor all the estate in
16 the premises conveyed to the trustee by the grantor. Any part of the trust property
17 may be reconveyed at the request of the beneficiary.

18 6. COVENANT NO. 6. That if default be made in the performance of the
19 obligation, or in the payment of the debt, or interest thereon, or any part thereof, or
20 in the payment of any of the other moneys agreed to be paid, or of any interest
21 thereon, or if any of the conditions or covenants in this section adopted by reference
22 be violated, and if the notice of breach and election to sell, required by this chapter,
23 be first recorded, then trustee, its successors or assigns, on demand by beneficiary,
24 or assigns, shall sell the above-granted premises, or such part thereof as in its
25 discretion it shall find necessary to sell, in order to accomplish the objects of these
26 trusts, in the manner following, namely:

27 The trustees shall first give notice of the time and place of such sale, in the
28 manner provided in NRS 107.080 and may postpone such sale not more than three
29 times by proclamation made to the persons assembled at the time and place
30 previously appointed and advertised for such sale, and on the day of sale so
31 advertised, or to which such sale may have been postponed, the trustee may sell the
32 property so advertised, or any portion thereof, at public auction, at the time and
33 place specified in the notice, at a public location in the county in which the
34 property, or any part thereof, to be sold, is situated, to the highest cash bidder. The
35 beneficiary, obligee, creditor, or the holder or holders of the promissory note or
36 notes secured thereby may bid and purchase at such sale. The beneficiary may, after
37 recording the notice of breach and election, waive or withdraw the same or any
38 proceedings thereunder, and shall thereupon be restored to the beneficiary's former
39 position and have and enjoy the same rights as though such notice had not been
40 recorded.

41 7. COVENANT NO. 7. That the trustee, upon such sale, shall make (without
42 warranty), execute and, after due payment made, deliver to purchaser or purchasers,
43 his, her or their heirs or assigns, a deed or deeds of the premises so sold which shall
44 convey to the purchaser all the title of the grantor in the trust premises, and shall
45 apply the proceeds of the sale thereof in payment, firstly, of the expenses of such
46 sale, together with the reasonable expenses of the trust, including counsel fees, in
47 an amount equal to percent of the amount secured thereby and remaining
48 unpaid **or reasonable counsel fees and costs actually incurred**, which shall
49 become due upon any default made by grantor in any of the payments aforesaid;
50 and also such sums, if any, as trustee or beneficiary shall have paid, for procuring a
51 search of the title to the premises, or any part thereof, subsequent to the execution
52 of the deed of trust; and in payment, secondly, of the obligation or debts secured,

1 and interest thereon then remaining unpaid, and the amount of all other moneys
2 with interest thereon herein agreed or provided to be paid by grantor; and the
3 balance or surplus of such proceeds of sale it shall pay to grantor, his or her heirs,
4 executors, administrators or assigns.

5 8. COVENANT NO. 8. That in the event of a sale of the premises conveyed or
6 transferred in trust, or any part thereof, and the execution of a deed or deeds
7 therefor under such trust, the recital therein of default, and of recording notice of
8 breach and election of sale, and of the elapsing of the 3-month period, and of the
9 giving of notice of sale, and of a demand by beneficiary, his or her heirs or assigns,
10 that such sale should be made, shall be conclusive proof of such default, recording,
11 election, elapsing of time, and of the due giving of such notice, and that the sale
12 was regularly and validly made on due and proper demand by beneficiary, his or
13 her heirs and assigns; and any such deed or deeds with such recitals therein shall be
14 effectual and conclusive against grantor, his or her heirs and assigns, and all other
15 persons; and the receipt for the purchase money recited or contained in any deed
16 executed to the purchaser as aforesaid shall be sufficient discharge to such
17 purchaser from all obligation to see to the proper application of the purchase
18 money, according to the trusts aforesaid.

19 9. COVENANT NO. 9. That the beneficiary or his or her assigns may, from time
20 to time, appoint another trustee, or trustees, to execute the trust created by the deed
21 of trust or other conveyance in trust. A copy of a resolution of the board of directors
22 of beneficiary (if beneficiary be a corporation), certified by the secretary thereof,
23 under its corporate seal, or an instrument executed and acknowledged by the
24 beneficiary (if the beneficiary be a natural person), shall be conclusive proof of the
25 proper appointment of such substituted trustee. Upon the recording of such certified
26 copy or executed and acknowledged instrument, the new trustee or trustees shall be
27 vested with all the title, interest, powers, duties and trusts in the premises vested in
28 or conferred upon the original trustee. If there be more than one trustee, either may
29 act alone and execute the trusts upon the request of the beneficiary, and all of the
30 trustee's acts thereunder shall be deemed to be the acts of all trustees, and the
31 recital in any conveyance executed by such sole trustee of such request shall be
32 conclusive evidence thereof, and of the authority of such sole trustee to act.

33 **Sec. 2.** NRS 107.040 is hereby amended to read as follows:

34 107.040 1. In order to adopt by reference any of the covenants, agreements,
35 obligations, rights and remedies in NRS 107.030, it shall only be necessary to state
36 in the deed of trust the following: "The following covenants, Nos.
37 and (inserting the respective numbers) of NRS 107.030 are
38 hereby adopted and made a part of this deed of trust."

39 2. A deed of trust or other conveyance in trust, in order to fix the amount of
40 insurance to be carried, need not reincorporate the provisions of Covenant No. 2 of
41 NRS 107.030, but may merely state the following: "Covenant No. 2," and set out
42 thereafter the amount of insurance to be carried.

43 3. In order to fix the rate of interest under Covenant No. 4 of NRS 107.030, it
44 shall only be necessary to state in such trust deed or other conveyance in trust,
45 "Covenant No. 4," and set out thereafter the rate of interest to be charged
46 thereunder.

47 4. In order to fix the amount or percent of counsel fees under Covenant No. 7
48 of NRS 107.030, it shall only be necessary to state in such deed of trust, or other
49 conveyance in trust, the following: "Covenant No. 7," and set out thereafter *either*
50 the percentage to be allowed **or, in lieu of the percentage to be allowed,**
51 *reasonable counsel fees and costs actually incurred.*

1 **Sec. 3.** NRS 107.055 is hereby amended to read as follows:
2 107.055 If a party to a deed of trust, executed after July 1, 1971, desires to
3 charge an assumption fee for a change in parties, the amount of such charge must
4 be clearly set forth in the deed of trust at the time of execution. *Without limiting or*
5 *prohibiting any other method by which the amount of the charge may be clearly*
6 *set forth in the deed of trust, the charge may be set forth as:*

- 7 1. *A fixed sum;*
- 8 2. *A percentage of the amount secured by the deed of trust and remaining*
9 *unpaid at the time of assumption; or*
- 10 3. *The lesser of, the greater of or some combination of the amounts*
11 *determined by subsections 1 and 2.*

12 **Sec. 4.** ~~[NRS 107.081 is hereby amended to read as follows:~~
13 ~~107.081 1. All sales of property pursuant to NRS 107.080 must be made at~~
14 ~~auction to the highest bidder and must be made between the hours of 9 a.m. and 5~~
15 ~~p.m. The agent holding the sale must not become a purchaser at the sale or be~~
16 ~~interested in any purchase at such a sale.~~
17 ~~2. All sales of real property must be made:~~
18 ~~(a) For a residential foreclosure or foreclosure of a residential unit:~~
19 ~~(1) In a county with a population of less than 100,000, at the courthouse in~~
20 ~~the county in which the property or some part thereof is situated.~~
21 ~~[(b)] (2) In a county with a population of 100,000 or more, at the public~~
22 ~~location in the county designated by the governing body of the county for that~~
23 ~~purpose.~~
24 ~~(b) For a foreclosure of commercial property, at a public location in the~~
25 ~~county in which the property or some part thereof is situated as specified in the~~
26 ~~notice of sale recorded by the trustee of the trust deed or transfer in trust.~~
27 ~~3. For the purposes of this section:~~
28 ~~(a) "Commercial property" has the meaning ascribed to it in NRS 645E.040.~~
29 ~~(b) "Residential foreclosure" has the meaning ascribed to it in NRS 107.080.~~
30 ~~(c) "Residential unit" means a unit in a common interest community that is~~
31 ~~used exclusively for residential use, as those terms are defined in chapter 116 of~~
32 ~~NRS.] (Deleted by amendment.)~~

33 **Sec. 4.5.** (Deleted by amendment.)
34 **Sec. 5.** NRS 100.091 is hereby amended to read as follows:
35 100.091 1. For each loan requiring the deposit of money to an escrow
36 account, loan trust account or other impound account for the payment of taxes,
37 assessments, rental or leasehold payments, ~~[or fire, hazard or other]~~ insurance
38 premiums ~~[]~~ *or other obligations related to the encumbered property*, the lender
39 shall ~~[, at]~~ :

- 40 (a) *Require contributions in an amount reasonably necessary to pay the*
41 *obligations as they become due.*
- 42 (b) *Unless money in the account is insufficient, pay in a timely manner the*
43 *obligations as they become due.*
- 44 (c) *At least annually, analyze the account. The analysis of each account must*
45 *be performed to determine whether sufficient money is contributed to the account*
46 *on a monthly basis to pay for the projected disbursements from the account. At*
47 *least 30 days before the effective date of any increased contribution to the account*
48 *based on the analysis, a statement must be sent to the borrower showing the method*
49 *of determining the amount of money held in the account, the amount of projected*
50 *disbursements from the account and the amount of the reserves which may be held*
51 *in accordance with federal guidelines.*

1 2. If, upon completion of the analysis, it is determined that an account is not
2 sufficiently funded to pay from the normal payment the items when due on the
3 account, the lender shall offer the borrower the opportunity to correct the deficiency
4 by making one lump-sum payment or by making increased monthly contributions,
5 in an amount required by the lender. The lender shall not declare a default on the
6 account solely because the borrower is unable to pay the amount of the deficiency
7 in one lump sum.

8 3. *Except for payments made by a borrower for a lender to recover previous*
9 *deficiencies in contributions to the account pursuant to subsection 2, the*
10 *borrower is entitled pursuant to subsection 4 to the amount by which the*
11 *borrower's contributions to the account exceed the amount reasonably necessary*
12 *to pay the annual obligations due from the account, together with interest*
13 *thereon at the rate established pursuant to NRS 99.040.*

14 4. If, upon completion of the analysis, it is determined that the amount of
15 money held by the lender in the account, together with anticipated future monthly
16 contributions to the account to be credited to the account before the dates items are
17 due on the account, exceed the amount of money required to pay the items when
18 due, the lender shall, ~~at the option of~~ *not later than 30 days after completion of*
19 *its annual review of the account, notify the borrower:*

20 (a) *Of the amount by which the contributions and interest earned pursuant*
21 *to subsection 3 exceed the amount reasonably necessary to pay the annual*
22 *obligations due from the account; and*

23 (b) *That the borrower ~~either repay~~ may, not later than 20 days after receipt*
24 *of the notice, specify that the lender:*

25 (1) *Repay the excess money and interest promptly to the borrower ~~;~~*
26 *apply;*

27 (2) *Apply the excess money and interest to the outstanding principal*
28 *balance; or ~~retain~~*

29 (3) *Retain the excess money and interest in the account.*

30 5. *If the borrower fails to specify the disposition of the excess money and*
31 *interest as provided in paragraph (b) of subsection 4, the lender shall maintain*
32 *the excess money and interest in the account.*

33 6. If any payment on the loan is delinquent at the time of the analysis, the
34 lender shall retain any excess money *and interest* in the account and apply the
35 *excess money and interest* in the account toward payment of the delinquency.

36 ~~4.~~ 7. *A lender who violates any provision of subsections 4, 5 and 6 is*
37 *liable to the borrower for a civil penalty of not more than \$1,000.*

38 8. *The provisions of this section apply exclusively to:*

39 (a) *A loan secured by a single family residence, as that term is defined in*
40 *NRS 107.080; and*

41 (b) *A unit in a common-interest community that is used exclusively for*
42 *residential use, as those terms are defined in chapter 116 of NRS.*

43 9. As used in this section:

44 (a) "Borrower" means any person who receives a loan secured by real property
45 and who is required to make advance contributions for the payment of taxes,
46 insurance premiums or other expenses related to the property.

47 (b) "Lender" means any person who makes loans secured by real property and
48 who requires advance contributions for the payment of taxes, insurance premiums
49 or other expenses related to the property.

50 **Sec. 5.2. NRS 116.310313 is hereby amended to read as follows:**

51 116.310313 1. ~~Am~~ Except as otherwise provided in this subsection, an
52 association ~~may~~ shall not charge a unit's owner ~~reasonable~~ fees to cover the

1 costs of ~~[collecting any]~~ collection services in connection with the collection of a
2 past due obligation. ~~[The Commission shall adopt regulations establishing the~~
3 ~~amount of the fees that an association may charge pursuant to this section.]~~ which
4 exceed \$1,500. An association shall not charge a unit's owner fees to cover the
5 costs of collection services in connection with the collection of a past due fine
6 which exceed \$600.

7 2. In addition to the fees charged to a unit's owner pursuant to subsection
8 1, an association may recover from the unit's owner, without any increase or
9 markup, the costs charged to the association in connection with the collection of
10 a past due obligation by a person who is not an officer, director, agent or affiliate
11 of the community manager of the association or of an agent of the association.
12 The amount recovered from a unit's owner pursuant to this subsection must not
13 exceed \$1,000.

14 3. In addition to the fees and costs charged to a unit's owner pursuant to
15 subsections 1 and 2, an association may recover from the unit's owner:

16 (a) Reasonable management company fees incurred by the association in
17 connection with the collection of a past due obligation but such fees may not
18 exceed a total of \$200; and

19 (b) Reasonable attorney's fees and costs incurred by the association in
20 connection with the collection of a past due obligation if the attorney's fees and
21 costs are:

22 (1) Incurred by the association because the unit's owner has filed a
23 bankruptcy petition pursuant to Title 11 of the United States Code;

24 (2) Authorized by the governing documents and incurred by the
25 association in an action filed to enforce or challenge a past due obligation owed
26 by the unit's owner or an action related to the enforcement of a past due
27 obligation owed by the unit's owner; or

28 (3) Awarded to the association by a court.

29 4. Each written attempt to collect from a unit's owner a past due obligation
30 which is more than 60 days past due in which the association or its authorized
31 agent expresses an intent to engage in further collection activity if the unit's
32 owner fails to pay the total amount due must include:

33 (a) A statement of the current amount due; and

34 (b) A schedule of the amount of the fees, costs, charges or other amounts
35 which may be charged to the unit's owner if the unit's owner fails to pay the total
36 amount due.

37 For the purposes of this subsection, providing a standard monthly statement or
38 a coupon book is not an attempt to collect a past due obligation.

39 5. Each notice of a past due obligation provided to a unit's owner must
40 include an offer for one repayment plan which provides:

41 (a) For a past due obligation in an amount equal to \$1,000 or less, a plan for
42 the repayment in 12 equal monthly installments of each past due obligation and
43 the costs charged pursuant to this section as of the date of the offer.

44 (b) For a past due obligation in an amount greater than \$1,000, a plan for
45 the repayment in 24 equal monthly installments of each past due obligation and
46 the costs charged pursuant to this section as of the date of the offer.

47 6. If the unit's owner and the association enter into a repayment plan as
48 described in subsection 5, the association must cease all attempts to collect the
49 past due obligation. The association may not charge to the unit's owner any
50 additional costs in connection with the collection of the past due obligation after
51 the unit's owner has made the initial payment under a repayment plan unless the
52 unit's owner defaults on the repayment plan and fails to cure the default within

1 30 days or defaults on any other financial obligation owed to the association. If a
2 unit's owner defaults on a repayment plan and does not cure the default within
3 30 days, the association may resume attempts to collect the past due obligation
4 and, if the association has commenced the process of foreclosing on the unit
5 pursuant to NRS 116.31162 to 116.31168, inclusive, the association may resume
6 the foreclosure process.

7 7. The association may not charge a fee which exceeds \$100 to enter into
8 and administer a repayment plan.

9 8. An association may not record a lien in connection with the collection of
10 a past due obligation until the account of the unit's owner has had a past due
11 balance for 4 months.

12 9. The Commission:

13 (a) Shall adopt regulations establishing the amount of the fees that an
14 association may charge a unit's owner to cover the costs of specific collection
15 services in connection with the collection of a past due obligation.

16 (b) May adopt regulations to carry out the provisions of this section.

17 10. The provisions of this section apply to any costs of collecting a past due
18 obligation charged to a unit's owner, regardless of whether the past due obligation
19 is collected by the association itself or by any person acting on behalf of the
20 association, including, without limitation, an officer or employee of the association,
21 a community manager or a collection agency.

22 ~~(9)~~ 11. As used in this section:

23 (a) "Costs of collecting" includes any fee, charge or cost, by whatever name,
24 including, without limitation, any collection fee, filing fee, recording fee, fee
25 related to the preparation, recording or delivery of a lien or lien rescission, title
26 search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and
27 any other fee or cost that an association charges a unit's owner for the investigation,
28 enforcement or collection of a past due obligation. The term does not include any
29 costs incurred by an association if a lawsuit is filed to enforce any past due
30 obligation or any costs awarded by a court.

31 (b) "Obligation" means any assessment, fine, construction penalty, fee, charge
32 or interest levied or imposed against a unit's owner pursuant to any provision of
33 this chapter or the governing documents.

34 **Sec. 5.4. NRS 116.3116 is hereby amended to read as follows:**

35 116.3116 1. The association has a lien on a unit for any construction penalty
36 that is imposed against the unit's owner pursuant to NRS 116.310305, any
37 assessment levied against that unit or any fines imposed against the unit's owner
38 from the time the construction penalty, assessment or fine becomes due. Unless the
39 declaration otherwise provides, any penalties, fees, charges, late charges, fines and
40 interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS
41 116.3102 are enforceable as assessments under this section. If an assessment is
42 payable in installments, the full amount of the assessment is a lien from the time the
43 first installment thereof becomes due.

44 2. A lien under this section is prior to all other liens and encumbrances on a
45 unit except:

46 (a) Liens and encumbrances recorded before the recordation of the declaration
47 and, in a cooperative, liens and encumbrances which the association creates,
48 assumes or takes subject to;

49 (b) A first security interest on the unit recorded before the date on which the
50 assessment sought to be enforced became delinquent or, in a cooperative, the first
51 security interest encumbering only the unit's owner's interest and perfected before
52 the date on which the assessment sought to be enforced became delinquent; and

1 (c) Liens for real estate taxes and other governmental assessments or charges
2 against the unit or cooperative.

3 ~~{- The}~~

4 3. A lien under this section is also prior to all security interests described in
5 paragraph (b) of subsection 2 to the extent of ~~{any}~~ .

6 (a) Any charges incurred by the association on a unit pursuant to NRS
7 116.310312 ; and ~~{to the extent of}~~

8 (b) An amount equal to the assessments for common expenses based on the
9 periodic budget adopted by the association pursuant to NRS 116.3115 which would
10 have become due in the absence of acceleration during the 9 months immediately
11 preceding institution of an action to enforce the lien, unless federal regulations
12 adopted by the Federal Home Loan Mortgage Corporation or the Federal National
13 Mortgage Association require a shorter period of priority for the lien. If federal
14 regulations adopted by the Federal Home Loan Mortgage Corporation or the
15 Federal National Mortgage Association require a shorter period of priority for the
16 lien, the period during which the lien is prior to all security interests described in
17 paragraph (b) of subsection 2 must be determined in accordance with those federal
18 regulations, except that notwithstanding the provisions of the federal regulations,
19 the period of priority for the lien must not be less than the 6 months immediately
20 preceding ~~{institution of an action to enforce the lien.}~~ .

21 (1) The association's mailing of a notice of delinquent assessment in
22 accordance with paragraph (a) of subsection 1 of NRS 116.31162 with respect to
23 the association's lien; or

24 (2) A trustee's sale of the unit under NRS 107.080 or a foreclosure sale
25 of the unit under NRS 40.430 to enforce the security interest described in
26 paragraph (b) of subsection 2,

27 and fees and costs not to exceed the amounts set forth in NRS 116.310313 to
28 cover the cost of collecting the past due obligation. This subsection ~~{does}~~ and
29 subsection 2 do not affect the priority of mechanics' or materialmen's liens, or the
30 priority of liens for other assessments made by the association. This subsection and
31 subsection 2 do supersede any contrary provision in the governing documents of
32 the association.

33 ~~{-}~~ 4. After a trustee's sale of a unit under NRS 107.080 or a foreclosure
34 sale of a unit under NRS 40.430 to enforce a security interest described in
35 paragraph (b) of subsection 2, upon payment to the association of the amounts
36 described in subsection 3, any unpaid amounts for which subsection 1 creates a
37 lien and which accrued before the trustee's sale or foreclosure sale are a
38 personal obligation of the person who owned the unit at the time the amounts
39 became due and the association does not have a lien on the unit for those
40 amounts.

41 5. Unless the declaration otherwise provides, if two or more associations have
42 liens for assessments created at any time on the same property, those liens have
43 equal priority.

44 ~~{-}~~ 6. Recording of the declaration constitutes record notice and perfection
45 of the lien. No further recordation of any claim of lien for assessment under this
46 section is required.

47 ~~{-}~~ 7. A lien for unpaid assessments is extinguished unless proceedings to
48 enforce the lien are instituted within 3 years after the full amount of the assessments
49 becomes due.

50 ~~{-}~~ 8. This section does not prohibit actions to recover sums for which
51 subsection 1 creates a lien or prohibit an association from taking a deed in lieu of
52 foreclosure.

1 ~~7.9.~~ 9. A judgment or decree in any action brought under this section must
2 include costs and reasonable attorney's fees for the prevailing party.

3 ~~8.10.~~ 10. The association, upon written request, shall furnish to a unit's owner
4 a statement setting forth the amount of unpaid assessments against the unit. If the
5 interest of the unit's owner is real estate or if a lien for the unpaid assessments may
6 be foreclosed under NRS 116.31162 to 116.31168, inclusive, the statement must be
7 in recordable form. The statement must be furnished within 10 business days after
8 receipt of the request and is binding on the association, the executive board and
9 every unit's owner.

10 ~~9.11.~~ 11. In a cooperative, upon nonpayment of an assessment on a unit, the
11 unit's owner may be evicted in the same manner as provided by law in the case of
12 an unlawful holdover by a commercial tenant, and:

13 (a) In a cooperative where the owner's interest in a unit is real estate under
14 NRS 116.1105, the association's lien may be foreclosed under NRS 116.31162 to
15 116.31168, inclusive.

16 (b) In a cooperative where the owner's interest in a unit is personal property
17 under NRS 116.1105, the association's lien:

18 (1) May be foreclosed as a security interest under NRS 104.9101 to
19 104.9709, inclusive; or

20 (2) If the declaration so provides, may be foreclosed under NRS 116.31162
21 to 116.31168, inclusive.

22 **Sec. 5.6. NRS 116.31162 is hereby amended to read as follows:**

23 116.31162 1. Except as otherwise provided in subsection 4, in a
24 condominium, in a planned community, in a cooperative where the owner's interest
25 in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's
26 interest in a unit is personal property under NRS 116.1105 and the declaration
27 provides that a lien may be foreclosed under NRS 116.31162 to 116.31168,
28 inclusive, the association may foreclose its lien by sale after all of the following
29 occur:

30 (a) The association has mailed by certified or registered mail, return receipt
31 requested, to the unit's owner or his or her successor in interest, at his or her
32 address, if known, and at the address of the unit, a notice of delinquent assessment
33 which states the amount of the assessments and other sums which are due in
34 accordance with subsection 1 of NRS 116.3116, a description of the unit against
35 which the lien is imposed and the name of the record owner of the unit.

36 (b) Before the association records the notice of default and election to sell in
37 the manner required by paragraph (c), the executive board authorizes the
38 foreclosure of the association's lien by sale by a majority vote of the members of
39 the executive board which is recorded in the minutes of the meeting at which
40 such action is taken.

41 (c) Not less than 30 days after mailing the notice of delinquent assessment
42 pursuant to paragraph (a) and not less than 6 months after the account of the
43 unit's owner first had a past due balance or the date on which the past due
44 obligation exceeds \$500, the association or other person conducting the sale has
45 executed and caused to be recorded, with the county recorder of the county in
46 which the common-interest community or any part of it is situated, a notice of
47 default and election to sell the unit to satisfy the lien which must contain the same
48 information as the notice of delinquent assessment and which must also comply
49 with the following:

50 (1) Describe the deficiency in payment.

51 (2) State the name and address of the person authorized by the association
52 to enforce the lien by sale.

1 (3) Contain, in 14-point bold type, the following warning:
2

3 **WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN**
4 **THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE**
5 **AMOUNT IS IN DISPUTE!**
6

7 ~~(c)~~ (d) The unit's owner or his or her successor in interest has failed to pay
8 the amount of the lien, including costs, fees and expenses incident to its
9 enforcement, for 90 days following the recording of the notice of default and
10 election to sell.

11 2. The notice of default and election to sell must be signed by the person
12 designated in the declaration or by the association for that purpose or, if no one is
13 designated, by the president of the association.

14 3. The period of 90 days begins on the first day following:

15 (a) The date on which the notice of default is recorded; or

16 (b) The date on which a copy of the notice of default is mailed by certified or
17 registered mail, return receipt requested, to the unit's owner or his or her successor
18 in interest at his or her address, if known, and at the address of the unit,

19 whichever date occurs later.

20 4. The association may not foreclose a lien by sale based on a fine or penalty
21 for a violation of the governing documents of the association unless:

22 (a) The violation poses an imminent threat of causing a substantial adverse
23 effect on the health, safety or welfare of the units' owners or residents of the
24 common-interest community; or

25 (b) The penalty is imposed for failure to adhere to a schedule required pursuant
26 to NRS 116.310305.

27 **Sec. 5.8. The amendatory provisions of section 5.6 of this bill apply only**
28 **to a notice of default which is recorded pursuant to NRS 116.31162 on or after**
29 **October 1, 2011.**

30 **Sec. 6.** NRS 106.105 is hereby repealed.

TEXT OF REPEALED SECTION

106.105 Contributions; payment of obligations; notice regarding and disposition of excess money; civil penalty.

1. Except as otherwise provided in subsection 2, a lender who requires a borrower to make advance contributions to an impound trust account, or an account of similar name, for the payment of taxes, insurance premiums or other obligations related to the encumbered property shall:

(a) Require contributions in an amount reasonably necessary to pay the obligations as they become due.

(b) Unless money in the account is insufficient, pay in a timely manner the obligations as they become due.

(c) Within 30 days after the completion of its annual review of the account, notify the borrower:

(1) Of the amount by which the contributions exceed the amount reasonably necessary to pay the annual obligations due from the account; and

(2) That the borrower may specify the disposition of the excess money within 20 days after receipt of the notice. If the borrower fails to specify such a

disposition within that time, the lender shall maintain the excess money in the account.

↳ A lender who violates any provision of this subsection is liable to the borrower for a civil penalty of not more than \$1,000.

2. A lender, to recover previous deficiencies in contributions to an impound trust account, may require contributions to the account in an amount greater than that reasonably necessary to pay the obligations as they become due. The borrower is otherwise entitled to the amount by which the borrower's contributions to the account exceed the amount reasonably necessary to pay the annual obligations due from the account, together with interest thereon at the rate established pursuant to NRS 99.040.

3. As used in this section:

(a) "Borrower" means a mortgagor, grantor of a deed of trust or other obligor on a loan secured by a lien upon real property.

(b) "Lender" means a mortgagee, beneficiary of a deed of trust or other obligee on a loan secured by a lien upon real property, and his or her successor in interest.