

MEMORANDUM

TO: Senate Judiciary Committee
FROM: Executive Committee, State Bar of Nevada Real Property Section
DATE: May 15, 2025
RE: Summary of AB 192 (First Reprint)

Introduction. Sections 2 - 32 of AB 192¹ would enact the Uniform Easement Relocation Act ("UERA"). Sections 34 - 50 would enact the Uniform Mortgage Modifications Act ("UMMA"), both of which have been approved by the Uniform Law Commission ("ULC") for enactment in all states.

As part of the consideration of AB 192, the Executive Committee (the "**Executive Committee**") of the Real Property Section, State Bar of Nevada provides this memorandum as background on AB 192. The UERA and UMMA have been approved by the Board of Governors of the State Bar of Nevada, which authorizes the Executive Committee to advocate in favor of these two proposals, but does not represent the position of the Board of Governors of the State Bar of Nevada, the general membership of the State Bar, or the general membership of the Real Property Section, which is a voluntary section of members of the State Bar of Nevada composed of lawyers practicing in a specified area of law.

Uniform Acts. Enactment of uniform acts benefit from the inclusion in of interpretive Official Comments and guidance from court decisions in other states considering the same laws. Nevada has enacted numerous Uniform Laws relating to real property, including the Uniform Common Interest Ownership Act (NRS 116), the Uniform Conservation Easement Act (NRS 111.390 - 111.440), the Uniform Assignment of Rents Act (NRS 107A), and the Uniform Commercial Real Estate Receivership Act (NRS 32.100 - 32.370).

UERA² As explained on the ULC website, UERA

allows the owner of real estate burdened by an easement to obtain a court order to relocate the easement if the relocation does not materially impair the utility of the easement holder, or the physical condition, use or value of the benefitted property. The burdened property owner must file a civil action, give other potentially affected real-property interest owners notice, and bear all the costs of relocation.

¹ Unless otherwise noted all references are to the First Reprint of AB 192.

² As of this date, UERA has been enacted in Washington, Utah, Nebraska and Arkansas, and introduced in Texas, Oklahoma, and Virginia.

Under common law (i.e., court decisions) relocation of an easement generally requires the consent of all of the parties to the easement. Generally speaking, UERA aims to make property more valuable by permitting the relocation of an easement if the relocation does not harm the usefulness of the easement or burden the easement property. UERA is based on Section 4.8 of the Restatement (Third) of Property which the Nevada Supreme Court adopted in *St. James Village Inc. v. Cunningham*, 210 P. 3d 190 (2009), which is a good example of how UERA could have been used. Here, the developer of a 1600 acre subdivision sought "a slight relocation of the easement by adding curves to the existent roadway." After the easement holder refused to agree to modify the easement, the developer sought to relocate the easement under the Restatement. Although it ruled the developer's easement did not satisfy the Restatement conditions for relocation, the Court acknowledged the benefit of the Restatement's change to common law principles.

UERA in Nevada. UERA was introduced (SB 106) in 2021 in the original form approved by the ULC, but encountered opposition since it included the ability to relocate municipal and utility easements. A revised UERA was introduced in Utah to address these concerns and the law was enacted in 2022. As introduced, AB 192 followed the ULC version. The Executive Committee worked with the bill sponsor to amend the bill to more closely follow the Utah law. As amended, AB 192 does not apply to the relocation of a public entity easement or a public utility easement, nor does it permit the relocation of easements in a common-interest community (NRS 116). These easements can, of course, be relocated by agreement of the parties to the easement.

UERA Summary.

AB 192 Section	Summary
1 -2	Enacts a new chapter to NRS to include UERA (Secs. 2 -32).
3-21	Definitions, including: <i>Easement</i> (Sec. 7). The definition is synonymous with "right of way" and includes prescriptive easements (easements obtained through long term adverse use). <i>Appurtenant easement</i> (Sec. 4): an easement benefitting land, in contrast to an easement "in gross" (for example, a utility easement) (Sec. 9). An appurtenant easement involves a <i>dominant estate</i> (Sec. 6), that is, the land benefitting from the easement, and a <i>servient estate</i> (Sec. 18), that is, the land burdened by the easement. For example, if Lot A has the benefit of a driveway easement over Lot B, Lot A is the dominant estate and Lot B is the servient estate.

AB 192 Section	Summary
	The definition of <i>conservation easement</i> (Sec. 5) comes from the Nevada Uniform Conservation Easement Act (NRS 111.390 - 111.440). "Negative easement" (Sec. 11) refers to a restrictive covenant. For example, a recorded document that restricts the height of a building. Definitions of "<i>public entity</i>" (Sec. 12.3) "<i>public-entity easement</i>" (Sec 12.7), and "<i>public road</i>" (Sec. 22(4)) have been added to the bill in order to exclude them from relocation under UERA (Sec. 24(2)(a)). "<i>Public utility easement</i>" (Sec. 13) includes video service providers. <i>Real property</i> (Sec. 14). <i>Security Instrument</i> (Sec. 16) is broadly defined and includes a deed of trust or other lien document.
22	1: Permits the relocation of an easement unless excluded by Sec. 2 2: UERA may not be used to relocate public utility easement, public entity easement, conservation easement, negative easement, easement associated with a public road or easement created by a declaration under NRS 116.
23	Establishes the findings required to relocate an easement, namely that (1) the relocation will not lessen the utility of the easement; (2) increase the burden on the easement holder; (3) impair the purpose for which the easement was created; (4) create safety issues; (5) disrupt the use and enjoyment of the easement; (6) impair the physical condition, use, or value of the dominant estate; or (7) impair the value of a security interest or the interest of a tenant or other interest holder in the servient or dominant estate.
24	1, 2: Requires the filing and service of a complaint on all parties in interest in order to relocate an easement. 3: Lists the required content of the complaint, including the time for commencement and completion of the relocation, the current and proposed locations of the easement and any improvements and the reason the easement is eligible for relocation (Sec. 22) and satisfies the conditions for relocation (Sec. 23). The plaintiff must also have made a reasonable attempt to notify the holders of other easements on the property.

AB 192 Section	Summary
	4. Authorizes named parties to waive their right to contest the relocation and be removed from the lawsuit.
25	Describes the order the court must enter in order to permit the relocation of the easement. 4(a). Before relocating the easement, the court order must be recorded. 4(b), 5: Addresses the procedure for any necessary amendment of a recorded map under NRS 278.
26	Describes the costs that the person seeking the relocation must pay.
27	Imposes an obligation of good faith in the relocation process.
28	Establishes the operative document to be recorded effecting the relocation of the easement.
29	Creates general rules regarding the relocation. For example, the relocated easement is not a new easement.
30	Prevents an easement agreement from prohibiting an easement being relocated pursuant to UERA.
31 -32	Customary Uniform Act provisions requiring uniformity in interpretation and addressing electronic documents.

UMMA³ UMMA addresses mortgage loan modifications. Under common law (i.e., court decisions), if a junior lien is recorded after a mortgage loan, an amendment to the mortgage loan does not affect the priority of the mortgage so long as the amendment does not adversely affect the junior lien. Whether an amendment adversely affects the junior lender is not always clear. UMMA establishes types of amendments ("safe harbors") that will not affect the priority of the mortgage, such as a decrease in the interest rate or an extension of maturity. One of the purposes

³ As of this date, UMMA has been enacted in Utah, and introduced in West Virginia.

of the UMMA is to reduce the costs of loan modifications and create, in the words of the ULC summary, "straightforward alternatives to foreclosure when possible."

AB 192 Sections	Summary
33 - 34	Enacts a new chapter to NRS to include UMMA (Secs. 34 -50).
35- 46	Definitions, including: <i>Financial Covenant (Sec. 37)</i> refers to "an undertaking to demonstrate an obligor's creditworthiness or the adequacy of security provided by an obligor." <i>Modification (Sec. 38)</i> includes "includes change, amendment, revision, correction, addition, supplementation, elimination, waiver and restatement." <i>Mortgage (Sec. 39)</i> is broadly defined to include any agreement that creates a consensual interest in real property and specifically includes a deed of trust. <i>Mortgage modification (Sec. 40)</i> is broadly defined. <i>Obligation (Sec. 41)</i>. <i>Obligor (Sec. 42)</i> includes not only the borrower but someone who signs a mortgage or "is otherwise accountable." <i>Recognized Index (Sec. 44)</i> refers to Comptroller of the Currency regulations of the index for adjustable rate mortgage loans.
47	1. UMMA applies to a mortgage modification unless excluded by subsection 3. 2. UMMA does not affect laws governing mortgages, statutes of limitation, recording laws, the priority of tax liens, the statute of frauds, or future advance statutes (except as modified by Sec 48(2)(h)). 3. UMMA does not apply to a release or addition of property or obligors or an assignment of a mortgage.
48	1. For a mortgage modification described in 2, the modification does not affect priority and is not a novation (i.e., a new agreement).

AB 192 Sections	Summary
	2. List of modifications that do not affect priority, i.e., the "safe harbors": a. An extension of the maturity date. b. A decrease in the interest rate. c. If the change does not result in an increase in the interest rate of an obligation as calculated on the modification date: (1) A change to a different index that is a recognized index if the previous index to which changes in the interest rate were linked is no longer available; (2) A change in the differential between the index and the interest rate; (3) A change from a floating or adjustable rate to a fixed rate; or (4) A change from a fixed rate to a floating or adjustable rate based on a recognized index; d. A capitalization of unpaid interest or other unpaid monetary obligation; e. A forgiveness, forbearance or other reduction of principal, accrued interest or other monetary obligation; f. A modification of a requirement for maintaining an escrow or reserve account for payment of an obligation, including taxes and insurance premiums; g. A modification of a requirement for acquiring or maintaining insurance; h. A modification of an existing condition to advance funds; i. A modification of a financial covenant; and j. A modification of the payment amount or schedule resulting from another modification described in this subsection. 3. The effect of a mortgage modification not described in subsection 2 is governed by other law.
49 -50	Customary Uniform Act provisions requiring uniformity in interpretation and addressing electronic documents.

Effective Date. UERA applies to an easement "created before, on, or after October 1, 2025" UMMA act applies to a mortgage modification (**Sec. 40**) "made on or after October 1, 2025, regardless of when the mortgage or the obligation was created."