

SENATE BILL NO. 239—SENATOR ROBERSON

MARCH 10, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to real property. (BDR 9-970)

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; authorizing certain persons to file a notice to terminate a revolving line of credit secured by a deed of trust or mortgage; authorizing certain trustees to file a declaration of nonmonetary status under certain circumstances; revising provisions governing an action to declare void a trustee’s sale; authorizing a beneficiary to substitute as trustee for the purpose of reconveying a deed of trust; providing that a failure to comply with the provisions of law governing a trustee’s sale does not affect the validity of a sale in favor of a bona fide purchaser; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law, within 21 days after receiving notice that a debt secured by
2 a mortgage has been paid or otherwise satisfied or discharged, the mortgagee is
3 required to record a discharge of the mortgage. (NRS 106.290) Existing federal law
4 relating to lending practices also specifies certain circumstances under which a
5 lender may reduce or terminate a home equity line of credit, otherwise known as a
6 “revolving line of credit.” (Truth in Lending Act, 12 C.F.R. Part 1026) **Section 1** of
7 this bill authorizes certain persons to provide a written request to terminate a
8 revolving line of credit secured by a deed of trust or mortgage. **Section 1** also
9 requires a lender upon receipt of such notice to: (1) terminate the borrower’s right
10 to obtain advances under the revolving line of credit; (2) apply certain sums paid to
11 the satisfaction of the revolving line of credit; and (3) record a reconveyance or
12 certificate of discharge of the security instrument when the balance becomes zero.

13 Existing law: (1) prescribes certain qualifications and duties of a trustee under a
14 deed of trust; (2) provides for a civil action against a trustee under certain
15 circumstances; and (3) prohibits a beneficiary from reconveying a deed of trust,
16 unless the beneficiary meets certain qualifications to act as a trustee.



* S B 2 3 9 *

17 (NRS 107.028) **Section 2** of this bill: (1) authorizes certain trustees to file a
18 declaration of nonmonetary status if the trustee is named as a party to a civil action
19 under certain circumstances; and (2) authorizes a party to the action to file an
20 objection to a trustee's declaration of nonmonetary status. If no such objection is
21 timely made or if a court does not determine that an objection is valid, the trustee is
22 no longer required to participate in the action and is not subject to any damages,
23 equitable relief or attorney's fees or costs. **Section 3** of this bill authorizes a
24 beneficiary to substitute and act as trustee for the purpose of partially or fully
25 reconveying a deed of trust.

26 Existing law provides that a sale by the trustee under a deed of trust must be
27 declared void by a court of competent jurisdiction if: (1) the trustee or a person
28 authorized to make the sale does not substantially comply with certain provisions of
29 existing law governing the exercise of the trustee's power of sale; and (2) an action
30 is commenced in the county where the sale took place within 45 days after the date
31 of the sale or, if the notice of default and election to sell or the notice of sale is not
32 provided to certain persons in accordance with existing law, within 60 days after
33 the person received actual notice of sale. Existing law also requires a trustee or a
34 successful bidder at a trustee's sale of property to record a trustee's deed upon sale
35 not later than 30 days after the trustee's sale of the property. (NRS 107.080) Under
36 **section 4** of this bill: (1) not later than 5 days after a trustee's deed upon sale is
37 recorded, the trustee or successful bidder at the trustee's sale must post
38 conspicuously on the property a notice of trustee's sale; (2) an action to declare
39 void a trustee's sale must be commenced within 15 days after the recording of the
40 trustee's deed upon sale or, in certain circumstances, within 90 days after the date
41 of the sale; and (3) after the expiration of the period for commencing an action to
42 declare void a trustee's sale, any failure to comply with a provision of existing law
43 governing the exercise of the trustee's power of sale does not affect the rights of a
44 bona fide purchaser.

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

1 **Section 1.** Chapter 106 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *1. Upon receipt of a written request from an authorized*
4 *person to terminate a revolving line of credit secured by a*
5 *mortgage or deed of trust, the lender shall:*

6 *(a) Terminate the borrower's right to obtain advances under*
7 *the borrower's revolving line of credit;*

8 *(b) Apply all sums subsequently paid by or on behalf of the*
9 *borrower in connection with the revolving line of credit to the*
10 *satisfaction of the revolving line of credit and other sums secured*
11 *by the related security instrument; and*

12 *(c) When the balance of all outstanding sums secured by the*
13 *related security instrument becomes zero, record a reconveyance*
14 *or certificate of discharge of the security instrument.*

15 *2. No particular phrasing is required in the written request*
16 *provided to the lender to terminate a revolving line of credit, but*
17 *the request must include, without limitation:*



- 1 (a) *The name of each borrower;*
- 2 (b) *The account number of the revolving line of credit; and*
- 3 (c) *The street address of the property, if appropriate.*
- 4 3. *Notice of a written request to terminate a revolving line of*
- 5 *credit secured by a mortgage or deed of trust from an authorized*
- 6 *person must be provided to the borrower. The notice must be in*
- 7 *substantially the following form:*

8
9 **NOTICE TO BORROWER**

10
11 *You have a revolving line of credit, otherwise known as a*
12 *home equity line of credit, secured by a mortgage or deed of*
13 *trust, and lien, on real property located at _____.*
14 *Our company is handling the escrow for your transaction.*
15 *We are sending the attached notice to your lender*
16 *requesting that your revolving line of credit be terminated.*
17 *Our reason for making this request is: _____.*
18 *When your lender receives our request, your lender will*
19 *terminate and close your revolving line of credit and you*
20 *will no longer be able to obtain credit advances. However,*
21 *termination of your revolving line of credit does not release*
22 *you from liability for amounts owed under the account. All*
23 *sums your lender subsequently receives in connection with*
24 *your revolving line of credit, including any sums we may*
25 *send to your lender, will be applied by your lender to the*
26 *satisfaction of your account. When the balance of your*
27 *account becomes zero, your lender will be required to cancel*
28 *the mortgage or deed of trust as a matter of public record.*
29 *If you have questions about this notice or our action, please*
30 *contact _____ by calling us at _____*
31 *or writing to us at _____.*

32
33 _____
34 *(Name of Company)*

- 35 4. *As used in this section:*
- 36 (a) *“Authorized person” includes:*
- 37 (1) *A title agent as defined in NRS 692A.060;*
- 38 (2) *A title insurer as defined in NRS 692A.070; and*
- 39 (3) *An escrow agency as defined in NRS 645A.010.*
- 40 (b) *“Receipt of a written request” includes confirmation by*
- 41 *facsimile, electronic mail or paper copy sent by certified mail.*

42 **Sec. 2.** Chapter 107 of NRS is hereby amended by adding
43 thereto a new section to read as follows:

44 1. *If the trustee under a deed of trust is named in an action in*
45 *which the deed of trust is the subject and the trustee has a*



1 *reasonable belief that he or she has been named in the action*
2 *solely in his or her capacity as trustee and not as a result of any*
3 *wrongful act or omission made in the performance of his or her*
4 *duties as trustee, the trustee may, at any time, file a declaration of*
5 *nonmonetary status. The declaration must be served on the parties*
6 *in the manner prescribed by Rule 5 of the Nevada Rules of Civil*
7 *Procedure and must include:*

8 (a) *The status of the trustee as trustee under the deed of trust;*
9 *and*

10 (b) *The basis for the trustee's reasonable belief that he or she*
11 *has been named as a defendant in the action solely in his or her*
12 *capacity as trustee and not as a result of any wrongful act or*
13 *omission made in the performance of his or her duties as trustee.*

14 2. *Upon the filing of a declaration of nonmonetary status*
15 *pursuant to subsection 1, the time in which the trustee is required*
16 *to file an answer or any other responsive pleading is tolled until*
17 *notice is given of an order granting an objection to the declaration*
18 *of nonmonetary status, from which date the trustee has 30 days to*
19 *file an answer or any other responsive pleading to the complaint.*

20 3. *Any party that has appeared in an action described in*
21 *subsection 1 has 15 days after the date of service of the declaration*
22 *of nonmonetary status to file an objection. Any objection filed*
23 *pursuant to this subsection must set forth the factual basis on*
24 *which the objection is based and must be served on the trustee.*

25 4. *If a timely objection is made pursuant to subsection 3, the*
26 *court shall promptly examine the declaration of nonmonetary*
27 *status and the objection and shall issue an order as to the validity*
28 *of the objection. If the court determines the objection is valid, the*
29 *trustee is required to participate in the action.*

30 5. *If no objection is raised within the 15-day period pursuant*
31 *to subsection 3 or if the court determines the objection is invalid,*
32 *the trustee is not required to participate any further in the action*
33 *and is not subject to any money damages, equitable relief or*
34 *attorney's fees or costs, except that the trustee is required to*
35 *respond to any discovery request as a nonparty participant and is*
36 *bound by any court order relating to the deed of trust.*

37 6. *If, at any time during the proceedings under this section,*
38 *the parties to the action acquire newly discovered evidence*
39 *indicating the trustee should be made a participant in the action as*
40 *a result of the trustee's performance of his or her duties as trustee,*
41 *the parties may file a motion to amend the pleadings pursuant to*
42 *Rule 15 of the Nevada Rules of Civil Procedure.*

43 7. *For the purposes of this section, "trustee" includes any*
44 *agent or employee of the trustee who performs some or all the*



1 *duties of a trustee under this chapter and includes substitute*
2 *trustees and agents of the beneficiary or trustee.*

3 **Sec. 3.** NRS 107.028 is hereby amended to read as follows:

4 107.028 1. ~~The~~ *Except as otherwise provided in subsection*
5 *4, the* trustee under a deed of trust must be:

6 (a) An attorney licensed to practice law in this State;

7 (b) A title insurer or title agent authorized to do business in this
8 State pursuant to chapter 692A of NRS;

9 (c) A person licensed pursuant to chapter 669 of NRS;

10 (d) A domestic or foreign entity which holds a current state
11 business license issued by the Secretary of State pursuant to chapter
12 76 of NRS;

13 (e) A person who does business under the laws of this State, the
14 United States or another state relating to banks, savings banks,
15 savings and loan associations or thrift companies;

16 (f) A person who is appointed as a fiduciary pursuant to
17 NRS 662.245;

18 (g) A person who acts as a registered agent for a domestic or
19 foreign corporation, limited-liability company, limited partnership
20 or limited-liability partnership;

21 (h) A person who acts as a trustee of a trust holding real
22 property for the primary purpose of facilitating any transaction with
23 respect to real estate if he or she is not regularly engaged in the
24 business of acting as a trustee for such trusts;

25 (i) A person who engages in the business of a collection agency
26 pursuant to chapter 649 of NRS; or

27 (j) A person who engages in the business of an escrow agency,
28 escrow agent or escrow officer pursuant to the provisions of chapter
29 645A or 692A of NRS.

30 2. A trustee under a deed of trust must not be the beneficiary of
31 the deed of trust for the purposes of exercising the power of sale
32 pursuant to NRS 107.080.

33 3. A trustee under a deed of trust must not:

34 (a) Lend its name or its corporate capacity to any person who is
35 not qualified to be the trustee under a deed of trust pursuant to
36 subsection 1.

37 (b) Act individually or in concert with any other person to
38 circumvent the requirements of subsection 1.

39 4. A beneficiary of record may ~~replace~~ :

40 (a) *Replace* its trustee with another trustee ~~H~~ ; or

41 (b) *Substitute as trustee only for the purposes of executing a*
42 *substitution of trustee and a full or partial reconveyance of a deed*
43 *of trust.*



1 5. The appointment of a new trustee is not effective until the
2 substitution of trustee is recorded in the office of the recorder of the
3 county in which the real property is located.

4 ~~5.1~~ 6. The trustee does not have a fiduciary obligation to the
5 grantor or any other person having an interest in the property which
6 is subject to the deed of trust. The trustee shall act impartially and in
7 good faith with respect to the deed of trust and shall act in
8 accordance with the laws of this State. A rebuttable presumption
9 that a trustee has acted impartially and in good faith exists if the
10 trustee acts in compliance with the provisions of NRS 107.080. In
11 performing acts required by NRS 107.080, the trustee incurs no
12 liability for any good faith error resulting from reliance on
13 information provided by the beneficiary regarding the nature and the
14 amount of the default under the obligation secured by the deed of
15 trust if the trustee corrects the good faith error not later than 20 days
16 after discovering the error.

17 ~~6.1~~ 7. If, in an action brought by a grantor, a person who holds
18 title of record or a beneficiary in the district court in and for the
19 county in which the real property is located, the court finds that the
20 trustee did not comply with this section, any other provision of this
21 chapter or any applicable provision of chapter 106 or 205 of NRS,
22 the court must award to the grantor, the person who holds title of
23 record or the beneficiary:

24 (a) Damages of \$5,000 or treble the amount of actual damages,
25 whichever is greater;

26 (b) An injunction enjoining the exercise of the power of sale
27 until the beneficiary, the successor in interest of the beneficiary or
28 the trustee complies with the requirements of subsections 2, 3 and 4;
29 and

30 (c) Reasonable attorney's fees and costs,
31 ↪ unless the court finds good cause for a different award.

32 **Sec. 4.** NRS 107.080 is hereby amended to read as follows:

33 107.080 1. Except as otherwise provided in NRS 106.210,
34 107.085 and 107.086, if any transfer in trust of any estate in real
35 property is made after March 29, 1927, to secure the performance of
36 an obligation or the payment of any debt, a power of sale is hereby
37 conferred upon the trustee to be exercised after a breach of the
38 obligation for which the transfer is security.

39 2. The power of sale must not be exercised, however, until:

40 (a) Except as otherwise provided in paragraph (b), in the case of
41 any trust agreement coming into force:

42 (1) On or after July 1, 1949, and before July 1, 1957, the
43 grantor, the person who holds the title of record, a beneficiary under
44 a subordinate deed of trust or any other person who has a
45 subordinate lien or encumbrance of record on the property has, for a



1 period of 15 days, computed as prescribed in subsection 3, failed to
2 make good the deficiency in performance or payment; or

3 (2) On or after July 1, 1957, the grantor, the person who
4 holds the title of record, a beneficiary under a subordinate deed of
5 trust or any other person who has a subordinate lien or encumbrance
6 of record on the property has, for a period of 35 days, computed as
7 prescribed in subsection 3, failed to make good the deficiency in
8 performance or payment.

9 (b) In the case of any trust agreement which concerns owner-
10 occupied housing as defined in NRS 107.086, the grantor, the
11 person who holds the title of record, a beneficiary under a
12 subordinate deed of trust or any other person who has a subordinate
13 lien or encumbrance of record on the property has, for a period that
14 commences in the manner and subject to the requirements described
15 in subsection 3 and expires 5 days before the date of sale, failed to
16 make good the deficiency in performance or payment.

17 (c) The beneficiary, the successor in interest of the beneficiary
18 or the trustee first executes and causes to be recorded in the office of
19 the recorder of the county wherein the trust property, or some part
20 thereof, is situated a notice of the breach and of the election to sell
21 or cause to be sold the property to satisfy the obligation which,
22 except as otherwise provided in this paragraph, includes a notarized
23 affidavit of authority to exercise the power of sale. Except as
24 otherwise provided in subparagraph (5), the affidavit required by
25 this paragraph must state under the penalty of perjury the following
26 information, which must be based on the direct, personal knowledge
27 of the affiant or the personal knowledge which the affiant acquired
28 by a review of the business records of the beneficiary, the successor
29 in interest of the beneficiary or the servicer of the obligation or debt
30 secured by the deed of trust, which business records must meet the
31 standards set forth in NRS 51.135:

32 (1) The full name and business address of the current trustee
33 or the current trustee's personal representative or assignee, the
34 current holder of the note secured by the deed of trust, the current
35 beneficiary of record and the current servicer of the obligation or
36 debt secured by the deed of trust.

37 (2) That the beneficiary under the deed of trust, the successor
38 in interest of the beneficiary or the trustee is in actual or
39 constructive possession of the note secured by the deed of trust or
40 that the beneficiary or its successor in interest or the trustee is
41 entitled to enforce the obligation or debt secured by the deed of
42 trust. For the purposes of this subparagraph, if the obligation or debt
43 is an instrument, as defined in subsection 2 of NRS 104.3103, a
44 beneficiary or its successor in interest or the trustee is entitled to



1 enforce the instrument if the beneficiary or its successor in interest
2 or the trustee is:

- 3 (I) The holder of the instrument;
- 4 (II) A nonholder in possession of the instrument who has
5 the rights of a holder; or
- 6 (III) A person not in possession of the instrument who is
7 entitled to enforce the instrument pursuant to a court order issued
8 under NRS 104.3309.

9 (3) That the beneficiary or its successor in interest, the
10 servicer of the obligation or debt secured by the deed of trust or the
11 trustee, or an attorney representing any of those persons, has sent to
12 the obligor or borrower of the obligation or debt secured by the deed
13 of trust a written statement of:

- 14 (I) The amount of payment required to make good
15 the deficiency in performance or payment, avoid the exercise of the
16 power of sale and reinstate the terms and conditions of the
17 underlying obligation or debt existing before the deficiency in
18 performance or payment, as of the date of the statement;
- 19 (II) The amount in default;
- 20 (III) The principal amount of the obligation or debt
21 secured by the deed of trust;
- 22 (IV) The amount of accrued interest and late charges;
- 23 (V) A good faith estimate of all fees imposed in
24 connection with the exercise of the power of sale; and
- 25 (VI) Contact information for obtaining the most current
26 amounts due and the local or toll-free telephone number described
27 in subparagraph (4).

28 (4) A local or toll-free telephone number that the obligor or
29 borrower of the obligation or debt may call to receive the most
30 current amounts due and a recitation of the information contained in
31 the affidavit.

32 (5) The date and the recordation number or other unique
33 designation of, and the name of each assignee under, each recorded
34 assignment of the deed of trust. The information required to be
35 stated in the affidavit pursuant to this subparagraph may be based
36 on:

- 37 (I) The direct, personal knowledge of the affiant;
- 38 (II) The personal knowledge which the affiant acquired
39 by a review of the business records of the beneficiary, the successor
40 in interest of the beneficiary or the servicer of the obligation or debt
41 secured by the deed of trust, which business records must meet the
42 standards set forth in NRS 51.135;

43 (III) Information contained in the records of the recorder
44 of the county in which the property is located; or



1 (IV) The title guaranty or title insurance issued by a title
2 insurer or title agent authorized to do business in this State pursuant
3 to chapter 692A of NRS.

4 ➔ The affidavit described in this paragraph is not required for the
5 exercise of the trustee's power of sale with respect to any trust
6 agreement which concerns a time share within a time-share plan
7 created pursuant to chapter 119A of NRS if the power of sale is
8 being exercised for the initial beneficiary under the deed of trust or
9 an affiliate of the initial beneficiary.

10 (d) The beneficiary or its successor in interest or the servicer of
11 the obligation or debt secured by the deed of trust has instructed the
12 trustee to exercise the power of sale with respect to the property.

13 (e) Not less than 3 months have elapsed after the recording of
14 the notice or, if the notice includes an affidavit and a certification
15 indicating that, pursuant to NRS 107.130, an election has been made
16 to use the expedited procedure for the exercise of the power of sale
17 with respect to abandoned residential property, not less than 60 days
18 have elapsed after the recording of the notice.

19 3. The 15- or 35-day period provided in paragraph (a) of
20 subsection 2, or the period provided in paragraph (b) of subsection
21 2, commences on the first day following the day upon which the
22 notice of default and election to sell is recorded in the office of the
23 county recorder of the county in which the property is located and a
24 copy of the notice of default and election to sell is mailed by
25 registered or certified mail, return receipt requested and with
26 postage prepaid to the grantor or, to the person who holds the title of
27 record on the date the notice of default and election to sell is
28 recorded, and, if the property is operated as a facility licensed under
29 chapter 449 of NRS, to the State Board of Health, at their respective
30 addresses, if known, otherwise to the address of the trust property.
31 The notice of default and election to sell must:

32 (a) Describe the deficiency in performance or payment and may
33 contain a notice of intent to declare the entire unpaid balance due if
34 acceleration is permitted by the obligation secured by the deed of
35 trust, but acceleration must not occur if the deficiency in
36 performance or payment is made good and any costs, fees and
37 expenses incident to the preparation or recordation of the notice and
38 incident to the making good of the deficiency in performance or
39 payment are paid within the time specified in subsection 2;

40 (b) If the property is subject to the requirements of NRS 107.400
41 to 107.560, inclusive, contain the declaration required by subsection
42 6 of NRS 107.510;

43 (c) If, pursuant to NRS 107.130, an election has been made to
44 use the expedited procedure for the exercise of the power of sale



1 with respect to abandoned residential property, include the affidavit
2 and certification required by subsection 6 of NRS 107.130; and

3 (d) If the property is a residential foreclosure, comply with the
4 provisions of NRS 107.087.

5 4. The trustee, or other person authorized to make the sale
6 under the terms of the trust deed or transfer in trust, shall, after
7 expiration of the applicable period specified in paragraph (d) of
8 subsection 2 following the recording of the notice of breach and
9 election to sell, and before the making of the sale, give notice of the
10 time and place thereof by recording the notice of sale and by:

11 (a) Providing the notice to each trustor, any other person entitled
12 to notice pursuant to this section and, if the property is operated as a
13 facility licensed under chapter 449 of NRS, the State Board of
14 Health, by personal service or by mailing the notice by registered or
15 certified mail to the last known address of the trustor and any other
16 person entitled to such notice pursuant to this section;

17 (b) Posting a similar notice particularly describing the property,
18 for 20 days successively, in a public place in the county where the
19 property is situated;

20 (c) Publishing a copy of the notice three times, once each week
21 for 3 consecutive weeks, in a newspaper of general circulation in the
22 county where the property is situated or, if the property is a time
23 share, by posting a copy of the notice on an Internet website and
24 publishing a statement in a newspaper in the manner required by
25 subsection 3 of NRS 119A.560; and

26 (d) If the property is a residential foreclosure, complying with
27 the provisions of NRS 107.087.

28 5. Every sale made under the provisions of this section and
29 other sections of this chapter vests in the purchaser the title of the
30 grantor and any successors in interest without equity or right of
31 redemption. ~~†A†~~ *Except as otherwise provided in subsection 7, a*
32 *sale made pursuant to this section must be declared void by any*
33 *court of competent jurisdiction in the county where the sale took*
34 *place if:*

35 (a) The trustee or other person authorized to make the sale does
36 not substantially comply with the provisions of this section or any
37 applicable provision of NRS 107.086 and 107.087;

38 (b) Except as otherwise provided in subsection 6, an action is
39 commenced in the county where the sale took place within ~~†45†~~ *15*
40 *days after the date ~~†of the sale;† on which the trustee's deed upon~~*
41 *sale is recorded pursuant to subsection 10 in the office of the*
42 *county recorder of the county in which the property is located;* and

43 (c) A notice of lis pendens providing notice of the pendency of
44 the action is recorded in the office of the county recorder of the



1 county where the sale took place within ~~15~~ 5 days after
2 commencement of the action.

3 6. If proper notice is not provided pursuant to subsection 3 or
4 paragraph (a) of subsection 4 to the grantor, to the person who holds
5 the title of record on the date the notice of default and election to
6 sell is recorded, to each trustor or to any other person entitled to
7 such notice, the person who did not receive such proper notice may
8 commence an action pursuant to subsection 5 within ~~60~~ 90 days
9 after the date ~~{on which the person received actual notice}~~ of the
10 sale.

11 7. *Upon expiration of the time for commencing an action*
12 *which is set forth in subsections 5 and 6, any failure to comply*
13 *with the provisions of this section or any other provision of this*
14 *chapter does not affect the rights of a bona fide purchaser as*
15 *described in NRS 111.180.*

16 8. If, in an action brought by the grantor or the person who
17 holds title of record in the district court in and for the county in
18 which the real property is located, the court finds that the
19 beneficiary, the successor in interest of the beneficiary or the trustee
20 did not comply with any requirement of subsection 2, 3 or 4, the
21 court must award to the grantor or the person who holds title of
22 record:

23 (a) Damages of \$5,000 or treble the amount of actual damages,
24 whichever is greater;

25 (b) An injunction enjoining the exercise of the power of sale
26 until the beneficiary, the successor in interest of the beneficiary or
27 the trustee complies with the requirements of subsections 2, 3 and 4;
28 and

29 (c) Reasonable attorney's fees and costs,
30 ↪ unless the court finds good cause for a different award. The
31 remedy provided in this subsection is in addition to the remedy
32 provided in subsection 5.

33 ~~18~~ 9. The sale of a lease of a dwelling unit of a cooperative
34 housing corporation vests in the purchaser title to the shares in the
35 corporation which accompany the lease.

36 ~~19~~ 10. After a sale of property is conducted pursuant to this
37 section, the trustee shall:

38 (a) Within 30 days after the date of the sale, record the trustee's
39 deed upon sale in the office of the county recorder of the county in
40 which the property is located; or

41 (b) Within 20 days after the date of the sale, deliver the trustee's
42 deed upon sale to the successful bidder. Within 10 days after the
43 date of delivery of the deed by the trustee, the successful bidder
44 shall record the trustee's deed upon sale in the office of the county
45 recorder of the county in which the property is located.



1 ~~10~~ 11. *Within 5 days after recording the trustee's deed*
2 *upon sale, the trustee or successful bidder, whomever recorded the*
3 *trustee's deed upon sale pursuant to subsection 10, shall cause a*
4 *copy of the trustee's deed upon sale to be posted conspicuously on*
5 *the property.*

6 12. If the successful bidder fails to record the trustee's deed
7 upon sale pursuant to paragraph (b) of subsection ~~9~~ 10, the
8 successful bidder:

9 (a) Is liable in a civil action to any party that is a senior
10 lienholder against the property that is the subject of the sale in a sum
11 of up to \$500 and for reasonable attorney's fees and the costs of
12 bringing the action; and

13 (b) Is liable in a civil action for any actual damages caused by
14 the failure to comply with the provisions of subsection ~~9~~ 10 and
15 for reasonable attorney's fees and the costs of bringing the action.

16 ~~11~~ 13. The county recorder shall, in addition to any other
17 fee, at the time of recording a notice of default and election to sell
18 collect:

19 (a) A fee of \$150 for deposit in the State General Fund.

20 (b) A fee of \$45 for deposit in the Account for Foreclosure
21 Mediation, which is hereby created in the State General Fund. The
22 Account must be administered by the Court Administrator, and the
23 money in the Account may be expended only for the purpose of
24 supporting a program of foreclosure mediation established by
25 Supreme Court Rule.

26 (c) A fee of \$5 to be paid over to the county treasurer on or
27 before the fifth day of each month for the preceding calendar month.
28 The county recorder may direct that 1.5 percent of the fees collected
29 by the county recorder pursuant to this paragraph be transferred into
30 a special account for use by the office of the county recorder. The
31 county treasurer shall remit quarterly to the organization operating
32 the program for legal services that receives the fees charged
33 pursuant to NRS 19.031 for the operation of programs for the
34 indigent all the money received from the county recorder pursuant
35 to this paragraph.

36 ~~12~~ 14. The fees collected pursuant to paragraphs (a) and (b)
37 of subsection ~~11~~ 13 must be paid over to the county treasurer by
38 the county recorder on or before the fifth day of each month for the
39 preceding calendar month, and, except as otherwise provided in this
40 subsection, must be placed to the credit of the State General Fund or
41 the Account for Foreclosure Mediation as prescribed pursuant to
42 subsection ~~11~~ 13. The county recorder may direct that 1.5 percent
43 of the fees collected by the county recorder be transferred into a
44 special account for use by the office of the county recorder. The
45 county treasurer shall, on or before the 15th day of each month,



1 remit the fees deposited by the county recorder pursuant to this
2 subsection to the State Controller for credit to the State General
3 Fund or the Account as prescribed in subsection ~~11.1~~ 13.

4 ~~13.1~~ 15. The beneficiary, the successor in interest of the
5 beneficiary or the trustee who causes to be recorded the notice of
6 default and election to sell shall not charge the grantor or the
7 successor in interest of the grantor any portion of any fee required to
8 be paid pursuant to subsection ~~11.1~~ 13.

9 ~~14.1~~ 16. As used in this section:

10 (a) "Residential foreclosure" means the sale of a single family
11 residence under a power of sale granted by this section. As used in
12 this paragraph, "single family residence":

13 (1) Means a structure that is comprised of not more than four
14 units.

15 (2) Does not include vacant land or any time share or other
16 property regulated under chapter 119A of NRS.

17 (b) "Trustee" means the trustee of record.

18 **Sec. 5.** NRS 645B.340 is hereby amended to read as follows:

19 645B.340 1. Except as otherwise provided by law or by
20 agreement between the parties and regardless of the date the
21 interests were created, if the beneficial interest in a loan or the
22 ownership interest in the real property previously securing the loan
23 belongs to more than one person, the holders of the beneficial
24 interest in a loan whose interests represent 51 percent or more of the
25 outstanding principal balance of the loan or the holders of 51
26 percent or more of the ownership interest in the real property, as
27 indicated on a trustee's deed upon sale recorded pursuant to
28 subsection ~~19.1~~ 10 of NRS 107.080, a deed recorded pursuant to
29 subsection 5 of NRS 40.430 or a deed in lieu of foreclosure, and any
30 subsequent deed selling, transferring or assigning an ownership
31 interest, may act on behalf of all the holders of the beneficial
32 interests or ownership interests of record on matters which require
33 the action of the holders of the beneficial interests in the loan or the
34 ownership interests in the real property, including, without
35 limitation:

36 (a) The designation of a mortgage broker or mortgage agent,
37 servicing agent or any other person to act on behalf of all the holders
38 of the beneficial interests or ownership interests of record;

39 (b) The foreclosure of the property for which the loan was made;

40 (c) The subsequent sale, transfer, encumbrance or lease of real
41 property owned by the holders resulting from a foreclosure or the
42 receipt of a deed in lieu of a foreclosure in full satisfaction of a loan,
43 to a bona fide purchaser or encumbrancer for value;

44 (d) The release of any obligation under a loan in return for an
45 interest in equity in the real property or, if the loan was made to a



1 person other than a natural person, an interest in equity of that
2 entity; and

3 (e) The modification or restructuring of any term of the loan,
4 deed of trust or other document relating to the loan, including,
5 without limitation, changes to the maturity date, interest rate and the
6 acceptance of payment of less than the full amount of the loan and
7 any accrued interest in full satisfaction of the loan.

8 2. A person designated to act pursuant to subsection 1 on
9 behalf of the holders of the beneficial interest in a loan or the
10 ownership interest in real property shall, not later than 30 days
11 before the date on which the holders will determine whether or not
12 to act pursuant to subsection 1, send a written notice of the action to
13 each holder of a beneficial interest or ownership interest at the
14 holder's last known address, by a delivery service that provides
15 proof of delivery or evidence that the notice was sent. The written
16 notice must state:

17 (a) The actions that will be taken on behalf of the holders who
18 consent to an action pursuant to this section, if the holders of the
19 beneficial interest in a loan whose interests represent 51 percent or
20 more of the outstanding principal balance of the loan or the holders
21 of 51 percent or more of the ownership interest in the real property
22 act pursuant to subsection 1;

23 (b) The actions that will be taken on behalf of the holders who
24 do not consent to an action pursuant to this section, if the holders of
25 the beneficial interest in a loan whose interests represent 51 percent
26 or more of the outstanding principal balance of the loan or the
27 holders of 51 percent or more of the ownership interest in the real
28 property act pursuant to subsection 1; and

29 (c) The amount of the costs or, if an amount is unknown, an
30 estimate of the amount of the costs that will be allocated to, or due
31 from, the holder and deducted from any proceeds owed to the
32 holder.

33 3. If real property is sold, transferred, encumbered or leased
34 pursuant to paragraph (c) of subsection 1, any beneficial interest in
35 the loan or ownership interest in the real property of a holder who
36 does not consent to the sale, transfer, encumbrance or lease,
37 including, without limitation, any interest of a tenant in common
38 who does not consent to the sale, transfer, encumbrance or lease,
39 must be sold, transferred, encumbered or leased by a reference to
40 this section and by the signatures on the necessary documents of the
41 holders consenting to the sale, transfer, encumbrance or lease of the
42 real property. The holders consenting to the sale, transfer,
43 encumbrance or lease of the real property shall designate a
44 representative to sign any necessary documents on behalf of the
45 holders who do not consent to the sale, transfer, encumbrance or



1 lease and, if the representative maintains written evidence of the
2 consent of the number of holders described in subsection 1, the
3 representative is not liable for any action taken pursuant to this
4 subsection.

5 4. Any action which is taken pursuant to subsection 1 must be
6 in writing.

7 5. The provisions of this section do not apply to a transaction
8 involving two investors with equal interests.

9 **Sec. 6.** This act becomes effective upon passage and approval.

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* S B 2 3 9 *

