

[Rev. 2/9/2010 2:05:14 PM]

CHAPTER 106 - REAL MORTGAGES

ADOPTION OF COVENANTS

- [NRS 106.020](#) Adoption by reference before March 1, 1967.
[NRS 106.025](#) Adoption by reference on and after March 1, 1967.
[NRS 106.030](#) Mortgage secures performance of covenants adopted by reference.
[NRS 106.040](#) Adoption by reference in instrument.
[NRS 106.050](#) Parties may enter into different or additional covenants.

IMPOUND TRUST ACCOUNTS

- [NRS 106.105](#) Contributions; payment of obligations; notice regarding and disposition of excess money; civil penalty.

MORTGAGES OF ESTATES FOR YEARS; POSSESSORY CLAIMS TO PUBLIC LANDS OR MINING CLAIMS

- [NRS 106.195](#) Mortgage of estate for years.
[NRS 106.200](#) Effect of recorded mortgage upon possessory claims to public lands or mining claims.

ASSIGNMENTS; SUBORDINATION AND WAIVERS AS TO PRIORITY; DISCHARGE AND EXTINGUISHMENT

- [NRS 106.210](#) Recording of assignments of mortgages or beneficial interests in deeds of trust; constructive notice.
[NRS 106.220](#) Filing and recording of instruments subordinating or waiving priority of mortgages or deeds of trust; constructive notice.
[NRS 106.240](#) Extinguishment of lien created by mortgage or deed of trust upon real property.
[NRS 106.260](#) Discharge and assignment: Marginal entries; discharge or release must be recorded when mortgage or lien recorded by microfilm.
[NRS 106.270](#) Discharge of mortgages on filing of certificates specifying satisfaction or payment.
[NRS 106.280](#) Certificates of discharge: Recording.
[NRS 106.290](#) Recording of discharge of mortgage by mortgagee; liability for failure to record discharge; requirements for release of mortgage when discharge not recorded; liability for improperly recording release; criminal penalty.

ENCUMBRANCE TO SECURE FUTURE ADVANCES

- [NRS 106.300](#) Definitions.
[NRS 106.310](#) "Borrower" defined.
[NRS 106.320](#) "Future advance" defined.
[NRS 106.330](#) "Instrument" defined.
[NRS 106.340](#) "Lender" defined.
[NRS 106.345](#) "Principal" defined.
[NRS 106.350](#) Applicability.
[NRS 106.360](#) Execution, contents and amendment of instrument.
[NRS 106.370](#) Priority of lien.
[NRS 106.380](#) Notice of election to terminate operation of instrument; recording of statement by lender or borrower; change of notice address by lender.
[NRS 106.390](#) Effect of notice of termination.
[NRS 106.400](#) Advances made after notice of termination.

ADOPTION OF COVENANTS

NRS 106.020 Adoption by reference before March 1, 1967. In any mortgage of real or personal, or real and personal property, made prior to March 1, 1967, the parties may adopt by reference all or any of the following covenants, agreements, obligations, rights and remedies:

1. COVENANT NO. 1. That the mortgagor will perform each and all of the promises and obligations of the mortgage and all covenants thereof, adopted by reference as provided herein, and will pay the indebtedness therein described with interest as therein provided.

2. COVENANT NO. 2. That the mortgagor will pay a reasonable attorney fee in case suit is started for the collection of the mortgage debt or any part thereof, and will pay all costs and expenses of the suit, whether the suit be prosecuted to judgment or not, and will also pay all costs of any sale made thereunder without court proceedings, including in case of such sale an attorney fee equal to percent of the amount due at the date of the sale upon the principal and interest of the mortgage debt.

3. COVENANT NO. 3. That the mortgagor will pay, in lawful money of the United States, all sums expended or advanced by the mortgagee for taxes or assessments levied or assessed against the mortgaged property, fire insurance upon the same, or advanced for any other purpose provided for by the terms of the mortgage or the covenants thereof adopted by reference, together with interest upon any such sums from the date of the payment by the mortgagee until repaid, at the rate of percent per annum.

4. COVENANT NO. 4. That this mortgage will be security for the payment in lawful money of the United States of any and all moneys that may hereafter become due or payable from the mortgagor to the mortgagee, from any cause whatsoever.

5. COVENANT NO. 5. That this mortgage shall be security for any and all renewals of the mortgage debt or of the promissory note or notes evidencing the same, which may be executed and delivered by the mortgagor to the mortgagee, and any and all additional or future advances or loans which may be made by the mortgagee to the mortgagor.

6. COVENANT NO. 6. That the mortgagor agrees to pay and discharge at maturity all taxes and assessments and all other charges and encumbrances which are, or shall hereafter be, or appear to be, a lien upon the mortgaged property, or any part thereof, and the mortgagor will pay all interest or installments due on any prior encumbrance. And in default thereof, the mortgagee may, without demand or notice, pay the same and the mortgagee shall be the sole judge of the legality or validity of such taxes, assessments, charges or encumbrances and the amount necessary to be paid in the satisfaction or discharge thereof.

7. COVENANT NO. 7. That the mortgagor will at all times keep the buildings and improvements, which are now or which shall hereafter be erected upon the mortgaged premises, insured against loss or damage by fire to the amount of at least \$..... in some reliable insurance company or companies, approved by the mortgagee, and will deliver the policies therefor to the mortgagee to be held by the mortgagee as further security. In default of the mortgagor to obtain such insurance, the mortgagee may procure the same, not exceeding the amount aforesaid, and may pay and expend for premiums for such insurance such sums of money as the mortgagee shall deem necessary.

8. COVENANT NO. 8. That if there be more than one mortgagor in a mortgage, all covenants, terms, promises and obligations set forth in the mortgage or adopted by reference are agreed to be joint and several covenants, terms, conditions, promises and obligations of each of the mortgagors thereto.

9. COVENANT NO. 9. That this mortgage is made upon the express condition that if all sums secured hereby shall be paid at the time, place and manner mentioned in the mortgage, or in any of the covenants provided by this section which shall be adopted by reference, the mortgage and the estate therein mentioned and described shall cease, determine and be void, and the mortgagor, for himself or herself, his or her heirs, executors, administrators, successors and assigns, covenants and agrees to pay in lawful money of the United States to the mortgagee all sums secured by the mortgage, or by the terms of the covenants adopted by reference at the time and in the manner therein provided, and if default be made in the payment of the principal or interest or any part thereof described in the mortgage, or of any promissory note or other instrument or obligation for which such mortgage is given as security, the whole of the principal sum for which the mortgage is given, which shall be then unpaid, shall become forthwith payable, although the time expressed in the promissory note or notes or other obligation or obligations shall not have arrived.

10. COVENANT NO. 10. That it is understood and agreed that all the natural increase, during the existence of this mortgage, of any livestock which shall at any time be subject to the lien hereof, and all other livestock of the same kind as that described in the mortgage which in any manner is acquired by the mortgagor during the life of the mortgage, and all wool grown upon or produced by any sheep which shall at any time be subject to the lien of the mortgage, is property mortgaged hereunder and subject to the lien of the mortgage.

11. COVENANT NO. 11. That the mortgagor covenants and agrees to keep all livestock mortgaged or subject to the lien of the mortgage in good condition, and care for, inspect and protect the same, and provide and maintain sufficient blooded, graded breeding stock to properly serve any female livestock at any time subject to the lien of the mortgage, and in general to exercise such care in rearing, branding, ranging and feeding all livestock subject to the lien of the mortgage as is consistent and in accord with good business, and with the customary manner of handling that kind of livestock which is subject to the lien hereof. Should the livestock or any part thereof at any time, in the opinion of the mortgagee, require care, attention or protection other than that provided by the mortgagor, then the mortgagee may enter or cause entry to be made upon any property where the mortgaged livestock or any part thereof may be found, and assume control, custody and possession of the same, and at the expense of the mortgagor care for, protect, and attend to the same in such manner as it may deem necessary.

12. COVENANT NO. 12. That it is further understood and agreed that the mortgagee, its agents or attorneys, shall have the right at all times to inspect and examine any property which may at any time be subject to the lien of the mortgage, for the purpose of ascertaining whether or not the security given is being lessened, diminished, depleted or impaired, and if such inspection or examination shall disclose, in the judgment of the mortgagee, that the security given or the property mortgaged is being lessened or impaired, such condition shall be deemed a breach of the covenants of the mortgage on the part of the mortgagor.

13. COVENANT NO. 13. That upon default of any of the terms, conditions, covenants or agreements of any chattel

mortgage whereby livestock is mortgaged, it is agreed that the mortgagee may, without foreclosure and without legal proceedings and without any previous demand therefor, with the aid or assistance of any person or persons, enter upon the premises and ranges of the mortgagor or such place or places as any of the property subject to the lien of the mortgage is or may be found, and take, lead, drive or carry away the mortgaged property or any part thereof, and with or without notice to the mortgagor, at either public or private sale, sell and dispose of the same or so much thereof as may be necessary to pay the amount and sums secured by the mortgage, for the best price it can obtain, and out of the moneys arising therefrom it shall retain and pay the sum or sums then due or payable under the lien of the mortgage, and interest thereon, and all charges and expenses incurred in gathering, feeding, caring for, and selling the property or any part thereof, and any other expenses and charges incurred by the mortgagee, and all other sums secured by any of the terms of the mortgage, and any overplus shall be paid to the mortgagor. The mortgagee is expressly authorized and empowered, upon any such sale, to make and execute such bills of sale or other conveyances necessary to convey to the purchaser or purchasers thereof an absolute title in the property so sold. It shall not be necessary for the purchaser or purchasers at any such sale or sales purported to be made under the powers granted hereunder to inquire into or in any way be or become responsible for the actual existence of the contingency or contingencies upon which such sale or sales shall be made by the mortgagee, and title to the purchaser or purchasers of the property so sold shall be good and sufficient; and the mortgagor agrees that the decision of the mortgagee as to the actual existence of the contingency or contingencies upon which the sale or sales as aforesaid is or may be predicated shall be conclusive and binding upon the mortgagor.

14. COVENANT NO. 14. That it is expressly agreed by and between the mortgagor and mortgagee that, in the event suit shall be instituted for the foreclosure of the mortgage, the mortgagee may, at its option and without notice, apply for the appointment of a receiver for the purpose of taking possession of the mortgaged property pending foreclosure, and with the approval of the court wherein such suit is instituted, such receiver as may be designated by the mortgagee shall be appointed. All costs in connection with the appointment of a receiver or in connection with the discharge of the duties of the receiver shall be taxed as costs in the suit.

15. COVENANT NO. 15. That it is expressly agreed and understood that in any sale of any of the property at any time subject to the lien of the mortgage, under the terms of the mortgage or any of the covenants adopted by reference, the property may, at the option of the mortgagee, be sold in one lot or parcel or in such other lots or parcels as may be designated by the mortgagee; and it is further covenanted and agreed that the mortgagee may become the purchaser of the property or any part thereof at any sale made under any of the terms of the mortgage, or upon foreclosure.

[1:109:1927; NCL § 4330]—(NRS A 1967, 120)

NRS 106.025 Adoption by reference on and after March 1, 1967. In any mortgage of real property, made on or after March 1, 1967, the parties may adopt by reference all or any of the following covenants, agreements, obligations, rights and remedies:

1. COVENANT NO. 1. That the mortgagor will perform each and all of the promises and obligations of the mortgage and all covenants thereof, adopted by reference as provided herein, and will pay the indebtedness therein described with interest as therein provided.

2. COVENANT NO. 2. That the mortgagor will pay a reasonable attorney fee in case suit is started for the collection of the mortgage debt or any part thereof, and will pay all costs and expenses of the suit, whether the suit be prosecuted to judgment or not, and will also pay all costs of any sale made thereunder without court proceedings, including in case of such sale an attorney fee equal to percent of the amount due at the date of the sale upon the principal and interest of the mortgage debt.

3. COVENANT NO. 3. That the mortgagor will pay, in lawful money of the United States, all sums expended or advanced by the mortgagee for taxes or assessments levied or assessed against the mortgaged property, fire insurance upon the same, or advanced for any other purpose provided for by the terms of the mortgage or the covenants thereof adopted by reference, together with interest upon any such sums from the date of the payment by the mortgagee until repaid, at the rate of percent per annum.

4. COVENANT NO. 4. That this mortgage will be security for the payment in lawful money of the United States of any and all moneys that may hereafter become due or payable from the mortgagor to the mortgagee, from any cause whatsoever.

5. COVENANT NO. 5. That this mortgage shall be security for any and all renewals of the mortgage debt or of the promissory note or notes evidencing the same, which may be executed and delivered by the mortgagor to the mortgagee, and any and all additional or future advances or loans which may be made by the mortgagee to the mortgagor.

6. COVENANT NO. 6. That the mortgagor agrees to pay and discharge at maturity all taxes and assessments and all other charges and encumbrances which are, or shall hereafter be, or appear to be, a lien upon the mortgaged property, or any part thereof, and the mortgagor will pay all interest or installments due on any prior encumbrance. And in default thereof, the mortgagee may, without demand or notice, pay the same and the mortgagee shall be the sole judge of the legality or validity of such taxes, assessments, charges or encumbrances and the amount necessary to be paid in the satisfaction or discharge thereof.

7. COVENANT NO. 7. That the mortgagor will at all times keep the buildings and improvements, which are now or which shall hereafter be erected upon the mortgaged premises, insured against loss or damage by fire to the amount of at least \$..... in some reliable insurance company or companies, approved by the mortgagee, and will deliver the policies therefor to the mortgagee to be held by the mortgagee as further security. In default of the mortgagor to obtain such insurance, the mortgagee may procure the same, not exceeding the amount aforesaid, and may pay and expend for premiums for such insurance such sums of money as the mortgagee shall deem necessary.

8. COVENANT NO. 8. That if there be more than one mortgagor in a mortgage, all covenants, terms, promises and obligations set forth in the mortgage or adopted by reference are agreed to be joint and several covenants, terms,

conditions, promises and obligations of each of the mortgagors thereto.

9. COVENANT NO. 9. That this mortgage is made upon the express condition that if all sums secured hereby shall be paid at the time, place and manner mentioned in the mortgage, or in any of the covenants provided by this section which shall be adopted by reference, the mortgage and the estate therein mentioned and described shall cease, determine and be void, and the mortgagor, for himself or herself, his or her heirs, executors, administrators, successors and assigns, covenants and agrees to pay in lawful money of the United States to the mortgagee all sums secured by the mortgage, or by the terms of the covenants adopted by reference at the time and in the manner therein provided, and if default be made in the payment of the principal or interest or any part thereof described in the mortgage, or of any promissory note or other instrument or obligation for which such mortgage is given as security, the whole of the principal sum for which the mortgage is given, which shall be then unpaid, shall become forthwith payable, although the time expressed in the promissory note or notes or other obligation or obligations shall not have arrived.

10. COVENANT NO. 10. That it is further understood and agreed that the mortgagee, its agents or attorneys, shall have the right at all times to inspect and examine any property which may at any time be subject to the lien of the mortgage, for the purpose of ascertaining whether or not the security given is being lessened, diminished, depleted or impaired, and if such inspection or examination shall disclose, in the judgment of the mortgagee, that the security given or the property mortgaged is being lessened or impaired, such condition shall be deemed a breach of the covenants of the mortgage on the part of the mortgagor.

11. COVENANT NO. 11. That it is expressly agreed by and between the mortgagor and mortgagee that, in the event suit shall be instituted for the foreclosure of the mortgage, the mortgagee, may, at its option and without notice, apply for the appointment of a receiver for the purpose of taking possession of the mortgaged property pending foreclosure, and with the approval of the court wherein such suit is instituted, such receiver as may be designated by the mortgagee shall be appointed. All costs in connection with the appointment of a receiver or in connection with the discharge of the duties of the receiver shall be taxed as costs in the suit.

12. COVENANT NO. 12. That it is expressly agreed and understood that in any sale of any of the property at any time subject to the lien of the mortgage, under the terms of the mortgage or any of the covenants adopted by reference, the property may, at the option of the mortgagee, be sold in one lot or parcel or in such other lots or parcels as may be designated by the mortgagee; and it is further covenanted and agreed that the mortgagee may become the purchaser of the property or any part thereof at any sale made under any of the terms of the mortgage, or upon foreclosure.

(Added to NRS by 1967, 123)

NRS 106.030 Mortgage secures performance of covenants adopted by reference. Whenever, by the terms of any mortgage, any of the covenants in [NRS 106.020](#) or [106.025](#) are adopted as a part thereof by reference, as provided in [NRS 106.020](#) to [106.050](#), inclusive, the mortgage is intended to secure and does secure the performance of the terms and conditions of the mortgage and all of the covenants so adopted by reference.

[2:109:1927; NCL § 4331]—(NRS A 1967, 125; 1985, 237)

NRS 106.040 Adoption by reference in instrument.

1. In order to adopt by reference any of the covenants, agreements, obligations, rights and remedies in [NRS 106.020](#) or [106.025](#), it shall only be necessary to state in the mortgage whichever of the following is appropriate:

(a) "The following covenants, Nos., and (inserting the respective numbers) of [NRS 106.020](#), are hereby adopted and made a part of this mortgage."

(b) "The following covenants, Nos., and (inserting the respective numbers) of [NRS 106.025](#), are hereby adopted and made a part of this mortgage."

2. In order to fix the amount of counsel fees under Covenant No. 2 of [NRS 106.020](#) or [106.025](#), it shall only be necessary to state in the mortgage: "Covenant No. 2," and set out thereafter the percentage to be allowed.

3. In order to fix the rate of interest under Covenant No. 3 of [NRS 106.020](#) or [106.025](#), it shall only be necessary to state in the mortgage: "Covenant No. 3," and set out thereafter the rate of interest to be charged thereunder.

4. A mortgage, in order to fix the amount of insurance to be carried, need not reincorporate the provisions of Covenant No. 7 of [NRS 106.020](#) or [106.025](#), but may merely state the following: "Covenant No. 7," and set out thereafter the amount of insurance to be carried.

[3:109:1927; NCL § 4332] + [4:109:1927; NCL § 4333]—(NRS A 1967, 126)

NRS 106.050 Parties may enter into different or additional covenants. Nothing in [NRS 106.020](#) to [106.040](#), inclusive, prevents the parties to any mortgage from entering into any other, different or additional covenants or agreements than those set out in [NRS 106.020](#) or [106.025](#).

[5:109:1927; NCL § 4334]—(NRS A 1967, 126; 1985, 237)

IMPOUND TRUST ACCOUNTS

NRS 106.105 Contributions; payment of obligations; notice regarding and disposition of excess money; civil penalty.

1. Except as otherwise provided in subsection 2, a lender who requires a borrower to make advance contributions to an impound trust account, or an account of similar name, for the payment of taxes, insurance premiums or other obligations related to the encumbered property shall:

(a) Require contributions in an amount reasonably necessary to pay the obligations as they become due.

(b) Unless money in the account is insufficient, pay in a timely manner the obligations as they become due.

(c) Within 30 days after the completion of its annual review of the account, notify the borrower:

(1) Of the amount by which the contributions exceed the amount reasonably necessary to pay the annual obligations due from the account; and

(2) That the borrower may specify the disposition of the excess money within 20 days after receipt of the notice. If the borrower fails to specify such a disposition within that time, the lender shall maintain the excess money in the account. Ë A lender who violates any provision of this subsection is liable to the borrower for a civil penalty of not more than \$1,000.

2. A lender, to recover previous deficiencies in contributions to an impound trust account, may require contributions to the account in an amount greater than that reasonably necessary to pay the obligations as they become due. The borrower is otherwise entitled to the amount by which the borrower's contributions to the account exceed the amount reasonably necessary to pay the annual obligations due from the account, together with interest thereon at the rate established pursuant to [NRS 99.040](#).

3. As used in this section:

(a) "Borrower" means a mortgagor, grantor of a deed of trust or other obligor on a loan secured by a lien upon real property.

(b) "Lender" means a mortgagee, beneficiary of a deed of trust or other obligee on a loan secured by a lien upon real property, and his or her successor in interest.

(Added to NRS by 1989, 1766)

MORTGAGES OF ESTATES FOR YEARS; POSSESSORY CLAIMS TO PUBLIC LANDS OR MINING CLAIMS

NRS 106.195 Mortgage of estate for years. Mortgages may be made upon an estate for years, however created, unless prohibited by the instrument which created such estate.

(Added to NRS by 1967, 954)

NRS 106.200 Effect of recorded mortgage upon possessory claims to public lands or mining claims. A mortgage for a good and valuable consideration upon possessory claims to public lands, all buildings and improvements upon such lands, and all quartz and mining claims, acknowledged in manner and form as mortgages upon real property are required by law to be acknowledged, and recorded in the office of the recorder in the county in which the property is situated, shall have the same effect against third persons as mortgages upon real property.

[76:9:1861; A 1935, 253; 1931 NCL § 1547]—(NRS A 1965, 924)

ASSIGNMENTS; SUBORDINATION AND WAIVERS AS TO PRIORITY; DISCHARGE AND EXTINGUISHMENT

NRS 106.210 Recording of assignments of mortgages or beneficial interests in deeds of trust; constructive notice.

1. Any assignment of a mortgage of real property, or of a mortgage of personal property or crops recorded prior to March 27, 1935, and any assignment of the beneficial interest under a deed of trust may be recorded, and from the time any of the same are so filed for record shall operate as constructive notice of the contents thereof to all persons.

2. Each such filing or recording shall be properly indexed by the recorder.

[Part 1:120:1935; 1931 NCL § 2122.31]—(NRS A 1965, 924)

NRS 106.220 Filing and recording of instruments subordinating or waiving priority of mortgages or deeds of trust; constructive notice.

1. Any instrument by which any mortgage or deed of trust of, lien upon or interest in real property is subordinated or waived as to priority, may, in case it concerns only one or more mortgages or deeds of trust of, liens upon or interests in real property, together with, or in the alternative, one or more mortgages of, liens upon or interests in personal property or crops, the instruments or documents evidencing or creating which have been recorded prior to March 27, 1935, be recorded, and from the time any of the same are so filed for record shall operate as constructive notice of the contents thereof to all persons.

2. Each such filing or recording shall be properly indexed by the recorder.

[Part 1:120:1935; 1931 NCL § 2122.31]—(NRS A 1965, 925)

NRS 106.240 Extinguishment of lien created by mortgage or deed of trust upon real property. The lien heretofore or hereafter created of any mortgage or deed of trust upon any real property, appearing of record, and not otherwise satisfied and discharged of record, shall at the expiration of 10 years after the debt secured by the mortgage or deed of trust according to the terms thereof or any recorded written extension thereof become wholly due, terminate, and it shall be conclusively presumed that the debt has been regularly satisfied and the lien discharged.

[2:37:1917; 1919 RL p. 3352; NCL § 9410]—(NRS A 1965, 1229)

NRS 106.260 Discharge and assignment: Marginal entries; discharge or release must be recorded when mortgage or lien recorded by microfilm.

1. Any mortgage or lien, that has been or may hereafter be recorded, may be discharged or assigned by an entry on the margin of the record thereof, signed by the mortgagee or the mortgagee's personal representative or assignee,

acknowledging the satisfaction of or value received for the mortgage or lien and the debt secured thereby, in the presence of the recorder or the recorder's deputy, who shall subscribe the same as a witness, and such entry shall have the same effect as a deed of release or assignment duly acknowledged and recorded. Such marginal discharge or assignment shall in each case be properly indexed by the recorder.

2. In the event that the mortgage or lien has been recorded by a microfilm or other photographic process, a marginal release may not be used and a duly acknowledged discharge or release of such mortgage or lien must be recorded.

[35:9:1861; A 1881, 23; 1935, 253; 1953, 79]—(NRS A 1965, 925)

NRS 106.270 Discharge of mortgages on filing of certificates specifying satisfaction or payment. Any recorded mortgage shall also be discharged upon the record thereof by the recorder in whose custody it shall be, whenever there shall be presented to the recorder a certificate executed by the mortgagee, the mortgagee's personal representative or assignee, acknowledged, or proved and certified, as prescribed in NRS, to entitle conveyances to be recorded, specifying that such mortgage has been paid or otherwise satisfied or discharged.

[36:9:1861; A 1935, 253; 1931 NCL § 1508]—(NRS A 1965, 926)

NRS 106.280 Certificates of discharge: Recording. Every certificate of discharge of a recorded mortgage, and the proof or acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book containing such record in the minutes of the discharge of such mortgage made by the recorder upon the record thereof.

[37:9:1861; A 1935, 253; 1931 NCL § 1509]—(NRS A 1965, 926)

NRS 106.290 Recording of discharge of mortgage by mortgagee; liability for failure to record discharge; requirements for release of mortgage when discharge not recorded; liability for improperly recording release; criminal penalty.

1. Within 21 calendar days after receiving written notice that a debt secured by a mortgage has been paid or otherwise satisfied or discharged, the mortgagee shall cause a discharge of the mortgage to be recorded pursuant to [NRS 106.260](#) or [106.270](#) if the mortgagor, the mortgagor's heirs or assigns have fully performed the conditions of the mortgage.

2. If a mortgagee fails to comply with the provisions of this section, the mortgagee is liable in a civil action to the mortgagor, the mortgagor's heirs or assigns for:

- (a) The sum of \$500;
- (b) Any actual damages caused by the failure of the mortgagee to comply with the provisions of this section; and
- (c) A reasonable attorney's fee and the costs of bringing the action.

3. Except as otherwise provided in this subsection, if a mortgagee fails to cause a discharge of the mortgage to be recorded pursuant to subsection 1 within 75 calendar days, a title insurer may prepare and cause to be recorded a release of the mortgage. At least 30 calendar days before the recording of a release pursuant to this subsection, the title insurer shall mail, by first-class mail, postage prepaid, notice of the intention to record the release of the mortgage to the mortgagor and mortgagee, or their successors in interest, at the last known address of each such person. A release prepared and recorded pursuant to this subsection shall be deemed a discharge of the mortgage. The title insurer shall not cause a release to be recorded pursuant to this subsection if the title insurer receives written instructions to the contrary from the mortgagor, the mortgagee or a successor in interest.

4. The release prepared pursuant to subsection 3 must set forth:

- (a) The name of the mortgagor;
- (b) The name of the mortgagee;
- (c) The recording reference to the mortgage;
- (d) A statement that the debt secured by the mortgage has been paid in full or otherwise satisfied or discharged;
- (e) The date and amount of payment or other satisfaction or discharge; and
- (f) The name and address of the title insurer issuing the release.

5. A release prepared and recorded pursuant to subsection 3 does not relieve a mortgagee of the requirements imposed by subsections 1 and 2.

6. In addition to any other remedy provided by law, a title insurer who improperly causes to be recorded a release of a mortgage pursuant to this section is liable in a civil action for actual damages and for a reasonable attorney's fee and the costs of bringing the action to any person who is injured because of the improper recordation of the release.

7. Any person who willfully violates this section is guilty of a misdemeanor.

8. As used in this section, "title insurer" has the meaning ascribed to it in [NRS 692A.070](#).

[38:9:1861; A 1935, 253; 1931 NCL § 1510]—(NRS A [1999, 56](#))

ENCUMBRANCE TO SECURE FUTURE ADVANCES

NRS 106.300 Definitions. As used in [NRS 106.300](#) to [106.400](#), inclusive, unless the context otherwise requires, the words and terms defined in [NRS 106.310](#) to [106.345](#), inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1985, 725; A 1989, 492)

NRS 106.310 "Borrower" defined. "Borrower" means a mortgagor, grantor of a deed of trust or other debtor.

(Added to NRS by 1985, 725)

NRS 106.320 "Future advance" defined. "Future advance" means a loan of money to a borrower pursuant to an agreement but made after the agreement is executed.

(Added to NRS by 1985, 725)

NRS 106.330 “Instrument” defined. “Instrument” means a mortgage, deed of trust or other instrument encumbering real property as security for the repayment of a debt.

(Added to NRS by 1985, 725)

NRS 106.340 “Lender” defined. “Lender” means a mortgagee, beneficiary of a deed of trust or other creditor holding an instrument.

(Added to NRS by 1985, 725)

NRS 106.345 “Principal” defined. “Principal” means the money a lender advances to a borrower as a loan which, separately or together with other advances, is intended to be evidenced by the face amount of a note, bond or other similar document. The term does not include any interest, advances made to protect security or advances which would not have been made if the borrower and all other parties to the agreement relating to the loan or future advances had complied with its terms even if the obligations contained in the agreement were secured by an instrument.

(Added to NRS by 1989, 492)

NRS 106.350 Applicability. The provisions of [NRS 106.300](#) to [106.400](#), inclusive, apply only to an instrument or supplement or amendment to an instrument that states clearly that it is to be governed by those provisions.

(Added to NRS by 1985, 726; A 1989, 492)

NRS 106.360 Execution, contents and amendment of instrument.

1. A borrower may execute an instrument encumbering the borrower’s real property to secure future advances from a lender within a mutually agreed maximum amount of principal.

2. The instrument must state clearly:

- (a) That it secures future advances; and
- (b) The maximum amount of principal to be secured.

3. The maximum amount of advances of principal to be secured by the instrument may increase or decrease from time to time by amendment of the instrument.

(Added to NRS by 1985, 725; A 1989, 492)

NRS 106.370 Priority of lien.

1. The priority of a lien for future advances dates from the time that the instrument is recorded in the office of the county recorder of the county in which the property is located, whether or not the:

- (a) Future advances are obligatory or at the option of the lender; or
- (b) Lender has notice of an intervening lien.

2. If an amendment to an instrument is recorded which increases the maximum amount of indebtedness secured by the instrument, the priority of any lien for future advances of principal thereafter which exceed the maximum amount of principal of the original indebtedness dates from the time the amendment is recorded in the office of the county recorder of the county in which the property is located.

(Added to NRS by 1985, 725; A 1989, 493)

NRS 106.380 Notice of election to terminate operation of instrument; recording of statement by lender or borrower; change of notice address by lender.

1. A borrower may at any time personally deliver or send by certified mail, return receipt requested, written notice to the lender stating that the borrower elects to terminate the operation of an instrument as security for future advances of principal made after the lender receives the notice. The notice:

(a) Must be delivered or sent to the lender at each address provided for the lender in the instrument or, if applicable, at each address provided for the lender in a document which is effective pursuant to subsection 5; and

(b) Does not become effective until it is received by the lender.

2. Within 4 business days after receiving the notice, the lender must record in the office of the county recorder in which the instrument was recorded a statement that:

(a) Expressly refers to the instrument by:

- (1) The date on which the instrument was recorded in the office of the county recorder; and
- (2) The book, page and document number, as applicable, of the instrument as recorded;

(b) Contains the legal description of the encumbered real property;

(c) Affirms that the notice given pursuant to subsection 1 was received by the lender, and identifies the date of that receipt; and

(d) Separately sets forth:

(1) The amount of principal owed that is secured by the instrument; and

(2) The outstanding interest accrued on the principal described in subparagraph (1) as of the date the statement of the lender is recorded.

3. If the lender does not record the statement required by subsection 2 within the period set forth in subsection 2, the borrower may record a similar statement. The borrower’s statement has the same effect as the lender’s statement would have had if the lender had recorded the statement required by subsection 2.

4. If a lender wishes to receive notices pursuant to this section at an address other than the address for the lender

provided in the instrument, if any, the lender must:

(a) Record, in the office of the county recorder in which the instrument was recorded, a document entitled "Change of Notice Address" that includes, without limitation, the address at which the lender wishes to receive notices pursuant to this section; and

(b) Personally deliver or send by certified mail, return receipt requested, a copy of the document to the borrower at each address provided for the borrower in the instrument, if any.

5. A document recorded pursuant to subsection 4 does not become effective until it is received by the borrower.

(Added to NRS by 1985, 726; A 1989, 493; [2009, 1670](#))

NRS 106.390 Effect of notice of termination. Receipt of notice of termination by the lender does not affect the priority of any lien for any future advances previously made, obligations previously incurred or interest accrued thereon.

(Added to NRS by 1985, 726)

NRS 106.400 Advances made after notice of termination. Future advances of principal made to a borrower after the receipt of the notice of termination by the lender are not secured by the instrument. The principal amount of indebtedness secured by the instrument is limited to the amount stated by the lender in the lender's recorded statement.

(Added to NRS by 1985, 726; A 1989, 493)