



Pacific Law Journal Review of Selected Nevada Legislative

Volume 1979 | Issue 1

Article 53

1-1-1979

Property; Affidavits in Eviction Proceedings

Don H. Gallian

Follow this and additional works at: <https://scholarlycommons.pacific.edu/nlr>



Part of the [Legislation Commons](#)

Recommended Citation

Don H. Gallian, *Property; Affidavits in Eviction Proceedings*, 1979 U. PAC. L. REV. (1979).

Available at: <https://scholarlycommons.pacific.edu/nlr/vol1979/iss1/53>

This Legislative Review is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in Pacific Law Journal Review of Selected Nevada Legislative by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

remainder of the rental payment.⁷ The 1979 statment must also show the amount of the periodic rent that was used to pay property taxes in 1978.⁸

Chapter 593 does not apply to (a) any property which is covered by a written agreement which requires the tenant to pay taxes; (b) any lodging unless it contains its own cooking and toilet facilities which are separate from other living quarters; (c) any room in a hotel or motel; (d) any concession within a larger commercial enterprise, or any other property not customarily used separately from adjacent units; or (4) any property for which rent is a share of sales or profit.⁹

Chapter 593 will expire by limitation on June 30, 1981, if before that date the constitution of Nevada is amended to limit the amount of general (ad valorem) taxes on real property to one dollar for each one hundred dollars of full cash value, or to any lesser amount.¹⁰

Don H. Gallian

FOOTNOTES

1. 1979 Nev. Stats. ch. 593 §11 (adding to NRS Ch. 353).
2. Id. §2 (adding to NRS Ch. 361).
3. Id. §6 ¶ 4 (adding to NRS Ch. 118).
4. Id. §6 ¶ 6 (adding to NRS Ch. 118).
5. Id. §6 ¶ 4 (adding to NRS Ch. 118).
6. Id. §6 ¶ 5 (adding to NRS Ch. 118).
7. Id. §6 ¶ 1 (adding to NRS Ch. 118).
8. Id. §6 ¶ 4 (adding to NRS Ch. 118).
9. Id. §6 ¶ 3 (adding to NRS Ch. 118).
10. Id., §39 ¶ 4.

PROPERTY; AFFIDAVITS IN EVICTION PROCEEDINGS

Amends NRS 40.253

AB 769 (Committee on Commerce); STATS 1979, Ch 648

Chapter 648 amends NRS 40.253 to clarify procedures for the eviction of defaulting tenants upon the landlord's affidavit. NRS 40.253 deals with periodic tenants with rent paid by the month or shorter periods;¹ its provisions are applicable "unless otherwise agreed in writing."²

If the tenant is in default of rent, the landlord may serve notice to the tenant to either pay or surrender the property.³ This notice must advise the tenant of the right to contest the matter by filing an affidavit with the justice of the peace.⁴ Previously, the tenant could only contend in the affidavit that there was no default in the payment of the rent.⁵

Chapter 648 allows the tenant to contest the landlord's notice by filing an affidavit saying that either there is no default in the payment of rent or that the payment had been tendered to the landlord and was refused.⁶ After a file-stamped copy of the tenant's affidavit is delivered to the landlord or his representative,⁷ the landlord must admit the tenant to the premises.⁸

If the tenant does not comply with the notice or does not file an affidavit within the time required, the landlord may apply to the justice of the peace for an order directing the sheriff or constable to remove the tenant.⁹ The justice of the peace will determine the truthfulness and sufficiency of the affidavits filed by the landlord and tenant.¹⁰ The justice will then issue either a summary order for the tenant's removal from or nonadmittance to the premises or require that further proceedings be held to determine the issues of fact, in accordance with unlawful detainer procedures.¹¹

Don H. Gallian

FOOTNOTES

1. 1977 Nev. Stats. ch. 235 §1, at 418 (NRS 40.235(1), amended by 1979 Nev. Stats. ch. 648 (hereinafter "Ch. 648") §1).

2. Id.

3. NRS 40.253(1) (as amended by Ch. 648 §1).
4. Id.
5. 1977 Nev. Stats. ch. 235 §1, at 418 (NRS 40.253(1), amended by Ch. 648 §1).
6. Ch. 648 §1 (amending NRS 40.253(1)).
7. Id. §1 (amending NRS 40.253(2)(b)).
8. Id. §1 (amending NRS 40.253(1)).
9. NRS 40.253(2)(a) (as amended by Ch. 648 §1).
10. NRS 40.253(3) (as amended by Ch. 648 §1).
11. Id.

PROPERTY; LIS PENDENS

Adds to NRS Chapter 14
SB 343 (Close); STATS 1979, Ch 507
(Effective May 26, 1979)

Chapter 507 provides a method of cancelling the notice of a pending action from the property records recorded in the county recorder's office. Existing law allows a party who has an action dealing with the foreclosure of a mortgage upon real property or affecting the title or possession of real property, to file a notice of the pending action in the county where the property is located.¹ The filing of this notice gives any subsequent purchaser or incumbrancer constructive notice of the pending action.² A person having constructive notice will not be protected by the law as a bona fide purchaser.³

Prior to Chapter 507, a party did not have the opportunity for a hearing to contest the filing of a pendency notice. If the notice was improperly filed, the injured party could only bring an action to remove a cloud on title and for damages for slander of title, but such proceedings could offer no immediate relief.⁴ Chapter 507 provides for a hearing to oppose a notice of the pendency of the action. The hearing must be set as soon as it is practicable and will take precedence over all other civil matters, except motions for preliminary injunctions.⁵

The party who filed the notice must be given five days notice⁶ of the hearing.⁷ He must then appear and prove by a preponderance of evidence that: (a) the action is for the foreclosure of a mortgage or affects the title or possession of real property; (b) his claim is not brought in bad faith or for an "improper motive";⁸ (c)