

SENATE BILL NO. 160—SENATOR SEGERBLOM

FEBRUARY 18, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing deficiency judgments on obligations secured by certain residential property. (BDR 3-604)

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 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 or a sale in lieu of a
2 foreclosure sale or trustee’s sale, 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, under certain circumstances, existing law prohibits a
6 court from awarding a deficiency judgment with respect to an obligation secured by
7 a mortgage or deed of trust. (NRS 40.455, 40.458, 40.4638)
8 This bill revises this prohibition against an award of a deficiency judgment by
9 prohibiting a court from awarding a deficiency judgment after a foreclosure sale or
10 trustee’s sale or a sale in lieu of a foreclosure sale or trustee’s sale if the real
11 property is a single-family dwelling: (1) owned by the debtor or grantor of the deed
12 of trust; and (2) occupied by the debtor or grantor continuously as his or her
13 principal residence. Moreover, this bill, which becomes effective upon passage and
14 approval, prohibits such a deficiency judgment regardless of the date on which the
15 obligation secured by the mortgage, deed of trust or other encumbrance on real
16 property was created, unless a deficiency judgment with respect to that obligation is
17 awarded before the effective 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.** NRS 40.458 is hereby amended to read as follows:

39 40.458 1. ~~If the judgment creditor or the beneficiary of the~~
40 ~~deed of trust who applies for a deficiency judgment is a banking or~~
41 ~~other financial institution, the~~ *The* court may not award a



1 deficiency judgment to the judgment creditor or the beneficiary of
2 the deed of trust *after a sale in lieu of a foreclosure sale* if:

3 (a) The real property is a single-family dwelling and the debtor
4 or the grantor of the deed of trust was the owner of the real property
5 at the time of the sale in lieu of a foreclosure sale; *and*

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

9 ~~—(c) The debtor or grantor continuously occupied the real
10 property as the debtor's or grantor's principal residence after
11 securing the mortgage or deed of trust. ‡~~

12 ~~—(d) The debtor or grantor and the banking or other financial
13 institution entered into an agreement to sell the real property secured
14 by the mortgage or deed of trust to a third party for an amount less
15 than the indebtedness secured thereby; and~~

16 ~~—(e) The agreement entered into pursuant to paragraph (d):~~

17 ~~—(1) Does not state the amount of money still owed to the
18 banking or other financial institution by the debtor or grantor or
19 does not authorize the banking or other financial institution to
20 recover that amount from the debtor or grantor; and~~

21 ~~—(2) Contains a conspicuous statement that has been
22 acknowledged by the signature of the debtor or grantor which
23 provides that the banking or other financial institution has waived its
24 right to recover the amount owed by the debtor or grantor and which
25 sets forth the amount of recovery that is being waived.]~~

26 2. As used in this section ‡:

27 ~~—(a) “Banking or other financial institution” means any bank,
28 savings and loan association, savings bank, thrift company, credit
29 union or other financial institution that is licensed, registered or
30 otherwise authorized to do business in this State.~~

31 ~~—(b) “Sale”, “sale in lieu of a foreclosure sale” means a sale of
32 real property pursuant to an agreement between a person to whom
33 an obligation secured by a mortgage or other lien on real property is
34 owed and the debtor of that obligation in which the sales price of the
35 real property is insufficient to pay the full outstanding balance of the
36 obligation and the costs of the sale. The term includes, without
37 limitation, a deed in lieu of foreclosure.~~

38 **Sec. 3.** NRS 40.4638 is hereby amended to read as follows:

39 40.4638 ~~‡~~ A person to whom an obligation secured by a
40 junior mortgage or lien on real property is owed may not bring any
41 action to enforce that obligation after a foreclosure sale of the real
42 property which secured that obligation or a sale in lieu of a
43 foreclosure sale if:

44 ~~‡(a) The person is a financial institution;~~



1 ~~(b)~~ 1. The real property which secured the obligation is a
2 single-family dwelling and the debtor or grantor was the owner of
3 the real property at the time of the foreclosure sale or sale in lieu of
4 a foreclosure sale;

5 ~~[(e) The debtor or grantor used the amount of the obligation to~~
6 ~~purchase the real property;~~

7 ~~(d)~~ and

8 2. The debtor or grantor continuously occupied the real
9 property as the debtor's or grantor's principal residence after
10 securing the obligation. ~~[(e) and~~

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

13 ~~2. As used in this section, "financial institution" has the~~
14 ~~meaning ascribed to it in NRS 363A.050.]~~

15 **Sec. 4.** The amendatory provisions of this act apply to an
16 obligation secured by a mortgage, deed of trust or other
17 encumbrance upon real property before, on or after the effective
18 date of this act, unless a deficiency judgment with respect to the
19 obligation is awarded before the effective date of this act.

20 **Sec. 5.** This act becomes effective upon passage and approval.

