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Property

Property; actions against surety or guarantor

NEV. REV. STAT. § 40.4591 (repealed); §§ 40.____, 107.____ (new); §§ 40.430, 40.440, 40.450, 40.451, 40.459, 40.465, 40.495, 107.080, 107.090 (amended).

AB 557 (Committee on Judiciary); 1989 STAT. Ch. 470

SB 479 (Committee on Judiciary); 1989 STAT. Ch. 750

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.¹ 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.² Chapter 470 permits a guarantor, surety, or other obligor to waive the one-action rule.³ 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.⁴ 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.⁵ The guarantor, surety, or other obligor cannot waive the one-action rule

1. NEV. REV. STAT. § 40.430 (1987) (hereinafter the one-action rule).

2. *First Nat'l Bank of Nevada v. Barengo*, 91 Nev. 396, 397, 536 P.2d 487, 487 (1975).

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 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).

4. 1989 Nev. Stat. ch. 470, sec. 2, at 1001 (amending NEV. REV. STAT. § 40.495).

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 action⁸ 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

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6. *Id.*

7. 1987 Nev. Stat. ch. 563, sec. 2, at 1345 (amended by 1989 Nev. Stat. ch. 750, sec. 5, at 1768).

8. *See* 1989 Nev. Stat. ch. 750, sec. 5, at 1768 (amending NEV. REV. STAT. § 40.430 4), (acts or proceedings which are not included in the definition of action).

9. *Id.* (amending NEV. REV. STAT. § 40.430).

10. *First Interstate Bank of Nevada v. Shields*, 102 Nev. 616, 618, 730 P.2d 429, 431 (1986) (guarantors permitted the same benefits of the deficiency judgment statutes as other obligors). The deficiency judgment statutes are set forth in Nevada Revised Statute §§ 40.451-40.459. *Id.* at 618, 730 P.2d 429, 430.

11. 1989 Nev. Stat. ch. 470, sec. 2, at 1001 (amending NEV. REV. STAT. § 40.495 2).

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).