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SENATE BILL NO. 346—SENATOR BREEDEN

MARCH 21, 2011

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JOINT SPONSOR: ASSEMBLYMAN SEGERBLOM

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Referred to Committee on Judiciary

**SUMMARY**—Revises provisions governing deficiency judgments on obligations secured by certain residential property. (BDR 3-276)

**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.

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**AN ACT** relating to real property; revising provisions governing the award of a deficiency judgment after the foreclosure of a mortgage or deed of trust on certain residential property; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Under existing law, after a foreclosure sale or trustee’s sale of real property  
2 which secured an obligation, the creditor or beneficiary of the deed of trust may  
3 obtain, after a hearing, a deficiency judgment if there is a deficiency of the  
4 proceeds of the sale and a balance remaining due to the creditor or beneficiary of  
5 the deed of trust. However, existing law prohibits a court from awarding a  
6 deficiency judgment with respect to an obligation secured by a mortgage or deed of  
7 trust created on or after October 1, 2009, if: (1) the creditor or beneficiary of the  
8 deed of trust is a financial institution; (2) the real property is a single-family  
9 dwelling and the debtor or grantor of the deed of trust was the owner of the  
10 property; (3) the debtor or grantor used the loan to purchase the property; (4) the  
11 debtor or grantor occupied the property continuously as his or her principal  
12 residence after obtaining the loan; and (5) the debtor or grantor did not refinance  
13 the loan. (NRS 40.455)

14 This bill revises this prohibition against an award of a deficiency judgment by  
15 prohibiting a court from awarding a deficiency judgment after a foreclosure sale or  
16 trustee’s sale of any real property which is a single-family dwelling: (1) owned by  
17 the debtor or grantor of the deed of trust; and (2) occupied by the debtor or grantor  
18 continuously as his or her principal residence. Moreover, this bill prohibits such a  
19 deficiency judgment regardless of the date on which the obligation secured by the  
20 mortgage, deed of trust or other encumbrance on real property was created, unless a



\* S B 3 4 6 \*

21 deficiency judgment with respect to that obligation is awarded before the effective  
22 date of this bill.

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

1       **Section 1.** NRS 40.455 is hereby amended to read as follows:  
2       40.455 1. Except as otherwise provided in subsection 3, upon  
3 application of the judgment creditor or the beneficiary of the deed of  
4 trust within 6 months after the date of the foreclosure sale or the  
5 trustee's sale held pursuant to NRS 107.080, respectively, and after  
6 the required hearing, the court shall award a deficiency judgment to  
7 the judgment creditor or the beneficiary of the deed of trust if it  
8 appears from the sheriff's return or the recital of consideration in the  
9 trustee's deed that there is a deficiency of the proceeds of the sale  
10 and a balance remaining due to the judgment creditor or the  
11 beneficiary of the deed of trust, respectively.

12       2. If the indebtedness is secured by more than one parcel of  
13 real property, more than one interest in the real property or more  
14 than one mortgage or deed of trust, the 6-month period begins to run  
15 after the date of the foreclosure sale or trustee's sale of the last  
16 parcel or other interest in the real property securing the  
17 indebtedness, but in no event may the application be filed more than  
18 2 years after the initial foreclosure sale or trustee's sale.

19       3. ~~[(If the judgment creditor or the beneficiary of the deed of~~  
20 ~~trust is a financial institution, the)] *The* court may not award a  
21 deficiency judgment to the judgment creditor or the beneficiary of  
22 the deed of trust, even if there is a deficiency of the proceeds of the  
23 sale and a balance remaining due the judgment creditor or  
24 beneficiary of the deed of trust, if:~~

25       (a) The real property is a single-family dwelling and the debtor  
26 or grantor was the owner of the real property at the time of the  
27 foreclosure sale or trustee's sale; *and*

28       (b) ~~[(The debtor or grantor used the amount for which the real~~  
29 ~~property was secured by the mortgage or deed of trust to purchase~~  
30 ~~the real property;~~

31 ~~—(c)]~~ The debtor or grantor continuously occupied the real  
32 property as the debtor's or grantor's principal residence after  
33 securing the mortgage or deed of trust. ~~[- and~~

34 ~~—(d) The debtor or grantor did not refinance the mortgage or deed~~  
35 ~~of trust after securing it.~~

36 ~~—4. As used in this section, "financial institution" has the~~  
37 ~~meaning ascribed to it in NRS 363A.050.]~~

38       **Sec. 2.** The amendatory provisions of this act apply to an  
39 obligation secured by a mortgage, deed of trust or other



- 1 encumbrance upon real property before, on or after the effective
- 2 date of this act, unless a deficiency judgment with respect to the
- 3 obligation is awarded before the effective date of this act.
- 4 **Sec. 3.** This act becomes effective upon passage and approval.

