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

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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).

when rental property² is used to violate the Uniform Controlled Substances Act³ (the Act), that property is subject to forfeiture unless the tenant⁴ is evicted.⁵ Chapter 578 requires that the owners of rental property be given notice⁶ that their property may be forfeited because a tenant was arrested for using the property to violate the Act.⁷ If the tenant is convicted, a second notice must be sent to the owner stating that the property is subject to forfeiture unless the convicted tenant is evicted.⁸

Under Chapter 574, the tenant and all persons residing with the tenant must vacate public housing when the tenant or any person living with the tenant is convicted of violating a controlled substance law.⁹ The tenant may not be allowed to reside again in public housing.¹⁰ Notice of the eviction and the opportunity for a hearing to contest the eviction are provided for by Chapter 574.¹¹

By enacting Chapter 574, the legislature intends to promote the health, safety and welfare of residents of public housing, by penalizing those residents who violate any state or federal law on controlled substances.¹²

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2. 1998 Nev. Stat. ch. 578, sec. 1, at 1230 (enacting NEV. REV. STAT. § 453.____) (rental property can be any real property or a mobile home).

3. NEV. REV. STAT. §§ 453.011-.552 (1987) (amended by 1989 Nev. Rev. Stat. ch. 578, sec. 1) Chapter 578 excepts section 453.336, the provision covering possession of a controlled substance without the intent to sell. 1989 Nev. Stat. ch. 578, sec. 1, at ____.

4. 1989 Nev. Rev. Stat. ch. 578, sec. 1, at 1230 (amending NEV. REV. STAT. ch. 453.____) (definition of tenant).

5. *Id.* at 1231.

6. Written notice will be given when the tenant is arrested for a violation of the Act. *Id.* The property is subject to forfeiture pursuant to Nevada Revised Statute sections 453.301 and 179.1156-.119 inclusive. *Id.* The notice creates a contestable presumption that the owner knew of, and consented to, any subsequent violation of the Act. *Id.* at sec. 5.

7. *Id.*

8. *Id.* sec 5, at 1234 (amending NEV. REV. STAT. § 179.1164). The landlord is entitled to reasonable attorney's fees should the tenant contest the eviction. *Id.* sec. 4, at 1232 (amending NEV. REV. STAT. § 40.254).

9. 1989 Nev. Rev. Stat. ch. 574, sec. 4, at 1224 (amending NEV. REV. STAT. § 315.____). Conviction of the tenant or any person residing with the tenant for possession, use, or distribution of a controlled substance, will result in the eviction of all persons residing with the tenant. *Id.* A second violation by a juvenile residing with the tenant, or a first violation by a juvenile who resides with the tenant and fails to enroll in an available rehabilitation program, will also result in an eviction. *Id.*

10. *Id.* sec. 5, at 1224 (amending NEV. REV. STAT. § 315.____). Tenants who did not actually commit the violation may be allowed to reside in public housing after a reasonable period. *Id.*

11. *Id.* sec. 6, at 1224 (amending NEV. REV. STAT. § 315.____). The tenant has five days in which to file an affidavit with the justice of the peace in order to obtain a hearing to contest the eviction. *Id.*

12. *Id.* ch. 574, sec. 2, at 1223 (amending NEV. REV. STAT. § 315.____) (public housing not intended to subsidize criminal activity).