

# Real Estate Loan Drafting Guidance: Nevada

by Michael E. Buckley, Fennemore Craig, P.C., with Practical Law Real Estate

Status: Law stated as of 05 Feb 2025 | Jurisdiction: Nevada, United States

This document is published by Practical Law and can be found at: [content.next.westlaw.com/w-032-7850](https://content.next.westlaw.com/w-032-7850)  
Request a free trial and demonstration at: [tr.com/practicallaw-home](https://tr.com/practicallaw-home)

A Q&A guide to real estate finance law and practice for borrowers and lenders in Nevada. This guide can be used in conjunction with the Real Estate Finance State Q&A. It addresses state customs and laws relating to loan document drafting to ensure enforceability and priority of the lien of mortgage instruments. It also generally discusses mortgage recording taxes, foreclosure, and lien priority in a commercial context. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see Real Estate Loan Drafting Guidance: State Q&A Tool).

## Mortgage Instruments

**1. Does a security instrument that evidences a permanent, fully-funded term loan need to state the maximum indebtedness that it secures? What about for loans contemplating future advances (such as open-end mortgages, revolving lines of credit, and construction loans)? Does the lien of a security instrument automatically secure accrued interest and protective advances?**

### Maximum Principal Indebtedness

Under Nevada law, a security instrument that secures a permanent, fully funded term loan need not state the maximum indebtedness that it secures (see *In re Resort at Summerlin Litig.*, 127 P.3d 1076, 1079-80 (Nev. 2006)). However, most security instruments recite the principal amount of the secured obligation to facilitate identifying the instrument evidencing or creating the indebtedness and calculating the amounts secured.

Loans contemplating future advances only need to state the maximum amount of indebtedness if the

parties elect to be governed by Nevada's Future Advance Statutes (NRS 106.300 to 106.400) (NRS 106.360). When parties decide to be governed by these statutes, the instrument must state clearly:

- That it is to be governed by the provisions of NRS 106.300 to 106.400.
- That it secures future advances.
- The maximum amount of principal to be secured.

(NRS 106.350 and 106.360.) See Question 15.

### Accrued Interest and Protective Advances

Interpretation of a deed of trust is governed by the law of contracts (see *Edelstein v. Bank of New York Mellon*, 286 P.3d 249, 258-59 (Nev. 2012)). Accordingly, the express terms of the deed of trust will determine whether interest and protective advances are automatically secured.

Absent language to the contrary:

- If interest is a part of the obligation secured by a deed of trust or mortgage, the security instrument automatically secures accrued interest (NRS 106.020(1), 106.025(1), 107.020, and 107.030(6)).
- Advances to protect security are part of the "indebtedness" secured by a mortgage or deed of trust (NRS 40.451).

### 2. Please indicate any information statutorily required to be contained in a security instrument including:

- The date of the document.
- The maturity date under the note.
- The obligations secured by the security instrument.
- The addresses of the parties.
- A parcel or tax identification number of the property.
- The identity of the preparer.
- Other statutory requirements.

The security instrument must be recorded in the county (or counties) in which the real property encumbered by the security instrument is located (NRS 247.200). To be recorded, the security instrument must:

- Be acknowledged (NRS 247:120(1)(a)).
- Generally conform to the font, formatting, and other requirements of NRS 247:110(3).
- Exclude personal information as defined in NRS 603A.040. (NRS 239B.030.)

Nevada statutes do not require that a mortgage or deed of trust be dated or include the maturity date of the note.

If the maturity date of the note is included in the recorded security instrument or a recorded amendment, ten years after the unsatisfied secured debt becomes wholly due (according to the recorded instrument), the lien of the security instrument is extinguished (NRS 106.240).

Under the statute of frauds, a mortgage or deed of trust that creates an estate or interest in land must be in writing, and must contain:

- The names of the parties.
- A description of the real property.
- A description of the secured obligation, specific enough to be determinable with “reasonable certainty.”

(NRS 111.205; *Johnson v. Watson*, 272 P.2d 580, 581 (Nev. 1954).)

In addition, under Nevada law, documents relating to real property must include:

- The grantee’s mailing address.
- The assessor’s parcel number of the property.
- If the security instrument includes a metes and bounds legal description:
  - the name and mailing address of the person who prepared the legal description, if the legal description has not previously been recorded; or
  - all information necessary to identify and locate the previous recording, if the legal description has previously been recorded.

(NRS 111.312.) An assessor’s parcel number is not deemed to be a complete legal description (NRS 111.312(4)).

If the lender under a deed of trust wants to charge an assumption fee, the amount of the charge must be clearly set out in the mortgage or deed of trust at the time of execution (NRS 107.055).

If the security instrument is intended to be a fixture filing, it must satisfy the requirements of the Nevada Uniform Commercial Code (see Question 7).

### 3. Is there any special language that must be included in the security instrument to create a lien on the borrower’s personal property?

For a security instrument to create a lien on the borrower’s personal property, the instrument must comply with the Nevada Uniform Commercial Code (UCC) (NRS 104.9109). This is accomplished by including a provision in the instrument stating the security instrument is also a security agreement under the UCC (NRS 104.9102(1)(xxx), 104.9203(2)(c)(1)).

Under the UCC, the security instrument must contain or attach a description that reasonably identifies the personal property collateral (NRS 104.9108(1) and 104.9203). A description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or using words of similar import does not reasonably identify the collateral (NRS 104.9108(3)).

Collateral is reasonably identified by any of the following descriptions:

- A specific listing.
- A category.
- A type of collateral as defined in the Nevada UCC.

- Quantity.
- Computational or allocational formula or procedure.
- Any other method if the identity is objectively determinable.

(NRS 104.9108(2).)

A description only by collateral type is insufficient for:

- A commercial tort claim.
- Consumer goods.
- A security entitlement.
- Security and commodity accounts.

(NRS 104.9108(5).)

In the case of a deed of trust (not a mortgage), the real property is held by a trustee in trust (NRS 107.020). The deed of trust is a lien, not a conveyance (NRS 40.050). Under the Nevada UCC, a security interest in personal property is granted to the secured party, not the trustee under the deed of trust (NRS 104.9102(1)(www)).

Accordingly, to create a security interest on the borrower's personal property, a deed of trust that includes a UCC security agreement should grant a security interest in the personal property directly to the beneficiary, not the trustee.

#### **4. Can the lien of a mortgage secure after-acquired property? If so, is there specific language that the security instrument must use to automatically create a lien on after-acquired property?**

In Nevada, the lien of a security instrument generally may secure after-acquired property if the security instrument so provides (NRS 104.9204). Nevada statutes do not specify language for creating a lien on after-acquired real property and Nevada cases do not address the inclusion of after-acquired real property. The Restatement (Third) of Property (Mortgages) § 7.5 recognizes the effectiveness of an after-acquired real property provision between mortgagor and mortgagee. A "conveyance" (NRS 111.010(1)) of fee title includes after acquired title (NRS 111.160). Although a security instrument does not convey fee title, it does constitute a "conveyance."

In Nevada, a security instrument that includes a security agreement in personal property may secure

after-acquired personal property if the security agreement so provides (NRS 104.9204).

However, under the Nevada Uniform Commercial Code, a security interest in after-acquired property generally does not attach to:

- Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten days after the secured party gives value.
- A commercial tort claim.

(NRS 104.9204.) However, a security interest may attach under an after-acquired property clause to consumer goods or a tort claim as proceeds under NRS 104.9315 and 104.9336 or to proceeds of consumer goods or a commercial tort claim (NRS 104.9204(3)).

Nevada statutes do not specify language for creating a lien on after-acquired property.

## Assignments of Leases and Rents and Fixture Filings

### **5. Is it sufficient to incorporate an assignment of leases and rents into the mortgage, or is a separate instrument required? Can an assignment of leases be enforced without foreclosing the mortgage?**

Nevada has adopted the Uniform Assignment of Rents Act, NRS Chapter 107A (UARA). Under the UARA, a "security instrument" creates an assignment of rents arising from the real property described in the security instrument unless the security instrument provides otherwise (NRS 107A.230). A "security instrument" includes both a mortgage and a deed of trust (NRS 107A.160).

A separate assignment is common but not required. The security interest in the rents is separate from the lien on the real property and may be enforced without foreclosing the security instrument (NRS 107A.230(2)). The assignment may be enforced by:

- Appointment of a receiver (NRS 107A.260).
- Notification to the assignor (NRS 107A.270).
- Notification to the tenant (NRS 107A.280).

- Any other method sufficient to enforce the assignment under laws other than the UARA (NRS 107A.250(1)).

### **6. Does your jurisdiction generally recognize an absolute assignment of leases and rents or is assignment deemed a collateral assignment given to further secure the mortgage?**

Nevada recognizes an absolute assignment of leases and rents. A lender's security instrument covering leases and rents is a presently effective security interest in all accrued and unaccrued rents arising from the real property described in the assignment document, regardless of whether the assignment language takes the form of either:

- An absolute assignment.
- An absolute assignment conditioned on default.
- An assignment given as further security for the loan.
- Any other form.

(NRS 107A.230.) The assignment of rents entitles the secured party to collect the rents on enforcement of the assignment (NRS 107A.250).

### **7. Can a recorded security instrument act as a fixture filing? If so, please indicate any special language or legend needed.**

A recorded security instrument can act as a fixture filing if it satisfies the requirements of the Nevada Uniform Commercial Code (UCC). The UCC requires the security instrument to provide:

- The name of the debtor.
- The name of the secured party or a representative of the secured party.
- An indication:
  - of the collateral covered by the security instrument; and
  - that it covers fixtures related to the real property described in the security instrument.
- An indication that the instrument is to be filed for record in the real property records.
- A description of the real property encumbered by the security instrument.

- The name of the record owner if the debtor does not have an interest of record in the real property. (NRS 104.9502.)

## Mortgage Recording Tax

### **8. If a security instrument contemplates future advances or re-advances, when and to what extent is mortgage recording tax (or similar tax) payable in connection with the future advance or re-advance?**

Nevada has no mortgage recording tax.

### **9. What are the consequences for failure to pay mortgage recording tax (or similar tax) in full when due?**

Nevada has no mortgage recording tax.

## Foreclosure

### **10. Are real property transfer taxes or controlling interest transfer taxes imposed on foreclosing lenders in connection with the transfer of real property? Describe the difference, if applicable, between transfer taxes assessed in a mortgage loan foreclosure versus a mezzanine loan foreclosure.**

Nevada imposes a real property transfer tax on the recording of a deed. (NRS 375.023). Deeds of trust and mortgages do not qualify as deeds subject to real property transfer taxes (NRS 375.010(1)(b)(3)). However, the following instruments qualify as deeds subject to real property transfer taxes:

- A trustee's deed following a nonjudicial foreclosure (NRS 107.080(10)).
- A sheriff's deed following a judicial foreclosure (NRS 21.220).

(NRS 375.010(1)(a) and 375.023.)

A mezzanine loan foreclosure on the ownership interest of the property owner (for example, shares of stock or membership or partnership interests) is not taxable since there is no recorded “deed.”

### **11. How are leases affected by foreclosure if there is no separate non-disturbance agreement between the lender and tenant?**

Absent an agreement stating otherwise (such as a subordination, non-disturbance and attornment agreement (SNDA)), foreclosure in Nevada generally extinguishes all interests in the real property that are junior to the security instrument, such as a lease entered into after the security instrument was recorded (see *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014) (superseded by statute on other grounds)). In practice, many commercial leases provide for automatic subordination of the lease to a landlord mortgage loan.

Any instrument by which a mortgage or deed of trust or lien on real property is subordinated or waived as to priority must be recorded in the county where the property is located (NRS 106.220).

Most Nevada foreclosures are nonjudicial trustee’s sales under a deed of trust. The trustee may be required to provide notice to a tenant, depending on whether the tenant has a recorded interest in the real property. There are no Nevada cases or statutes addressing whether the lender may unilaterally elect to retain a subordinate lease in effect following a trustee’s sale, but lenders do make these elections, often by recording written notice of the election.

In the case of a judicial foreclosure of a mortgage or deed of trust, the tenant’s interest in the property would likely survive the foreclosure if the tenant was not named in the action (see Restatement (Third) of Property (Mortgages) § 71, Cmt. b). There is no controlling Nevada law on the question in the context of a foreclosure. Generally speaking, however, a third party not joined is not bound by a judicial decision (see, *Anderson v. Sanchez*, 355 P. 3d 16 (Nev App., 2015), citing *Johnson v. Johnson*, 93 Nev. 655, 572 P. 2d 925 (1977).)

While the effect of a foreclosure on interests in the foreclosed property does not depend on whether the foreclosure involves commercial or residential property, a “residential foreclosure”

(NRS 107.015(9), (11)) or a nonjudicial foreclosure of a “residential mortgage loan” (NRS 107.450) gives rise to additional notice requirements relating to the foreclosure (see NRS 107.087 and NRS 107.400 to NRS 107.560). Additional restrictions exist with respect to a foreclosure involving servicemembers or their dependents (see NRS 40.439, NRS 107.500(1)(a)) or government workers in the case of a shutdown (see NRS 40.4395, NRS 107.500(1)(b)). In addition, judicial or nonjudicial foreclosure of owner-occupied residential housing is subject to statutorily required mediation (see NRS 40.437, NRS 107.086) pursuant to Foreclosure Mediation Rules adopted by the Nevada Supreme Court.

### **12. Describe the process for both the appointment and discharge of a rent receiver.**

#### **Appointment**

The following Nevada statutes govern rent receivers:

- The Uniform Commercial Real Estate Receivership Act (UCRERA) (NRS 32.100 to 32.370).
- The Uniform Assignment of Rents Act (UARA) (NRS 107A.010 to 107A.370).

#### **Uniform Commercial Real Estate Receivership Act: NRS 32.100 to 32.370**

UCRERA distinguishes between a discretionary and a mandatory appointment of a receiver.

Under the UCRERA, a court may appoint a receiver:

- Before a judgment, to protect the property from waste.
- After a judgment, to preserve the property pending an appeal.
- On equitable grounds.
- During the redemption period to:
  - preserve the property sold in an execution or foreclosure sale; and
  - secure the rents.

(NRS 32.260(1).)

In connection with a foreclosure or other enforcement of a mortgage, the secured lender is entitled to the



appointment of a receiver if any of the following apply:

- Appointment is necessary to protect the property from waste, loss, transfer, dissipation, or impairment.
- The borrower agreed in writing to the appointment of a receiver on default.
- The owner of the property agreed in writing to appointment of a receiver after notice of default and signed a written consent.
- The property is insufficient to satisfy the debt.
- The owner fails to turn over rents or other proceeds the lender is entitled to collect.
- A junior lienholder obtains appointment of a receiver.

(NRS 32.260(2); *Fed. Nat'l Mortg. Assoc. v. Westland Liberty Vill., LLC*, 515 P.3d 329 (2022).)

The court may:

- Order the appointment of a receiver only after notice and opportunity for a hearing, except where the circumstances require otherwise (NRS 32.250).
- Require a party seeking the appointment of a receiver without notice or hearing to post a bond (NRS 32.260(3)).

There are generally no specific qualifications to be a receiver. However, the following persons cannot be appointed receiver:

- Any affiliate of a party.
- Any person that has an interest materially adverse to a party.
- Any person that has a material financial interest in the outcome of the action.
- Any person that has a debtor-creditor relationship with a party.
- Any person that holds an equity interest in a party (other than a non-controlling interest in a publicly traded party).

(NRS 32.265.)

The court may remove a receiver for cause. The court must replace a receiver that dies, resigns, or is removed. (NRS 32.345.)

Once a receiver has completed their duties, they must submit a final report to the court. Once the court approves the final report and the receiver distributes all receivership property, the receiver is discharged. (NRS 32.350.)

### Uniform Assignment of Rents Act: NRS 107A.010 to 107A.370

Under the UARA, an assignee is entitled to the appointment of a receiver for real property subject to the assignment of rents if the assignor is in default and one or more of the following apply:

- The assignor has agreed in a signed document to the appointment of a receiver in the event of the assignor's default.
- It appears likely that the real property may not be sufficient to satisfy the secured obligation.
- The assignor has failed to turn over to the assignee proceeds that the assignee was entitled to collect.
- A subordinate assignee of rents obtains the appointment of a receiver for the real property.
- Other circumstances exist that would justify appointment of a receiver under other Nevada law.

(NRS 107A.260.)

An assignee may file a petition for the appointment of a receiver in connection with an action:

- To foreclose the security instrument.
- For specific performance of the assignment.
- Seeking a remedy on account of waste or threatened waste of the real property subject to the assignment.
- To otherwise enforce the secured obligation or the assignee's remedies arising from the assignment.

(NRS 107A.260(2).)

The assignee must give a copy of the petition to any other person that held a recorded assignment of rents arising from the real property ten days before the assignee files the petition (NRS 107A.260(3)).

The UARA does not include separate qualifications for the receiver or a procedure for discharging the receiver.

**13. Please list any limitations to the exercise or election of lender's remedies (for example, does the jurisdiction have a one-action rule, a homestead exemption, or is the jurisdiction a community property state?)**

### One-Action Rule

Nevada has a one action rule, which requires the holder of a security interest in real property to foreclose its lien before seeking a money judgment against the borrower, with certain exceptions (NRS 40.430). If the lender commences an action in violation of the one action rule, the borrower may raise the rule as a defense, and the court must either:

- Dismiss the proceeding without prejudice.
- Grant a continuance and order the pleadings amended to convert the action into a proper action.

(NRS 40.435(1).) If the borrower fails to raise the one-action rule as a defense, the defense is waived, but entry of the final judgment releases and discharges the security interest in the real property (NRS 40.435(3)). In *Hefetz v. Beavor*, 397 P. 3d 472 (2017), however, the one action rule defense was waived by failure to timely raise the defense even though asserted prior to final judgment.

### Limits on Deficiency Judgments

Nevada law generally limits deficiency judgments and prohibits them in certain cases (NRS 40.451 to NRS 40.463). For example:

- An application for a deficiency judgment must be made within six months following the foreclosure, though the period may be extended for up to two years if foreclosures on multiple parcels are involved (NRS 40.455).
- A deficiency judgment is limited to the amount of the indebtedness less the greater of the judicially determined fair market value of the real property or the amount received from the foreclosure sale (NRS 40.451, 40.459, and 40.495).
- A deficiency judgment sought by a junior mortgagee may not include the amount of any proceeds received by, or payable to, the person under an insurance policy to compensate the person for losses incurred regarding the property or the default on the obligation (NRS 40.4636).

Statutory deficiency protections may not be waived in any document relating to “the sale of real property” (NRS 40.453; see *Lowe Enters. Residential Partners, L.P. v. Eighth Jud. Dist. Ct.*, 40 P. 3d 405, 412 (2002)).

### Homestead Exemption

Nevada provides for a homestead exemption (NRS 115.010). The homestead does not extend to the

process to enforce the payment of a mortgage or deed of trust, including a second or subsequent mortgage, a mortgage obtained through refinancing, a line of credit taken against the property, and a home equity loan (NRS 115.010(3 (a))).

### Community Property State

Nevada is a community property state. Neither spouse or neither domestic partner may sell, convey, or encumber the community real property unless both join in the execution of the deed or other instrument by which the real property is sold, conveyed, or encumbered. The deed or other instrument must be acknowledged by both spouses or domestic partners. (NRS 123.230(3) and 122A.200.)

**14. Are there any qualifications imposed on a lender to enforce its mortgage? For example, does a lender need to qualify to do business in the jurisdiction or satisfy other statutory requirements? Are any qualifications imposed on the foreclosing lender’s attorney? For example, must counsel be admitted to practice in the jurisdiction to bring a foreclosure action?**

#### Qualifications for a Lender

##### Foreign Entity

A lender that is a foreign corporation, limited liability company, limited partnership, or business trust must qualify to do business in Nevada as a foreign entity before “doing business” in the state (NRS 80.010, 86.544, 87A.540, 88.575, and 88A.710). Failure to qualify prevents the foreign entity from commencing or maintaining an action or proceeding in a Nevada court (NRS 80.055(2), 86.548(2), 87A.610, 88.600, and 88A.750(2)). This limitation would prevent a foreign entity from, among other things, seeking a judicial foreclosure or the appointment of a receiver.

For foreign corporations, limited liability companies, and limited partnerships, doing business in Nevada does not include:

- Maintaining, defending, or settling any proceeding.
- Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.
- Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

- Owning, without more, real or personal property.
- Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of like nature.
- Transacting business in interstate commerce.

(NRS 80.015(1), 86.5483, 87A.615, and 88.602.)

Regarding business trusts, a foreign entity does not count as doing business in Nevada solely because it is a beneficial owner or trustee of a business trust (NRS 88A.260).

An entity that is not doing business in Nevada does not need to qualify or comply with any provision of NRS Chapters 80 (foreign corporations), 645A (escrow agents), 645B (mortgage companies), or NRS Title 55 (banks and related organizations), unless the person engages in any of the following activities:

- Maintaining an office in Nevada for the transaction of business.
- Soliciting or accepting deposits in Nevada, except under the provisions of NRS Chapter 666 or 666A (governing the licensing of banks).
- Soliciting business for the activities of a mortgage company as defined by NRS 645B.0127.
- Arranging a mortgage loan secured by real property which is not commercial property.

(NRS 80.015(1), 86.5483, 87A.615, and 88.602.)

A foreign entity lender that is not doing business in Nevada or engaging in any of the above activities is not required to register to transact business in Nevada to enforce a deed of trust by nonjudicial sale. A foreign entity seeking to judicially foreclose a mortgage loan will likely be subject to greater scrutiny than in the case of a nonjudicial trustee's sale, where the enforcement action is undertaken by the trustee under the deed of trust, not the lender.

### Licensing Requirements

As a general rule, a mortgage company or mortgage loan originator must be licensed by the [Mortgage Lending Division of the Nevada Department of Business and Industry](#) (NRS 645B.900 and 645B.910). There are a number of exemptions to this licensing requirement, including an exemption for institutional lenders (NRS 645B.015 and 645B.016).

Failure to obtain the necessary license or qualify for an exemption may give rise to defenses against loan enforcement. For example, NRS 645B.920 states

that if any person violates licensing requirements, any contracts entered into by that person for the mortgage transaction are voidable by the other party to the contract. It may be argued that this statute permits the voiding of the mortgage itself, although the Nevada appellate courts have not yet decided this issue (see *Sylver v. Regents Bank, N.A.*, 300 P.3d 718, 723 (Nev. 2013)).

### Qualifications for a Lender's Attorney

Generally, Nevada's rules do not permit an out-of-state attorney to practice law in Nevada. However, a lawyer in good standing in another state can apply for temporary admission to appear on behalf of a client in a particular matter, such as a judicial foreclosure or a judicial proceeding seeking enforcement of a security instrument. (NV ST RPC Rule 5.5; *Imperial Credit Corp. v. Eighth Jud. Dist. Ct.*, 331 P.3d 862, 865 (Nev. 2014).)

## Lien Priority

### 15. How does a lender perfect future advances (including re-advances under revolving lines of credit)? Does priority date back to the original recording date of the security instrument or the date of the advance?

Under Nevada common law:

- Obligatory advances are entitled to the priority of the original recording of the security instrument.
- Optional advances made after notice of a subsequent encumbrance are subject and subordinate to the subsequent encumbrance.

(*Chartz v. Cardelli*, 279 P. 761, 763 (Nev. 1929).) For optional advances, notice includes both actual notice and constructive notice as a result of the recording of the subsequent encumbrance (NRS 111.180).

If the parties choose to do so, a security instrument may be governed by the Nevada Future Advance Statutes (NRS 106.300 to 106.400; *In re Resort at Summerlin Litig.*, 127 P.3d at 1079-80). Under these statutes:

- A security instrument may secure future advances up to a stated amount of principal if the security instrument clearly states it is governed by the Future Advance Statutes (NRS 106.350).



## Real Estate Loan Drafting Guidance: Nevada

- Optional future advances have the same priority as the original advance (NRS 106.370).
- The borrower may terminate the operation of the security instrument as security for future advances of principal (NRS 106.380).
- Advances of principal made after such a termination have a priority based on the date of advance, not the original recording (NRS 106.400).

The parties may also adopt a subordination agreement that dictates the priority of advances. See *In re Manhattan W. Mechs.' Lien Litig.*, 359 P.3d 125 (2015). Equitable subrogation can also occur so long as the holder of an intervening lien is not materially prejudiced, regardless of whether the lender was aware of the intervening lien (*Houston v. Bank of Am.*, 78 P.3d 71, 74 (Nev. 2003)).

However, the priority of a mechanics' lien may not be waived or defeated by equitable subrogation (NRS 108.2453 and 108.2457; *In re Fontainebleau Las Vegas Holdings, LLC*, 289 P.3d 1199, 1212 (Nev. 2012)).

### **16. In the context of construction lending, does the jurisdiction recognize the “obligatory advance rule”? If so, what are the criteria for determining if an advance is obligatory or non-obligatory?**

Under Nevada common law, obligatory advances under a security instrument relate back to the original

recording of the security instrument, including accrued interest and protective advances (*Chartz*, 279 P. at 763).

In determining whether advances are obligatory, courts consider:

- The language in the loan documents.
- The parties' conduct.
- The nature of the parties' relations.

(See *Southern Trust Mortg. Co. v. K & B Door Co., Inc.*, 763 P.2d 353, 354-55 (Nev. 1988).)

In *Southern Trust*, the Nevada Supreme Court focused on the following language, which the court described as “designed to remove any conceivable quibble about the obligatory nature of future advances”:

[a]nything herein to the contrary notwithstanding, it is specifically understood and agreed that all funds furnished by Lender and employed in performance of the obligations of Borrower under this agreement shall be deemed advanced by Lender under an obligation to do so regardless of the identity of the person or persons to whom such funds are furnished.

(*Southern Trust Mortg. Co.*, 763 P.2d at 354.) Though there is nothing in *Southern Trust* to suggest that the above quoted language is mandatory, this language is frequently included in construction loan deeds of trust.

#### **About Practical Law**

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at [legalsolutions.com/practical-law](https://legalsolutions.com/practical-law). For more information or to schedule training, call 1-800-733-2889 or e-mail [referenceattorneys@tr.com](mailto:referenceattorneys@tr.com).