

SENATE BILL NO. 186—SENATOR ATKINSON

FEBRUARY 25, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing real property. (BDR 3-112)

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 the limitation on the period for commencing an action for a deficiency judgment after a sale in lieu of a foreclosure sale; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law authorizes a creditor under an obligation secured by a mortgage or
2 deed of trust who is not prohibited from obtaining a personal judgment against the
3 debtor for any amount remaining due after a sale in lieu of a foreclosure sale to
4 bring an action against the debtor to obtain such a judgment only if the action is
5 commenced within 6 years after the date of the debtor’s default. (NRS 11.190,
6 40.458) Under existing law, the statute of limitations for such an action by a
7 creditor under an obligation secured by a junior mortgage or deed of trust is
8 6 months after the sale in lieu of a foreclosure sale. (NRS 40.4639) This bill applies
9 this 6-month statute of limitations to an action by a creditor under any obligation
10 secured by a mortgage or deed of trust who is not prohibited from obtaining a
11 personal judgment against the debtor for any amount remaining due after a sale in
12 lieu of a foreclosure sale. Under **section 5** of this bill, the statute of limitations set
13 forth in this bill applies to an action involving a mortgage or deed of trust other
14 than a junior mortgage or deed of trust only if the sale in lieu of a foreclosure sale
15 occurs on or after October 1, 2013.

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

1 **Section 1.** Chapter 40 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *1. A civil action not barred by NRS 40.430, 40.458 or 40.4639*
4 *by a person to whom an obligation secured by a mortgage or other*



1 *lien on real property is owed to obtain a money judgment against*
2 *the debtor after a sale in lieu of a foreclosure sale may only be*
3 *commenced within 6 months after the date of the sale in lieu of a*
4 *foreclosure sale.*

5 **2.** *As used in this section, "sale in lieu of a foreclosure sale"*
6 *has the meaning ascribed to it in NRS 40.458.*

7 **Sec. 2.** NRS 40.433 is hereby amended to read as follows:

8 40.433 As used in NRS 40.430 to 40.459, inclusive, *and*
9 *section 1 of this act*, unless the context otherwise requires, a
10 "mortgage or other lien" includes a deed of trust, but does not
11 include a lien which arises pursuant to chapter 108 of NRS, pursuant
12 to an assessment under chapter 116, 117, 119A or 278A of NRS or
13 pursuant to a judgment or decree of any court of competent
14 jurisdiction.

15 **Sec. 3.** NRS 40.451 is hereby amended to read as follows:

16 40.451 As used in NRS 40.451 to 40.463, inclusive, *and*
17 *section 1 of this act*, "indebtedness" means the principal balance of
18 the obligation secured by a mortgage or other lien on real property,
19 together with all interest accrued and unpaid prior to the time of
20 foreclosure sale, all costs and fees of such a sale, all advances made
21 with respect to the property by the beneficiary, and all other
22 amounts secured by the mortgage or other lien on the real property
23 in favor of the person seeking the deficiency judgment. Such
24 amount constituting a lien is limited to the amount of the
25 consideration paid by the lienholder.

26 **Sec. 4.** NRS 11.190 is hereby amended to read as follows:

27 11.190 Except as otherwise provided in NRS 40.4639,
28 125B.050 and 217.007, *and section 1 of this act*, actions other than
29 those for the recovery of real property, unless further limited by
30 specific statute, may only be commenced as follows:

31 1. Within 6 years:

32 (a) An action upon a judgment or decree of any court of the
33 United States, or of any state or territory within the United States, or
34 the renewal thereof.

35 (b) An action upon a contract, obligation or liability founded
36 upon an instrument in writing, except those mentioned in the
37 preceding sections of this chapter.

38 2. Within 4 years:

39 (a) An action on an open account for goods, wares and
40 merchandise sold and delivered.

41 (b) An action for any article charged on an account in a store.

42 (c) An action upon a contract, obligation or liability not founded
43 upon an instrument in writing.

44 (d) An action against a person alleged to have committed a
45 deceptive trade practice in violation of NRS 598.0903 to 598.0999,



1 inclusive, but the cause of action shall be deemed to accrue when
2 the aggrieved party discovers, or by the exercise of due diligence
3 should have discovered, the facts constituting the deceptive trade
4 practice.

5 3. Within 3 years:

6 (a) An action upon a liability created by statute, other than a
7 penalty or forfeiture.

8 (b) An action for waste or trespass of real property, but when the
9 waste or trespass is committed by means of underground works
10 upon any mining claim, the cause of action shall be deemed to
11 accrue upon the discovery by the aggrieved party of the facts
12 constituting the waste or trespass.

13 (c) An action for taking, detaining or injuring personal property,
14 including actions for specific recovery thereof, but in all cases
15 where the subject of the action is a domestic animal usually included
16 in the term "livestock," which has a recorded mark or brand upon it
17 at the time of its loss, and which strays or is stolen from the true
18 owner without the owner's fault, the statute does not begin to run
19 against an action for the recovery of the animal until the owner has
20 actual knowledge of such facts as would put a reasonable person
21 upon inquiry as to the possession thereof by the defendant.

22 (d) Except as otherwise provided in NRS 112.230 and 166.170,
23 an action for relief on the ground of fraud or mistake, but the cause
24 of action in such a case shall be deemed to accrue upon the
25 discovery by the aggrieved party of the facts constituting the fraud
26 or mistake.

27 (e) An action pursuant to NRS 40.750 for damages sustained by
28 a financial institution or other lender because of its reliance on
29 certain fraudulent conduct of a borrower, but the cause of action in
30 such a case shall be deemed to accrue upon the discovery by the
31 financial institution or other lender of the facts constituting the
32 concealment or false statement.

33 4. Within 2 years:

34 (a) An action against a sheriff, coroner or constable upon
35 liability incurred by acting in his or her official capacity and in
36 virtue of his or her office, or by the omission of an official duty,
37 including the nonpayment of money collected upon an execution.

38 (b) An action upon a statute for a penalty or forfeiture, where the
39 action is given to a person or the State, or both, except when the
40 statute imposing it prescribes a different limitation.

41 (c) An action for libel, slander, assault, battery, false
42 imprisonment or seduction.

43 (d) An action against a sheriff or other officer for the escape of a
44 prisoner arrested or imprisoned on civil process.



1 (e) Except as otherwise provided in NRS 11.215, an action to
2 recover damages for injuries to a person or for the death of a person
3 caused by the wrongful act or neglect of another. The provisions of
4 this paragraph relating to an action to recover damages for injuries
5 to a person apply only to causes of action which accrue after
6 March 20, 1951.

7 (f) An action to recover damages under NRS 41.740.

8 5. Within 1 year:

9 (a) An action against an officer, or officer de facto to recover
10 goods, wares, merchandise or other property seized by the officer in
11 his or her official capacity, as tax collector, or to recover the price or
12 value of goods, wares, merchandise or other personal property so
13 seized, or for damages for the seizure, detention or sale of, or injury
14 to, goods, wares, merchandise or other personal property seized, or
15 for damages done to any person or property in making the seizure.

16 (b) An action against an officer, or officer de facto for money
17 paid to the officer under protest, or seized by the officer in his or her
18 official capacity, as a collector of taxes, and which, it is claimed,
19 ought to be refunded.

20 **Sec. 5.** The amendatory provisions of this act apply only to an
21 action commenced after a sale in lieu of a foreclosure sale that
22 occurs on or after October 1, 2013.

