

ASSEMBLY BILL NO. 242—ASSEMBLYMEN FRIERSON,
JAUREGUI, AND BILBRAY-AXELROD

FEBRUARY 24, 2017

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to certain loans secured by a lien on real property. (BDR 54-857)

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 loans secured by a lien on real property in which investors hold the beneficial interests; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law provides that if the beneficial interest in a mortgage loan belongs
2 to more than one person, the holders of 51 percent or more of the outstanding
3 principal balance or 51 percent or more of the ownership interest in the real
4 property previously securing the loan may act on behalf of all the holders of the
5 beneficial interests of record. (NRS 645B.340) This bill excludes any beneficial or
6 ownership interest held by the borrower or guarantor of a loan from being
7 considered as part of the beneficial interest in the outstanding principal balance or
8 the ownership interest in real property for the purpose of allowing the holders of 51
9 percent or more of the outstanding principal balance or ownership interest to act on
10 behalf of all holders. This bill also prohibits a person from assisting a borrower or
11 guarantor to evade the provisions of this bill.

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

1 **Section 1.** NRS 645B.340 is hereby amended to read as
2 follows:

3 645B.340 1. Except as otherwise provided by law or by
4 agreement between the parties and regardless of the date the
5 interests were created, if the beneficial interest in a loan or the
6 ownership interest in the real property previously securing the loan



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1 belongs to more than one person, the holders of the beneficial
2 interest in a loan whose interests represent 51 percent or more of the
3 outstanding principal balance of the loan or the holders of 51
4 percent or more of the ownership interest in the real property, as
5 indicated on a trustee's deed upon sale recorded pursuant to
6 subsection 10 of NRS 107.080, a deed recorded pursuant to
7 subsection 5 of NRS 40.430 or a deed in lieu of foreclosure, and any
8 subsequent deed selling, transferring or assigning an ownership
9 interest, may act on behalf of all the holders of the beneficial
10 interests or ownership interests of record on matters which require
11 the action of the holders of the beneficial interests in the loan or the
12 ownership interests in the real property, including, without
13 limitation:

14 (a) The designation of a mortgage broker or mortgage agent,
15 servicing agent or any other person to act on behalf of all the holders
16 of the beneficial interests or ownership interests of record;

17 (b) The foreclosure of the property for which the loan was made;

18 (c) The subsequent sale, transfer, encumbrance or lease of real
19 property owned by the holders resulting from a foreclosure or the
20 receipt of a deed in lieu of a foreclosure in full satisfaction of a loan,
21 to a bona fide purchaser or encumbrancer for value;

22 (d) The release of any obligation under a loan in return for an
23 interest in equity in the real property or, if the loan was made to a
24 person other than a natural person, an interest in equity of that
25 entity; and

26 (e) The modification or restructuring of any term of the loan,
27 deed of trust or other document relating to the loan, including,
28 without limitation, changes to the maturity date, interest rate and the
29 acceptance of payment of less than the full amount of the loan and
30 any accrued interest in full satisfaction of the loan.

31 2. *For the purposes of subsection 1, the beneficial interest in*
32 *the outstanding principal balance of a loan and the ownership*
33 *interest in the real property previously securing the loan do not*
34 *include any beneficial interest or ownership interest held by the*
35 *borrower or guarantor of the loan or any successor, assign,*
36 *affiliate or other entity related to the borrower or guarantor of the*
37 *loan.*

38 3. A person designated to act pursuant to subsection 1 on
39 behalf of the holders of the beneficial interest in a loan or the
40 ownership interest in real property shall, not later than 30 days
41 before the date on which the holders will determine whether or not
42 to act pursuant to subsection 1, send a written notice of the action to
43 each holder of a beneficial interest or ownership interest at the
44 holder's last known address, by a delivery service that provides



1 proof of delivery or evidence that the notice was sent. The written
2 notice must state:

3 (a) The actions that will be taken on behalf of the holders who
4 consent to an action pursuant to this section, if the holders of the
5 beneficial interest in a loan whose interests represent 51 percent or
6 more of the outstanding principal balance of the loan or the holders
7 of 51 percent or more of the ownership interest in the real property
8 act pursuant to subsection 1;

9 (b) The actions that will be taken on behalf of the holders who
10 do not consent to an action pursuant to this section, if the holders of
11 the beneficial interest in a loan whose interests represent 51 percent
12 or more of the outstanding principal balance of the loan or the
13 holders of 51 percent or more of the ownership interest in the real
14 property act pursuant to subsection 1; and

15 (c) The amount of the costs or, if an amount is unknown, an
16 estimate of the amount of the costs that will be allocated to, or due
17 from, the holder and deducted from any proceeds owed to the
18 holder.

19 ~~§3~~ 4. If real property is sold, transferred, encumbered or
20 leased pursuant to paragraph (c) of subsection 1, any beneficial
21 interest in the loan or ownership interest in the real property of a
22 holder who does not consent to the sale, transfer, encumbrance or
23 lease, including, without limitation, any interest of a tenant in
24 common who does not consent to the sale, transfer, encumbrance or
25 lease, must be sold, transferred, encumbered or leased by a reference
26 to this section and by the signatures on the necessary documents of
27 the holders consenting to the sale, transfer, encumbrance or lease of
28 the real property. The holders consenting to the sale, transfer,
29 encumbrance or lease of the real property shall designate a
30 representative to sign any necessary documents on behalf of the
31 holders who do not consent to the sale, transfer, encumbrance or
32 lease and, if the representative maintains written evidence of the
33 consent of the number of holders described in subsection 1, the
34 representative is not liable for any action taken pursuant to this
35 subsection.

36 ~~§4~~ 5. Any action which is taken pursuant to subsection 1
37 must be in writing.

38 ~~§5~~ 6. *A person shall not, directly or indirectly, assist a*
39 *borrower or guarantor to evade any provision of this section.*

40 7. The provisions of this section do not apply to a transaction
41 involving two investors with equal interests.

42 **Sec. 2.** This act becomes effective on July 1, 2017.

