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Property; actions against surety or guarantor

The University of the Pacific, McGeorge School of Law

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Existing law limits a creditor to one cause of action for recovering a debt or enforcing a right secured by a mortgage, deed of trust, or lien on real property. Prior case law provided an exception to this "one-action rule" by permitting a creditor to proceed against a guarantor separately and independently from the creditor's foreclosure. Chapter 470 permits a guarantor, surety, or other obligor to waive the one-action rule. However, the one-action rule may not be waived if the principal balance of the debt is at any time less than $500,000 or if the real property was used primarily for the production of farm products when the obligation was created. If the secured property is the residence of no more than four families or contains no more than one residential structure, then the waiver is void. The guarantor, surety, or other obligor cannot waive the one-action rule after the commencement of a judicial proceeding that violates the one-action rule if the proceeding is stayed or dismissed before judgment has been entered or if the suit is converted into one which does not violate the one-action rule. If the obligor asserts the one-action rule as a defense, the court must, upon motion by a party, either dismiss the proceeding without prejudice or grant a continuance and require the complainant to convert the action into one that does not violate the one-action rule. The obligor's failure to assert the one-action rule as an affirmative defense in a judicial proceeding acts as a waiver to that defense. See Short v. Sinai, 50 Nev. 346, 350, 259 P. 417, 418 (1927) (citing McMillan v. Bull's Head Bank, 32 Ind. 11, 2 Am. Rep. 323) (distinction between surety and guarantor).

3. 1989 Nev. Stat. ch. 470, sec. 2, at 1001 (amending Nev. Rev. Stat. § 40.495). A creditor does not forfeit any rights in the security after the commencement of a judicial proceeding that violates the one-action rule if the proceeding is stayed or dismissed before judgment has been entered or if the suit is converted into one which does not violate the one-action rule. Id. ch. 750, sec. 3, at 1767 (enacting Nev. Rev. Stat. § 40..). If the obligor asserts the one-action rule as a defense, the court must, upon motion by a party, either dismiss the proceeding without prejudice or grant a continuance and require the complainant to convert the action into one that does not violate the one-action rule. Id. The obligor's failure to assert the one-action rule as an affirmative defense in a judicial proceeding acts as a waiver to that defense. Id. See Short v. Sinai, 50 Nev. 346, 350, 259 P. 417, 418 (1927) (citing McMillan v. Bull's Head Bank, 32 Ind. 11, 2 Am. Rep. 323) (distinction between surety and guarantor).
5. Id.
if the secured property is the owner’s principal residence or if the
debt is secured by a purchase money mortgage. 6

Prior law did not apply the one-action rule if the action fell under
the Uniform Commercial Code. 7 Chapter 750 provides that the one-
action rule applies whether or not the action 8 falls under the Uniform
Commercial Code. 9

Under existing case law, a guarantor receives the same protections
given a primary obligor by the deficiency judgment statutes. 10 Chapter
470 extends these protections to sureties and any other obligors in
an action to enforce a mortgage or lien on real property and on the
secured debt. 11

Property; controlled substances—forfeiture of real property and
eviction of tenants

NEV. REV. STAT. §§ 315. —, 453. — (new); §§ 40.2514, 40.254,
179.1164, 453.301 (amended).
AB 339 (Arberry); 1989 STAT. Ch. 578
AB 836 (McGaughey); 1989 STAT. Ch. 574

Chapters 578 and 574 require the eviction of any tenant convicted
of a violation of a controlled substance law. 1 Under Chapter 578,

1. 1989 Nev. Stat. ch. 578, secs. 1, at 1230 (amending NEV. REV. STAT. § 453. —)(conviction must be for a violation of the Uniform Controlled Substances Act); 4, at 1224 (enacting NEV. REV. STAT. § 315. —)(conviction may also be for a violation of any state or federal law on controlled substances). See NEV. REV. STAT. §§ 453.011-.348 (1987) (Uniform Controlled Substances Act).