

Amendment No. 732

Assembly Amendment to Senate Bill No. 128 First Reprint	(BDR 9-841)
<b>Proposed by:</b> Assembly Committee on Judiciary	
<b>Amends:</b> Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION		Initial and Date		SENATE ACTION		Initial and Date			
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) green bold dashed underlining is newly added transitory language.

NMB/RRY



Date: 5/15/2009

S.B. No. 128—Requires certain persons to record foreclosure sales and sales of real property under a deed of trust within a certain period of time.  
(BDR 9-841)



SENATE BILL NO. 128—SENATORS PARKS, CARLTON, HORSFORD, WIENER; AMODEI, BREEDEN, CEGAVSKE, COFFIN, COPENING, LEE, MATHEWS, MCGINNESS, NOLAN, SCHNEIDER AND WOODHOUSE (BY REQUEST)

FEBRUARY 11, 2009

JOINT SPONSORS: ASSEMBLYMEN CONKLIN, SEGERBLOM, ANDERSON, KOIVISTO, PIERCE; AIZLEY, BOBZIEN, BUCKLEY, DENIS, DONDERO LOOP, GRADY, LESLIE, MANENDO, MCCLAIN, OCEGUERA, OHRENSCHALL AND PARNELL

Referred to Committee on Commerce and Labor

SUMMARY—Requires certain persons to record foreclosure sales and sales of real property under a deed of trust within a certain period of time. (BDR 9-841)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.  
Effect on the State: No.

~

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

AN ACT relating to property; requiring certain persons to record foreclosure sales and sales of real property under a deed of trust within a certain period of time after the sale; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Existing law provides for a trustee to execute a power of sale on real property after a breach of an obligation or payment of debt due to the trustee. **Section 1** of this bill amends existing law to: (1) require the ~~beneficiary of the deed of trust~~ **trustee** to ~~cause the recordation of~~ **record** the sale of the property with the appropriate office of the county recorder within 30 days after the date of the sale, ~~or deliver, within 20 days after the date of the sale, the deed to the successful bidder, who must then record the deed with the appropriate office of the county recorder within 10 days after the date of delivery;~~ and (2) make the ~~beneficiary~~ **successful bidder** liable for certain damages for failure to cause such recordation. (NRS 107.080)

Existing law provides for a person to proceed on an action for the recovery of any debt or for the enforcement of any right secured by a mortgage or other lien upon real estate. **Section 2** of this bill amends existing law to require the sheriff who conducted a foreclosure sale pursuant to such an action to record the sale with the appropriate office of the county recorder within 30 days after the date of the sale. (NRS 40.430)

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

1       **Section 1.** NRS 107.080 is hereby amended to read as follows:

2       107.080 1. Except as otherwise provided in NRS 107.085, if any transfer in  
3 trust of any estate in real property is made after March 29, 1927, to secure the  
4 performance of an obligation or the payment of any debt, a power of sale is hereby  
5 conferred upon the trustee to be exercised after a breach of the obligation for which  
6 the transfer is security.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 **8. ~~Within 30 days after~~ After a sale of property is conducted pursuant to**  
29 **this section, the ~~beneficiary~~ trustee shall ~~cause the~~:**

30 **(a) Within 30 days after the date of the sale, record the trustee's deed upon**  
31 **sale ~~to be recorded~~ in the office of the county recorder of the county in which**  
32 **the property is located ~~;~~ or**

33 **(b) Within 20 days after the date of the sale, deliver the trustee's deed upon**  
34 **sale to the successful bidder. Within 10 days after the date of delivery of the deed**  
35 **by the trustee, the successful bidder shall record the trustee's deed upon sale in**  
36 **the office of the county recorder of the county in which the property is located.**

37 **9. ~~If the beneficiary successful bidder fails to cause the recordation of~~**  
38 **record the trustee's deed upon sale pursuant to ~~this subsection,~~ paragraph (b) of**  
39 **subsection 8, the ~~beneficiary,~~ successful bidder:**

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

43 **(b) Is liable in a civil action for any actual damages caused by his failure to**  
44 **comply with the provisions of ~~this~~ subsection 8 and for reasonable attorney's**  
45 **fees and the costs of bringing the action.**

46 **Sec. 2.** NRS 40.430 is hereby amended to read as follows:

47 40.430 1. Except in cases where a person proceeds under subsection 2 of  
48 NRS 40.495 or subsection 1 of NRS 40.512, there may be but one action for the  
49 recovery of any debt, or for the enforcement of any right secured by a mortgage or  
50 other lien upon real estate. That action must be in accordance with the provisions of  
51 NRS 40.430 to 40.459, inclusive. In that action, the judgment must be rendered for  
52 the amount found due the plaintiff, and the court, by its decree or judgment, may

1 direct a sale of the encumbered property, or such part thereof as is necessary, and  
2 apply the proceeds of the sale as provided in NRS 40.462.

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

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

12 4. *Within 30 days after a sale of property is conducted pursuant to this*  
13 *section, the sheriff who conducted the sale shall record the sale of the property in*  
14 *the office of the county recorder of the county in which the property is located.*

15 5. As used in this section, an "action" does not include any act or proceeding:

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

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

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

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

26 (e) For the exercise of a power of sale pursuant to NRS 107.080.

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

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

31 (h) To draw under a letter of credit.

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

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

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

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

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

48 (n) Pursuant to NRS 40.507 or 40.508.

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

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

52 **Sec. 3.** This act becomes effective on July 1, 2009.