Ms. Tracie K. Lindeman
Clerk of the Nevada Supreme Court
RE: Proposed FMP Rules Amendment
July 2, 2012

Dear Ms. Lindeman:

I'm writing on behalf of myself, Robert E. Hager, Esq., and Henry Sotelo, Esq. The three of us have participated in approximately 700 foreclosure mediations since the fall of 2009. Each of us are requesting the opportunity to speak at the July 9 hearing.

Mark Mausert and Robert Hager will discuss the connection between LandSafe Appraisal Services and Bank of America. That is, LandSafe is wholly owned by Bank of America. Some Lenders, like Chase, go so far as to produce BPO's and appraisals that are conducted in house. Chapter 645 of the Nevada Revised Statutes does not specifically prohibit indulgence in this sort of conflict of interest . . . but it should. Implicit prohibition is apparent. The idea is to build a sort of firewall between the appraiser and the lender, so as to ensure an accurate, unbiased appraisal, attended by impartiality and the appearance of impartiality. Lenders have an obvious motive to inflate values at mediation, i.e., if borrowers are aware of the extent of diminution of value, they will be more likely to affirm underwater mortgages. There are a number of other motivations. The result is predictable. Foreclosures will be delayed, but as homeowners realized they have been duped, the mortgage crisis will drag on for years. The Rules contemplate independent appraisals. Fraudulent appraisals were a key component of the bubble and subsequent financial collapse of the real estate market.

A forthright exchange of information allows for reasoned decisions which will stabilize Nevada and ameliorate the crisis. If negotiated resolutions cannot be arrived at, well, that is the way it is. The problem will be worked out via foreclosure or litigation. Certainty is important. Achieving inequitable resolutions, which are based upon false information and therefore inherently unstable, seems ill-advised. The nexus between NRS 40.451, 111.210 and disclosure of the amount paid by the current lienholder is very important. How NRS 40.451 will be interpreted is an issue before the Court. That statute appears to limit the amount of deficiency exposure -- to the amount paid by the lienholder, in juxtaposition with the price brought by a trustee's sale, or the appraised value, whichever is higher. NRS 111.210, part of Nevada's "statute of frauds", requires expression of consideration. That statute was enacted in 1861. Usually verbiage such as "for value received" is substituted in the stead of an expression of consideration -- especially when assignments emanate from Mortgage Electronic Registration Systems, Inc. (MERS). A formulaic recitation is a conclusion, as opposed to an expression. Both statutes compel the same inquiry, to wit, how much was paid for acquisition of the beneficial interest.

I do not know how many foreclosure mediations have occurred. 700 is a large number. The three of us have worked very hard and performed in-depth research. Please let me know the time limits. We will break up any time allowed so as to avoid repetition.

Thanks very much.

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