



# Pacific Law Journal Review of Selected Nevada Legislative

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Volume 1989 | Issue 1

Article 124

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1-1-1989

## Property; distribution of foreclosure proceeds

The University of the Pacific, McGeorge School of Law

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### Recommended Citation

The University of the Pacific, McGeorge School of Law, *Property; distribution of foreclosure proceeds*, 1989 U. PAC. L. REV. (2019).

Available at: <https://scholarlycommons.pacific.edu/nlr/vol1989/iss1/124>

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## 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.<sup>1</sup> Chapter 411 specifies the priority for payment of these proceeds.<sup>2</sup> The right to a distribution vests at the time of the foreclosure sale, and is unaffected by any later judgment creditor<sup>3</sup> or deficiency judgment.<sup>4</sup> 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.<sup>5</sup>

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1. NEV. REV. STAT. § 40.440 (1988) (amended by 1989 Nev. Stat. ch. 411, sec. 3, at 888).

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).