

IN THE SUPREME COURT OF THE STATE OF NEVADA

HIGH NOON AT ARLINGTON RANCH  
HOMEOWNERS ASSOCIATION, A  
NEVADA NON-PROFIT  
CORPORATION, FOR ITSELF AND  
ALL OTHERS SIMILARLY SITUATED,  
Petitioner,

Case No. 52798

Clark County District  
Court No. A542616

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
SUSAN JOHNSON, DISTRICT  
JUDGE,  
Respondents,

**FILED**

JAN 22 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Youre  
DEPUTY CLERK

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Las Vegas Drop Box  
CLERK OF SUPREME COURT  
2009 JAN 20 AM 9:25

D.R. HORTON, INC.,

Real Party in Interest

**MOTION FOR STAY OF THE COURT'S CONSIDERATION OF PETITIONER'S  
PETITION FOR WRITS OF MANDAMUS OR PROHIBITION**

COMES NOW, Real Party in Interest D.R. Horton, Inc. ("D.R. Horton"), by and  
through its attorneys Wood, Smith, Henning & Berman LLP, pursuant to *NRAP* 26(b) and  
*NRAP* 27, and hereby requests that this Court consideration of Petitioner's Writ until after  
the hearing on Petitioner's counsel's Motion for Withdrawal as Counsel in District Court  
Department 21, currently set for hearing on February 17, 2009. In the alternative, D.R.  
Horton respectfully requests that this Court grant an enlargement of time for D.R. Horton  
to Answer the Petitioner's Writ until 20 days after the hearing on counsel's Motion for  
Withdrawal as Counsel in the District Court

**I. INTRODUCTION**

On November 19, 2008, Petitioner, the High Noon at Arlington Ranch  
Homeowners Association (the "Association") filed a Petition for Writ of Prohibition or  
Mandamus (the "Petition") with this honorable Court. At that time, the Petition was not  
accompanied by the required affidavit. However, on December 17, 2008, the

WOOD, SMITH, HENNING & BERMAN LLP  
Attorneys at Law  
7670 WEST LAKE MEAD BOULEVARD, SUITE 250  
LAS VEGAS, NEVADA 89128-6652  
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DEPUTY CLERK  
09-01865

1 Association's counsel James R. Christensen, Esq., from the law firm of Quon Bruce  
2 Christensen, filed his affidavit in support of the Association's Petition. On January 12,  
3 2009, after filing his affidavit, Mr. Christensen's office filed a Motion to Withdraw as  
4 Counsel with the District Court.<sup>1</sup> From the record of this appeal, it does not appear that  
5 this Court is aware of Counsel's Motion to Withdraw. The hearing on the Association's  
6 counsel's Motion to Withdraw is scheduled for February 17, 2009. At this time, no  
7 moving papers have been filed indicting whether the Association intends to hire new  
8 counsel.

9 In light of Counsel's Motion, it is unclear if the Association will continue to pursue its  
10 Petition with this Court. As such, D.R. Horton respectfully requests that this honorable  
11 Court stay consideration of the Association's Petition until after the hearing on its  
12 counsel's Motion.

## 13 II. LEGAL ARGUMENT

### 14 A. Standard for Review

15 Under **NRAP** 27(b):

16 "Motions for procedural orders, including any motion under Rule  
17 26(b) may be acted upon at any time, without awaiting a response  
18 thereto, and pursuant to subsection (c), motions for specified types  
of procedural orders may be disposed of by the clerk."

19 The instant motion requests a procedural order staying consideration of the  
20 Association's Petitions for a Writ of Mandamus and/or Prohibition until after the resolution  
21 of the Association's counsel's Motion to Withdraw with the District Court. D.R. Horton  
22 has been directed by this honorable Court to respond to the Association's Petitions by  
23 January 29, 2009. As such, D.R. Horton requests that the Court act upon the instant  
24 Motion for a stay, without waiting for an opposition, pursuant to **NRAP** 27(b).

25 In the alternative, **NRAP** 26(b) allows the Court to, for good cause shown, enlarge  
26 the time prescribed by its order. If the Court declines to grant D.R. Horton's Motion to  
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28 <sup>1</sup> See, Exhibit "A" attached hereto and incorporated herein by this reference.

1 Stay, D.R. Horton respectfully requests that this honorable Court grant D.R. Horton an  
2 extension of time to answer the Association's petition until twenty (20) days after the  
3 February 17, 2009 hearing on counsel's Motion to Withdraw in the District Court.

4 **B. Consideration of the Association's Petition Should Be Stayed Pending**  
5 **Resolution of its Counsel's Motion to Withdraw with the District Court.**

6 As delineated above, on January 12, 2008, the Association's counsel filed a  
7 Motion to Withdraw as Counsel with the District Court. If the Court grants Counsel's  
8 Motion, the Association will be without counsel of record. Under **NRS 116.3101**, a  
9 homeowners association must "be organized as a profit or nonprofit corporation,  
10 association, limited-liability company, trust or partnership." Further, the Supreme Court of  
11 Nevada requires that a corporate petitioner be represented by counsel, stating that,  
12 although a person is entitled to represent himself or herself in the district court, no rule or  
13 statute permits a company, trust, or any other entity to appear on its own behalf in the  
14 district courts or in the Nevada Supreme Court without proper representation.<sup>2</sup> Indeed,  
15 the Supreme Court of Nevada holds that "neither a corporation nor a trust may proceed in  
16 proper person."<sup>3</sup>

17 Therefore, if the district court grants the Association's counsel's Motion, the  
18 Association, a corporate petitioner, would be without counsel and unable to appear in the  
19 instant appeal, unless and until it retains new counsel. As previously noted, it is unclear if  
20 the Association intends to hire new counsel of record, much less continue to pursue its  
21 Petition for a Writ of Prohibition and/or Mandamus with this Court. As such, the instant  
22 Motion to Stay should be granted and the Association's appeal should be stayed pending  
23 resolution of counsel's withdrawal in the District Court, or, in the alternative, D.R. Horton's  
24 time to answer the Association's petition should be enlarged.

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27 <sup>2</sup> See, Salman v. Newell, 110 Nev. 1333, 885 P.2d 607 (1994).

28 <sup>3</sup> See, Id. at 608.

1 III. CONCLUSION

2 For the foregoing reasons, D.R. Horton respectfully requests that this honorable  
3 Court stay consideration of the Association's Petition until after the District Court hears  
4 the Association's counsel's Motion to Withdraw and the Association is able to retain a  
5 new counsel of record. In the alternative, D.R. Horton respectfully requests that this Court  
6 enlarge the time for D.R. Horton to answer until twenty (20) days after the February 17,  
7 2009 hearing on Counsel's Motion to Withdraw in the District Court.

8 DATED: January 20, 2009

WOOD, SMITH, HENNING & BERMAN LLP

9  
10 By: 

11 JOEL D. ODOU  
12 Nevada Bar No. 7468  
13 THOMAS E. TROJAN  
14 Nevada Bar No. 6852  
15 STEPHEN N. ROSEN  
16 Nevada Bar No. 10737  
17 WOOD, SMITH, HENNING & BERMAN LLP  
18 7670 West Lake Mead Boulevard, Suite 250  
19 Las Vegas, Nevada 89128-6652  
20 Attorneys for Real Party in Interest,  
21 D.R. HORTON, INC.  
22  
23  
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**PROOF OF SERVICE**

**STATE OF NEVADA, COUNTY OF CLARK**

I am employed in the County of Clark, State of Nevada. I am over the age of eighteen years and not a party to the within action; my business address is 7670 West Lake Mead Boulevard, Suite 250, Las Vegas, Nevada 89128-6652.

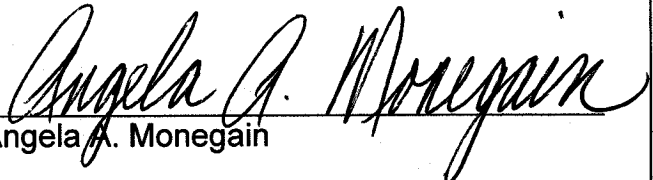
On January 20, 2009, I served the following document(s) described as **MOTION FOR STAY OF THE COURT'S CONSIDERATION OF PETITIONER'S PETITION FOR WRITS OF MANDAMUS OR PROHIBITION** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

**SEE ATTACHED LIST**

**BY MAIL:** I am "readily familiar" with Wood, Smith, Henning & Berman's practice for collecting and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Las Vegas, Nevada, on that same day following ordinary business practices.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on January 20, 2009, at Las Vegas, Nevada.

  
Angela A. Monegain

**SERVICE LIST**  
**Case No. 52798**

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Honorable Judge Susan H. Williams	Respondent
Regional Justice Center	
District Court, Dept 22	
200 Lewis Avenue	
Las Vegas, NV 89101	
George T. Bouchanis, Esq.	Attorneys for Amicus Curiae Nevada
George T. Bochanis, Ltd.	Justice Association
631 South North Street	
Las Vegas, NV 89101	
Norberto Cisneros	Attorneys for Amicus Curiae Safe Homes
Cisneros & Thompson	Nevada
630 South Third Street	
Las Vegas, NV 89101	
Nancy Quon, Esq.	Attorneys for High Noon at Arlington
Jason W. Bruce, Esq.	Ranch Homeowners Association
James R. Christensen	
Quon Bruce Christensen	
2330 Paseo del Prado	
Suite C-101	
Las Vegas, NV 89102	

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CLERK OF THE COURT

1 **MOT**  
2 NANCY QUON, ESQ.  
3 Nevada Bar No. 6099  
4 JASON W. BRUCE, ESQ.  
5 Nevada Bar No. 6916  
6 JAMES R. CHRISTENSEN, ESQ.  
7 Nevada Bar No. 3861  
8 QUON BRUCE CHRISTENSEN LAW FIRM  
9 2330 Paseo Del Prado, Suite C101  
10 Las Vegas, NV 89102  
11 (702) 942-1600  
12 *Attorneys for Plaintiff*

DISTRICT COURT

CLARK COUNTY, STATE OF NEVADA

11 HIGH NOON AT ARLINGTON RANCH )  
12 HOMEOWNERS ASSOCIATION, a ))  
13 Nevada non-profit corporation, for itself )  
14 and for all others similarly situated, )  
15 Plaintiff, )  
16 v. )  
17 D.R. HORTON, INC., a Delaware )  
18 Corporation DOE INDIVIDUALS 1-100, )  
19 ROE BUSINESS or GOVERNMENTAL )  
20 ENTITIES 1-100, inclusive, )  
21 Defendants. )

CASE NO.: A542616  
DEPT. NO.: XXII

**MOTION TO WITHDRAW AS  
COUNSEL**

DATE: February 17, 2009  
TIME: 8:30 a.m.

20 COMES NOW, QUON BRUCE CHRISTENSEN LAW FIRM, and ANGIUS &

21 TERRY LLP, counsel for Plaintiff High Noon at Arlington Ranch Homeowners Association, and  
22 moves the court for an order permitting them to withdraw as counsel for this party in the  
23 above-entitled action pursuant to SCR 46, subsection 2, NRPC. 1.16 and EJDRC 7.40(b)(2), and

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1 based upon the accompanying notice, memorandum of points and authorities, and the Affidavit  
2 of James R. Christensen, Esq.

3 Dated this 12<sup>th</sup> day of January, 2009.

4 **QUON BRUCE CHRISTENSEN**

5 By:   
6 NANCY QUON, ESQ.  
7 Nevada Bar No. 6099  
8 JASON W. BRUCE, ESQ.  
9 Nevada Bar No. 6916  
10 JAMES R. CHRISTENSEN, ESQ.  
11 Nevada Bar No. 3861  
12 2330 Paseo Del Prado, Suite C-101  
13 Las Vegas, Nevada 89102  
14 (702) 942-1600  
15 *Attorneys for Plaintiff*

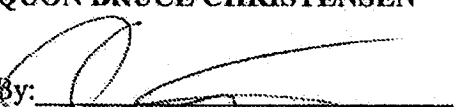
16 **NOTICE OF HEARING ON MOTION TO WITHDRAW AS COUNSEL**

17 **TO ALL COUNSEL OF RECORD:**

18 **TAKE NOTICE** that QUON BRUCE CHRISTENSEN LAW FIRM, and ANGIUS &  
19 TERRY LLP, have filed a motion to withdraw as counsel for Plaintiff in this action. The hearing  
20 on the motion is scheduled for February 17, 2009, at 8:30 a.m., in the above-entitled court.

21 Dated this 12<sup>th</sup> day of January, 2009.

22 **QUON BRUCE CHRISTENSEN**

23 By:   
24 NANCY QUON, ESQ.  
25 Nevada Bar No. 6099  
26 JASON W. BRUCE, ESQ.  
27 Nevada Bar No. 6916  
28 JAMES R. CHRISTENSEN, ESQ.  
Nevada Bar No. 3861  
2330 Paseo Del Prado, Suite C-101  
Las Vegas, Nevada 89102  
(702) 942-1600  
*Attorneys for Plaintiff*



1                                    MEMORANDUM OF POINTS AND AUTHORITIES

2            QUON BRUCE CHRISTENSEN LAW FIRM, and ANGIUS & TERRY LLP move the  
3 Court for an order permitting their withdrawal as counsel of record for Plaintiff High Noon at  
4 Arlington Ranch Homeowners Association (hereinafter "Association"), and upon the following  
5 points and authorities:

6            The rules governing legal representation provide that once an attorney has appeared in an  
7 action, an attorney may be changed only upon the application of the attorney or the client with  
8 the consequent order of the court, or by stipulation. *See, e.g., Orme v. Eighth Judicial Dist.*  
9 *Court In and For County of Clark*, 105 Nev. 712, 714, 782 P.2d 1325, 1326 (1989) (citing  
10 *Aldabe v. Aldabe*, 84 Nev. 392, 398, 441 P.2d 691, 695 (1968). SCR 46 contemplates that once  
11 an attorney has appeared in an action, he may be changed upon the application of the client or the  
12 attorney with the consent of the court, or by stipulation. *Id.* N.R.P.C. 1.16 mandates that counsel  
13 "shall withdraw from the representation of a client if . . . (3) the lawyer is discharged." Quon  
14 Bruce Christensen and Anguis & Terry LLP have been discharged. EDCR 7.40(b)(2) specifies  
15 that counsel may withdraw upon written motion and consent of the court. Accordingly, this  
16 motion for withdrawal is submitted to the Court.

17            The grounds for withdrawal, together with the current address and telephone number for  
18 the Association are set forth in the affidavit of James R. Christensen, Esq. attached hereto as  
19 **Exh. 1**. The parties are not prejudiced by the withdrawal of counsel because the trial date is not  
20 set until June 14, 2010. Further, Plaintiff has retained Matthew L. Grode, Esq., of Gibbs, Giden,  
21 Locher, Turner & Sencet LLP, as new counsel.

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WHEREFORE, QUON BRUCE CHRISTENSEN, and ANGIUS & TERRY LLP  
request the Court grant this motion and permit them to withdraw as counsel of record for Plaintiff  
High Noon at Arlington Ranch Homeowners Association.

Respectfully submitted this 12<sup>th</sup> day of January, 2009.

**QUON BRUCE CHRISTENSEN**

By: NANCY QUON, ESQ.  
Nevada Bar No. 6099  
JASON W. BRUCE, ESQ.  
Nevada Bar No. 6916  
JAMES R. CHRISTENSEN, ESQ.  
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2330 Paseo Del Prado, Suite C-101  
Las Vegas, Nevada 89102  
(702) 942-1600  
*Attorneys for Plaintiff*


STATE OF NEVADA )  
 ) ss.  
COUNTY OF CLARK )

1. I am counsel of record for Plaintiff High Noon at Arlington Ranch Homeowners Association ("Association"). ANGIUS & TERRY, LLP filed a notice of association on December 19, 2008.

3. I am informed and believe that the Association has retained Matthew L. Grode, Esq., of Gibbs, Giden, Locher, Turner & Senet LLP, as new counsel.

DATED this 12<sup>th</sup> day of January, 2009.

SUBSCRIBED AND SWORN to before  
me this 19<sup>th</sup> day of January, 2009.

 **L. MATTHEWS**  
Notary Public, State of Nevada  
Appointment No. 07-3690-1  
My Appl. Expires Jul 15, 2011