



# RECENT CHANGES TO REAL ESTATE LAW

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Nevada's latest legislative session revised the trustee's sales process and granted victims of domestic violence the right to terminate their residential leases. These changes, summarized in this article, are now in effect.

## TRUSTEE'S SALES

### *Homeowner's Bill of Rights*

Senate Bill 321, known as the Homeowner's Bill of Rights, codified as NRS 107.400 to 107.560, applies to the foreclosure of owner-occupied housing. Any financial institution that foreclosed on 100 or fewer owner-occupied properties in Nevada, in its preceding annual reporting period, is exempt.

Highlights include:

- At least 30 days before recording a notice of breach and election to sell, or commencing a judicial foreclosure action under NRS 40.430, the beneficiary, servicer or trustee must provide the borrower with a notice that includes, among other requirements:
  1. A summary of borrower's account, including the amount required to cure the default, contact information whereby borrower may obtain information regarding the loan and contact information for HUD-approved counseling agencies;
  2. A statement of foreclosure prevention alternatives, offered by the servicer or beneficiary; and
  3. A statement that the borrower may request certain information, including copies of loan documents and the borrower's payment history.<sup>1</sup>
- Borrowers must be notified of eligibility of any foreclosure prevention alternatives offered by beneficiary or servicer.<sup>2</sup>
- A notice may not be recorded, nor a judicial foreclosure commenced, until:

1. The requirements in NRS 107.500(1) described above are satisfied;
2. 30 days have passed since the servicer has contacted the borrower, pursuant to NRS 107.510(2), to assess the borrower's financial situation and explore options for the borrower to avoid a foreclosure sale or the servicer establishes it cannot reach the borrower after exhausting the means set forth in NRS 107.510(5); and
3. The servicer or beneficiary complies with NRS 107.520 and 107.530.

Any notice related to owner-occupied housing must include a declaration that the servicer has contacted the borrower, as required by NRS 107.510(2), or attempted to contact the borrower as required by NRS 107.510(5).

- A servicer or beneficiary must send the borrower written acknowledgment of the receipt of a foreclosure prevention alternative application within five business days after receiving the same from the borrower. The acknowledgment must describe the process for consideration, include a statement that the servicer or beneficiary must either deny the application or submit a written offer for a foreclosure prevention alternative within 30 calendar days after the borrower submits a complete application and, if such an offer is submitted, the borrower must accept or reject the offer within 14 days of receipt.<sup>3</sup>
- Neither a judicial foreclosure action may be commenced, nor a notice recorded, until the foreclosure prevention alternative process has been resolved by a proper denial of an application, the borrower's failure to timely submit a completed application or accept a written offer or a borrower-default under the terms of an accepted offer. Any denial must state the reasons for the denial. Borrowers are entitled to appeal a denial.<sup>4</sup>
- A servicer or beneficiary must establish a single point of contact to take the borrower through the foreclosure prevention alternative negotiation process.<sup>5</sup>
- Within a certain timeframe, a sale must be noticed and conducted. Failure to meet the timeframes requires the dismissal of a judicial foreclosure or a rescission of a notice.<sup>6</sup>

- Servicers and beneficiaries are subject to liability for failing to comply with the Homeowner's Bill of Rights.
- No provision of Nevada law may be construed to require that a sale in lieu of a foreclosure be an arm's-length transaction, or to prohibit such a sale that is not an arm's-length transaction.

### ***New Affidavit Requirements***

In 2011, the Nevada State Legislature revised NRS 107.080(c)(2) to require that a notice must be accompanied by an affidavit containing certain information. Assembly Bill 300 (2013) revised the information required in such affidavits and the method by which a person may obtain the personal knowledge to supply such information.

NRS 107.080(c)(2) has been revised as follows:

- Previously, the affidavit required that the affiant certify the contents of the affidavit based on personal knowledge, without guidance as to what constituted personal knowledge. Now, personal knowledge may be either direct, first-hand knowledge or personal knowledge acquired through reviewing the business records of the beneficiary or servicer.
- The affidavit no longer requires a statement that the trustee has authority to exercise the power for sale; instead, it must provide that the beneficiary, its successor or the trustee is entitled to enforce the obligation or debt secured by the deed of trust. Because a promissory note is most often the basis for enforcement of a debt secured by the deed of trust, NRS 107.080(2)(c) now provides that a beneficiary, its successor or the trustee is entitled to enforce a note, if any of such parties is:
  1. The holder of the note;
  2. A nonholder, in possession of the note, with rights of a holder; or
  3. A person not in possession who is entitled to enforce the note, pursuant to a court order issued under NRS 104.3309.
- The affidavit no longer requires the inclusion of the amount in default, principal amount owing or estimates of the costs associated with exercising the power of sale. However, NRS 107.080(3) now requires that the affidavit certify that the beneficiary, its successor in interest, the servicer or an attorney representing any of those persons has sent the borrower a written statement including:
  1. The amount required to cure the default, avoid the exercise of the power of sale and reinstate the terms of the loan;

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2. The amount in default;
  3. The principal amount owing;
  4. The amount of accrued interest and locate charges;
  5. A good faith estimate of all fees imposed in connection with the exercise of the power of sale; and
  6. Contact information for obtaining the most current amounts due, including the local or toll-free telephone number the borrower may call to obtain such information.
- The name of each assignee of a recorded assignment of the deed of trust must be included.

## Abandoned Residential Property

Senate Bill 278 adopted an expedited procedure for the sale of abandoned residential property. This expedited procedure is codified as NRS 107.130. There are several criteria that qualify a property as abandoned residential property. Assuming the requirements are met, the sale may be expedited by up to 30 days. Proceeding under the expedited process is not without risk, as failure to fully comply with the requirements enables a grantor to unwind the sale by recording an affidavit stating that the property is not abandoned. Nevertheless, the process may prove useful for beneficiaries of abandoned residential property in certain cases, including when a grantor under a deed of trust certifies to the beneficiary that the property is abandoned.

## NEW TENANT LEASE TERMINATION OPTION

AB 284 added sections to NRS Chapter 118A to provide victims of domestic violence with an option to terminate their residential leases and protect them against landlord retaliation. The changes do not limit a landlord's right to terminate a lease for reasons unrelated to domestic violence.

NRS 118A.345 permits a tenant, cotenant or household member who is a victim of domestic violence to terminate a rental agreement by giving the landlord written notice of termination, which notice is effective upon the earlier of either the end of the current lease term or 30 days after providing the landlord such notice. A household member is a person, related by blood or marriage, actually residing with a tenant. The notice must be given within 90 days after the occurrence of the actions, events or circumstances that resulted in the tenant, cotenant or household member becoming a victim of domestic violence.

The written notice must describe the reason for termination and be accompanied by copies of:

1. The domestic violence order for protection;
2. A written report from law enforcement, indicating that the tenant, cotenant or household member notified the law enforcement agency of the domestic violence; or

3. A written affidavit in the form prescribed under NRS 118A.347, signed by any of the following professionals, who must be licensed to practice in Nevada: physician, psychiatrist, psychologist, social worker, registered nurse holding a master's degree in psychiatric nursing, marriage and family therapist, clinical professional counselor. The affidavit may also be signed by a properly appointed clergy member of a 501(c)(3) organization.

A tenant or cotenant who terminates a rental agreement pursuant to NRS 118A.345 is only liable for rent through the date of termination. The abuser may be civilly liable to the landlord for all economic losses incurred by the landlord in connection with the early termination. The abuse victim may require the landlord to re-key or replace the lock on the residence, if the tenant pays the cost of such installation. Landlord may not provide a key to a new lock to an abuser nor provide such abuser with any information regarding the whereabouts of the affected tenant, cotenant or household member. NRS 118A.510, prohibiting certain retaliatory conduct by landlord, now also prohibits such conduct against any domestic violence victim or any tenant or cotenant terminating his or her lease under NRS 118A.345. ■

1. NRS 107.500(1).
2. NRS 107.500(2).
3. NRS 107.520.
4. NRS 107.530.
5. NRS 107.540.
6. NRS 107.550.



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