

SENATE BILL NO. 414—COMMITTEE ON
COMMERCE, LABOR AND ENERGY

MARCH 28, 2011

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions relating to banks. (BDR 55-1107)

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

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

AN ACT relating to banks; prohibiting a bank from demanding the repayment of the principal of a commercial mortgage loan unless a person fails to pay the loan as agreed; prohibiting a bank from unreasonably delaying a response to an offer for a short sale on real property secured by a residential mortgage loan; prohibiting a financial institution from obtaining a deficiency judgment in 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 balance
5 remaining due the judgment creditor or beneficiary of the deed of trust. For an
6 obligation secured by a mortgage or deed of trust on or after October 1, 2009, a
7 court may not award a deficiency judgment to the judgment creditor or the
8 beneficiary of the deed of trust if: (1) the creditor or beneficiary is a financial
9 institution; (2) the real property is a single-family dwelling and the debtor or
10 grantor was the owner of the property; (3) the debtor or grantor used the loan to
11 purchase the property; (4) the debtor or grantor occupied the property continuously
12 after obtaining the loan; and (5) the debtor or grantor did not refinance the loan.
13 (NRS 40.455) **Section 4** of this bill prohibits a court from awarding a deficiency
14 judgment to the judgment creditor or the beneficiary of the deed of trust if: (1) the
15 creditor or beneficiary is a financial institution; (2) the real property is a single-
16 family dwelling and the debtor or grantor was the owner of the property; (3) the
17 debtor or grantor used the loan to purchase the property; (4) the debtor or grantor
18 occupied the property continuously after obtaining the loan; (5) the debtor or
19 grantor and the financial institution entered into an agreement, commonly known as
20 a short sale, to sell the real property to a third party for less than the indebtedness;



21 and (6) the agreement does not state the amount of money still owed by the debtor
 22 or grantor or does not authorize the financial institution to recover that money.
 23 **Section 3** of this bill prohibits a bank or its officers, managers or employees from
 24 unreasonably delaying its response to an offer for a short sale on real property
 25 secured by a residential mortgage loan.
 26 **Section 2** of this bill prohibits a bank from demanding the repayment of all or
 27 part of the outstanding principal on a commercial mortgage loan unless the debtor
 28 fails to make payments on the loan as agreed.

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

1 **Section 1.** Chapter 668 of NRS is hereby amended by adding
 2 thereto the provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2. 1.** *A bank or an officer, manager or employee of a*
 4 *bank shall not demand the repayment of any additional amount of*
 5 *outstanding principal on a commercial mortgage loan if the*
 6 *person to whom the loan was made has not failed to make*
 7 *payments upon the commercial mortgage loan as agreed.*

8 2. *As used in this section, "commercial mortgage loan" has*
 9 *the meaning ascribed to it in NRS 645E.030.*

10 **Sec. 3. 1.** *A bank or an officer, manager or employee of a*
 11 *bank shall not unreasonably delay responding to an offer for a*
 12 *short sale on real property secured by a residential mortgage loan.*

13 2. *For the purposes of this section, a person is presumed to*
 14 *have unreasonably delayed responding to an offer for a short sale*
 15 *on real property secured by a residential mortgage loan when the*
 16 *person fails to respond to an offer for a short sale with an*
 17 *acceptance or rejection of the offer within 90 days after receipt of*
 18 *the offer.*

19 3. *As used in this section:*

20 (a) *"Indebtedness" has the meaning ascribed to it in*
 21 *NRS 40.451.*

22 (b) *"Residential mortgage loan" has the meaning ascribed to it*
 23 *in NRS 645B.0132.*

24 (c) *"Short sale" means an agreement between a bank and an*
 25 *owner of real property to sell the real property secured by a*
 26 *residential mortgage loan to a third party for an amount less than*
 27 *the indebtedness secured thereby.*

28 **Sec. 4.** NRS 40.455 is hereby amended to read as follows:

29 40.455 1. Except as otherwise provided in subsection 3 ~~†~~ *or*
 30 *4*, upon application of the judgment creditor or the beneficiary of the
 31 deed of trust within 6 months after the date of the foreclosure sale or
 32 the trustee's sale held pursuant to NRS 107.080, respectively, and
 33 after the required hearing, the court shall award a deficiency
 34 judgment to the judgment creditor or the beneficiary of the deed of



1 trust if it appears from the sheriff's return or the recital of
2 consideration in the trustee's deed that there is a deficiency of the
3 proceeds of the sale and a balance remaining due to the judgment
4 creditor or the beneficiary of the deed of trust, respectively.

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

12 3. If the judgment creditor or the beneficiary of the deed of
13 trust is a financial institution, the court may not award a deficiency
14 judgment to the judgment creditor or the beneficiary of the deed of
15 trust, even if there is a deficiency of the proceeds of the sale and a
16 balance remaining due the judgment creditor or beneficiary of the
17 deed of trust, if:

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

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

24 (c) The debtor or grantor continuously occupied the real
25 property as the debtor's or grantor's principal residence after
26 securing the mortgage or deed of trust; and

27 (d) The debtor or grantor did not refinance the mortgage or deed
28 of trust after securing it.

29 4. *If the judgment creditor or the beneficiary of the deed of*
30 *trust is a financial institution, the court may not award a*
31 *deficiency judgment to the judgment creditor or the beneficiary of*
32 *the deed of trust if:*

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

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

39 (c) *The debtor or grantor continuously occupied the real*
40 *property as the debtor's or grantor's principal residence after*
41 *securing the mortgage or deed of trust;*

42 (d) *The debtor or grantor and the financial institution entered*
43 *into an agreement to sell the real property secured by the*
44 *mortgage or deed of trust to a third party for an amount less than*
45 *the indebtedness secured thereby; and*



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1 *(e) The agreement entered into pursuant to paragraph (d) does*
2 *not state the amount of money still owed to the financial*
3 *institution by the debtor or grantor or does not authorize the*
4 *financial institution to recover that amount from the debtor or*
5 *grantor.*

6 5. As used in this section, "financial institution" has the
7 meaning ascribed to it in NRS 363A.050.

