
FORECLOSURE ON REAL PROPERTY IN NEVADA

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These materials describe the different types of foreclosures (judicial and non-judicial) on real property available in Nevada, the procedures for each type of foreclosure, the effect of each type of foreclosure on any remaining claims of the creditor against the borrower or guarantor, and the procedures for enforcement of such claims.

Copies of relevant Nevada statutes and samples of the principal forms used in a non-judicial foreclosure are attached at the end of these materials.*

I. ISSUES TO CONSIDER PRIOR TO FORECLOSURE

A. **Pre-Foreclosure Review.** Before foreclosure commences, the lender and its attorney, and the borrower and its attorney, should consider a number of issues. Depending on the results of the review of these issues, the lender may decide not to proceed with the foreclosure, or may prefer to enter into a workout agreement with the borrower. Also as a result of this review, the borrower may discover that it has ammunition to use in negotiating a workout or a settlement of the debt with the lender and avoiding foreclosure.

B. **Is There a Default?** Prior to initiating a foreclosure, the attorney should review the loan documents and other pertinent information to confirm that there is actually a default under the loan documents. For example, even if a loan was not paid on its maturity date, or one or more installments of principal or interest have not been paid, the loan documents may provide that no event of default exists until written notice has been provided to the borrower and/or guarantors and the cure period has elapsed without payment. Accordingly, the lender may be required to send a written notice to the borrower and/or guarantors informing them of the breach and the required cure period. The lender may also need to send a subsequent letter accelerating the indebtedness (making it immediately due and payable) based on the default if it has not already matured and become due and payable in full.

C. **Material Default.** Some courts in other jurisdictions have held that a lender may not foreclose, even upon a breach of the loan documents, if the default is not material, *i.e.* if lender's security and prospects of repayment are not impaired. A monetary default (failure to make payments) is always considered material, but a non-monetary default (failure to maintain the property, failure to pay taxes, failure to maintain insurance, failure to provide financial statements, etc.) may not be a material default. *See Vonk v. Dunn*, 775 P.2d 1088 (Ariz. 1989) (real estate taxes); *Freeman v. Lind*, 181 Cal. App. 3d 791, 226 Cal. Rptr. 515 (Cal. Ct. App. 1986) (insurance); *Brown v. AVEMCO Investment Corp.*, 603 F.2d 1367 (9th Cir. 1979) (applying Texas law) (lease of personal property). *See generally* Restatement of the Law, Third of Property (Mortgages § 8.1) (1997). There is no Nevada authority specifically on this issue, but in *First Western Financial Corporation v. Vegas Continental*, 100 Nev. 710, 692 P.2d 1279 (1984), the Nevada Supreme Court held that a lender may not receive condemnation proceeds unless the lender's security is impaired. The "impairment of security" concept might be applied by a Nevada court to bar acceleration and foreclosure in the case of a non-monetary default.

* Thanks to Nevada Title Company which provided these forms.

D. **Due on Sale Clauses.** Courts in several states including Nevada held in the 1970s and 1980s that due on sale clauses (making a loan subject to acceleration if the property is transferred) were not enforceable unless the lender's security was impaired. *Boyes v. Valley Bank of Nevada*, 101 Nev. 287, 701 P.2d 1008 (1985). These decisions were pre-empted by federal law making due on sale clauses enforceable. 12 USC 1701j-3. There are some limited exceptions for residential property containing less than five (5) dwelling units.

E. **Waiver of Default.** A lender's past conduct may result in a waiver of its present right to accelerate. For example, if there is a consistent pattern of accepting late payments, the lender may have waived its rights to accelerate the debt based on similar late payments. Many loan documents will contain anti-waiver provisions addressing this issue, but it is also possible that the lender may have waived the anti-waiver provision as well. *Nevada National Bank v. Huff*, 582 P.2d 364 (Nev. 1978); *Williamson v. Wanlass*, 545 P.2d 1145 (Utah 1976).

F. **Review of Loan Documents.** The attorney should review the loan documents to identify any deficiencies. These may include:

1. Errors in identification and names of parties;
2. Errors in the legal description of the real property;
3. Failure to perfect security interests in personal property by filing of Uniform Commercial Code Financing Statements;
4. Failure to include a grant "in trust" in the deed of trust (see II.A below);
5. Failure to correctly identify the secured obligation in the deed of trust.

G. **Subordination or Inter-Creditor Agreements.** The attorney should review any subordination or inter-creditor agreements if there is more than one lender involved with the particular property. These may require additional notice and cure rights in addition to those provided for in the loan documents with the borrower and guarantors.

H. **Subordination, Non-Disturbance and Attornment Agreements.** If the property is income generating (i.e. office or retail property leased to tenants), the lender may have obtained subordination, non-disturbance and attornment agreements with the tenants. These may provide for notice and cure rights for the tenants in addition to those provided in the loan documents. If the property is income generating, consideration should also be given to obtaining the appointment of a receiver or otherwise enforcing the assignment of rents. *See generally* NRS Chapter 117A.

I. **Review of Title.** The attorney should obtain an updated title report on the property and review it and the lender's title policy to determine whether there are any senior liens on the property or other title issues which may make it inadvisable to conduct a foreclosure. For example, if the lender is holding a second deed of trust behind a large first deed of trust, there may be no equity in the property for the second deed of trust holder. Even if there is equity the second deed of trust holder may not be in a position to pay off or make payments on the first deed of trust. Liens for property taxes will always have priority over a deed of trust; if the taxes

are a significant amount that may be a factor as well in determining whether or not foreclosure is appropriate. Under some circumstances mechanics' liens can gain priority over a deed of trust based on the date of commencement of construction.

J. **Environmental Review.** The lender may want to obtain a phase I environmental site assessment and, if environmental issues are disclosed by that assessment, conduct testing on the property. The lender has the right to enter onto the property for purposes of testing even if the loan documents do not provide that right. NRS 40.507 and 32.015. Although environmental issues are outside the scope of these materials, please note that under certain circumstances an owner of real property can be responsible for remedying any adverse environmental conditions even if the owner had no role in creating the contamination.

K. **Deed in Lieu of Foreclosure.** Consideration should be given to obtaining a deed in lieu of foreclosure if the owner of the property is willing to provide such deed. This can entail significant disadvantages as the lender would take title subject to all liens and encumbrances of record, including those which would otherwise be subordinate to the deed of trust. The deed in lieu of foreclosure is also subject to being attacked as a "fraudulent transfer" if the borrower files a bankruptcy proceeding after granting the deed or if the deed is attacked by another creditor. On the other hand, the deed in lieu of foreclosure gives the lender immediate ownership of the property without the delays inherent in the foreclosure process and without the risk of a bankruptcy filing interrupting the foreclosure process. It may be possible for the lender to obtain a deed in lieu of foreclosure to an affiliate and subsequently conduct a foreclosure to eliminate any junior liens and encumbrances.

II. TYPES OF FORECLOSURES AVAILABLE IN NEVADA

A. **Foreclosure by Trustee's Sale.** By far the most prevalent form of foreclosure in Nevada is foreclosure by trustee's sale, conducted by the trustee named in the deed of trust securing the loan. The relevant procedures for this type of foreclosure are discussed in Section III below. This type of foreclosure has the advantage of being relatively fast (approximately four (4) months), not requiring commencement of an action in court, and transferring ownership without a redemption right. This type of foreclosure is only available if the security instrument provides for a grant "in trust" to a trustee. NRS 40.430(4)(e); NRS 107.080.

B. **Judicial Foreclosure.** In some cases it is necessary for a creditor to foreclose judicially by filing an action in court. This may also be referred to as "foreclosure as a mortgage." This may be necessary if the security instrument does not include a grant to a trustee in trust, or if the laws of another state are involved in the transaction and if such laws require or provide advantages to foreclosing judicially rather than by trustee's sale. For example, California and Oregon law provide that a judicial foreclosure is required to preserve certain rights against the borrower and/or guarantors. These laws may be relevant in a transaction which is governed by the law of the other jurisdiction but is secured by real property located in Nevada. For choice of law issues, *see generally KeyBank of Alaska v. Donnels*, 106 Nev. 49, 787 P.2d 382 (1990); Bible, *The Impact of Nevada's One-Action and Anti-Deficiency Laws on Multi-State Mortgages or Deeds of Trust*, 11 Nevada Lawyer 12 (2003).

C. **Unified Foreclosure.** If the creditor also has a security interest in personal property securing the same obligation, the Uniform Commercial Code provides that the creditor may, at its election, include such personal property in the real property foreclosure. NRS 104.9604. Personal property includes all forms of property other than real property, including equipment and fixtures that may be located on real property, construction materials prior to their being incorporated into a building, utility deposits, agreements with contractors, architects and engineers, and other intangible rights. If the creditor desires to conduct a unified sale of real and personal property, the notice of sale and trustee's deed (see Section III.H and K below) should identify and include the personal property. There are also various procedures under the Uniform Commercial Code by which the creditor can enforce a security interest in personal property separate and apart from a real property foreclosure, which are outside the scope of these materials.

III. **PROCEDURES FOR FORECLOSURE BY TRUSTEE'S SALE**

A. **Contractual Notices.** The deed of trust or other documents pertaining to the loan may require that the lender must provide the borrower and/or guarantors notice of a default and an opportunity to cure prior to commencing any enforcement action under the deed of trust or other loan documents. If the contractual documents do not provide for a notice and cure right, there is no Nevada requirement for a demand letter or other communication to the borrower or guarantors prior to commencing the foreclosure. See I.D and C above.

B. **Notice of Default and Election to Sell.** The foreclosure is commenced by recording and mailing of a Notice of Default and Election to Sell under NRS 107.080. This document identifies the property involved, the relevant deed of trust, and the default or defaults that have occurred under the secured obligations. This document is recorded in the real property records and also must be mailed by registered or certified mail to (1) the original grantor of the deed of trust; (2) the current owner of the property; (3) the holders of any subordinate encumbrances on the real property; (4) any person who has recorded a request for notice (See III.D below); and (5) any guarantors of the secured obligations (see III.E below). Notices must be sent to the trustor and guarantors at their last known addresses, which may be different from any addresses shown in the public records. Accordingly, the creditor must examine its files to determine the last known address of those parties.

C. **Trustee's Sale Guaranty.** The trustee conducting the foreclosure will ordinarily obtain a trustee's sale guaranty from a title insurance company. This guaranty identifies and insures the parties which are required to receive foreclosure notices. It is not a substitute for a policy of title insurance and does not serve a similar purpose; the title insurance company's liability under the trustee's sale guaranty is limited to the information specifically stated to be insured consisting of the identity of the parties to whom notices are required to be sent. The form of trustee's sale guaranty commonly used in Nevada is attached at the end of these materials.

D. **Request for Notice.** Any party with an interest in real property may record a Request for Notice under NRS Section 107.090. The effect of this request is to require the trustee to send copies of all foreclosure notices to that person. The grantor, current owner, and holders of any subordinate liens will be entitled to receive such notices regardless of whether or

not they have recorded a Request for Notice.

E. **Notice to Guarantors.** The Notice of Default must also be sent to any guarantors of the secured obligations. NRS 107.095. As the title company will not normally be able to obtain this information from the public records, the creditor must provide that information and instruct the trustee to send such notices. If this notice is not given, the guarantors will be released from their obligations under the guaranties, but such failure to give notice will not affect the validity of the foreclosure against the real property.

F. **Right to Cure.** The grantor, its successors in interest, and any subordinate lien holders are entitled to cure any default under the secured obligations within thirty-five (35) days after the first (1st) day after the Notice of Default has been recorded and mailed. For example, if the loan has not matured but was accelerated because the grantor failed to make one or more monthly payments, the grantor, its successors in interest, and any subordinate lien holders have the right to bring the loan current within this thirty-five (35) day period, and if they do so the foreclosure must be rescinded. This provision has no practical effect if the loan has matured and is fully due and payable.

G. **Consumer Credit Notice.** In connection with certain consumer credit transactions, secured by owner occupied housing, the trustee must send a consumer credit notice not later than sixty (60) days before the date of the foreclosure sale as provided in NRS 107.085.

H. **Notice of Sale.** After the Notice of Default is recorded and mailed, three (3) months must elapse before the creditor can take any further action. After the three (3) months have elapsed, the creditor can record, notice, publish, and post a Notice of Sale. The Notice of Sale sets a specific time, place, and date for the trustee's sale. The location of the sale is required to be set by ordinance in each county with a population of 100,000 or more; the location established for Clark County is 930 South Fourth Street, Las Vegas, Nevada. The Notice of Sale must be recorded, mailed by registered or certified mail to the same parties entitled to receive the Notice of Default, posted for twenty (20) days at three (3) public places in the county, and published three (3) times in a newspaper of general circulation at intervals of not less than one (1) week. The publishing requirement results in a minimum time period of twenty-one (21) days before a sale can be conducted.

I. **Postponement of Sale.** The trustee's sale can be postponed by announcement at the previously scheduled time and place of the sale not more than three (3) times. If an additional postponement is desired, the beneficiary or trustee must begin again with the Notice of Sale. NRS 107.082.

J. **Conduct of the Sale.** The procedures for the actual conducting of the trustee's sale are not prescribed by statute in Nevada, but may be set forth in the deed of trust. Customarily, the sale will be conducted as an auction by the trustee. The trustee will identify the property and request bids. The holder of the secured indebtedness is entitled to credit bid, *i.e.* offset the amount of its bid against the secured obligation. All other bidders must provide qualified funds, usually in the form of a cashier's check exhibited to the trustee prior to the sale. This tends to discourage bidders other than the secured lender in foreclosures on larger loans, as any other bidders are required to bring funds to the sale. The foreclosing lender will normally

provide the trustee bidding instructions so that the trustee can bid on its behalf and the lender does not have to actually send a representative to the sale. As a result, many trustee's sales consist of the trustee reading the necessary statements allowed in a public place without anyone listening or participating.

K. **Trustee's Deed Upon Sale.** Following completion of the sale, the trustee will prepare and record a deed of the property to the successful bidder at the foreclosure sale.

L. **No Right of Redemption.** The purchaser at the trustee's sale obtains the title of the grantor without any right of redemption. NRS 107.080(5).

IV. **JUDICIAL FORECLOSURE PROCEDURES**

A. **Commencement of Action.** A judicial foreclosure is an action commenced in the appropriate state court. The creditor will file and serve a complaint seeking a judgment of foreclosure under NRS 4030(1). If the facts are undisputed, the creditor may file a motion for summary judgment; or, if the facts are disputed, a trial may be required. The court will determine the amount owed and enter a judgment of foreclosure instructing the sheriff to conduct a foreclosure sale.

B. **Foreclosure sale.** The foreclosure in a judicial foreclosure action is to be conducted by the sheriff of the county in the same manner as execution upon a judgment. NRS 40.430(3). This will be an auction sale similar to the sale conducted by the trustee in a non-judicial foreclosure.

C. **Right of Redemption.** If the property is foreclosed judicially, the trustor and any subordinate lien holders have a right to redeem the property – essentially an option to repurchase the property – by paying to the person who purchased the property at the foreclosure sale the amount of the successful bid at the foreclosure sale, plus one percent (1%) per month interest and any amounts expended by the purchaser to pay taxes and assessments, less any amounts received from tenants of the property prior to redemption. NRS 21.190 through NRS 21.250. As a practical matter, this means that the purchaser at a judicial foreclosure sale will not have clear title such that the purchaser could resell the property to a third person until the twelve (12) month period has elapsed.

V. **ONE ACTION AND RELATED RULES**

A. **One Action Rule.** Nevada has a one action rule affecting the enforcement of loans secured by real property. Similar one action rules are in effect in several other states primarily in the Western United States, but the rules vary significantly between states. In particular, the Nevada one action rule is significantly different from the California one action rule.

B. **Content of One Action Rule.** The one action rule provides that the only action to enforce a loan secured by real property is a judicial foreclosure, but contains numerous exceptions including enforcement of a deed of trust by a trustee's sale if the deed of trust contains a grant "in trust" to a trustee. Other exceptions to the one action rule include: (1) an action to appoint a receiver for the property, (2) an exercise of a right to setoff or pledge of a

bank account pursuant to a written agreement, (3) draws under a letter of credit, (4) actions under environmental indemnities, and (5) enforcement of any security interest in personal property which may have been granted as collateral for the loan.

C. **Property First Rule.** Although not explicitly stated in the one action rule, the rule has been interpreted to require that any secured creditor seeking to enforce a debt secured by Nevada real property must proceed against the property first by a judicial or non-judicial foreclosure. “Under the one-action rule, a debtor can require a creditor to foreclose on real estate security before suing on the note or, if the creditor sues on the note first, force the creditor to lose its security interest.” *McDonald v. Alexander*, 121 Nev. 812; 123 P.3d 748 (2005).

D. **Waiver of One Action Rule.** The one action rule is not waivable by a trustor and any such waiver is void and of no effect. NRS 40.453. The one action rule is, however, waivable by a guarantor in commercial transactions. NRS 40.495.

E. **Fair Value Protection.** The amount of the deficiency which can be recovered against the trustor is calculated based on the amount of the debt on the date of the foreclosure sale, less the greater of the successful bid at the foreclosure sale, or the fair value of the property on the date of the foreclosure sale. NRS 40.459. As a result, the amount of the deficiency may be subject to significant dispute and may lead to further litigation as the parties will be entitled to attempt to prove the amount of the fair value of the property on the foreclosure date. The lender will attempt to establish a lower value resulting in a larger deficiency and the borrower will attempt to establish a greater value resulting in a smaller or no deficiency.

F. **Fair Value Protection for Guarantors.** Although guarantors are permitted to make an enforceable waiver of the one action rule under Nevada law, they are not entitled to make an enforceable waiver of fair value protection. NRS 40.495(3). Accordingly, if the lender forecloses on the real property, any recovery against the guarantor will be limited to the deficiency calculated as discussed in Section V.E above. The effect of the one action waiver by the guarantor is only to allow the lender to enforce the guaranty for the whole amount of the debt if the lender chooses not to foreclose on the real property at all.

G. **Procedure for a Deficiency Claim.** Any deficiency claim must be commenced within six (6) months after the date of the foreclosure sale, whether by judicial or non-judicial foreclosure. NRS 40.455.

VI. **OTHER EFFECTS OF FORECLOSURE**

A. **Environmental Provisions.** The one action rule does not affect the enforcement of environmental indemnity agreements or other environmental provisions. NRS 40.430(4)(n); NRS 40.508. If the estimated cost to clean up and remedy environmental problems on property exceeds ten percent (10%) of the indebtedness owed to the secured lender, the lender has the option of waiving its lien as to all or part of the real collateral and proceeding against the borrower as an unsecured creditor. NRS 40.512.

B. **Eviction of Owner-Occupant.** Following recording of the trustee's deed or equivalent deed arising out of a judicial foreclosure, the lender or other purchaser of the property at the foreclosure sale can evict an owner-occupant (the grantor under the deed of trust) following a three (3) day notice. NRS 40.255.

C. **Effect of Foreclosure on Leases and Tenants.** Courts in other jurisdictions have generally held that a lease of real property has priority as any other encumbrance and may be subordinate or senior to the deed of trust based on the date of recordation of any memorandum of lease, whether the lender had actual notice of the lease when the deed of trust was placed on the property, or whether the lease is subordinated to the deed of trust by provisions of the lease or a separate agreement. *E.g. Aviel v. Ng*, 161 Cal. App. 4th 809, 74 Cal. Rptr. 3rd 200 (2008); *Dover Mobil Estates v. Fiberform Products, Inc.*, 220 Cal. App. 3rd 1494, 270 Cal. Rptr. 183 (1990). While there is no specific Nevada authority on this point, the general rules relating to lien priority appear to lead to the same conclusion. NRS 111.315; NRS 111.325; *Berge v. Fredericks*, 95 Nev. 183, 591 P.2d 246 (1979). Accordingly, in the absence of an agreement between the lender and the tenant, leases which are senior in priority to the deed of trust will remain in effect, and leases which are junior in priority to the deed of trust will be eliminated and may be terminated by the foreclosing lender or by the tenant. Of course, the lender and the tenant may affirm the lease by agreement or by their actions such as payment and acceptance of rent after the foreclosure. In many cases these rules regarding the effect of the foreclosure on leases will be varied by contracts between the lender and the tenants such as subordination, non-disturbance and attornment agreements.

VII. SPECIAL ISSUES FOR CONDOMINIUM PROJECTS AND SUBDIVISIONS

A. **Declarant Rights.** The Common Interest Ownership Act, NRS Chapter 116, defines certain rights, known as "Special Declarant Rights," which are rights reserved to a declarant and are unique to the declarant and are not shared in common with other unit owners. The Special Declarant Rights as provided in the Nevada statutes are any rights in the relevant declaration to:

1. Complete improvements indicated on plats and plans or in the declaration;
2. Exercise any right reserved in the declaration to:
 - a. Add real estate to a common –interest community;
 - b. Create units, common elements or limited common elements within a common-interest community;
 - c. Subdivide units or convert units into common elements; or
 - d. Withdraw real estate from a common-interest community.
3. Maintain sales offices, management offices, signs advertising the common-interest community and models;
4. Use easements through the common elements for the purpose of making

improvements within the common-interest community or within real estate which may be added to the common-interest community;

5. Make the common-interest community subject to a master association;
6. Merge or consolidate a common-interest community with another common-interest community of the same form of ownership; or
7. Appoint or remove any officer of the association or any master association or any member of an executive board during any period of declarant's control.

B. **Options for Foreclosing Lender.** NRS Sections 116.3104, 116.31043 and 116.31046 set forth three options available to the lender foreclosing on the developer's interest in a condominium project or subdivision with respect to electing to assume or hold Special Declarant Rights and the consequent developer liability that will attach to each of such options. These provisions allow foreclosing lenders to choose the Special Declarant Rights that they wish to acquire and thereby determine the extent of their liability to purchasers and owners of units in the applicable community. The three options are:

- a. elect to acquire and succeed to all Special Declarant Rights reserved in the CC&Rs, in which case the foreclosing lender will be subject to the following liabilities and obligations of the declarant: (i) liabilities and obligations relating to the successor lender's exercise or non-exercise of the Special Declarant Rights after the successor lender takes title to the property on foreclosure; and (ii) liabilities and obligations imposed on the transferor declarant other than (1) misrepresentations by the transferor declarant, (2) warranty obligations for improvements made by the transferor declarant, (3) breach of any fiduciary obligation by the transferor declarant or its appointees on the executive board with respect to the duties with respect to management of the association during the declarant's period of control, or (4) liabilities and obligations imposed on the transferor declarant as a result of its acts after the transfer is made;
- b. elect to acquire only the Special Declarant Right to maintain models, sales offices and signs, in which case the foreclosing lender may not exercise any other Special Declarant Right and is not liable for any obligation under the Common Interest Ownership Act except the obligation to provide a Public Offering Statement to a purchaser; or
- c. elect to acquire Special Declarant Rights for the sole purpose of holding them for transfer to another person, in which case the only Special Declarant Right that the foreclosing lender may exercise is the right to control the executive board of the association for the

duration of the period of declarant's control. No other Special Declarant Rights may be exercised and, as long as the foreclosing lender does not exercise any such other rights, it will not be liable for any acts or omissions, other than any breach of its fiduciary duty with respect to its exercise of rights to control the executive board.

C. **Must Be Included in Trustee's Deed.** Any of the above three options is required to be exercised by an express statement of the specific option exercised set forth in the trustee's deed transferring the foreclosed property or in a separate document recorded concurrently. The foreclosing lender must sign a recorded document evidencing its election.

VIII. LEGISLATIVE DEVELOPMENTS

A. **A.B. 149.** As these materials are being prepared, Assembly Bill No. 149 is pending in the Nevada Legislature. It provides that the exercise of the power of sale with respect to any owner occupied housing covered by NRS 107.085 is subject to additional requirements. The trustee may not exercise the power of sale unless the trustee includes in the consumer credit notice described in III.G above contact information which the grantor may use to reach a person with authority to negotiate a loan modification on behalf of the trustee, contact information for at least one (1) local housing counseling agency approved by the United States Department of Housing and Urban Development, and a form upon which the grantor may indicate his election to enter into mediation or waive mediation. If the grantor elects to enter into mediation, the trustee shall file a copy of the form with the administrative office of the courts which shall assign the matter to a judge, and no further action may be taken to exercise the power of sale until completion of the mediation.

ACTIONS FOR FORECLOSURE OF REAL MORTGAGES

NRS 40.430 Action for recovery of debt secured by mortgage or other lien; “action” defined.

1. Except in cases where a person proceeds under subsection 2 of [NRS 40.495](#) or subsection 1 of [NRS 40.512](#), there may be but one action for the recovery of any debt, or for the enforcement of any right secured by a mortgage or other lien upon real estate. That action must be in accordance with the provisions of [NRS 40.430](#) to [40.459](#), inclusive. In that action, the judgment must be rendered for the amount found due the plaintiff, and the court, by its decree or judgment, may direct a sale of the encumbered property, or such part thereof as is necessary, and apply the proceeds of the sale as provided in [NRS 40.462](#).

2. This section must be construed to permit a secured creditor to realize upon the collateral for a debt or other obligation agreed upon by the debtor and creditor when the debt or other obligation was incurred.

3. A sale directed by the court pursuant to subsection 1 must be conducted in the same manner as the sale of real property upon execution, by the sheriff of the county in which the encumbered land is situated, and if the encumbered land is situated in two or more counties, the court shall direct the sheriff of one of the counties to conduct the sale with like proceedings and effect as if the whole of the encumbered land were situated in that county.

4. As used in this section, an “action” does not include any act or proceeding:

(a) To appoint a receiver for, or obtain possession of, any real or personal collateral for the debt or as provided in [NRS 32.015](#).

(b) To enforce a security interest in, or the assignment of, any rents, issues, profits or other income of any real or personal property.

(c) To enforce a mortgage or other lien upon any real or personal collateral located outside of the State which does not, except as required under the laws of that jurisdiction, result in a personal judgment against the debtor.

(d) For the recovery of damages arising from the commission of a tort, including a recovery under [NRS 40.750](#), or the recovery of any declaratory or equitable relief.

(e) For the exercise of a power of sale pursuant to [NRS 107.080](#).

(f) For the exercise of any right or remedy authorized by [chapter 104](#) of NRS or by the Uniform Commercial Code as enacted in any other state.

(g) For the exercise of any right to set off, or to enforce a pledge in, a deposit account pursuant to a written agreement or pledge.

(h) To draw under a letter of credit.

(i) To enforce an agreement with a surety or guarantor if enforcement of the mortgage or other lien has been automatically stayed pursuant to 11 U.S.C. § 362 or pursuant to an order of a federal bankruptcy court under any other provision of the United States Bankruptcy Code for not less than 120 days following the mailing of notice to the surety or guarantor pursuant to subsection 1 of [NRS 107.095](#).

(j) To collect any debt, or enforce any right, secured by a mortgage or other lien on real property if the property has been sold to a person other than the creditor to satisfy, in whole or in part, a debt or other right secured by a senior mortgage or other senior lien on the property.

(k) Relating to any proceeding in bankruptcy, including the filing of a proof of claim, seeking relief from an automatic stay and any other action to determine the amount or validity of a debt.

(l) For filing a claim pursuant to [chapter 147](#) of NRS or to enforce such a claim which has been disallowed.

(m) Which does not include the collection of the debt or realization of the collateral securing the debt.

(n) Pursuant to [NRS 40.507](#) or [40.508](#).

(o) Which is exempted from the provisions of this section by specific statute.

(p) To recover costs of suit, costs and expenses of sale, attorneys’ fees and other incidental relief in connection with any action authorized by this subsection.

[1911 CPA § 559; RL § 5501; NCL § 9048]—(NRS A 1965, 915; 1969, 572; 1987, 1345; 1989, 888, 1768; 1993, 151)

NRS 40.433 “Mortgage or other lien” defined. As used in [NRS 40.430](#) to [40.459](#), inclusive, unless the context otherwise requires, a “mortgage or other lien” includes a deed of trust, but does not include a lien which arises pursuant to [chapter 108](#) of NRS, pursuant to an assessment under [chapter 116](#), [117](#), [119A](#) or [278A](#) of NRS or pursuant to a judgment or decree of any court of competent jurisdiction.

(Added to NRS by 1989, 1767; A 1991, 580)

NRS 40.435 Judicial proceedings in violation of [NRS 40.430](#); provisions of [NRS 40.430](#) as an affirmative defense.

1. The commencement of or participation in a judicial proceeding in violation of [NRS 40.430](#) does not forfeit any of the rights of a secured creditor in any real or personal collateral, or impair the ability of the creditor to realize upon any real or personal collateral, if the judicial proceeding is:

- (a) Stayed or dismissed before entry of a final judgment; or
- (b) Converted into an action which does not violate [NRS 40.430](#).

2. If the provisions of [NRS 40.430](#) are timely interposed as an affirmative defense in such a judicial proceeding, upon the motion of any party to the proceeding the court shall:

- (a) Dismiss the proceeding without prejudice; or
- (b) Grant a continuance and order the amendment of the pleadings to convert the proceeding into an action which does not violate [NRS 40.430](#).

3. The failure to interpose, before the entry of a final judgment, the provisions of [NRS 40.430](#) as an affirmative defense in such a proceeding waives the defense in that proceeding. Such a failure does not affect the validity of the final judgment, but entry of the final judgment releases and discharges the mortgage or other lien.

4. As used in this section, “final judgment” means a judgment which imposes personal liability on the debtor for the payment of money and which may be appealed under the Nevada Rules of Appellate Procedure.

(Added to NRS by 1989, 1767)

NRS 40.440 Disposition of surplus money. If there is surplus money remaining after payment of the amount due on the mortgage or other lien, with costs, the court may cause the same to be paid to the person entitled to it pursuant to [NRS 40.462](#), and in the meantime may direct it to be deposited in court.

[1911 CPA § 560; RL § 5502; NCL § 9049]—(NRS A 1989, 888, 1769)

NRS 40.450 Proceedings when debt secured falls due at different times. If the debt for which the mortgage or other lien on real property is held is not all due, as soon as a sufficient amount of the property has been sold to pay the amount due, with costs, the sale shall cease. Afterwards, as often as more becomes due for principal or interest, the court may, on motion, order more to be sold. However, if the property cannot be sold in portions without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, with a rebate of interest where such a rebate is proper.

[1911 CPA § 561; RL § 5503; NCL § 9050]—(NRS A 1989, 1769)

FORECLOSURE SALES AND DEFICIENCY JUDGMENTS

NRS 40.451 “Indebtedness” defined. As used in [NRS 40.451](#) to [40.463](#), inclusive, “indebtedness” means the principal balance of the obligation secured by a mortgage or other lien on real property, together with all interest accrued and unpaid prior to the time of foreclosure sale, all costs and fees of such a sale, all advances made with respect to the property by the beneficiary, and all other amounts secured by the mortgage or other lien on the real property in favor of the person seeking the deficiency judgment. Such amount constituting a lien is limited to the amount of the consideration paid by the lienholder.

(Added to NRS by 1969, 572; A 1989, 1769)

NRS 40.453 Waiver of rights in documents relating to sale of real property against public policy and unenforceable; exception. Except as otherwise provided in [NRS 40.495](#):

1. It is hereby declared by the Legislature to be against public policy for any document relating to the sale of real property to contain any provision whereby a mortgagor or the grantor of a deed of trust or a guarantor or surety of the indebtedness secured thereby, waives any right secured to him by the laws of this state.

2. A court shall not enforce any such provision.

(Added to NRS by 1969, 573; A 1973, 911; 1985, 371; 1987, 1643; 1993, 152)

NRS 40.455 Deficiency judgment: Award to judgment creditor or beneficiary of deed of trust.

1. Upon application of the judgment creditor or the beneficiary of the deed of trust within 6 months after the date of the foreclosure sale or the trustee’s sale held pursuant to [NRS 107.080](#), respectively, and after the required hearing, the court shall award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if it appears from the sheriff’s return or the recital of consideration in the trustee’s deed that there is a deficiency of

the proceeds of the sale and a balance remaining due to the judgment creditor or the beneficiary of the deed of trust, respectively.

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

(Added to NRS by 1969, 573; A 1979, 450; 1985, 371; 1987, 1345)

NRS 40.457 Hearing before award of deficiency judgment; appraisal of property sold.

1. Before awarding a deficiency judgment under [NRS 40.455](#), the court shall hold a hearing and shall take evidence presented by either party concerning the fair market value of the property sold as of the date of foreclosure sale or trustee's sale. Notice of such hearing shall be served upon all defendants who have appeared in the action and against whom a deficiency judgment is sought, or upon their attorneys of record, at least 15 days before the date set for hearing.

2. Upon application of any party made at least 10 days before the date set for the hearing the court shall, or upon its own motion the court may, appoint an appraiser to appraise the property sold as of the date of foreclosure sale or trustee's sale. Such appraiser shall file with the clerk his appraisal, which is admissible in evidence. The appraiser shall take an oath that he has truly, honestly and impartially appraised the property to the best of his knowledge and ability. Any appraiser so appointed may be called and examined as a witness by any party or by the court. The court shall fix a reasonable compensation for the appraiser, but his fee shall not exceed similar fees for similar services in the county where the encumbered land is situated.

(Added to NRS by 1969, 573)

NRS 40.459 Limitations on amount of money judgment. After the hearing, the court shall award a money judgment against the debtor, guarantor or surety who is personally liable for the debt. The court shall not render judgment for more than:

1. The amount by which the amount of the indebtedness which was secured exceeds the fair market value of the property sold at the time of the sale, with interest from the date of the sale; or

2. The amount which is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured, with interest from the date of sale,

→ whichever is the lesser amount.

(Added to NRS by 1969, 573; A 1985, 371; 1987, 1644; 1989, 1770; 1993, 152)

NRS 40.462 Distribution of proceeds of foreclosure sale.

1. Except as otherwise provided by specific statute, this section governs the distribution of the proceeds of a foreclosure sale. The provisions of [NRS 40.455](#), [40.457](#) and [40.459](#) do not affect the right to receive those proceeds, which vests at the time of the foreclosure sale. The purchase of any interest in the property at the foreclosure sale, and the subsequent disposition of the property, does not affect the right of the purchaser to the distribution of proceeds pursuant to paragraph (c) of subsection 2 of this section, or to obtain a deficiency judgment pursuant to [NRS 40.455](#), [40.457](#) and [40.459](#).

2. The proceeds of a foreclosure sale must be distributed in the following order of priority:

(a) Payment of the reasonable expenses of taking possession, maintaining, protecting and leasing the property, the costs and fees of the foreclosure sale, including reasonable trustee's fees, applicable taxes and the cost of title insurance and, to the extent provided in the legally enforceable terms of the mortgage or lien, any advances, reasonable attorney's fees and other legal expenses incurred by the foreclosing creditor and the person conducting the foreclosure sale.

(b) Satisfaction of the obligation being enforced by the foreclosure sale.

(c) Satisfaction of obligations secured by any junior mortgages or liens on the property, in their order of priority.

(d) Payment of the balance of the proceeds, if any, to the debtor or his successor in interest.

→ If there are conflicting claims to any portion of the proceeds, the person conducting the foreclosure sale is not required to distribute that portion of the proceeds until the validity of the conflicting claims is determined through interpleader or otherwise to his satisfaction.

3. A person who claims a right to receive the proceeds of a foreclosure sale pursuant to paragraph (c) of subsection 2 must, upon the written demand of the person conducting the foreclosure sale, provide:

(a) Proof of the obligation upon which he claims his right to the proceeds; and

(b) Proof of his interest in the mortgage or lien, unless that proof appears in the official records of a county in which the property is located.

➤ Such a demand is effective upon personal delivery or upon mailing by registered or certified mail, return receipt requested, to the last known address of the claimant. Failure of a claimant to provide the required proof within 15 days after the effective date of the demand waives his right to receive those proceeds.

4. As used in this section, “foreclosure sale” means the sale of real property to enforce an obligation secured by a mortgage or lien on the property, including the exercise of a trustee’s power of sale pursuant to [NRS 107.080](#).

(Added to NRS by 1989, 887)

NRS 40.463 Agreement for assistance in recovering proceeds of foreclosure sale due to debtor or successor in interest; requirements for enforceable agreement; fee must be reasonable.

1. Except as otherwise provided in this section, a debtor or his successor in interest may enter into an agreement with a third party that provides for the third party to assist in the recovery of any balance of the proceeds of a foreclosure sale due to the debtor or his successor in interest pursuant to paragraph (d) of subsection 2 of [NRS 40.462](#).

2. An agreement pursuant to subsection 1:

(a) Must:

(1) Be in writing;

(2) Be signed by the debtor or his successor in interest; and

(3) Contain an acknowledgment of the signature of the debtor or his successor in interest by a notary public;

and

(b) May not be entered into less than 30 days after the date on which the foreclosure sale was conducted.

3. Any agreement entered into pursuant to this section that does not comply with subsection 2 is void and unenforceable.

4. Any fee charged by a third party for services provided pursuant to an agreement entered into pursuant to this section must be reasonable. A fee that exceeds \$2,500, excluding attorney’s fees and costs, is presumed to be unreasonable. A court shall not enforce an obligation to pay any unreasonable fee, but may require a debtor to pay a reasonable fee that is less than the amount set forth in the agreement.

5. A third party may apply to the court for permission to charge a fee that exceeds \$2,500. Any third party applying to the court pursuant to this subsection has the burden of establishing to the court that the fee is reasonable.

6. This section does not preclude a debtor or his successor in interest from contesting the reasonableness of any fee set forth in an agreement entered into pursuant to this section.

7. As used in this section:

(a) “Creditor” means a person due an obligation being enforced by a foreclosure sale conducted pursuant to [NRS 40.451](#) to [40.463](#), inclusive.

(b) “Debtor” means a person, or the successor in interest of a person, who owes an obligation being enforced by a foreclosure sale conducted pursuant to [NRS 40.451](#) to [40.463](#), inclusive.

(c) “Third party” means a person who is neither the debtor nor the creditor of a particular obligation being enforced by a foreclosure sale conducted pursuant to [NRS 40.451](#) to [40.463](#), inclusive.

(Added to NRS by [2007, 107](#))

RIGHTS OF GUARANTOR, SURETY OR OBLIGOR IN REAL PROPERTY

NRS 40.465 “Indebtedness” defined. As used in [NRS 40.475](#), [40.485](#) and [40.495](#), “indebtedness” means the principal balance of the obligation, together with all accrued and unpaid interest, and those costs, fees, advances and other amounts secured by the mortgage or lien upon real property.

(Added to NRS by 1987, 1643; A 1989, 1001)

NRS 40.475 Remedy against mortgagor or grantor; assignment of creditor’s rights to guarantor, surety or obligor. Upon full satisfaction by a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, of the indebtedness secured by a mortgage or lien upon real property, the paying guarantor, surety or other obligor is entitled to enforce every remedy which the creditor then has against the mortgagor or grantor of the mortgage or lien upon real property, and is entitled to an assignment from the creditor of all of the rights which the creditor then has by way of security for the performance of the indebtedness.

(Added to NRS by 1987, 1643)

NRS 40.485 Interest in proceeds of secured indebtedness upon partial satisfaction of indebtedness.

Immediately upon partial satisfaction by a guarantor, surety or other obligor, other than the mortgage or grantor of a deed of trust, of the indebtedness secured by a mortgage or lien upon real property, the paying guarantor, surety or other obligor automatically, by operation of law and without further action, receives an interest in the proceeds of the indebtedness secured by the mortgage or lien to the extent of the partial satisfaction, subject only to the creditor's prior right to recover the balance of the indebtedness owed by the mortgage or grantor.

(Added to NRS by 1987, 1643)

NRS 40.495 Waiver of rights; separate action to enforce obligation; available defenses.

1. The provisions of [NRS 40.475](#) and [40.485](#) may be waived by the guarantor, surety or other obligor only after default.

2. Except as otherwise provided in subsection 4, a guarantor, surety or other obligor, other than the mortgage or grantor of a deed of trust, may waive the provisions of [NRS 40.430](#). If a guarantor, surety or other obligor waives the provisions of [NRS 40.430](#), an action for the enforcement of that person's obligation to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a mortgage or lien upon real property may be maintained separately and independently from:

- (a) An action on the debt;
- (b) The exercise of any power of sale;
- (c) Any action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby; and
- (d) Any other proceeding against a mortgage or grantor of a deed of trust.

3. If the obligee maintains an action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby, the guarantor, surety or other obligor may assert any legal or equitable defenses provided pursuant to the provisions of [NRS 40.451](#) to [40.463](#), inclusive.

4. The provisions of [NRS 40.430](#) may not be waived by a guarantor, surety or other obligor if the mortgage or lien:

- (a) Secures an indebtedness for which the principal balance of the obligation was never greater than \$500,000;
- (b) Secures an indebtedness to a seller of real property for which the obligation was originally extended to the seller for any portion of the purchase price;
- (c) Is secured by real property which is used primarily for the production of farm products as of the date the mortgage or lien upon the real property is created; or
- (d) Is secured by real property upon which:
 - (1) The owner maintains his principal residence;
 - (2) There is not more than one residential structure; and
 - (3) Not more than four families reside.

(Added to NRS by 1987, 1643; A 1989, 1001)

ENVIRONMENTAL IMPAIRMENT OF REAL COLLATERAL OF SECURED LENDER

NRS 40.501 Definitions. As used in [NRS 40.501](#) to [40.512](#), inclusive, the words and terms defined in [NRS 40.502](#) to [40.506](#), inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1993, 153; A 1995, 510)

NRS 40.502 "Environmental provision" defined. "Environmental provision" means any written representation, warranty, indemnity, promise or covenant relating to the existence, location, nature, use, generation, manufacture, storage, disposal, handling, or past, present, future or threatened release of any hazardous substance from, in, into or onto real collateral, or to past, present or future compliance with any law relating thereto, made by a debtor in conjunction with the making, renewal or modification of a loan, extension of credit, guaranty or other obligation involving the debtor, whether or not the representation, warranty, indemnity, promise or covenant is or was contained in or secured by the mortgage and whether or not the mortgage has been discharged, reconveyed or foreclosed upon.

(Added to NRS by 1993, 153; A 1995, 510)

NRS 40.503 "Environmentally impaired" defined. Real collateral is "environmentally impaired" if the estimated costs to clean up and remedy a past, present or threatened release of any hazardous substance from, in, into or onto it exceeds 10 percent of the total indebtedness owed to the secured lender secured by the collateral.

(Added to NRS by 1993, 153; A 1995, 510)

NRS 40.504 “Hazardous substance” defined. “Hazardous substance” means:

1. An element, compound, mixture, solution, material or substance whose use, possession, transportation, storage, release, discharge or disposal is regulated pursuant to [chapter 444](#), [445A](#), [445B](#), [459](#), [477](#), [590](#) or [618](#) of NRS or the Uniform Fire Code (1988 edition);
2. An element, compound, mixture, solution, material or substance designated as a hazardous substance pursuant to 42 U.S.C. § 9602 and an element, compound, mixture, solution, material or substance described in 42 U.S.C. § 9601(14);
3. An element, compound, mixture, solution, material or substance listed as a hazardous waste in, or having the characteristics identified in, 42 U.S.C. § 6921 on January 1, 1993, except any waste for which regulation under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6901 et seq.) has been suspended by an act of Congress; and
4. Petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, synthetic oil, synthetic gas usable for fuel or any mixture thereof.

(Added to NRS by 1993, 153; A 1995, 510)

NRS 40.505 “Release” defined. “Release” means a spilling, leaking, pumping, pouring, emitting, emptying, discharging, ejecting, escaping, leaching, dumping or disposing of a hazardous substance into the environment, including continuing migration into or through the soil, surface water or groundwater.

(Added to NRS by 1993, 153; A 1995, 510)

NRS 40.506 “Secured lender” defined. “Secured lender” means the holder of an obligation secured by a mortgage.

(Added to NRS by 1993, 154; A 1995, 510)

NRS 40.507 Right of entry and inspection of real collateral.

1. A secured lender may enter and inspect real collateral for the purpose of determining the existence, location, nature and magnitude of any past, present or threatened release or presence of a hazardous substance from, in, into or onto it:

(a) Upon reasonable belief of the existence of a past, present or threatened release or the presence of any hazardous substance from, in, into or onto it not previously disclosed in writing to him in conjunction with the making, renewal or modification of a loan, extension of credit, guaranty or other obligation involving the debtor; or

(b) After the commencement of a trustee’s sale or judicial foreclosure proceedings against the real collateral.

2. A secured lender shall not abuse the right of entry and inspection or use it to harass the debtor or tenant of the property. Except in case of an emergency, when the debtor or tenant of the property has abandoned the premises, or if it is impracticable to do so, a secured lender shall give the debtor or tenant of the property reasonable notice of intent to enter, and enter only during the debtor’s or tenant’s normal business hours. Twenty-four hours’ notice is presumed to be reasonable in the absence of evidence to the contrary.

3. If a secured lender is refused the right of entry and inspection by the debtor or tenant of the property, or is otherwise unable to enter and inspect the property without a breach of the peace, he may, upon petition, obtain an order from a court of competent jurisdiction to exercise his rights under subsection 1.

(Added to NRS by 1993, 154; A 1995, 510)

NRS 40.508 Action by secured lender concerning environmental provision. A secured lender may bring a separate action for a breach of an environmental provision, to recover damages for the breach or for the enforcement of an environmental provision.

(Added to NRS by 1993, 154; A 1995, 510)

NRS 40.509 Limitation on amount of damages recoverable in action concerning environmental provision; recovery of interest.

1. Unless the environmental provision expressly permits a different or greater recovery or subsection 2 permits the addition of interest, the damages recoverable by a secured lender in an action pursuant to [NRS 40.508](#) are limited to the sum of reimbursement or indemnification for:

(a) If he acted pursuant to an order of any federal, state or local governmental agency relating to the cleaning up, remedying or other responsive action required by applicable law which is anticipated by the environmental provision, all amounts reasonably advanced in good faith by him in connection therewith;

(b) If he did not act pursuant to such an order, those costs relating to a reasonable cleaning up, remedying or other responsive action concerning hazardous substances, performed in good faith, which is anticipated by the environmental provision;

(c) All liabilities of the secured lender to any third party relating to the breach, unless the secured lender had actual knowledge of the environmental condition which is the basis of the claim for indemnification before entering into the transaction in which the environmental provision was given; and

(d) Costs, attorney's fees and other incidental relief.

2. If the parties have so agreed, the lender may recover interest on the amount advanced by him to cure or mitigate the breach.

(Added to NRS by 1993, 154; A 1995, 510)

NRS 40.511 Exceptions to applicability of [NRS 40.507](#) and [40.508](#). [NRS 40.507](#) and [40.508](#) do not apply if the real collateral is a unit put to residential use in a common-interest community or is real property upon which:

1. The owner maintains his principal residence;
2. There is not more than one residential structure; and
3. Not more than four families reside.

(Added to NRS by 1993, 155; A 1995, 510)

NRS 40.512 Environmental impairment of real collateral: Waiver of lien; notice of waiver; exception; recording of waiver.

1. If real collateral is environmentally impaired and the debtor's obligation is in default, a secured lender may:

(a) Waive his lien as to all of the real collateral and proceed as an unsecured creditor, including reduction of his claim against the debtor to judgment and any other rights and remedies permitted by law; or

(b) Waive his lien in accordance with paragraph (a) as to that part of the real collateral which is environmentally impaired and proceed against the unimpaired real collateral.

2. To waive his lien against all or part of the environmentally impaired real collateral, the secured lender must, before commencement of any action, record with the county recorder of the county where the real collateral is located a notice of intent to waive the lien and mail a copy thereof, by registered or certified mail, return receipt requested, with postage prepaid, to the debtor, to the person who holds the title of record on the date of the notice, and to those persons with an interest, as defined in [NRS 107.090](#), whose interest or claimed interest is subordinate to the secured lender's lien, at their respective addresses, if known, otherwise to the address of the real collateral. In the case of a partial waiver the notice of intent to waive may be contained in a notice of default and election to sell. The notice of intent to waive must contain:

(a) A legal description of the environmentally impaired real collateral;

(b) A statement that the secured lender intends to proceed against the debtor under the applicable paragraph of subsection 1; and

(c) If the secured lender is proceeding under paragraph (b) of subsection 1, a statement that he will proceed against the unimpaired property, which may result in a judgment for deficiency against the debtor as a result of diminution in value of the collateral because of the exclusion of the environmentally impaired portion.

3. A secured lender may not waive his lien as a result of any environmental impairment if he had actual knowledge of the environmental impairment at the time the lien was created. In determining whether a secured lender had such knowledge, the report of any person legally entitled to prepare the report with respect to the existence or absence of any environmental impairment is prima facie evidence of the existence or absence, as the case may be, of any environmental impairment.

4. A waiver made by a secured lender pursuant to this section is not final or conclusive until a final judgment, as defined in subsection 4 of [NRS 40.435](#), has been obtained. If the waiver covers the full extent of the collateral, the lender shall immediately thereafter cause his lien to be released by recording the waiver in the same manner as the lien was recorded.

(Added to NRS by 1993, 155; A 1995, 510)

UNIFIED FORECLOSURE OF REAL AND PERSONAL PROPERTY

NRS 104.9604 Procedure if security agreement covers real property or fixtures.

1. If a security agreement covers both personal and real property, a secured party may proceed:

(a) Under this part as to the personal property without prejudicing any rights with respect to the real property; or

(b) As to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

2. Subject to subsection 3, if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(a) Under this part; or

(b) In accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

3. Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

4. A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

(Added to NRS by [1999, 347](#))

NONJUDICIAL FORECLOSURE BY TRUSTEE'S SALE

NRS 107.080 Trustee's power of sale: Power conferred; required notices; effect of sale; circumstances in which sale may be declared void.

1. Except as otherwise provided in [NRS 107.085](#), if any transfer in trust of any estate in real property is made after March 29, 1927, to secure the performance of an obligation or the payment of any debt, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which the transfer is security.

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

(a) In the case of any trust agreement coming into force:

(1) On or after July 1, 1949, and before July 1, 1957, the grantor, or his successor in interest, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property, has for a period of 15 days, computed as prescribed in subsection 3, failed to make good the deficiency in performance or payment; or

(2) On or after July 1, 1957, the grantor, or his successor in interest, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property, has for a period of 35 days, computed as prescribed in subsection 3, failed to make good the deficiency in performance or payment;

(b) The beneficiary, the successor in interest of the beneficiary or the trustee first executes and causes to be recorded in the office of the recorder of the county wherein the trust property, or some part thereof, is situated a notice of the breach and of his election to sell or cause to be sold the property to satisfy the obligation; and

(c) Not less than 3 months have elapsed after the recording of the notice.

3. The 15- or 35-day period provided in paragraph (a) of subsection 2 commences on the first day following the day upon which the notice of default and election to sell is recorded in the office of the county recorder of the county in which the property is located and a copy of the notice of default and election to sell is mailed by registered or certified mail, return receipt requested and with postage prepaid to the grantor, and to the person who holds the title of record on the date the notice of default and election to sell is recorded, at their respective addresses, if known, otherwise to the address of the trust property. The notice of default and election to sell must describe the deficiency in performance or payment and may contain a notice of intent to declare the entire unpaid balance due if acceleration is permitted by the obligation secured by the deed of trust, but acceleration must not occur if the deficiency in performance or payment is made good and any costs, fees and expenses incident to the preparation or recordation of the notice and incident to the making good of the deficiency in performance or payment are paid within the time specified in subsection 2.

4. The trustee, or other person authorized to make the sale under the terms of the trust deed or transfer in trust, shall, after expiration of the 3-month period following the recording of the notice of breach and election to sell, and before the making of the sale, give notice of the time and place thereof by recording the notice of sale and by:

(a) Providing the notice to each trustor and any other person entitled to notice pursuant to this section by personal service or by mailing the notice by registered or certified mail to the last known address of the trustor and any other person entitled to such notice pursuant to this section;

(b) Posting a similar notice particularly describing the property, for 20 days successively, in three public places of the township or city where the property is situated and where the property is to be sold; and

(c) Publishing a copy of the notice three times, once each week for 3 consecutive weeks, in a newspaper of general circulation in the county where the property is situated.

5. Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and his successors in interest without equity or right of redemption. A sale made pursuant to this section may be declared void by any court of competent jurisdiction in the county where the sale took place if:

(a) The trustee or other person authorized to make the sale does not substantially comply with the provisions of this section;

(b) Except as otherwise provided in subsection 6, an action is commenced in the county where the sale took place within 90 days after the date of the sale; and

(c) A notice of lis pendens providing notice of the pendency of the action is recorded in the office of the county recorder of the county where the sale took place within 30 days after commencement of the action.

6. If proper notice is not provided pursuant to subsection 3 or paragraph (a) of subsection 4 to the grantor, to the person who holds the title of record on the date the notice of default and election to sell is recorded, to each trustor or to any other person entitled to such notice, the person who did not receive such proper notice may commence an action pursuant to subsection 5 within 120 days after the date on which the person received actual notice of the sale.

7. The sale of a lease of a dwelling unit of a cooperative housing corporation vests in the purchaser title to the shares in the corporation which accompany the lease.

[Part 1:173:1927; A 1949, 70; 1943 NCL § 7710]—(NRS A 1957, 631; 1959, 10; 1961, 23; 1965, 611, 1242; 1967, 198; 1979, 708; 1987, 1644; 1989, 1770; [2003, 2893](#); [2005, 1623](#); [2007, 2447](#))

NRS 107.081 Time and place of sale; agent holding sale not to be purchaser.

1. All sales of property pursuant to [NRS 107.080](#) must be made at auction to the highest bidder and must be made between the hours of 9 a.m. and 5 p.m. The agent holding the sale must not become a purchaser at the sale or be interested in any purchase at such a sale.

2. All sales of real property must be made:

(a) In a county with a population of less than 100,000, at the courthouse in the county in which the property or some part thereof is situated.

(b) In a county with a population of 100,000 or more, at the public location in the county designated by the governing body of the county for that purpose.

(Added to NRS by [2005, 1620](#))

NRS 107.082 Oral postponement of sale.

1. If a sale of property pursuant to [NRS 107.080](#) is postponed by oral proclamation, the sale must be postponed to a later date at the same time and location.

2. If such a sale has been postponed by oral proclamation three times, any new sale information must be provided by notice as provided in [NRS 107.080](#).

(Added to NRS by [2005, 1621](#))

NRS 107.083 Proceedings after purchaser refuses to pay amount bid.

1. If a purchaser refuses to pay the amount bid by him for the property struck off to him at a sale pursuant to [NRS 107.080](#), the agent may again sell the property to the highest bidder, after again giving the notice previously provided.

2. If any loss is incurred from the purchaser refusing to pay his bid, the agent may recover the amount of the loss, with costs, for the benefit of the party aggrieved, by motion upon previous notice of 5 days to the purchaser, before any court of competent jurisdiction.

3. The court shall proceed in a summary manner in the hearing and disposition of such a motion, and give judgment and issue execution therefor forthwith, but the refusing purchaser may request a jury. The same proceedings may be had against any subsequent purchaser who refuses to pay, and the agent may, in his discretion, thereafter reject the bid of any person so refusing.

4. An agent is not liable for any amount other than the amount bid by the second or subsequent purchaser and the amount collected from the purchaser who refused to pay.

(Added to NRS by [2005, 1621](#))

NRS 107.084 Liability for removing or defacing notice of sale. A person who willfully removes or defaces a notice posted pursuant to subsection 4 of [NRS 107.080](#), if done before the sale or, if the default is satisfied before the sale, before the satisfaction of the default, is liable in the amount of \$500 to any person aggrieved by the removal or defacing of the notice.

(Added to NRS by [2005, 1620](#))

NRS 107.085 Restrictions on trustee's power of sale concerning certain trust agreements: Applicability; service of notice upon grantor; scheduling of date of sale; form of notice; judicial foreclosure not prohibited; "unfair lending practice" defined.

1. With regard to a transfer in trust of an estate in real property to secure the performance of an obligation or the payment of a debt, the provisions of this section apply to the exercise of a power of sale pursuant to [NRS 107.080](#) only if:

(a) The trust agreement becomes effective on or after October 1, 2003; and

(b) On the date the trust agreement is made, the trust agreement is subject to the provisions of § 152 of the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1602(aa), and the regulations adopted by the Board of Governors of the Federal Reserve System pursuant thereto, including, without limitation, 12 C.F.R. § 226.32.

2. The trustee shall not exercise a power of sale pursuant to [NRS 107.080](#) unless:

(a) In the manner required by subsection 3, not later than 60 days before the date of the sale, the trustee causes to be served upon the grantor a notice in the form described in subsection 3; and

(b) If an action is filed in a court of competent jurisdiction claiming an unfair lending practice in connection with the trust agreement, the date of the sale is not less than 30 days after the date the most recent such action is filed.

3. The notice described in subsection 2 must be:

(a) Served upon the grantor by personal service or, if personal service cannot be timely effected, in such other manner as a court determines is reasonably calculated to afford notice to the grantor; and

(b) In substantially the following form, with the applicable telephone numbers and mailing addresses provided on the notice and a copy of the promissory note attached to the notice:

NOTICE
YOU ARE IN DANGER OF LOSING YOUR HOME!

Your home loan is being foreclosed. In 60 days your home will be sold and you will be forced to move. For help, call:

Consumer Credit Counseling _____

The Attorney General _____

The Division of Financial Institutions _____

Legal Services _____

Your Lender _____

Nevada Fair Housing Center _____

4. This section does not prohibit a judicial foreclosure.

5. As used in this section, "unfair lending practice" means an unfair lending practice described in [NRS 598D.010](#) to [598D.150](#), inclusive.

(Added to NRS by [2003, 2892](#))

15 U.S.C. § 1602. Definitions and rules of construction

(aa) (1) A mortgage referred to in this subsection means a consumer credit transaction that is secured by the consumer's principal dwelling, other than a residential mortgage transaction, a reverse mortgage transaction, or a transaction under an open end credit plan, if--

(A) the annual percentage rate at consummation of the transaction will exceed by more than 10 percentage points the yield on Treasury securities having comparable periods of maturity on the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

(B) the total points and fees payable by the consumer at or before closing will exceed the greater of--

(i) 8 percent of the total loan amount; or

(ii) \$ 400.

(2) (A) After the 2-year period beginning on the effective date of the regulations promulgated under section 155 of the Riegle Community Development and Regulatory Improvement Act of 1994 [15 USCS § 1602 note], and no more frequently than biennially after the first increase or decrease under this subparagraph, the Board may by regulation increase or decrease the number of percentage points specified in paragraph (1)(A), if the Board determines that the increase or decrease is--

(i) consistent with the consumer protections against abusive lending provided by the amendments made by subtitle B of title I of the Riegle Community Development and Regulatory Improvement Act of 1994; and

(ii) warranted by the need for credit.

(B) An increase or decrease under subparagraph (A) may not result in the number of percentage points referred to in subparagraph (A) being--

(i) less than 8 percentage points; or

(ii) greater than 12 percentage points.

(C) In determining whether to increase or decrease the number of percentage points referred to in subparagraph (A), the Board shall consult with representatives of consumers, including low-income consumers, and lenders.

(3) The amount specified in paragraph (1)(B)(ii) shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index, as reported on June 1 of the year preceding such adjustment.

(4) For purposes of paragraph (1)(B), points and fees shall include--

(A) all items included in the finance charge, except interest or the time-price differential;

(B) all compensation paid to mortgage brokers;

(C) each of the charges listed in section 106(e) [15 USCS § 1605(e)] (except an escrow for future payment of taxes), unless--

(i) the charge is reasonable;

(ii) the creditor receives no direct or indirect compensation; and

(iii) the charge is paid to a third party unaffiliated with the creditor; and

(D) such other charges as the Board determines to be appropriate.

(5) This subsection shall not be construed to limit the rate of interest or the finance charge that a person may charge a consumer for any extension of credit.

12 C.F.R. § 226.32 Requirements for certain closed-end home mortgages.

(a) Coverage. (1) Except as provided in paragraph (a)(2) of this section, the requirements of this section apply to a consumer credit transaction that is secured by the consumer's principal dwelling, and in which either:

(i) The annual percentage rate at consummation will exceed by more than 8 percentage points for first-lien loans, or by more than 10 percentage points for subordinate-lien loans, the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

(ii) The total points and fees payable by the consumer at or before loan closing will exceed the greater of 8 percent of the total loan amount, or \$ 400; the \$ 400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1.

(2) This section does not apply to the following:

(i) A residential mortgage transaction.

(ii) A reverse mortgage transaction subject to § 226.33.

(iii) An open-end credit plan subject to subpart B of this part.

(b) Definitions. For purposes of this subpart, the following definitions apply:

(1) For purposes of paragraph (a)(1)(ii) of this section, points and fees means:

(i) All items required to be disclosed under § 226.4(a) and 226.4(b), except interest or the time-price differential;

(ii) All compensation paid to mortgage brokers;

(iii) All items listed in § 226.4(c)(7) (other than amounts held for future payment of taxes) unless the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor; and

(iv) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident, written in connection with the credit transaction.

(2) Affiliate means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (*12 U.S.C. 1841 et seq.*).

(c) Disclosures. In addition to other disclosures required by this part, in a mortgage subject to this section, the creditor shall disclose the following in conspicuous type size:

(1) Notices. The following statement: "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan."

(2) Annual percentage rate. The annual percentage rate.

(3) Regular payment; balloon payment. The amount of the regular monthly (or other periodic) payment and the amount of any balloon payment. The regular payment disclosed under this paragraph shall be treated as accurate if it is based on an amount borrowed that is deemed accurate and is disclosed under paragraph (c)(5) of this section.

(4) Variable-rate. For variable-rate transactions, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate required to be disclosed under § 226.30.

(5) Amount borrowed. For a mortgage refinancing, the total amount the consumer will borrow, as reflected by the face amount of the note; and where the amount borrowed includes premiums or other charges for optional credit insurance or debt-cancellation coverage, that fact shall be stated, grouped together with the disclosure of the amount borrowed. The disclosure of the amount borrowed shall be treated as accurate if it is not more than \$ 100 above or below the amount required to be disclosed.

(d) Limitations. A mortgage transaction subject to this section shall not include the following terms:

(1)(i) Balloon payment. For a loan with a term of less than five years, a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance.

(ii) Exception. The limitations in paragraph (d)(1)(i) of this section do not apply to loans with maturities of less than one year, if the purpose of the loan is a "bridge" loan connected with the acquisition or construction of a dwelling intended to become the consumer's principal dwelling.

(2) Negative amortization. A payment schedule with regular periodic payments that cause the principal balance to increase.

(3) Advance payments. A payment schedule that consolidates more than two periodic payments and pays them in advance from the proceeds.

(4) Increased interest rate. An increase in the interest rate after default.

(5) Rebates. A refund calculated by a method less favorable than the actuarial method (as defined by section 933(d) of the Housing and Community Development Act of 1992, *15 U.S.C. 1615(d)*), for rebates of interest arising from a loan acceleration due to default.

(6) [Effective until Oct. 1, 2009.] Prepayment penalties. Except as allowed under paragraph (d)(7) of this section, a penalty for paying all or part of the principal before the date on which the principal is due. A prepayment penalty includes computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992.

(6) [Effective Oct. 1, 2009.] Prepayment penalties. Except as allowed under paragraph (d)(7) of this section, a penalty for paying all or part of the principal before the date on which the principal is due. A prepayment penalty includes computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992, *15 U.S.C. 1615(d)*.

(7) [Effective until Oct. 1, 2009.] Prepayment penalty exception. A mortgage transaction subject to this section may provide for a prepayment penalty otherwise permitted by law (including a refund calculated according to the rule of 78s) if:

(i) [Effective until Oct. 1, 2009.] The penalty can be exercised only for the first five years following consummation;

(ii) [Effective until Oct. 1, 2009.] The source of the prepayment funds is not a refinancing by the creditor or an affiliate of the creditor; and

(iii) [Effective until Oct. 1, 2009.] At consummation, the consumer's total monthly debts (including amounts owed under the mortgage) do not exceed 50 percent of the consumer's monthly gross income, as verified by the consumer's signed financial statement, a credit report, and payment records for employment income.

(7) [Effective Oct. 1, 2009.] Prepayment penalty exception. A mortgage transaction subject to this section may provide for a prepayment penalty (including a refund calculated according to the rule of 78s) otherwise permitted by law if, under the terms of the loan:

(i) [Effective Oct. 1, 2009.] The penalty will not apply after the two-year period following consummation;

(ii) [Effective Oct. 1, 2009.] The penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or an affiliate of the creditor;

(iii) [Effective Oct. 1, 2009.] At consummation, the consumer's total monthly debt payments (including amounts owed under the mortgage) do not exceed 50 percent of the consumer's monthly gross income, as verified in accordance with § 226.34(a)(4)(ii); and

(iv) [Effective Oct. 1, 2009.] The amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation.

(8) Due-on-demand clause. A demand feature that permits the creditor to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance, except in the following circumstances:

(i) There is fraud or material misrepresentation by the consumer in connection with the loan;

(ii) The consumer fails to meet the repayment terms of the agreement for any outstanding balance; or

(iii) There is any action or inaction by the consumer that adversely affects the creditor's security for the loan, or any right of the creditor in such security.

NRS 107.090 Request for notice of default and sale: Recording and contents; mailing of notice; effect of request.

1. As used in this section, "person with an interest" means any person who has or claims any right, title or interest in, or lien or charge upon, the real property described in the deed of trust, as evidenced by any document or instrument recorded in the office of the county recorder of the county in which any part of the real property is situated.

2. A person with an interest or any other person who is or may be held liable for any debt secured by a lien on the property desiring a copy of a notice of default or notice of sale under a deed of trust with power of sale upon real property may at any time after recordation of the deed of trust record in the office of the county recorder of the county in which any part of the real property is situated an acknowledged request for a copy of the notice of default or of sale. The request must state the name and address of the person requesting copies of the notices and identify the deed of trust by stating the names of the parties thereto, the date of recordation, and the book and page where it is recorded.

3. The trustee or person authorized to record the notice of default shall, within 10 days after the notice of default is recorded and mailed pursuant to [NRS 107.080](#), cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice, addressed to:

(a) Each person who has recorded a request for a copy of the notice; and

(b) Each other person with an interest whose interest or claimed interest is subordinate to the deed of trust.

4. The trustee or person authorized to make the sale shall, at least 20 days before the date of sale, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage

prepaid, containing a copy of the notice of time and place of sale, addressed to each person described in subsection 3.

5. No request recorded pursuant to the provisions of subsection 2 affects the title to real property.

(Added to NRS by 1961, 74; A 1969, 42, 95; 1989, 644, 1772; [2001, 1751](#))

NRS 107.095 Notice of default: Mailing to guarantor or surety of debt; effect of failure to give.

1. The notice of default required by [NRS 107.080](#) must also be sent by registered or certified mail, return receipt requested and with postage prepaid, to each guarantor or surety of the debt. If the address of the guarantor or surety is unknown, the notice must be sent to the address of the trust property. Failure to give the notice, except as otherwise provided in subsection 3, releases the guarantor or surety from his obligation to the beneficiary, but does not affect the validity of a sale conducted pursuant to [NRS 107.080](#) nor the obligation of any guarantor or surety to whom the notice was properly given.

2. Failure to give the notice of default required by [NRS 107.090](#), except as otherwise provided in subsection 3, releases the obligation to the beneficiary of any person who has complied with [NRS 107.090](#) and who is or may otherwise be held liable for the debt or other obligation secured by the deed of trust, but such a failure does not affect the validity of a sale conducted pursuant to [NRS 107.080](#) nor the obligation of any person to whom the notice was properly given pursuant to this section or to [NRS 107.080](#) or [107.090](#).

3. A guarantor, surety or other obligor is not released pursuant to this section if:

(a) The required notice is given at least 15 days before the later of:

(1) The expiration of the 15- or 35-day period described in [NRS 107.080](#); or

(2) Any extension of that period by the beneficiary; or

(b) The notice is rescinded before the sale is advertised.

(Added to NRS by 1989, 1770)

SPECIAL ISSUES RE CONDOMINIUM PROJECTS AND SUBDIVISIONS

NRS 116.3104 Transfer of special declarant's right.

1. A special declarant's right created or reserved under this chapter may be transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the common-interest community is located. The instrument is not effective unless executed by the transferee.

2. Upon transfer of any special declarant's right, the liability of a transferor declarant is as follows:

(a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranties imposed upon him by this chapter. Lack of privity does not deprive any unit's owner of standing to maintain an action to enforce any obligation of the transferor.

(b) If a successor to any special declarant's right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the common-interest community.

(c) If a transferor retains any special declarant's rights, but transfers other special declarant's rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant's rights and arising after the transfer.

(d) A transferor has no liability for any act or omission or any breach of a contractual obligation or warranty arising from the exercise of a special declarant's right by a successor declarant who is not an affiliate of the transferor.

3. Unless otherwise provided in a mortgage, deed of trust or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale or sale under the Bankruptcy Code or a receivership, of any units owned by a declarant or real estate in a common-interest community subject to developmental rights, a person acquiring title to all the property being foreclosed or sold, but only upon his request, succeeds to all special declarant's rights related to that property held by that declarant, or only to any rights reserved in the declaration pursuant to [NRS 116.2115](#) and held by that declarant to maintain models, offices for sales and signs. The judgment or instrument conveying title must provide for transfer of only the special declarant's rights requested.

4. Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale or sale under the Bankruptcy Code or a receivership of all interests in a common-interest community owned by a declarant:

(a) The declarant ceases to have any special declarant's rights; and

(b) The period of declarant's control ([NRS 116.31032](#)) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant's rights held by that declarant to a successor declarant.

(Added to NRS by 1991, 560; A 1993, 2366)

NRS 116.31043 Liabilities and obligations of person who succeeds to special declarant's rights. The liabilities and obligations of a person who succeeds to special declarant's rights are as follows:

1. A successor to any special declarant's right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration.

2. A successor to any special declarant's right, other than a successor described in subsection 3 or 4 or a successor who is an affiliate of a declarant, is subject to the obligations and liabilities imposed by this chapter or the declaration:

(a) On a declarant which relate to the successor's exercise or nonexercise of special declarant's rights; or

(b) On his transferor, other than:

(1) Misrepresentations by any previous declarant;

(2) Warranties on improvements made by any previous declarant, or made before the common-interest community was created;

(3) Breach of any fiduciary obligation by any previous declarant or his appointees to the executive board; or

(4) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

3. A successor to only a right reserved in the declaration to maintain models, offices for sales and signs ([NRS 116.2115](#)), may not exercise any other special declarant's right, and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement and any liability arising as a result thereof.

4. A successor to all special declarant's rights held by a transferor who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title under subsection 3 of [NRS 116.3104](#), may declare in a recorded instrument the intention to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant's rights to any person acquiring title to any unit or real estate subject to developmental rights owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his transferor to control the executive board in accordance with [NRS 116.31032](#) for the duration of any period of declarant's control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant's rights under this subsection, the successor declarant is not subject to any liability or obligation as a declarant other than liability for his acts and omissions under [NRS 116.31032](#).

(Added to NRS by 1991, 561; A 1993, 2367)

REDEMPTION RIGHTS UPON JUDICIAL FORECLOSURE

NRS 21.190 Sale of real property; purchaser acquires rights of judgment debtor; absolute sale and sale subject to redemption; certificate of sale. Upon a sale of real property, the purchaser shall be substituted to and acquire all the right, title, interest and claim of the judgment debtor thereto. When the estate is less than a leasehold of 2 years' unexpired term, the sale shall be absolute. In all other cases the real property shall be subject to redemption as provided in this chapter. The officer shall give to the purchaser a certificate of the sale containing:

1. A particular description of the real property sold.

2. The price bid for each distinct lot or parcel.

3. The whole price paid.

4. When subject to redemption it shall be so stated; and when the judgment, under which the sale has been made, is made payable in a specified kind of money or currency, the certificate shall also state the kind of money or currency in which the redemption may be made, which shall be the same as that specified in the judgment. A duplicate of such certificate shall be filed by the officer in the office of the county recorder of the county.

[1911 CPA § 356; RL § 5298; NCL § 8854]

NRS 21.200 Real property sold subject to redemption; who may redeem; redemptioner defined.

1. Property sold subject to redemption, as provided in [NRS 21.190](#), or any part sold separately, may be redeemed in the manner hereinafter provided by the following persons or their successors in interest:

(a) The judgment debtor or his successor in interest, in the whole or any part of the property.

(b) A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold.

2. The person mentioned in paragraph (b) of subsection 1 is termed a “redemptioneer” in this chapter.
[1911 CPA § 357; RL § 5299; NCL § 8855]

NRS 21.210 Time and manner of redemption. The judgment debtor or redemptioner may redeem the property from the purchaser any time within 1 year after the sale on paying the purchaser the amount of his purchase price with 1 percent per month thereon in addition, to the time of redemption, together with:

1. The amount of any assessment, taxes or payments toward liens which were created prior to the purchase, which the purchaser may have paid thereon after purchase, and interest on such amount; and
2. If the purchaser is also a creditor, having a prior lien to that of the redemptioner, other than the judgment under which the purchase was made, the amount of such lien, with interest.

[1911 CPA § 358; A 1933, 150; 1939, 53; 1931 NCL § 8856]—(NRS A 1973, 173)

NRS 21.220 Successive redemptions; redemption from previous redemptioner; notice of redemption; sheriff’s deed; certificate of redemption.

1. If property be so redeemed by a redemptioner, another redemptioner may, within 60 days after the last redemption, again redeem it from the last redemptioner on paying the sum paid on such last redemption with 2 percent thereon in addition, and the amount of any assessments or taxes which the last redemptioner may have paid thereon after the redemption by him, with interest on that amount, and in addition the amount of any liens held by the last redemptioner prior to his own, with interest, but the judgment under which the property was sold need not be so paid as a lien.

2. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within 60 days after the last redemption, on paying the sum paid on the last previous redemption, with 2 percent thereon in addition, and the amounts of any assessments or taxes which the last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with interest.

3. Written notice of redemption must be given to the sheriff and a duplicate recorded with the recorder of the county, and if any taxes or assessments are paid by the redemptioner, or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and recorded with the recorder and, if the notice is not recorded, the property may be redeemed without paying the tax, assessment or lien.

4. If no redemption is made within 1 year after the sale, the purchaser, or his assignee, is entitled to a conveyance or, if so redeemed, whenever 60 days have elapsed and no other redemption has been made and notice thereof given, and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to a sheriff’s deed, but in all cases the judgment debtor has the entire period of 1 year after the date of the sale to redeem the property.

5. If the judgment debtor redeems, he must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeems, the effect of the sale is terminated, and he is restored to his estate.

6. Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to him a certificate of redemption, acknowledged or approved before a person authorized to take acknowledgments of conveyances of real property. The certificate must be recorded in the office of the recorder of the county in which the property is situated.

[1911 CPA § 359; A 1933, 150; 1939, 53; 1931 NCL § 8857]—(NRS A 1969, 490; 1981, 1220; [2001, 1747](#))

NRS 21.230 Payments of redemption to purchaser, redemptioner or officer; documents to be served by redemptioner; sheriff to pay over money.

1. The payments mentioned in [NRS 21.210](#) and [21.220](#) may be made to the purchaser or redemptioner, or for him to the officer who made the sale. When the judgment under which the sale has been made is payable in a specified kind of money or currency, payments must be made in the same kind of money or currency, and a tender of the money is equivalent to payment.

2. Notice of redemption must be served by a redemptioner upon the sheriff and the person from whom he seeks to redeem together with:

(a) A copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court or of the county where the judgment is docketed, or, if he redeems upon a mortgage or other lien, a note of the record thereof, certified by the recorder.

(b) A copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or his agent, or of a subscribing witness thereto.

(c) An affidavit by himself, or his agent, showing the amount then actually due on the lien.

3. Upon the payment to the sheriff of any money for the redemption of property as provided in this chapter, the sheriff shall pay over the same to the person entitled thereto.

[1911 CPA § 360; A 1939, 53; 1931 NCL § 8858]

NRS 21.240 Court may restrain waste until expiration of period for redemption; what is not considered waste. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, or may appoint a receiver to take charge of the property, or the proceeds thereof, by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it shall not be deemed waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make necessary repairs of buildings thereon; or to use wood or timber on the property therefor, or for the repair of fences, or for fuel for his family while he occupies the property.

[1911 CPA § 362; RL § 5304; NCL § 8860]

NRS 21.250 Disposition of rents and profits. The purchaser from the time of a sale until a redemption, and a redemptioner from the time of his redemption until another redemption, shall be entitled to receive from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof; but in case the property shall be redeemed as provided in this chapter, the amount of such rents, and profits which may have been received by such purchaser or redemptioner, or which the purchaser or redemptioner may have been entitled to claim or receive, unless such claim shall be released to the person claiming such right of redemption, shall be deducted from the amount which the purchaser or redemptioner would be entitled to receive on such redemption.

[1911 CPA § 363; RL § 5305; NCL § 8861]

EVICTION

NRS 40.255 Removal of person holding over after 3-day notice to quit; circumstances authorizing removal.

1. Except as provided in subsection 2, in any of the following cases, a person who holds over and continues in possession of real property or a mobile home after a 3-day written notice to quit has been served upon him, and also upon any subtenant in actual occupation of the premises, pursuant to [NRS 40.280](#), may be removed as prescribed in [NRS 40.290](#) to [40.420](#), inclusive:

(a) Where the property or mobile home has been sold under an execution against him or a person under whom he claims, and the title under the sale has been perfected;

(b) Where the property or mobile home has been sold upon the foreclosure of a mortgage, or under an express power of sale contained therein, executed by him or a person under whom he claims, and the title under the sale has been perfected;

(c) Where the property or mobile home has been sold under a power of sale granted by [NRS 107.080](#) to the trustee of a deed of trust executed by such person or a person under whom he claims, and the title under such sale has been perfected; or

(d) Where the property or mobile home has been sold by him or a person under whom he claims, and the title under the sale has been perfected.

2. This section does not apply to the tenant of a mobile home lot in a mobile home park.

Order No.: «TitlNbr»

TRUSTEE'S GUARANTEE

File No.: «TitlNbr»

Guarantee No.: «TitlTSGPolNbr»

Liability: \$«TitlTSGLiabAmt__N_2_»

Fee: \$«TitlTSGAmt__N_2_»

Date of Guarantee: «TitlRptDate__D_A__» at 7:30 a.m.

Name of Assured:

«VestingBuyer»
Nevada Title Company

The estate or interest in the land described or referred to covered by this Guarantee is:

A Fee

Title to said estate or interest at the date thereof is vested in:

«VestingSeller»

The land referred to in this Guarantee is situated in the State of Nevada, County of
«PropCounty»

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A
PART HEREOF FOR LEGAL DESCRIPTION

Address: «PropFullAdd»

Order No.: «TitlNbr»

EXHIBIT "A"
LEGAL DESCRIPTION

«Detailed_Legal»

Order No.: «TitlNbr»

TRUSTEE'S GUARANTEE

«TSG_Special_Exceptions»

Order No.: «TitlNbr»

TRUSTEE'S SALE GUARANTEE
INFORMATION FOR TRUSTEE

Relative to the Deed of Trust shown as Item of this Guarantee:

(1) Trustee must observe the requirements of Section 107.080 of the Nevada Revised Statutes as to the notices to be sent to the trustors, or to their successors in interest.
Names of trustors or their successors in interest and addresses:

(2) The names and addresses of persons who have recorded requests, as provided by Section 107.090 of the Nevada Revised Statutes, for a copy of notice of default and for a copy of notice of sale are:

(3) Effective October 1, 1989 NRS 107.090 has been amended to provide that notices must be mailed within 10 days after the notice of default is recorded to each other person with an interest whose interest or claimed interest is subordinate to the deed of trust. The names and addresses of such persons are:

(4) City in which said land is located: «PropCity»
If not a city, judicial district in which said land is located:

(5) Legal Publication

LAS VEGAS SUN
800 S. Valley View Blvd.
Las Vegas, Nevada 89107

LAS VEGAS REVIEW JOURNAL
1111 W. Bonanza
Las Vegas, Nevada 89125

NEVADA LEGAL NEWS
930 S. 4th St.
Las Vegas, Nevada 89101

Order No.: «TitlNbr»

TRUSTEE'S SALE GUARANTEE

Attention is called to the Servicemembers Civil Relief Act (108 P.L. 189; 117 Stat. 2835; 2003 Enacted H.R. 100) and amendments thereto, which contain inhibitions against the sale of land under a deed of trust if the owner is entitled to the benefits of said Act.

Attention is called to the Federal Tax Lien Act of 1966 which, among other things, provides for the giving of written notice of sale in a specified manner to the Secretary of the Treasury or his delegate as a requirement for the discharge or divestment of a federal tax lien in a non-judicial sale, and established with respect to such lien a right in the United States to redeem the property within a period of 120 days from the date of any such sale.

Countersigned:

«TitlOff»

Authorized Officer or Agent

Order No.: «TitlNbr»

EXHIBIT “B”

Order No.: «TitlNbr»



Westcor Land Title Insurance Company

Privacy Policy Notice

«DDRecDate__GRANT_DEED_»

Policy No: «TitlOwnPPolNbr»

Title V of the Gramm-Leach-Bliley Act (GLBA) generally prohibits any financial institution, directly or through its affiliates, from sharing nonpublic personal information about you with a nonaffiliated third party unless the institution provides you with a notice of its privacy policies and practices, such as the type of information that it collects about you and the categories of persons or entities to whom it may be disclosed. In compliance with the GLBA, we are providing you with this document, which notifies you of the privacy policies and practices of Westcor Land Title Insurance Company.

We may collect nonpublic personal information about you from the following sources:

- Information we receive from you such as on applications or other forms.
- Information about your transactions we secure from our files, or from our affiliates or others.
- Information we receive from a consumer reporting agency.
- Information that we receive from others involved in your transaction, such as the real estate agent or lender.

Unless it is specifically stated otherwise in an amended Privacy Policy Notice, no additional nonpublic personal information will be collected about you.

We may disclose any of the above information that we collect about our customers or former customers to our affiliates or to nonaffiliated third parties as permitted by law.

We also may disclose this information about our customers or former customers to the following types of nonaffiliated companies that perform marketing services on our behalf or with whom we have joint marketing agreements:

- Financial service providers such as companies engaged in banking, consumer finance, securities and insurance.
- Non-financial companies such as envelope stuffers and other fulfillment service providers.

WE DO NOT DISCLOSE ANY NONPUBLIC PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT SPECIFICALLY PERMITTED BY LAW.

We restrict access to nonpublic personal information about you to those employees who need to know that information in order to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

APN:

RETURN / MAIL TAX STATEMENTS TO:

**NEVADA TITLE COMPANY
2500 N. BUFFALO DRIVE #150
LAS VEGAS, NEVADA 89128**

NOTICE OF BREACH AND ELECTION TO SELL UNDER DEED OF TRUST

FORECLOSURE NO.

NOTICE IS HEREBY GIVEN:

That Nevada Title Company, a Nevada Corporation, is the current Trustee under a Deed of Trust dated , executed by as Trustor, to secure obligations in favor of , as beneficiary, recorded in Book , as Document number , of Official Records CLARK County, Nevada.

That a breach of the obligations for which such Deed of Trust is security has occurred in that:

Together with all sums (if any) advanced by the beneficiary and any interest accrued thereon to preserve the security of the beneficiary.

That by reason thereof, the undersigned, present beneficiary under such Deed of Trust, has executed and delivered to said Trustee a written Declaration of Default and Demand for Sale, and has surrendered to said Trustee such Deed of Trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

DATED this day of

BY: _____

STATE OF: _____
COUNTY OF: _____

This instrument was acknowledged before me on _____ by _____.

Signature _____
(Notary Public)

APN:

When recorded return to:
Nevada Title Company
2500 N. Buffalo Drive, #150
Las Vegas, NV 89128

NOTICE OF TRUSTEE'S SALE

TRUSTEE SALE # FCL
DATED:

On at , Nevada Title Company, as duly appointed or substituted Trustee under and pursuant to Deed of Trust dated recorded in book , as document number , in the Office of the County Recorder of CLARK County, Nevada executed by in favor of by reason of now continuing default in the payment of performance of obligations secured by said Deed of Trust, including the Breach of Default Notice which was recorded in the Office of the County Recorder of CLARK County, Nevada, by the beneficiaries and the undersigned more than three months prior to the date thereof, WILL CAUSE TO BE SOLD AT PUBLIC AUCTION TO THE HIGHEST BIDDER FOR CASH (payable at the time of sale in lawful money of the United States of America) at the front entrance to Nevada Legal News located at 930 S. Fourth Street, Las Vegas, Nevada, 89101, all right, title and interest conveyed to and now held by it under said Deed of Trust in the property situated in said County and State described as:

Commonly known as:

If a street address or common designation of property is shown, no warranty is given as to its completeness or correctness.

Said sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note secured by said Deed of Trust, to wit: \$ with interest thereon, as provided in said note, advances, if any, under the terms of said Deed of Trust, fees, charges and expenses of Trustee and of the Trusts created by said Deed of Trust.

NEVADA TITLE COMPANY, A NEVADA CORPORATION

By: _____
Michele Dobar, Trustee Sale Officer

Published in Nevada Legal News on the following dates:

STATE OF: NEVADA
COUNTY OF: CLARK

This instrument was acknowledged before me on by Michele Dobar as Trustee Sale Officer
of Nevada Title Company.

Signature _____
(Notary Public)

APN:

RETURN / MAIL TAX STATEMENTS TO:
NEVADA TITLE COMPANY
2500 N. BUFFALO DRIVE, #150
LAS VEGAS, NV 89128

FILE NO:

**NOTICE OF RESCISSION OF NOTICE OF BREACH
AND ELECTION TO SELL UNDER DEED OF TRUST**

WHEREAS, the undersigned, as trustee for the Beneficiary under that certain Deed of Trust hereinafter described, heretofore delivered to the Trustee thereunder written Declaration of Default and Notice of Breach and Election to Sell Under Deed of Trust and

WHEREAS, Notice was heretofore given the undersigned, by such Beneficiary, of breach of the obligation for which said Deed of Trust is security and of election to cause to be sold the property therein described, which Notice was recorded on _____ in the office of the recorder of _____ County, Nevada, in Book _____ of Official Records as Document No. _____.

NOW, THEREFORE, NOTICE IS HEREBY GIVEN that the undersigned, as Trustee for the Beneficiary, does hereby rescind, cancel and withdraw said Declaration of Default and Notice of Breach and Election to Sell Under Deed of Trust, it being understood, however, that this rescission shall not in any manner be construed as waiving or affecting any breach of default – past, present or future – under said Deed of Trust, or as impairing any right or remedy thereunder, but is, and shall be deemed to be, only an election, without prejudice, not to cause a sale to be made pursuant to said Declaration and Notice, and shall in no way jeopardize or impair any right, remedy or privilege secured to the Beneficiary and/or the Trustee, under said Deed of Trust, nor modify nor alter in any respect any of the terms, covenants, conditions, or obligations thereof, and said Deed of Trust and all obligations secured thereby are hereby reinstated and shall be and remain in force and effect the same as if said Declaration of Default and Notice of Breach had not been made and given. Said Deed of Trust above referred to was executed by _____, Trustor, to NEVADA TITLE COMPANY, a Nevada Corporation, as current Trustee, and recorded as Document Number _____ on _____ in Book _____ of Official records, in _____ County, Nevada.

DATE:

NEVADA TITLE COMPANY

BY: _____

STATE OF NEVADA

COUNTY OF CLARK

On _____, before me, a Notary Public, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this document and acknowledged _____ executed it.

Signature: _____
(Notary Public)

APN:
RETURN / MAIL TAX STATEMENTS TO:

TRUSTEE'S DEED UPON SALE

FORECLOSURE NO: FCL RPTT \$

THIS INDENTURE, made between NEVADA TITLE COMPANY a Nevada Corporation,
as Trustee as hereinafter stated, herein called Trustee, and

herein called Grantee, WITNESSETH:

WHEREAS, by Deed of Trust dated and recorded on in Book of
Official Records, as Document No. in the Office of the County Recorder of CLARK
County, State of Nevada, did grant and convey to said Trustee, upon the trusts therein expressed,
the property hereinafter described, among other uses and purposes to secure the payment of that
certain promissory note and interest according to the terms thereof, and other sums of money
advanced, with interest thereon, to which reference is hereby made, and,

WHEREAS, breach and default was made under the terms of said Deed of Trust in the particulars
set forth in the Notice of said Breach and Default hereinafter referred to, to which reference is
hereby made; and

WHEREAS, on the then Beneficiary, or holder of said note did execute and deliver to the
Trustee written Declaration of Default and demand for sale and thereafter there was filed for record
on in the office of the County Recorder of CLARK County, Nevada a Notice of breach and
default and of election to cause the Trustee to sell said property to satisfy the obligation secured by
said Deed of Trust, which Notice was recorded in Book as Document No. of Official
Records of said County, and,

WHEREAS, Trustee in consequence of said election, declaration of default, and demand for sale,
and in compliance with said Deed of Trust and with the statutes in such cases made and provided,
made and published for more than twenty (20) days before the date of sale therein fixed in a
newspaper of general circulation printed and published in the county and state in which the
premises to be sold is situated, Notice of Sale as required by law, containing a correct description
of the property to be sold and stating that the Trustee would under the provisions of said Deed of
Trust sell the property therein and herein described at public auction to the highest bidder for cash
in lawful money of the United States on at the hour of 10:00 AM of said day, at the front
entrance to Nevada Legal News, 930 S. Fourth Street, in the City of Las Vegas, County of Clark,
State of Nevada, and,

WHEREAS three true and correct copies of said Notice were posted in three of the most public places in the County of CLARK, State of Nevada, in which said sale was noticed to take place, for not less than twenty days before the date of sale therein fixed, and,

WHEREAS, compliance having been made with all of the statutory provisions of the State of Nevada and with all of the provisions of said Deed of Trust as to the acts to be performed and notices to be given and in particular, full compliance having been made with all requirements of law regarding the service of notices required by statutes, and with the Servicemembers Civil Relief Act (108 P.L. 189; 117 Stat. 2835; 2003 Enacted H.R. 100), said Trustee, at the time and place did then and there at public auction sell the property hereinafter described to the said Grantee for the sum of AND /100 DOLLARS (\$), said Grantee being the highest and best bidder therefore.

NOW, THEREFORE, Trustee in consideration of the premises recited and the sum herein mentioned bid and paid by the Grantee the receipt whereof is hereby acknowledged, and by virtue of these premises, does GRANT AND CONVEY, but without warranty or covenants, express or implied, unto the said Grantee all right, title and interest under said Deed of Trust in that certain property situate in the County of CLARK State of Nevada, described as follows:

IN WITNESS WHEREOF the said NEVADA TITLE COMPANY, has this day, caused its corporate name to be affixed hereto and this instrument to be executed by its authorized officers.

NEVADA TITLE COMPANY, Trustee

By: _____

By: _____

STATE OF: NEVADA
COUNTY OF: CLARK

This instrument was acknowledged before me on by .

Signature _____
(Notary Public)