

Ex. 1

EXHIBIT 1

Ex. 1

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New District Civil/Criminal Search](#) [Refine Search](#) [Back](#) Location : District Court Civil/Criminal [Help](#)

Register of Actions

Case No. A-13-678814-C

SFR Investments Pool 1, LLC, Plaintiff(s) vs. US Bank,	Case Type:	Title to Property
Defendant(s)	Subtype:	Quiet Title
§	Date Filed:	03/22/2013
§	Location:	Department 18
§	Conversion Case	A678814
§	Number:	
§	Supreme Court No.:	63614
§		
Party Information		

Defendant Parks, Lucia

Lead Attorneys
D. Chris Albright
Retained
7023847111(W)

Defendant US Bank

Chelsea A. Crowton,
ESQ
Retained
702-475-7969(W)

Plaintiff SFR Investments Pool 1, LLC

Kim C. Howard
Retained
702-485-3300(W)

Events & Orders of the Court
DISPOSITIONS

06/11/20 Order of Dismissal With Prejudice (Judicial Officer: Barker, David)
Debtors: SFR Investments Pool 1, LLC (Plaintiff)
Creditors: US Bank (Defendant), Lucia Parks (Defendant)
Judgment: 06/11/2013, Docketed: 06/18/2013

OTHER EVENTS AND HEARINGS

03/22/20 Case Opened
03/22/20 Complaint
Complaint for Quiet Title and Injunctive Relief
03/22/20 Notice of Lis Pendens
Notice of Lis Pendens
03/27/20 Motion for Temporary Restraining Order
Application for Temporary Restraining Order on Order Shortening Time and Motion for Preliminary Injunction
03/28/20 Motion for Preliminary Injunction (8:15 AM) (Judicial Officer Barker, David)
Plaintiff's Application for Temporary Restraining Order on Order Shortening Time and Motion for Preliminary Injunction
[Parties Present](#)
[Minutes](#)
Result: Granted in Part
03/28/20 Temporary Restraining Order
Temporary Restraining Order Enjoining Sale and Order Setting Briefing Schedule for Preliminary Injunction
03/28/20 Notice of Posting Bond
Notice of Posting and Acceptance of Bond
03/29/20 Notice of Posting Bond
Notice of Posting and Acceptance of Bond
04/01/20 Affidavit of Service
Affidavit of Service - US Bank
04/01/20 Affidavit of Service

	<i>Affidavit of Service</i>
04/01/20	Summons
	<i>Summons - Lucia Parks</i>
04/01/20	Summons
	<i>Summons - U.S. Bank, N.A.</i>
04/03/20	Affidavit of Service
	<i>Affidavit of Service - U.S. Bank</i>
04/10/20	Notice of Appearance
	<i>Notice of Appearance</i>
04/10/20	Initial Appearance Fee Disclosure
	<i>Initial Appearance Fee Disclosure</i>
04/10/20	Notice of Removal
	<i>Notice of Petition for Removal</i>
04/11/20	Motion for Preliminary Injunction (8:15 AM) (Judicial Officer Barker, David)
	04/11/2013, 05/16/2013
	<i>Plaintiff's Motion for Preliminary Injunction</i>
	<u>Parties Present</u>
	<u>Minutes</u>
	Result: Matter Continued
04/17/20	Notice
	<i>Notice of Remand</i>
04/19/20	Answer to Complaint
	<i>Answer to Complaint for Quiet Title and Injunctive Relief</i>
04/25/20	Response
	<i>Defendant, U.S. Bank, N.A.'s, Response to the Motion for Preliminary Injunction</i>
04/25/20	Request for Judicial Notice
	<i>Defendant, U.S. Bank, N.A.'s, Request for Judicial Notice in Support of the Response to the Plaintiff's Motion for Preliminary Injunction</i>
04/29/20	Affidavit of Service
	<i>Affidavit of Service - Lucia Parks</i>
04/30/20	Motion to Dismiss
	<i>Defendant, U.S. Bank, N.A.'s, Motion to Dismiss with Prejudice the Plaintiff's Complaint</i>
04/30/20	Motion to Expunge Lis Pendens
	<i>Defendant US Bank's Motion to Expunge Lis Pendens</i>
05/02/20	Certificate of Mailing
	<i>Certificate of Mailing</i>
05/03/20	Notice of Entry of Order
	<i>Notice of Entry of Order</i>
05/09/20	Exhibits
	<i>Exhibits in Support of Application for Temporary Restraining Order on Order Shortening Time and Motion for Preliminary Injunction</i>
05/14/20	Certificate of Service
	<i>Certificate of Service</i>
05/14/20	Notice
	<i>Notice of Joinder in Plaintiff's Motion for Preliminary Injunction</i>
05/14/20	Notice
	<i>Notice of Joinder in Defendant U.S. Bank N.A.'s Motion to Expunge Lis Pendens</i>
05/14/20	Notice
	<i>Notice of Joinder in Defendant U.S. Bank N.A.'s Motion to Dismiss with Prejudice the Plaintiff's Complaint</i>
05/14/20	Reply in Support
	<i>Reply in Support of Motion for Preliminary Injunction</i>
05/15/20	Opposition to Motion
	<i>Opposition to Motion to Expunge Lis Pendens</i>
05/16/20	Motion to Expunge Lis Pendens (8:15 AM) (Judicial Officer Barker, David)
	05/16/2013, 06/04/2013
	<i>Defendant US Bank's Motion to Expunge Lis Pendens</i>
	Result: Matter Continued

05/16/20 Joinder (8:15 AM) (Judicial Officer Barker, David)
Defendant Lucia Parks' Notice of Joinder in Plaintiff's Motion for Preliminary Injunction
 Result: Granted

05/16/20 Joinder (8:15 AM) (Judicial Officer Barker, David)
05/16/2013, 06/04/2013
Defendant Lucia Parks' Notice of Joinder in Defendant U.S. Bank N.A.'s Motion to Expunge Lis Pendens
 Result: Matter Continued

05/16/20 All Pending Motions (8:15 AM) (Judicial Officer Barker, David)
[Parties Present](#)
[Minutes](#)
 Result: Matter Heard

05/16/20 Notice
Notice of Receipt of Funds Being Held in Trust

05/17/20 Decision (8:33 AM) (Judicial Officer Barker, David)
Decision: Pltf's Motion for Preliminary Injunction & Deft. Lucia Parks' Notice of Joinder in Pltf's Motion for Preliminary Injunction
[Minutes](#)
 Result: Minute Order - No Hearing Held

05/23/20 Reply in Support
Reply in Support of Defendant, U.S. Bank, N.A.'s, Motion to Expunge Lis Pendens

05/24/20 Opposition to Motion to Dismiss
Opposition to U.S. Bank's Motion to Dismiss

05/28/20 Certificate of Service
Certificate of Service

05/29/20 Reporters Transcript
Transcript of Proceedings: Motions, heard May 16, 2013

05/29/20 Reply in Support
Defendant, U.S. Bank, N.A.'s, Reply in Support of the Motion to Dismiss with Prejudice the Plaintiff's Complaint

05/30/20 Certificate of Mailing
Certificate of Mailing

05/31/20 Certificate of Service
Certificate of Service

05/31/20 Supplemental
Supplement to Opposition to Motion to Dismiss

06/04/20 Motion to Dismiss (8:15 AM) (Judicial Officer Barker, David)
Defendant, U.S. Bank, N.A.'s, Motion to Dismiss with Prejudice the Plaintiff's Complaint
 Result: Matter Continued

06/04/20 Joinder (8:15 AM) (Judicial Officer Barker, David)
Defendant Lucia Parks' Joinder in Defendant U.S. Bank N.A.'s Motion to Dismiss with Prejudice the Plaintiff's Complaint
 Result: Matter Continued

06/04/20 All Pending Motions (8:15 AM) (Judicial Officer Barker, David)
[Parties Present](#)
[Minutes](#)
06/04/2013 Reset by Court to 06/04/2013
 Result: Matter Heard

06/10/20 Order Denying Motion
Order Denying Plaintiff's Motion for Preliminary Injunction

06/11/20 Notice of Entry of Order

06/11/20 Order for Dismissal
Order for Dismissal and Cancellation of Notice of Pendency of Action

06/12/20 Notice of Entry of Order

06/17/20 Order to Statistically Close Case
Civil Order to Statistically Close Case

06/26/20 Motion to Amend Judgment

06/27/20 *Motion to Alter or Amend Judgment*
Certificate of Service
Certificate of Service
 07/09/20 **CANCELED Decision** (3:00 AM) (Judicial Officer Barker, David)
Vacated - Moot
Decision Re: Defendant Lucia Parks' Joinder in Defendant U.S. Bank's Motion to Dismiss with Prejudice Plaintiff's Complaint ... Defendant U.S. Bank's Motion to Expunge Lis Pendens ... Defendant Lucia Parks' Joinder to Defendant U.S. Bank's Motion to Expunge Lis Pendens ... Defendant U.S. Bank's Motion to Dismiss with Prejudice Plaintiff's Complaint
 07/12/20 **Notice of Appeal**
Notice of Appeal
 07/12/20 **Case Appeal Statement**
Case Appeal Statement
 07/17/20 **Certificate of Service**
Certificate of Service
 07/17/20 **Opposition**
Defendant, U.S. Bank, N.A.'s Opposition to the Plaintiff's Motion to Alter or Amend Judgment
 07/18/20 **Response**
Response and Opposition to Plaintiff's Motion to Alter or Amend Judgment; and Joinder in Defendant US Bank's Opposition
 07/23/20 **Reply**
Reply in Support of Motion to Alter or Amend Judgment
 07/24/20 **Certificate of Service**
Certificate of Service
 07/24/20 **Errata**
Notice of Errata
 07/29/20 **Response**
Supplement to Response and Opposition to Plaintiff's Motion to Alter Or Amend Judgment; and Joinder in Defendant Us Bank's Opposition
 07/30/20 **Motion to Amend Judgment** (8:15 AM) (Judicial Officer Barker, David)
Plaintiff's Motion to Alter or Amend Judgment
 Result: Granted in Part
 08/05/20 **Recorders Transcript of Hearing**
Recorder's Transcript of Proceedings: Plaintiff's Motion to Alter or Amend Judgment, heard July 30, 2013
 08/05/20 **Recorders Transcript of Hearing**
Recorder's Transcript of Proceedings: Defendant Lucia Parks' Joinder in U.S. Bank's Motion to Dismiss with Prejudice; Defendant U.S. Bank's Motion to Expunge Lis Pendens; Defendant Lucia Parks' Notice of Joinder in Defendant U.S. Bank's Motion to Expunge Lis Pendens; Defendant U.S. Bank's Motion to Dismiss with Prejudice, heard June 4, 2013
 Financial Information

		Defendant Parks, Lucia	
		Total Financial Assessment	223.00
		Total Payments and Credits	223.00
		Balance Due as of 08/06/2013	0.00
04/19/2013	Transaction		
	Assessment		223.00
04/19/2013	Wiznet	Receipt # 2013-48771-CCCLK Parks, Lucia	(223.00)

	Defendant US Bank	
	Total Financial Assessment	258.00
	Total Payments and Credits	258.00
	Balance Due as of 08/06/2013	0.00

04/10/2013	Transaction Assessment			226.50
04/10/2013	Wiznet	Receipt # 2013-43892-CCCLK	US Bank	(223.00)
04/10/2013	Wiznet	Receipt # 2013-43893-CCCLK	US Bank	(3.50)
04/10/2013	Transaction Assessment			3.50
04/10/2013	Wiznet	Receipt # 2013-43895-CCCLK	US Bank	(3.50)
04/10/2013	Transaction Assessment			3.50
04/10/2013	Wiznet	Receipt # 2013-44042-CCCLK	US Bank	(3.50)
04/18/2013	Transaction Assessment			3.50
04/18/2013	Wiznet	Receipt # 2013-48286-CCCLK	US Bank	(3.50)
04/25/2013	Transaction Assessment			3.50
04/25/2013	Wiznet	Receipt # 2013-51306-CCCLK	US Bank	(3.50)
04/26/2013	Transaction Assessment			3.50
04/26/2013	Wiznet	Receipt # 2013-51577-CCCLK	US Bank	(3.50)
04/30/2013	Transaction Assessment			3.50
04/30/2013	Wiznet	Receipt # 2013-53353-CCCLK	US Bank	(3.50)
05/01/2013	Transaction Assessment			3.50
05/01/2013	Wiznet	Receipt # 2013-53437-CCCLK	US Bank	(3.50)
05/02/2013	Transaction Assessment			3.50
05/02/2013	Wiznet	Receipt # 2013-54386-CCCLK	US Bank	(3.50)
05/29/2013	Transaction Assessment			3.50
05/29/2013	Wiznet	Receipt # 2013-65229-CCCLK	US Bank	(3.50)

Plaintiff SFR Investments Pool 1, LLC

Total Financial Assessment	297.00
Total Payments and Credits	297.00
Balance Due as of 08/06/2013	0.00

03/22/2013	Transaction Assessment			270.00
03/22/2013	Wiznet	Receipt # 2013-35194-CCCLK	SFR Investments Pool 1, LLC	(270.00)
06/12/2013	Transaction Assessment			3.00
06/12/2013	Payment (Window)	Receipt # 2013-71772-CCCLK	Nationwide Legal Nevada LLC	(3.00)
07/12/2013	Transaction Assessment			24.00
07/12/2013	Wiznet	Receipt # 2013-84311-CCCLK	SFR Investments Pool 1, LLC	(24.00)

EXHIBIT 2

I. Party Information

Plaintiff(s) (name/address/phone): SFR INVESTMENTS POOL1, LLC	Defendant(s) (name/address/phone): US BANK, N.A., a national banking association as Trustee for the Certificate Holders of Wells Fargo Asset Securities Corporation, Mortgage Pass- Through Certificates, Series 2006-AR4 and LUCIA PARKS, an individual, DOES I through X; and ROE CORPORATIONS I through X, inclusive
Attorney (name/address/phone): Howard C. Kim, Esq. and Diana S. Cline, Esq., Howard Kim and Associates, 400 North Stephanie St., Suite 160, Henderson , Nevada 89014; (702) 485-3300	Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and
applicable subcategory, if appropriate)

☐ Arbitration Requested

Civil Cases		
Real Property	Torts	
<div><input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer</div> <div><input checked="" type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input checked="" type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance</div> <div><input type="checkbox"/> Condemnation/Eminent Domain</div> <div><input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning</div>	<div>Negligence <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other</div>	<div><input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability</div> <div><input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights</div> <div><input type="checkbox"/> Employment Torts (Wrongful termination)</div> <div><input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition</div>
Probate	Other Civil Filing Types	
<div>Estimated Estate Value: _____</div> <div><input type="checkbox"/> Summary Administration</div> <div><input type="checkbox"/> General Administration</div> <div><input type="checkbox"/> Special Administration</div> <div><input type="checkbox"/> Set Aside Estates</div> <div><input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee</div> <div><input type="checkbox"/> Other Probate</div>	<div><input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General</div> <div><input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code</div> <div><input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker’s Compensation Appeal</div>	<div><input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal</div> <div><input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding</div> <div><input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor’s Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters</div>

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

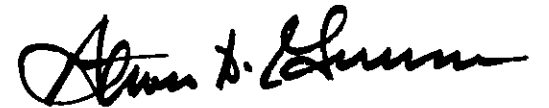
<input type="checkbox"/> NRS Chapters 78-88	<input type="checkbox"/> Investments (NRS 104 Art. 8)	<input type="checkbox"/> Enhanced Case Mgmt/Business
<input type="checkbox"/> Commodities (NRS 90)	<input type="checkbox"/> Deceptive Trade Practices (NRS 598)	<input type="checkbox"/> Other Business Court Matters
<input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Trademarks (NRS 600A)	

03/22/13

Date

/s/ Diana S. Cline

Signature of initiating party or representative



CLERK OF THE COURT

COMP

HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
E-mail: howard@hkimlaw.com
DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
E-mail: diana@hkimlaw.com
VICTORIA L. HIGHTOWER, ESQ.
Nevada Bar No. 10897
E-mail: victoria@hkimlaw.com
HOWARD KIM & ASSOCIATES
400 N. Stephanie St, Suite 160
Henderson, Nevada 89014
Telephone: (702) 485-3300
Facsimile: (702) 485-3301

Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL1, LLC a Nevada
limited liability company,

Plaintiff,

US BANK, N.A., a national banking
association as Trustee for the Certificate
Holders of Wells Fargo Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4, and LUCIA
PARKS, an individual, DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No. A - 1 3 - 6 7 8 8 1 4 - C

Dept. No. X V I I I

**COMPLAINT FOR QUIET TITLE AND
INJUNCTIVE RELIEF**

Arbitration Exemptions:

1. Action for Declaratory Relief
2. Action Concerning Real Property

Plaintiff SFR INVESTMENTS POOL 1, LLC ("SFR"), by and through its attorneys of
records, the law firm HOWARD KIM AND ASSOCIATES, hereby demands quiet title and
request injunctive relief against the above named defendants as follows:

I. PARTIES

1. Plaintiff is a Nevada limited liability company with its principal place of business in
Clark County, Nevada and the current title owner of the property commonly known as **2270
Nashville Avenue, Henderson, Nevada, 89052; Parcel No. 178-19-712-012** (the "Property").

2. Upon information and belief, Defendant US BANK, N.A. (“US Bank”) is a national banking association and Trustee for the Certificate Holders of Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4 that may claim an interest in the Property via a 2012 Wells Fargo deed of trust.

3. Upon information and belief, COPPER RIDGE COMMUNITY HOMEOWNERS ASSOCIATION (“Copper Ridge HOA”) is a Nevada non-profit corporation that filed a lien on the Property pursuant to NRS 116.3116 *et. seq.* and the Copper Ridge HOA governing documents (“CC&R’s”).

4. Upon information and belief, Defendant LUCIA PARKS is an individual residing in Nevada and the former title owner of the Property.

5. Upon information and belief, each of the defendants sued herein as DOES I through X, inclusive claim an interest in the Property or are responsible in some manner for the events and action that plaintiff seeks to enjoin; that when the true names capacities of such defendants become known, plaintiff will ask leave of this Court to amend this complaint to insert the true names, identities and capacities together with proper charges and allegations.

6. Upon information and belief, each of the defendants sued herein as ROES CORPORATIONS I through X, inclusive claim an interest in the Property or are responsible in some manner for the events an happenings herein that plaintiff seeks to enjoin; that when the true names capacities of such defendants become known, plaintiff will ask leave of this Court to amend this complaint to insert the true names, identities and capacities together with proper charges and allegations.

II. GENERAL ALLEGATIONS

Plaintiff Acquired Title to the Property through Foreclosure of Super-Priority HOA Lien

7. Plaintiff acquired the Property on March 1, 2013 by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* (“HOA foreclosure sale”). Since the HOA foreclosure sale, Plaintiff has expended additional funds and resources in relation to the Property.

8. On or about March 6, 2013, the resulting foreclosure deed was recorded in the Official

1 Records of the Clark County Recorder as Instrument Number 201303060001614 (“HOA
2 Foreclosure Deed”).

3 9. The foreclosure sale was conducted by Nevada Association Services, Inc. agent for
4 Copper Ridge HOA, pursuant to the powers conferred by the Nevada Revised Statutes 116.3116,
5 116.31162, 116.31163 and 116.31164, the Copper Ridge HOA governing documents (CC&R’s)
6 and a Notice of Delinquent Assessment Lien, recorded on May 24, 2012 in the Official Records
7 of the Clark County Recorder as Instrument Number 201205240002436 (“HOA Lien”).

8 10. As recited in the HOA Foreclosure Deed, the HOA foreclosure sale complied with all
9 requirements of law, including but not limited to, recording and mailing of copies of Notice of
10 Delinquent Assessment and Notice of Default, and the recording, posting and publication of the
11 Notice of Sale.

12 11. Pursuant to NRS 116.3116(2), the entire HOA Lien

13 is prior to all other liens and encumbrances of unit except:

14 (a) Liens and encumbrances recorded before the recordation of the declaration
15 and, in a cooperative, liens and encumbrances which the association creates,
16 assumes or takes subject to;

17 (b) A first security interest on the unit recorded before the date on which the
18 assessment sought to be enforced became delinquent or, in a cooperative, the first
19 security interest encumbering only the unit’s owner’s interest and perfected before
20 the date on which the assessment sought to be enforced became delinquent; and

21 (c) Liens for real estate taxes and other governmental assessments or charges
22 against the unit or cooperative.

23 12. NRS 116.3116(2) further provides that a portion of the HOA Lien has priority over even
24 a first security interest in the Property:

25 [the HOA Lien] is also prior to all security interests described in paragraph (b) to
26 the extent of any charges incurred by the association on a unit pursuant to NRS
27 116.310312 and to the extent of the assessments for common expenses based on
28 the periodic budget adopted by the association pursuant to NRS 116.3115 which
would have become due in the absence of acceleration during the 9 months
immediately preceding institution of an action to enforce the lien[.]

13. Upon information and belief, no party still claiming an interest in the Property recorded a
lien or encumbrance prior to the declaration creating Copper Ridge HOA.

14. Upon information and belief, Plaintiff’s bid on the Property was in excess of the amount
necessary to satisfy the costs of sale and the super-priority portion of the HOA Lien.

15. Upon information and belief, Copper Ridge HOA or its agent Nevada Association Services, Inc. distributed or should have distributed the excess funds to lien holders in order of priority pursuant to NRS 116.3114(c).

16. Upon information and belief, the excess funds paid at the HOA foreclosure sale through its winning bid were used or should have been used to satisfy any liens for real estate taxes and other governmental assessments or charges against the Property.

17. Upon information and belief, prior to the HOA foreclosure sale, no individual or entity paid the full amount of delinquent assessments described in the HOA Lien and the Notice of Default.

18. Upon information and belief, prior to the HOA foreclosure sale, no individual or entity paid the super-priority portion of the HOA Lien representing 9 months of assessments for common expenses based on the periodic budget adopted by the association which would have become due in the absence of acceleration for the relevant time period.

19. Pursuant to NRS 116.31166, the foreclosure sale vested title in Plaintiff “without equity or right of redemption,” and the Foreclosure Deed is conclusive against the Property’s “former owner, his or her heirs and assigns, and all other persons.”

Interests, Liens and Encumbrances Extinguished by the Super-Priority HOA Lien

20. Upon information and belief, Defendant Lucia Parks obtained title to the Property on or about January 5, 2006 through a Grant Bargain Sale Deed from Albert Brandelli and Mary Brandelli that was recorded in the Official Records of the Clark County Recorder as Instrument No. 200601050004273.

21. On or about June 7, 2012, Wells Fargo Bank, N.A. recorded an Assignment of Deed of Trust against the Property to U.S. Bank National Association, as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through, Certificates Series 2006-AR4 in the Official Records of the Clark County Recorder as Instrument No. 201007120002705 (“Wells Fargo Deed of Trust”).

22. On or about February 7, 2013, Nevada Association Services, Inc, agent for Copper Ridge HOA recorded a Notice of Trustee’s Sale in the Official Records of the Clark County Recorder

as Instrument Number 201302070000910 stating that the Property would be sold at a public auction pursuant to the terms of the on March 1, 2013 at 10:00 a.m.

23. On or about March 6, 2013, Plaintiff acquired the Property in the foreclosure sale and the Foreclosure Deed was recorded in the Official Records of Clark County Recorder as Instrument No. 201303060001614.

24. Defendant Lucia Park's ownership interest in the Property was extinguished by foreclosure of the HOA Lien.

25. Defendant US Bank's interest in the Property, if any, via the Wells Fargo Deed of Trust was extinguished by the foreclosure of the super-priority portion of the HOA Lien.

III. FIRST CLAIM FOR RELIEF

(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, *et. seq.* and 116.3116, *et. seq.* against the US Bank, Copper Ridge HOA, and Lucia Parks)

26. Plaintiff repeats and realleges the allegations of paragraphs 1-25 as though fully set forth herein and incorporate the same by reference.

27. Pursuant to NRS 30.010, *et. seq.*, this Court has the power and authority to declare the Plaintiff's rights and interests in the Property and to resolve the Defendants' adverse claims in the Property.

28. Plaintiff acquired the Property on March 1, 2013 by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* and the resulting HOA Foreclosure Deed vesting title in Plaintiff was recorded on March 6, 2013.

29. Defendant Lucia Parks, as previous title owner of the Property may assert a claim adverse to Plaintiff.

30. Upon information and belief, Defendant US Bank is claiming an interest in the Property through the Wells Fargo Deed of Trust.

31. A foreclosure sale conducted pursuant to NRS 116.31162, 116.31163 and 116.31164, like all foreclosure sales, extinguishes the title owner's interest in the Property and all junior liens and encumbrances, including deeds of trust.

32. Pursuant to NRS 116.3116(2), the super-priority portion of the HOA Lien has priority over the Wells Fargo Deed of Trust.

1 33. Upon information and belief, the Copper Ridge HOA Lien has been or should have been
2 extinguished or otherwise satisfied.

3 34. Defendants were duly notified of the HOA foreclosure sale and failed to act to protect
4 their interests in the Property, if any legitimately existed.

5 35. Plaintiff is entitled to a declaratory judgment from this Court finding that: (1) Plaintiff is
6 the title owner of the Property; (2) the HOA Foreclosure Deed is valid and enforceable; (3) the
7 HOA foreclosure sale extinguished Defendants' security interests in the Property; and (4)
8 Plaintiff's rights and interest in the Property are superior to any adverse interest claimed by
9 Defendants.

10 36. Plaintiff seeks an order from the Court quieting title to the Property in favor of Plaintiff.

11 **IV. SECOND CLAIM FOR RELIEF**

12 **(Preliminary and Permanent Injunction against US Bank and Lucia Parks)**

13 37. Plaintiff repeats and realleges the allegations of paragraphs 1- 36 as though fully set forth
14 herein and incorporate the same by reference.

15 38. Plaintiff properly acquired title to the Property at the HOA foreclosure sale on March 1,
16 2013.

17 39. Defendant US Bank may claim an interest in the Property through the Wells Fargo Deed
18 of Trust which was extinguished by the HOA foreclosure sale.

19 40. Defendant US Bank through its trustee, National Default Servicing Corporation is
20 attempting to improperly proceed with the non-judicial foreclosure of the Wells Fargo Deed of
21 Trust and sell the Property at a trustee's sale set for April 1, 2013 at 10:00 AM as evidenced by
22 the Notice of Trustee Sale recorded on March 11, 2013 in the Official Records of Clark County
23 Recorder as Instrument No. 201303110003086.

24 41. Any trustee's sale based on the Wells Fargo Deed of Trust would be invalid as
25 Defendants lost their interest in the Property, if any.

26 42. On the basis of the facts described herein, Plaintiff has a reasonable probability of
27 success on the merits of its claims and has no other adequate remedies at law.

28 43. Plaintiff is entitled to a preliminary injunction and permanent injunction prohibiting

Defendants from continuing any foreclosure proceedings that would affect the title to the Property.

V. THIRD CLAIM FOR RELIEF

(Unjust Enrichment against Defendants)

44. Plaintiff repeats and realleges the allegations of paragraphs 1- 43 as though fully set forth herein and incorporate the same by reference.

45. Plaintiff has expended funds and resources in connection with the acquisition and maintenance of the Property.

46. Defendants have benefitted by the funds and resources expended by Plaintiff.

47. Should Defendants' interests in the Property be declared valid, Defendants will have been unjustly enriched by the funds and resources expended by Plaintiff.

48. Plaintiff will be damaged if Defendants are allowed to both retain their interests in the Property and the benefit of the funds and resources Plaintiff expended on the Property.

49. Plaintiff has been required to hire attorneys to protect its rights in the Property and to pursue this action.

50. Plaintiff is entitled to general and special damages in excess of \$10,000.00.

VI. PRAYER FOR RELIEF

Plaintiff requests judgment against Defendants as follows:

1. For a declaration and determination that SFR Investments Pool 1, LLC is the rightful owner of title to the Property, and that Defendants be declared to have no right, title or interest in the Property

2. For a preliminary and permanent injunction that Defendants are prohibited from initiating or continuing foreclosure proceedings on the Property;

3. For general and special damages in excess of \$10,000.

4. For an award of attorney's fees and costs of suit; and

///

HOWARD KIM & ASSOCIATES

400 N. STEPHANIE ST, SUITE 160
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. For any further relief that the Court may deem just and proper.
DATED March 22nd, 2013.

HOWARD KIM & ASSOCIATES

/s/ Diana S. Cline
Howard C. Kim, Esq.
Nevada Bar No. 10386
Diana S. Cline, Esq.
Nevada Bar No. 10580
Victoria L. Hightower, Esq.
Nevada Bar No. 10897
400 N. Stephanie St., Suite 160
Henderson, Nevada 89014
Phone: (702) 485-3300
Fax: (702) 485-3301

Attorneys for Plaintiff

IAFD

HOWARD C. KIM, ESQ.

Nevada Bar No. 10386

E-mail: howard@hkimlaw.com

DIANA S. CLINE, ESQ.

Nevada Bar No. 10580

E-mail: diana@hkimlaw.com

VICTORIA L. HIGHTOWER, ESQ.

Nevada Bar No. 10897

E-mail: victoria@hkimlaw.com

HOWARD KIM & ASSOCIATES

400 N. Stephanie St, Suite 160

Henderson, Nevada 89014

Telephone: (702) 485-3300

Facsimile: (702) 485-3301

Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL1, LLC a Nevada
limited liability company,

Plaintiff,

vs.

US BANK, N.A., a national banking
association as Trustee for the Certificate
Holders of Wells Fargo Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4 and LUCIA
PARKS, an individual, DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No.

Dept. No.

**INITIAL APPEARANCE FEE
DISCLOSURE (NRS CHAPTER 19)**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are
submitted for parties appearing in the above-entitled action as indicated below:

///

HOWARD KIM & ASSOCIATES

400 N. STEPHANIE ST, SUITE 160

HENDERSON, NEVADA 89014

(702) 485-3300 FAX (702) 485-3301

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SFR INVESTMENTS POOL 1, LLC \$270.00

TOTAL \$270.00

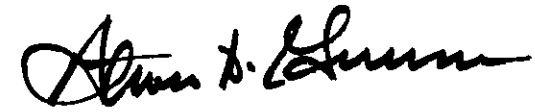
DATED March 22nd, 2013.

HOWARD KIM & ASSOCIATES

/s/ Diana S. Cline
Howard C. Kim, Esq.
Nevada Bar No. 10386
Diana S. Cline, Esq.
Nevada Bar No. 10580
Victoria L. Hightower, Esq.
Nevada Bar No. 10897
400 N. Stephanie St., Suite 160
Henderson, Nevada 89014
Phone: (702) 485-3300
Fax: (702) 485-3301

Attorneys for Plaintiff

EXHIBIT 3



CLERK OF THE COURT

ORDER

WRIGHT, FINLAY & ZAK, LLP

Chelsea A. Crowton, Esq.

Nevada Bar No. 11547

5532 South Fort Apache Road, Suite 110

Las Vegas, NV 89148

(702) 475-7964; Fax: (702) 946-1345

ccrowton@wrightlegal.net

Attorney for Defendant,

U.S. Bank, N.A., as Trustee for the Certificate Holders of Wells Fargo Asset Securities

Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4

DISTRICT COURT
CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a Nevada
limited liability company

Plaintiff,

vs.

US BANK, N.A., a national banking association
as Trustee for the Certificate Holders of Wells
Fargo Asset Securities Corporation, Mortgage
Pass-Through Certificates, Series 2006-AR4,
and LUCIA PARKS, an individual; DOES I
through X, and ROE CORPORATIONS I
through X, inclusive.

Defendants.

Case No.: A-13-678814-C

Dept. No.: XVIII

ORDER DENYING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION

The Plaintiff's Motion for Preliminary Injunction having come on for hearing in the
above-entitled Court on May ¹⁶17, 2013 at the hour of ^{8:15}8:30 A.M. The Plaintiff, SFR Investments
Pool 1, LLC, appearing by and through its counsel of record, Diana S. Cline, Esq., of Howard
Kim & Associates; the Defendant, U.S. Bank, N.A., as Trustee for the Certificate Holders of
Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-
AR4, appearing by and through its counsel of record, Chelsea A. Crowton, Esq., of Wright,
Finlay & Zak, LLP, and the Court having considered all arguments presented, the pleadings on
///

1 file herein, and determining that good cause appearing, hereby rules as follows:

2 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff's Motion
3 for Preliminary injunction is hereby denied.

4 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that a stay of thirty (30)
5 days is imposed from the date of service of the Notice of Entry of the Order Denying Plaintiff's
6 Motion for Preliminary Injunction, during which time Defendant, U.S. Bank, N.A., as Trustee
7 for the Certificate Holders of Wells Fargo Asset Securities Corporation, Mortgage Pass-Through
8 Certificates, Series 2006-AR4, its successors, assigns, and agents, are restrained and enjoined
9 from foreclosing on, selling, transferring, or otherwise conveying the real property commonly
10 known as 2270 Nashville Avenue, Henderson, Nevada 89052, Parcel No. 178-19-712-012.

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **IT IS HEREBY ORDERED ADJUDGED AND DECREED** that Defendant, Lucia
2 Park's, Notice of Joinder is hereby granted.

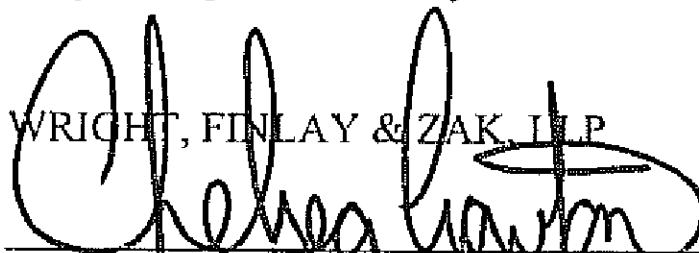
3 **IT IS SO ORDERED.**

4 Dated this _____ day of May, 2013.

5
6 
7 _____
8 DISTRICT COURT JUDGE

8 Respectfully Submitted by:

9
10 WRIGHT, FINLAY & ZAK, LLP

11 
12 _____
13 Chelsea A. Crowton, Esq.

14 Nevada Bar No. 11547

15 5532 South Fort Apache Road, Suite 110

16 Las Vegas, NV 89148

17 *Attorney for Defendant, U.S. Bank, N.A.,*

18 *as Trustee for the Certificate Holders of*

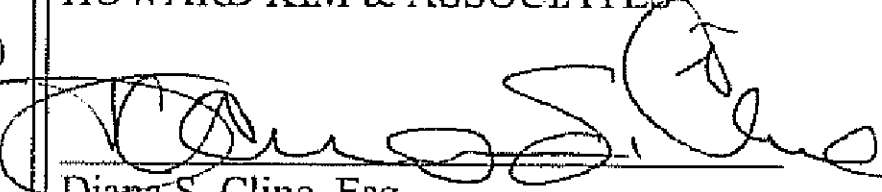
19 *Wells Fargo Asset Securities Corporation,*

20 *Mortgage Pass-Through Certificates,*

21 *Series 2006-AR4*

22 Reviewed by:

23 HOWARD KIM & ASSOCIATES

24 
25 _____
26 Diana S. Cline, Esq.

27 Nevada Bar No. 10580

28 400 N. Stephanie St, Suite 160


Henderson, Nevada 89014

Attorney for Plaintiff,

SFR Investments Pool 1, LLC

Approved by:

ALBRIGHT, STODDARD, WARNICK &
ALBRIGHT

29 
30 _____
31 D. Chris Albright, Esq.

32 Nevada Bar No. 4904

33 801 South Rancho Drive, Suite D-4

34 Las Vegas, NV 89106

35 *Attorney for Defendant, Lucia Parks*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS HEREBY ORDERED ADJUDGED AND DECREED that Defendant, Lucia
Park's, Notice of Joinder is hereby granted.


IT IS SO ORDERED.

Dated this 17th day of June, 2013.



DISTRICT COURT JUDGE 78

Respectfully Submitted by:



WRIGHT FINLAY & ZAK, LLP
Chelsea A. Crowton, Esq.
Nevada Bar No. 11547
5532 South Fort Apache Road, Suite 110
Las Vegas, NV 89148
*Attorney for Defendant, U.S. Bank, N.A.,
as Trustee for the Certificate Holders of
Wells Fargo Asset Securities Corporation,
Mortgage Pass-Through Certificates,
Series 2006-AR4*


Reviewed by:

HOWARD KIM & ASSOCIATES

Diana S. Cline, Esq.
Nevada Bar No. 10580
400 N. Stephanie St, Suite 160
Henderson, Nevada 89014
*Attorney for Plaintiff,
SFR Investments Pool I, LLC*

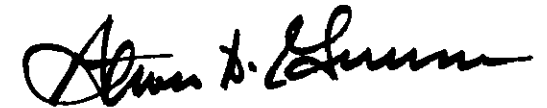
Approved by:

ALBRIGHT, STODDARD, WARNICK &
ALBRIGHT



D. Chris Albright, Esq.
Nevada Bar No. 4904
801 South Rancho Drive, Suite D-4
Las Vegas, NV 89106
Attorney for Defendant, Lucia Parks

EXHIBIT 4



CLERK OF THE COURT

1 **NEOJ**
2 **WRIGHT, FINLAY & ZAK, LLP**
3 Chelsea A. Crowton, Esq.
4 Nevada Bar No. 11547
5 5532 South Fort Apache Road, Suite 110
6 Las Vegas, NV 89148
7 (702) 475-7964; Fax: (702) 946-1345
8 ccrowton@wrightlegal.net
9 *Attorney for Defendant,*
10 *U.S. Bank, N.A., as Trustee for the Certificate Holders of Wells Fargo Asset Securities*
11 *Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 **SFR INVESTMENTS POOL, LLC, a Nevada**
11 **limited liability company**

Case No.: A-13-678814-C

Dept. No.: XVIII

12 **Plaintiff,**

NOTICE OF ENTRY OF ORDER

13 **vs.**

14 **US BANK, N.A., a national banking association**
15 **as Trustee for the Certificate Holders of Wells**
16 **Fargo Asset Securities Corporation, Mortgage**
17 **Pass-Through Certificates, Series 2006-AR4,**
18 **and LUCIA PARKS, an individual; DOES I**
19 **through X, and ROE CORPORATIONS I**
20 **through X, inclusive.**

21 **Defendants.**

22 **TO ALL INTERESTED PARTIES:**

23 ///

24 ///

25 ///

26 ///

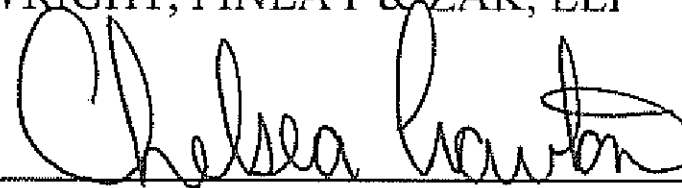
27 ///

28 ///

1 PLEASE TAKE NOTICE that an Order Denying Plaintiff's Motion for Preliminary
2 Injunction was entered in the above-entitled Court on the 10th day of June, 2013, a copy of which
3 is attached hereto.

4 DATED this 10th day of June, 2013.
5

6 WRIGHT, FINLAY & ZAK, LLP

7 

8 Chelsea A. Crowton, Esq.

9 Nevada Bar No. 11547

10 5532 South Fort Apache Road, Suite 110

11 Las Vegas, NV 89148

12 *Attorney for Defendant, U.S. Bank, N.A., as Trustee*
13 *for the Certificate Holders of Wells Fargo Asset*
14 *Securities Corporation, Mortgage Pass-Through*
15 *Certificates, Series 2006-AR4*

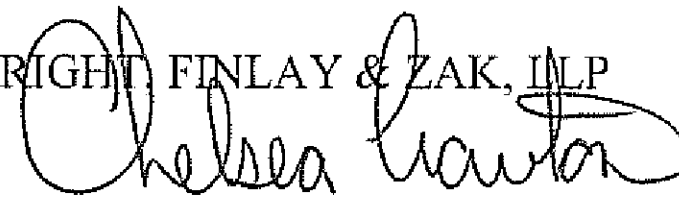
16 **AFFIRMATION**

17 Pursuant to N.R.S. 239B.030

18 The undersigned does hereby affirm that the preceding **NOTICE OF ENTRY OF**
19 **ORDER** filed in Case No. A-13-678814-C **does not** contain the social security number of any
20 person.

21 DATED this 10th day of June, 2013.
22

23 WRIGHT, FINLAY & ZAK, LLP

24 

25 Chelsea A. Crowton, Esq.

26 Nevada Bar No. 11547

27 5532 South Fort Apache Road, Suite 110

28 Las Vegas, NV 89148

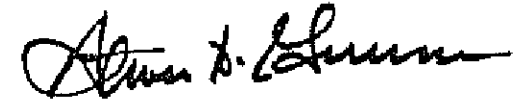
Attorney for Defendant, U.S. Bank, N.A., as Trustee
for the Certificate Holders of Wells Fargo Asset
Securities Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

I HEREBY CERTIFY that I am an employee of WRIGHT, FINLAY & ZAK, LLP; that service of the foregoing NOTICE OF ENTRY OF ORDER was made on the **10th** day of June, 2013, by depositing a true copy of same in the United States Mail, at Las Vegas, Nevada, addressed as follows:

Howard C. Kim, Esq.
Diana S. Cline, Esq.
Victoria L. Hightower, Esq.
HOWARD KIM & ASSOCIATES
400 N. Stephanie St., Suite 160
Henderson, NV 89014
Attorneys for Plaintiff

/s/ Ashley Renteria
An Employee of WRIGHT, FINLAY & ZAK, LLP



CLERK OF THE COURT

1 **ORDER**

2 **WRIGHT, FINLAY & ZAK, LLP**

3 **Chelsea A. Crowton, Esq.**

4 **Nevada Bar No. 11547**

5 **5532 South Fort Apache Road, Suite 110**

6 **Las Vegas, NV 89148**

7 **(702) 475-7964; Fax: (702) 946-1345**

8 **ccrowton@wrightlegal.net**

9 ***Attorney for Defendant,***

10 ***U.S. Bank, N.A., as Trustee for the Certificate Holders of Wells Fargo Asset Securities***

11 ***Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4***

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 **SFR INVESTMENTS POOL 1, LLC, a Nevada**

15 **limited liability company**

16 **Plaintiff,**

17 **vs.**

18 **US BANK, N.A., a national banking association**

19 **as Trustee for the Certificate Holders of Wells**

20 **Fargo Asset Securities Corporation, Mortgage**

21 **Pass-Through Certificates, Series 2006-AR4,**

22 **and LUCIA PARKS, an individual; DOES I**

23 **through X, and ROE CORPORATIONS I**

24 **through X, inclusive.**

25 **Defendants.**

Case No.: A-13-678814-C

Dept. No.: XVIII

26 **ORDER DENYING PLAINTIFF'S**

27 **MOTION FOR PRELIMINARY**

28 **INJUNCTION**

21 The Plaintiff's Motion for Preliminary Injunction having come on for hearing in the

22 above-entitled Court on May ¹⁶7, 2013 at the hour of ^{8:15}8:30 A.M. The Plaintiff, SFR Investments

23 Pool 1, LLC, appearing by and through its counsel of record, Diana S. Cline, Esq., of Howard

24 Kim & Associates; the Defendant, U.S. Bank, N.A., as Trustee for the Certificate Holders of

25 Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-

26 AR4, appearing by and through its counsel of record, Chelsea A. Crowton, Esq., of Wright,

27 Finlay & Zak, LLP, and the Court having considered all arguments presented, the pleadings on

28 ///

1 file herein, and determining that good cause appearing, hereby rules as follows:

2 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff's Motion
3 for Preliminary injunction is hereby denied.

4 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that a stay of thirty (30)
5 days is imposed from the date of service of the Notice of Entry of the Order Denying Plaintiff's
6 Motion for Preliminary Injunction, during which time Defendant, U.S. Bank, N.A., as Trustee
7 for the Certificate Holders of Wells Fargo Asset Securities Corporation, Mortgage Pass-Through
8 Certificates, Series 2006-AR4, its successors, assigns, and agents, are restrained and enjoined
9 from foreclosing on, selling, transferring, or otherwise conveying the real property commonly
10 known as 2270 Nashville Avenue, Henderson, Nevada 89052, Parcel No. 178-19-712-012.

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

IT IS HEREBY ORDERED ADJUDGED AND DECREED that Defendant, Lucia Park's, Notice of Joinder is hereby granted.

IT IS SO ORDERED.

Dated this _____ day of May, 2013.

DISTRICT COURT JUDGE

Respectfully Submitted by:

WRIGHT, FINLAY & ZAK, LLP

Chelsea A. Crowton, Esq.

Nevada Bar No. 11547

5532 South Fort Apache Road, Suite 110

Las Vegas, NV 89148

Attorney for Defendant, U.S. Bank, N.A.,

as Trustee for the Certificate Holders of

Wells Fargo Asset Securities Corporation,

Mortgage Pass-Through Certificates.

Series 2006-AR4

Reviewed by:

HOWARD KIM & ASSOCIATES

Approved by:

ALBRIGHT, STODDARD, WARNICK &
ALBRIGHT /

Diana S. Cline, Esq.

Nevada Bar No. 10580

400 N. Stephanie St, Suite 160

Henderson, Nevada 89014

Attorney for Plaintiff,

SFR Investments Pool 1, LLC

D. Chris Albright, Esq.

Nevada Bar No. 4904

801 South Rancho Drive, Suite D-4

Las Vegas, NV 89106

Attorney for Defendant, Lucia Parks

1 IT IS HEREBY ORDERED ADJUDGED AND DECREED that Defendant, Lucia
2 Park's, Notice of Joinder is hereby granted.

3 IT IS SO ORDERED.

4 Dated this 7th day of June ~~May~~, 2013.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DISTRICT COURT JUDGE 

Respectfully Submitted by:

WRIGHT FINLAY & ZACK, LLP

Chelsea A. Crowton, Esq.

Nevada Bar No. 11547

5532 South Fort Apache Road, Suite 110

Las Vegas, NV 89148

*Attorney for Defendant, U.S. Bank, N.A.,
as Trustee for the Certificate Holders of
Wells Fargo Asset Securities Corporation,
Mortgage Pass-Through Certificates,
Series 2006-AR4*

Reviewed by:

HOWARD KIM & ASSOCIATES

Diana S. Cline, Esq.

Nevada Bar No. 10580

400 N. Stephanie St, Suite 160

Henderson, Nevada 89014

Attorney for Plaintiff,

SFR Investments Pool 1, LLC

Approved by:

ALBRIGHT, STODDARD, WARNICK &
ALBRIGHT



D. Chris Albright, Esq.

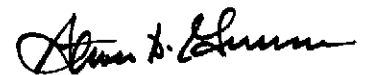
Nevada Bar No. 4904

801 South Rancho Drive, Suite D-4

Las Vegas, NV 89106

Attorney for Defendant, Lucia Parks

EXHIBIT 5



CLERK OF THE COURT

1 **ORDM**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 SFR INVESTMENTS POOL 1, LLC,

7 Plaintiff,

8 vs.

9 U.S. BANK, N.A., LUCIA PARKS,

10 Defendants.

CASE NO. A-13-678814-C
DEPT NO. XVIII

ORDER FOR DISMISSAL
AND CANCELLATION OF NOTICE
OF PENDENCY OF ACTION

11
12
13 Defendant U.S. Bank N.A.'s Motion to Dismiss with Prejudice Plaintiff's
14 Complaint, and Motion to Expunge Lis Pendens, and Defendant Lucia Parks' Joinders
15 thereto came on for a hearing before the above-entitled Court on June 4, 2013, with Judge
16 David Barker presiding. The Court, having considered all of the pleadings on file herein,
17 and having considered the arguments of counsel, hereby finds as follows:

18 1. This matter concerns property commonly known as 2270 Nashville Avenue,
19 Henderson, Nevada, 89052, Parcel No. 178-19-712-012 (the "Property").

20 2. On or about January 5, 2006, Defendant Lucia Parks obtained title to the
21 Property through a Grant Bargain Sale Deed from Albert Brandelli and Mary Brandelli
22 which was recorded in the Clark County Recorder's Office. Parks executed a Deed of
23 Trust and Note whereby Wells Fargo Bank, N.A. was stated as the Lender and United Title
24 of Nevada as the Trustee under the Deed of Trust.

25 3. On or about February 24, 2010, a Notice of Default and Election to Sell
26 under Deed of Trust was recorded in the Clark County Recorder's Office.

27 4. On or about May 24, 2012, a Notice of Delinquent Assessment Lien was
28 recorded in the Clark County Recorder's Office.

1 5. On or about June 7, 2012, Wells Fargo Bank, N.A. recorded an Assignment
2 of Deed of Trust against the Property to U.S. Bank National Association ("U.S. Bank,
3 N.A."), as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through,
4 Certificates Series 2006-AR4 in the Clark County Recorder's Office.

5 6. On or about February 7, 2013, Nevada Association Services, Inc., agent for
6 Copper Ridge Community Homeowners Association ("HOA") recorded a Notice of
7 Trustee's Sale in the Clark County Recorder's Office.

8 7. On or about March 6, 2013, Plaintiff acquired the Property in a foreclosure
9 sale and the Foreclosure Deed was recorded in the Clark County Recorder's Office.

10 8. NRS 116.3116 governs homeowners' association liens. It states in part that
11 an assessment lien by a homeowners' association "is prior to all other liens and
12 encumbrances on a unit except...(b) A first security interest on the unit recorded before the
13 date on which the assessment sought to be enforced became delinquent..." NRS
14 116.3116(2)(b).

15 9. Here the first security interest Deed of Trust was first in time and prior to the
16 assessment lien of the homeowner's association.

17 10. While NRS 116.3116 provides that the assessment lien is prior to the first
18 security interest Deed "to the extent of any charges incurred by the association on a unit
19 pursuant to NRS 116.310312 and to the extent of the assessments for common expenses
20 based on the periodic budget adopted by the association pursuant to NRS 116.3115 which
21 would have become due in the absence of acceleration during the 9 months immediately
22 preceding institution of an action to enforce the lien," this provision refers to a judicial
23 foreclosure "action" and is not applicable when the HOA foreclosed its lien under NRS
24 116.31162-NRS 116.31168, the nonjudicial foreclosure statutes.

25 11. The HOA may have a priority for payment of its lien, but the first security
26 interest Deed was not extinguished by the foreclosure sale conducted by the HOA.
27
28

12. Plaintiff cannot quiet title or obtain declaratory relief seeking to extinguish the first security interest Deed.

13. Plaintiff has not presented a viable basis upon which the Court could grant a preliminary or permanent injunction.

14. Plaintiff has not presented a viable claim for Unjust Enrichment.

IT IS THEREFORE ORDERED that Defendant U.S. Bank, N.A.'s Motion to Dismiss With Prejudice Plaintiff's Complaint is GRANTED. And, it is further

ORDERED, that Defendant Lucia Parks' Joinder in Defendant U.S. Bank, N.A.'s Motion to Dismiss With Prejudice Plaintiff's Complaint is GRANTED. And it is further

ORDERED, that Defendant U.S. Bank, N.A.'s Motion to Expunge Lis Pendens, joined by Defendant Lucia Parks, is GRANTED. And, it is further

ORDERED, that the notice of pendency of action is hereby cancelled, and this cancellation has the same effect as an expungement of the original notice. And it is further

ORDERED, that Plaintiff shall record with the Clark County Recorder a copy of this order of cancellation of the notice of pendency of action. And, it is further

ORDERED, that this case is dismissed in its entirety.

DATED this 11th day of June, 2013

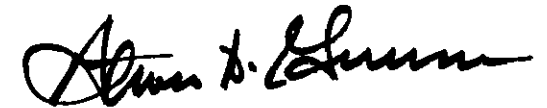
DISTRICT JUDGE

I hereby certify that on the date filed, I mailed or placed a copy of this Order in the Attorney's folder in the Clerk's Office to:

Chelsea Crowton, Esq. (Wright, Finlay & Zak)
Diana Cline, Esq. (Howard Kim & Associates)
D. Chris Albright, Esq. (Albright, Stoddard, Warnick & Albright)

Diane Sanzo
DIANE SANZO, Judicial Assistant

EXHIBIT 6



CLERK OF THE COURT

1 **NEOJ**
2 **WRIGHT, FINLAY & ZAK, LLP**

3 Chelsea A. Crowton, Esq.

4 Nevada Bar No. 11547

5 5532 South Fort Apache Road, Suite 110

6 Las Vegas, NV 89148

7 (702) 475-7964; Fax: (702) 946-1345

8 ccrowton@wrightlegal.net

9 *Attorney for Defendant,*

10 *U.S. Bank, N.A., as Trustee for the Certificate Holders of Wells Fargo Asset Securities*

11 *Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 **SFR INVESTMENTS POOL, LLC, a Nevada**
15 **limited liability company**

16 **Plaintiff,**

17 **vs.**

18 **US BANK, N.A., a national banking association**
19 **as Trustee for the Certificate Holders of Wells**
20 **Fargo Asset Securities Corporation, Mortgage**
21 **Pass-Through Certificates, Series 2006-AR4,**
22 **and LUCIA PARKS, an individual; DOES I**
23 **through X, and ROE CORPORATIONS I**
24 **through X, inclusive.**

25 **Defendants.**

Case No.: A-13-678814-C

Dept. No.: XVIII

26 **NOTICE OF ENTRY OF ORDER**

27 **TO ALL INTERESTED PARTIES:**

28 **///**

///

///

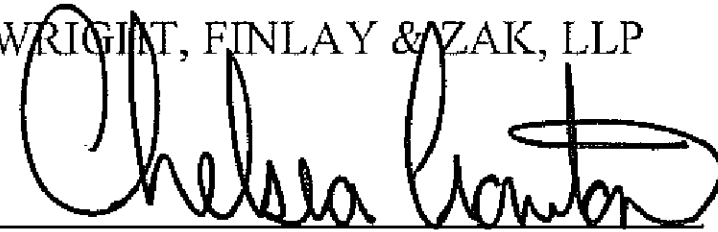
///

///

1 PLEASE TAKE NOTICE that an Order for Dismissal and Cancellation of Notice of
2 Pendency of Action was entered in the above-entitled Court on the 11th day of June, 2013, a copy
3 of which is attached hereto.

4 DATED this 12th day of June, 2013.

6 WRIGHT, FINLAY & ZAK, LLP

7 

8 Chelsea A. Crowton, Esq.

9 Nevada Bar No. 11547

10 5532 South Fort Apache Road, Suite 110

11 Las Vegas, NV 89148

12 *Attorney for Defendant, U.S. Bank, N.A., as Trustee*
13 *for the Certificate Holders of Wells Fargo Asset*
14 *Securities Corporation, Mortgage Pass-Through*
15 *Certificates, Series 2006-AR4*

14 **AFFIRMATION**

15 Pursuant to N.R.S. 239B.030

16 The undersigned does hereby affirm that the preceding **NOTICE OF ENTRY OF**
17 **ORDER** filed in Case No. A-13-678814-C **does not** contain the social security number of any
18 person.

19 DATED this 12th day of June, 2013.

20 WRIGHT, FINLAY & ZAK, LLP

21 

22 Chelsea A. Crowton, Esq.

23 Nevada Bar No. 11547

24 5532 South Fort Apache Road, Suite 110

25 Las Vegas, NV 89148

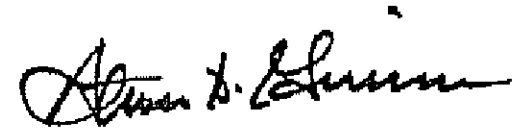
26 *Attorney for Defendant, U.S. Bank, N.A., as Trustee*
27 *for the Certificate Holders of Wells Fargo Asset*
28 *Securities Corporation, Mortgage Pass-Through*
Certificates, Series 2006-AR4

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

I HEREBY CERTIFY that I am an employee of WRIGHT, FINLAY & ZAK, LLP; that service of the foregoing **NOTICE OF ENTRY OF ORDER** was made on the 12th day of June, 2013, by depositing a true copy of same in the United States Mail, at Las Vegas, Nevada, addressed as follows:

Howard C. Kim, Esq.
Diana S. Cline, Esq.
Victoria L. Hightower, Esq.
HOWARD KIM & ASSOCIATES
400 N. Stephanie St., Suite 160
Henderson, NV 89014
Attorneys for Plaintiff

/s/ Ashley Renteria
An Employee of WRIGHT, FINLAY & ZAK, LLP



CLERK OF THE COURT

1 ORDM

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 SFR INVESTMENTS POOL 1, LLC,

7 Plaintiff,

8 vs.

9 U.S. BANK, N.A., LUCIA PARKS,

10 Defendants.

CASE NO. A-13-678814-C
DEPT NO. XVIII

**ORDER FOR DISMISSAL
AND CANCELLATION OF NOTICE
OF PENDENCY OF ACTION**

11
12
13 Defendant U.S. Bank N.A.'s Motion to Dismiss with Prejudice Plaintiff's
14 Complaint, and Motion to Expunge Lis Pendens, and Defendant Lucia Parks' Joinders
15 thereto came on for a hearing before the above-entitled Court on June 4, 2013, with Judge
16 David Barker presiding. The Court, having considered all of the pleadings on file herein,
17 and having considered the arguments of counsel, hereby finds as follows:

- 18 1. This matter concerns property commonly known as 2270 Nashville Avenue,
19 Henderson, Nevada, 89052, Parcel No. 178-19-712-012 (the "Property").
- 20 2. On or about January 5, 2006, Defendant Lucia Parks obtained title to the
21 Property through a Grant Bargain Sale Deed from Albert Brandelli and Mary Brandelli
22 which was recorded in the Clark County Recorder's Office. Parks executed a Deed of
23 Trust and Note whereby Wells Fargo Bank, N.A. was stated as the Lender and United Title
24 of Nevada as the Trustee under the Deed of Trust.
- 25 3. On or about February 24, 2010, a Notice of Default and Election to Sell
26 under Deed of Trust was recorded in the Clark County Recorder's Office.
- 27 4. On or about May 24, 2012, a Notice of Delinquent Assessment Lien was
28 recorded in the Clark County Recorder's Office.

1 5. On or about June 7, 2012, Wells Fargo Bank, N.A. recorded an Assignment
2 of Deed of Trust against the Property to U.S. Bank National Association ("U.S. Bank,
3 N.A."), as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through,
4 Certificates Series 2006-AR4 in the Clark County Recorder's Office.

5 6. On or about February 7, 2013, Nevada Association Services, Inc., agent for
6 Copper Ridge Community Homeowners Association ("HOA") recorded a Notice of
7 Trustee's Sale in the Clark County Recorder's Office.

8 7. On or about March 6, 2013, Plaintiff acquired the Property in a foreclosure
9 sale and the Foreclosure Deed was recorded in the Clark County Recorder's Office.

10 8. NRS 116.3116 governs homeowners' association liens. It states in part that
11 an assessment lien by a homeowners' association "is prior to all other liens and
12 encumbrances on a unit except...(b) A first security interest on the unit recorded before the
13 date on which the assessment sought to be enforced became delinquent..." NRS
14 116.3116(2)(b).

15 9. Here the first security interest Deed of Trust was first in time and prior to the
16 assessment lien of the homeowner's association.

17 10. While NRS 116.3116 provides that the assessment lien is prior to the first
18 security interest Deed "to the extent of any charges incurred by the association on a unit
19 pursuant to NRS 116.310312 and to the extent of the assessments for common expenses
20 based on the periodic budget adopted by the association pursuant to NRS 116.3115 which
21 would have become due in the absence of acceleration during the 9 months immediately
22 preceding institution of an action to enforce the lien," this provision refers to a judicial
23 foreclosure "action" and is not applicable when the HOA foreclosed its lien under NRS
24 116.31162-NRS 116.31168, the nonjudicial foreclosure statutes.

25 11. The HOA may have a priority for payment of its lien, but the first security
26 interest Deed was not extinguished by the foreclosure sale conducted by the HOA.
27
28

12. Plaintiff cannot quiet title or obtain declaratory relief seeking to extinguish the first security interest Deed.

13. Plaintiff has not presented a viable basis upon which the Court could grant a preliminary or permanent injunction.

14. Plaintiff has not presented a viable claim for Unjust Enrichment.

IT IS THEREFORE ORDERED that Defendant U.S. Bank, N.A.'s Motion to Dismiss With Prejudice Plaintiff's Complaint is GRANTED. And, it is further

ORDERED, that Defendant Lucia Parks' Joinder in Defendant U.S. Bank, N.A.'s Motion to Dismiss With Prejudice Plaintiff's Complaint is GRANTED. And it is further

ORDERED, that Defendant U.S. Bank, N.A.'s Motion to Expunge Lis Pendens, joined by Defendant Lucia Parks, is GRANTED. And, it is further

ORDERED, that the notice of pendency of action is hereby cancelled, and this cancellation has the same effect as an expungement of the original notice. And it is further

ORDERED, that Plaintiff shall record with the Clark County Recorder a copy of this order of cancellation of the notice of pendency of action. And, it is further

ORDERED, that this case is dismissed in its entirety.

DATED this 11th day of June, 2013

DISTRICT JUDGE

I hereby certify that on the date filed, I mailed or placed a copy of this Order in the Attorney's folder in the Clerk's Office to:

Chelsea Crowton, Esq.

Diana Cline, Esq.

D. Chris Albright, Esq.

(Wright, Finlay & Zak)

(Howard Kim & Associates)

(Albright, Stoddard, Warnick & Albright)

DIANE SANZO
DIANE SANZO, Judicial Assistant

EXHIBIT 7


CLERK OF THE COURT

MAMJ

HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
E-mail: howard@hkimlaw.com
DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
E-mail: diana@hkimlaw.com
HOWARD KIM & ASSOCIATES
400 N. Stephanie St, Suite 160
Henderson, Nevada 89014
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC a
Nevada limited liability company,

Plaintiff,

vs.

U.S. BANK, N.A., a national banking
association as Trustee for the Certificate
Holders of Wells Fargo Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4, a Nevada non-
profit corporation and LUCIA PARKS, an
individual, DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-13-678814-C

Dept. No.: XVIII

**MOTION TO ALTER OR AMEND
JUDGMENT**

SFR INVESTMENTS POOL 1, LLC (“SFR”) hereby submits its Motion to Alter or
Amend Judgment (“Motion”). This Motion is made pursuant to Rule 59(e) of the Nevada Rules
of Civil Procedure (“NRAP”), the following Memorandum of Points and Authorities, and

///

///

///

any oral argument that may be made by counsel at the time this matter is heard.

DATED this 26th day of June, 2013.

HOWARD KIM & ASSOCIATES

/s/ Jacqueline A. Gilbert
Howard C. Kim, Esq.
Nevada Bar No. 10386
Diana S. Cline, Esq.
Nevada Bar No. 10580
Jacqueline A. Gilbert, Esq.
Nevada Bar No. 10593
400 N. Stephanie St., Suite 160
Henderson, Nevada 89014
Phone: (702) 485-3300
Fax: (702) 485-3301
Attorneys for Plaintiff

NOTICE OF HEARING

PLEASE TAKE NOTICE that on 30 day of J u l y, 2013, in Department
18 of the above-entitled Court, at the hour of 8 : 15 a.m./~~p.m.~~, or as soon thereafter
as counsel may be heard, the undersigned will bring Plaintiff's Motion to Alter or Amend
Judgment before this Court for hearing.

DATED June 26th, 2013.

HOWARD KIM & ASSOCIATES

/s/ Jacqueline A. Gilbert
Howard C. Kim, Esq.
Nevada Bar No. 10386
Diana S. Cline, Esq.
Nevada Bar No. 10580
Jacqueline A. Gilbert, Esq.
Nevada Bar No. 10593
400 N. Stephanie St., Suite 160
Henderson, Nevada 89014
Phone: (702) 485-3300
Fax: (702) 485-3301
Attorneys for Plaintiff

///

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION and LEGAL STANDARD

Rule 59(e) of the Nevada Rules of Civil Procedure allows a district court to alter or amend its judgment for a number of reasons. Basic grounds for altering or amending pursuant to Rule 59(e) include “‘correct[ing] manifest errors of law or fact,’ ‘newly discovered or previously unavailable evidence,’ the need ‘to prevent manifest injustice,’ or a ‘change in controlling law.’” *AA Primo Builders, LLC v. Washington*, 126 Nev. ___, ___, 245 P.3d 1190, 1193 (2010), quoting *Coury v. Robison*, 115 Nev. 84, 124-27, 976 P.2d 518. So long as a motion to reconsider, vacate, set aside, or reargue [a final judgment]” is made in writing within ten days of entry of the judgment, it will be given “NRAP 59(e) status, with tolling effect under NRAP 4(a)(4)(C).” *Id.* at ___, 245 P.3d at 1194-95.¹

Here, there are at least three reasons why amendment or alteration is appropriate both to correct manifest error and injustice and for newly discovered evidence and. First, SFR requests this Court consider newly discovered evidence not available at the time of briefing which support SFR’s construction of the statute that “action” does not require a judicial foreclosure and that the statute is not intended to create a mere “payment priority.” Second, the Order’s dismissal of SFR’s claims against defendant Lucia Parks (“Parks”), the former homeowner, and expunging the lis pendens constitutes manifest error and injustice against SFR, because the HOA’s foreclosure sale divested any interest Parks had in the Property “without equity or right of redemption.” *See* NRS 116.31166(2). Finally, if this Court grants this motion, the lis pendens should remain in place, and if the Court denies the motion, the litigation continues and will continue through appeal. Thus, despite the unsettled state of the law, expunging the lis pendens causes manifest injustice to SFR as SFR will lose its property to a buyer at a foreclosure sale who will not have notice fo the continuing dispute as to the validity of U.S.Bank’s lien.

¹ A motion to alter or amend must be filed no later than 10 days after service of the written notice of entry of the judgment. NRCP 59(e). Here, the Order was entered on May 11, 2013 and was served in open Court at a hearing on May 12, 2013. Notice of entry of order was filed on May 12, 2013. Thus, pursuant to NRCP 59(e) and NRCP 4(a), this Motion is timely filed.

II. FACTUAL BACKGROUND

Parks Acquires the Property but Defaults on Association Assessments: SFR Purchases the Property at the Association Foreclosure Sale

In 2006, Parks purchased a property at 2270 Nashville Avenue, Henderson, Nevada 89052, Parcel No. 178-19-712-012 (the "Property"), which is located in a common interest community governed by a common-interest association, Copper Ridge Community Association (the "Association"), and the Declaration (CC&R's) recorded in 1997. In 2006, Parks executed a note secured by a Deed of Trust recorded against the Property, the beneficial interest in which was transferred to U.S. Bank, N.A. ("U.S. Bank") through one of two assignments recorded in July of 2010 or June of 2012. Parks defaulted on his monthly assessments to the Association. On July 19, 2012, the Association recorded a Notice of Default and Election to Sell Under Homeowners Association Lien. On February 7, 2013, the Association recorded a Notice of Foreclosure Sale. SFR purchased the Property at the Association's public-held foreclosure sale on March 1, 2013, and the Foreclosure Deed was recorded on March 6, 2013. As recited in the HOA Foreclosure Deed, the HOA foreclosure sale complied with all requirements of law, including but not limited to, the elapsing of 90 days, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the recording, posting and publication of the Notice of Sale. U.S. Bank failed to cure the default before the superpriority portion of the lien before the sale.

Notices of Default by the First Security Interest

In the meantime, on February 24, 2010, a Notice of Default and Election to Sell was recorded against the Property by the alleged trustee under the Deed of Trust for amounts due as of November 1, 2009. Three Notices of Trustee's Sale were recorded in 2010, 2011, and again on March 11, 2013. This final notice stated that the Property would be sold at public auction pursuant to the First Deed of Trust on March 26, 2013. U.S. Bank failed to mail a copy of the Notice of Trustee's Sale to SFR, despite the Association's Foreclosure Deed having been recorded on almost a week earlier.

The Ensuing Litigation

Subsequently, SFR filed a Complaint seeking to quiet title in its favor, a declaration that

Defendants have no right, title or interest in the Property, and a preliminary and a permanent injunction preventing Defendant U.S. Bank from continuing foreclosure proceedings on the Property. SFR also applied for a temporary restraining order (“TRO”) and preliminary injunction on March 27, 2013. This Court granted the TRO and set the hearing for the motion for preliminary injunction. On May 16, 2013, defendant Parks joined SFR’s motion. For a variety of reasons, the Court continued the hearing on the motion for preliminary injunction, which was eventually heard on May 16, 2013, and on May 17, 2013 issued a minute order denying the preliminary injunction but staying the determination for thirty days from the notice of entry of order. The order was entered on June 10, and the notice of entry was entered on June 11, 2013.

In the interim, on April 30, 2013, U.S.Bank filed a motion to expunge lis pendens on and motion to dismiss. The motion to expunge was to be heard on May 16, 2013. SFR filed its opposition to the expungement motion on May 15, 2013. On May 16, 2013, Parks filed a joinder in the motion to expunge. The Court continued the hearing until June 4, 2013, the same day as the motion to dismiss. Again, on the day of the hearing, Parks filed a joinder in the motion to dismiss. SFR filed its opposition to the motion to dismiss on May 24, 2013. On May 31, 2013, SFR supplemented its opposition with a copy of the order entered by the Hon. J. Tao in *First 100, LLC v. Burns*, Case No. A677693 (May 30, 2013) and with a letter dated May 29, 2013, from Carl Lisman, one of the drafters of the UCIOA, to Michael Buckley and Karen Dennison, co-chairs of the Common-Interest Committee of the Real Property Section of the Nevada State Bar (the “Lisman Letter”). After the hearing, the Court continued the matter to its Chamber Calendar for decision. On June 10, 2013, the Court issued its Order for Dismissal and Cancellation of Notice of Pendency of Action (the “Order”) and the notice of entry was filed on June 11, 2013.

The Legislative Session Ends, Having Considered and Rejected Significant Changes to NRS 116.3116

On June 3, 2013, the regular 77th Nevada Legislative Session ended, in which NRS

116.3116 was considered and, ultimately amended, but without any abrupt changes.² At a May 17, 2013 hearing, Chairman Frierson announced that the current language in S.B. 280 would be replaced with an amendment originally proposed for A.B. 98.³ He outlined an oral amendment to the **proposed replacement language that completely eliminated an association's ability to foreclose on the super priority portion of its lien.**

After the amendment passed out of the Assembly,⁴ the Common-Interest Committee of

² See April 1, 2013 Senate Committee on Judiciary hearing, available at http://nvleg.granicus.com/MediaPlayer.php?publish_id=2de721d1-ec60-1030-b4c5-84d7a9c8f15d starting at 00:46:18 (hearing on S.B. 332); April 30, 2013 Senate Committee on Judiciary hearing, available at http://nvleg.granicus.com/MediaPlayer.php?publish_id=865a44ee-03d3-1031-bce9-7f882e4cf4e2 at 01:46:12 (hearing on A.B. 98, noting additional testimony needed on NRS 116.3116); May 6, 2013 Senate Committee on Judiciary, available at http://nvleg.granicus.com/MediaPlayer.php?publish_id=42086428-07df-1031-8b21-673bf20d68e3 starting at 00:16:49 (hearing on A.B. 98 including testimony from Gail Anderson, Administrator of the Nevada Real Estate Division); May 17, 2013 Senate Committee on Judiciary, available at http://nvleg.granicus.com/MediaPlayer.php?publish_id=030b4b2f-1dd0-1031-8b21-673bf20d68e3 at 01:36:27 (work session adopting Amendment 4 to A.B. 98, with Chairman Segerblom acknowledged that issues relating to NRS 116.3116 needed further attention).

SFR requests this Court take judicial notice of legislative history of S.B. 332, S.B. 280 and A.B. 98 referenced and attached herein. Pursuant to FRCP 201, this Court may take judicial notice of facts “not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” The legislative history, is publicly available from sources whose accuracy cannot reasonably be questioned.

³ See Assembly Committee on Judiciary, May 17, 2013 http://nvleg.granicus.com/MediaPlayer.php?publish_id=547583bc-12c4-1031-8b21-673bf20d68e3.

⁴ In the Legislative Counsel Digest of the Second Reprint of S.B. 280, the Legislative Counsel Bureau summarized existing law in this way:

Under existing law, a homeowners’ association has a lien on a unit for certain amounts due to the association. Generally, the association’s lien is not prior to a first security interest on the unit recorded before the date on which the amount sought to be enforced became delinquent. However, the association’s lien is prior to the first security interest on the unit to the extent of certain maintenance and abatement charges and a certain amount of assessments for common expenses. **The portion of the association’s lien that is prior to the first security interest on the unit is commonly referred to as the “super-priority lien.” (NRS 116.3116) Existing law authorizes the association to foreclose its lien by sale and prescribes the procedures for such a foreclosure. (NRS 116.31162-116.31168)**

S.B. 280, Second Reprint, p. 1 (May 24, 2013) (emphasis added), attached hereto as **Exhibit 1.**

the Nevada State Bar Real Property Section sought counsel from Carl Lisman, one of the drafters of the Uniform Common Interest Ownership Act (“UCIOA”) and other uniform acts. Mr. Lisman provided an opinion letter setting forth the meaning and purpose behind UCIOA and specifically the evolution of the super priority lien, which was provided to the Assembly and Senate Judiciary committee members on June 1, 2013. *See* Lisman Letter, attached to SFR’s Supplement to Opposition to Motion to Dismiss as Ex. 2. Mr. Buckley was also one of the principal drafters of the bill adopting the UCIOA in Nevada in 1991. Mr. Lisman has authenticated his opinions set forth in the Lisman Letter in an affidavit dated June 17, 2013. Affidavit of Carl Lisman (June 17, 2013), attached hereto as **Exhibit 2**. After considering the testimony of the Nevada Real Estate Division and information provided by the Common-Interest Committee of the Nevada State Bar Real Property Section, including the Lisman Letter, the Legislature rejected amendments to NRS 116.3116 that would have changed the super priority portion of an association’s lien to a mere payment priority.⁵ *See* S.B. 280, As Enrolled, attached hereto as **Exhibit 3**.

Because SFR had already filed its opposition and supplement, the Lisman Affidavit was

_____ (continued)

The Legislative Counsel Digest of the Second Reprint of S.B. 280 makes it clear that the proposed amendments to NRS 116.3116 represent a change to the association’s lien and the association’s ability to foreclose:

This bill revises provisions governing the association’s lien on a unit and the foreclosure of the association’s lien. Section 10 of this bill provides that the association does not have a priority lien over the first security interest when the association forecloses its lien, and thus, the foreclosure of the association’s lien does not extinguish the first security interest on the unit.

However, under **section 7** of this bill, if the holder of the first security interest forecloses on a unit, the association has a lien on the unit which is prior to the first security interest.

Id.

⁵ The Legislature’s passing of S.B. 280, which authorizes the holder of a first security interest to create an escrow or impound account “for advance contributions for the payment of assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115” mirrors the suggestion in Comment 1 to Section 3-116 of UCIOA. *Compare* S.B. 280, As Enrolled, Sec. 7, ¶ 3) *with* UCIOA 3-116, Comment 1, p. 155. Changes to NRS 116 through S.B. 280 will not be effective until October 1, 2013. No provision in S.B. 280 suggests that the Legislature intended it to be retroactive.

not yet available and this Court did not have the most recent Legislative history or additional analysis on the UCIOA and NRS 116.3116 before issuing its ruling. Further, this Court misapplied the law in dismissing SFR's claims against Parks, whose interest in the Property transferred to SFR with the Association's foreclosure sale. Finally, SFR believes that espunging the lis pendens while the case is still pending, via this Motion or through a subsequent appeal, is both an error of law and manifestly unjust to SFR, given the widely disparate decisions interpreting NRS Chapter 116 and the fact that the Nevada Supreme Court has yet to weigh in on the issues. SFR brings this Motion to Alter or Amend Judgment based on new evidence, on errors in law, and to avoid manifest injustice.

III. ARGUMENT

A. NEWLY DISCOVERED EVIDENCE SUPPORTS ALTERING OR AMENDING THE JUDGMENT

The June 11, 2013 Order concluded that non-judicial foreclosure of an Association Lien including super-priority amounts does not extinguish the first security interest's lien. *See* Order, at ¶ 11. Specifically, the Order stated that the language "'institution of an action to enforce the lien" as used in NRS 116.3116, refers to a "judicial foreclosure 'action' and is not applicable when the HOA foreclosed its lien under . . . the nonjudicial foreclosure statutes." *Id.* at ¶ 10. Thus, as stated in the Order, "[t]he HOA may have a priority for payment of its lien, but the first security interest was not extinguished by the foreclosure sale conducted by the HOA." *Id.* at ¶ 11. Based on these conclusions, the Court ordered SFR's complaint dismissed as to US Bank.

Pursuant to Rule 59(e), as discussed supra, amendment or alteration of a court order is appropriate if the court is presented with newly discovered evidence. SFR's opposition to U.S. Bank's motion to expunge lis pendens and motion to dismiss were filed on May 15, 2013 and May 24, 2013 respectively. SFR filed a supplement to its opposition to motion to dismiss on May 31, 2013, including the Lisman Letter dated May 29, 2013. As discussed more fully below, information from the Nevada Legislature's 2013 77th Legislative Session including the Lisman Affidavit provide guidance and opinions interpreting the meaning and effect of NRS 116.3116. The Legislative Session ended on June 4, 2013 and the Lisman Affidavit authenticating the

statements in his letter was obtained on June 17, 2013. The Order was entered on June 11, 2013. Thus, the above-referenced evidence was not available at that time. This Court should amend or alter its June 11, 2013 Order after considering the Legislative history from this current session, and the Lisman Affidavit, which support or conclude that a first security interest can be extinguished by an Association's foreclosure sale pursuant to NRS 116.3116.

Lissman Explains that The Intent of the UCIOA is that an Association's Foreclosure is Intended to Extinguish a First Security Interest that does not Cure the Super-Priority Portion of the Lien

As this Court is aware, in 1991, Nevada adopted, almost whole-cloth, the Uniform Common Interest Ownership Act ("UCIOA") in NRS Chapter 116. As the Nevada Supreme Court recognized, this was done to "make uniform the law with respect to the subject of this chapter among states enacting it." *Boulder Oaks Community Ass'n v. B. & J Andrews Enterprises, LLC*, 215 P.3d 27, 31 (Nev. 2009), quoting NRS 116.1109(2). By doing so, courts can also rely on the comments to the UCIOA in interpreting NRS Chapter 116. *See id.* at 32 (relying on the comments to the UCIOA in construing NRS 116.003).

Because the Nevada Legislature was considering a number of amendments to NRS Chapter 116 during this 2013 Legislative Session,⁶ Michael Buckley⁷ and Karen Dennison, co-

⁶ During the 77th (2013) Session of the Nevada Legislature, the NRS 116.3116 was the subject of several proposed bills. One of the amendments to a Senate Bill considered changing the existing law to preserve the first security even after an association forecloses on the super priority portion of its lien. *See Ex. 1*. Under the amendment, an association's super priority lien would be only a payment priority and would not extinguish the first security interest. Ultimately, the Legislature rejected making abrupt changes to NRS 116.3116. *Id.* In the end, the Legislature passed Senate Bill 280 and Assembly Bill 273, neither of which affected the language in NRS 116.3116 that give associations' liens super priority for both abatement charges and up to nine months of assessments.

These bills were passed after the Legislature held several hearings on the super priority portion of homeowners associations' liens and the ability of an association to foreclose. The Legislature took testimony from various people and groups, including the Nevada Real Estate Division and the Common-Interest Committee of the Nevada State Bar Real Property Section (State Bar). The testimony and supporting documentation provided to the Legislature by both the Nevada Real Estate Division and the State Bar support SFR's interpretation of NRS 116.3116. The legislation passed during the 2013 Legislative Session is consistent with the Real Estate Division's advisory opinion and interpretation of existing law.

⁷ Mr. Buckley was one of the proponents of the legislation that adopted the UCIOA in Nevada and was relied on extensively by Assemblyman Richard McArthur, who proposed AB 361 in 2009, which added abatement charges to the super-priority lien. *See AB 361; see also* Hearing on A.B. 361 Before the Senate Judiciary Comm., 75th Leg. (Nev. May 6, 2009) ("I deferred a lot to Mr. Buckley in his technical changes [to the bill].")

1 chairs of the Common-Interest Committee of the Real Estate Property Section of the Nevada
2 State Bar, sought clarification of the very issue at hand—whether an Association’s foreclosure of
3 its assessment lien extinguishes a first security interest—from Carl H. Lisman, one of the
4 original authors of the UCIOA.⁸ In his May 29, 2013 answering letter, Mr. Lisman answered
5 “Yes.”⁹ He has since authenticated his opinions in an affidavit (Ex. 3). He explains that one of
6 the most important conclusions the drafting committee reached was to empower the association
7 and “address[] the need of the association to be funded.” Lisman Letter, at p. 5. To provide this
8 power, the drafters of the UCIOA determined that the power would arise in the form of a
9 statutory lien. *See* Lisman Affidavit at ¶15. The drafters then addressed the priority of the
10 association’s lien. *Id.* at ¶ 16. He further explains that if the lien for assessments arose after the
11 first security interest, as would most likely be the case, and is the case here, foreclosure of the
12 Association’s lien would be junior to the first security interest. *Id.* “As a result, a foreclosing
13 association [or the purchaser at the foreclosure sale] would take subject to the first security
14 interest – not a practical result – **or, worse, be foreclosed by the holder of the first security**
15 **interest.**” *Id.* To remedy this problem, the drafters created “**a priority rule, not a payment**
16 **rule:** ‘A lien under this section is prior to all other liens and encumbrances on a unit.’” *Id.* at ¶
17 17. As Mr. Lisman avers, “Had we intended that the priority be only for payment we would
18 have said so. A payment priority would not serve the goal we were seeking.” *Id.* In order to
19 balance the needs of the first priority interest holders and the associations, “Fannie Mae and
20 Freddie Mac that proposed the solution that exists today, “Give the association a limited priority
21

22 ⁸ Mr. Lisman provided a summary of his experience and background in the letter. He was a
23 member of the drafting committee of the UCIOA and chaired the committee that amended the
24 UCIOA in 1994 and in 2008. *See* Ex. 2. He has firsthand knowledge of the intent of the
25 provisions of the UCIOA.

26 ⁹ In a presentation given to the Maryland Talk Force on Common Ownership Communities of
27 the the Maryland Department of Housing and Community Development on January 23, 2006, Mr.
28 Lisman provided the same conclusions that he provided in his May 29, 2013 letter. *See*
BACKGROUND ON THE FORMATION [1975] & BIRTH [1982*] OF: THE UNIFORM COMMON INTEREST
OWNERSHIP ACT, available at <http://epohoa.org>, search for lisman. A true and accurate copy of
the article is attached hereto as **Exhibit 4**. In this article, Mr. Lisman explained that the drafters
of the UCIOA analogized assessments with taxes for purposes of the super priority portion of the
lien, because an Association provides services that must be paid for from its budget, therefore
every unit owner must pay so the Association can function. *See* Ex. 4, at p. 5-6.

ahead of the first security interest . . . equal to six months of assessments under the annual budget. . . .” *Lisman Letter*.

Citing to the Official Comments, Mr. Lisman continued:

as to prior first security interests the association’s lien does have priority for six [in Nevada, nine] months’ assessments based on the periodic budget. A significant departure from existing practice, the six months’ priority for the assessment lien strikes an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lender.

Id. at 5-6.

In analyzing how the super-priority portion of the lien works, Mr. Lisman states that it is not merely a payment priority with first right to proceeds from a foreclosure sale. Rather, he explains that “[i]t also puts the association ahead of the first security interest — and that means that foreclosure by the association extinguishes the first security interest and all junior interests.” *Id.* at 6 (emphasis added); Lisman Affidavit at ¶ 22. His reasoning is that the customary rules of foreclosure and priority in real property law apply: “foreclosure of a lien entitled to priority extinguishes that lien and all subordinate liens,” with the lien attaching to the proceeds of the sale. Lisman Affidavit at ¶ 23 and n.17. Thus, to protect its interest, the holder of the first security interest should pay the priority amount by (1) paying the itself; (2) requiring its borrower to pay the priority amount, or should require the nine months assessments [in Nevada] be escrowed, or to the Association. Lisman Letter, at 6; *see* Lisman Affidavit at ¶ 23-24. Based on this intent behind the UCIOA and, by extension, the Nevada Legislature, his Court should alter or amend its Order accordingly.

C. THE ORDERS GRANTING DISMISSAL TO DEFENDANT PARKS AND EXPUNGING THE LIS PENDENS SHOULD BE VACATED AS MANIFEST ERROR AND TO PREVENT MANIFEST INJUSTICE

Pursuant to Rule 59(e), amendment or altering an order or judgment is appropriate to correct manifest error or law and to prevent manifest injustice. *AA Primo Builders, LLC v. Washington*, 126 Nev. ___, ___, 245 P.3d 1190, 1193 (2010). Here, dismissing defendant Parks was clear error because, even under the Court’s construction of NRS 116.3116, SFR took Park’s

interest. Further, expunging the lis pendens creates manifest injustice towards SFR, especially where the construction of the NRS 116.3116 remains uncertain and unresolved by the Nevada Supreme Court.

1. **NRS 116.31166 Requires Vacating the Order Dismissing SFR's Claims Against the Former Homeowner**

Without comment or analysis, the Order dismissed not only the claims against U.S. Bank with prejudice, but also granted Lucia Parks' Joinder, thereby dismissing with prejudice SFR's claims against Parks. Granting dismissal of SFR's claims against Parks, the former homeowner, constitutes legal error. Foreclosure of deed of trust or an Association's lien against real property divests the property owner of any interest in the property. *See Buiding Energetix Corp. v. EHE, LP*, 129 Nev. ___, ___, 294 P.3d 1228, 1232 (2013) (analyzing the meaning of "without equity or right of redemption" as used in NRS 107.050(5)); see also NRS 116.31166(2). NRS 116.31164 provides the procedures for an Association's foreclosure sale and the subsequent delivery of the foreclosure deed "which conveys to the grantee all title of the unit's owner to the unit[.]" NRS 116.31164(3)(a). **A foreclosure deed made pursuant to NRS 116.31164** and containing recitals of the default, mailing of the notice of delinquent assessment, and recording of the notice of default and election to sell, the elapse of 90 days, and the giving of notice of sale **is "conclusive of the matters recited against the unit's former owner**, his or her heirs and assigns, and all other persons." NRS 116.31166(2) (emphasis added).

Here, SFR purchased the Property at the Association's non-judicial foreclosure sale on March 1, 2013, and the Foreclosure Deed was recorded on March 6, 2013. See Foreclosure Deed, attached to Exhibits to TRO filed May 9, 2013, as Ex. 1. The Foreclosure Deed includes the recitals required pursuant to NRS 116.31166(1):

This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Copper Ridge Community governing documents (CC&R's) and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 7/19/2012. . . . Nevada Association Serves, Inc. has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. . . .

Id.

Accordingly, the HOA sale divested Parks of his interest in the Property “without equity or right of redemption.” NRS 116.31166(3). All of Parks’s interest vested in SFR, the purchaser. Based on the foregoing, this Court should vacate its order granting Parks’s joinder and dismissing with prejudice SFR’s complaint against Parks.

2. The Lis Pendens Should Not Be Expunged so long as Litigation Continues and the Law Remains Unsettled

Even if this Court will not amend or alter its judgment as to dismissing SFR’s claims against U.S. Bank, it should vacate the Order’s expungment of the lis pendens. Because, as set forth above, litigation continues in this case, at least against Parks, therefore expunging the lis pendens constitutes error so long as SFR’s claims against Parks remain, as they should.

The lis pendens should remain in place even against U.S. Bank, however, so as to prevent manifest injustice.

“The purpose of recording the lis pendens is to give constructive notice to purchasers or encumbrancers that a dispute involving title or liens is ongoing.” *In re Bradshaw*, 315 B.r. 875, 888 (Bankr. D.Nev. 2004), citing NRS 14.101(3); *see Coury v. Tran*, 111 Nev. 652, 655, 895 P.2d 650, 652 (1995) (same). The lis pendens should not be expunged if the action was not brought in bad faith or for an improper motive. *See* NRS 14.015(2)(b). Additionally, the party recording the notice must show it has a fair chance of success on the merits and its injury would be greater than that of the defendant. NRS 14.015(3). Further, when determining whether to expunge a lis pendens, the court should consider the plaintiff’s motives and ability to obtain success not only in the litigation, but on appeal. *See Peery v. Super. Court*, 633 P.2d 198, 201 (Cal. 1981) (construing California statute with similar requirements to Nevada law).

Here, SFR is the rightful owner of the property. The dispute regarding liens is ongoing, as SFR will be exercising its right to an appeal if this Court denies the relief requested in this Motion. Leaving the lis pendens in place does not prevent U.S. Bank from proceeding with foreclosure. Its buyer will simply be taking with notice of the ongoing dispute. If, as SFR believes, the Nevada Supreme Court agrees with its interpretation of NRS Chapter 116, then U.S.

Bank will have wrongfully foreclosed on a Property in which it no longer had an interest; unnecessarily involving third-parties in the ongoing dispute. Such would create a manifest injustice for SFR. It would force SFR to litigate against persons who, without the notice provided by the lis pendens, may argue bona fide purchaser status.

Furthermore, on appeal, the standard that SFR must meet to keep the lis pendens in place is not showing a probability of success on the merits: rather, SFR must “present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.” Cf. *Hansen v. Eighth Judicial Dist. Ct.*, 116 Nev. 650, 656, 6 P.3d 982, 986 (2000) (setting forth the standard for granting a stay or injunction pending appeal), quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir.1981). As this Court is aware, the law on the interpretation of NRS 116.3116 and the effect of an Association’s non-judicial foreclosure on the first security interest, is far from settled. Courts across the Eighth Judicial District have reached a myriad of decisions, both in favor of the first security interests and of SFR. Even those courts deciding in favor of the first security interests do not agree on the interpretation of NRS 116.3116.

U.S. Bank will suffer little, if any, harm, if the lis pendens remains in place. As discussed above, it could still foreclose and sell the Property if this Court denies the request to vacate the order dismissing the complaint. It will simply be selling the Property subject to the ongoing dispute. Without the relief requested by this Motion, however, SFR is in grave danger of losing the Property, even if the Nevada Supreme Court reverses. SFR should not be subject to such manifest injustice. The Order expunging lis pendens should be amended and denied.

IV. CONCLUSION

Based on the foregoing, SFR respectfully requests that the Court amend or alter the Order entered June 11, 2013 as follows:

1. Deny U.S. Bank’s Motion to Dismiss;
2. Deny Lucia Parks’s Joinder and vacate the order dismissing SFR’s Complaint

HOWARD KIM & ASSOCIATES

400 N. STEPHANIE ST, SUITE 160

HENDERSON, NEVADA 89014

(702) 485-3300 FAX (702) 485-3301

1 against Parks;

2 3. Deny U.S.Bank's Motion to Expunge Lis Pendens and Parks's joinder therein;

3 4. Order the Complaint reinstated;

4 5. Vacate the order that Plaintiff record a copy of the June 11, 2013 order with the
5 Clark County Recorder; and

6 5. Reinststate the trial.

7 DATED June 25, 2013.

HOWARD KIM & ASSOCIATES

/s/ Jacqueline A. Gilbert

Howard C. Kim, Esq.

Nevada Bar No. 10386

Diana S. Cline, Esq.

Nevada Bar No. 10580

Jacqueline A. Gilbert, Esq.

Nevada Bar No. 10593

400 N. Stephanie St., Suite 160

Henderson, Nevada 89014

Phone: (702) 485-3300

Fax: (702) 485-3301

Attorneys for Defendant/Counter-claimant

SFR Investments Pool 1, LLC

EXHIBIT 1

SENATE BILL NO. 280—SENATOR KIHUEN

MARCH 15, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to common-interest communities. (BDR 10-863)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~to be omitted~~ is material to be omitted.

AN ACT relating to common-interest communities; revising provisions governing an association's lien on a unit; revising provisions governing the payment of financial obligations to an association; revising provisions governing the foreclosure of an association's lien by sale; requiring an association to provide a statement concerning certain amounts due to the association under certain circumstances; authorizing an association to charge a fee for such a statement; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, a homeowners' association has a lien on a unit for certain
2 amounts due to the association. Generally, the association's lien is not prior to a
3 first security interest on the unit recorded before the date on which the amount
4 sought to be enforced became delinquent. However, the association's lien is prior to
5 the first security interest on the unit to the extent of certain maintenance and
6 abatement charges and a certain amount of assessments for common expenses. The
7 portion of the association's lien that is prior to the first security interest on the unit
8 is commonly referred to as the "super-priority lien." (NRS 116.3116) Existing law
9 authorizes the association to foreclose its lien by sale and prescribes the procedures
10 for such a foreclosure. (NRS 116.31162-116.31168)

11 This bill revises provisions governing the association's lien on a unit and
12 the foreclosure of the association's lien. **Section 10** of this bill provides that the
13 association does not have a priority lien over the first security interest when the
14 association forecloses its lien and, thus, the foreclosure of the association's lien
15 does not extinguish the first security interest on the unit. However, under **section 7**
16 of this bill, if the holder of the first security interest forecloses on a unit, the
17 association has a lien on the unit which is prior to the first security interest. This
18 priority lien consists of the amounts included in the "super-priority lien" under



* S B 2 8 0 R 2 *

existing law and the costs of collecting the assessments included in the "super-priority lien," unless the federal regulations adopted by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Department of Veterans Affairs require a shorter period of priority or prohibit the inclusion of collection costs in the "super-priority lien." **Section 7** also limits the amount of the costs of collecting included in the lien upon the foreclosure of the first security interest.

Under **section 8** of this bill, the association may not foreclose its lien by sale based on unpaid collection costs. **Section 9** of this bill requires that certain notice of the foreclosure of the association's lien be provided by certified or registered mail, return receipt requested, rather than by first-class mail.

Section 3 of this bill: (1) sets forth the order in which an association must apply a payment made by a unit's owner who is delinquent in the payment of assessments, unless a contract between the association and the unit's owner provides otherwise; and (2) prohibits the association or its agent from refusing to accept a partial payment from a unit's owner or any holder of a first security interest encumbering the interest of the unit's owner because the amount tendered is less than the amount owed.

Section 11 of this bill authorizes a unit's owner or the authorized agent of a unit's owner to request from the association a statement concerning certain amounts owed to the association. Under **section 11**, the association may charge certain fees for such a statement. **Section 11** also revises provisions governing the resale package provided to a prospective purchaser of a unit and authorizes the association to charge a fee for providing in electronic format certain documents related to the resale package.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 116 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *As used in this section and NRS 116.3116 to 116.31168, inclusive, and section 3 of this act, unless the context otherwise requires, "first security interest" means a first security interest described in paragraph (b) of subsection 2 of NRS 116.3116.*

Sec. 3. 1. *Unless the parties agree otherwise, the association shall apply any sums paid by a unit's owner who is delinquent in paying assessments in the following order:*

(a) Unpaid assessments;

(b) Charges for late payment of assessments;

(c) Costs of collecting past due assessments charged to the unit's owner pursuant to NRS 116.310313; and

(d) All other unpaid fees, charges, fines, penalties, costs of collecting charged to a unit's owner pursuant to NRS 116.310313, interest and late charges.

2. *The association or its agent shall not refuse to accept a partial payment from a unit's owner or any holder of a first*



* S B 2 8 0 R 2 *

1 *security interest encumbering the interest of the unit's owner*
2 *because the amount tendered is less than the amount owed.*

3 **Sec. 4.** NRS 116.1203 is hereby amended to read as follows:

4 116.1203 1. Except as otherwise provided in subsections 2
5 and 3, if a planned community contains no more than 12 units and is
6 not subject to any developmental rights, it is subject only to NRS
7 116.1106 and 116.1107 unless the declaration provides that this
8 entire chapter is applicable.

9 2. The provisions of NRS 116.12065 and the definitions set
10 forth in NRS 116.005 to 116.095, inclusive, to the extent that the
11 definitions are necessary to construe any of those provisions, apply
12 to a residential planned community containing more than 6 units.

13 3. Except for NRS 116.3104, 116.31043, 116.31046 and
14 116.31138, the provisions of NRS 116.3101 to 116.350, inclusive,
15 *and sections 2 and 3 of this act* and the definitions set forth in NRS
16 116.005 to 116.095, inclusive, to the extent that such definitions are
17 necessary in construing any of those provisions, apply to a
18 residential planned community containing more than 6 units.

19 **Sec. 5.** NRS 116.12075 is hereby amended to read as follows:

20 116.12075 1. The provisions of this chapter do not apply to a
21 nonresidential condominium except to the extent that the declaration
22 for the nonresidential condominium provides that:

23 (a) This entire chapter applies to the condominium;

24 (b) Only the provisions of NRS 116.001 to 116.2122, inclusive,
25 and 116.3116 to 116.31168, inclusive, *and sections 2 and 3 of this*
26 *act* apply to the condominium; or

27 (c) Only the provisions of NRS 116.3116 to 116.31168,
28 inclusive, *and sections 2 and 3 of this act* apply to the
29 condominium.

30 2. If this entire chapter applies to a nonresidential
31 condominium, the declaration may also require, subject to NRS
32 116.1112, that:

33 (a) Notwithstanding NRS 116.3105, any management,
34 maintenance operations or employment contract, lease of
35 recreational or parking areas or facilities and any other contract or
36 lease between the association and a declarant or an affiliate of a
37 declarant continues in force after the declarant turns over control of
38 the association; and

39 (b) Notwithstanding NRS 116.1104 and subsection 3 of NRS
40 116.311, purchasers of units must execute proxies, powers of
41 attorney or similar devices in favor of the declarant regarding
42 particular matters enumerated in those instruments.

43 **Sec. 6.** NRS 116.31068 is hereby amended to read as follows:

44 116.31068 1. Except as otherwise provided in subsection 3,
45 an association shall deliver any notice required to be given by the



* S B 2 8 0 R 2 *

1 association under this chapter to any mailing or electronic mail
2 address a unit's owner designates. Except as otherwise provided in
3 subsection 3, if a unit's owner has not designated a mailing or
4 electronic mail address to which a notice must be delivered, the
5 association may deliver notices by:

6 (a) Hand delivery to each unit's owner;

7 (b) Hand delivery, United States mail, postage paid, or
8 commercially reasonable delivery service to the mailing address of
9 each unit;

10 (c) Electronic means, if the unit's owner has given the
11 association an electronic mail address; or

12 (d) Any other method reasonably calculated to provide notice to
13 the unit's owner.

14 2. The ineffectiveness of a good faith effort to deliver notice by
15 an authorized means does not invalidate action taken at or without a
16 meeting.

17 3. The provisions of this section do not apply:

18 (a) To a notice required to be given pursuant to NRS 116.3116
19 to 116.31168, inclusive ~~{,}~~, *and sections 2 and 3 of this act*; or

20 (b) If any other provision of this chapter specifies the manner in
21 which a notice must be given by an association.

22 **Sec. 7.** NRS 116.3116 is hereby amended to read as follows:

23 116.3116 1. The association has a lien on a unit for any
24 construction penalty that is imposed against the unit's owner
25 pursuant to NRS 116.310305, any assessment levied against that
26 unit or any fines imposed against the unit's owner from the time the
27 construction penalty, assessment or fine becomes due. Unless the
28 declaration otherwise provides, any penalties, fees, charges, late
29 charges, fines and interest charged pursuant to paragraphs (j) to (n),
30 inclusive, of subsection 1 of NRS 116.3102 are enforceable as
31 assessments under this section. If an assessment is payable in
32 installments, the full amount of the assessment is a lien from the
33 time the first installment thereof becomes due.

34 2. A lien under this section is prior to all other liens and
35 encumbrances on a unit except:

36 (a) Liens and encumbrances recorded before the recordation of
37 the declaration and, in a cooperative, liens and encumbrances which
38 the association creates, assumes or takes subject to;

39 (b) A first security interest on the unit recorded before the date
40 on which the assessment sought to be enforced became delinquent
41 or, in a cooperative, the first security interest encumbering only the
42 unit's owner's interest and perfected before the date on which the
43 assessment sought to be enforced became delinquent; and

44 (c) Liens for real estate taxes and other governmental
45 assessments or charges against the unit or cooperative.



* S B 2 8 0 R 2 *

1 ~~{any}~~
2 3. The *association has a lien which* is ~~{also}~~ prior to ~~{all~~
3 ~~security interests described in paragraph (b)}~~ *the first security*
4 *interest* to the extent of ~~{any}~~ :

5 (a) Any charges incurred by the association on a unit pursuant to
6 NRS 116.310312 ; and ~~{to the extent of}~~

7 (b) *Except as otherwise provided in this paragraph*, the
8 assessments for common expenses based on the periodic budget
9 adopted by the association pursuant to NRS 116.3115 which would
10 have become due in the absence of acceleration during the 9 months
11 immediately preceding ~~{institution of an action to enforce the lien;~~
12 ~~unless federal regulations adopted by the Federal Home Loan~~
13 ~~Mortgage Corporation or the Federal National Mortgage~~
14 ~~Association require a shorter period of priority for the lien.}~~ *a*
15 *trustee's sale or foreclosure sale of the unit to enforce the first*
16 *security interest and the costs of collecting those assessments*
17 *which are charged to a unit's owner pursuant to NRS 116.310313.*

18 If federal regulations adopted by the Federal Home Loan Mortgage
19 Corporation , ~~{or}~~ the Federal National Mortgage Association *or the*
20 *Department of Veterans Affairs* require a shorter period of priority
21 for the lien ~~{}~~ *or prohibit the inclusion of costs of collecting in the*
22 *lien*, the ~~{period during which}~~ *amount* of the lien which is prior to
23 ~~{all security interests described in paragraph (b)}~~ *the first security*
24 *interest pursuant to this paragraph* must be determined in
25 accordance with those federal regulations, except that
26 notwithstanding the provisions of the federal regulations, the period
27 of priority for the lien must not be less than the 6 months
28 immediately preceding ~~{institution of an action to enforce the lien.}~~

29 ~~---This subsection does}~~ *a trustee's sale or foreclosure sale of the*
30 *unit to enforce the first security interest. The amount of the costs*
31 *of collecting included in the lien pursuant to this paragraph must*
32 *not exceed the amounts set forth in the regulations adopted by the*
33 *Commission pursuant to NRS 116.310313, except that the amount*
34 *included in the lien to recover the actual costs charged to the*
35 *association or a person acting on behalf of the association to*
36 *collect a past due obligation by a person who is not an officer,*
37 *director, agent or affiliate of the community manager of the*
38 *association or of an agent of the association, including, without*
39 *limitation, the cost of a trustee's sale guarantee and other title*
40 *costs, recording costs, posting and publishing costs, sale costs,*
41 *mailing costs, express delivery costs and skip trace fees, must not*
42 *exceed \$500.*

43 4. The provisions of subsections 2 and 3 do not affect the
44 priority of mechanics' or materialmen's liens, or the priority of liens
45 for other assessments made by the association.



* S B 2 8 0 R 2 *

~~{3-}~~ 5. *The holder of the first security interest or the holder's authorized agent may establish an escrow account, loan trust account or other impound account for advance contributions for the payment of assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 if the unit's owner and the holder of the first security interest consent to the establishment of such an account. If such an account is established, payments from the account for assessments for common expenses must be made in accordance with the same due dates as apply to payments of such assessments by a unit's owner.*

6. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

~~{4-}~~ 7. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

~~{5-}~~ 8. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

~~{6-}~~ 9. This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

~~{7-}~~ 10. A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

~~{8-}~~ 11. The association, upon written request, shall furnish to a unit's owner a statement setting forth the amount of unpaid assessments against the unit. If the interest of the unit's owner is real estate or if a lien for the unpaid assessments may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board and every unit's owner.

~~{9-}~~ 12. In a cooperative, upon nonpayment of an assessment on a unit, the unit's owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and:

(a) In a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, the association's lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive.

(b) In a cooperative where the owner's interest in a unit is personal property under NRS 116.1105, the association's lien:

(1) May be foreclosed as a security interest under NRS 104.9101 to 104.9709, inclusive; or



* S B 2 8 0 R 2 *

(2) If the declaration so provides, may be foreclosed under NRS 116.31162 to 116.31168, inclusive.

~~110.~~ 13. In an action by an association to collect assessments or to foreclose a lien created under this section, the court may appoint a receiver to collect all rents or other income from the unit alleged to be due and owing to a unit's owner before commencement or during pendency of the action. The receivership is governed by chapter 32 of NRS. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to NRS 116.3115.

Sec. 8. NRS 116.31162 is hereby amended to read as follows:

116.31162 1. Except as otherwise provided in subsection 4, in a condominium, in a planned community, in a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's interest in a unit is personal property under NRS 116.1105 and the declaration provides that a lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the association may foreclose its lien by sale after all of the following occur:

(a) The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest, at his or her address, if known, and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

(b) Not less than 30 days after mailing the notice of delinquent assessment pursuant to paragraph (a), the association or other person conducting the sale has executed and caused to be recorded, with the county recorder of the county in which the common-interest community or any part of it is situated, a notice of default and election to sell the unit to satisfy the lien which must contain the same information as the notice of delinquent assessment and which must also comply with the following:

(1) Describe the deficiency in payment.

(2) State the name and address of the person authorized by the association to enforce the lien by sale.

(3) Contain, in 14-point bold type, the following warning:

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!



* S B 2 8 0 R 2 *

1 (c) The unit's owner or his or her successor in interest has failed
2 to pay the amount of the lien, including costs, fees and expenses
3 incident to its enforcement, for 90 days following the recording of
4 the notice of default and election to sell.

5 2. The notice of default and election to sell must be signed by
6 the person designated in the declaration or by the association for that
7 purpose or, if no one is designated, by the president of the
8 association.

9 3. The period of 90 days begins on the first day following:

10 (a) The date on which the notice of default is recorded; or

11 (b) The date on which a copy of the notice of default is mailed
12 by certified or registered mail, return receipt requested, to the unit's
13 owner or his or her successor in interest at his or her address, if
14 known, and at the address of the unit,
15 ➡ whichever date occurs later.

16 4. The association may not foreclose a lien by sale based on
17 ~~{a}~~ :

18 (a) *The costs of collecting charged to a unit's owner pursuant*
19 *to NRS 116.310313.*

20 (b) A fine or penalty for a violation of the governing documents
21 of the association unless:

22 ~~{a}~~ (1) The violation poses an imminent threat of causing a
23 substantial adverse effect on the health, safety or welfare of the
24 units' owners or residents of the common-interest community; or

25 ~~{b}~~ (2) The penalty is imposed for failure to adhere to a
26 schedule required pursuant to NRS 116.310305.

27 **Sec. 9.** NRS 116.311635 is hereby amended to read as
28 follows:

29 116.311635 1. The association or other person conducting
30 the sale shall also, after the expiration of the 90 days and before
31 selling the unit:

32 (a) Give notice of the time and place of the sale in the manner
33 and for a time not less than that required by law for the sale of real
34 property upon execution, except that in lieu of following the
35 procedure for service on a judgment debtor pursuant to NRS 21.130,
36 service must be made on the unit's owner as follows:

37 (1) A copy of the notice of sale must be mailed, on or before
38 the date of first publication or posting, by certified or registered
39 mail, return receipt requested, to the unit's owner or his or her
40 successor in interest at his or her address, if known, and to the
41 address of the unit; and

42 (2) A copy of the notice of sale must be served, on or before
43 the date of first publication or posting, in the manner set forth in
44 subsection 2; and



* S B 2 8 0 R 2 *

(b) Mail, on or before the date of first publication or posting, a copy of the notice by ~~{first-class-mail}~~ ***certified or registered mail, return receipt requested***, to:

(1) Each person entitled to receive a copy of the notice of default and election to sell notice under NRS 116.31163;

(2) The holder of a recorded security interest or the purchaser of the unit, if either of them has notified the association, before the mailing of the notice of sale, of the existence of the security interest, lease or contract of sale, as applicable; and

(3) The Ombudsman.

2. In addition to the requirements set forth in subsection 1, a copy of the notice of sale must be served:

(a) By a person who is 18 years of age or older and who is not a party to or interested in the sale by personally delivering a copy of the notice of sale to an occupant of the unit who is of suitable age; or

(b) By posting a copy of the notice of sale in a conspicuous place on the unit.

3. Any copy of the notice of sale required to be served pursuant to this section must include:

(a) The amount necessary to satisfy the lien as of the date of the proposed sale; and

(b) The following warning in 14-point bold type:

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL (name and telephone number of the contact person for the association). IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT (toll-free telephone number designated by the Division) IMMEDIATELY.

4. Proof of service of any copy of the notice of sale required to be served pursuant to this section must consist of:

(a) A certificate of mailing which evidences that the notice was mailed through the United States Postal Service; or

(b) An affidavit of service signed by the person who served the notice stating:

(1) The time of service, manner of service and location of service; and



(2) The name of the person served or, if the notice was not served on a person, a description of the location where the notice was posted on the unit.

Sec. 10. NRS 116.31164 is hereby amended to read as follows:

116.31164 1. The sale must be conducted in the county in which the common-interest community or part of it is situated, and may be conducted by the association, its agent or attorney, or a title insurance company or escrow agent licensed to do business in this State, except that the sale may be made at the office of the association if the notice of the sale so provided, whether the unit is located within the same county as the office of the association or not. The association or other person conducting the sale may from time to time postpone the sale by such advertisement and notice as it considers reasonable or, without further advertisement or notice, by proclamation made to the persons assembled at the time and place previously set and advertised for the sale.

2. On the day of sale originally advertised or to which the sale is postponed, at the time and place specified in the notice or postponement, the person conducting the sale may sell the unit at public auction to the highest cash bidder. Unless otherwise provided in the declaration or by agreement, the association may purchase the unit and hold, lease, mortgage or convey it. The association may purchase by a credit bid up to the amount of the unpaid assessments and any permitted costs, fees and expenses incident to the enforcement of its lien.

3. After the sale, the person conducting the sale shall:

(a) Make, execute and, after payment is made, deliver to the purchaser, or his or her successor or assign, a deed without warranty which conveys to the grantee all title of the unit's owner to the unit;

(b) Deliver a copy of the deed to the Ombudsman within 30 days after the deed is delivered to the purchaser, or his or her successor or assign; and

(c) Apply the proceeds of the sale for the following purposes in the following order:

(1) The reasonable expenses of sale;

(2) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by the declaration, reasonable attorney's fees and other legal expenses incurred by the association;

(3) Satisfaction of the association's lien;

(4) Satisfaction in the order of priority of any subordinate claim of record; and



* S B 2 8 0 R 2 *

1 (5) Remittance of any excess to the unit's owner.

2 **4. *The foreclosure by sale of the association's lien does not***
3 ***extinguish the rights of the holder of the first security interest.***

4 **Sec. 11.** NRS 116.4109 is hereby amended to read as follows:

5 116.4109 1. Except in the case of a sale in which delivery of
6 a public offering statement is required, or unless exempt under
7 subsection 2 of NRS 116.4101, a unit's owner or his or her
8 authorized agent shall, at the expense of the unit's owner, furnish to
9 a purchaser a resale package containing all of the following:

10 (a) A copy of the declaration, other than any plats, the bylaws,
11 the rules or regulations of the association and the information
12 statement required by NRS 116.41095.

13 (b) A statement from the association setting forth the amount of
14 the monthly assessment for common expenses and any unpaid
15 obligation of any kind, including, without limitation, management
16 fees, transfer fees, fines, penalties, interest, collection costs,
17 foreclosure fees and attorney's fees currently due from the selling
18 unit's owner. ~~{The statement remains effective for the period~~
19 ~~specified in the statement, which must not be less than 15 working~~
20 ~~days from the date of delivery by the association to the unit's owner~~
21 ~~or his or her agent. If the association becomes aware of an error in~~
22 ~~the statement during the period in which the statement is effective~~
23 ~~but before the consummation of the resale, the association must~~
24 ~~deliver a replacement statement to the unit's owner or his or her~~
25 ~~agent and obtain an acknowledgment in writing by the unit's owner~~
26 ~~or his or her agent before that consummation. Unless the unit's~~
27 ~~owner or his or her agent receives a replacement statement, the~~
28 ~~unit's owner or his or her agent may rely upon the accuracy of the~~
29 ~~information set forth in a statement provided by the association for~~
30 ~~the resale.}~~

31 (c) A copy of the current operating budget of the association and
32 current year-to-date financial statement for the association, which
33 must include a summary of the reserves of the association required
34 by NRS 116.31152 and which must include, without limitation, a
35 summary of the information described in paragraphs (a) to (e),
36 inclusive, of subsection 3 of NRS 116.31152.

37 (d) A statement of any unsatisfied judgments or pending legal
38 actions against the association and the status of any pending legal
39 actions relating to the common-interest community of which the
40 unit's owner has actual knowledge.

41 (e) A statement of any transfer fees, transaction fees or any other
42 fees associated with the resale of a unit.

43 (f) In addition to any other document, a statement describing all
44 current and expected fees or charges for each unit, including,
45 without limitation, association fees, fines, assessments, late charges



* S B 2 8 0 R 2 *

1 or penalties, interest rates on delinquent assessments, additional
2 costs for collecting past due fines and charges for opening or closing
3 any file for each unit.

4 2. The purchaser may, by written notice, cancel the contract of
5 purchase until midnight of the fifth calendar day following the date
6 of receipt of the resale package described in subsection 1, and the
7 contract for purchase must contain a provision to that effect. If the
8 purchaser elects to cancel a contract pursuant to this subsection,
9 the purchaser must hand deliver the notice of cancellation to the
10 unit's owner or his or her authorized agent or mail the notice of
11 cancellation by prepaid United States mail to the unit's owner or his
12 or her authorized agent. Cancellation is without penalty, and all
13 payments made by the purchaser before cancellation must be
14 refunded promptly. If the purchaser has accepted a conveyance of
15 the unit, the purchaser is not entitled to:

16 (a) Cancel the contract pursuant to this subsection; or

17 (b) Damages, rescission or other relief based solely on the
18 ground that the unit's owner or his or her authorized agent failed to
19 furnish the resale package, or any portion thereof, as required by this
20 section.

21 3. Within 10 days after receipt of a written request by a unit's
22 owner or his or her authorized agent, the association shall furnish all
23 of the following to the unit's owner or his or her authorized agent
24 for inclusion in the resale package:

25 (a) Copies of the documents required pursuant to paragraphs (a)
26 and (c) of subsection 1; and

27 (b) A certificate containing the information necessary to enable
28 the unit's owner to comply with paragraphs (b), (d), (e) and (f) of
29 subsection 1.

30 4. If the association furnishes the documents and certificate
31 pursuant to subsection 3:

32 (a) The unit's owner or his or her authorized agent shall include
33 the documents and certificate in the resale package provided to the
34 purchaser, and neither the unit's owner nor his or her authorized
35 agent is liable to the purchaser for any erroneous information
36 provided by the association and included in the documents and
37 certificate.

38 (b) The association may charge the unit's owner a reasonable
39 fee to cover the cost of preparing the certificate furnished pursuant
40 to subsection 3. Such a fee must be based on the actual cost the
41 association incurs to fulfill the requirements of this section in
42 preparing the certificate. The Commission shall adopt regulations
43 establishing the maximum amount of the fee that an association may
44 charge for preparing the certificate.



(c) The other documents furnished pursuant to subsection 3 must be provided in electronic format ~~{at no charge}~~ to the unit's owner. ~~{or, if}~~ *The association may charge the unit's owner a fee, not to exceed \$20, to provide such documents in electronic format. If* the association is unable to provide such documents in electronic format, the association may charge the unit's owner a reasonable fee, not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter, to cover the cost of copying.

(d) Except for the fees allowed pursuant to paragraphs (b) and (c), the association may not charge the unit's owner any other fees for preparing or furnishing the documents and certificate pursuant to subsection 3.

5. Neither a purchaser nor the purchaser's interest in a unit is liable for any unpaid assessment or fee greater than the amount set forth in the documents and certificate prepared by the association. If the association fails to furnish the documents and certificate within the 10 days allowed by this section, the purchaser is not liable for the delinquent assessment.

6. Upon the request of a unit's owner or his or her authorized agent, or upon the request of a purchaser to whom the unit's owner has provided a resale package pursuant to this section or his or her authorized agent, the association shall make the entire study of the reserves of the association which is required by NRS 116.31152 reasonably available for the unit's owner, purchaser or authorized agent to inspect, examine, photocopy and audit. The study must be made available at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties.

7. *A unit's owner or the authorized agent of the unit's owner may request a statement of demand from the association. Not later than 10 days after receipt of a written request from a unit's owner or the authorized agent of the unit's owner for a statement of demand, the association shall furnish a statement of demand to the unit's owner or the authorized agent. The association may charge a fee of not more than \$150 to prepare and furnish a statement of demand pursuant to this subsection and an additional fee of not more than \$100 to furnish a statement of demand within 3 days after receipt of a written request for a statement of demand. The statement of demand:*

(a) *Must set forth the amount of the monthly assessment for common expenses and any unpaid obligation of any kind, including, without limitation, management fees, transfer fees, fines, penalties, interest, collection costs, foreclosure fees and attorney's fees currently due from the selling unit's owner; and*



* S B 2 8 0 R 2 *

1 ***(b) Remains effective for the period specified in the statement***
2 ***of demand, which must not be less than 15 business days after the***
3 ***date of delivery by the association to the unit's owner or***
4 ***authorized agent of the unit's owner.***

5 ***8. If the association becomes aware of an error in a statement***
6 ***of demand furnished pursuant to subsection 7 during the period in***
7 ***which the statement of demand is effective but before the***
8 ***consummation of a resale for which a resale package was***
9 ***furnished pursuant to subsection 1, the association must deliver a***
10 ***replacement statement of demand to the unit's owner or the***
11 ***authorized agent of the unit's owner who requested the statement***
12 ***of demand. Unless the unit's owner or the authorized agent of the***
13 ***unit's owner who requested the statement of demand receives a***
14 ***replacement statement of demand, the unit's owner or authorized***
15 ***agent may rely upon the accuracy of the information set forth in***
16 ***the statement of demand provided by the association for the resale.***
17 ***Payment of the amount set forth in the statement of demand***
18 ***constitutes full payment of the amount due from the selling unit's***
19 ***owner.***

③



EXHIBIT 2

BAYVIEW LOAN SERVICING, LLC)
Plaintiff)
))
v.) **2:13-cv-00164-RCJ-NJK**
))
ALESSI & KOENIG, LLC et al.)

I, Carl H. Lisman, being first duly sworn, do hereby swear under penalty of perjury as follows:

1. I am a lawyer admitted to practice in the State of New York in 1970 and in the State of Vermont in 1971; my New York status is inactive and my Vermont status is active.

2. ***Uniform Law Commissioner.*** I have served as a Uniform Law Commissioner without interruption since 1976. I have been involved, almost continuously, in the drafting of substantially all of the uniform and model laws relating to condominiums, planned communities and cooperatives, time-shares, partition of real estate, land security interests and foreclosure. The Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws or the “ULC”) was established in 1892. It provides States with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

3. My initial involvement in common interest ownership law was as a member of the ULC's 1976 review committee on the Uniform Condominium Act ("UCA"). Thereafter, I was a

member of the drafting committees that produced the 1980 Uniform Planned Community Act (“UPCA”) and the 1982 Uniform Common Interest Ownership Act (“1982 UCIOA”). I was a member of and chaired the committee that amended the Uniform Common Interest Ownership Act in 1994 (“1994 UCIOA”).

4. I was a member of and chaired the drafting committee that produced both the 2008 amended Uniform Common Interest Ownership Act (“2008 UCIOA”) and the Uniform Common Interest Owners Bill of Rights Act.

5. **Educator.** I taught a course on real estate transactions for 18 years as an adjunct professor at Vermont Law School, with an emphasis on common interest ownership law.

6. I have been on the faculty of numerous courses and classes for lawyers and others involved in real estate, including chairing the American Law Institute-American Bar Association’s annual course on condominium, planned community and mixed use projects (since 1990) as well as serving on the faculty of the ALI-ABA annual course on resort real estate (since 1990). In those courses, I emphasize the benefits and burdens of the Uniform Laws for developers and their lenders; lenders to unit owners and associations; merchant builders; unit purchasers and sellers; associations; and managers.

7. **Speaker.** I’ve addressed legislative committees in a number of States (including California, Maryland and North Carolina) on the subject of the real property Uniform Laws as well as been an invited speaker at symposia and similar events.

8. **Peer Organizations.** I have been a member of and chaired the Common Interest Committee of the American College of Real Estate Lawyers and the Condominium and Planned Community Committee of the ABA Real Property Section.

9. I chaired, until recently, the Joint Editorial Board on Real Property, jointly sponsored by the American College of Real Estate Lawyers, the ABA Real Property Section, the Uniform Law Commission, the Community Association Institute, the American Land Title Association, the American College of Mortgage Attorneys and the American Land Title Association.

UCIOA and NUCIOA

10. Our goals in promulgating the 1982 UCIOA¹ were many, but we believe that we achieved at least two of them:

- ▶ We consolidated, into a single statute, the law applicable to the creation and termination of the condominium, planned community and real estate cooperative forms of real estate;² the operation of common interest community associations; and protections of consumers in purchases from the declarant and in resale transactions.

- ▶ We eliminated substantially all of the variations applicable to common interest communities attributable solely to the legal form of the community and, as to the remainder, we “harmonized” the differences.

11. UCIOA was, as promulgated in 1982 and, as amended and revised thereafter is,

¹ The ULC has subsequently amended 1982 UCIOA: First, in 1994, to address minor changes and, second, in 2008, to significantly revise Part 3 to expand governance rights for owners and increase transparency of board actions, as well as other changes throughout the rest of the Act. Those changes do not affect my opinions.

² The important distinction among these three forms of ownership is who owns what: In a condominium, unit owners own their units individually and, together, they own the common elements, which their association (in which they are mandatory members) manages; in a planned community, unit owners own their units but their association (in which they are mandatory members) owns the common elements; and in a real estate cooperative, the association owns both the units and common elements but owners, by virtue of their membership in the association, have exclusive rights to particular units.

In each, the association has a lien to enforce its assessment authority.

divided into five parts:

- ▶ Article 1 contains definitions and general provisions.
- ▶ Article 2 provides for the creation, alteration and termination of common interest communities.
- ▶ Article 3 concerns the administration of the community association.
- ▶ Article 4 deals with consumer protection for purchasers.
- ▶ Article 5 is an optional Article which establishes an administrative agency to supervise developers' activities.

12. Nevada enacted NUCIOA in 1991. At that time, Nevada adopted, with variations not relevant in this Affidavit, 1982 UCIOA's Section 3-116. The Nevada version is NRS 116.3116.

13. Roughly half the States have enacted one or more of the Uniform Condominium Act, the Uniform Planned Community Act or one of the iterations of UCIOA.³

Priorities

14. The first of the uniform laws addressing common interest communities was the Uniform Condominium Act. It was initially designed to deal with a wide range of issues including flexibility for developers, abuses by developers, the need to protect developer lenders

³ UCIOA: Alaska, Colorado, Connecticut, Delaware, Minnesota, Nevada, West Virginia, Vermont.

Uniform Condominium Act: Alabama, Arizona, Louisiana, Maine, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, Pennsylvania, Rhode Island, Texas, Virginia, Washington.

Uniform Planned Community Act: Pennsylvania.

Uniform Common Interest Owners Bill of Rights: Kansas.

after developer failure, separating title documentation from purchaser disclosure, appropriate disclosure for purchasers, and the powers and responsibilities of the association.⁴

15. UCA recognized that the ability of the association to fund itself from assessments required that the association have the ability to protect itself from non-paying owners.⁵ It – and the subsequent UPC and 1982 UCIOA – determined that the protection should be in the form of a statutory lien⁶ on each unit to secure payment of assessments against the unit or fines against

⁴ Although nothing in the Uniform Condominium Act prohibits a “horizontal” condominium, the presumption that guided its drafting was that a condominium would be vertical, as with mid- and high-rise buildings.

The Uniform Planned Community Act was initially designed to deal with the “multi-unit residential ‘planned community’ served by common area facilities owned and operated by a homeowner association.” Although nothing in the Uniform Planned Community Act prohibits a “vertical” planned community, the presumption that guided its drafting was that a planned community would be horizontal, as with traditional subdivisions in which the association owned common land.

When we were comparing Uniform Condominium Act and the Uniform Planned Community Act during the 1982 UCIOA drafting process, we immediately recognized that the condominium and planned community forms of ownership were interchangeable, so that a condominium could be created as a traditional “homes association” neighborhood and a planned community could be a high-rise building. With that recognition, we sought to eliminate variations.

⁵ The role of the association is critical to the success or failure of the great majority of common interest communities. In that regard, one of the most important conclusions that was reached addressed the need of the association to be properly funded.

Most common interest associations raise funds for their operations by assessing their members; some associations have amenities or other assets that generate income from third parties, but they are few in comparison. Similarly, most associations begin their budgeting process by identifying their expenses and then match up total expenses with assessment revenue. The consequence of this process is that if a single unit owner fails to pay her assessment obligations, the association is forced to cut back its expenses in the same amount – to the end that not all budgeted services can be provided.

In this respect, the association is similar to a involuntary creditor; it is required by statute and its governing documents to provide services even to owners who do not pay their assessments.

⁶ UCA § 3-116(a), 1982 UCIOA § 3-116(a) and NUCIOA § 116.3116(a) each provide that the association “has a lien....” 1994 UCIOA amended this subsection to add “statutory” (The association has a statutory lien....”) in order to ensure that the association’s rights in bankruptcy are protected.

the unit owner.⁷ The mere existence of the lien was believed to be sufficient leverage to ensure the association's ability to collect and, if not so, then the association was given the statutory authority to foreclose its lien in the same manner as a security interest.

16. Having decided that the association ought to have a lien to secure payment, the drafters then proceeded to consider the priority to be accorded to the association's lien. There are, generally speaking, five categories of potentially competing liens: Governmental charges and assessments; mortgages and deeds of trust; judgment liens; mechanic's and materialmen's liens; and homestead rights, dower and curtesy rights. These interests are inherently different:

- ▶ Governmental charges and assessments include municipal real estate taxes and special assessments; federal tax liens; and state and municipal income tax liens.
- ▶ Statutes and judicial decisions differentiate among purchase money mortgages and mortgages that are not purchase money mortgages.
- ▶ Judgment liens can arise against individual units or the association.
- ▶ Mechanics and materialmen can have claims against the declarant, the association or a unit owner.
- ▶ The laws of the States vary significantly relating to homestead rights, dower and curtesy.

If the association's only realistic remedy is foreclosure,⁸ the association's lien – for

⁷ Fees, charges, late charges, fines and interest are included in "assessment" for purposes of the lien. 2008 UCIOA added reasonable attorney's fees and other sums due the association under the declaration or as a result of an administrative, arbitration, mediation or judicial decision.

⁸ That would be true if pursuit of a money judgment against the unit owner would be futile or impractical.

assessments arising after the unit owner's mortgage or deed of trust was recorded in the office of the recorder – would ordinarily be junior to governmental charges and assessments and the first security interest (and might be subject to prior judgment liens, prior mechanic's and materialmen's liens and homestead, dower and curtesy rights). As a result, a foreclosing association would take subject to the first security interest – not a practical result – or, worse, be foreclosed by the holder of the first security interest.

17. UCA created – and each of UPCA and 1982 UCIOA repeated – a priority rule, not a payment rule: “A lien under this section is prior to all other liens and encumbrances on a unit.” UCA §3-116(b), UPCA § 3-116(b), UCIOA § 3-116(b), NUCIOA § 116.3116(2). Had we intended that the priority be only for payment, we would have said so.⁹ A payment priority would not serve the goal we were seeking.¹⁰

18. This priority principle has become the law not only in States that enacted one or more of the Uniform Laws but in a half dozen other States by specific legislation.

⁹ As explained in the Official Comments,

“To ensure prompt and efficient enforcement of the association's lien for unpaid assessments, such liens should enjoy statutory priority over most other liens. ... [A]s to prior first security interests the association's lien does have priority for six months' assessments based on the periodic budget. A significant departure from existing practice, the six months' priority for the assessment lien strikes an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lenders.”

Indeed, until recently I had never heard of a “payment priority” as different from a priority rule

¹⁰ Similarly, 1982 UCIOA § 1-104 (and NUCIOA 116.1104) prohibit a declaration provision that varies the term of the priority rule. Although there are some sections in both laws that allow the drafter of a declaration or bylaws to change a default rule, neither 1982 UCIOA Section 3-116 nor NUCIOA 116.3116 permits a declaration to “undo” the priority rule by, for example, eliminating it or subordinating it. The sections for which variation is permitted are listed in Official Comment 4 to UCIOA. (Both do allow the declaration to provide that fines, late charges and other fees are not treated as assessments.)

19. The association's lien is divided into two parts: One part, sometimes referred to as the "super lien," is ahead of all other interests except real estate taxes and other governmental assessments and charges. It is also superior to "a first security interest on the unit," even if the security interest was recorded before the date on which the assessment sought to be enforced became delinquent. 1982 UCIOA § 3-116(b), NUCIOA § 116.3116(2)(b). The priority portion of the lien is superior in all respects to the first security interest, just as any other superior lien would be. If it were otherwise, the fundamental purpose of the six-month priority would be easily defeated by the presence of a pre-existing security interest, which is precisely what the priority was supposed to correct. In most instances, the association's lien – being so much smaller in amount than the mortgage indebtedness – would never be, as a practical matter, collectible.

Under the Uniform Laws, the calculus of the priority is equal to not more than six months of regular assessments but, upon computation of that amount, the priority amount can be a combination of regular and special assessments, fees, charges, late charges, fines and interest. UCIOA § 3-116(a). In Nevada, the priority calculus is for nine months of regular assessments. NUCIOA § 116.3116(1).¹¹

The other part is junior to the first security interest but ahead of other mortgages, deeds of

¹¹ A lender faced with the association's limited priority could be expected to protect its collateral by requiring its borrowers to escrow for association assessments in the same manner as lenders have long required escrow for property taxes and casualty insurance. I am not aware that there are any studies on this subject, but anecdotal evidence strongly suggests that lender rarely – if ever – require a borrower to escrow for association assessments.

trust and encumbrances not recorded before the recording of the declaration.¹²

20. The amount to which the association is entitled under its priority position is the assessment “amount which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien,” UCIOA § 3-116(b),¹³ or, in Nevada, nine months (NUCIOA § 116.3116(2)). The decision to use “institution of an action” (rather than “commencement of an action”) was deliberate in order to ensure that the triggering event not is not limited to the initiation of a judicial action. “Action” means just that: something done. In jurisdictions that employ nonjudicial foreclosure, the action is typically recording a notice of default and giving appropriate notice to interested persons of the date, time and place of the sale.

Foreclosure

21. The association lien is foreclosed, on a unit in a condominium or planned community, in the same manner that a mortgage or deed of trust is foreclosed.¹⁴

Nevada enacted NUCIOA § 116.31162 instead of 1982 UCIOA Section 3-116(j); it left in place

¹² The association prior position does not affect the priority of mechanic’s or materialmen’s liens. UCIOA § 3-116(b); NUCIOA § 116.3116(2). UCIOA contains an optional provision confirming that the association’s lien is not subject to homestead, dower and curtesy laws; Nevada did not adopt that provision.

¹³ The first sentence of 1982 UCIOA is as follows: “The association has a lien on a unit for any assessment levied against the unit or fines imposed against its unit owner from the time the assessment or fine becomes due.” That sentence was amended in 1994 to delete “from the time the assessment or fine becomes due” because it appeared to cause confusion with respect to priority issues. The statutory intention was, 1982 and now, that the association’s lien is the functional equivalent of real estate taxes (except for the special priority rules set out in subsection (b)). The lien arises by virtue of the statute.

¹⁴ The association’s lien is foreclosed “in like manner as a mortgage on real estate.” UCA § 3-116(a), UPCA § 3-116(a). 1982 UCIOA re-ordered Section 3-116 but did not change the substance; subsection (j) provides: “The association’s lien may be foreclosed as provided in this subsection: (1) In a condominium or planned community, the association’s lien must be foreclosed in like manner as a mortgage on real estate [or power of sale under [insert appropriate state statute] [or by power of sale under subsection (k)]. Subsequent revisions to UCIOA did not change this.

the provisions relating to non-real estate cooperatives and moved the process rules for foreclosure of units in a condominium, planned community or real estate cooperative to Section 31162. This change nonetheless preserves the association's right to foreclose by sale – the same manner by which a mortgage or deed of trust is foreclosed.¹⁵

22. The statutory priority of the association's lien is not limited to a first claim against the proceeds from the foreclosure sale (up to the priority calculus). It also puts the association ahead of the first security interest – and that means that foreclosure by the association extinguishes the first security interest and all junior interests.¹⁶

23. That result naturally follows from the customary rule regarding priority of interests in real estate.¹⁷ A foreclosure sale of the association's lien is governed by the same principles generally applicable to lien foreclosure sales, so that foreclosure of a lien entitled to

¹⁵ I am not admitted to practice in the State of Nevada. In my review of NCUIOA §§ 116.31162 - 31164, I concluded that these provisions have been tailored to deal with units in common interest communities, but the rules embodied in these sections are very similar to process rules in foreclosure of mortgages and deeds of trust.

¹⁶ There is an exception, though very unlikely: If the first security interest is recorded before the declaration, the association's lien would be junior to it.

¹⁷ The Restatement of Property (Mortgages) (1996) states the general rule, in the context of mortgage foreclosure, this way in the Introductory Note to Chapter 7: “[A] valid foreclosure of a senior lien terminates not only the owner's equity of redemption, but all junior interests whose holders are joined as well.” Section 7.1 repeats this principle: A valid foreclosure of a mortgage terminates all interests in the foreclosed real estate that are junior to the mortgage being foreclosed and whose holders are properly joined or notified under applicable law.” By substituting “association lien” for “mortgage,” the rule in NUCIOA 116.3116 is clearly understood.

Comment a. to Section 7.1 reaffirms this conclusion: “It is a fundamental principle of mortgage law that a valid judicial foreclosure of a senior mortgage terminates not only the owner's title and equitable redemption rights, but also all other junior interests whose holders were made parties defendant. A power of sale (nonjudicial) foreclosure that complies with applicable statutory notice and related requirements accomplishes the same results. Thus, a purchaser at a foreclosure sale not only acquires the previous owner's interests in the real estate, but a title free and clear of all other properly joined interests that were junior to the foreclosed lien. ... It is equally axiomatic that the title deriving from a foreclosure sale, whether judicial or by power of sale, will be subject to all mortgages and other interests that are senior to the mortgage being foreclosed.”

priority extinguishes that lien and all subordinate liens. The liens attach to the proceeds of the sale and are paid out accordingly.

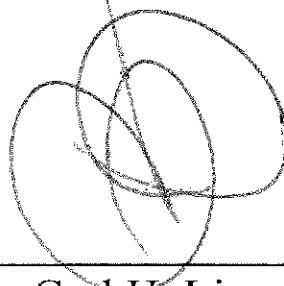
23. The holder of the first security interest can easily protect its position by paying the six-month priority amount to the association and taking an assignment from the association.

Conclusion

24. NUCIOA follows the principles in UCIOA:

- ▶ The association enjoys a statutory limited priority ahead of a first security interest similar to the priority given to property taxes and other governmental charges.
- ▶ Because of this statutory priority, foreclosure by the association extinguishes a first security interest and all other junior interests whether foreclosure is judicial or nonjudicial.
- ▶ The holder of a first security interest can – and should – protect itself against an association foreclosure by requiring that its borrower escrow the full amount of the association's priority and paying it to the association to avoid extinguishment of its security interest.

Dated: June 17, 2013.



Carl H. Lisman

Subscribed and sworn to in my presence this 17 day of June, 2013.



Notary Public

EXHIBIT 3

Senate Bill No. 280–Senator Kihuen

CHAPTER.....

AN ACT relating to common-interest communities; authorizing the establishment of an impound account for the payment of assessments under certain circumstances; revising provisions governing the collection of past due financial obligations owed to an association; revising provisions governing the foreclosure of an association's lien by sale; requiring an association to provide a statement concerning certain amounts due to the association under certain circumstances; authorizing an association to charge a fee for such a statement; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a homeowners' association has a lien on a unit for certain amounts due to the association. (NRS 116.3116) Existing law authorizes the association to foreclose its lien by sale and prescribes the procedures for such a foreclosure. (NRS 116.31162-116.31168)

Section 7 of this bill authorizes the establishment of an impound account for advance contributions for the payment of assessments. Under **section 8** of this bill, not earlier than 60 days after a unit's owner becomes delinquent on a payment owed to the association and before the association mails a notice of delinquent assessment or takes any other action to collect a past due obligation, the association must mail a notice to the unit's owner setting forth the fees that may be charged if the unit's owner fails to pay the past due obligation, a proposed repayment plan and certain information concerning the procedure for requesting a hearing before the executive board.

Section 11 of this bill authorizes a unit's owner, the authorized agent of a unit's owner or the holder of a security interest on the unit to request from the association a statement concerning certain amounts owed to the association. Under **section 11**, the association may charge certain fees for such a statement. **Section 11** also revises provisions governing the resale package provided to a prospective purchaser of a unit and authorizes the association to charge a fee for providing in electronic format certain documents related to the resale package.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~{omitted material}~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Sections 1-6. (Deleted by amendment.)

Sec. 7. NRS 116.3116 is hereby amended to read as follows:

116.3116 1. The association has a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, any assessment levied against that unit or any fines imposed against the unit's owner from the time the



construction penalty, assessment or fine becomes due. Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

2. A lien under this section is prior to all other liens and encumbrances on a unit except:

(a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and

(c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

➡ The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

3. *The holder of the security interest described in paragraph (b) of subsection 2 or the holder's authorized agent may establish an escrow account, loan trust account or other impound account*



for advance contributions for the payment of assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 if the unit's owner and the holder of that security interest consent to the establishment of such an account. If such an account is established, payments from the account for assessments for common expenses must be made in accordance with the same due dates as apply to payments of such assessments by a unit's owner.

4. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

~~{4.}~~ 5. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

~~{5.}~~ 6. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

~~{6.}~~ 7. This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

~~{7.}~~ 8. A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

~~{8.}~~ 9. The association, upon written request, shall furnish to a unit's owner a statement setting forth the amount of unpaid assessments against the unit. If the interest of the unit's owner is real estate or if a lien for the unpaid assessments may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board and every unit's owner.

~~{9.}~~ 10. In a cooperative, upon nonpayment of an assessment on a unit, the unit's owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and:

(a) In a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, the association's lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive.

(b) In a cooperative where the owner's interest in a unit is personal property under NRS 116.1105, the association's lien:

(1) May be foreclosed as a security interest under NRS 104.9101 to 104.9709, inclusive; or



(2) If the declaration so provides, may be foreclosed under NRS 116.31162 to 116.31168, inclusive.

~~{10.}~~ **11.** In an action by an association to collect assessments or to foreclose a lien created under this section, the court may appoint a receiver to collect all rents or other income from the unit alleged to be due and owing to a unit's owner before commencement or during pendency of the action. The receivership is governed by chapter 32 of NRS. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to NRS 116.3115.

Sec. 8. NRS 116.31162 is hereby amended to read as follows:

116.31162 1. Except as otherwise provided in subsection ~~{4.}~~ 5, in a condominium, in a planned community, in a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's interest in a unit is personal property under NRS 116.1105 and the declaration provides that a lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the association may foreclose its lien by sale after all of the following occur:

(a) The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest, at his or her address, if known, and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

(b) Not less than 30 days after mailing the notice of delinquent assessment pursuant to paragraph (a), the association or other person conducting the sale has executed and caused to be recorded, with the county recorder of the county in which the common-interest community or any part of it is situated, a notice of default and election to sell the unit to satisfy the lien which must contain the same information as the notice of delinquent assessment and which must also comply with the following:

- (1) Describe the deficiency in payment.
- (2) State the name and address of the person authorized by the association to enforce the lien by sale.
- (3) Contain, in 14-point bold type, the following warning:



WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

(c) The unit's owner or his or her successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for 90 days following the recording of the notice of default and election to sell.

2. The notice of default and election to sell must be signed by the person designated in the declaration or by the association for that purpose or, if no one is designated, by the president of the association.

3. The period of 90 days begins on the first day following:

(a) The date on which the notice of default is recorded; or

(b) The date on which a copy of the notice of default is mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest at his or her address, if known, and at the address of the unit,

↪ whichever date occurs later.

4. *An association may not mail to a unit's owner or his or her successor in interest a letter of its intent to mail a notice of delinquent assessment pursuant to paragraph (a) of subsection 1, mail the notice of delinquent assessment or take any other action to collect a past due obligation from a unit's owner or his or her successor in interest unless, not earlier than 60 days after the obligation becomes past due, the association mails to the address on file for the unit's owner:*

(a) A schedule of the fees that may be charged if the unit's owner fails to pay the past due obligation;

(b) A proposed repayment plan; and

(c) A notice of the right to contest the past due obligation at a hearing before the executive board and the procedures for requesting such a hearing.

5. The association may not foreclose a lien by sale based on a fine or penalty for a violation of the governing documents of the association unless:

(a) The violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community; or

(b) The penalty is imposed for failure to adhere to a schedule required pursuant to NRS 116.310305.



Sec. 9. NRS 116.311635 is hereby amended to read as follows:

116.311635 1. The association or other person conducting the sale shall also, after the expiration of the 90 days and before selling the unit:

(a) Give notice of the time and place of the sale in the manner and for a time not less than that required by law for the sale of real property upon execution, except that in lieu of following the procedure for service on a judgment debtor pursuant to NRS 21.130, service must be made on the unit's owner as follows:

(1) A copy of the notice of sale must be mailed, on or before the date of first publication or posting, by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest at his or her address, if known, and to the address of the unit; and

(2) A copy of the notice of sale must be served, on or before the date of first publication or posting, in the manner set forth in subsection 2; and

(b) Mail, on or before the date of first publication or posting, a copy of the notice by ~~{first-class mail}~~ ***certified or registered mail, return receipt requested***, to:

(1) Each person entitled to receive a copy of the notice of default and election to sell notice under NRS 116.31163;

(2) The holder of a recorded security interest or the purchaser of the unit, if either of them has notified the association, before the mailing of the notice of sale, of the existence of the security interest, lease or contract of sale, as applicable; and

(3) The Ombudsman.

2. In addition to the requirements set forth in subsection 1, a copy of the notice of sale must be served:

(a) By a person who is 18 years of age or older and who is not a party to or interested in the sale by personally delivering a copy of the notice of sale to an occupant of the unit who is of suitable age; or

(b) By posting a copy of the notice of sale in a conspicuous place on the unit.

3. Any copy of the notice of sale required to be served pursuant to this section must include:

(a) The amount necessary to satisfy the lien as of the date of the proposed sale; and

(b) The following warning in 14-point bold type:



WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL (name and telephone number of the contact person for the association). IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT (toll-free telephone number designated by the Division) IMMEDIATELY.

4. Proof of service of any copy of the notice of sale required to be served pursuant to this section must consist of:

(a) A certificate of mailing which evidences that the notice was mailed through the United States Postal Service; or

(b) An affidavit of service signed by the person who served the notice stating:

(1) The time of service, manner of service and location of service; and

(2) The name of the person served or, if the notice was not served on a person, a description of the location where the notice was posted on the unit.

Sec. 10. (Deleted by amendment.)

Sec. 11. NRS 116.4109 is hereby amended to read as follows:

116.4109 1. Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under subsection 2 of NRS 116.4101, a unit's owner or his or her authorized agent shall, at the expense of the unit's owner, furnish to a purchaser a resale package containing all of the following:

(a) A copy of the declaration, other than any plats, the bylaws, the rules or regulations of the association and the information statement required by NRS 116.41095.

(b) A statement from the association setting forth the amount of the monthly assessment for common expenses and any unpaid obligation of any kind, including, without limitation, management fees, transfer fees, fines, penalties, interest, collection costs, foreclosure fees and attorney's fees currently due from the selling unit's owner. ~~{The statement remains effective for the period specified in the statement, which must not be less than 15 working days from the date of delivery by the association to the unit's owner or his or her agent. If the association becomes aware of an error in~~



~~the statement during the period in which the statement is effective but before the consummation of the resale, the association must deliver a replacement statement to the unit's owner or his or her agent and obtain an acknowledgment in writing by the unit's owner or his or her agent before that consummation. Unless the unit's owner or his or her agent receives a replacement statement, the unit's owner or his or her agent may rely upon the accuracy of the information set forth in a statement provided by the association for the resale.~~

(c) A copy of the current operating budget of the association and current year-to-date financial statement for the association, which must include a summary of the reserves of the association required by NRS 116.31152 and which must include, without limitation, a summary of the information described in paragraphs (a) to (e), inclusive, of subsection 3 of NRS 116.31152.

(d) A statement of any unsatisfied judgments or pending legal actions against the association and the status of any pending legal actions relating to the common-interest community of which the unit's owner has actual knowledge.

(e) A statement of any transfer fees, transaction fees or any other fees associated with the resale of a unit.

(f) In addition to any other document, a statement describing all current and expected fees or charges for each unit, including, without limitation, association fees, fines, assessments, late charges or penalties, interest rates on delinquent assessments, additional costs for collecting past due fines and charges for opening or closing any file for each unit.

2. The purchaser may, by written notice, cancel the contract of purchase until midnight of the fifth calendar day following the date of receipt of the resale package described in subsection 1, and the contract for purchase must contain a provision to that effect. If the purchaser elects to cancel a contract pursuant to this subsection, the purchaser must hand deliver the notice of cancellation to the unit's owner or his or her authorized agent or mail the notice of cancellation by prepaid United States mail to the unit's owner or his or her authorized agent. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly. If the purchaser has accepted a conveyance of the unit, the purchaser is not entitled to:

(a) Cancel the contract pursuant to this subsection; or

(b) Damages, rescission or other relief based solely on the ground that the unit's owner or his or her authorized agent failed to



furnish the resale package, or any portion thereof, as required by this section.

3. Within 10 days after receipt of a written request by a unit's owner or his or her authorized agent, the association shall furnish all of the following to the unit's owner or his or her authorized agent for inclusion in the resale package:

(a) Copies of the documents required pursuant to paragraphs (a) and (c) of subsection 1; and

(b) A certificate containing the information necessary to enable the unit's owner to comply with paragraphs (b), (d), (e) and (f) of subsection 1.

4. If the association furnishes the documents and certificate pursuant to subsection 3:

(a) The unit's owner or his or her authorized agent shall include the documents and certificate in the resale package provided to the purchaser, and neither the unit's owner nor his or her authorized agent is liable to the purchaser for any erroneous information provided by the association and included in the documents and certificate.

(b) The association may charge the unit's owner a reasonable fee to cover the cost of preparing the certificate furnished pursuant to subsection 3. Such a fee must be based on the actual cost the association incurs to fulfill the requirements of this section in preparing the certificate. The Commission shall adopt regulations establishing the maximum amount of the fee that an association may charge for preparing the certificate.

(c) The other documents furnished pursuant to subsection 3 must be provided in electronic format ~~{at no charge}~~ to the unit's owner. ~~{or, if}~~ *The association may charge the unit's owner a fee, not to exceed \$20, to provide such documents in electronic format.* *If* the association is unable to provide such documents in electronic format, the association may charge the unit's owner a reasonable fee, not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter, to cover the cost of copying.

(d) Except for the fees allowed pursuant to paragraphs (b) and (c), the association may not charge the unit's owner any other fees for preparing or furnishing the documents and certificate pursuant to subsection 3.

5. Neither a purchaser nor the purchaser's interest in a unit is liable for any unpaid assessment or fee greater than the amount set forth in the documents and certificate prepared by the association. If the association fails to furnish the documents and certificate within



the 10 days allowed by this section, the purchaser is not liable for the delinquent assessment.

6. Upon the request of a unit's owner or his or her authorized agent, or upon the request of a purchaser to whom the unit's owner has provided a resale package pursuant to this section or his or her authorized agent, the association shall make the entire study of the reserves of the association which is required by NRS 116.31152 reasonably available for the unit's owner, purchaser or authorized agent to inspect, examine, photocopy and audit. The study must be made available at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties.

7. *A unit's owner, the authorized agent of the unit's owner or the holder of a security interest on the unit may request a statement of demand from the association. Not later than 10 days after receipt of a written request from the unit's owner, the authorized agent of the unit's owner or the holder of a security interest on the unit for a statement of demand, the association shall furnish a statement of demand to the person who requested the statement. The association may charge a fee of not more than \$150 to prepare and furnish a statement of demand pursuant to this subsection and an additional fee of not more than \$100 to furnish a statement of demand within 3 days after receipt of a written request for a statement of demand. The statement of demand:*

(a) Must set forth the amount of the monthly assessment for common expenses and any unpaid obligation of any kind, including, without limitation, management fees, transfer fees, fines, penalties, interest, collection costs, foreclosure fees and attorney's fees currently due from the selling unit's owner; and

(b) Remains effective for the period specified in the statement of demand, which must not be less than 15 business days after the date of delivery by the association to the unit's owner, the authorized agent of the unit's owner or the holder of a security interest on the unit, whichever is applicable.

8. *If the association becomes aware of an error in a statement of demand furnished pursuant to subsection 7 during the period in which the statement of demand is effective but before the consummation of a resale for which a resale package was furnished pursuant to subsection 1, the association must deliver a replacement statement of demand to the person who requested the statement of demand. Unless the person who requested the*



statement of demand receives a replacement statement of demand, the person may rely upon the accuracy of the information set forth in the statement of demand provided by the association for the resale. Payment of the amount set forth in the statement of demand constitutes full payment of the amount due from the selling unit's owner.



EXHIBIT 4

Articles



Background on the formation [1975] & birth[1982*] of :

The Uniform Common Interest Ownership Act

– in West Virginia it is known as WV Code §36B

The Uniform Common Interest Ownership Act (UCIOA)

A presentation by Carl Lisman, Chair of the Drafting Committee of the Uniform Common Interest Ownership Act (UCIOA)

June 09, 2006

By Carl Lisman (802) 864-5756 clisman@lisman.com (<http://www.lisman.com/Carl.html>)

Crownsville, Maryland -

The following is a presentation that Carl Lisman , Chair of the Drafting Committee on Amendments to the Uniform Common Interest Ownership Act (UCIOA).and Treasurer of the National Conference of Commissioners on Uniform State Laws presented to the Maryland Task Force on Common Ownership Communities - Maryland Department of Housing and Community Development on January 23, 2006. There were 21 people present at the meeting. A CAI survey was taken and discussed. Roger Winston Task Force Member.member introduced Mr. Carl Lisman.

Introduction of Guest - Roger Winston: "Mr. Carl Lisman is a shareholder in Lisman, Webster, Kirkpatrick & Leckerling, P.C. in Burlington, Vermont. He served as an Adjunct Professor at the Vermont Law School from 1982 to 1998, teaching real estate transaction law to third year students. He is a Vermont Commissioner on Uniform State Laws and Treasurer of the National Conference of Commissioners on Uniform State Laws. As a Uniform Law Commissioner, he chaired the drafting committees on the Uniform Common Interest Ownership Act (1994) and the Uniform Nonjudicial Foreclosure Act. He is co-chair of the Joint Editorial Board for Real Property Acts. He received his B.A. from the University of Vermont and his J.D. from Harvard Law School."

Mr. Carl Lisman: Roger's given you a pretty good back ground for those of you who don't know about the National Conference of Commissioners on Uniform State Laws. It's an organization of the states. It was founded over more than 125 years ago and it is the body that brings to the states legislation, carefully thought through legislation we hope, for adoption by the states and most of the laws begin with the word "uniform" like Uniform Commercial Code, Uniform Anatomical Gift Act and the topic which we are about to discuss, the Uniform Common Interest Ownership Act, and the Condominium Act.

I became a uniform laws Commissioner in 1976, I knew very little about the organization and shortly after my appointment I received a letter congratulating me on being appointed a Commissioner, telling me that my first committee meeting will be the meeting of the Uniform Condominium Act Committee in the fall of 1976. I did not know then what a condominium was; it was a word that I had heard there weren't many of those things in Vermont at the time and those that were, were sort of thought to be weird and not anything that would gain traction in the housing market. Times have changed and I'm glad that we went through the true false test, I may be preaching to the choir but more than half the homes started in the United States are homes that will end up in Common Ownership Communities and this gets bigger and bigger everyday and it needs more and more attention on a legislation level.

We finished drafting the Uniform Condominium Act in 1975 and immediately went back and started all over again in 76 and did some further amendments. What we discovered in the states that adopted the Uniform Condominium Act is that people who tried to evade, not avoid but evade, the act were creating what we called planned communities. This might be the time to pause for a second and get our terms straight. I'm going to talk mostly about the Uniform Common Interest Ownership Act, known by it's acronym UCIOA which is an amalgam of three different Uniform laws. Uniform Condominium Act, Uniform Planned Community Act and the Model Real Estate Cooperative Act.

In a condominium unit owners own their own unit; together they are members of an Association. The Association manages the common elements for that property because the unit owners own the common elements together. Tenants on the old law, Tenants and Condominium we don't use that term anymore.

In a planned community the unit owners own their own units and they are members of Associations and the Association owns the common elements. And what the Uniform Act refers to the Real Estate Co-operative, the Association owns the real estate and the units and by virtue of a document frequently called a Proprietary Lease, members have rights to occupy particular units. Those are the big three Common Interest Communities and that's the subject matter of the Uniform Common Interest Ownership Community Act.

We discovered after we did the condo act that people were evading the provisions of the condo act by vesting title to the elements in the Association since the definition of condominiums under the condominium act excluded that. They were of use so we came out with the Planned Community Act and right afterwards the Real Estate Co-op Act. When those were done we asked ourselves the obvious questions, can we smoosh this stuff altogether. Smoosh by the way is a defined legal term.

We smooshed this altogether and came up with the Uniform Common Interest Ownership Act. We also discovered in the smooshing process that we had different rules that made little sense for otherwise physically identical pieces of property. I used to try and trick my students at the Vermont Law School by drawing on the board little stick figures of a box, a house on top, one line going down and one line going across so that it looked like a two story house. I'd draw three of them on the black board and ask which one is the condominium, which one is the planned community and which one was the co-op, and of course you couldn't answer that by looking at the picture because physically identical property can take different forms of the ownership and then if you took that black board and placed it on its side that funny looking figure of the house now becomes a sub-division and with a triangle on them they now become a property and we soon realized that from a legal stand point it made little sense to have the law perpetuate the myth. The myth being that condominiums are high rise buildings, that planned communities are sub-divisions, and that co-ops look

like apartments. Because none of them from a legal stand point has to, and for a variety of good reasons should not be required to fit the mold.

Let me tell you the three basic principles of Common Interest Ownership Act. Remember these and you will pass my course.

The first is that UCIOA is a disclosure law not a regulatory law. Although there is an optional part 5 to UCIOA it is essentially self enforcing through private mechanism. There is no governing overlay in creating a common interest community.

Secondly it's long. You ask yourself, why that is a guiding principle? It's long because many of the provisions of the act begin with the phrase "Unless the declaration otherwise provides." We wanted to create default rules, we wanted to be able to shorten legal documents, we wanted to try to get the process started so that people could make intelligent decisions about whether to buy or lend based on the legal documentation as between 2 physically such as they are, identical projects where the price point is the same, the units are the same, and they really are right next to one another. What is there to differentiate one from the other from a buyer's perspective? We thought that attempting to standardize documentation we could help people see what's outside the norm and then let the market deal with whether or not outside the norm would be attracted to buyers and to lenders. So that we have a document called the Uniform Form 1, a Simple Condominium declaration. Simple Condominium Declaration is 3 ½ pages because the law otherwise fills in all the blanks.

And finally and perhaps most importantly in the underlying principles, when UCIOA was written we believed it to be a very balanced and fair act to all of the constituents who have an interest in common interest ownership communities. Developers to developer's, lenders to buyers, to sellers, units managers to officers and directors to Associations and to some degree to the municipalities that interact with the Associations. It's balanced because of the political realities of getting a very long and complicated law passed through a legislature that is probably not going to say this is not their number one priority or not their number two priority.

I testified in a number of states where the legislative reaction has been it's too long and too complicated and that's a real issue for UCIOA. Once people read it they see how well it works, how balanced it is for all who have an interest. So for those of you who have not read it let me try to distill it for you within just a few minutes of time. I'm going to do it in the context of the four major constituencies in a common interest community.

The developers, the associations, the lenders and the owners. Mostly in that order because that's mostly the order in which the act current deals with these constituency groups. That's not intended to suggest that the developers are more important than others or that lenders should have a lower priority than the association. First, the developer, which under the Uniform Act we call a Declarant. Declarant declares the declarations that's why we call it the declarant. The Declarant gets flexibility and protection. That's probably the most important benefit of the Act to a developer.

Let me point out to you that on the disclosure principle of the Act we go a long way to separate what goes into the Declaration, which gets reported in the land record on the one hand, from what is meaningful information to a perspective buyer or a unit lender on the other hand. We see the Declaration as being a title

document, we don't typically ask home buyers to read title documents. We leave that to abstractors and lawyers, and title insurance companies, they comment on them and they may call something to the attention of a buyer or owner but they're not trained to read those types of documents. Those other folks are.

So, in the first instance we focus on the declaration of the Uniform Act and we say to the developer here's a list of eighteen things that you have to put in every declaration regardless of the type of the project-condo plans, community, co-op, high rise, sub-division, garden apartments, lots, whatever it is under the scope of the act you have to put these things in your declaration. Most of them are pretty basic stuff legally sufficient description of real estate, reference to a plat that shows the boundaries of common interest community, and so forth. But there are a couple of provisions that has to be in the declaration. For title purposes they also have a minor disclosure. As long as developer reserves the right in a declaration to do enumerated events, that developer has a right to do that and that right can not be taken away.

The association says ahah we have wrested control from the associated developer let's take away the developer's rights to build the next building. We call those rights development rights.

Under the Uniform Common Interest Ownership Act the development rights are the rights to

- 1) Add real estate once identified in the declaration to the common interest community;
- 2) remove portions of the common interest community from the reach of the declaration;
- 3) to create units common elements and limited common elements within the region;
- 4) sub-divide units;
- 5) to convert units into common elements and vice versa; and as long as the developer specifies in the declaration which or all of those rights it wants to have and the time period in which to exercise them the developer does have those rights. That's a very valuable tool for a developer.

The developer says I'm going to build a 12 story high rise and I'm going to put residential units on all of the floors, the market may change as the project is being build-out, interest rates may change, circumstances may change, outside the project a smart developer will reserve the right to change the size of the units and maybe the floor plans of those units to meet changed market demands.

Becky Bowman: Do you specify a time period that the developer obtain these rights? And how does that work with the representations being made to the purchasers of the units?

Mr. Lisman: Good question for those of you who did not hear the question. Is there a time frame on the exercise on the Developer's rights and how do you deal with the representations that were made to the initial purchasers? Yes, there's time frame when we did the original Uniform Condominium Act we looked intensely at the Virginia Condominium Act which was relatively new at the time and under the Virginia Act it said that those rights can be exercised if at all only within 7 years. We put that in the original Condominium Act and decided after a while that was a really bad idea. Every project is of a different size and complexity. They all change so we finally concluded that the right answer was to say let the developer choose the time period and as long as the developer discloses it, then buyers will know, and they will make a meaningful decision. I've seen documents where the developer's rights have been reserved for 99 years. I've seen disclosure in the public offer statement but I've never seen anybody well and appropriately disclosing a 99 year reservation. I think a 99 year reservation really borderlines in violating the act.

So giving the Developer this flexibility really, really, really is important for developers because they now have a statutory safe harbor which they might not have in common law because judges may say this is unreasonable when the statute says you may do it. In addition to development rights the Act also goes into a concept of special declarant rights. There are too many instances over time where Associations and developers were at odds very early in the process and the Associations tried to stop the developers from finishing the projects. Taking away the right to build Tower C, refusing to let the Developer's construction vehicles on private road way, it goes on and on and on.

So there are a whole bunch of special declarant rights that at least the Act statutorily creates and can not be taken away including the right to complete improvements shown on the plan. A right to go on the common elements for that purpose, it's a pretty extensive list and it's very valuable list because it tells the developers that they are protected. Third point on what the Act is to developers is a statutory right to control the association board for a period of time during build-out and sell-out. The Act is pretty specific about when a certain percentage of the units have been sold that one person has to go on board from among the owners.

Then when a second percentage is reached and so forth until that at a particular point there is a transition where the unit owners have taken control of the Association and there are two important factors here from the Developer's stand point during build-out and sell-out. Controlling the Association, essentially having a veto over the Association, at least with respect to the relationship with the Developer, is a very valuable and comforting asset. But developers don't get away with just getting the asset without having the liability to balance. The liability that balances that right to obtain control are two. One is Directors on the Association Board were appointed by the developer having a higher duty of care than those who are elected by the Unit Owners, they're held to a higher standard. And the second is for so long as the developers retain control over the board, the statute of limitations doesn't begin to run on claims for construction defects with respect to the common owners.

So let me stop there and move to what the Associations get. Under the Uniform Act they get really two things that they wouldn't otherwise. One is there is an extensive list of the numerated powers of the Association. Power to fine, after notice and opportunity to have been heard. In many States' associations have no authority to fine. There's a Virginia Supreme Court decision that says that only the state could fine. Private associations couldn't. Extensive list of the numerated power, sue be sued, own real estate, convey real estate and so forth, because not all associations are incorporated, and because they are not all incorporated there are a number of issues about the power of an association.

And even if they are incorporated there are a number of issues about of what an association can and can not do. Secondly, and also of great importance, the Uniform Act came up with the concept of the super Lien. The Association has the power to assess, maintenance fees, annual assessments what ever you call them. It has a lien either by statute or common law and the declaration especially if it's a planned community. It says that the Association has a lien against the owners unit or lot for the unpaid assessment. The problem with that, if we stop right there is that more likely than not there's going to be a mortgage on the unit or the lot and that mortgage is going to have a priority ahead of the association's lien.

By analogy we looked to municipal taxes in home mortgages and came up with what we thought at the time a very innovative and good solution. We are now convinced that we are more brilliant than we thought we were.

The analogy with home mortgages and taxes is lenders who have a first mortgage will never want to see the property sold for unpaid property taxes, use their powers in mortgaging under the mortgage to pay the taxes and then stick it to the homeowners owner who hasn't paid. They add the balance to the notes of the mortgage. So what we did is we came up with the concept of the super lien. We said that the Association has a priority for unpaid Assessments up to and about equal to 6 months of unpaid assessments and ahead of the first mortgage and what happens of course is the Association contacts the bank, the bank doesn't want to see the unit foreclosed and have their mortgage lowered in priority, the bank advances the unpaid assessments and deals with its delinquent borrower in that context. It really is important for almost every Association that there not be one or two or three people who don't pay their assessments.

These Associations' budgets, and I'm not talking about Columbia where one or two or three people won't make a difference, I'm talking about the average size Association in the United States today where somebody isn't paying and the Association can't do something that they expect them to do when they adopted the last budget. Otherwise other folks have to subsidize that's not a fair result. So the super lien gives the association some power of great importance. What do lenders get? They get the comfort of good title.

Every state has a law on what lenders can lend for and what collateral they can take and loan value ratios and interest limitations and stuff like that. For a long time there was a question in the legal world as to whether or not you could have what we now label the flying freeholds. That is to say if you have an interest in real estate, the unit that starts on the third floor, your unit doesn't touch the ground it's held up by steel girds, steel girds go into the ground but no part of your unit is attach directly to the ground. The Uniform Act and the predecessor FHA Model Act both legitimize flying freehold. The other area in which they give comfort on title is Unreasonable Restraints on alienation and the Rule Against Perpetuities. For those of you who are lawyers, remember law school was the last time you thought about the Rule Against Perpetuities. Both of those deal with tying interest together over a period of time. In the case of a condominium the tying of the Common Ownership Interest with a unit lasts forever.

We talked about development rights and how important those were to developers and we talked briefly about special declarants rights, of which the developer's rights are a sub-set. Suppose you are a construction lender, you commit to a 25 million dollar construction loan, ABC Inc. is going to build the XYZ condominium project. The whole project is declared without any phasing or reservation of developers rights, the developer starts construction, starts with the infrastructure the water, sewer, the roads and so forth and about a third through the project the developer goes belly up. The loan got out of balance, there was no way that developer would have 2 nickels to rub together, it just didn't work, so now the lender is sitting there saying I've got a project that's 1/3 built. What am I going to do?

Well, one thing the lender could do is go to its own default department and deputize someone there to be the new developer and build the project up. That's happened but lenders don't like to do that because that's not their business, because they are not developers. They are lenders. So the second alternative is to find someone to buy the project. That's where the rub comes. That buyer is going to want to be able to stand in the shoes of the original developer in so far as having all of the rights of the original developer, but if that subsequent developer thought about it for more than 7 seconds, the subsequent developer wouldn't want to have all of the liabilities of the failed original developer. But one of the issues is, should that subsequent developer be responsible for the warranty obligations of the failed developer? And then, just to stir the pot a little more, think of the poor lender.

Because, if the lender, by transferring the developing rights to a successor developer it's deemed itself to be the successor developer, now there are 2 successor developers. If that lender is a successor developer it's the biggest target in town and everything that's wrong with that project is going to result in a law suit with the bank. Now if you want banks to lend to people who build common interest communities then you've got to give them some protection. What we came up with was the concept of Transfer of Special Declarant Rights, which says that if a lender takes the developer's special declarant rights at the time the loan is given and then after default transfer them without exercising them, then that lender is not a successor declarant, and has no liability for what the original developer did or did not do or the subsequent developer will do or doesn't do. It's a way to encourage lenders to lend and a way to make sure that failed projects at least in the construction phase find a new home and a new developer so that they could be built out.

Third, five unit condominium projects, row houses, one right next to the other there's a leak in the roof and the insurance doesn't cover it so the president of the association walks down the street to the bank and says we need a \$100,000 to replace the roof, the lender looks at the president of the association and says, great we will be pleased to make you the loan, you have five owners, that's fine just get all five owners to sign the loan. It can be done but it is really difficult and why does the lender say that he wants all five units to sign the mortgage? Because in a condominium the association doesn't own the common units, the unit owners own them. How can an Association give a mortgage on the units, only the unit Owners can so the president rings the door bells and comes back to the bank and says I can't get everybody to sign but we still need the new roof then the bank says no problem I'll give you the money just sign this guarantee right here. The treasurer would have to sign the guarantee too. People don't volunteer for those kinds of reasons. So that left the association between a rock and a hard place especially when the circumstances are dramatic where do you get the money from?

So the Uniform Act says what if the association has a condo playing community collateral? That's really its most valuable asset. The most valuable assess in the association was its ability to assess its members. Backed up by that Assessment plan including a 6 month priority. So the uniform act say that if the declaration authorizes it, the association may pledge the income stream of the association as collateral, it's great for the bank and also great for the association because it means that you don't have to go through all kinds of silly hoops and there's a statutory basis for doing this. We do association loans all the time in states where there is a uniform act, and in states where there isn't, but it's a lot more comforting to the lender when you have this statutory basis.

Finally, what do the owners get? First they get a public offering statement. They're buying from the developer, the developer is required to deliver the purchaser the public offering statement. Understanding what the contract purchaser says there's a contract decision period measured from when the buyer gets the public offering statement. It's a disclosure document we go on in great length about what it is that is suppose to go in the disclosure document. But from a practical perspective it's the kind of information that you or I, if we were going to be buying in a common interest community, would want to know about. Public offering statement is real meat and potatoes.

If you are buying a resale not from the developer but from another unit owner you get a resale certificate. Some what less information than a public offering statement but none the less very meaningful information.

Secondly buyers from the developers get statutory warranties. If there's a model that the unit owner is showing off then the unit that gets actually sold needs to conform to what that actual model looks like, if there are representations made what the units will be and what will be in them and what the view will be those expressed warranties and representations are actionable.

Third there is a requirement that plans be labeled "must be built" or "need not be built" so that the swimming pool or the tennis court, golf course, recreational building whatever it may be shows up on that nice glossy brochure. There has to be a label on there showing these people that I have no intention of building it. Finally for those of you who have experience in condominiums, in planned communities, one of the things you will notice when you compare documents, for what might otherwise be physically identical projects, is that votes in the association common expense liability in the condominium, and ownership interest in the common owners, are treated differently.

Under the old FHA Model Act which was the law and 2/3 of the states used until the Uniform laws started to be adopted, it said that those who we call now allocated interest have to be the same for every unit. That is to say if it was 3.4% Ownership Interest in the common elements, it's 3.4% interest common expense liability and 3.4% of the votes whatever the allocations may be. The problem with that is it does not make a whole lot of sense in these communities frequently in planned communities 1 unit, 1 vote or the amount of expenses it pays in assessments in the associations so one of the great steps forward in the Common Interest Ownership Act is this creation of concept of allocated interests and allowing the developer to specify in the declaration the basis for the allocations, so that more often than not the uniform state gets 1 unit and 1 vote without regard to the size of its common elements.

Its common expense liability is probably more lined up with the appropriate share of the common expenses, the replacement size of the value, and the ownership of the common elements may be based on the original pricing but the advantage of the allocation that way is that it fits better with reality. It stops forcing round pegs into square holes. I've got one more topic that I want to talk about when we wrote the original Uniform condominium Act and even when we were doing the original version of the Common Interest Ownership Act the big issue in the world for common interest communities was the developer overreaching.

That issue hasn't gone away, but it still was the biggest issue, every other issue paled in comparison so much of those laws were written to deal with overreaching developers and I think that you will discover that if you ask folks practicing in the states with the law, the developer overreaching is now not an issue. But in the last 5 or 10 years, another issue has risen we didn't anticipate when we started writing these laws in the early 70's, and that is overreaching or perceived overreaching by the board and prospective unit owners.

It is really a hot button issue and I say perceived because in some cases I don't think that it's real but in other cases I know that it is real so we now have a committee that's hard at work drafting what we call a Homeowners Bill of Rights a lot of it is procedure stuff. In the procedural stuff is a lot of substance by way of example requiring the board to give notice to the unit owners before adopting the rule, requiring the association to give notice to the unit owners to before commencing litigation, mandating that an association can not act arbitrarily, requiring open board meetings, dealing with the whole contentious issue of foreclosures with regard to assessments needs. You have figured out and we have too that associations come in all sizes and one law has to fit all sizes so there's a lot of flexibility built into what we are doing and what we have done to achieve positive results.

For more information, please check out the articles listed below:

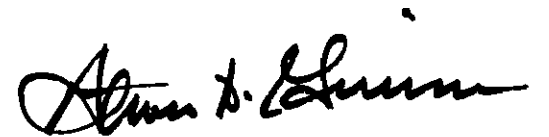
- Maryland Task Force on Common Ownership Communities to Hold Public Hearings - Jeanne N. Ketley
- The National Conference of Commissioners on Uniform State Laws - NCCUSL - UCIOA
- Robert H. Nelson - proponent for creation of homeowner association private governments
- Maryland Homeowner's Association
- Maryland Dept of Housing & Community Development (DHCD) Task Force on Common Ownership Communities
- Maryland DHCD Task Force on Common Ownership Communities Appointees - 2006
- Maryland Mediation and Conflict Resolution Office - Louis G. Gieszl, Deputy Director
- Issues Homeowners Have With Common Interest Developments - Bob Lewin
- A New Jersey Homeowner Association Bill Announcement - Wilfredo Caraballoo & Joseph V. Doria Jr.
- Carl H. Lisman - Lisman, Webster, Kirkpatrick & Leckerlin

SEE ATTACHED PDF w/hot links to the above references within this document.

Description
The Uniform Common Interest Ownership Act (UCIOA) - A presentation Carl Lisman a Uniform Laws Commissioner and Treasurer of the National Conference of Commissioners on Uniform State Laws.

REFERENCE SOURCE: 4/3/2011

**Birth [1982] reference: David A. Kahne, Law Offices of David A. Kahne with Professor Susan French- e.g. AARP Public Policy Institute, A Bill of Rights for Homeowners in Associations.
July 2006, 69 pages.*



CLERK OF THE COURT

CSERV

HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
E-mail: howard@hkimlaw.com
DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
E-mail: diana@hkimlaw.com
VICTORIA L. HIGHTOWER, ESQ.
Nevada Bar No. 10897
E-mail: victoria@hkimlaw.com
HOWARD KIM & ASSOCIATES
400 N. Stephanie St, Suite 160
Henderson, Nevada 89014
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC a
Nevada limited liability company,

Plaintiff,

vs.

U.S. BANK, N.A., a national banking
association as Trustee for the Certificate
Holders of Wells Fargo Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4 and LUCIA
PARKS, an individual, DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No. A-13-678814-C

Dept. No. XVIII

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of June, 2013, pursuant to NRCP 5(b), I served via
first class U.S. Mail, postage prepaid, and via email the **Motion to Alter or Amend Judgment**

///

///

///

///

///

///

HOWARD KIM & ASSOCIATES

400 N. STEPHANIE ST, SUITE 160

HENDERSON, NEVADA 89014

(702) 485-3300 FAX (702) 485-3301

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

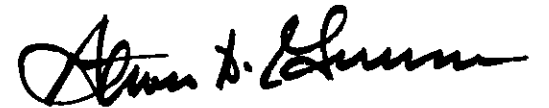
filed on June 26, 2013 to the following parties:

Chelsea A. Crowton, Esq.
WRIGHT, FINLAY & ZAK, LLP
5532 South Fort Apache Road, Suite 110
Las Vegas, NV 89148
Attorney for U.S. Bank, N.A.

D. Chris Albright, Esq.
William H. Stoddard, Jr.
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
801 South Rancho Drive, Suite D-4
Las Vegas, NV 89106
Attorneys for Defendant Lucia Parks

/s/ Andrew M. David
An Employee of Howard Kim & Associates

EXHIBIT 8



CLERK OF THE COURT

NOAS

HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
E-mail: howard@hkimlaw.com
DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
E-mail: diana@hkimlaw.com
HOWARD KIM & ASSOCIATES
400 N. Stephanie St, Suite 160
Henderson, Nevada 89014
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SFR INVESTMENTS POOL 1, LLC a
Nevada limited liability company,

Plaintiff,

vs.

U.S. BANK, N.A., a national banking
association as Trustee for the
Certificate Holders of Wells Fargo
Asset Securities Corporation, Mortgage
Pass-Through Certificates, Series 2006-
AR4, a Nevada non-profit corporation
and LUCIA PARKS, an individual,
DOES I through X; and ROE
CORPORATIONS I through X,
inclusive,

Defendants.

Case No.: A-13-678814-C

Dept. No.: XVIII

NOTICE OF APPEAL

Notice is hereby given that Plaintiff SFR Investment Pool I, LLC, by and
through its attorneys of record, Howard Kim & Associates, hereby appeals to the
Supreme Court of the State of Nevada from the following orders or judgments:

1. All judgements and orders in this case;

1 2. “Order Denying Plaintiff’s Motion for Preliminary Injunction”
2 entered on June 10, 2013, notice of entry of which was served on June 11, 2013;

3 3. “Order for Dismissal and Cancellation of Notice of Pendancy of
4 Action” entered on June 11, 2013, notice of entry of which was served on June 12,
5 2013.

6 3. All rulings and interlocutory orders made appealable by any of the
7 foregoing.

8 DATED this 11th day of July, 2013.
9
10

HOWARD KIM & ASSOCIATES

/s/ Jacqueline A. Gilbert

HOWARD C. KIM, ESQ.

Nevada Bar No. 10386

DIANA S. CLINE, ESQ.

Nevada Bar No. 10580

JACQUELINE A. GILBERT, ESQ.

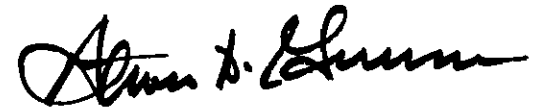
Nevada Bar No. 10593

400 N. Stephanie St., Suite 160

Henderson, Nevada 89014

Phone: (702) 485-3300

Fax: (702) 485-3301



CLERK OF THE COURT

CSERV

HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
E-mail: howard@hkimlaw.com
DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
E-mail: diana@hkimlaw.com
VICTORIA L. HIGHTOWER, ESQ.
Nevada Bar No. 10897
E-mail: victoria@hkimlaw.com
HOWARD KIM & ASSOCIATES
400 N. Stephanie St, Suite 160
Henderson, Nevada 89014
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC a
Nevada limited liability company,

Plaintiff,

vs.

U.S. BANK, N.A., a national banking
association as Trustee for the Certificate
Holders of Wells Fargo Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4 and LUCIA
PARKS, an individual, DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No. A-13-678814-C

Dept. No. XVIII

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of July, 2013, pursuant to NRCP 5(b), I served via
first class U.S. Mail, postage prepaid, the **Notice of Appeal** and **Case Appeal Statement**, filed
on July 12, 2013 to the following parties:

Chelsea A. Crowton, Esq.
WRIGHT, FINLAY & ZAK, LLP
5532 South Fort Apache Road, Suite 110
Las Vegas, NV 89148
Attorney for U.S. Bank, N.A.

/s/ Tommie Dooley

An Employee of Howard Kim & Associates

HOWARD KIM & ASSOCIATES

400 N. STEPHANIE ST, SUITE 160

HENDERSON, NEVADA 89014

(702) 485-3300 FAX (702) 485-3301

IN THE SUPREME COURT OF THE STATE OF NEVADA

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company,

Appellant,

VS.

U.S. BANK, N.A., a national banking
association as Trustee for the
Certificate Holders of Wells Fargo
Asset Securities Corporation, Mortgage
Pass-Through Certificates, Series 2006-
AR4, a Nevada non-profit corporation
and LUCIA PARKS, an individual,

Respondents.

Case No. 63614

District Court Case No. 13-00063

Electronically Filed
Aug 07 2013 09:51 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

DOCKETING STATEMENT

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement, NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. Id. Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: Eighth Department: XVIII
2. County: Clark Judge: The Honorable David Barker

District Ct. Case No. A-13-678814-C

Attorney filing this docketing statement:

Attorney: Jacqueline A. Gilbert Telephone: 702-485-3300

Firm: Howard Kim & Associates

Address: 400 N. Stephanie Street, Suite 160, Henderson, Nevada 89014

Client(s): SFR Investments Pool 1, LLC ("SFR")

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement. N/A

2. Attorney(s) representing respondents(s):

Appellate Counsel Unknown, Trial Counsel Was:

Attorney: Chelsea A. Crowton Telephone: 702-475-7964

Firm: Wright, Finlay & Zak, LLP

Address : 5532 South Fort Apache Road, Suite 110, Las Vegas, Nevada 89148

Client(s): U.S. Bank, N.A., as Trustee for the Certificate Holders of Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4 ("US Bank")

Appellate Counsel Unknown, Trial Counsel Was:

Attorney: D. Chris Albright

Telephone: 702-384-7111

Firm: Albright, Stoddard, Warnick & Albright

Address : 801 South Rancho Drive, Suite D-4, Las Vegas, Nevada 89106

Client(s): Lucia Parks ("Parks")

3. Nature of disposition below (check all that apply):

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☒ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination
- ☒ Dismissal:
 - ☐ Lack of jurisdiction
 - ☒ Failure to state a claim
 - ☐ Failure to Prosecute
 - ☐ Other (specify): _____
- ☐ Divorce Decree:
 - ☐ Original
 - ☐ Modification
- ☐ Other disposition (specify): _____

4. Does this appeal raise issues concerning any of the following? N/A

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

5. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously or pending before this court which are related to this appeal:

None

6. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

7. **Nature of the action.** Briefly describe the nature of the action and result below:

Plaintiff/appellant SFR Investments Pool 1, LLC (“SFR”) filed an action for quiet title and declaratory relief after SFR purchased real property at a foreclosure sale conducted by Nevada Association Services, Inc. on behalf of the Cooper Ridge Community Homeowners Association (the “Association”) pursuant to NRS Chapter 116. It is SFR’s position that the Association’s foreclosure sale extinguished all junior liens on the property, including US Bank’s deed of trust.

SFR moved for a temporary restraining order and preliminary injunction. The court **denied the motion for preliminary injunction by order entered on June 10, 2013 (Exhibit 3), notice of entry of which was served by U.S. mail on June 11, 2013 (Exhibit 4).** US Bank, joined by Parks (collectively referred to as the “Respondents”), moved to dismiss the case with prejudice and expunge the lis pendens. The court **granted the Respondents’ Motion to Dismiss with Prejudice and the Respondents’ Motion to Expunge Lis Pendens by order entered on June 11, 2013 (Exhibit 5), notice of entry of which was served by U.S. mail on June 12, 2013 (Exhibit 6).**

SFR moved to alter or amend the June 11, 2013 Order granting the Respondents’ Motion to Dismiss and Motion to Expunge Lis Pendens (*see* Docket, **Exhibit 7**).¹

¹ The Court heard arguments on SFR’s Motion to Alter or Amend Judgment on July 30, 2013. The Court granted in part (amend to dismiss Parks without prejudice) but denied the remainder of the relief requested. An order has not yet been entered. *See* **Exhibit 1.**

SFR filed its Notice of Appeal on July 12, 2013 (**Exhibit 8**).

8. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the District Court erred in denying SFR a preliminary injunction based on the court's determination that SFR had an unlikelihood of success on the merits based on the court's faulty construction of NRS 116.3116 and concluding that US Bank's first deed of trust survived the Association's foreclosure sale. Furthermore, whether the District Court erred in granting the Respondents' Motion to Dismiss and Motion to Expunge Lis Pendens based on the court's determination that SFR could not quiet title or obtain declaratory relief seeking to extinguish US Bank's first deed of trust based on the court's finding that NRS 116.3116 refers to a judicial foreclosure "action" and is not applicable when the HOA forecloses its lien under NRS 116.31162-NRS 116.31168, the nonjudicial foreclosure statutes.

9. Pending proceeding in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:²

<u>63009</u>	9320 POKEWOOD CT TRUST VS. WELLS FARGO BANK	"If the super priority homeowners association lien under NRS Chapter 116 takes priority over outstanding first mortgages and if foreclosure on the 'super priority' lien extinguishes the first mortgage."
<u>63695</u>	SFR INVESTMENTS POOL 1 VS. GREEN TREE SERVICING	Same
<u>63613</u>	SFR INVESTMENT POOL 1 VS. FED. NATIONAL MORTGAGE ASSOC.	Same
<u>63612</u>	SFR INVESTMENT POOL 1 VS. WELLS FARGO BANK	Same

² Some of these cases involve the question of whether an association must do a judicial vs. non-judicial foreclosure for its superpriority lien to arise; some involve whether there NRS 116.3116 creates only a "payment priority;" and others involve issues of notice or due process. All, however, involve the statutory interpretation of NRS 116.3116.

<u>63579</u>	SFR INVESTMENTS POOL 1 VS. WELLS FARGO BANK	Same
<u>63511</u>	SFR INVESTMENTS POOL 1 VS. DIST. CT. (DEUTSCHE BANK NATIONAL TRUST)	Same
<u>63451</u>	SFR INVESTMENTS POOL 1 VS. FIRST HORIZON	Same
<u>63313</u>	SFR INVESTMENTS POOL 1 VS. BANK OF AMERICA	Same
<u>63078</u>	SFR INVESTMENTS POOL 1 VS. US BANK, N.A.	Same
<u>63542</u>	DRYSDALE COURT TRUST VS. BANK OF AMERICA	Same
<u>63409</u>	3182 TARPON 103 TRUST VS. WELLS FARGO BANK	Same
<u>63367 (c/w)</u>	SANUCCI CT TRUST VS. ELEVADO C/W 63067	Same
<u>63067 (c/w)</u>	SANUCCI CT TRUST VS. ELEVADO C/W 63367	Same
<u>63066</u>	MANN STREET TRUST VS. NEWMAN	Same
<u>62528</u>	VILLA PALMS COURT 102 TRUST VS. RILEY	Same
<u>63615</u>	RIVER GLIDER AVE TRUST VS. US BANK	Same
<u>63611</u>	TRUST VS. WELLS FARGO BANK	Same
<u>63550</u>	RIVER GLIDER AVE TRUST VS. BANK OF AMERICA	Same
<u>63481</u>	OLIVER SAGEBRUSH DRIVE TRUST VS. BAC HOME LOANS	Same
<u>63384</u>	9320 POKWOOD CT TRUST VS. WELLS FARGO BANK	Same
<u>63282</u>	BOURNE VALLEY COURT TRUST VS. CITIBANK, N.A.	Same
<u>63264</u>	CORPOLO AVENUE TRUST VS. AHMEAD	Same
<u>63185</u>	VILLA VECCHIO CT TRUST VS. DEUTSCHE BANK	Same
<u>63184</u>	BOURNE VALLEY COURT TRUST VS. WELLS FARGO BANK	Same
<u>63180</u>	SHADOW WOOD HOMEOWNERS VS. NEW YORK COMMUNITY BANCORP	Same
<u>63077</u>	RIVER GLIDER AVE TRUST VS. BANK OF NEW YORK MELLON	Same
<u>63011</u>	SATICO BAY VS. BANK OF NEW YORK MELLON	Same

62506	CENTENO VS. MONTESA LLC	Same
63593	KAL-MOR-USA VS. SUNTRUST MORTGAGE	Same
59604	SCHIMMOELLER VS. US BANK NATIONAL ASSOC.	Same
61416	CENTENO VS. NATIONAL DEFAULT SERVICING CORP.	Same
60984	CENTENO VS. MAVERICK VALLEY PROPERTIES LLC	Same

10. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

11. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An Issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☒ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

12. Trial. If this action proceeded to trial, how many days did the trial last?

N/A

Was it a bench or jury trial?

N/A

- 13. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

N/A

TIMELINESS OF NOTICE OF APPEAL

- 14. Date of entry of written judgment or order appealed from**

June 10, 2013 for Order Denying Preliminary Injunction (Exhibit 3)

June 11, 2013 for Order Granting Motion to Dismiss and Cancellation of Notice of Pendency of Action (Exhibit 5)

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

- 15. Date written notice of entry of judgment or order was served**

June 11, 2013 for Order denying Preliminary Injunction (Exhibit 4)

June 12, 2013 for Order Granting Motion to Dismiss and Cancellation of Notice of Pendency of Action (Exhibit 6)

Was service by:

☐ Delivery

☒ **Mail**/electronic/fax

- 16. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing

☐ NRCP 52(b) Date of filing

X NRCP 59 Date of filing

Motion to Alter or Amend Judgment, Filed on June 26, 2013, Served by U.S. Mail and E-mail on June 27, 2013 (see Exhibit 7).

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

- (b) Date of entry of written order resolving tolling motion: The Court heard arguments on SFR's Motion to Alter or Amend Judgment on July 30, 2013 but has not yet entered an Order. The Court denied the relief that would have made this appeal moot.
- (c) Date written notice of entry of order resolving tolling motion was served: N/A

Was service by:

- ☐ Delivery
☐ Mail

17. Date notice of appeal filed

July 12, 2013(Exhibit 8)

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal: N/A

18. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

19. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

X NRAP 3A(b)(1)

- ☐ NRAP 3A(b)(2)
 - ☒ NRAP 3A(b)(3)
 - ☐ NRS 38.205
 - ☐ NRS 233B.150
 - ☐ NRS 703.376
 - ☐ Other (specify)
-

(b) Explain how each authority provides a basis for appeal from the judgment or order:

This appeal is taken from an order refusing to grant an injunction.

This appeal is taken from an order dismissing a complaint.³

20. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

SFR Investments Pool 1, LLC, plaintiff;

U.S. Bank, N.A., defendant,

Lucia Parks, defendant.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in the appeal, e.g., formally dismissed, not served, or other:

N/A

21. Give a brief description (3 to 4 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiff's claims:

³ As soon as the order granting in part and denying in part SFR's Motion to Alter or Amend, SFR intends to appeal that also.

1. Declaratory Relief/Quiet Title pursuant to NRS 30.010 *et seq.* and NRS 116.3116 *et seq.*

2. Injunctive relief

Claims disposed of as follows:

Court denied preliminary injunction against US Bank by order entered June 10, 2013, notice of entry of which was filed June 11, 2013.

Court granted the Respondent's Motion to Dismiss and Motion to Expunge Lis Pendens by order entered June 11, 2013, notice of entry of which was filed June 12, 2013.

22. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

23. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below: N/A

(b) Specify the parties remaining below: N/A

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

24. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

The order denying the injunction is independently appealable pursuant to NRAP 3(A)(b)(3).

The order granting dismissal and expunging lis pendens dismissed all remaining claims against all parties.

25. Attach file-stamped copies of the following documents:

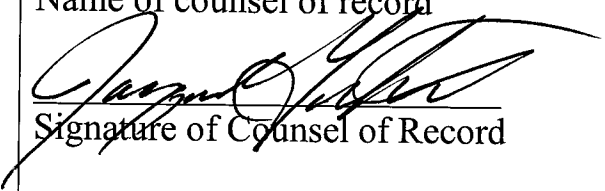
- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

Exhibit	Title of Document	File-Stamp Date
1	District Court Docket as of August 6, 2013	
2	Complaint	March 22, 2013
3	Order Denying Plaintiff's Motion for Preliminary Injunction	June 10, 2013
4	Notice of Entry of Order Denying Motion for Preliminary Injunction	June 11, 2013
5	Order for Dismissal and Cancellation of Notice of Pendency of Action	June 11, 2013
6	Notice of Entry of Order for Dismissal and Cancellation of Notice of Pendency of Action	June 12, 2013
7	Motion to Alter or Amend / Certificate of Service	June 26, 2013/ June 27, 2013
8	Notice of Appeal/Certificate of Service	July 12, 2013/ July 17, 2013

///

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of knowledge, information and belief, and that I have attached all required documents to this docketing statement.

<u>SFR Investments Pool 1, LLC</u> Name of Appellant <u>August 6, 2013</u> Date	<u>Jacqueline A. Gilbert, Esq</u> Name of counsel of record  Signature of Counsel of Record
<u>Clark County, Nevada</u> State and county where signed	

///

///

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 6th day of August, 2013. Electronic service of the forgoing Docketing Statement with Exhibits shall be made in accordance with the Master Service List as follows:

Chelsea A. Crowton, Esq.
Wright, Finlay & Zak, LLP
5532 South Fort Apache Road, Suite 110
Las Vegas, Nevada 89148

Attorney for Respondent US Bank

D. Chris Albright, Esq.
Albright, Stoddard, Warnick & Albright
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106

Attorney for Respondent Lucia Parks

Dated this 6th day of August, 2013

/s/Jacqueline A. Gilbert

An employee of Howard Kim & Associates