

Senate Bill No. 356—Senator Roberson
(by request)

CHAPTER.....

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 to a deed of trust may be set; revising provisions relating to certain agreements to sell real property to a third party; revising provisions concerning 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:

Existing law provides that certain covenants may be adopted by reference in a deed of trust. (NRS 107.030) **Section 1** of this bill amends one such statutory covenant to provide the parties to a deed of trust the alternatives of paying, in connection with a trustee's sale, either: (1) counsel fees in an amount equal to a specified percentage of the amount secured by the deed of trust and remaining unpaid; or (2) reasonable counsel fees and costs actually incurred. **Section 2** of this bill revises accordingly the information that must be stated in a deed of trust which contains such a covenant. **Section 1** also amends another statutory covenant which authorizes a beneficiary or his or her assigns to appoint another trustee to execute a trust by removing the use of a certified copy of a resolution of the board of directors of a corporate beneficiary as conclusive proof of the proper appointment of a trustee.

Existing law also provides that if a party to a deed of trust desires to charge an assumption fee for a change in parties to the deed of trust, the amount of the assumption fee must be clearly set forth in the deed of trust at the time of execution. (NRS 107.055) **Section 3** of this bill sets forth certain methods of specifying assumption fees for a change in parties to a deed of trust.

Existing law prohibits a court from awarding a deficiency judgment to a creditor or beneficiary of a deed of trust who is a banking or other financial institution if certain circumstances exist, including when a debtor or grantor and the banking or other financial institution have entered into an agreement to sell real property secured by a mortgage or deed of trust to a third party for an amount less than the indebtedness secured by the mortgage or deed of trust, and the agreement: (1) does not state the amount owed to the banking or other financial institution or does not authorize the banking or other financial institution to recover the amount owed; and (2) contains a statement signed by the debtor or grantor which provides that the banking or other financial institution has waived its right to recover the amount owed and sets forth the amount being waived. (NRS 40.458) **Section 4** of this bill requires that such a statement also be signed by the banking or other financial institution.

Existing law additionally provides that if a loan requires the deposit of money to an impound account for the payment of certain obligations, the lender must analyze the account at least annually. (NRS 100.091) Existing law also imposes certain duties upon a lender who requires a borrower to make advance contributions to an impound account for the payment of certain obligations. (NRS 106.105) **Section 5** of this bill revises provisions concerning the accounting for impound



accounts and the related duties of a lender by incorporating provisions repealed by **section 6** of this bill.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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

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

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

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

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

3. COVENANT NO. 3. That if, during the existence of the trust, there be commenced or pending any suit or action affecting the conveyed premises, or any part thereof, or the title thereto, or if any adverse claim for or against the premises, or any part thereof, be made or asserted, the trustee or beneficiary may appear or intervene in the suit or action and retain counsel therein and defend same, or otherwise take such action therein as they may be advised, and may settle or compromise same or the adverse claim; and in that behalf



and for any of the purposes may pay and expend such sums of money as the trustee or beneficiary may deem to be necessary.

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

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

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

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



and enjoy the same rights as though such notice had not been recorded.

7. COVENANT NO. 7. That the trustee, upon such sale, shall make (without warranty), execute and, after due payment made, deliver to purchaser or purchasers, his, her or their heirs or assigns, a deed or deeds of the premises so sold which shall convey to the purchaser all the title of the grantor in the trust premises, and shall apply the proceeds of the sale thereof in payment, firstly, of the expenses of such sale, together with the reasonable expenses of the trust, including counsel fees, in an amount equal to percent of the amount secured thereby and remaining unpaid ~~to~~ **or reasonable counsel fees and costs actually incurred**, which shall become due upon any default made by grantor in any of the payments aforesaid; and also such sums, if any, as trustee or beneficiary shall have paid, for procuring a search of the title to the premises, or any part thereof, subsequent to the execution of the deed of trust; and in payment, secondly, of the obligation or debts secured, and interest thereon then remaining unpaid, and the amount of all other moneys with interest thereon herein agreed or provided to be paid by grantor; and the balance or surplus of such proceeds of sale it shall pay to grantor, his or her heirs, executors, administrators or assigns.

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

9. COVENANT NO. 9. That the beneficiary or his or her assigns may, from time to time, appoint another trustee, or trustees, to execute the trust created by the deed of trust or other conveyance in trust. ~~A copy of a resolution of the board of directors of beneficiary~~



~~(if beneficiary be a corporation), certified by the secretary thereof, under its corporate seal, or an~~ *An* instrument executed and acknowledged by the beneficiary ~~(if the beneficiary be a natural person), shall be~~ *is* conclusive proof of the proper appointment of such substituted trustee. Upon the recording of such ~~certified copy or~~ executed and acknowledged instrument, the new trustee or trustees shall be vested with all the title, interest, powers, duties and trusts in the premises vested in or conferred upon the original trustee. If there be more than one trustee, either may act alone and execute the trusts upon the request of the beneficiary, and all of the trustee's acts thereunder shall be deemed to be the acts of all trustees, and the recital in any conveyance executed by such sole trustee of such request shall be conclusive evidence thereof, and of the authority of such sole trustee to act.

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

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

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

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

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

Sec. 3. NRS 107.055 is hereby amended to read as follows:

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



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

Sec. 4. NRS 40.458 is hereby amended to read as follows:

40.458 1. If the judgment creditor or the beneficiary of the deed of trust who applies for a deficiency judgment is a banking or other financial institution, the court may not award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if:

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

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

(c) The debtor or grantor continuously occupied the real property as the debtor's or grantor's principal residence after securing the mortgage or deed of trust;

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

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

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

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

2. As used in this section:

(a) "Banking or other financial institution" means any bank, savings and loan association, savings bank, thrift company, credit union or other financial institution that is licensed, registered or otherwise authorized to do business in this State.

(b) "Sale in lieu of a foreclosure sale" means a sale of real property pursuant to an agreement between a person to whom an obligation secured by a mortgage or other lien on real property is



owed and the debtor of that obligation in which the sales price of the real property is insufficient to pay the full outstanding balance of the obligation and the costs of the sale. The term includes, without limitation, a deed in lieu of foreclosure.

Sec. 5. NRS 100.091 is hereby amended to read as follows:

100.091 1. For each loan requiring the deposit of money to an escrow account, loan trust account or other impound account for the payment of taxes, assessments, rental or leasehold payments, ~~for fire, hazard or other~~ insurance premiums ~~+~~ **or other obligations related to the encumbered property**, the lender 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) At least annually, analyze the account. The analysis of each account must be performed to determine whether sufficient money is contributed to the account on a monthly basis to pay for the projected disbursements from the account. At least 30 days before the effective date of any increased contribution to the account based on the analysis, a statement must be sent to the borrower showing the method of determining the amount of money held in the account, the amount of projected disbursements from the account and the amount of the reserves which may be held in accordance with federal guidelines.

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

3. ***Except for payments made by a borrower for a lender to recover previous deficiencies in contributions to the account pursuant to subsection 2, the borrower is entitled pursuant to subsection 4 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.***

4. If, upon completion of the analysis, it is determined that the amount of money held by the lender in the account, together with anticipated future monthly contributions to the account to be credited to the account before the dates items are due on the



account, exceed the amount of money required to pay the items when due, the lender shall, ~~at the option of~~ *not later than 30 days after completion of its annual review of the account, notify the borrower:*

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

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

(1) Repay the excess money and interest promptly to the borrower ~~is apply~~;

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

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

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

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

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

8. The provisions of this section apply exclusively to:

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

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

9. As used in this section:

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

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

Sec. 6. NRS 106.105 is hereby repealed.

