

ASSEMBLY BILL NO. 471—COMMITTEE ON COMMERCE AND LABOR

MARCH 18, 2009

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the award of deficiency judgments after a sale of real property. (BDR 3-1138)

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; providing that a court shall not award a deficiency judgment on the foreclosure of a mortgage or a deed of trust under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law, a judgment creditor or a beneficiary of a deed of trust may
2 obtain, after a hearing, a deficiency judgment after a foreclosure sale or trustee’s
3 sale if it appears from the sheriff’s return or the recital of consideration in the
4 trustee’s deed that there is a deficiency of the proceeds of the sale and a
5 balance remaining due the judgment creditor or beneficiary of the deed of trust.
6 (NRS 40.455)
7 This bill provides that a court may not award a deficiency judgment to a
8 judgment creditor or a beneficiary of a deed of trust if: (1) the real property is a
9 single-family dwelling and the debtor or grantor was the owner of the property; (2)
10 the debtor or grantor used the loan to purchase the property; (3) the debtor or
11 grantor did not occupy the property before obtaining the loan but occupied the
12 property continuously after obtaining the loan; and (4) the debtor or grantor did not
13 refinance the loan.

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

1 **Section 1.** NRS 40.455 is hereby amended to read as follows:
2 40.455 1. ~~Upon~~ *Except as otherwise provided in*
3 *subsection 3, upon* application of the judgment creditor or the
4 beneficiary of the deed of trust within 6 months after the date of the



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1 foreclosure sale or the trustee's sale held pursuant to NRS 107.080,
2 respectively, and after the required hearing, the court shall award a
3 deficiency judgment to the judgment creditor or the beneficiary of
4 the deed of trust if it appears from the sheriff's return or the recital
5 of consideration in the trustee's deed that there is a deficiency of the
6 proceeds of the sale and a balance remaining due to the judgment
7 creditor or the beneficiary of the deed of trust, respectively.

8 2. If the indebtedness is secured by more than one parcel of
9 real property, more than one interest in the real property or more
10 than one mortgage or deed of trust, the 6-month period begins to run
11 after the date of the foreclosure sale or trustee's sale of the last
12 parcel or other interest in the real property securing the
13 indebtedness, but in no event may the application be filed more than
14 2 years after the initial foreclosure sale or trustee's sale.

15 3. *The court may not award a deficiency judgment to the*
16 *judgment creditor or the beneficiary of the deed of trust, even if*
17 *there is a deficiency of the proceeds of the sale and a balance*
18 *remaining due the judgment creditor or beneficiary of the deed of*
19 *trust, if:*

20 (a) *The real property is a single-family dwelling and the debtor*
21 *or grantor was the owner of the real property at the time of the*
22 *foreclosure sale or trustee's sale;*

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

26 (c) *The debtor or grantor did not occupy the real property*
27 *before securing the mortgage or deed of trust;*

28 (d) *The debtor or grantor continuously occupied the real*
29 *property as his principal residence after securing the mortgage or*
30 *deed of trust; and*

31 (e) *The debtor or grantor did not refinance the mortgage or*
32 *deed of trust after securing it.*

