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

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

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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 104.9912
   - 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 deposition of collateral.  
- Secured party liable for damages and the loss cause 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 not 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  
ote in default without secured party becoming owner of  
the collateral by disposition or acceptance. NRS 104.9607