Property; distribution of foreclosure proceeds

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Property

Property; distribution of foreclosure proceeds

NEV. REV. STAT. § 40._ (new); §§ 40.430, 40.440 (amended).
AB 320 (Committee on Judiciary); 1989 STAT. Ch. 411

Existing law provides that after a foreclosure sale, a court may direct payment of any proceeds in excess of the mortgage or lien and the costs of foreclosure to any person entitled to the surplus.¹ Chapter 411 specifies the priority for payment of these proceeds.² The right to a distribution vests at the time of the foreclosure sale, and is unaffected by any later judgment creditor³ or deficiency judgment.⁴ However, a junior mortgagee or lienholder who buys an interest in the property at the foreclosure sale does not forfeit the right to a distribution, and may obtain a deficiency judgment if the debt is not satisfied.⁵

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2. 1989 Nev. Stat. ch. 411, sec. 1, at 887 (enacting NEV. REV. STAT. § 40._). The order of distribution is: (1) reasonable expenses incurred in taking possession of and maintaining the property, including all costs of the foreclosure sale; (2) payment of the debt being enforced by the sale; (3) payment of junior mortgagees and lien holders; and (4) payment to the debtor. Id.
3. The provisions of Nevada Revised Statutes section 40.455 (covering deficiency judgment awards to judgment creditors) do not affect rights to proceeds. Id.
4. Id. The provisions of Nevada Revised Statutes sections 40.457 (regarding appraisal of property value) and 40.459 (regarding limitations on amounts of deficiency judgments) do not affect rights to proceeds. Id.
5. Id. See Carrillo v. Valley Bank, 103 Nev. 157, 159, 734 P.2d 724, 725 (1987) (if the senior lienholder or mortgagee initiates a foreclosure, a junior lienholder or mortgagee may resort to a deficiency judgment to the extent that the combined debts secured by the property exceed the fair market value of the property).