

ASSEMBLY BILL NO. 332—ASSEMBLYWOMAN SPIEGEL

MARCH 18, 2013

JOINT SPONSOR: SENATOR FORD

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to real property. (BDR 9-732)

FISCAL NOTE: Effect on Local Government: No. Effect on the State: No.

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

AN ACT relating to real property; revising provisions governing the exercise of the power of sale under a deed of trust with respect to abandoned residential property; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law provides for a trustee under a deed of trust to exercise a power of
2 sale on real property after a breach of an obligation or payment of debt secured by
3 the deed of trust. Under existing law, a notice of default and election to sell real
4 property that is subject to a deed of trust must include an affidavit setting forth
5 certain information concerning the authority to exercise the power of sale. If the
6 affidavit is not recorded in accordance with existing law, a court must declare void
7 the trustee’s sale and a civil action may be brought against the beneficiary, the
8 successor in interest of the beneficiary or the trustee who did not comply with the
9 requirement. (NRS 107.080)

10 **Section 2** of this bill establishes the criteria to be used to determine whether
11 real property constitutes abandoned residential property. Under **section 3** of this
12 bill, if, at any time after recording a notice of default and election to sell and after
13 an investigation of the property, the beneficiary or its successor in interest or the
14 agent authorized to act on behalf of the beneficiary or its successor in interest
15 determines that the property constitutes abandoned residential property, the
16 beneficiary, successor or agent may record an affidavit setting forth the
17 circumstances and conditions supporting the determination that the property is
18 abandoned residential property. If such an affidavit is recorded: (1) the beneficiary
19 or its successor in interest or the agent authorized to act on behalf of the beneficiary
20 or its successor in interest must provide certain notice of the affidavit; and (2) the
21 grantor of the deed of trust, the successor in interest of the grantor or the person
22 who holds title of record may cause the affidavit to be deemed to be withdrawn by



23 recording an affidavit declaring that the property is not abandoned residential
24 property and setting forth the circumstances and conditions supporting the
25 withdrawal determination. Under **sections 3 and 4** of this bill, if an affidavit
26 indicating that property is abandoned residential property is recorded and not
27 withdrawn and the purchaser of the property at the trustee's sale occupies the
28 property as owner-occupied housing or sells the property to a person who occupies
29 the property as owner-occupied housing: (1) the trustee's sale may not be declared
30 void on the ground that the affidavit of authority to exercise the power of sale
31 required by existing law was not recorded or is defective; and (2) a civil action may
32 not be brought for a failure to comply with certain requirements governing the
33 exercise of the power of sale.

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

1 **Section 1.** Chapter 107 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2.** *As used in this section and NRS 107.080 to NRS*
4 *107.110, inclusive, and section 3 of this act, unless the context*
5 *otherwise requires:*

6 1. *"Abandoned residential property" means residential real*
7 *property:*

8 (a) *Consisting of not more than four family dwelling units or a*
9 *single-family residential unit, including, without limitation, a*
10 *condominium, townhouse or home within a subdivision, if the unit*
11 *is sold, leased or otherwise conveyed unit by unit, regardless of*
12 *whether the unit is part of a larger building or parcel that consists*
13 *of more than four units; and*

14 (b) *That the grantor or the successor in interest of the grantor*
15 *has surrendered as evidenced by a document signed by the grantor*
16 *or successor confirming the surrender or by the delivery of the*
17 *keys to the property to the beneficiary or that satisfies the*
18 *following conditions:*

19 (1) *The residential real property is not currently occupied*
20 *as a principal residence by the grantor of the deed of trust, the*
21 *person who holds title of record or any lawful occupant;*

22 (2) *The obligation secured by the deed of trust is in default*
23 *and the deficiency in performance or payment has not been cured;*

24 (3) *The gas, electric and water utility services to the*
25 *property have been terminated;*

26 (4) *There are no children enrolled in school residing at the*
27 *address of the residential real property;*

28 (5) *Payments pursuant to the federal Social Security Act,*
29 *including, without limitation, retirement and survivors' benefits,*
30 *supplemental security income benefits and disability insurance*
31 *benefits, payments for unemployment compensation or payments*



1 *for public assistance, as defined in NRS 422.050 and 422A.065,*
2 *are not currently being mailed to the address of the residential real*
3 *property;*

4 *(6) An owner of the property is not presently serving in the*
5 *Armed Forces of the United States, a reserve component thereof*
6 *or the National Guard; and*

7 *(7) Two or more of the following conditions exist:*

8 *(I) Construction was initiated on the residential real*
9 *property and was discontinued before completion, leaving a*
10 *building unsuitable for occupancy, and no construction has taken*
11 *place for at least 6 months;*

12 *(II) Multiple windows on the property are boarded up or*
13 *closed off or are smashed through, broken off or unhinged, or*
14 *multiple window panes are broken and unrepaired;*

15 *(III) Doors on the property are smashed through,*
16 *broken off, unhinged or continuously unlocked;*

17 *(IV) The property has been stripped of copper or other*
18 *materials, or interior fixtures to the property have been removed;*

19 *(V) Assessments owed to a unit-owners' association, as*
20 *defined in NRS 116.011 or 116B.030, are past due;*

21 *(VI) At least two or more written statements of*
22 *occupants of neighboring properties indicate a clear intent to*
23 *abandon the property;*

24 *(VII) Law enforcement officials have received at least*
25 *one report of trespassing or vandalism or other illegal acts being*
26 *committed at the property within the immediately preceding 6*
27 *months;*

28 *(VIII) The property has been declared unfit for*
29 *occupancy and ordered to remain vacant and unoccupied under*
30 *an order issued by a municipal or county authority or a court of*
31 *competent jurisdiction;*

32 *(IX) The local police, fire or code enforcement authority*
33 *has requested that the owner or other interested or authorized*
34 *party secure the property because the local authority has declared*
35 *the property to be an imminent danger to the health, safety and*
36 *welfare of the public;*

37 *(X) The property is open and unprotected and in*
38 *reasonable danger of significant damage resulting from exposure*
39 *to the elements or vandalism; or*

40 *(XI) The residential real property contains overgrown or*
41 *dead vegetation.*

42 *2. The term does not include residential real property if:*

43 *(a) There is construction, renovation or rehabilitation on the*
44 *property that is proceeding diligently to completion, and any*
45 *building being constructed, renovated or rehabilitated is in*



1 *substantial compliance with all applicable ordinances, codes,*
2 *regulations and laws;*

3 *(b) The property is occupied on a seasonal basis, but is*
4 *otherwise secure;*

5 *(c) There are bona fide rental or sale signs on the property, or*
6 *the property is listed on the Multiple Listing Service, and the*
7 *property is secure; or*

8 *(d) The residential real property is secure but is the subject of*
9 *a probate action, action to quiet title or other ownership dispute.*

10 **Sec. 3. 1.** *At any time after a notice of default and election*
11 *to sell has been recorded pursuant to subsection 2 of NRS*
12 *107.080, the beneficiary may elect to use the procedures set forth*
13 *in this section in connection with the exercise of the power of sale*
14 *pursuant to NRS 107.080 if, after an investigation, the beneficiary*
15 *determines that the real property is abandoned residential*
16 *property.*

17 **2.** *If a beneficiary has a reasonable belief that real property*
18 *may be abandoned residential property, the beneficiary or its agent*
19 *may enter the property to investigate whether the property is*
20 *abandoned residential property. Notwithstanding any other*
21 *provision of law, a beneficiary and its agents who enter property*
22 *pursuant to this subsection are not liable for trespass.*

23 **3.** *A beneficiary who elects to use the procedures set forth in*
24 *this section in connection with the exercise of the power of sale*
25 *pursuant to NRS 107.080 must:*

26 *(a) Record, or cause to be recorded, in the office of the*
27 *recorder of the county wherein the real property, or some part*
28 *thereof, is located an affidavit setting forth the facts supporting*
29 *the determination that the real property is abandoned residential*
30 *property. The affidavit required by this subsection must:*

31 *(1) Be signed and verified by the beneficiary;*

32 *(2) State that, upon information and belief of the*
33 *beneficiary after investigation by the beneficiary or its agent, the*
34 *property is abandoned residential property; and*

35 *(3) State the conditions or circumstances supporting the*
36 *determination that the property is abandoned residential property*
37 *and have attached to the affidavit photographic or other*
38 *documentary evidence in support of such conditions or*
39 *circumstances; and*

40 *(b) Post in a conspicuous place on the real property, and mail*
41 *by first class mail to the last known address of the grantor of the*
42 *deed of trust, a successor in interest of the grantor or the person*
43 *who holds title of record, a notice, in at least 12-point bold type in*
44 *a font that is easy to read, in substantially the following form, with*
45 *the applicable telephone numbers provided on the notice:*



NOTICE

FORECLOSURE PROCEEDINGS AGAINST THIS PROPERTY HAVE STARTED, AND AN AFFIDAVIT DECLARING THIS PROPERTY TO BE ABANDONED HAS BEEN RECORDED.

If you believe that the property has not been abandoned, you may record with the county recorder an affidavit declaring that the property is not abandoned.

If you do not record with the county recorder an affidavit declaring that the property is not abandoned and mail a copy of the affidavit to your lender, you may lose the right to challenge the foreclosure sale of the property.

For help, call:

- Consumer Credit Counseling _____*
- The Attorney General _____*
- The Division of Mortgage Lending _____*
- The Division of Financial Institutions _____*
- Legal Services _____*
- Your Lender _____*
- Nevada Fair Housing Center _____*

4. Except as otherwise provided in this subsection, if an affidavit described in subsection 3 has been recorded, at any time before the date of the sale of the real property conducted pursuant to NRS 107.080, the grantor, a successor in interest of the grantor or the person who holds title of record may record in the office of the county recorder in the county where the affidavit described in subsection 3 was recorded, an affidavit stating that the real property is not abandoned residential property and setting forth the conditions or circumstances supporting the claim that the property is not abandoned residential property. The grantor, a successor in interest of the grantor or the person who holds title of record may not record the affidavit described in this subsection if he or she has surrendered the property, as evidenced by a signed document confirming the surrender or by the delivery of the keys to the property to the beneficiary. Upon the recording of the affidavit described in this subsection:

(a) The person who recorded the affidavit must mail by registered or certified mail, return receipt requested, to the beneficiary and the trustee a copy of the affidavit; and

(b) The affidavit described in subsection 3 is deemed to be withdrawn.



1 **5. If:**

2 **(a) An affidavit described in subsection 3 has been recorded**
3 **and has not been withdrawn; and**

4 **(b) The purchaser of the property at a sale conducted pursuant**
5 **to NRS 107.080:**

6 **(1) Occupies the real property as owner-occupied housing;**
7 **or**

8 **(2) Sells the property to a person who occupies the real**
9 **property as owner-occupied housing,**

10 **↳ the sale vests in the purchaser the title of the grantor and any**
11 **successors in interest without equity or right of redemption and**
12 **may not be declared void on the ground that the affidavit of**
13 **authority to exercise the power of sale required by paragraph (c)**
14 **of subsection 2 of NRS 107.080 has not been recorded or is**
15 **defective, and an action pursuant to subsection 7 of NRS 107.080**
16 **may not be commenced.**

17 **6. As used in this section:**

18 **(a) "Beneficiary" means the beneficiary of the deed of trust or**
19 **the successor in interest of the beneficiary or any person**
20 **designated or authorized to act on behalf of the beneficiary or its**
21 **successor in interest.**

22 **(b) "Owner-occupied housing" has the meaning ascribed to it**
23 **in NRS 107.086.**

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

25 107.080 1. Except as otherwise provided in NRS 106.210,
26 107.085 and 107.086, if any transfer in trust of any estate in real
27 property is made after March 29, 1927, to secure the performance of
28 an obligation or the payment of any debt, a power of sale is hereby
29 conferred upon the trustee to be exercised after a breach of the
30 obligation for which the transfer is security.

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

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

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

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



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

9 (c) The beneficiary, the successor in interest of the beneficiary
10 or the trustee first executes and causes to be recorded in the office of
11 the recorder of the county wherein the trust property, or some part
12 thereof, is situated a notice of the breach and of the election to sell
13 or cause to be sold the property to satisfy the obligation which,
14 except as otherwise provided in this paragraph, includes a notarized
15 affidavit of authority to exercise the power of sale stating, based on
16 personal knowledge and under the penalty of perjury:

17 (1) The full name and business address of the trustee or the
18 trustee's personal representative or assignee, the current holder of
19 the note secured by the deed of trust, the current beneficiary of
20 record and the servicers of the obligation or debt secured by the
21 deed of trust;

22 (2) The full name and last known business address of every
23 prior known beneficiary of the deed of trust;

24 (3) That the beneficiary under the deed of trust, the successor
25 in interest of the beneficiary or the trustee is in actual or
26 constructive possession of the note secured by the deed of trust;

27 (4) That the trustee has the authority to exercise the power of
28 sale with respect to the property pursuant to the instruction of the
29 beneficiary of record and the current holder of the note secured by
30 the deed of trust;

31 (5) The amount in default, the principal amount of the
32 obligation or debt secured by the deed of trust, a good faith estimate
33 of all fees imposed and to be imposed because of the default and the
34 costs and fees charged to the debtor in connection with the exercise
35 of the power of sale; and

36 (6) The date, recordation number or other unique designation
37 of the instrument that conveyed the interest of each beneficiary and
38 a description of the instrument that conveyed the interest of each
39 beneficiary.

40 ➤ The affidavit described in this paragraph is not required for the
41 exercise of the trustee's power of sale with respect to any trust
42 agreement which concerns a time share within a time share plan
43 created pursuant to chapter 119A of NRS if the power of sale is
44 being exercised for the initial beneficiary under the deed of trust or
45 an affiliate of the initial beneficiary.



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1 (d) Not less than 3 months have elapsed after the recording of
2 the notice.

3 3. The 15- or 35-day period provided in paragraph (a) of
4 subsection 2, or the period provided in paragraph (b) of subsection
5 2, commences on the first day following the day upon which the
6 notice of default and election to sell is recorded in the office of the
7 county recorder of the county in which the property is located and a
8 copy of the notice of default and election to sell is mailed by
9 registered or certified mail, return receipt requested and with
10 postage prepaid to the grantor or, to the person who holds the title of
11 record on the date the notice of default and election to sell is
12 recorded, and, if the property is operated as a facility licensed under
13 chapter 449 of NRS, to the State Board of Health, at their respective
14 addresses, if known, otherwise to the address of the trust property.
15 The notice of default and election to sell must:

16 (a) Describe the deficiency in performance or payment and may
17 contain a notice of intent to declare the entire unpaid balance due if
18 acceleration is permitted by the obligation secured by the deed of
19 trust, but acceleration must not occur if the deficiency in
20 performance or payment is made good and any costs, fees and
21 expenses incident to the preparation or recordation of the notice and
22 incident to the making good of the deficiency in performance or
23 payment are paid within the time specified in subsection 2; and

24 (b) If the property is a residential foreclosure, comply with the
25 provisions of NRS 107.087.

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

32 (a) Providing the notice to each trustor, any other person entitled
33 to notice pursuant to this section and, if the property is operated as a
34 facility licensed under chapter 449 of NRS, the State Board of
35 Health, by personal service or by mailing the notice by registered or
36 certified mail to the last known address of the trustor and any other
37 person entitled to such notice pursuant to this section;

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

41 (c) Publishing a copy of the notice three times, once each week
42 for 3 consecutive weeks, in a newspaper of general circulation in the
43 county where the property is situated or, if the property is a time
44 share, by posting a copy of the notice on an Internet website and



1 publishing a statement in a newspaper in the manner required by
2 subsection 3 of NRS 119A.560; and

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

5 5. Every sale made under the provisions of this section and
6 other sections of this chapter vests in the purchaser the title of the
7 grantor and any successors in interest without equity or right of
8 redemption. ~~It~~ *Except as otherwise provided in section 3 of this*
9 *act, a* sale made pursuant to this section must be declared void by
10 any court of competent jurisdiction in the county where the sale took
11 place if:

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

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

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

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

29 7. ~~It~~ *Except as otherwise provided in section 3 of this act, if*
30 in an action brought by the grantor or the person who holds title of
31 record in the district court in and for the county in which the real
32 property is located, the court finds that the beneficiary, the successor
33 in interest of the beneficiary or the trustee did not comply with any
34 requirement of subsection 2, 3 or 4, the court must award to the
35 grantor or the person who holds title of record:

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

38 (b) An injunction enjoining the exercise of the power of sale
39 until the beneficiary, the successor in interest of the beneficiary or
40 the trustee complies with the requirements of subsections 2, 3 and 4;
41 and

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



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

4 9. After a sale of property is conducted pursuant to this section,
5 the trustee shall:

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

9 (b) Within 20 days after the date of the sale, deliver the trustee's
10 deed upon sale to the successful bidder. Within 10 days after the
11 date of delivery of the deed by the trustee, the successful bidder
12 shall record the trustee's deed upon sale in the office of the county
13 recorder of the county in which the property is located.

14 10. If the successful bidder fails to record the trustee's deed
15 upon sale pursuant to paragraph (b) of subsection 9, the successful
16 bidder:

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

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

24 11. The county recorder shall, in addition to any other fee, at
25 the time of recording a notice of default and election to sell collect:

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

27 (b) A fee of \$45 for deposit in the Account for Foreclosure
28 Mediation, which is hereby created in the State General Fund. The
29 Account must be administered by the Court Administrator, and the
30 money in the Account may be expended only for the purpose of
31 supporting a program of foreclosure mediation established by
32 Supreme Court Rule.

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

43 12. The fees collected pursuant to paragraphs (a) and (b) of
44 subsection 11 must be paid over to the county treasurer by the
45 county recorder on or before the fifth day of each month for the



1 preceding calendar month, and, except as otherwise provided in this
2 subsection, must be placed to the credit of the State General Fund or
3 the Account for Foreclosure Mediation as prescribed pursuant to
4 subsection 11. The county recorder may direct that 1.5 percent of
5 the fees collected by the county recorder be transferred into a special
6 account for use by the office of the county recorder. The county
7 treasurer shall, on or before the 15th day of each month, remit the
8 fees deposited by the county recorder pursuant to this subsection to
9 the State Controller for credit to the State General Fund or the
10 Account as prescribed in subsection 11.

11 13. The beneficiary, the successor in interest of the beneficiary
12 or the trustee who causes to be recorded the notice of default and
13 election to sell shall not charge the grantor or the successor in
14 interest of the grantor any portion of any fee required to be paid
15 pursuant to subsection 11.

16 14. As used in this section:

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

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

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

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



