



STATE BAR SEMINAR June 21, 2008

NEVADA FORECLOSURE LAW
SELECTED ISSUES: Mixed Collateral
F. DeArmond Sharp
Robison, Belaustegui, Sharp & Low

■ MIXED COLLATERAL ISSUES OCCUR WHEN OBLIGATION IS SECURED BY BOTH REAL AND PERSONAL PROPERTY

■ CHOICES

- FORECLOSE PERSONAL PROPERTY UNDER UCC ARTICLE 9
- FORECLOSE REAL PROPERTY UNDER NRS 107.080 et. seq.

OR

■ IF SECURITY AGREEMENT (DEED OF TRUST) COVERS BOTH PERSONAL AND REAL PROPERTY, PROCEED IN ACCORDANCE WITH RIGHTS WITH RESPECT TO REAL PROPERTY – ARTICLE 9 PROVISIONS DO NOT APPLY. NRS 104.9604

■ CONTRASTING AND COMPARING REAL PROPERTY AND PERSONAL PROPERTY RULES

RULES (Black- Real; Red - Personal)
1. One-Action Rule – NRS 40.430
Remedies cumulative – no One Action Rule

- Sue first then resort to collateral NRS 104.9601
- Not an action under NRS 40.430(4)(b)(f)(g)(h)

2. Deficiency Judgment Limitation
NRS 40.451, et seq.
Secured party only required to apply cash proceeds of disposition. NRS 104.9615. No requirement to credit fair market value of collateral if commercially reasonable disposition

3. Possession of property not required. May obtain receiver - NRS 107.100

Secured party entitled to take possession without breach of peace. NRS 104.9609.

Possession required to hold commercially reasonable disposition. Claim and delivery available under NRS 31.080 et seq.

4. Sale procedure spelled out in NRS 107.080-107.100

Secured party after default may sell, lease, license or dispose of the collateral. NRS 104.9610

- Method, manner, time, place and other terms must be commercially reasonable.
- May require commercially reasonable clean-up, fix-up and to be available for inspection by potential buyers.
- Sale pursuant to court order deemed commercially reasonable.

5. Sale by public auction after 4 months notice. Redemption at any time before sale – right to cure in first 35 days.

Sale or other disposition after reasonable notice - 10 days- NRS 104.9612

- Public sale (auction) secured party may buy
- Private sale secured party may not buy unless collateral sold on recognized market
- Debtor has right to redeem any time before secured party has disposed of the collateral or entered into a contract for disposition

6. Deed in lieu of foreclosure available.
Secured party may propose to accept collateral in full or partial satisfaction of debt.
Debtor may object and require sale. NRS 104.9620

7. Remedies if wrongful or improper sale, injunction, stop sale, or damages.

- Court may restrain disposition of collateral.
- Secured party liable for damages and the loss caused by failure to comply with Article; e.g. sale not commercially reasonable.
- Penalty includes loss of deficiency, damages for debtor's inability to obtain or increase cost of alternative financing and damages for loss of surplus. NRS 104.9625

TIPS

- Avoid all Article 9 requirements and restrictions by selling personal property collateral as part of real property foreclosure as permitted by NRS 104.9604(1)(b).
- If collateral is note secured by a deed of trust, secured party may if agreed after default collect directly from account debtor (maker of note) and foreclose deed of trust if pledged note in default without secured party becoming owner of the collateral by disposition or acceptance. 104.9607
