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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

****

SATICOY BAY LLC SERIES 133 MCCLAREN, PLAINTIFF(S) VS. GREEN TREE SERVICING LLC, DEFENDANT(S)	CASE NO: A-14-693882-C DEPARTMENT 2

NOTICE OF DEPARTMENT REASSIGNMENT

NOTICE IS HEREBY GIVEN that the above-entitled action has been randomly reassigned to Judge Valorie J. Vega.

☒ This reassignment is due to: attorney conflict

ANY TRIAL DATE AND ASSOCIATED TRIAL HEARINGS STAND BUT MAY BE RESET BY THE NEW DEPARTMENT

Any motions or hearings presently scheduled in the FORMER department will be heard by the NEW department as set forth below:

Motion to Dismiss, on March 19, 2014, at 9:00 AM.

PLEASE INCLUDE THE NEW DEPARTMENT NUMBER ON ALL FUTURE FILINGS.

A-14-693882-C
NODR
Notice of Department Reassignment
3514090

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: Heather Kallk
Heather Kordenbrock, Deputy Clerk of the Court

CERTIFICATE OF MAILING

I hereby certify that: on this the 26th day of February, 2014

☒ I placed a copy of the foregoing NOTICE OF DEPARTMENT REASSIGNMENT in the appropriate attorney folder located in the Clerk of the Court's Office:

Michael F Bohn
Michael R. Brooks
Dana Jonathon Nitz

Heather Kallk
Heather Kordenbrock, Deputy Clerk of the Court

MICHAEL F. BOHN, ESQ.
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Attorney for appellant

Electronically Filed
Oct 07 2014 03:36 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

SUPREME COURT COURT

STATE OF NEVADA

SATICOY BAY LLC SERIES 133 MCLAREN Appelant, vs. GREEN TREE SERVICING LLC, Respondent.	CASE NO.: 65708

JOINT APPENDIX 1

Michael F. Bohn, Esq.
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Attorney for Appellant

Ariel E. Stern, Esq.
Akerman LLP
1160 Town Center Drive, Ste. 330
Las Vegas, NV 89144

Attorney for Respondent

Docket 65708 Document 2014-33341

INDEX TO APPENDIX 1

ALPHABETICAL INDEX TO JOINT APPENDIX

CIVIL COVER SHEET A-14-693882-C

Clark County, Nevada

Case No. _____ XV

(Assigned by Clerk's Office)

I. Party Information

Plaintiff SATICOY BAY LLC SERIES 133 MCLAREN Attorney Michael F. Bohn, Esq. 376 E. Warm Springs Road, Ste. 125 Las Vegas NV 89119 (702) 642-3113	Defendants GREEN TREE SERVICING LLC; THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK,AS SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS MASTER TRUST, REVOLVING HOME EQUITY LOAN ASSET BACKED NOTES, SERIES 2004-T; NATIONAL DEFAULT SERVICING CORPORATION; CTC REAL ESTATE SERVICES; CHARLES J. WIGHT; AND TARA J. WIGHT, Attorney N/A

II. Nature of Controversy EXEMPTION FROM ARBITRATION Title to Real Property

Civil Cases

Real Property

- ☐ **Landlord/Tenant**
  - ☐ Unlawful Detainer
- ☐ **Title to Property**
  - ☐ Foreclosure
  - ☐ Liens
  - **X Quiet Title**
  - ☐ Specific Performance
- ☐ **Condemnation/Eminent Domain**
- ☐ **Other Real Property**
  - ☐ Partition
  - ☐ Planning/Zoning

Torts

Negligence

- ☐ **Negligence – Auto**
- ☐ **Negligence – Medical/Dental**
- ☐ **Negligence – Premises Liability** (Slip/Fall)
- ☐ **Negligence – Other**

- ☐ **Product Liability**
  - ☐ Product Liability/Motor Vehicle
  - ☐ Other Torts/Product Liability
- ☐ **Intentional Misconduct**
  - ☐ Torts/Defamation (Libel/Slander)
  - ☐ Interfere with Contract Rights
- ☐ **Employment Torts** (Wrongful termination)
- ☐ **Other Torts**
  - ☐ Anti-trust
  - ☐ Fraud/Misrepresentation
  - ☐ Insurance
  - ☐ Legal Tort
  - ☐ Unfair Competition

Probate

Estimated Estate Value: _____

- ☐ **Summary Administration**
- ☐ **General Administration**
- ☐ **Special Administration**
- ☐ **Set Aside Estates**
- ☐ **Trust/Conservatorships**
  - ☐ Individual Trustee
  - ☐ Corporate Trustee
- ☐ **Other Probate**

Other Civil Filing Types

- ☐ **Construction Defect**
  - ☐ Chapter 40
  - ☐ General
- ☐ **Breach of Contract**
  - ☐ Building & Construction
  - ☐ Insurance Carrier
  - ☐ Commercial Instrument
  - ☐ Other Contracts/Acct/Judgment
  - ☐ Collection of Actions
  - ☐ Employment Contract
  - ☐ Guarantee
  - ☐ Sale Contract
  - ☐ Uniform Commercial Code
- ☐ **Civil Petition for Judicial Review**
  - ☐ Foreclosure Mediation
  - ☐ Other Administrative Law
  - ☐ Department of Motor Vehicles
  - ☐ Worker's Compensation Appeal

- ☐ **Appeal from Lower Court** *(also check applicable civil case box)*
  - ☐ Transfer from Justice Court
  - ☐ Justice Court Civil Appeal
- ☐ **Civil Writ**
  - ☐ Other Special Proceeding
- ☐ **Other Civil Filing**
  - ☐ Compromise of Minor's Claim
  - ☐ Conversion of Property
  - ☐ Damage to Property
  - ☐ Employment Security
  - ☐ Enforcement of Judgment
  - ☐ Foreign Judgment – Civil
  - ☐ Other Personal Property
  - ☐ Recovery of Property
  - ☐ Stockholder Suit
  - ☐ Other Civil Matters

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

- ☐ NRS Chapters 78-88
- ☐ Commodities (NRS 90)
- ☐ Securities (NRS 90)
- ☐ Investments (NRS 104 Art. 8)
- ☐ Deceptive Trade Practices (NRS 598)
- ☐ Trademarks (NRS 600A)
- ☐ Enhanced Case Mgmt/Business
- ☐ Other Business Court Matters

January 2nd , 2014

Date

/ S / Michael F. Bohn, Esq. /

Signature of initiating party or representative

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01/02/2014 10:36:49 AM

CLERK OF THE COURT

COMP
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mbohn@bohnlawfirm.com
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376 East Warm Springs Road, Ste. 125
Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX

Attorney for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 133 MCLAREN,

Plaintiff,

vs.

GREEN TREE SERVICING LLC; THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK,AS SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS MASTER TRUST, REVOLVING HOME EQUITY LOAN ASSET BACKED NOTES, SERIES 2004-T; NATIONAL DEFAULT SERVICING CORPORATION; CTC REAL ESTATE SERVICES; CHARLES J. WIGHT; AND TARA J. WIGHT,

Defendants.

CASE NO.: A-14-693882-C
DEPT NO.: XV

EXEMPTION FROM ARBITRATION:
Title to real property

COMPLAINT

Plaintiff, Saticoy Bay LLC Series 133 McLaren, by and through it's attorney, Michael F. Bohn, Esq. alleges as follows:

1. Plaintiff is the owner of the real property commonly known as 133 McLaren Street, Henderson, Nevada.

2. Plaintiff obtained title by foreclosure deed recorded November 26, 2013.

3. The plaintiff's title stems from a foreclosure deed arising from a delinquency in

assessments due from the former owner to the Hillpointe Park Maintenance, pursuant to NRS Chapter 116.

4. Green Tree Servicing LLC is the beneficiary of a deed of trust which was recorded as an encumbrance to the subject property on November 23, 2004.

5. The Bank of New York Melon f/k/a The Bank of New York, as Successor Trustee to JP Morgan Chase Bank, N.A., as Trustee for the Certificateholders of CWABS Master Trust, Revolving Home Equity Loan Asset Backed Notes, Series 2004-T is the beneficiary, by way of assignment, of a second deed of trust which was recorded as an encumbrance to the subject property on November 23, 2004.

6. National default Servicing Corporation is the trustee on a deed of trust by way of a substitution of trustee.

7. CTC Real Estate Services is the original trustee on a second deed of trust.

8. Defendants Charles J. Wight and Tara J. Wight are the former owners of the subject real property.

9. The interest of each of the defendants has been extinguished by reason of the foreclosure sale resulting from a delinquency in assessments due from the former owners, Charles J. Wight and Tara J. Wight to the Hillpointe Park Maintenance, pursuant to NRS Chapter 116.

10. The plaintiff is entitled to an award of attorneys fees and costs.

SECOND CLAIM FOR RELIEF

11. Plaintiff repeats the allegations contained in paragraphs 1 through 10.

12. Plaintiff is entitled to a determination from this court, pursuant to NRS 40.010 that the plaintiff is the rightful owner of the property and that the defendants have no right, title, interest or claim to the subject property.

13. The plaintiff is entitled to an award of attorneys fees and costs.

THIRD CLAIM FOR RELIEF

14. Plaintiff repeats the allegations contained in paragraphs 1 through 13.

15. Plaintiff seeks a declaration from this court, pursuant to NRS 40.010, that title in the

property is vested in plaintiff free and clear of all liens and encumbrances, that the defendants herein have no estate, right, title or interest in the property, and that defendants are forever enjoined from asserting any estate, title, right, interest, or claim to the subject property adverse to the plaintiff.

16. The plaintiff is entitled to an award of attorneys fees and costs.

WHEREFORE, plaintiff prays for Judgment as follows:

1. For injunctive relief;

2. For a determination and declaration that plaintiff is the rightful holder of title to the property, free and clear of all liens, encumbrances, and claims of the defendants.

3. For a determination and declaration that the defendants have no estate, right, title, interest or claim in the property.

4. For a judgment forever enjoining the defendants from asserting any estate, right, title, interest or claim in the property; and

5. For such other and further relief as the Court may deem just and proper.

DATED this 2nd day of January 2014.

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: / s / Michael F. Bohn, Esq. /
Michael F. Bohn, Esq.
376 East Warm Springs Road, Ste. 125
Las Vegas, Nevada 89119
Attorney for plaintiff

VERIFICATION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Iyad Haddad, being first duly sworn, deposes and says;

That he is the authorized representative of the plaintiff Limited Liability Company in the above entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein alleged on information and belief, and as to those matters, he believes them to be true.

IYAD HADDAD

SUBSCRIBED and SWORN to before me
this 2ND day of January, 2014

NOTARY PUBLIC in and for said
County and State

MAURIZIO MAZZA
Notary Public State of Nevada
No. 05-94588-1
My Appt. Exp. Feb. 1, 2017

IAFD
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Attorney for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 133 MCLAREN, Plaintiff, vs. GREEN TREE SERVICING LLC; THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK,AS SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS MASTER TRUST, REVOLVING HOME EQUITY LOAN ASSET BACKED NOTES, SERIES 2004-T; NATIONAL DEFAULT SERVICING CORPORATION; CTC REAL ESTATE SERVICES; CHARLES J. WIGHT; AND TARA J. WIGHT, Defendants.	CASE NO.: A-14-693882-C DEPT NO.: XV

INITIAL APPEARANCE FEE DISCLOSURE

Pursuant to NRS Chapter 19, filing fees are submitted for the party appearing in the above-entitled action as indicated below:

SATICOY BAY LLC SERIES 133 MCLAREN	$270.00
TOTAL REMITTED:	$270.00

///

///

DATED this 2nd day of January 2014.

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: / s / Michael F. Bohn, Esq. /
Michael F. Bohn, Esq.
376 East Warm Springs Road, Ste. 125
Las Vegas, Nevada 89119
Attorney for plaintiff

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CLERK OF THE COURT

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Tel: (702) 851-1191
Fax: (702) 851-1198
Attorneys for Defendant Green Tree Servicing, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC DERIES 133 MCLAREN Plaintiff, vs. GREEN TREE SERVICING LLC; THE BANK OF NEW YORK MELLON FKA THE BBANK OF NEW YORK, AS SUCCESSOR TRUSTEE TO JP MORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE CERTIFICATE HOLDERS OF CWABS MASTER TRUST, REVOLVING HOME EQUITY LOAN ASSET BACKED NOTES, SERIES 2004-T; NATIONAL DEFAULT SERVICING CORPORATION; CTC REAL ESTATE SERVICES; CHARLES J. WIGHT; and TARA J. WIGHT, Defendants.	Case No.: A-14-693882-C Dept.: XV **NOTICE OF MOTION AND MOTION TO DISMISS PURSUANT TO *NRCP* 12(b)(5); REQUEST FOR JUDICIAL NOTICE**

Pursuant to Rule 12(b)(5) of the Nevada *Rules of Civil Procedure* ("NRCP"), Defendant Green Tree Servicing, LLC ("Green Tree") respectfully moves this Court to dismiss Plaintiff Saticoy Bay, LLC Series 133 McLaren's ("Saticoy Bay") Complaint without leave to amend on the ground that the Complaint fails to state a claim upon which relief can be granted.

///

///

///

This motion is supported by the attached Memorandum of Points and Authorities, the Request for Judicial Notice, the papers and pleadings already on file, and any oral arguments that the Court may entertain.

DATED this 12th day of February, 2014.

BROOKS BAUER LLP

By: _____ /FOR

Michael R. Brooks, Esq.
Nevada Bar No. 7287
1645 Village Center Circle, Suite 200
Las Vegas, NV 89134
Attorney for Defendant Green Tree Servicing, LLC

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1645 VILLAGE CENTER CIRCLE, SUITE 200, LAS VEGAS, NV 89134
TELEPHONE: (702) 851-1191 FAX: (702) 851-1198

NOTICE OF MOTION TO DISMISS

TO ALL PARTIES:

PLEASE TAKE NOTICE that Green Tree will bring its Motion to Dismiss for hearing in Department XV of the above-entitled Court on 19 day of March, 2014, at 9:00AM a.m./p.m., or as soon thereafter as this matter may be heard.

DATED this 12 day of February, 2014.

BROOKS BAUER LLP

By: _____

Michael R. Brooks, Esq.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case is one of dozens super-priority lien sale cases that are currently making their way through the Clark County District Courts. The question that keeps arising is: "How can sales producing proceeds of only a small fraction of the value of a property wipe out the interest of a first position deed of trust?" Plaintiff Saticoy Bay, LLC Series 133 McLaren ("Saticoy Bay") purchased an $112,886 property at a homeowner association's lien ("HOA Lien") sale for $10,200.00. Plaintiff now asserts it owns this property free and clear of other liens and encumbrances that predate the HOA Lien, including the encumbrances currently held by Defendant, Green Tree Servicing, LLC ("Green Tree"). Common sense dictates that Saticoy Bay's allegations cannot be right. If Saticoy Bay is correct, Nevada law would consistently allow purchasers at HOA Lien foreclosure sales to reap enormous windfalls, all at the expense of lenders who have extended large loans secured by those same properties. Saticoy Bay's theory is that the interest it purchased at the HOA Lien sale emanated from the foreclosure of a "super-priority lien" that abolished and eliminated other liens recorded against the property. If this were true, the Court would have to believe that some of the finest lawyers in the country, *i.e.*, – the ones that make up the Uniform Law Commission -- actually designed such a flawed system. There is no evidence of this or that the drafters of the Uniform Common Interest Ownership Act ("UCOIA") intended the absurd outcome urged by Saticoy Bay.

II. STATEMENT OF FACTS

This case arises from a dispute over real property located at 133 McLaren St., Henderson, Nevada 89074 (the "Property"). Complaint, ¶ 1.

A. The Loan and the Deed of Trust

On or about November 23, 2004, Defendants, Charles J. Wight and Tara J. Wight (the "Borrowers" and/or "Homeowners"), obtained a $220,000 home loan (the "Loan") from Countrywide Home Loans, Inc. ("Countrywide.") See, the attached Request for Judicial Notice ("RJN"), Exhibit 1. The Loan is secured by a first deed of trust ("Deed of Trust") that was recorded against the Property on November 23, 2004, in the Office of the Clark County

Recorder. *Id.* The Deed of Trust was later assigned, or our about May 28, 2013, from Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for lender, Countrywide, to Green Tree. RJN, Exhibit 2. As such, the present holder of the Deed of Trust and Loan is Green Tree. *Id.*

B. The HOA Lien and the HOA Foreclosure Sale

Long after the Deed of Trust had been recorded against the Property, the Hillpointe Park Maintenance Home Owner's Association ("Hillpointe" and/or "HOA") allegedly filed a lien, styled "Notice of Delinquent Assessment Lien," on January 14, 2011, against the Property for non-payment of homeowner assessment dues in the amount of $1,286.00 (the "HOA Lien.") RJN, Exhibit 3. On September 9, 2011, The HOA then filed a Notice of Default and Election to Sell Real Property to Satisfy Delinquent Assessment Lien, for delinquent assessments, as of September 6, 2011, in the amount of $2,149.00. RJN, Exhibit 4.

On October 29, 2013, a Notice of Foreclosure Sale was recorded against the Property and set the Property for sale on November 26, 2013. RJN, Exhibit 5. On November 26, 2013, the HOA purported to conduct a non-judicial foreclosure of the Property. Complaint,¶ 2; RJN, Exhibit 6. Saticoy Bay purchased the interest represented by the HOA Lien for $10,200.00 and recorded a Foreclosure Deed with the Clark County Recorder on November 26, 2013. *Id.*

Plaintiff then filed this lawsuit and now asserts that it is the owner of the Property – free and clear of any encumbrances included the Deed of Trust – by virtue of the *non-judicial* HOA Lien foreclosure sale *post-hoc*. Plaintiff however cannot summarily dispose of the Deed of Trust by virtue of this sale. The Deed of Trust exists as an encumbrance on the Property. Therefore, this matter should be dismissed and this Motion should be granted.

III. LEGAL STANDARD FOR A MOTION TO DISMISS

Nevada *Rule of Civil Procedure* 12(b)(5) provides for dismissal upon a motion asserting the defense of failure to state a claim upon which relief can be granted. Specifically, Nevada *Rule of Civil Procedure* 12(b) states:

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> Every defense, in law or fact, to a claim for relief in any pleading,...shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: ...(5) failure to state a claim upon which relief can be granted....

NRCP 12(b)(5). A court reviewing a motion to dismiss must determine whether the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief. *Edgar v. Wagner*, 101 Nev. 226, 227, 699 P.2d 110, 111 (1985).

The Supreme Court of Nevada has stated, "[f]ederal cases interpreting the Federal Rules of Civil Procedure are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts." *Executive Management, Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (internal quotations and citation omitted). The Supreme Court of the United States clarified the pleading standard imposed by the Federal Rules of Civil Procedure and stated:

> a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do....Factual allegations must be enough to raise a right to relief above the speculative level.

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964-65 (2007) (internal quotation marks and citations omitted). The *Twombly* court also noted that a complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570, 127 S. Ct. at 1974.

When deciding a motion to dismiss pursuant to NRCP 12(b)(5), courts assume the facts alleged as true, but do not "assume the truth of legal conclusions merely because they are cast in the form of factual allegation." *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981); *see also Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 2944 (1986). In this case, the Complaint fails to state any claim upon which relief can be granted and, therefore, the Complaint should be dismissed in its entirety.

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IV. ANALYSIS

A. Saticoy Bay's Interest in the Property Does Not Extinguish the First Position Deed of Trust.

Saticoy Bay's position is that the super-priority language of Nevada statutes provides the purchaser at an HOA foreclosure auction title, free and clear of a claim by the first position lien-holder. This argument is based on a poor reading of the statute, and would result in very bad policy for the State of Nevada. Each of the Plaintiff's arguments fails and is addressed in turn below.

1. The Court should dismiss this matter because the HOA did not file a court action, which is required to give an HOA super-priority pursuant to NRS §116.3116(2)(c).

Saticoy Bay purchased the Property from the HOA based on the HOA's lienholder interest in the Property. Saticoy Bay contends that the foreclosure auction extinguished the first position Deed of Trust. Complaint, ¶¶ 9, 12 & 15. Presumably, Plaintiff asserts that the HOA Lien had somehow garnered "super-priority" status. Since the Complaint provides so little guidance, the language relied upon by other parties similarly situated to Saticoy Bay, is found at *NRS* 116.3116 as follows:

> A lien under this section is prior to all other liens and encumbrances on a unit except:
>
> **1.** . . .
> **2.** 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
> **3.** . . .
>
> 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 **6 months immediately preceding**

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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. (Bold emphasis added.)

Thus, a plain reading of the statute as set forth in the first subsection provides that an ordinary homeowner assessment lien does not obtain super-priority status over a prior-recorded security interest, such as a deed of trust, before the date on which the assessment sought to be enforced became delinquent. *Id.* In the following subsection of this statute, there are very specific instances set forth where such a homeowner assessment lien may actually transmute itself into a "super-priority" lien. However, the statute makes it abundantly clear that there are specific requirements for a homeowner assessment lien to be transformed into a "super-priority" lien. For example, there is the requirement that the assessment itself be based on " . . .. a periodic budget adopted by the association pursuant to *NRS* 116.3115 which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien." Therefore, in addition to the adoption of such a budget, there must be an "action" to enforce the lien before such a lien can ever achieve super-priority status.

Saticoy Bay's allegations fail to address the condition precedent to enforce the lien. Specifically, the statute requires that a super-priority lien is enforceable only when a budget has been adopted pursuant to the requirements of *NRS* 116.3115 or for maintenance pursuant to *NRS* 116.310212. The HOA must adopt an annual budget annually under *NRS* 116.3115 to create a super-priority lien. Saticoy Bay offers no allegation to support this factual element and there are no recitals in the lien sale documents to support this position. As a result, there is no factual support for the creation of the lien.

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Also, as demonstrated below, Saticoy Bay has made no showing that there was an "action" to enforce the underlying lien. Nor can Plaintiff argue for an interpretation that the statute simply provides that any homeowner's assessment lien has super-priority status since the filing of a lien is itself an "action."

The logical fallacies associated with giving the above statute such a reading violate rules of statutory construction. Specifically, Saticoy Bay's allegations would render the first position lien priority language meaningless. By way of illustration, if recording the lien was the "action to enforce the lien", the HOA could simply extract payment from a first deed of trust holder for 9 months under threat of foreclosure. Then, after receiving payment, the HOA could start the process over again for the next 9 months in perpetuity without ever having to complete a sale. This reading of the law would render the priority of a first position deed of trust meaningless. Simple principles of statutory construction tell us that this not a defensible reading of the statute.

Finally, there are simple practical aspects that don't make sense. For example, the recording of a lien will always occur less than 6 months from the date of a payment default. Furthermore, the entire HOA non-judicial process could be completed in less than 6-months, making it unnecessary to grant such an extensive super-priority lien that reaches back to a time when the borrower was not in default on HOA dues.

2. *NRS* 116 and the *NRCP* All Refer to an Action as a Civil Lawsuit.

As pointed out above, before a lien can have super-priority status there must be a showing that there was an "*action* to enforce the lien." The foreclosure sale for the HOA Lien was not an "action," however. To create a super-priority lien, then, the HOA must initiate a *legal action* by filing a lawsuit. The reasons are manifold.

First, the use of the word "action" in 116.3116 was not accidental and is consistently reinforced when analyzing the structure and language of Nevada law. Action is used consistently to refer to a lawsuit.

- *NRCP* 2 provides: "There shall be one form of action to be known as 'civil action.'"
- *NRCP* 3 states: "A civil action is commenced by filing a complaint with the court."

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- *NRS* 38.300 "'Civil action' includes an action for money damages or equitable relief. . . ."

NRS 38.300 specifically deals with rights and remedies after mediations and arbitrations associated with homeowners association disputes. With this in mind, when we read the super-priority statutes of NRS §116.3116 we see that the super-priority only arises with the filing of ". . . an action to enforce the lien .... " (Emphasis added).

Further, the language of *NRS* §116.3116(7) states: "A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party." A judgment is only possible from a judicial action and attorneys are not required to foreclose a lien by sale. More compelling might be the language contained in NRS §116.3116 subsection (10) wherein it states:

> 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 . . . 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.

The language of this statute makes it clear that the court will be involved in all actions because only a court can appoint a receiver. Also interesting to note is the fact that nowhere in *NRS* §116 does the statute refer to a lien foreclosure as an "action." Any time "action" is mentioned it is conjunction with some activity by a court of law.

Also, the reasoning set forth above is consistent with the recent Nevada Supreme Court decision that made it clear that there is a material difference between a judicial foreclosure action and a non-judicial foreclosure of a Deed of Trust under *NRS* 107. In *Holt v. Regional Trustee Services Corp.* __ Nev. ___, 266 P.3d 602, 605-606, 127 Nev.Adv.Op. 80 (2011), the Nevada Supreme Court stated: "But as the name implies, non-judicial foreclosure is not a judicial 'action' giving rise to a claim or defense of foreclosure . . ."

Furthermore, not only is each reference to an action coupled with the potential for court activity, but when the statute refers to the non-judicial foreclosure procedure, it specifically references it as a "foreclosure of lien by sale." *See*, *NRS* §**116.31162**. In all of the sections of *NRS* 116 dealing with a lien by sale, commencement of an action is never referenced. *See NRS*

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116.31162 – 116.31168. The Nevada legislature was careful not to confuse a judicial action provided for in *NRS* 116.3116 and a non-judicial foreclosure of a lien by sale provided for in *NRS* 116.31162 through *NRS* 116.31168. Therefore, the only conclusion is that a judicial action must be filed to give rise to the super-priority lien.

It is important to note that the distinction between a judicial action and a non-judicial foreclosure of sale by lien was contemplated by the legislature when the statute was adopted. Specifically, the UCIOA contained provisions to govern states that had both judicial and non-judicial enforcement procedures. However, because of the summary nature of the foreclosure of lien by sale procedure, there are certain actions that cannot be taken against a homeowner by foreclosure of lien by sale. For example, an HOA lien may not be foreclosed by sale for violation of the declarations or for other fines. Rather, it must be enforced by judicial action pursuant to *NRS* 116.3116. *See NRS* 116.31162(4). As a result, an "action" and "foreclosure by sale" are distinct remedies under Nevada law.

3. Other Areas of Nevada Law Confirm the Requirement of Filing an Action

There are other areas where the word "action" is defined by the Nevada legislature as well that make it clear that an "action" requires judicial action. In the mechanic's lien law, *e.g.*, under chapter 108, the Nevada Legislature provided another statutory lien right with distinct enforcement tools. A review of that framework confirms that the commencement of an action as synonymous with a judicial action.

- *NRS* §108.2275(5): If, at the time the application is filed, **an action to foreclose the notice of lien** has not been filed, the clerk of the court shall assign a number to the application and obtain from the applicant a filing fee of $85. If an action has been filed to foreclose the notice of lien before the application was filed pursuant to this section, the application must be made a part of the action to foreclose the notice of lien.
- *NRS* §108.239(1): A notice of lien may be enforced by **an action in any court** of competent jurisdiction that is located within the county where the property upon which the work of improvement is located, on setting out in the complaint the particulars of the demand, with a description of the property to be charged with the lien.

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- *NRS* §108.229(1): At any time before or during **the trial of any action to foreclose a lien**, a lien claimant may record an amended notice of lien to correct or clarify the lien claimant's notice of lien.
- *NRS* §108.229(5): A notice of lien may be enforced **by an action in any court** of competent jurisdiction

See, NRS 108.221, *et seq*.

It should also be noted that the word "action" is not defined in NRS chapter 108 either. Just in case there is any doubt about the use of judicial proceeding in terms of establishing lien priority between competing parties, the Nevada Supreme Court provided this excerpt: "However, the statute suggests that the validity and priority of all statutory liens should be decided in the enforcement action." *A.F. Const. Co. v. Virgin River Casino Corp.* 118 Nev. 699, 704 (2002).

4. Other Jurisdictions Have Held that Super-Priority Arises Only After Filing a Lawsuit.

This same conclusion was reached by courts in other states. For example, Nevada and Massachusetts have nearly identical language in their homeowners' association super priority lien statutes regarding the necessity for the institution of an action to enforce the lien.[1] While Nevada has no case law interpreting the meaning of this portion of the statute, Massachusetts does. Specifically, Massachusetts courts have held:

> The condominium lien achieves "super priority" status over the first mortgage when a condominium association institutes "an action to enforce the lien." Thus, Section 6(c) provides that: [t]his lien is also prior to the mortgages described in clause (ii) above to the extent of the common expense assessments based on the budget adopted pursuant to subsection (a) above which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien ...
>
> Accordingly, the institution of an action by a condominium association is a condition precedent to achieving "super-priority" status for the condominium lien. However, even when the association files

[1] Massachusetts law states: This lien is also prior to the mortgages described in clause (m above to the extent of the common expense assessments based on the budget adopted pursuant to subsection (a) above which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien .... MA ST 183A s 6

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> such an action, the condominium lien is given a "super-priority" status only to the extent of unpaid condominium fees for the preceding six months. It is uncontested by the parties that a lawsuit is required before a lien for unpaid condominium fees achieves a "super-priority" status. See also In re Stem, 44 B.R. 15, 19 (Bankr.D.Mass.1984). ("the establishment of the lien is not dependent on the commencement of a lawsuit, which is only a step necessary to elevate the status of the lien to a position superior to other encumbrances, other than municipal liens and first mortgages. ") ...In this regard, M.G.L. ch. 183A, § 6(c) specifically provides that, without the commencement of an enforcement action by a condominium association, a lien for unpaid condominium fees is "prior" to all other liens and encumbrances "except ... (ii) a first mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent ... " (emphasis added). That exception makes the lien junior at least until an action is commenced. Indeed, if the lien was anything but junior to the first mortgage, there would be no reason to require that an action be filed in order to grant that lien super-priority status.

Trustees of MacIntosh Condominium Association v. FDIC., et.al. 908 F.Supp. 58 at 63 (1995).

The same conclusion was reached in Connecticut where the court held:

> Most importantly, our review of our statutes and appellate case law reveals that "the institution of an action" has never been held to mean anything other than the filing of a civil action in court. See generally General Statutes § 47-258(b) (employing phrase "institution of an action to enforce" in context of condominium association lien, which requires civil action to enforce) . . . Accordingly, we are not inclined to extend the meaning of the phrase "the institution of an action to enforce" to include other formal proceedings unless the legislature has made its intent clear that other proceedings will suffice. It has not done so. *Benson v. Zoning Bd. Of Appeal of Town of Westport* 89 Conn.App. 324, 332, 873 A.2d 1017, 1022 (Conn.App. 2005)

Thus, a homeowners' association must file an action for the super priority lien over a first position deed of trust to exist. In addition to the very persuasive authority from Massachusetts and Connecticut, the appellate court in Washington has held that the super-priority lien arises after the filing of a judicial action. *Summerhill Village Homeowners v. Roughley* 270 P.3d 639 (Div. 1 2012).

5. Other Authority, including the Nevada Real Estate Division's Advisory Opinion, does not Change the Conclusion that an Action is Required.

In other similar cases, Plaintiffs have cited to the Nevada Real Estate Division recent statement on whether a lawsuit is filed to create the super-priority lien right. *The Super Priority Lien* NV Real Estate Div. Advisory Op. 13-01, pp. 8-9 (Dec. 12, 2012.) While the advisory

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opinion is one of the few statements on the subject, the analysis is lacking in rigor or consistent statutory construction. In the first instance, as previously pointed out, the analysis suffers from the logical fallacy of circular reasoning. Again, that is to say that you cannot define the lien by the creation of the lien.

In addition, the Nevada Real Estate Division points to the language of *NRS* 116.3116(2) to define an "action." However, it is the language of *NRS* 116.3116(2) that leads us to further support for the argument that a lawsuit is required. Specifically, the last sentence of *NRS* 116.3116(2) incorporates the mechanics' liens and materialman's lien law by stating: "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." As a result, *NRS* chapter 116 must be read in harmony with mechanics' lien and materialman's lien laws. *Orion Portfolio Servs. 2 LLC v. Cnty. of Clark*, 126 Nev. ___, ___, 245 P.3d 527, 531 (2010). ("This court has a duty to construe statutes as a whole, so that all provisions are considered together and, to the extent practicable, reconciled and harmonized. *Id.* (citations omitted). In addition, the court must not render any part of the statute meaningless, and must not read the statute's language so as to produce absurd or unreasonable results. *Id.* (citations omitted).")

6. The Legislature does not include the word "action" in other statutes when a court action is not required for the statutory expungement of a lien.

An interesting comparison can be made between, for example, *NRS* chapter 116 and the statutory framework used for liens for storage or maintenance of a motor vehicle under *NRS* 108.265, *et seq.* In particular, where a lien has been established under this section, it may be satisfied by a sale by auction under *NRS* 108.310. Noticeably missing from this statutory framework of lien enforcement is a reference to an "action." Because statues must be "read as a whole," it becomes obvious that the Legislature uses the word "action" only when referring to a civil action, otherwise the word "action" is conspicuously omitted from the statute, as it is in *NRS* 108.265, *et seq*. *Orion*, at 531.

7. The filing of a lawsuit is the only interpretation for the word "action" within *NRS* 116.3116(2) that makes logical sense.

In many jurisdictions covered by the uniform act adopted by Nevada, the only type of HOA action is a lawsuit. Given that resolution of those suits can take a year or more, it is important to prevent HOA's from being deprived of cash. However, the Nevada legislature also provided a non-judicial procedure for the enforcement of the HOA lien which is much quicker than a judicial action. In fact, a non-judicial proceeding can be completed in less than 4 months – far less than the super-priority period in *NRS* 116.3116(2)(c).

Further, the requirement for an association to file a court action as a condition to the existence of the super-priority lien makes excellent policy sense. The Plaintiff's position would allow an association to sit on its hands, accrue thousands of dollars of delinquent assessments, and then "automatically" obtain a super-priority lien. This method of collecting HOA dues would encourage a slothful administration of the process, and would essentially reward laches or non-expeditious behavior. What the legislature intended to do within *NRS* 116.3116(2) was to give the association two methods of recapturing community association dues. First, an HOA can act swiftly using the non-judicial foreclosure remedy available to it and begin collecting rents from tenants to make up for the prior accounting deficiency. The consequence of moving swiftly using the non-judicial means is that the super-priority lien never springs into existence. Secondly, the association can file a lawsuit and also obtain a super-priority for 6 months of outstanding HOA dues on the account. This will take longer and will cause the association potential losses thus explaining the super-priority lien rights.

Finally, if HOAs are given the *de facto* ability to maintain perpetual super-priorities over first lenders, it will decimate the availability of capital within the state of Nevada. The legislature is amply aware that the HOAs need money to operate for the good of their communities, and they have addressed this need by providing HOAs options, but they are not a mechanism for the dispossession of first deed of trust holders from their perfected rights in collateral.

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B. Even if the HOA can non-judicially foreclose on under the super-priority language of *NRS* 116.3116(2)(c), the HOA did not record a Notice of Default and Election to Sell as to the super-priority lien.

1. Distinct Notice is required to foreclose a super-priority lien.

Even if the Court were somehow to agree that the HOA Lien is a "super-priority" lien there is still an additional problem that the HOA did not record a Notice of Default as to that "super-priority" lien.

If the conditions necessary to enforce the super-priority portion of the lien were present, then the lien and the Notice of Default and Notice of Sale would all indicate as such. This would encourage vigorous defense of the priority position by the lenders and also encourage bidding at the foreclosure auction.

The statutory basis for the notice of the super-priority lien is found at *NRS* 116.31162(1)(b) provides:

> 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!

It is important to note that the deficiency in payment must be described. *NRS* 116.31162(1)(b). In each of the circumstances, there is no evidence that the deficiency is based on a budget adopted in compliance with *NRS* 116.3115 as required in subsection (b)(1) above. As a result, there is no basis to find that the super-priority ever arose. Furthermore, without the recitation of the satisfaction of *NRS* 116.3115 compliance, lenders with first position deeds of

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trust would not know that there collateral was at risk and bidders would not know that the asset could be acquired unencumbered.

To further illustrate, it goes without saying that the super-priority lien portion of an HOA lien is conditional and only arises when there are up to 6 months of delinquent assessments as outlined in *NRS* 116.3115. *See*, NRS 116.3116(1)-(2). Accordingly, to prevail at trial in this matter, Saticoy Bay must present evidence to this Court that the HOA has satisfied the statutory requirements of compliance with the provisions of *NRS* 116.3115 in adopting its budget. Saticoy Bay has made no such showing or even an allegation. Instead, Saticoy Bay has simply assumed the existence of this fact. Furthermore, Saticoy Bay assumed it existed at the time of the HOA lien sale. As a result, Saticoy Bay took the risk at the sale that it was not buying a super-priority lien.

The adverse impact of this omission on a Notice of Assessment, Notice of Default or Notice of Sale cannot be understated. For example, the role of the foreclosure auctioneer has always been to maximize the value of the asset by providing clear information about the property being sold. *See, Hatch v. Collins* 255 Cal.App.3d 1104; 275 Cal.Rptr. 476 (1990) ("A trustee has a general duty to conduct the sale 'fairly, openly, reasonably and with due diligence,' exercising sound discretion to protect the rights of the mortgagor and others…") More information provides greater certainty in bidding and attracts vigorous bidding. Without a recitation that the super-priority conditions have been satisfied, bidders would be taking a risk by bidding in at the sale. The risk that the super-priority conditions have not been satisfied and that the lien was junior to a first deed of trust would severely dampen bidding interest. The lack of disclosure could encourage illicit information gathering from the HOA's and their collection agents. Further, it would allow for manipulation of bidding by parties who had obtained the undisclosed information. In the end, it is the borrower that would pay the price from suppressed bidding.

In this case, the HOA recorded a Notice of Default and Election to Sell, but it does not state that it is foreclosing on the super-priority interest or that the super-priority condition was satisfied. In fact, the Notice of Default itself is based on a Notice of Delinquent Assessment, recorded on January 14, 2011, that states that just $1,286.00 is due and owing and will increase

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(RJN, Exhibit 3), even though a super-priority is capped at 6 months of assessment. By the time the Notice of Default was filed against the Property on September 9, 2011, the HOA Lien had risen to $2,149.00 (and that was only as of September 6, 2011.) RJN, Exhibit 4. The sale ultimately took did not place until November 26, 2013. This means that far more than six (6) months of assessments were included in the lien and foreclosure documents.

C. Even assuming that one notice is sufficient for an HOA to foreclose on multiple liens, and that there is no requirement to account for the deficiencies, the Plaintiff did not satisfy the foreclosure notice requirements under *NRS* 107.080.

Pursuant to *NRS* 107.080, a lien claimant must give notice to each party of interest in a foreclosure by an HOA is entitled to receive notice of the default, election to sell the property, the time and place of the foreclosure sale, and the final payment amount to correct the lien prior to foreclosure. *See*, *NRS* 116.31162-116.31168. In the present instance, the HOA has the burden of proving that Green Tree was properly noticed of the default, election to sell, and foreclosure sale, and is required to produce copies of return receipts and certified mail receipts.[2] Currently, Saticoy Bay has not provided evidence that Green Tree was in fact properly noticed. Furthermore, Saticoy Bay has the burden of showing that notice, if ever actually sent by certified mail (with accompanying return receipt), was properly addressed to an officer of Green Tree, or someone with the authority to accept service on behalf of the Corporation. Therefore, the HOA foreclosure auction was void due to a lack of notice, as a matter of law, and therefore Saticoy Bay has no standing to request any judicial relief in the present matter.

[2] Simply recording documents in the Clark County Recorder's Office does not qualify as proper notice when Green Tree would have no reason to check on their first priority status. *See, Bemis v. Estate of Bemis*, 114 Nev. 1021, 1025-26, 967 P.2d 437, 440-41 (1998) (explaining that a public record's mere existence does not create an affirmative requirement to search for it, especially when a party has no reason to know of such filing).

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D. Public Policy Dictates that Saticoy Bay's Position Cannot Prevail.

1. Perpetual super-priority liens were not contemplated by the Legislature.

NRS 116.3116 specifically gives first lien holders a priority position greater than an HOA lien, except for the 6 month period prior to a judicial action. *See*, NRS 116.3116(2)(c). If first lien holders could never maintain a first lien position based on Saticoy Bay's reading of NRS 116.3116(2)(c), it would render the entire first lien provision within the statute meaningless. Further, if HOAs are given the *de facto* ability to maintain perpetual super-priorities over first lenders, it will decimate the availability of capital within the state of Nevada. The legislature is amply aware that HOAs need money to operate for the good of their communities, and they have addressed this need by providing HOAs options, but they are not a mechanism for the dispossession of lenders from their perfected rights in collateral. Here, Saticoy Bay "purchased" the HOA's interested in the Property for $10,200. Common sense dictates legislative intent in this instance, because the wiping out the considerable monies extended to the Borrowers for the Loan for what originally amounted to $1,286.00 of HOA dues would lead to (in opposition to the well-established canons of statutory construction) an absurd result. *See*, *Orion*, at 531.

2. Saticoy Bay is engaging in moral hazard by exploiting the ambiguity of *NRS* 116.3116.

The foreclosure process is not a vehicle for obtaining windfalls, and Saticoy Bay is currently engaged in a systematic low-risk, high-reward scheme of purchasing HOA lien positions and attempting to utilize the ambiguity within NRS 116.3116(2)(c) to create windfalls for their investors. In the present instance, Green Tree holds a Loan, even laying aside the considerable arrears that had accrued thereon, in the original amount of $220,000.00, that is secured by the Property, and Saticoy Bay paid a mere $10,200.00 at the HOA auction. This means that if Saticoy Bay is somehow able to convince a court that *NRS* 116.3116(2)(c) encourages the wiping out of the Loan, then they win that entire amount in equity of the property; if they are unable to convince the court of this fiction, then they still keep the super-priority amount that they paid for the HOA lien position. This is a moral hazard, in that Saticoy Bay gets to risk other people's money on a litigation gamble without risking any of their own capital. Clearly, there is something amiss with

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the way these HOA foreclosure auctions are being conducted (along with several other cases before this court involving Saticoy Bay), because Saticoy Bay is somehow the highest bidder at all of these "auctions" but is only paying a fraction of the original balance of the Loan owed on the Property, which Green Tree would be able to fully credit bid at the HOA auction.

All of these factors support a supposition that something quite disingenuous is happening within these Saticoy Bay "super-priority" cases, and it becomes clear what that is when the following question is asked: "Why would Saticoy Bay be buying these properties when they are well aware of the impropriety of the auction process?" The answer is simple: Saticoy Bay rents these properties out during the pendency of the litigation, and makes a huge amount of profit on the backs of the first deed of trust holders' property, incurring only small litigation fees in the process. For example, if Saticoy Bay pays $3,000 at an HOA auction, and incurs $3,000 in legal fees to fight this case off for a year, and can rent the property for a minimum of $1,000 per month, then they make a 100% return gross on their original $6,000 investment. Also, if they can somehow convince a court to throw in fee simple title to the property as well, then their profit rises exponentially.

Therefore, when examining the balance of equities in the present instance, it is obvious that Saticoy Bay is systematically engaging in morally hazardous behavior, and is capitalizing by collecting rent on this property during the pendency of litigation – "in order to receive equity we must first do equity."

V. REQUEST FOR JUDICIAL NOTICE

NRS 47.130 provides this Court may take judicial notice of facts that are "(a) [g]enerally known within the territorial jurisdiction of the trial court; or (b) [c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute." Defendant respectfully requests that the Court take judicial notice of the following documents true and correct copies of which are attached hereto:

1. Deed of Trust recorded November 23, 2004, Instrument No. 200411230002449, in the Office of the Clark County Recorder and attached hereto as Exhibit "1";

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2. Assignment of Deed of Trust from MERS as nominee for lender, Countrywide Home Loans Inc., to Green Tree, recorded on May 28, 2013, Instrument No. 201305280000641, with the Clark County Recorder and attached hereto as Exhibit "2";
3. Notice of Delinquent Assessment Lien recorded on May 14, 2011, as Instrument No. 201101140001247, in the Office of the Clark County Recorder and attached hereto as Exhibit "3";
4. A Notice of Default and Election to Sell under Homeowners Association Lien, for delinquent homeowner's assessments by Southern Terrace and recorded on September 9, 2011, Instrument No. 201109090000728, in the Office of the Clark County Recorder and attached hereto as Exhibit "4";
5. Notice of Trustee's Sale, recorded on October 29, 2013, Instrument No. 201310290003584 with the Clark County Recorder and attached hereto as Exhibit "5;" and,
6. Trustee's Deed Upon Sale, recorded on November 26, 2013, Instr. No. 201311260001363 with the Clark County Recorder and attached hereto as Exhibit "6."

The recorded documents attached hereto are public documents on file in the Office of the Clark County Recorder or available online through the State of Nevada. As such, the recorded documents attached hereto are generally known within the territorial jurisdiction of this Court. Further, the recorded documents attached hereto are capable of accurate and ready determination by resort to sources of reasonably undisputed accuracy - the Office of the Clark County Recorder and the State of Nevada website. Therefore, the existence and contents of those documents are not subject to reasonable dispute and Defendant requests this Court take judicial notice of the recorded documents attached hereto.

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V. CONCLUSION

For the foregoing reasons, Green Tree respectfully requests that this Court grant its Motion to Dismiss on all claims alleged by LN Management and should quiet title in favor of Green Tree.

DATED this 12 day of February, 2014.

BROOKS BAUER LLP

By: _____
Michael R. Brooks, Esq.
Nevada Bar No. 7287
Attorney for Defendant Green Tree Services, LLC

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is that of Brooks Bauer LLP, 1645 Village Center Circle, Suite 200, Las Vegas, Nevada 89134.

On this day, I served a copy of the foregoing **NOTICE OF MOTION AND MOTION TO DISMISS PURSUANT TO NRCP 12(b)(5); REQUEST FOR JUDICIAL NOTICE** on the parties in said action or proceeding by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

Michael F. Bohn, Esq.
376 East Warm Springs Road, Suite 125
Las Vegas, NV 89119

Attorney for Plaintiff, SATICOY BAY LLC SERIES 133 MCLARAN STREET

and placing the envelope in the mail bin at the firm's office.

I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it is deposited with the U.S. Postal Service on the same day it is placed in the mail bin, with postage thereon fully prepaid at Las Vegas, Nevada, in the ordinary course of business.

I certify under penalty of perjury that the foregoing is true and correct and that this Certificate of Service was executed by me on the 12th day of February, 2014, at Las Vegas, Nevada.

An Employee of BROOKS BAUER LLP

EXHIBIT 1

EXHIBIT 1

Assessor's Parcel Number:
178-16-215-068
After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.

MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423
Prepared By:
JEANETTE HUTSON
~~Recording Requested By~~:
D. DEL BALZO
COUNTRYWIDE HOME LOANS, INC.

10190 COVINGTON CROSS DR
#190
LAS VEGAS
NV 89144

20041123-0002449

Fee: $41.00
N/C Fee: $25.00

11/23/2004 13:53:41
T20040137070
Requestor:
OLD REPUBLIC TITLE COMPANY OF NEVADA
Frances Deane BGN
Clark County Recorder Pgs: 28

[Space Above This Line For Recording Data]

5120003256-KLS 0008663384511004
[Escrow/Closing #] [Doc ID #]

DEED OF TRUST

MIN 1000157-0004394368-3

DEFINITIONS
Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated NOVEMBER 12, 2004 , together with all Riders to this document.

APP000032

(B) "Borrower" is
CHARLES J WIGHT, AND TARA J WIGHT, HUSBAND AND WIFE AS JOINT TENANTS

Borrower is the trustor under this Security Instrument.
(C) "Lender" is
COUNTRYWIDE HOME LOANS, INC.

Lender is a
CORPORATION

organized and existing under the laws of NEW YORK . Lender's address is
4500 Park Granada
Calabasas, CA 91302-1613
(D) "Trustee" is
CTC REAL ESTATE SERVICES

400 COUNTRYWIDE WAY MSN SV-88
SIMI VALLEY, CA, NV 93065
(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
(F) "Note" means the promissory note signed by Borrower and dated NOVEMBER 12, 2004 .
The Note states that Borrower owes Lender
TWO HUNDRED TWENTY THOUSAND and 00/100

Dollars (U.S. $ 220,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than DECEMBER 01, 2034 .
(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

[X] Adjustable Rate Rider	[ ] Condominium Rider	[X] Second Home Rider
[ ] Balloon Rider	[X] Planned Unit Development Rider	[ ] 1-4 Family Rider
[ ] VA Rider	[ ] Biweekly Payment Rider	[ ] Other(s) [specify]

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

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(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower

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irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY of

[Type of Recording Jurisdiction]

CLARK :

[Name of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

which currently has the address of

133 MCLAREN STREET, HENDERSON ,

[Street/City]

Nevada 89074-0916 ("Property Address"):

[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums

any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or

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defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be

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paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is

reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive

from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

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Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

Initials: _____

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees,

Initials: _____

property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Initials:

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option, and without further demand, may invoke the power of sale, including the right to accelerate full payment of the Note, and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. $ 300.00 .

Initials: _____

DOC ID #: 00086633845110O4

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

_____

_____

_____(Seal)
CHARLES J. WIGHT -Borrower

_____(Seal)
TARA J. WIGHT -Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

DOC ID #: 0008663384511004

STATE OF ~~NEVADA~~ New York
COUNTY OF Kings

This instrument was acknowledged before me on November 16, 2005 by Charles J. Wright and Tara J. White

FRANK ALBERGO
Commissioner of Deeds
City of New York No. 2-10432
Certificate Filed in Kings County
Commission Expires 12-01-05

Frank Albergo

Mail Tax Statements To:
TAX DEPARTMENT SV3-24

450 American Street
Simi Valley CA, 93065

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

[Space Above This Line For Recording Data]

FIXED/ADJUSTABLE RATE RIDER

(LIBOR Twelve Month Index - Rate Caps)

PARCEL ID #:
178-16-215-068
Prepared By:
JEANETTE HUTSON

5120003256-KLS
[Escrow/Closing #]

0008663384511004
[Doc ID #]

23991

DOC ID #: 00086633845110O4

THIS FIXED/ADJUSTABLE RATE RIDER is made this TWELFTH day of NOVEMBER, 2004 , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to COUNTRYWIDE HOME LOANS, INC.
("Lender") of the same date and covering the property described in the Security Instrument and located at:
133 MCLAREN STREET, HENDERSON, NV 89074-0916
[Property Address]

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of 5.000 %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of DECEMBER, 2009 , and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for twelve month U.S. dollar-denominated deposits in the London market, as published in *The Wall Street Journal*. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index".

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO & ONE-QUARTER percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.000 % or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 10.000 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall read as follows:

> **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.
>
> If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.
>
> If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be amended to read as follows:

> **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.

_____ (Seal)
CHARLES J WIGHT -Borrower

_____ (Seal)
TARA J. WIGHT -Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

PLANNED UNIT DEVELOPMENT RIDER

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

PARCEL ID #:
178-16-215-068

Prepared By:
JEANETTE HUTSON

5120003256-KLS
[Escrow/Closing #]

00086633845110004
[Doc ID #]

THIS PLANNED UNIT DEVELOPMENT RIDER is made this TWELFTH day of NOVEMBER, 2004 , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the

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DOC ID #: 0008663384511004

undersigned (the "Borrower") to secure Borrower's Note to
COUNTRYWIDE HOME LOANS, INC.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

133 MCLAREN STREET
HENDERSON, NV 89074-0916
[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in
THE COVENANTS, CONDITIONS, AND RESTRICTIONS FILED OF RECORD
THAT AFFECT THE PROPERTY

(the "Declaration"). The Property is a part of a planned unit development known as
HILLPOINTE PARK MAINTENANCE

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

Initials:

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

Initials:

DOC ID #: 0008663384511004

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

CHARLES J. WIGHT (Seal) - Borrower

TARA J. WIGHT (Seal) - Borrower

(Seal) - Borrower

(Seal) - Borrower

SECOND HOME RIDER

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

PARCEL ID #:
178-16-215-068

Prepared By:
JEANETTE HUTSON

5120003256-KLS
[Escrow/Closing #]

00086633845110004
[Doc ID #]

MULTISTATE SECOND HOME RIDER - Single Family - **Fannie Mae/Freddie Mac UNIFORM INSTRUMENT**

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DOC ID #: 00086633845110O4

THIS SECOND HOME RIDER is made this TWELFTH day of NOVEMBER, 2004 , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower" whether there are one or more persons undersigned) to secure Borrower's Note to

COUNTRYWIDE HOME LOANS, INC.

(the "Lender") of the same date and covering the Property described in the Security Instrument (the "Property"), which is located at:

133 MCLAREN STREET, HENDERSON, NV 89074-0916

[Property Address]

In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree that Sections 6 and 8 of the Security Instrument are deleted and are replaced by the following:

6. Occupancy. Borrower shall occupy, and shall only use, the Property as Borrower's second home. Borrower shall keep the Property available for Borrower's exclusive use and enjoyment at all times, and shall not subject the Property to any timesharing or other shared ownership arrangement or to any rental pool or agreement that requires Borrower either to rent the Property or give a management firm or any other person any control over the occupancy or use of the Property.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's second home.

DOC ID #: 0008663384511004

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this Second Home Rider.

_____ (Seal)
CHARLES J. WIGHT -Borrower

_____ (Seal)
TARA J. WIGHT -Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

Order No. : 5120003256-KLS

EXHIBIT "A"

The land referred to is situated in the State of Nevada, County of Clark, City of Henderson, and is described as follows:

PARCEL I:

Lot Two (2) in Block Two (2) of SKYVIEW, as shown by map thereof on file in Book 47 of Plats, Page 69, in the Office of the County Recorder of Clark County, Nevada and as amended by Certificate of Amendment recorded November 1, 1990 in Book 901101 of Official Records, Clark County, Nevada records as Document No. 00544 and as amended by Certificate of Amendment recorded February 28, 1991 in Book 910228 as Document No. 01623.

PARCEL II:

A non-exclusive easement for ingress, egress and of enjoyment in and to the Common Area set forth and defined in the Declaration of Covenants, Conditions and Restrictions and Grant of Easements for Hillpointe Park Maintenance District, recorded January 25, 1991 in Book 910125 as Document No. 00894, as the same may from time to time be amended and/or supplemented of Official Records.

EXHIBIT 2

EXHIBIT 2

Inst #: 201305280000641
Fees: $18.00
N/C Fee: $0.00
05/28/2013 08:11:14 AM
Receipt #: 1630761
Requestor:
NATIONWIDE TITLE CLEARING
Recorded By: CYV Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

I hereby affirm that this document submitted for recording does not contain a social security number.

Signed: _____
NADINE HOMAN
ASST. SECRETARY

Parcel#:178-16-215-068

When Recorded Mail To:
Green Tree Servicing LLC
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

Loan #: 68231133

CORPORATE ASSIGNMENT OF DEED OF TRUST

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC., ITS SUCCESSORS AND ASSIGNS, WHOSE ADDRESS IS PO BOX 2026, FLINT, MI, 48501, (ASSIGNOR),** by these presents does convey, grant, assign, transfer and set over the described Deed of Trust together with all interest secured thereby, all liens, and any rights due or to become due thereon to **GREEN TREE SERVICING LLC, WHOSE ADDRESS IS 7360 SOUTH KYRENE ROAD, T314, TEMPE, AZ 85283 (800)643-0202, A DELAWARE CORPORATION, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE).**

Said Deed of Trust is dated , made by **CHARLES J. WIGHT AND TARA J. WIGHT** and recorded as Instrument # 20041123-0002449, and/or Book , Page , in the Recorder's office of CLARK County, Nevada.

Dated this 16th day of May in the year 2013
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC., ITS SUCCESSORS AND ASSIGNS

By: _____
NADINE HOMAN
ASST. SECRETARY

All Authorized Signatories whose signatures appear above are employed by **NTC** and have reviewed this document and supporting documentation prior to signing.

GTSAV 20225711 -- FNMA MIN 100015700043943683 MERS PHONE 1-888-679-6377 DOCR
T1613055309 [C] EFRMNV1

Parcel#:178-16-215-068
Loan #: 68231133

STATE OF FLORIDA
COUNTY OF PINELLAS
The foregoing instrument was acknowledged before me on this 16th day of May in the year 2013, by Nadine Homan as ASST. SECRETARY for MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC., ITS SUCCESSORS AND ASSIGNS, who, as such ASST. SECRETARY being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.

REGINA D. FARRELL- NOTARY PUBLIC
COMM EXPIRES: 3/1/2014

Regina D. Farrell
Notary Public State of Florida
My Commission # DD 966361
Expires March 1, 2014
BONDED THRU NOTARY PUBLIC UNDERWRITERS

Document Prepared By: E.Lance/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152
GTSAV 20225711 -- FNMA MIN 100015700043943683 MERS PHONE 1-888-679-6377 DOCR T1613055309 [C] EFRMNV1

EXHIBIT 3

EXHIBIT 3

Inst #: 201101140001247
Fees: $14.00
N/C Fee: $0.00
01/14/2011 09:05:00 AM
Receipt #: 642767
Requestor:
NORTH AMERICAN TITLE COMPAN
Recorded By: MJM Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN # 178-16-215-068
N64181
Accommodation

NOTICE OF DELINQUENT ASSESSMENT LIEN

In accordance with Nevada Revised Statutes and the Association's declaration of Covenants Conditions and Restrictions (CC&Rs), recorded on January 25, 1991, as instrument number 00894 Book 910125, of the official records of Clark County, Nevada, the Hillpointe Park Maintenance has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as 133 Mclaren Street Henderson, NV 89074 and more particularly legally described as: SKYVIEW, PLAT BOOK 47, PAGE 69, LOT 2, BLOCK 2 in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are):
WIGHT, CHARLES J & TARA J

Mailing address(es):
135 Leverett Ave, Statten Island, NY 10308
135 Leverett Ave, Statten Island, NY 10308

*Total amount due through today's date is $1,286.00.
This amount includes late fees, collection fees and interest in the amount of $907.00.

* Additional monies will accrue under this claim at the rate of the claimant's regular assessments or special assessments, plus permissible late charges, costs of collection and interest, accruing after the date of the notice.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Dated: January 11, 2011

Autumn Fesel
By: Autumn Fesel, of Nevada Association Services, Inc., as agent for Hillpointe Park Maintenance.

When Recorded Mail To:
Nevada Association Services, Inc.
TS #N64181
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
Phone: (702) 804-8885 Toll Free: (888) 627-554

EXHIBIT 4

EXHIBIT 4

(2)

APN # 178-16-215-068
NAS # N64181
North American Title # 34157
PropertyAddress: 133 Mclaren Street

Inst #: 201109090000728
Fees: $15.00
N/C Fee: $0.00
09/09/2011 09:11:46 AM
Receipt #: 907765
Requestor:
NORTH AMERICAN TITLE COMPAN
Recorded By: GILKS Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

IMPORTANT NOTICE

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

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION and you may have the legal right to bring your account in good standing by paying all your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. No sale date may be set until ninety (90) days from the date this notice of default was mailed to you. The date this document was mailed to you appears on this notice.

This amount is $2,149.00 as of September 06, 2011 and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and Restrictions. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property or pay other obligations as required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and Restrictions, the Hillpointe Park Maintenance (the Association) may insist that you do so in order to reinstate your account in good standing. In addition, the Association may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes and hazard insurance premiums.

Upon your request, this office will mail you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your Association may mutually agree in writing prior to the foreclosure sale to, among other things, 1) provide additional time in which to cure the default by transfer of the property or otherwise; 2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your Association permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your Association.

To find out about the amount you must pay, or arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact: Nevada Association Services, Inc. on behalf of Hillpointe Park Maintenance, 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146. The phone number is (702) 804-8885 or toll free at (888) 627-5544.

If you have any questions, you should contact a lawyer or the Association which maintains the right of assessment on your property.

NAS # N64181

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN THAT NEVADA ASSOCIATION SERVICES, INC.

is the duly appointed agent under the previously mentioned Notice of Delinquent Assessment Lien, with the owner(s) as reflected on said lien being WIGHT, CHARLES J & TARA J, dated January 11, 2011, and recorded on January 14, 2011 as instrument number 0001247 Book 20110114 in the official records of Clark County, Nevada, executed by Hillpointe Park Maintenance, hereby declares that a breach of the obligation for which the Covenants Conditions and Restrictions, recorded on January 25, 1991, as instrument number 00894 Book 910125, as security has occurred in that the payments have not been made of homeowner's assessments due from November 01, 2009 and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, trustee's fees and costs, attorney's fees and costs and Association fees and costs.

That by reason thereof, the Association has deposited with said agent such documents as the Covenants Conditions and Restrictions and documents evidencing the obligations secured thereby, and declares all sums secured thereby due and payable and elects to cause the property to be sold to satisfy the obligations.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Nevada Associations Services, Inc., whose address is 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146 is authorized by the association to enforce the lien by sale.

Legal_Description: SKYVIEW, PLAT BOOK 47, PAGE 69, LOT 2, BLOCK 2 in the County of Clark

Dated: September 06, 2011

Autumn Fesel

By: Autumn Fesel, of Nevada Association Services, Inc.
on behalf of Hillpointe Park Maintenance

When Recorded Mail To:
Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
(702) 804-8885
(888) 627-5544

EXHIBIT 5

EXHIBIT 5

Inst #: 201310290003584
Fees: $18.00
N/C Fee: $0.00
10/29/2013 03:32:39 PM
Receipt #: 1825707
Requestor:
TITLE SOLUTIONS, INC.
Recorded By: MSH Pge: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING COVER PAGE
(Must be typed or printed clearly in BLACK ink only and avoid printing in the 1" margins of document)

APN# 178-16-215-068

(11 digit Assessor's Parcel Number may be obtained at: http://redrock.co.clark.nv.us/assrealprop/ownr.aspx)

TITLE OF DOCUMENT
(DO NOT Abbreviate)

Notice of Foreclosure Sale

Document Title on cover page must appear EXACTLY as the first page of the document to be recorded.

RECORDING REQUESTED BY:

Nevada Association Services

RETURN TO: Name Nevada Association Services

Address 6224 W. Desert Inn Road

City/State/Zip Las Vegas, NV 89146

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name

Address

City/State/Zip

This page provides additional information required by NRS 111.312 Sections 1-2.
An additional recording fee of $1.00 will apply.
To print this document properly—do not use page scaling.

APN # 178-16-215-068
Hillpointe Park Maintenance

NAS # N64181

NOTICE OF FORECLOSURE SALE

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 NEVADA ASSOCIATION SERVICES, INC. AT (702) 804-8885. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

YOU ARE IN DEFAULT UNDER A DELINQUENT ASSESSMENT LIEN, January 11, 2011. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE IS HEREBY GIVEN THAT on 11/22/2013 at 10:00 am at the front entrance to the Nevada Association Services, Inc. 6224 West Desert Inn Road, Las Vegas, Nevada, under the power of sale pursuant to the terms of those certain covenants conditions and restrictions recorded on January 25, 1991 as instrument number 00894 Book 910125 of official records of Clark County, Nevada Association Services, Inc., as duly appointed agent under that certain Delinquent Assessment Lien, recorded on January 14, 2011 as document number 0001247 Book 20110114 of the official records of said county, will sell at public auction to the highest bidder, for lawful money of the United States, all right, title, and interest in the following commonly known property known as: 133 Mclaren Street, Henderson, NV 89074. Said property is legally described as: SKYVIEW, PLAT BOOK 47, PAGE 69, LOT 2, BLOCK 2, official records of Clark County, Nevada.

The owner(s) of said property as of the date of the recording of said lien is purported to be: WIGHT, CHARLES J & TARA J

The undersigned agent disclaims any liability for incorrectness of the street address and other common designations, if any, shown herein. The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, or encumbrances, or obligations to satisfy any secured or unsecured liens. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is $2,667.87. Payment must be in cash or a cashier's check drawn on a state or national bank, check drawn on a state or federal savings and loan association, savings association or savings bank and authorized to do business in the State of Nevada. The Notice of Default and Election to Sell the described property was recorded on 9/9/2011 as instrument number 0000728 Book 20110909 in the official records of Clark County.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

October 25, 2013

Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146 (702) 804-8885, (888) 627-5544

When Recorded Mail To:
Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146

By: Elissa Hollander, Agent for Association and employee of Nevada Association Services, Inc.

EXHIBIT 6

EXHIBIT 6

Inst #: 201311260001363
Fees: $18.00 N/C Fee: $25.00
RPTT: $576.30 Ex: #
11/26/2013 10:00:11 AM
Receipt #: 1854985
Requestor:
RESOURCES GROUP
Recorded By: ANI Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

Please mail tax statement and
when recorded mail to:
Saticoy Bay LLC Series 133 McLaren
P.O. Box 36208
Las Vegas, NV 89133

FORECLOSURE DEED

APN # 178-16-215-068
North American Title #45010-11-34157 / N64181

NAS # N64181

The undersigned declares:

Nevada Association Services, Inc., herein called agent (for the Hillpointe Park Maintenance), was the duly appointed agent under that certain Notice of Delinquent Assessment Lien, recorded January 14, 2011 as instrument number 0001247 Book 20110114, in Clark County. The previous owner as reflected on said lien is WIGHT, CHARLES J & TARA J. Nevada Association Services, Inc. as agent for Hillpointe Park Maintenance does hereby grant and convey, but without warranty expressed or implied to: Saticoy Bay LLC Series 133 McLaren (herein called grantee), pursuant to NRS 116.31162, 116.31163 and 116.31164, all its right, title and interest in and to that certain property legally described as: SKYVIEW, PLAT BOOK 47, PAGE 69, LOT 2, BLOCK 2 Clark County

AGENT STATES THAT:
This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Hillpointe Park Maintenance 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 9/9/2011 as instrument # 0000728 Book 20110909 which was recorded in the office of the recorder of said county. Nevada Association Services, 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. Said property was sold by said agent, on behalf of Hillpointe Park Maintenance at public auction on 11/22/2013, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale, became the purchaser of said property and paid therefore to said agent the amount bid $10,200.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: November 25, 2013

Misty Blanchard

By Misty Blanchard, Agent for Association and Employee of Nevada Association Services

STATE OF NEVADA)
COUNTY OF CLARK)

On November 25, 2013, before me, Susana E. Puckett, personally appeared Misty Blanchard personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and seal.

(Seal)

SUSANA E. PUCKETT
Notary Public, State of Nevada
Appointment No. 11-4905-1
My Appt. Expires April 21, 2015

(Signature)

Susana E Puckett

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 178-16-215-068
   b. _____
   c. _____
   d. _____

2. Type of Property:
   a. ☐ Vacant Land b. ☑ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other

FOR RECORDERS OPTIONAL USE ONLY
Book _____ Page: _____
Date of Recording: _____
Notes:

3.a. Total Value/Sales Price of Property $ 10,200.00
b. Deed in Lieu of Foreclosure Only (value of property) ( )
c. Transfer Tax Value: $ 112,886.00
d. Real Property Transfer Tax Due $ 576.30

4. **If Exemption Claimed:**
   a. Transfer Tax Exemption per NRS 375.090, Section _____
   b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature Misty Blanchard Capacity: Agent for HOA/NAS Employee

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION (REQUIRED)
Print Name: Nevada Association Services
Address: 6224 W. Desert Inn Road
City: Las Vegas
State: Nevada Zip: 89146

BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Saticoy Bay LLC Series 133 McLaren
Address: P.O. Box 36208
City: Las Vegas
State: Nevada Zip: 89133

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)
Print Name: SATICOY BAY LLC SERIES 133 MCLAREN Escrow #
Address: P O Box 36208
City: LV State: NV Zip: 89133

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Electronically Filed
02/21/2014 01:33:42 PM

CLERK OF THE COURT

OPPS
MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
KELLY M. PERRI, ESQ.
Nevada Bar No. 13220
kperri@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX

Attorney for plaintiff, Saticoy Bay LLC Series 133 McLaren

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 133 MCLAREN, Plaintiff, vs. GREEN TREE SERVICING LLC; THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK,AS SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS MASTER TRUST, REVOLVING HOME EQUITY LOAN ASSET BACKED NOTES, SERIES 2004-T; NATIONAL DEFAULT SERVICING CORPORATION; CTC REAL ESTATE SERVICES; CHARLES J. WIGHT; AND TARA J. WIGHT, Defendants.	CASE NO.: A693882 DEPT NO.: XV Date of hearing: March 19, 2014 Time of hearing: 9:00 a.m.

OPPOSITION TO MOTION TO DISMISS; and COUNTERMOTION TO STAY CASE

Plaintiff, Saticoy Bay LLC Series McLaren, by and through it's attorney, Michael F. Bohn, Esq., opposes the motion to dismiss and countermoves to stay this case as follows.

FACTS

Plaintiff is the owner of the real property commonly known as 133 McLaren Street, Henderson,

Nevada. Plaintiff obtained title by foreclosure deed recorded November 26, 2013. A copy of the deed is Exhibit 1. The plaintiff's title stems from a foreclosure deed arising from a delinquency in assessments due from the former owners, Charles J. Wight and Tara J. Wight, to the Hillpointe Park Maintenance, pursuant to NRS Chapter 116.

Green Tree Servicing LLC is the beneficiary of a deed of trust which was recorded as an encumbrance to the subject property on November 23, 2004.

Defendants Charles J. Wight and Tara J. Wight are the former owners of the subject real property.

The interest of each of the defendants has been extinguished by reason of the foreclosure sale resulting from a delinquency in assessments due from the former owners, Charles J. Wight and Tara J. Wight to the Hillpointe Park Maintenance, pursuant to NRS Chapter 116.

Defendant Green Tree Servicing, LLC has filed this motion to dismiss. However, the HOA foreclosure has extinguished any interest that the defendant had in the property, and the motion to dismiss should be denied.

POINTS AND AUTHORITIES

I. OPPOSITION TO MOTION TO DISMISS

I. Standards on a motion to dismiss

In the case of Vacation Village, Inc. v. Hitachi America, Ltd., 110 Nev. 481, 874 P.2d 744 (1994) the Supreme Court stated:

> The standard of review for a dismissal under NRCP 12(b)(5) is rigorous as this court " 'must construe the pleading liberally and draw every fair intendment in favor of the [non-moving party].' " Squires v. Sierra Nev. Educational Found., 107 Nev. 902, 905, 823 P.2d 256, 257 (1991) (quoting Merluzzi v. Larson, 96 Nev. 409, 411, 610 P.2d 739, 741 (1980)). All factual allegations of the complaint must be accepted as true. Capital Mortgage Holding v. Hahn, 101 Nev. 314, 315, 705 P.2d 126 (1985). A complaint will not be dismissed for failure to state a claim "unless it appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him [or her] to relief." Edgar v. Wagner, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985) (citing Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957)).

The defendant here has brought a motion to dismiss. However, the defendant has also alleged certain facts involving the transactions in questions, making the granting of a motion to dismiss improper.

/ / /

2. NRS 116.3116 granted to the HOA a super priority lien that takes priority over the defendant's deed of trust.

NRS 116.3116 provides in part:

Liens against units for assessments.

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. (emphasis added)

By its clear terms, NRS 116.3116 (2) provides that the super-priority lien for 9 months of charges is "prior to all security interests described in paragraph (b)." The deed of trust held by defendant falls squarely within the language of paragraph (b). The statutory language does not limit the nature of this "priority" in any way.

When the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it. City Council of Reno v. Reno Newspapers, 105 Nev. 886, 891, 784 P.2d 974, 977 (1989). Additionally, courts must construe statutes to give meaning to all of their parts and language, and courts are to read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation. Board of County Comm'rs v. CMC of Nevada, 99 Nev. 739, 744, 670 P.2d 102, 105 (1983). A statute should be interpreted to give the terms their plain meaning, considering the provisions as a whole, so as to read them in a way that would not render words or phrases superfluous or make a provision nugatory. Southern Nevada Homebuilders v. Clark County 121 Nev. 446, 117 P.3d 171 (2005). A statute should be construed so that no part is rendered meaningless. Public Employees' Benefits Program v. Las Vegas Metropolitan Police Department 124 Nev. 138, 179 P.3d 542 (2008). Statutes must construed so as to avoid absurd results. In re Orpheus Trust 124 Nev. 170, 179 P.3d 562 (2008); Hunt v. Warden, 111 Nev. 1284, 903 P.2d 826 (1995).

The 9 month period in which the associations' lien is granted priority is commonly referred to as the "super priority" lien. In the case of State Department of Business and Industry v. Nevada Association Services, 128 Nev. Adv. Op. 34 (2012) the Supreme Court stated in a footnote defining "super priority" that:

> Priority status over certain types of encumbrances is granted to liens against units for delinquent assessments. NRS 116.3116(2); NRS 116.093 (defining "unit").

The plain language of the statute is that this 9 months "super priority" lien of the association has priority over trust deeds. The statute is written in the negative. It first lists three categories of liens and encumbrances which the association's lien is not prior to:

> "A lien under this section is prior to all other liens and encumbrances on a unit except:"
>
> The statute then lists the three categories as
>
> (a) liens recorded before the CC & R's,
> (b) mortgage liens, and
> (c) liens for taxes and other governmental assessments or charges.

In the same paragraph, the statute then states that the "super priority" lien takes priority over "all security interests" described in paragraph (b), which exactly describes the first mortgage lien asserted by Respondent. The relevant portion of the statute states:

> 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 . . . .and to the extent of the assessments for common expenses . . . .which would have become due in the absence of acceleration

during the 9 months immediately preceding institution of an action to enforce the lien....

The statute specifies that the 9 month super priority lien is not "prior to" liens recorded before the CC&Rs or liens for real estate taxes and other governmental charges or charges. The only liens which are subject to the "super priority" exception are mortgage liens like the one held by Defendant.

3. **The HOA's foreclosure of it's super priority lien at the foreclosure sale held on November 22, 2013 extinguished the deed of trust held by Defendant.**

It is hornbook law that foreclosure of a superior lien extinguishes all junior liens. See McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC 121 Nev. 812, 123 P.3d 748 (2005); Brunzell v. Lawyers Title Ins. Co. 101 Nev. 395, 705 P.2d 642 (1985); Aladdin Heating Corp. v. Trustees of Central States 93 Nev. 257, 563 P.2d 82 (1977); and Erickson Construction Co. v. Nevada National Bank, 89 Nev. 359, 513 P.2d 1236 (1973). At the time the HOA foreclosed it's "super priority" lien, all junior liens, which would include the defendant/defendant's formerly first mortgage lien, were extinguished.

This interpretation is the only rational, logical interpretation that would not lead to absurd results. The only way to make sure that the HOA gets payment from the first is if the first is in danger of losing it's security. This is exactly the same situation as when a junior mortgage holder seeks to protect it's security interest from foreclosure by a senior mortgage holder.

In the case of State Department of Business and Industry v. Nevada Association Services, 128 Nev. Adv. Op. 34 (2012), the Supreme Court upheld an injunction prohibiting the State Department of Business and Industry, Financial Institutions Division from enforcing it's declaratory order and advisory opinion regarding the amount of HOA lien fees associations could collect. The Supreme Court held that the Financial Institutions Division did not have jurisdiction or authority to interpret NRS Chapter 116, but that this jurisdiction and authority rested with the Real Estate Division. The decision states in part:

> The language of NRS 116.615 and NRS 116.623 is clear and unambiguous. . . . . Based on a plain, harmonized reading of these statutes, the responsibility of determining which fees may be charged, the maximum amount of such fees, **and whether they maintain a priority,** rests with the Real Estate Division and the CCICCH.
>
> . . . .
>
> **We therefore determine that the plain language of the statutes requires that the CCICCH and the Real Estate Division, and no other commission or division, interpret NRS Chapter 116.** Consequently, the Department lacked jurisdiction to issue an advisory opinion interpreting NRS Chapter 116. Therefore, the district court did not abuse its discretion in determining that NAS had a likelihood of success on the merits.
>
> . . . .

> We therefore determine that the plain language of the statutes requires that the CCICCH and the Real Estate Division, and no other commission or division, interpret NRS Chapter 116.. . . (emphasis added)

The Supreme Court specifically noted that the responsibility to determine whether the fees "maintain a priority" rests with the Real Estate Division. In response to this decision, the Real Estate Division issued it's opinion interpreting NRS 116.3116. A copy of the opinion is Exhibit 2.

Section II of the opinion, cites to a portion of Section 2 to the commentary from the drafters of the Uniform Common-Interest Ownership Act (UCIOA).

The opinion letter from the Real Estate Division states, beginning on page 8:

> NRS 116.3116(2) provides that the association's lien is prior to all other liens recorded against the unit *except:* liens recorded against the unit before the declaration; first security interests (first deeds of trust); and real estate taxes or other governmental assessments. There is one exception to the exceptions, so to speak, when it comes to priority of the association's lien. This exception makes a portion of an association's lien prior to the first security interest. The portion of the association's lien given priority status to a first security interest is what is referred to as the "super priority lien" to distinguish it from the other portion of the association's lien that is subordinate to a first security interest.
>
> The ramifications of the super priority lien are significant in light of the fact that superior liens, when foreclosed, remove all junior liens. **An association can foreclose its super priority lien and the first security interest holder will either pay the super priority lien amount or lose its security.** NRS 116.3116 is found in the Uniform Act at § 3-116. Nevada adopted the original language from § 3-116 of the Uniform Act in 1991. From its inception, the concept of a super priority lien was a novel approach. The Uniform Act Comments to §3-116 state:
>
> > [A]s to prior first security interests, the association's lien does have priority for 6 months' assessments based on the periodic budget. A significant department from existing practice, the 6 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. As a practical matter, secured lenders will most likely pay the 6 months's assessments demanded by the association rather than having the association foreclose on the unit. If the mortgage lender wishes, an escrow for assessments can be required.
>
> This comment on § 3-116 illustrates the intent to allow for 6 months of assessments to be prior to a first security interest. The reason this was done was to accommodate the association's need to enforce collection of unpaid assessments. The controversy surrounding the super priority lien is in defining its limit. This is an important consideration for an association looking to enforce its lien. **There is little benefit to an association if it incurs expenses pursuing unpaid assessments that will be eliminated by an imminent foreclosure of the first security interest. As stated in the comment, it is also likely that the holder of the first security interest will pay the super priority**

lien amount to avoid foreclosure by the association. (emphasis added)

The Supreme Court has repeatedly held that courts should attach substantial weight to an administrative body's interpretation of statutes which it is charged to enforce. Folio v. Briggs 99 Nev. 30, 656 P.2d 842 (1983); Sierra Pacific Power Co. v. Department of Taxation 96 Nev. 295, 607 P.2d 1147 (1980); Clark County School District v. Local Government Employee Management Relations Board 90 Nev. 442, 530 P.2d 114 (1974).

The Supreme Court has frequently stated that when interpreting a statute, the court should review the legislative history to determine the Legislature's intent. State v. Tricas 128 Nev. Ad. Op. 62, 290 P.3d 255 (2012); Gold Ridge Partners v. Sierra Pacific Power Co. 128 Nev. Adv. Op. 47, 285 P.3d 1059 (2012).

Chapter 116 of the Nevada Revised Statutes is derived from the Uniform Common-Interest Ownership Act (UCIOA). The Supreme Court has referred to NRS Chapter 116 and to the Uniform Act in interpreting other provisions of NRS Chapter 116 in a number of cases. For example in Holcomb Condominium HOA v. Stewart Venture LLC 129 Nev. Adv. Op. 18 (2013), the Supreme Court stated "the term 'separate instrument' is not defined in NRS Chapter 116 or the Uniform Common-Interest Ownership Act (UCIOA)."

In Beazer Homes Holding Corp. v. District Court ,128 Nev. Adv. Op. 66, 291 P.3d 128 (2012), the Supreme Court stated "the commentary to the Restatement (Third) of Property, section 6.11, which mirrors section 3-102 of the Uniform Common-Interest Ownership Act, upon which NRS 116.3102 is based."

In Boulder Oaks Community Association v. B&J Andrews 125 Nev. 397, 215 P.3d 27 (2009), the Supreme Court stated "...NRS Chapter 116 is Nevada's version of the Uniform Common-Interest Ownership Act (UCIOA).

Section 2 to the commentary from the drafters of the uniform act is the relevant portion pertaining to the "super priority" lien, and was cited in the opinion letter from the Real Estate Division. The entirety of section 2 reads:

> 2. To ensure prompt and efficient enforcement of the association's lien for un-paid assessments, such liens should enjoy statutory priority over most other liens. Accordingly, subsection (a) provides that the associations's lien takes priority over all other liens and encumbrances except those recorded prior to the recordation of the declaration, those imposes for real estate taxes or other governmental assessments or charges against the unit, and first mortgages recorded before the date the assessment became delinquent.

> However, as to prior first mortgages, the association's lien does have priority for 6 months' assessments based on the periodic budget. A significant department from existing practice, the 6 months's 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 mortgage lenders. **As a practical matter, mortgage lenders will most likely pay the 6 months's assessments demanded by the association rather than having the association foreclose on the unit. If the mortgage lender wishes, an escrow for assessments can he required. Since this provision may conflict with the provisions of some state statutes which forbid some lending institutions from making loans not secured by first priority liens, the law of each state should be reviewed and amended when necessary.** (emphasis added)

This language clearly shows the intent for the HOA lien to have priority over the first mortgage holder. Why else would the mortgage lender pay the assessments rather than have the unit go to foreclosure? Why else would the various state statutes have to be amended when necessary? Simply because the holder of the first would lose it's priority to the HOA lien.

The committee notes also state that the lender could provide for an escrow for assessments. This is commonly done for taxes and insurance. The language of the deed of trust specifically makes provisions for escrow of assessment payments.

Carl Lisman, Esq., who was one of the drafters of the original model law, has recently issued an opinion letter which states, in part, that it was the intent of the drafters that the mortgage holder's lien would be extinguished by foreclosure of the "super-priority" lien. A copy of the letter is Exhibit 3.

The Legislative Counsel Bureau has also issued an opinion letter that the effect of the statute is that foreclosure on the "super-priority" lien by an HOA extinguishes the mortgage holder's lien. A copy of that letter is Exhibit 4.

Fannie Mae REQUIRES that mortgage lenders to pay the association liens because it recognizes that the HOA lien has priority. A copy of the Servicing Guide Announcement dated June 10, 2011 is Exhibit 5. The servicing guide, page 302-2 provides in part:

> .... Generally, the borrower will pay special assessments directly, but if he or she fails to do so, the servicer must advance it's own funds to pay them if that is necessary to protect the priority of Fannie Mae's lien. ...
> When the HOA of a PUD or condo project notifies the servicer that a borrower is 60 days delinquent in the payment of assessments or charges levied by the association, the servicer should advance the funds to pay the charges if necessary to protect the priority of Fannie Mae's mortgage lien. If the project is located in a state that has adopted the Uniform Condominium Act (UCA), the Uniform Common Interest Ownership Act (UCIOA), or similar statute that provides for up to six months of delinquent regular condo assessments to have lien priority over the six months of such advances....

Fannie Mae certainly recognizes that a number of states have statutes which provide limited priority for HOA assessments and is requiring it's servicers to protect the priority of it's loans.

4. A reported decision supports the plaintiff's position

The court of appeals for the State of Washington in the case of Summerhill Village Homeowners Association v. Roughley, 289 P.3d 645 (2012) has recently ruled that under the similar Washington state version of the UCIOA that foreclosure of the priority lien of an association extinguishes the outstanding deeds of trust. The Washington State statute, 64.34.364. provides, in relevant part:

> **Lien for assessments**
>
> (1) The association has a lien on a unit for any unpaid assessments levied against a unit from the time the assessment is due.
>
> (2) A lien under this section shall be prior to all other liens and encumbrances on a unit except: (a) Liens and encumbrances recorded before the recording of the declaration; (b) a mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental assessments or charges against the unit. A lien under this section is not subject to the provisions of chapter 6.13 RCW.
>
> (3) Except as provided in subsections (4) and (5) of this section, the lien shall also be prior to the mortgages described in subsection (2)(b) of this section to the extent of assessments for common expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the association pursuant to RCW 64.34.360(1) which would have become due during the six months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure by either the association or a mortgagee, the date of a trustee's sale in a nonjudicial foreclosure by a mortgagee, or the date of recording of the declaration of forfeiture in a proceeding by the vendor under a real estate contract.
>
> (4) The priority of the association's lien against units encumbered by a mortgage held by an eligible mortgagee or by a mortgagee which has given the association a written request for a notice of delinquent assessments shall be reduced by up to three months if and to the extent that the lien priority under subsection (3) of this section includes delinquencies which relate to a period after such holder becomes an eligible mortgagee or has given such notice and before the association gives the holder a written notice of the delinquency. 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.
>
> (5) If the association forecloses its lien under this section nonjudicially pursuant to chapter 61.24 RCW, as provided by subsection (9) of this section, the association shall not be entitled to the lien priority provided for under subsection (3) of this section.

The biggest difference between the Nevada statute and the Washington state statute is that in Washington, the HOA has to conduct a judicial foreclosure to keep it's priority. The Washington Court of Appeals ruled that the HOA lien was prior to the first mortgage holder and that the foreclosure sale of the HOA lien extinguished the security interest of the mortgage holder. The court stated:

The term "mortgage" includes a deed of trust. Thus, a condominium association's lien for common expense assessments has limited priority over deeds of trust recorded before the lien arises. This is often termed "super priority."

¶ 10 The official comments to RCW 64.34.364 reveal the expectation of the legislature: "As a practical matter, mortgage lenders will most likely pay the assessments demanded by the association which are prior to its mortgage rather than having the association foreclose on the unit and eliminate the lender's mortgage lien." [FN6]

> FN6. 2 SENATE JOURNAL, 51st Leg., Reg., 1st & 2nd Spec. Sess., at 2080 (Wash.1990); *see also* 1 SENATE JOURNAL, 51st Leg. Sess., Reg. Sess., at 376 (Wash.1990). It appears the Senate adopted the Washington State Bar Association comments, which are substantially identical to the official comments to the Uniform Condominium Act concerning this section.

> ¶ 11 Therefore, under the statute, Summerhill's 2008 assessment lien had priority over the 2006 deed of trust to the extent of Summerhill's assessments for common expenses. Deutsche Bank's predecessor, MERS, was included in and notified of the foreclosure action, but GMAC, as the loan servicer, did not facilitate payment of the assessment lien prior to the sheriffs sale. **The sale extinguished the 2006 deed of trust**. The question now is whether Deutsche Bank can redeem. (emphasis added).

In a case involving an HOA lien from the state of Virginia, Board of Directors v. Wachovia Bank 581 S.E. 2d 201 (Va. 2003), the court held that the bank's mortgage lien had priority over the lien held by the HOA. In that case, however, the Virginia statute specifically held that the mortgage lien had priority. The statute in question provides:

> 55-79.84. Lien for assessments
>
> A. The unit owners' association shall have a lien on every condominium unit for unpaid assessments levied against that condominium unit in accordance with the provisions of this chapter and all lawful provisions of the condominium instruments. **The said lien, once perfected, shall be prior to all other liens and encumbrances except** (i) real estate tax liens on that condominium unit, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) **sums unpaid on any first mortgages or first deeds of trust recorded prior to the perfection of said lien for assessments and securing institutional lenders.** The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens. (emphasis added)

If the Nevada legislature wanted to be clear that the bank's lien would survive the foreclosure of the HOA's super priority lien, it could have specifically stated so in the Nevada statute. Instead, the clear language of the Nevada statute is that the nine month "super priority lien" has priority over defendant's first deed of trust.

The advisory opinion of the Real Estate Division is consistent with the plain language of the statute, the intent of the statute as demonstrated by the committee advisory notes, and the judicial decision

from the state of Washington interpretation as a substantially similar statute. The plaintiff's title should be found to be free and clear of any lien or encumbrances asserted by defendant.

5. The HOA was not required to file a civil action to enforce it's super priority lien.

The Summerhill case is cited for the proposition that the foreclosure of the HOA lien extinguishes the first mortgage lien. A number of district court judges have relied on the Summerhill case to claim that the HOA lien must be foreclosed upon by judicial foreclosure. By its terms, NRS 116.3116(2)(c) does not require the filing of a "judicial" action; it only requires "institution of an action to enforce the lien."

There is no provision for judicial foreclosure of HOA liens in NRS Chapter 116. Foreclosure of liens under NRS Chapter 116 is also specifically excepted from the statutory scheme for judicial foreclosures under Chapter 40. NRS 40.433 states:

> **"Mortgage or other lien" defined**. As used in NRS 40.430 to 40.459, inclusive, unless the context otherwise requires, a "mortgage or other lien" includes a deed of trust, but **does not include a lien which arises pursuant to chapter 108 of NRS, pursuant to an assessment under chapter 116, 117, 119A or 278A of NRS or pursuant to a judgment or decree of any court of competent jurisdiction.** (emphasis added).

Also included in NRS Chapter 40 is the statute commonly referred to as the "one action rule, " NRS 40.430(1) which begins "there may be but one action for the recovery of any debt, or for the enforcement of any right secured by a mortgage or other lien upon real estate...." The one action rule permits only one action for the recovery of any debt or the enforcement of any right secured by a mortgage or other lien. The statute define a list of actions which a beneficiary may take which do not violate the one action rule, including non-judicial foreclosure. The non-judicial foreclosure is referred to as an "action" but it clearly is not a "civil action."

The Supreme Court has already rejected the argument that an "action" must be a civil action. In the case of Hamm v. Arrowcreek Homeowners Association 124 Nev. 290, 183 P.3d 895 (2008), the Supreme Court stated:

> NRS 116.3116(1) provides that liens exist when assessments are due, regardless of any classification. **Thus, an association is not required to commence a civil action to record or perfect the lien, which already exists once assessments are due, and, therefore, such association need not submit to mediation or arbitration before recording the lien**. We conclude that NRS 38.310 does not treat similarly situated individuals differently because it requires mediation or arbitration before civil actions are initiated by homeowners or homeowners' associations alike, without classification. Applying the rational basis test, we conclude that NRS 38.310's requirement of mediation or arbitration is rationally related to the legitimate governmental interest of assisting homeowners to achieve a quicker and less

> costly resolution of their disputes with homeowners' associations than if they had to initiate a civil action in the district court. Accordingly, we conclude that NRS 38.310 does not violate equal protection principles.

NRS Chapter 116 provides the requirements for a foreclosure sale of an HOA lien in NRS 116.31162 through 116.31168. The procedures are similar to foreclosure under power of sale on a trust as provided in NRS 107.080. There is no provision in these statutes for a judicial foreclosure process.

NRS 116.3116 is not the only statute providing a super priority. NRS 116.310312 allows an HOA to have a super priority lien that may be non-judicially foreclosed for maintenance or abatements costs. NRS 116.310312 provides in part:

> 4. The association may order that the costs of any maintenance or abatement conducted pursuant to subsection 2 or 3, including, without limitation, reasonable inspection fees, notification and collection costs and interest, be charged against the unit. The association shall keep a record of such costs and interest charged against the unit and has a lien on the unit for any unpaid amount of the charges. **The lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive.**
> 5. A lien described in subsection 4 bears interest from the date that the charges become due at a rate determined pursuant to NRS 17.130 until the charges, including all interest due, are paid.
> 6. Except as otherwise provided in this subsection, **a lien described in subsection 4 is prior and superior to all liens, claims, encumbrances and titles other than the liens described in paragraphs (a) and (c) of subsection 2 of NRS 116.3116**. If the federal regulations of 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 and superior to other security interests shall be determined in accordance with those federal regulations. Notwithstanding the federal regulations, the period of priority of the lien must not be less than the 6 months immediately preceding the institution of an action to enforce the lien.
> (emphasis added).

The language in this statute makes it clear that the "super priority" lien status is to be achieved by the non-judicial foreclosure procedure outlined in NRS Chapter 116.

The Real Estate Division Advisory Opinion, attached as Exhibit 2 also addresses the meaning of the term "action" as used in the statute. The opinion begins by addressing 3 questions. The third one being:

> **QUESTION #3:**
>
> Pursuant to NRS 116.3116, must the association institute a "civil action" as defined by Nevada Rules of Civil Procedure 2 and 3 in order for the super priority lien to exist?

The opinion gives a short answer and a more detailed answer to the question. The short answer is:

SHORT ANSWER TO #3:

No. The association must *take action* to enforce its super priority lien, but it need not institute a civil action by the filing of a complaint. The association may begin the process for foreclosure in NRS 116.31162 or exercise any other remedy it has to enforce the lien.

The detailed answer to the question in the opinion is:

IV. "ACTION" AS USED IN NRS 116.3116 DOES NOT REQUIRE A CIVIL ACTION ON THE PART OF THE ASSOCIATION.

NRS 116.3116(2) provides that the super priority lien pertaining to assessments consists of those assessments "which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien." NRS 116.3116 requires that the association take action to enforce its lien in order to determine the immediately preceding 9 months of assessments. The question presented is whether this action must be a civil action.

During the Senate Committee on Judiciary hearing on May 8, 2009, the Chair of the Committee, Terry Care, stated with reference to AB 204:

> One thing that bothers me about section 2 is the duty of the association to enforce the liens, but I understand the argument with the economy and the high rate of delinquencies not only to mortgage payments but monthly assessments. Bill Uffelman, speaking for the Nevada Bankers Association, broke it down to a 210-day scheme that went into the current law of six months. Even though you asked for two years, I looked at nine months, thinking the association has a duty to move on these delinquencies.

NRS 116 does not require an association to take any particular action to enforce its lien, but that it institutes "an action." NRS 116.31162 provides the first steps to foreclose the association's lien. This process is started by the mailing of a notice of delinquent assessment as provided in NRS 116.31162(1)(a). At that point, the immediately preceding 9 months of assessments based on the association's budget determine the amount of the super priority lien. The Division concludes that this action by the association to begin the foreclosure of its lien is "action to enforce the lien" as provided in NRS 116.3116(2). The association is not required to institute a civil action in court to trigger the 9 month look back provided in NRS 116.3116(2). Associations should make the delinquent assessment known to the first security holder in an effort to receive the super priority lien amount from them as timely as possible.

The argument that a judicial foreclosure must be instituted in order for the HOA lien to gain it's "super priority" status is contrary to Nevada law. The legislature set up a statutory scheme in which the liens are to be foreclosed upon in a non-judicial manner. There is no provision under chapter 116 for a judicial foreclosure similar to the statutory provisions providing for judicial foreclosure of trust deeds.

This was recognized in a recent decision issued by Judge Pro from the United States District Court for the District of Nevada regarding the super-priority lien created by NRS 116.3116. In the case of 7912 Limbwood Court Trust v. Wells Fargo Bank, __ F. Supp.2d ___, 2013 WL 5780793 (D.Nev.),

the court stated:

> Nevada's statutory scheme is clear. **Section 116.3116(2) unambiguously provides that the HOA super priority lien is prior to the first deed of trust. The statutory scheme also unambiguously provides for the HOA to resort to non judicial foreclosure procedures to euforce its lieu.** The statute sets forth the order of priority by which the foreclosure sale proceeds must be distributed, and the association's lien must be satisfied before any other subordinate claim of record. The purchaser at an HOA foreclosure sale obtains the unit owner's title without equity or right of redemption, and a deed which contains the proper recitals "is conclusive against the unit's former owner, his or her heirs and assigns, and all other persons." *Id.* § 116.31166(2). Compare Nev.Rev.Stat. § 107.080 (providing that a mortgage foreclosure sale "vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption"); Bryant v. Carson River Lumbering Co., 3 Nev. 313, 317–18 (1867) (providing that such a sale vests absolute title in the purchaser). Consequently, a foreclosure sale on the HOA super priority lien extinguishes all junior interests, including the first deed of trust. (emphasis added)
>
> . . . .
>
> The court went on to say:
>
> Moreover, the result in this case is neither novel nor unfair. Wells Fargo easily could have avoided this purportedly inequitable consequence by paying off the HOA super priority lien amount to obtain the priority position thereby avoiding extinguishment of its junior interest. Additionally, Wells Fargo could have required an escrow for HOA assessments so that in the event of default, Wells Fargo could have satisfied the super priority lien amount without having to expend any of its own funds. See Uniform Common Interest Ownership Act § 3–116, cmt. 1 (1982).

The legislature provided for a non-judicial procedure for foreclosure of a homeowners association lien. A judicial foreclosure is therefore not required for the super-priority lien to extinguish the defendant's mortgage lien.

6. The statute takes priority over the provisions of the CC&R's.

The statutes and case law are clear that the provisions of chapter 116 control over the CC&Rs. NRS 116.1104 provides:

> **Provisions of chapter may not be varied by agreement, waived or evaded; exceptions.** Except as expressly provided in this chapter, its provisions may not be varied by agreement, and rights conferred by it may not be waived. Except as otherwise provided in paragraph (b) of subsection 2 of NRS 116.12075, a declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this chapter or the declaration.

NRS 116.1206 provides that any CC&R's which conflict with the statute will be deemed to conform with the chapter. The statute provides:

> **Provisions of governing documents in violation of chapter deemed to conform with**

chapter by operation of law; procedure for certain amendments to governing documents.

1. Any provision contained in a declaration, bylaw or other governing document of a common-interest community that violates the provisions of this chapter:

(a) Shall be deemed to conform with those provisions by operation of law, and any such declaration, bylaw or other governing document is not required to be amended to conform to those provisions.

(b) Is superseded by the provisions of this chapter, regardless of whether the provision contained in the declaration, bylaw or other governing document became effective before the enactment of the provision of this chapter that is being violated.

The Supreme Court affirmed that the statutes control over the wording of the CC& R's. In the case of Boulder Oaks Community Association v. B& J Andrews Enterprises, LLC 125 Nev. 397, 215 P.3d 27 (2009) the court stated:

> When NRS 116.003 is read in context with the UCIOA, **it is clear that when a term is defined in NRS Chapter 116, the statutory definition controls and any definition that conflicts will not be enforced. To read NRS 116.003 otherwise would lead to the absurd result of rendering the definitions provided in NRS 116.005 to 116.095 mere surplusage. See Speer v. State, 116 Nev. 677, 679, 5 P.3d 1063, 1064 (2000). Further, any other reading of the statute would be contrary to the express purpose of NRS Chapter 116, which is to "make uniform the law with respect to the subject of this chapter among states enacting it." NRS 116.1109(2)**. If this court were to enforce any definition provided by a declaration, then the goal of making the laws concerning common-interest communities uniform would never be reached. See Speer, 116 Nev. at 679, 5 P.3d at 1064 (stating that statutes should not be read in a manner that violates the " 'spirit of the act' " (quoting Anthony Lee R., A Minor v. State, 113 Nev. 1406, 1414, 952 P.2d 1, 6 (1997))).

If the subject CC&R's conflict with the priority contained in NRS 116.3116, the statute controls.

Certainly, if any CC&R's on any development violated any statute, public policy or constitutional provision, no person could seriously claim that the CC&R's prevailed over the statute. There is no reason why the provisions of any CC&R's would take precedence over the statutes found in NRS Chapter 116

7. The defendant is afforded with adequate notice

To the extent that the defendants motion alleges that the defendant did not receive notice, this is an issue of fact, and the granting of the motion to dismiss is in appropriate.

The statutes outlining the procedures for the non-judicial foreclosure of the HOA lien give provide for adequate notice to subordinate lien holders, including first lien mortgage holders.

Defendant is statutorily entitled to notice of the foreclosure sale so that it may protect it's interests. NRS 116.31168 provides in part;

Foreclosure of liens: Requests by interested persons for notice of default and election to sell; right of association to waive default and withdraw notice or proceeding to foreclose.

1. The provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed. The request must identify the lien by stating the names of the unit's owner and the common-interest community.

NRS 107.090 provides in part:

Request for notice of default and sale: Recording and contents; mailing of notice; request by homeowners' association; effect of request.

1. As used in this section, "person with an interest" means any person who has or claims any right, title or interest in, or lien or charge upon, the real property described in the deed of trust, as evidenced by any document or instrument recorded in the office of the county recorder of the county in which any part of the real property is situated.

. . . .

3. The trustee or person authorized to record the notice of default shall, within 10 days after the notice of default is recorded and mailed pursuant to NRS 107.080, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice, addressed to:

(a) Each person who has recorded a request for a copy of the notice; and

(b) Each other person with an interest whose interest or claimed interest is subordinate to the deed of trust.

The language of this statute makes it clear that all persons with an interest, whose interest are subordinate to the super priority lien, are entitled to notice.

The statutory scheme provided for in NRS 107.080 mirrors the foreclosure procedures for HOA liens found in NRS Chapter 116. In the case of Charmicor v. Deaner 572 F.2d 694 (9th Cir. 1978), the federal appeals court ruled that the statutory procedure for non-judicial foreclosure sales provided in NRS 107.080 did not transform the private action into state action for due process purposes.

The statutory requirements for the foreclosure procedures under both NRS 107.080 and NRS Chapter 116 are detailed in the following graph:

HOA Foreclosure	Statutory Requirement	Bank Foreclosure
NRS 116.31162(1)(a)	Delinquency by homeowner	NRS 107.080(1)
NRS 116.31162(1)(a)	Mail notice of delinquency to homeowner	No statutory requirement but required by terms of deed of trust
NRS 116.31162(1)(b)	Execute notice of default and election to sell (NOD) that describes the deficiency in payment	NRS 107.080(2)(b)

HOA Foreclosure	Statutory Requirement	Bank Foreclosure
NRS 116.31162(1)(a)	Record NOD	NRS 107.080(3)
NRS 116.31162(2)(b)	Mail NOD by certified or registered mail, return receipt requested to homeowner	NRS 108.080(3)
NRS 116.31163 and NRS 16.31168 (incorporating requirements of NRS 107.090)	Mail NOD to interested parties who request notice	NRS 107.090(3)(a)
NRS 116.31168 (incorporating requirements of NRS 107.090)	Mail NOD to subordinate claim holders	NRS 107.090(3)(b)
NRS 116.31162(1)(c)	Failure to pay for 90 days after NOD is recorded and mailed	NRS 107.080(3)
NRS 116.311635(1)(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/posting in a public place and on property	NRS 107.080(4)
NRS 116.311635(1)(a)(1)	Mail Notice of Sale (NOS) to homeowner	NRS 107.080(4)
NRS 116.311635(1)(b)(1) and NRS 116.311635(1)(b)(3)	Mail Notice of Sale (NOS) to interested parties who request notice	NRS 107.090(4)
NRS 116.311635(1)(b)(1)	Mail Notice of Sale (NOS) to subordinate claim holders	NRS 107.090(4)
NRS 116.311635(1)(b)(3)	Mail Notice of Sale (NOS) to Ombudsman	No statutory requirement
NRS 116.311635(2)	Post NOS on property or personally deliver to homeowner	NRS 107.080(4)

The statutory requirements for foreclosure of an HOA lien and trust deed are virtually identical, and the statutes mirror each other. The notices provided to claimants to the real property are the same under both Chapters 107 and 116, and the notices are adequate.

Defendant had adequate notice to protect its interests in the subject real property and failed to do so. Defendant's mortgage lien has therefore been extinguished.

/ / /

8. Alleged inadequacy in price is not grounds to overturn a foreclosure sale

The case of Long v. Towne, 98 Nev. 11, 639 P.2d 528 (1982) involved a lien foreclosure sale to recover assessments owed to an association. The Supreme Court held that the allegation that the price paid at the sale was inadequate was not sufficient to justify setting aside the sale where there was no showing of fraud, unfairness or oppression.

Moreover, we are before the court on a motion to dismiss. The adequacy of the purchase price would be an issue of fact requiring discovery and presentation to the ultimate trier of fact. Dismissal on a motion to dismiss would be improper because the court is to look only to the pleadings, not extrinsic facts.

9. Plaintiff is protected as a bona fide purchaser

A bona fide purchaser for value at a foreclosure sale takes title free and clear from the claims of the extinguished former lien holders. In the case of Firato v. Tuttle, 48 Cal.2d 136, 308 P.2d 333 (1957), the California Supreme Court stated:

> Instruments which are wholly void cannot ordinarily provide the foundation for good title even in the hands of an innocent purchaser, as where a deed has been forged or has not been delivered. Trout v. Taylor, 220 Cal. 652, 656, 32 P.2d 968. It does not appear, however, that section 870 of the Civil Code should necessarily make the unauthorized reconveyance by a trustee void as to such a purchaser. Section 2243 of that code states: 'Everyone to whom property is transferred in violation of a trust, holds the same as an involuntary trustee under such trust, unless he purchased it in good faith, and for a valuable consideration.' (Emphasis added.) This section was also enacted in 1872 and has been treated as correlative to section 870. Chapman v. Hughes, 134 Cal. 641, 657, 58 P. 298, 60 P. 974, 66 P. 982.
>
> **The rule indicated by section 2243, which would protect innocent purchasers for value who take without any notice that the conveyance by the trustee was unauthorized, is in accord with the rule protecting such purchasers who acquire their interests from one who holds a general power and who makes a conveyance for an unauthorized**
> **purpose**, see Alcorn v. Buschke, 133 Cal. 655, 66 P. 15, and cases cited, or from a trustee under a secret trust. Ricks v. Reed, 19 Cal. 551; Rafftery v. Kirkpatrick, 29 Cal.App.2d 503, 508, 85 P.2d 147; Civil Code, s 869. The protection of such purchasers is consistent 'with the purpose of the registry laws, with the settled principles of equity, and with the convenient transaction of business.' Williams v. Jackson, 107 U.S. 478, 484, 2 S.Ct. 814, 819, 27 L.Ed. 529. **It also finds support in the better reasoned cases from other jurisdictious which have dealt with similar problems upou general equitable principles and in the absence of statutory provisions.** Simpson v. Stern, 63 App.D.C. 161, 70 F.2d 765, certiorari denied 292 U.S. 649, 54 S.Ct. 859, 78 L.Ed. 1499; Williams v. Jackson, supra, 107 U.S. 478,
> 2 S.Ct. 814; Town of Carbon Hill v. Marks204 Ala. 622, 86 So. 903; Lennartz v. Quilty, 191 Ill. 174, 60 N.E. 913; Millick v. O'Malley, 47 Idaho 106, 273 P. 947; Day v. Brenton, 102 Iowa 482, 71 N.W. 538; Willamette Collection & Credit Service v. Gray, 157 Or. 79,

70 P.2d 39; Locke v. Andrasko, 178 Wash. 145, 34 P.2d 444.

> As section 2243 of the Civil Code must be read with section 870 of the same code and because of the obvious desirability of protecting innocent purchasers for value who rely in good faith upon recorded instruments under the circumstances presented here, we conclude that plaintiffs were required to plead that respondents were not such innocent purchasers for value in order to state a cause of action against them. In the absence of such allegations, the trial court properly sustained respondents' demurrers to plaintiffs' first amended complaint. (emphasis added)

The bona fide doctrine protects a purchaser's title against competing legal or equitable claims of which the purchaser had no notice at the time of the conveyance. 25 Corp. v. Eisenman Chemical Co., 101 Nev. 664, 709 P.2d 164, 172 (1985); Berge v. Fredericks, 95 Nev. 183, 591 P.2d 246, 247 (1979).

As far back as 1880, the Supreme Court, in the case of Moresi v. Swift, 15 Nev. 215 (1880), stated:

> The rule that a man who advances money bona fide and without notice, will be protected in equity, applies equally to real estate, chattels, and personal estate.

California's Civil Code §2924 is similar to Nevada's NRS 107.080 governing the procedures for non-judicial foreclosures of trust deeds. However, Civil Code §2924 includes a codification of the common law presumptions regarding the protections provided to a bona fide purchaser at a trustee's sale. Section (6)(c) states:

> A recital in the deed executed pursuant to the power of sale of compliance with all requirements of law regarding the mailing of copies of notices or the publication of a copy of the notice of default or the personal delivery of the copy of the notice of default or the posting of copies of the notice of sale or the publication of a copy thereof shall constitute prima facie evidence of compliance with these requirements and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice.

Nevada has not codified the protections of a bona fide purchaser at a trustee's sale, but the Nevada case law is consistent with the holdings in California based on it's statutory codification of the bona fide purchaser doctrine.

NRS 116.31166 has language similar to California Civil Code §2924 (6)(c) regarding the recitals in the foreclosure deed. The Nevada statute reads:

> **Foreclosure of liens: Effect of recitals in deed; purchaser not responsible for proper application of purchase money; title vested in purchaser without equity or right of redemption.**
>
> 1. The recitals in a deed made pursuant to NRS 116.31164 of:
>
> (a) Default, the mailing of the notice of delinquent assessment, and the recording of the notice of default and election to sell;

(b) The elapsing of the 90 days; and
(c) The giving of notice of sale,
are conclusive proof of the matters recited.

2. Such a deed containing those recitals is conclusive against the unit's former owner, his or her heirs and assigns, and all other persons. The receipt for the purchase money contained in such a deed is sufficient to discharge the purchaser from obligation to see to the proper application of the purchase money.

3. The sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit's owner without equity or right of redemption.

In the case of Moore v. DeBernardi 47 Nev. 33, 220 P. 544 (1923), the court stated:

> The decisions are uniform that the bona fide purchaser of a legal title is not affected by any latent equity founded either on a trust, incumbrance, or otherwise, of which he has no notice, actual or constructive. Brophy M. Co. v. B. & D. G. & S. M. Co., 15 Nev. 108.
> . . . .
> To entitle a party to the character of a bona fide purchaser, without notice, he must have acquired the legal title, and have actually paid the purchase money before receiving notice of the equity of another party. Moresi v. Swift, 15 Nev. 215.

Consistent with these holdings, in the case of Baily v. Butner 64 Nev. 1, 176 P.2d 226 (1947) the court stated:

> The authorities are practically unanimous in holding that, in a suit by one asserting a prior equity, unless exceptional circumstances exist, the duty devolves upon the defendant, who seeks to establish a superior equity upon the basis that he is a bona fide purchaser, to both allege and prove all of the essential elements constituting him such bona fide purchaser, that is to say, a purchaser for a valuable consideration without notice of the prior agreement and the equity resulting therefrom.

Although the procedures for the non-judicial foreclosures are similar in Chapter 116 for foreclosure on a homeowners association lien and under Chapter 107 for foreclosure under a deed of trust, there is one striking difference between the two chapters. NRS 107.080(6) permits a party that does not receive proper notice of the sale to file an action to set the sale aside within 60 days of receiving actual notice of the sale. There is no similar provision in Chapter 116. The court may presume that the legislature intended for ALL sales under Chapter 116 to be final and not subject to attack.

It is respectfully submitted that because of the similarities between the Nevada statutory and case law and the California statutory and case law, the court should adopt the reasoning in the Firato v. Tuttle case and apply the bona fide purchaser doctrine and confirm the title of the plaintiff in the subject real property free and clear of the defendants mortgage lien.

10. The Supreme Court has enjoined banks from foreclosing in similar cases

Judge Tao issued a detailed, 20 page analysis of NRS Chapter 116 and found that the non-judicial

foreclosure of an HOA lien extinguishes the lien of the mortgage holder. A copy of that decision is Exhibit 6. Counsel for plaintiff admits to quoting almost verbatim, portions of the judge's well thought out decision in this brief.

In the federal court, Judge Gordon recently issued a decision adopting the reasoning of Judge Tao's decision. A copy of Judge Gordon's decision is Exhibit 7. Judge Pro also issued a decision in a (soon to be reported) case which he found that the statutes provide that the foreclosure of an HOA lien extinguishes the mortgage loans. See 7912 Limbwood Court Trust v. Wells Fargo Bank, N.A. ___ F.Supp 2. ___ , 2013 WL5780793 (D. Nev. 2013). A copy of the decision is Exhibit 8.

Counsel for the plaintiff has been involved in a number of cases, and has appealed the denial of an injunction to prohibit the bank from foreclosing on it's deed of trust after the plaintiff purchased the property at a foreclosure sale. The Supreme Court initially issued temporary injunctions staying the foreclosure sale. A copy of these temporary restraining orders are collectively attached as Exhibit 9.

In several of the cases and after full briefing, the Supreme Court has issued preliminary injunctions prohibiting the foreclosure pending the decision on appeal. A copy of these orders are collectively attached as Exhibit 10. In a few of the cases, the preliminary injunctions have not yet been issued. In none of the cases has the court refused to grant an injunction.

It should be noted, that NRAP 8(c) provides:

> (c) **Stays in Civil Cases Not Involving Child Custody.** In deciding whether to issue a stay or injunction, the Supreme Court will generally consider the following factors: (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) **whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.** (emphasis added)

The fact that the court has consistently issued injunctions, even though the orders are not final or binding, would indicate that the Supreme Court is inclined to rule in favor of the plaintiff's position in these cases. At the very least, this indicates the Supreme Court doesn't want the rights of any of the parties being affected while it makes it's decision.

II. COUNTERMOTION TO STAY PROCEEDINGS

As an alternative countermotion, if the court is inclined to grant the motion to dismiss, the plaintiff would move to stay these proceedings pending a decision from the Nevada Supreme Court on this controversial issue. At present, there are over 50 cases known to counsel, pending before the Supreme

Court. Attached as Exhibit 11 is a list of the cases, as of the first week of August, pending before the Supreme Court regarding the super priority HOA lien issue.

The court has the inherent authority to regulate it's own cases. With the large number of cases being filed, and the large number of cases being appealed to the Nevada Supreme Court, a very large backlog of cases is building in the appellate level. It is respectfully submitted that this case should be stayed, the defendant should not be permitted to foreclose on the property, and the plaintiff should be required to maintain the property, pay all HOA dues and taxes and maintain insurance on the property, until such time as the Supreme Court makes a binding ruling on the issues.

CONCLUSION

The language in NRS 116.3116 created a super priority lien that extinguished defendant's deed of trust when plaintiff purchased the real property at the HOA foreclosure sale. The legislative history for NRS 116.3116 supports plaintiff's position that foreclosure of the super priority lien has the normal effect of extinguishing all security interests that fall within the scope of NRS 116.3116(2)(b).

DATED this 18th day of February, 2014.

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: / s / Michael F. Bohn, Esq. /
Michael F. Bohn, Esq.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
Attorney for plaintiff

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 18th day of February 2014, I served a photocopy of the foregoing OPPOSITION TO MOTION TO DISMISS by placing the same in a sealed envelope with first-class postage fully prepaid thereon and deposited in the United States mails addressed as follows:

Michael R. Brooks, Esq.
1645 Village Center Circle, Suite 200
Las Vegas, NV 89134

/s/ /Maurice Mazza/
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

EXHIBIT 1

EXHIBIT 1

Inst #: 201311260001363
Fees: $18.00 N/C Fee: $25.00
RPTT: $576.30 Ex: #
11/26/2013 10:00:11 AM
Receipt #: 1854985
Requestor:
RESOURCES GROUP
Recorded By: ANI Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

Please mail tax statement and
when recorded mail to:
Saticoy Bay LLC Series 133 McLaren
P.O. Box 36208
Las Vegas, NV 89133

FORECLOSURE DEED

APN # 178-16-215-068

North American Title #45010-11-34157 / N64181

NAS # N64181

The undersigned declares:

Nevada Association Services, Inc., herein called agent (for the Hillpointe Park Maintenance), was the duly appointed agent under that certain Notice of Delinquent Assessment Lien, recorded January 14, 2011 as instrument number 0001247 Book 20110114, in Clark County. The previous owner as reflected on said lien is WIGHT, CHARLES J & TARA J. Nevada Association Services, Inc. as agent for Hillpointe Park Maintenance does hereby grant and convey, but without warranty expressed or implied to: Saticoy Bay LLC Series 133 McLaren (herein called grantee), pursuant to NRS 116.31162, 116.31163 and 116.31164, all its right, title and interest in and to that certain property legally described as: SKYVIEW, PLAT BOOK 47, PAGE 69, LOT 2, BLOCK 2 Clark County

AGENT STATES THAT:
This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Hillpointe Park Maintenance 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 9/9/2011 as instrument # 0000728 Book 20110909 which was recorded in the office of the recorder of said county. Nevada Association Services, 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. Said property was sold by said agent, on behalf of Hillpointe Park Maintenance at public auction on 11/22/2013, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale, became the purchaser of said property and paid therefore to said agent the amount bid $10,200.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: November 25, 2013

Misty Blanchard

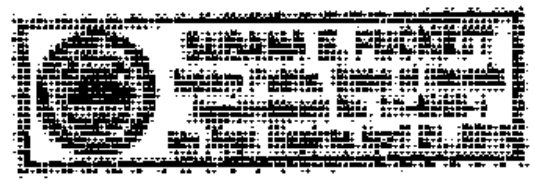
By Misty Blanchard, Agent for Association and Employee of Nevada Association Services

STATE OF NEVADA)
COUNTY OF CLARK)

On November 25, 2013, before me, Susana S. Puckett, personally appeared Misty Blanchard personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and seal.

(Seal)



(Signature)

Susana S. Puckett

EXHIBIT 2

EXHIBIT 2

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
ADVISORY OPINION

Subject: The Super Priority Lien	Advisory No. **13-01**	21 pages
	Issued By: Real Estate Division	
	Amends/ Supersedes: N/A	
Reference(s): NRS 116.3102; ; NRS 116.310312; NRS 116.310313; NRS 116.3115; NRS 116.3116; NRS 116.31162; Commission for Common Interest Communities and Condominium Hotels Advisory Opinion No. 2010-01	Issue Date: December 12, 2012	

QUESTION #1:

Pursuant to NRS 116.3116, may the portion of the association's lien which is superior to a unit's first security interest (referred to as the "super priority lien") contain "costs of collecting" defined by NRS 116.310313?

QUESTION #2:

Pursuant to NRS 116.3116, may the sum total of the super priority lien ever exceed 9 times the monthly assessment amount for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115, plus charges incurred by the association on a unit pursuant to NRS 116.310312?

QUESTION #3:

Pursuant to NRS 116.3116, must the association institute a "civil action" as defined by Nevada Rules of Civil Procedure 2 and 3 in order for the super priority lien to exist?

SHORT ANSWER TO #1:

No. The association's lien does not include "costs of collecting" defined by NRS 116.310313, so the super priority portion of the lien may not include such costs. NRS 116.310313 does not say such charges are a lien on the unit, and NRS 116.3116 does not make such charges part of the association's lien.

SHORT ANSWER TO #2:

No. The language in NRS 116.3116(2) defines the super priority lien. The super priority lien consists of unpaid assessments based on the association's budget and NRS 116.310312 charges, nothing more. The super priority lien is limited to: (1) 9 months of assessments; and (2) charges allowed by NRS 116.310312. The super priority lien based on assessments may not exceed 9 months of assessments as reflected in the association's budget, and it may not include penalties, fees, late charges, fines, or interest. References in NRS 116.3116(2) to assessments and charges pursuant to NRS 116.310312 define the super priority lien, and are not merely to determine a dollar amount for the super priority lien.

SHORT ANSWER TO #3:

No. The association must *take action* to enforce its super priority lien, but it need not institute a civil action by the filing of a complaint. The association may begin the process for foreclosure in NRS 116.31162 or exercise any other remedy it has to enforce the lien.

ANALYSIS OF THE ISSUES:

This advisory opinion – provided in accordance with NRS 116.623 – details the Real Estate Division's opinion as to the interpretation of NRS 116.3116(1) and (2). The Division hopes to help association boards understand the meaning of the statute so they are better equipped to represent the interests of their members. Associations are encouraged to look at the entirety of a situation surrounding a particular deficiency and evaluate the association's best option for collection. The first step in that analysis is to understand what constitutes the association's lien, what is not part of the lien, and the status of the lien compared to other liens recorded against the unit.

Subsection (1) of NRS 116.3116 describes what constitutes the association's lien; and subsection (2) states the lien's priority compared to other liens recorded against a unit. NRS 116.3116 comes from the Uniform Common Interest Ownership Act (1982) (the "Uniform Act"), which Nevada adopted in 1991. So, in addition to looking at the language of the relevant Nevada statute, this analysis includes references to the Uniform Act's equivalent provision (§ 3-116) and its comments.

I. NRS 116.3116(1) DEFINES WHAT THE ASSOCIATION'S LIEN CONSISTS OF.

NRS 116.3116(1) provides generally for the lien associations have against units within common-interest communities. NRS 116.3116(1) states as follows:

> 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.

(emphasis added).

Based on this provision, the association's lien includes assessments, construction penalties, and fines imposed agaiust a unit when they become due. In addition – unless the declaration otherwise provides – penalties, fees, charges, late charges, fines, and interest charged pursuant to NRS 116.3102(1)(j) through (n) are also part of the association's lien in that such items are enforceable as if they were assessments. Assessments can be foreclosed pursuaut to NRS 116.31162, but liens for fines and penalties may not be foreclosed unless they satisfy the requirements of NRS 116.31162(4). Therefore, it is importaut to accurately categorize what comprises each portion of the association's lien to evaluate enforcement options.

A. "COSTS OF COLLECTING" (DEFINED BY NRS 116.310313) ARE NOT PART OF THE ASSOCIATION'S LIEN

NRS 116.3116(1) does not specifically make costs of collecting part of the associatiou's lien, so the determination must be whether such costs can be included under the incorporated provisions of NRS 116.3102. NRS 116.3102(1)(j) through (n) identifies five very specific categories of peualties, fees, charges, late charges, fines, and interest associations may impose. This language encompasses all penalties, fees,

charges, late charges, fines, and interest that are part of the lien described in NRS 116.3116(1).

NRS 116.3102(1)(j) through (n) states:

> 1. Except as otherwise provided in this section, and subject to the provisions of the declaration, the association may do any or all of the following: ...
> (j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners, including, without limitation, any services provided pursuant to NRS 116.310312.
> **(k) Impose charges for late payment of assessments pursuant to NRS 116.3115.**
> (l) Impose constrnction penalties when authorized pursuant to NRS 116.310305.
> (m) Impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.
> (n) Impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents aud certificate required by that section.

(emphasis added).

Whatever charges the association is permitted to impose by virtue of these provisions are part of the association's lien. Subsection (k) – emphasized above – has been used – the Division believes improperly – to support the conclusion that associations may include costs of collecting past due obligations as part of the association's lien. The Commission for Common Interest Communities and Condominium Hotels issued Advisory Opinion No. 2010-01 in December of 2010. The Commission's advisory concludes as follows:

> An association may collect as a part of the super priority lien (a) interest permitted by NRS 116.3115, (b) late fees or charges authorized by the declaration, (c) charges for preparing any statements of unpaid assessments and (d) the "costs of collecting" authorized by NRS 116.310313.

Analysis of what constitutes the *super priority lien* portion of the association's lien is discussed in Section III, but the Division agrees that the association's lien does include items noted as (a), (b) and (c) of the Commission's advisory opinion above. To support item (d), the Commission relies on NRS 116.3102(1)(k) which gives associations the power to: "Impose charges for late payment of assessments pursuant to NRS 116.3115." This language would include interest authorized by statute and late fees if authorized by the association's declaration.

"Costs of collecting" defined by NRS 116.310313 is too broad to fall within the parameters of charges for late payment of assessments.[1] By definition, "costs of collecting" relate to the collection of past due "obligations." "Obligations" are defined as "any assessment, fine, construction penalty, fee, charge or interest levied or imposed against a unit's owner."[2] In other words, costs of collecting includes more than "charges for late payment of assessments."[3] Therefore, the plain language of NRS 116.3116(1) does not incorporate costs of collecting into the association's lien. Further review of the relevant statutes and legislative action supports this conclusion.

B. PRIOR LEGISLATIVE ACTION SUPPORTS THE POSITION THAT COSTS OF COLLECTING ARE NOT PART OF THE ASSOCIATION'S LIEN DESCRIBED BY NRS 116.3116(1).

The language of NRS 116.3116(1) allows for "charges for late payment of assessments" to be part of the association's lien.[4] "Charges for late payments" is not the same as "costs of collecting." "Costs of collecting" was first defined in NRS 116 by the adoption of NRS 116.310313 in 2009. NRS 116.310313(1) provides for the association's

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[1] Charges for late payment of assessments comes from NRS 116.3102(1)(k) and is incorporated into NRS 116.3116(1).
[2] NRS 116.310313.
[3] "Costs of collecting" includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation. The term does not include any costs incurred by an association if a lawsuit is filed to enforce any past due obligation or any costs awarded by a court. NRS 116.310313(3)(a).
[4] NRS 116.3102(1)(k) (incorporated into NRS 116.3116(1)).

right to charge a unit owner "reasonable fees to cover the costs of collecting any past due obligation." NRS 116.310313 is not referenced in NRS 116.3116 or NRS 116.3102, nor does NRS 116.310313 specifically provide for the association's right to lien the unit for such costs.

In contrast, NRS 116.310312, also adopted in 2009, allows an association to enter the grounds of a unit to maintain the property or abate a nuisance existing on the exterior of the unit. NRS 116.310312 specifically provides for the association's expenses to be a lien on the unit and provides that the lien is prior to the first security interest.[5] NRS 116.3102(1)(j) was amended to allow these expenses to be part of the lien described in NRS 116.3116(1). And NRS 116.3116(2) was amended to allow these expenses to be included in the association's super priority lien.

The Commission's advisory opinion from December 2010 also relies on changes to the Uniform Act from 2008 to support the notion that collection costs should be part of the association's super priority lien. Nevada has not adopted those changes to the Uniform Act. Since the Commission's advisory opinion, the Nevada Legislature had an opportunity to clarify the law in this regard.

In 2011, the Nevada Legislature considered Senate Bill 174, which proposed changes to NRS 116.3116. S.B. 174 originally included changes to NRS 116.3116(1) such that the association's lien would specifically include "costs of collecting" as defined in NRS 116.310313. S.B. 174 proposed changes to NRS 116.3116 (1) and (2) to bring the statute in line with the changes to the same provision in the Uniform Act amended in 2008.

The Uniform Act's amendments were removed from S.B. 174 by the first reprint. As amended, S.B. 174 proposed changes to NRS 116.3116(2) expanding the super priority lien amount to include costs of collecting not to exceed $1,950, in addition to 9 months

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[5] See NRS 116.310312(4) and (6).

of assessments. S.B. 174 was discussed in great detail and ultimately died in committee.[6]

Also in 2011, Senate Bill 204 – as originally introduced – included changes to NRS 116.3116(1) to expand the association's lien to include attorney's fees and costs and "any other sums due to the association."[7] The bill's language was taken from the Uniform Act amendments in 2008. All changes to NRS 116.3116(1) were removed from the bill prior to approval.

The Nevada Legislature's actions in the 2009 and 2011 sessions are indicative of its intent not to make costs of collecting part of the lien. The Nevada Legislature could have made the costs of collecting part of the association's lien, like it did for costs under NRS 116.310312. It did not do so. In order for the association to have a right to lien a unit under NRS 116.3116(1), the charge or expense must fall within a category listed in the plain language of the statute. Costs of collecting do not fall within that language. Based on the foregoing, the Division concludes that the association's lien does not include "costs of collecting" as defined by NRS 116.310313.

A possible concern regarding this outcome could be that an association may not be able to recover their collection costs relating to a foreclosure of an assessment lien. While that may seem like an unreasonable outcome, a look at the bigger picture must be considered to put it in perspective. NRS 116.31162 through NRS 116.31168, inclusive, outlines the association's ability to enforce its lien through foreclosure. Associations have a lien for assessments that is enforced through foreclosure. The association's expenses are reimbursed to the association from the proceeds of the sale. NRS 116.31164(3)(c) allows the proceeds of the foreclosure sale to be distributed in the following order:

(1) The reasonable expenses of sale;

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[6] See http://leg.state.nv.us/Session/76th2011/Reports/history.cfm?ID=423.
[7] Senate Bill No. 204 – Senator Copening, Sec. 49, ln. 1-16, February 28, 2011.

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

Subsections (1) and (2) allow the association to receive its expenses to enforce its lien through foreclosnre *before* the association's lien is satisfied. Obviously, if there are no proceeds from a sale or a sale never takes place, the association has no way to collect its expenses other than through a civil action against the unit owner. Associations must consider this consequence when making decisions regarding collection policies understanding that every delinquent assessment may not be treated the same.

II. NRS 116.3116(2) ESTABLISHES THE PRIORITY OF THE ASSOCIATION'S LIEN.

Having established that the association has a lien on the unit as described in subsection (1) of NRS 116.3116, we now turn to subsection (2) to determine the lien's priority in relation to other liens recorded against the unit. The lien described by NRS 116.3116(1) is what is referred to in subsection (2). Understanding the priority of the lien is an important consideration for any board of directors looking to enforce the lien through foreclosure or to preserve the lien in the event of foreclosure by a first security interest.

NRS 116.3116(2) provides that the association's lien is prior to all other liens recorded against the unit *except:* liens recorded against the unit before the declaration; first security interests (first deeds of trust); and real estate taxes or other governmental assessments. There is one exception to the exceptions, so to speak, when it comes to priority of the association's lien. This exception makes a portion of an association's lien prior to the first security interest. The portion of the association's lien given priority status to a first security interest is what is referred to as the "super priority lien" to

distinguish it from the other portion of the association's lien that is subordinate to a first security interest.

The ramifications of the super priority lien are significant in light of the fact that superior liens, when foreclosed, remove all junior liens. An association can foreclose its super priority lien and the first security interest holder will either pay the super priority lien amount or lose its security. NRS 116.3116 is found in the Uniform Act at § 3-116. Nevada adopted the original language from § 3-116 of the Uniform Act in 1991. From its inception, the concept of a super priority lien was a novel approach. The Uniform Act comments to § 3-116 state:

> [A]s to prior first security interests the association's lien does have priority for 6 months' assessments based on the periodic budget. A significant departure from existing practice, the 6 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. As a practical matter, secured lenders will most likely pay the 6 months' assessments demanded by the association rather than having the association foreclose on the unit. If the lender wishes, an escrow for assessments can be required.

This comment on § 3-116 illustrates the intent to allow for 6 months of assessments to be prior to a first security interest. The reason this was done was to accommodate the association's need to enforce collection of unpaid assessments. The controversy surrounding the super priority lien is in defiuing its limit. This is an important consideration for an association looking to enforce its lien. There is little benefit to an association if it incurs expenses pursuing unpaid assessments that will be eliminated by an imminent foreclosure of the first security interest. As stated in the comment, it is also likely that the holder of the first security iuterest will pay the super priority lien amount to avoid foreclosure by the association.

III. THE AMOUNT OF THE SUPER PRIORITY LIEN IS LIMITED BY THE PLAIN LANGUAGE OF NRS 116.3116(2).

NRS 116.3116(2) states:

> 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.

(emphasis added)

Having found previously that costs of collecting are not part of the lien means they are not part of the super priority lien. The question then becomes what can be included as part of the super priority lien. Prior to 2009, the super priority lien was limited to 6 months of assessments. In 2009, the Nevada legislature changed the 6 months of

assessments to 9 months and added expenses for abatement under NRS 116.310312 to the super priority lien amount. But to the extent federal law applicable to the first security interest limits the super priority lien, the super priority lien is limited to 6 months of assessments.

The emphasized language in the portion of the statute above identifies the portion of the association's lien that is prior to the first security interest, i.e. what comprises the super priority lien. This language states that there are two components to the super priority lien. The first is "to the extent of any charges" incurred by the association pursuant to NRS 116.310312. NRS 116.310312(4) makes clear that the charges assessed against the unit pursuant to this section are a lien on the unit and subsection (6) makes it clear that such lien is prior to first security interests. These costs are also specifically part of the lien described in NRS 116.3116(1) incorporated through NRS 116.3102(1)(j). This portion of the super priority lien is specific to charges incurred pursuant to NRS 116.310312. Payment of those charges relieves their super priority lien status. There does not seem to be any confusion as to what this part of the super priority lien is. Analysis of the super priority lien will focus on the second portion.

A. THE SUPER PRIORITY LIEN ATTRIBUTABLE TO ASSESSMENTS IS LIMITED TO 9 MONTHS OF ASSESSMENTS AND CONSISTS ONLY OF ASSESSMENTS.

The second portion of the super priority lien is "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."

The statute uses the language "to the extent of the assessments" to illustrate that there is a limit on the amount of the super priority lien, just like the language concerning expenses pursuant to NRS 116.310312, but this portion concerns assessments. The limit on the super priority lien is based on the assessments for

common expenses reflected in a budget adopted pursuant to NRS 116.3115 which would have become due in 9 months. The assessment portion of the super priority lien is no different than the portion derived from NRS 116.310312. Each portion of the super priority lien is limited to the specific charge stated and nothing else.

Therefore, while the association's *lien* may include any penalties, fees, charges, late charges, fines aud interest charged pursuant to NRS 116.3102 (1) (j) to (n), inclusive, the total amount of the *super priority lien* attributed to assessments is no more than 9 months of the monthly assessment reflected in the association's budget. Association budgets do not reflect late charges or interest attributed to an anticipated delinquent owner, so there is no basis to conclude that such charges could be included in the super priority lien or in addition to the assessments. Such extraneous charges are not included in the association's super priority lien.

NRS 116.3116 originally provided for 6 months of assessments as the super priority lien. Comments to the Uniform Act quoted previously support the conclusion that the original intent was for 6 months of the assessments alone to comprise the super priority lien amount and not the penalties, charges, or interest. It is possible that an argument could be made that the language is so clear in this regard one should not look to legislative intent. But considering the controversy surrounding the meaning of this statute, the better argument is that legislative intent should be used to determine the meaning.

The Commission's advisory opinion of December 2010 concluded that assessments *and* additional costs are part of the super priority lien. The Commission's advisory opinion relies in part on a Wake Forest Law Review[8] article from 1992 discussing the Uniform Act. This article actually concludes that the Uniform Act language limits the

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[8] See James Winokur, *Meaner Lienor Community Associations: The "Super Priority" Lien and Related Reforms Under the Uniform Common Interest Ownership Act*, 27 WAKE FOREST L. REV. 353, 366-69 (1992).

amount of the super priority lien to 6 months of assessments, but that the super priority lien does not necessarily consist of only delinquent assessments.[9] It can include fines, interest, and late charges.[10] The concept here is that all parts of the lien are prior to a first security interest and that reference to assessments for the super priority lien is only to define a specific dollar amount.

The Division disagrees with this interpretation because of the unreasonable consequences it leaves open. For example, a unit owner may pay the delinquent assessment amount leaving late charges and interest as part of the super priority lien. If the super priority lien can encompass more than just delinquent assessments in this situation, it would give the association the right to foreclose its lien consisting only of late charges and interest prior to the first security interest. It is also unreasonable to expect that fines (which cannot be foreclosed generally) survive a foreclosure of the first security interest. Either the lender or the new buyer would be forced to pay the prior owner's fines. The Division does not find that these consequences are reasonable or intended by the drafters of the Uniform Act or by the Nevada Legislature. Even the 2008 revisions to the Uniform Act do not allow for anything other than assessments and costs incurred to foreclose the lien to be included in the super priority lien. Fines, interest, and late charges are not *costs* the association incurs.

In 2009, the Nevada Legislature revised NRS 116.3116 to expand the association's super priority lien. Assembly Bill 204 sought to extend the super priority lien of 6 months of assessments to 2 years of assessments.[11] The Commission's chairman, Michael Buckley, testified on March 6, 2009 before the Assembly Committee on Judiciary on A.B. 204 that the law was unclear as to whether the 6 month priority can

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[9] See id. at 367 (referring to the super priority lien as the "six months assessment ceiling" being computed from the periodic budget).
[10] See id.
[11] See http://leg.state.nv.us/Session/75th2009/Reports/history.cfm?ID=416.

include the association's costs and attorneys' fees.[12] Mr. Buckley explained that the Uniform Act amendments in 2008 allowed for the collection of attorneys' fees and costs incurred by the association in foreclosing the assessment lien as part of the super priority lien. Mr. Buckley requested that the 2008 change to the Uniform Act be included in A.B. 204. Mr. Buckley's requested change to A.B. 204 to expand the super priority lien never made it into A.B. 204. Ultimately, A.B. 204 was adopted to change 6 months to 9 months, but commeutiug on the intent of the bill, Assemblywoman Ellen Spiegel stated:

> Assessments covered under A.B. 204 are the regular monthly or quarterly dues for their home. *I carefully put this bill together to make sure it did not include any assessments for penalties, fines or late fees.* The bill covers the basic monies the association uses to build its regular budgets.

(emphasis added).[13]

It is significant that the legislative intent in changing 6 months to 9 months was with the understanding that no portion of that amount would be for penalties, fines, or late fees and that it only covers the basic monies associations use to build their regular budgets. It does make sense that a lien superior to a first security interest would not include penalties, fines, and interest. To say that the super priority lien includes more than just 9 months of assessments allows several undesirable and unreasonable consequences.

B. NEVADA HAS NOT ADOPTED AMENDMENTS TO THE UNIFORM ACT TO ALTER THE ORIGINAL INTENT OF THE SUPER PRIORITY LIEN.

The changes to the Uniform Act support the contention that only what is referenced as the super priority lien in NRS 116.3116(2) is what comprises the super priority lien. In 2008, § 3-116 of the Uniform Act was revised as follows:

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[12] See Minutes of the Meeting of the Assembly Committee on Judiciary, Seventy-fifth Session, March 6, 2009 at 44-45.

[13] See Minutes of the Senate Committee on Judiciary, Seventy-fifth Session, May 8, 2009 at 27.

SECTION 3-116. LIEN FOR ~~ASSESSMENTS~~; SUMS DUE ASSOCIATION; ENFORCEMENT.

(a) The association has a statutory lien on a unit for any assessment ~~levied against~~ attributable to that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, reasonable attorney's fees and costs, other fees, charges, late charges, fines, and interest charged pursuant to Section 3-102(a)(10), (11), and (12), and any other sums due to the association under the declaration, this [act], or as a result of an administrative, arbitration, mediation, or judicial decision are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except:

~~(i)~~(1) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances ~~which~~ that the association creates, assumes, or takes subject to~~,~~ ;

~~(ii)~~(2) except as otherwise provided in subsection (c), 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 owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent~~,~~; and

~~(iii)~~(3) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

(c) A ~~The~~ lien under this section is also prior to all security interests described in subsection (b)(2) ~~clause (ii) above~~ to the extent of both the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien and reasonable attorney's fees and costs incurred by the association in foreclosing the association's lien. ~~This subsection~~ Subsection (b) and this subsection ~~does~~ do not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. [~~The~~ A lien under this section is not subject to ~~the provisions of~~ [insert appropriate reference to state homestead, dower and curtesy, or other exemptions].]

Explaining the reason for the changes to these sections, the Uniform Act includes the following comments:

Associations must be legitimately concerned, as fiduciaries of the unit owners, that the association be able to collect periodic common charges from recalcitrant unit owners in a timely way. To address those concerns, the section contains these 2008 amendments:

First, subsection (a) is amended to add the cost of the association's reasonable attorueys fees and court costs to the total value of the association's existing 'super lien' – currently, 6 months of regular common assessments. This amendment is identical to the amendment adopted by Connecticut in 1991; see C.G.S. Section 47-258(b). The increased amount of the association's lien has been approved by Fannie Mae and local lenders and has become a significant tool in the successful collection efforts enjoyed by associations in that state.

The Uniform Act's amendment in 2008 is very telling about § 3-116's original intent. The comments state reasonable attorneys' fees and court costs are *added* to the super priority lien stating that it is currently 6 months of regular common assessments. The Uniform Act adds attorneys' fees and costs to subsection (a) which defines the association's lien. Those attorueys' fees and costs attributable to foreclosure efforts are also added to subsection (c) which defines the super priority lien amount.

If the association's lien ever included attorneys' fees and court costs as "charges for late payment of assessments" or if such sum was part of the super priority lien, there would be no reason to add this language to subsection (a) and (c). Or at a miuimum, the comments would assert the amendment was simply to make the language more clear. It is also clear by the language that only what is specified as part of the super priority lien can comprise the super priority lien. The additional language defiuing the super priority lien provides for costs that are *incurred* by the association foreclosing the lieu. This is further evidence that the super priority lien does not aud never did consist of interest, fines, penalties or late charges. These charges are not incurred by the association and they should not be part of any super priority lien.

The Nevada Legislature had the opportunity to change NRS 116.3116 in 2009 and 2011 to conform to the Uniform Act. It chose uot to. While the revisions under the

Uniform Act may make sense to some and they may be adopted in other jurisdictions, the fact of the matter is, Nevada has not adopted those changes. The changes to the Uniform Act cannot be insinuated into the language of NRS 116.3116. Based on the plain language of NRS 116.3116, legislative intent, and the comments to the Uniform Act, the Division concludes that the super priority lien is limited to expenses stemming from NRS 116.310312 and assessments as reflected in the association's budget for the immediately preceding 9 months from institution of an action to enforce the association's lien.

IV. "ACTION" AS USED IN NRS 116.3116 DOES NOT REQUIRE A CIVIL ACTION ON THE PART OF THE ASSOCIATION.

NRS 116.3116(2) provides that the super priority lien pertaining to assessments consists of those assessments "which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien." NRS 116.3116 requires that the association take action to enforce its lien in order to determine the immediately preceding 9 months of assessments. The question presented is whether this action must be a civil action.

During the Senate Committee on Judiciary hearing on May 8, 2009, the Chair of the Committee, Terry Care, stated with reference to AB 204:

> One thing that bothers me about section 2 is the duty of the association to enforce the liens, but I understand the argument with the economy and the high rate of delinquencies not only to mortgage payments but monthly assessments. Bill Uffelman, speaking for the Nevada Bankers Association, broke it down to a 210-day scheme that went into the current law of six months. Even though you asked for two years, I looked at nine months, thinking the association has a duty to move on these delinquencies.

NRS 116 does not require an association to take any particular action to enforce its lien, but that it institutes "an action." NRS 116.31162 provides the first steps to foreclose the association's lien. This process is started by the mailing of a notice of delinquent

assessment as provided in NRS 116.31162(1)(a). At that point, the immediately preceding 9 months of assessments based on the association's budget determine the amount of the super priority lien. The Division concludes that this action by the association to begin the foreclosure of its lien is "action to enforce the lien" as provided in NRS 116.3116(2). The association is not required to institute a civil action in court to trigger the 9 month look back provided in NRS 116.3116(2). Associations should make the delinquent assessment known to the first security holder in an effort to receive the super priority lien amount from them as timely as possible.

ADVISORY CONCLUSION:

An association's lien consists of assessments, construction penalties, and fines. Unless the association's declaration provides otherwise, the association's lien also includes all penalties, fees, charges, late charges, fines and interest pursuant to NRS 116.3102(1)(j) through (n). While charges for late payment of assessments are part of the association's lien, "costs of collecting" as defined by NRS 116.310313, are not. "Costs of collecting" defined by NRS 116.310313 iucludes costs of collecting any *obligation*, not just assessments. Costs of collecting are not merely a charge for a late payment of assessments. Since costs of collecting are not part of the association's lien in NRS 116.3116(1), they cannot be part of the super priority lien detailed in subsection (2).

The super priority lieu consists of two components. By virtue of the detail provided by the statute, the super priority lien applies to the charges incurred under NRS 116.310312 and up to 9 months of assessments as reflected in the association's regular budget. The Nevada Legislature has not adopted changes to NRS 116.3116 that were made to the Uniform Act in 2008 despite multiple opportunities to do so. In fact, the Legislative intent seems rather clear with Assemblywoman Spiegel's comments to A.B. 204 that changed 6 months of assessments to 9 months. Assemblywoman Spiegel stated that she "carefully put this bill together to make sure it did not include any

assessments for penalties, fines or late fees." This is consistent with the comments to the Uniform Act stating the priority is for assessments based on the periodic budget. In other words, when the super priority lien language refers to 9 months of assessments, assessments are the only component. Just as when the language refers to charges pursuant to NRS 116.310312, those charges are the only component. Not in either case can you substitute other portions of the entire lien and make it superior to a first security interest.

Associations need to evaluate their collection policies in a manner that makes sense for the recovery of unpaid assessments. Associations need to consider the foreclosure of the first security iuterest aud the chances that they may not be paid back for the costs of collection. Associations may recover costs of collecting unpaid assessments if there are proceeds from the association's foreclosure.[14] But costs of collecting are not a lien under NRS 116.310313 or NRS 116.3116(1); they are the personal liability of the unit owner.

Perhaps an effective approach for an association is to start with foreclosure of the assessment lien after a nine month assessment delinquency or sooner if the association receives a foreclosure notice from the first security interest holder. The association will always want to enforce its lien for assessments to trigger the super priority lien. This can be accomplished by starting the foreclosure process. The association can use the super priority lien to force the first security interest holder to pay that amount. The association should incur only the expense it believes is necessary to receive payment of assessments. If the first security interest holder does not foreclose, the association will maintain its assessment lien consisting of assessments, late charges, and interest. If a loan modification or short sale is worked out with the owner's lender, the association is better off limiting its expenses and more likely to recover the assessments. Adding unnecessary costs of collection – especially after a short period of delinquency – can

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[14] NRS 116.31164.

make it all the more impossible for the owner to come current or for a short sale to close. This situation does not benefit the association or its members.

The statements in this advisory opinion represent the views of the Division and its general interpretation of the provisions addressed. It is issued to assist those involved with common interest communities with questions that arise frequently. It is not a rule, regulation, or final legal determination. The facts in a specific case could cause a different outcome.

EXHIBIT 3

EXHIBIT 3

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May 29, 2013

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Ladies and Gentlemen:

You have asked whether foreclosure of its assessment lien by a Nevada common interest association extinguishes a first security interest and other junior interests.

It is my opinion that foreclosure by an association extinguishes the first security interest and all other subordinate interests if the foreclosure otherwise complies with the requirements of Nevada law.

As discussed more below, the Nevada statute is based on and incorporates, with variations not relevant to my opinion, the provisions of the Uniform Common Interest Ownership Act ("UCIOA"). My long experience in the writing of UCIOA and its predecessor laws gives me a unique perspective into the meaning and intent of Nevada's Uniform Common-Interest Ownership Act ("NUCIOA").

UCIOA and NUCIOA clearly contemplate that foreclosure by an association extinguishes a first security interest.

My Experience and Background

ULC Commissioner. The Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws) 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.

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, cooperatives, time-shares, partition of real estate, land security interests and nonjudicial foreclosure.

My initial involvement in common interest ownership law was as a member of the ULC's 1976 review committee on the Uniform Condominium Act. Thereafter, I was a member of the drafting committees that produced the 1980 Uniform Planned Community Act and the 1982 Uniform Common Interest Ownership Act. I chaired the committee that amended the Uniform Common Interest Ownership Act in 1994.

I chaired the drafting committee that produced both the 2008 amended Uniform Common Interest Ownership Act and the Uniform Common Interest Owners Bill of Rights Act.

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.

I've 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 courses on condominium, planned community and mixed use projects as well as serving on the faculty of the ALI-ABA course on resort real estate. In those classes, I emphasize the benefits and burdens of the Uniform laws for developers, lenders, merchant builders, unit purchasers and sellers, associations and managers.

I've addressed legislative committees in a number of States on the subject of the real property Uniform Laws as well as been an invited speaker at symposia and similar events.

Peer Organizations. I've 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.

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 Conference, the Community Association Institute, the American College of Mortgage Attorneys and the American Land Title Association.

UCIOA and NUCIOA

Our goals in promulgating the 1982 UCIOA[1] were many, but we believe that we achieved at least two of them:

First, 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.

Second, 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.

1982 UCIOA is divided into five parts:

- Article 1 contains definitions and general provisions.
- Article 2 provides for the creation, alteration and termination of common interest

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[1] The ULC has subsequently amended UCIOA: First, in 1994, to address minor changes and, second, in 2008, to significantly expand Part 3 to expand governance rights for owners and increased 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 distinctions 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 own 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.

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 a developer's activities.

Nevada enacted NUCIOA in 1991. At that time, Nevada adopted, without variations not relevant to my opinion, 1982 UCIOA's Section 3-116. The Nevada version is NRS 116.3116.

The ULC proudly proclaims that 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

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

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[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 Owner Bill of Rights: Kansas.

[4] Although nothing in the Uniform Condominium Act prohibited 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 prohibited 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.

Because the role of an association is critical to the success or failure of the great majority of common interest communities, we devoted a significant amount of time to empowering the association. One of the most important conclusions that we 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. For that reason, the association was given a statutory lien against the unit owner's unit; it was believed that the mere existence of the lien would 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.

However, if the association's only realistic remedy is foreclosure,[5] the association's lien – for assessments arising after the unit owner's mortgage was recorded in the office of the recorder – would ordinarily be junior to the first security interest. 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.

It was Fannie Mae and Freddie Mac that proposed a solution that would protect the association and the interests of the holder of the first security interest: Give the association a limited priority ahead of the first security interest – UCIOA chose an amount equal to six months of assessments under the annual budget; the Nevada version is nine months. As explained in the Official Comments,

> as 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

---

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

> enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lenders.

First embodied in the 1976 Uniform Condominium Act, this priority principle has become the law not only in States that enacted one or more of the Uniform laws and in a half dozen other States by specific legislation.

A lender faced with foreclosure by the association could be expected to protect its collateral by paying off the six month priority amount. And it could do so without advancing its own funds by requiring its borrowers to escrow for association assessments in the same manner as lenders require escrow for property taxes and casualty insurance.[6]

Foreclosure

The priority treatment of the association's lien is not limited to a first claim to proceeds from the foreclosure sale (up to an amount of unpaid assessments, fee, charges, late charges, fines and interest not exceeding six months of assessments determined by the periodic budget). 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.[7]

That result naturally follows from the customary rule regarding priority of interests in real estate.[8] 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 priority extinguishes that lien and all subordinate liens. The liens attach to the proceeds of the sale and are paid out accordingly.

---

[6] Of course, back in 1976, there were many fewer foreclosures and only a few of them required more than six months from commencement to completion. Even in a judicial foreclosure jurisdiction, foreclosure actions – in the absence of a meritorious defense would be completed in less than 12 months. Requiring a borrower to escrow six months of association associations was seen as a minor burden.

[7] 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.

[8] The Restatement of Property (Mortgages) (1996) states the general rule, in the context of mortgage foreclosure, this way in Section 7.1: "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.

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

The 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 the statutory priority, foreclosure by the association extinguishes the first security interest and all other junior interests.

- 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 the security interest.

Sincerely,

Carl H. Lisman

26961\001

EXHIBIT 4

EXHIBIT 4

STATE OF NEVADA
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INTERIM FINANCE COMMITTEE (775) 684-6821

December 7, 2012

Senator Scott Hammond
8408 Gracious Pine Avenue
Las Vegas, NV 89143-4608

Dear Senator Hammond:

You have asked this office certain questions relating to the foreclosure of liens under chapter 116 of NRS, the chapter which governs common-interest communities in this State. We will answer each of your questions separately below.

DISCUSSION

1. What ownership interest is obtained by the purchaser of real property that is foreclosed pursuant to NRS 116.31162 to 116.31168, inclusive, considering the language set forth in NRS 116.31164?

The provisions of NRS 116.31162 to 116.31168, inclusive, govern the foreclosure of a lien held by the association of a common-interest community. NRS 116.31164 sets forth the procedure for conducting the sale of real property by an association pursuant to the foreclosure of a lien on that property. With respect to the distribution and use of the proceeds of such a sale and the delivery of the property after the sale, subsection 3 of NRS 116.31164 provides:

> 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

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

(Emphasis added). Additionally, subsection 3 of NRS 116.31166 provides that "[t]he sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit's owner without equity or right of redemption."

In considering a provision of NRS, we are guided by several rules of statutory construction employed by the Nevada Supreme Court. As a general rule of statutory construction, a court presumes that the plain meaning of statutory language reflects a full and complete statement of the Legislature's intent. Villanueva v. State, 117 Nev. 664, 669 (2001). Therefore, when the plain meaning of statutory language is clear and unambiguous on its face, a court generally will apply the plain meaning of the statutory language and will not search for any meaning beyond the language of the statute itself. Erwin v. State, 111 Nev. 1535, 1538-39 (1995); McKay v. Bd. of Supervisors, 102 Nev. 644, 648 (1986) (words in a statute "should be given their plain meaning unless this violates the spirit of the act").

Applying this rule of statutory construction stated above, the plain language of subsection 3 of NRS 116.31164 provides that when property is sold pursuant to an association's foreclosure of a lien, the purchaser obtains a deed without warranty which conveys to the purchaser, as the grantee of the warranty made, executed and delivered by the person conducting the sale, all title held by the previous owner.[1] In addition, subsection 3 of NRS 116.31166 provides that the interest vested in the purchaser is that of the previous owner's title without equity or right of redemption. Thus, these two provisions of NRS clearly and unambiguously establish that when real property is sold pursuant to the foreclosure of a lien on the property held by an association, the purchaser acquires the entirety of the title held by the previous owner of the property, and such title is not subject to any claim of equity or right of redemption by the previous owner.

2. Does the ownership interest obtained by the purchaser of real property that is foreclosed pursuant to NRS 116.31162 to 116.31168, inclusive, survive a subsequent foreclosure on a security interest, other than an association lien, on the same property?

The order of distribution of proceeds of a sale of real property made pursuant to an association's foreclosure of a lien on the property is set forth in subsection 3 of NRS 116.31164. The order of priority for satisfying a security interest other than an association lien on such property is also set forth in subsection 3 of NRS 116.31164. Subsection 3 of NRS 116.31164 provides that proceeds from the sale of a property must be applied to "[s]atisfaction in the order

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[1] A deed without warranty, unlike a warranty deed which contains a covenant of title, may carry with it the risk of a defect in the title. 15 M.L.P. 2d Deeds § 3 (2013) (citing Corbin on Contracts § 587).

of priority of any subordinate claim of record" but only after those proceeds are first applied to: (1) the reasonable expenses of the sale; (2) the reasonable expenses of securing, maintaining and preparing the property for sale; and (3) the satisfaction of the association's lien.

Significantly, subsection 1 and 2 of NRS 116.31166 also provide that:

> 1. The recitals in a deed made pursuant to NRS 116.31164 of:
> (a) Default, the mailing of the notice of delinquent assessment, and the recording of the notice of default and election to sell;
> (b) The elapsing of the 90 days; and
> (c) The giving of notice of sale,
>
> are conclusive proof of the matters recited.
>
> 2. Such a deed containing those recitals is conclusive against the unit's former owner, his or her heirs and assigns, and all other persons. The receipt for the purchase money contained in such a deed is sufficient to discharge the purchaser from obligation to see to the proper application of the purchase money.

(Emphasis added).

Based on the plain language of subsection 2 of NRS 116.31166, the receipt for the purchase money contained in a deed without warranty delivered to a purchaser pursuant to NRS 116.31164 that includes the recitals described in subsection 1 of NRS 116.31166 serves to discharge the purchaser from any obligation to ensure the proper application of the purchase money paid by the purchaser.

In the event there are insufficient proceeds to satisfy a security interest, the holder of that security interest may be able to seek recourse by pursuing a deficiency judgment against the person who was the owner of the property at the time of sale under chapter 40 of NRS.[2] However, assuming the purchaser of the property obtains a deed containing the proper recitals described in subsection 1 of NRS 116.31166 and the receipt for purchase money described in subsection 2 of NRS 116.31166, there are no other applicable statutory provisions that would otherwise authorize the holder of a security interest to whom the previous owner of the property was obligated to seek a judgment against the purchaser of the property for any deficiency resulting from the distribution of proceeds. Accordingly, the ownership interest of a purchaser who obtains title through a deed properly containing the information described above is not subject to any claim made by the holder of a security interest who forecloses on an obligation after the purchase is made pursuant to NRS 116.31164.

---

[2] NRS 40.451 to 40.463, inclusive, establish procedures for the award of a deficiency judgment, and NRS 40.4631 to 40.4639, inclusive, set forth provisions relating to actions by holders of junior real mortgages after a foreclosure sale. It should be noted, however, that pursuant to Assembly Bill No. 471 of the 2009 Legislative Session (Ch. 310, Statutes of Nevada 2009, at p. 1528-31), a deficiency judgment on an obligation secured by a mortgage, deed of trust or other encumbrance on or after October 1, 2009, may not be awarded against a homeowner if certain criteria are met.

3. **Can any part of an ownership interest vested in the purchaser of real property that is foreclosed pursuant to NRS 116.31162 to 116.31168, inclusive, be extinguished by a subsequent foreclosure on a security interest, other than an association lien, on the same property?**

As explained above, any recourse sought by the holder of a security interest to whom the previous owner of the property was obligated is properly made against that previous owner and not the purchaser of the property. Therefore, no part of an ownership interest vested in the purchaser may be extinguished by a foreclosure on a security interest to which the previous owner was obligated that occurs after the purchaser obtains title to the property under NRS 116.31164.

SUMMARY

Based on the reasoning set forth above, it is the opinion of this office that: (1) the purchaser of real property sold pursuant to the foreclosure of an association lien under the provisions of NRS 116.31162 to 116.31168, inclusive, obtains all title belonging to the previous owner; and (2) if certain recitals and the receipt for purchase money are properly contained in the deed conveying such title to the purchaser, the purchaser is discharged from any obligation relating to the application of proceeds from the sale of the property to satisfy the claims described in NRS 116.31164, including any claim that may be made by the holder of an interest secured by the same property but to whom the previous owner, and not the purchaser, was obligated.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,

Brenda J. Erdoes
Legislative Counsel

By ____________________
J. Daniel Yu
Principal Deputy Legislative Counsel

Bradley A. Wilkinson
Chief Deputy Legislative Counsel

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Ref No. 121205082859
File No. OP_Hammond121205154959

EXHIBIT 5

EXHIBIT 5

Chapter 2. Taxes and Assessments (07/01/99)

Part of a servicer's responsibility for protecting the priority of Fannie Mae's lien on a property securing a mortgage Fannie Mae has purchased or securitized is the maintenance of accurate records on the status of taxes, ground rents, or other assessments that could become a lien against the property—and paying the related bills if it maintains an escrow deposit account for that purpose.

Section 201 Taxes and Ground Rents (08/24/03)

The servicer must maintain accurate records on the status of real estate taxes and ground rents. The servicer of a ***first-lien mortgage loan*** usually accomplishes this by paying the bills itself using funds in the borrower's escrow deposit account. When the servicer has waived the escrow deposit account for a specific borrower, it still remains responsible for the timely payment of taxes and ground rents. Therefore, if the borrower fails to pay the taxes or ground rents, the servicer must advance its own funds to pay them, revoke the waiver, and begin escrow deposit collections to pay future bills. (Also see *Section 103.01, Waiver of Escrow Deposits (01/01/05)*.)

The servicer of a ***second*** mortgage does not have to pay the bills for taxes and ground rents, but it must satisfy itself that these items are paid when due—either by the borrower or the first-lien mortgage loan servicer. If the second-lien mortgage loan servicer wishes (and the mortgage loan documents permit), it may establish an escrow deposit account to ensure that these expenses are paid promptly.

When the property securing the mortgage loan is a manufactured home, servicers must take the appropriate steps to ensure that both the manufactured home and land are taxed as real property and that a single tax bill is issued. In most cases, manufactured homes that have been converted to real property also will be taxed as real property. If this is not possible under applicable law and the dwelling must be taxed separately as personal property, the servicer's escrow systems must be adjusted to escrow for both real and personal property taxes. Further, in this event, all of Fannie Mae's requirements relating to real estate taxes apply equally to personal property taxes applicable to the dwelling.

The servicer should use the funds in the borrower's escrow deposit account to pay taxes and other related charges before any penalty date. Whenever funds are available, the servicer must pay these expenses early enough to take advantage of the maximum discounts allowed. If the deposit account balance is not sufficient to pay these obligations, the servicer should notify the borrower and then advance its own funds. The borrower may be billed for the amount the servicer advanced if (and in the manner) permitted by the mortgage loan documents, applicable law, and government regulations. If a penalty is incurred for late payments of taxes—and the borrower was a factor in delaying the payment—the servicer may bill the borrower for the penalty. Otherwise, the servicer must pay the penalty from its own funds. In such cases, Fannie Mae will reimburse the servicer for any funds it has to advance (including those for late fees and tax penalties). (Also see *Part VIII, Section 108.01, Delinquent Tax Late Fees or Penalties (01/31/03).*)

Section 202 Special Assessments (01/31/03)

Special assessments may be imposed by special tax, municipal utility, or community facilities districts in some states; by the HOA of a PUD or condo project; or by the co-op corporation of a co-op project. The servicer must maintain accurate records on the status of any special assessments that could become a lien against a property. Generally, the borrower will pay special assessments directly, but if he or she fails to do so, the servicer must advance its own funds to pay them if that is necessary to protect the priority of Fannie Mae's lien. In a few instances, deposits to pay special assessments will be collected as part of the mortgage loan payment.

When the HOA of a PUD or condo project notifies the servicer that a borrower is 60 days' delinquent in the payment of assessments or charges levied by the association, the servicer should advance the funds to pay the charges if necessary to protect the priority of Fannie Mae's mortgage lien. If the project is located in a state that has adopted the Uniform Condominium Act (UCA), the Uniform Common Interest Ownership Act (UCIOA), or a similar statute that provides for up to six months of delinquent regular condo assessments to have lien priority over the mortgage lien, Fannie Mae will reimburse the servicer for up to six months of such advances. However, Fannie Mae will not reimburse the servicer for any fees or costs related to attempts to collect the delinquent assessments.

EXHIBIT 6

EXHIBIT 6

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DISTRICT COURT

CLARK COUNTY, NEVADA

FIRST 100, LLC, Plaintiff, v. RONALD BURNS, et al., Defendants.	CASE NO.: A677693 DEPARTMENT NO. XX **ORDER DENYING DEFENDANT'S MOTION TO DISMISS**

This matter having come on for hearing on the 8th day of May, 2013; Luis A. Ayon, Esq., and Margaret E. Schmidt, Esq., appearing for and on behalf of Plaintiff; Chelsea A. Crowton, Esq., appearing for and on behalf of Defendant, U.S. Bank; Karl L. Nielson, Esq., appearing for and on behalf of Defendant, Ronald Burns; Gregory L. Wilde, Esq., appearing for and on behalf of Defendant, National Default Servicing Corporation; and the Court having hearing arguments of counsel, and being fully advised in the premises, finds:

(1) This matter comes before the Court on a Motion by Defendant U.S. Bank NA to dismiss the Complaint pursuant to Rule 12(b)(5) of the Nevada Rules of Civil Procedure ("NRCP").

(2) This dispute arises from foreclosure proceedings conducted against a residential property located at 3055 Key Largo Drive, Unit #101, Las Vegas, Nevada 89120, identified by APN 162-25-614-153 ("the Subject Property"). The Subject

JEROME TAO
DISTRICT JUDGE
DEPARTMENT XX

Property is located within a common-interest community governed by a homeowners' association as defined in NRS Chapter 116, known as the Canyon Willows Owners Association (HOA). The prior owners of the property (who are not parties to this action) failed to pay all monthly assessments due under the operating documents of the common-interest community. In response, the HOA asserted a lien against the Subject Property and initiated foreclosure proceedings pursuant to NRS 116.3116 et seq. which culminated in a foreclosure sale conducted on February 2, 2013.

(3) The Plaintiff is First 100 LLC, a Nevada limited-liability corporation, which alleges that it acquired the Subject Property at the February 2, 2013 public auction. According to the allegations of the Complaint, the Plaintiff properly recorded a Deed on February 4, 2013 reflecting its purchase of the Subject Property. However, two days later, on February 6, 2013, the Subject Property was re-sold by way of foreclosure and Trustee's Sale initiated by Defendant National Default Servicing Corporation, who asserted that it was the named trustee under Deed of Trust previously recorded against the Subject Property on October 30, 2006, as Instrument No. 200610300002548 (and referred to in the pleadings as the "BNC Mortgage Deed of Trust"). Defendant Robert Burns purchased the Subject Property at the February 6, 2013 Trustee's Sale.

(4) The Plaintiff's Complaint asserts three causes of action: (First) Wrongful Foreclosure against Defendant National Default Servicing Corporation; (Second) Declaratory Relief/Quiet Title against all Defendants; and (Third) Injunctive Relief against Defendant Burns.

(5) As framed by the parties' briefing and oral arguments, the issue before the Court is a straightforward question of law. The Plaintiff contends that the February 2 foreclosure sale conducted pursuant to NRS 116.3116 et seq. and based upon a lien asserted by a homeowner's association for unpaid assessments automatically extinguished, by operation of law, any and all prior encumbrances upon the Subject Property. Thus, according to the Plaintiff, the subsequent Trustee's Sale conducted on

February 6 was unlawful because the October 30, 2006 Deed of Trust against the Subject Property had been extinguished in its entirety by the February 2 foreclosure sale. Therefore, the Plaintiff alleges that it is the rightful and legal owner of the Subject Property via its purchase of the Subject Property on February 2 free and clear of all prior encumbrances.

(6) In considering a Motion to Dismiss pursuant to NRCP 12(b)(5), the Court must accept all factual allegations of the pleadings to be true and view those allegations both liberally and in the light most favorable to the non-moving party. However, the Court need not accept the parties' assertions of law as true. The Court's analysis is limited to the factual allegations contained within the four corners of the Complaint and all inferences reasonably arising therefrom. A claim can only be dismissed if it is clear beyond any reasonable doubt that the plaintiff cannot prove any set of facts at trial that would entitle it to relief. Furthermore, a complaint can be dismissed even if all of the elements of a cause of action have been technically pled so long as the Court, relying on "judicial experience and common sense," finds that the allegations of the complaint are "conclusory" or "implausible." *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009)[1].

(7) In this case, the parties do not appear to dispute that the February 2, 2013 foreclosure sale was properly conducted in accordance with all of the legal requirements of NRS Chapter 116. The parties also do not appear to dispute that the BNC Mortgage Deed of Trust was a perfected legal encumbrance upon the Subject Property properly recorded on October 30, 2006. The parties also do not appear to dispute that the lien asserted against the Subject Property by the HOA was proper and legal under the provisions of NRS Chapter 116. The parties also do not appear to dispute that, if the Plaintiff's interpretation of the legal consequences of NRS Chapter 116 is correct, the Plaintiff has properly pled the elements supporting its causes of

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[1] *Ashcroft* was decided pursuant to FRCP 12(b)(6). However, where the Nevada Rules of Civil Procedure parallel the Federal Rules of Civil Procedure, rulings of federal courts interpreting and applying the federal rules are persuasive authority for this Court in applying the Nevada Rules. *E.g., Executive Management Ltd. v. Ticor Title Ins.*, 118 Nev. 46, 53 (2002). NRCP 12(b)(5) is identical to FRCP 12(b)(6).

JEROME TAO
DISTRICT JUDGE
DEPARTMENT XX

action.

(8) Therefore, the question before the Court is a straightforward question of statutory interpretation: whether a foreclosure sale properly initiated and conducted pursuant to NRS Chapter 116 automatically extinguishes all prior encumbrances on the property such that a bona fide purchaser at the foreclosure sale acquires the property free and clear of all prior encumbrances.

(9) In interpreting the scope and meaning of a statute, the Court looks first to the words of the statute. The words of a statute are assigned their ordinary meaning unless it is clear from the face of the statute that the Legislature intended otherwise. When "the language of a statute is plain and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself." *Estate of Smith v. Mahoney's Silver Nugget*, 127 Nev. Adv. Op. 76 (November 23, 2011). If the Legislature has independently defined any word or phrase contained within a statute, the Court must apply the definition created by the Legislature. If, and only if, the Court determines that the words of the statute are ambiguous when given their ordinary and plain meaning, then reference may be made to other sources such as the legislative history of the statute in order to clarify the ambiguity. An "ambiguity" exists where a provision is susceptible to two reasonable interpretations.

(10) A threshold question in this case is whether the security interest represented by the BNC Mortgage Deed of Trust is senior or junior to the lien asserted by the HOA. NRS 116.3116 states in part as follows:

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

> The lien is also prior to all security interests described in paragraph (b) 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.

(11) Thus, under NRS 116.3116, a previously perfected first security interest retains its seniority over a subsequent lien asserted by a homeowners' association *except* to the extent that the subsequent association lien is based upon unpaid regular periodic assessments for common expenses. In that event, notwithstanding that the association's lien was asserted subsequently in time, a portion of the homeowners' association lien (limited to what was unpaid during the nine months immediately preceding the lien) is given artificial priority over a previously perfected first security interest. The portion of the association lien equating to what was unpaid during those nine months is commonly said to have "super-priority" status over other prior encumbrances. If the association claims that more than nine months' assessments stand unpaid, then the amount unpaid during the nine months immediately preceding the lien is entitled to "super priority" status over other encumbrances, but any assessments remaining unpaid for more than nine months would be subordinate to other previously perfected encumbrances.

(12) The parties do not appear to dispute that the lien asserted by the HOA in this case was based upon regular periodic assessments that were unpaid during the nine

months immediately preceding the imposition of the lien. Therefore, as a matter of law, the lien asserted by the HOA is deemed to be senior to the security interest created by the BNC Mortgage Deed of Trust even though the HOA lien was asserted subsequently in time. The parties do not appear to dispute this legal conclusion.

(13) Thus, the parties appear to agree that the HOA lien was senior to the BNC Mortgage Deed of Trust at the instant in time immediately before the property was sold via foreclosure sale to the Plaintiff on February 2, 2013. However, what the parties vigorously dispute is whether the junior security interest (the BNC Mortgage Deed of Trust) was extinguished by operation of law as a result of the February 2 foreclosure sale.

(14) NRS 116.31162 states that, after a lien is asserted by a homeowner's association and certain procedures are followed. the association "may foreclose its lien by sale." If the association chooses to proceed with a non-judicial foreclosure sale, then NRS 116.31164 governs how the foreclosure sale is to occur. After the foreclosure sale is completed, NRS 116.31164 governs how the proceeds of the sale must be allocated. In particular, NRS 116.31164(3) states:

> 3. After the sale, the person conducting the sale shall....
> (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
> (5) Remittance of any excess to the unit's owner.

(15) Thus, the plain language of NRS 116.31164 expressly contemplates that the proceeds must first used to pay the expenses of the sale, taxes and other governmental charges, legal expenses, and the association's lien, and then to satisfy

"subordinate claim[s] of record."

(16) In this case, the parties agree that the proceeds of the sale totaled only approximately $2,000.00, far less than what would have been required to pay off all of the liens and security interests that existed against the Subject Property prior to the foreclosure sale. Accordingly, the question before the Court can be phrased as follows: when the proceeds from a foreclosure sale conducted pursuant to NRS 116.31164 are inadequate to satisfy all of the various lienholders when distributed as required in NRS 116.31164(3), does the failure to satisfy the subordinate interests mean that those subordinate interests survive the foreclosure sale to the extent that they remain unsatisfied, or instead that those subordinate interests are extinguished by operation of law such that a bona fide third-party purchaser at the foreclosure sale takes the property free and clear of any unsatisfied subordinate encumbrances?

(17) The Plaintiff avers that the latter case is true. Consequently, the Plaintiff asserts that because all subordinate interests were extinguished on February 2 when it acquired the Subject Property, the subsequent foreclosure sale conducted on February 6 based upon an unpaid subordinate security interest was unlawful. On the other hand, the Defendant avers that the former must be true. Consequently, the Defendant avers that its subordinate security interest survived the February 2 sale because the interest remained unsatisfied from the proceeds of that sale, and accordingly it possessed the legal right to foreclose upon the Subject Property and trigger a second foreclosure sale in order to satisfy its subordinate interests. In effect, the Defendant argues that the Plaintiff, by purchasing the Subject Property for an amount insufficient to pay off all existing encumbrances, only acquired the property "subject to" those unsatisfied encumbrances.

(18) The Court has reviewed the entirety of NRS Chapter 116, and there appears to be no statutory provision that expressly states that an unsatisfied junior lien either is, or is not, extinguished by operation of law as a consequence of a foreclosure sale conducted pursuant to NRS 116.31164. In their briefs, the parties are also unable

to identify any particular provision expressly on point. Therefore, in analyzing the answer to this question, the Court must consider other sources, such as the legislative history of NRS 116.31164, and other similar statutes contained within the NRS.

(19) NRS Chapter 116 was originally introduced in 1991 as Assembly Bill 221, with the stated purpose of "adopt[ing] the Uniform Common-Interest Ownership Act," or UCIOA (Preamble of AB 221, introduced January 24, 1991; statement of introduction of AB 221, Minutes of the Assembly Committee on Judiciary, February 20, 1991). At the time, the UCIOA had already been adopted in several other states and was under consideration in at least 3 others. (Memorandum dated March 13, 1991 from Uniform Common Interest Ownership Act Subcommittee, in the legislative record as an exhibit to Minutes of the Assembly Committee on Judiciary, March 20, 1991). NRS 116.3116 originally corresponded to Section 100 of AB 221, and NRS 116.31164 originally corresponded to Section 102 of AB 221. The "super priority" lien verbiage included within Section 100 of AB 221 is identical to NRS 116.3116 as it exists today, except that the original "super priority" lien was limited to assessments unpaid during the six months (rather than 9 months) immediately preceding the lien. The time period was expanded to nine months in 2009 by Assembly Bill 204.

(20) NRS 116.3116 was subjected to various technical amendments in 1993 through AB 612 (which did not affect the "super priority" language at issue here). During testimony in support of the technical amendments, one of the drafters of the original bill testified that:

> "As a general proposition, it makes good sense to follow a uniform law as closely as possible, utilizing the optional suggestions in the uniform act to customize the law as necessary. The corresponding benefit -- especially important in a small state like Nevada -- is our own version of a uniform law with precedent in other uniform law jurisdictions. Maintaining the uniform law also makes available the very helpful explanatory comments, some of which contain illustrative examples, and all of which, like the act itself, represent not only very careful draftsmanship, but the input of all of the different groups involved in the homeowner association process; that is, developers, consumers, lenders, local governmental authorities, state regulators, managers and other

> professionals, as well as homeowners associations themselves." (Testimony of Michael Buckley, Chairman of the Uniform Common-Interest Ownership Act Subcommittee, before the Assembly Judiciary Committee on May 20, 1993).

(21) Thus, one of the principal drafters of the bill expressly urged that the Nevada Legislature adhere as closely as practicable to the uniform version of the UCIOA, and the Nevada Legislature did so by enacting the "super priority" language originally included in the UCIOA into NRS 116.3116 without any amendment (and with virtually no debate). Consequently, the legislative history surrounding AB 221 contains virtually nothing useful to the Court's analysis in the case at hand. However, the Legislature apparently contemplated that adoption of the uniform language without amendment would enable Nevada courts to look to "precedent in other uniform law jurisdictions" as well as the background and explanatory comments accompanying the UCIOA in resolving questions relating to the scope and meaning of NRS 116.3116.

(22) Indeed, the Nevada Supreme Court regularly looks outside the confines of NRS Chapter 116 and to the Uniform Act (as well as other sources) in interpreting various provisions of NRS Chapter 116. *E.g., Holcomb Condominium HOA v. Stewart Venture LLC*, 129 Nev. Adv. Op. 18 (April 4, 2013) ("the term 'separate instrument' is not defined in NRS Chapter 116 or the Uniform Common-Interest Ownership Act (UCIOA)"); *Beazer Homes Holding Corp. v. District Court*, 128 Nev. Adv. Op. 66 (Dec. 27, 2012) (citing "the commentary to the Restatement (Third) of Property, section 6.11, which mirrors section 3–102 of the Uniform Common Interest Ownership Act, upon which NRS 116.3102 is based"); *Boulder Oaks Community Association v. B&J Andrews*, 169 P.3d 1155 (2007) (unpublished) ("NRS Chapter 116 is Nevada's version of the Uniform Common-Interest Ownership Act and largely mirrors the uniform act [and citing to] the commentary to [the UCIOA]").

(23) NRS 116.3116 is modeled upon Section 3-116 of the 1982 version of the UCIOA, which was originally drafted by the National Conference of Commissioners on Uniform State Laws. NRS 116.3116 deviates from Section 3-116 in expanding the period of "super priority" to include unpaid assessments occurring during the preceding

9 months instead of merely 6 months, but otherwise NRS 116.3116 is identical to UCIOA Section 3-116.

(24) Official Comment 1 to Section 3-116 describes the purpose of the section as follows:

> "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 significant departure from existing practice, the 6 months' priority for the assessment lien strikes an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity of protecting the priority of the security interests of lenders. As a practical matter, mortgage lenders will most likely pay the 6 months' assessments demanded by the association rather than having the association foreclose on the unit. If the lender wishes, an escrow for assessments can be required. Since this provision may conflict with the provision of some state statutes which forbid some lending institutions from making loans not secured by first priority liens [state law should be consulted]."

(25) Thus, the drafters of the UCIOA expressly contemplated that, as a practical matter in most cases, the holder of the first security interest would seek to protect its interest from subordination to a "super priority" lien by simply paying the unpaid assessments. However, the Comment does not expressly specify whether, if a lender chooses not to do so and instead permits the property to proceed to foreclosure, the lender's first security interest is thereby extinguished. Furthermore, nothing else in either the plain text or comments of UCIOA appear to relate specifically to the question of whether a foreclosure sale initiated due to unpaid assessments extinguishes all other junior liens, including a first security interest rendered junior because of the "super priority" provision. Quite to the contrary, Comment 1 suggests that the drafters of the UCIOA intended to leave this question to state law rather than establishing uniform national standards.

(26) In Opposition to the Motion, the Plaintiff notes that, as a general principle of Nevada law, foreclosure of a superior security interest extinguishes all junior interests that did not participate in the foreclosure process. *E.g., Brunzell v.*

Lawyers Title Ins. Co., 101 Nev. 395 (1985); *Erickson Construction Co. v. Nevada National Bank*, 89 Nev. 350 (1973). The Plaintiff also notes that the Nevada Department of Business and Industry has issued an administrative opinion, dated December 12, 2012, that interprets NRS Chapter 116.3116 such that a foreclosure based upon a "super priority" lien extinguished a first security interest made junior only due to the "super priority" statute. The Plaintiff also cites to an opinion by a Washington State appellate court (interpreting a statute identical to the UCIOA) finding that a foreclosure based upon a "super priority" lien extinguished a first security interest that was given notice of the pending foreclosure and yet chose not to participate. *Summerhill Village HOA v. Roughly*, 270 P.2d 639 (Wash.Ct.App. 2012). The Plaintiff also notes that some Judges of this Judicial District have resolved this question in favor of the Plaintiff's argument. The Court also notes that at least one scholarly commentator has opined that a non-judicial foreclosure sale under the UCIOA extinguishes all junior liens that did not participate in the foreclosure process as "necessary parties." *See*, Winokur, "Meaner Lienor Community Associations: The 'Super Priority' Lien and Related Reforms Under The UCIOA," 27 Wake Forest Law Review 353, 378 n.106 (1992) ("foreclosure extinguish[es] the Less-Prioritized Lien").

(27) In support of its Motion, the Defendant cites to an opinion issued by Judge Dawson of the U.S. District Court, *Diakonos Holdings LLC v. Countrywide Home Loans*, 2013 WL 531092 (D.Nev. February 11, 2013), rejecting the reasoning of the Washington court in *Summerhill*. The Defendant also cites to various unpublished, non-precedential Orders issued by other Judges of this Judicial District that have found that a foreclosure sale based upon a "super priority" lien does not extinguish a first security interest upon the property. (*See*, Defendant's Motion, pages 11-14).

(28) In short, the situation before this Court appears to be as follows. By this Motion, this Court is asked to interpret the scope and meaning of a statute that was enacted by the Nevada Legislature after virtually no meaningful debate, that was modeled on a broad uniform act that specifically left unanswered the question raised by

this Motion, whose legislative sponsor urged the Legislature not to deviate from the text of the uniform act so that the courts of this State could rely upon precedent from other states, and upon which the courts of different states, and the Judges of this Judicial District, have taken different positions.

(29) In the absence of clear guidance from the text of the statute or its legislative history, this Court is left to examine other sources for guidance. One such source consists of other statutes that relate to matters similar to those addressed by NRS 116.3116.

(30) In Nevada, holders of security interests against real property may initiate foreclosure through multiple statutory avenues. For example, the holder of a mortgage may initiate a judicial foreclosure via NRS 40.430 et seq. The holder of a deed of trust may also initiate a non-judicial foreclosure (commonly known as a "Trustee's Sale") pursuant to NRS 107.080 et seq. A landlord (or other assignee of the right to receive rent from real property) may also seek the appointment of a receiver to initiate a foreclosure upon a security instrument pursuant to NRS 107A.260.

(31) It is well-settled that any foreclosure sale conducted pursuant to NRS 40.462, 107.080, or 107A.260 automatically extinguishes all junior security interests against the property. *E.g., Brunzell v. Lawyers Title Ins. Co.*, 101 Nev. 395 (1985); *Erickson Construction Co. v. Nevada National Bank*, 89 Nev. 350 (1973). Thus, the Defendant is essentially arguing that a foreclosure conducted pursuant to NRS 116.3116 is something wholly unique under Nevada law, because it would represent the only type of foreclosure permitted in Nevada under which junior liens would not be automatically extinguished.

(32) However, if the Defendant is correct that foreclosures conducted pursuant to NRS 116.3116 are unique under Nevada law, then there must exist something in the text or legislative history of NRS 116.3116 that says so. Under settled rules of statutory interpretation, the Court cannot read NRS 116.3116 as a unique, unprecedented, and *sui generis* departure from long-established norms relating to

foreclosure sales in Nevada unless there is some indication in the text or legislative history that the Legislature intended this to be the case. There is not. Quite to the contrary, the complete absence of anything within NRS Chapter 116 regarding the question of extinguishment suggests that the Legislature intended that Chapter 116 foreclosures would be handled as any other type of foreclosure.

(33) Notably, NRS 40.462 was enacted in 1989, and NRS 107.080 was originally enacted in 1927. In other words, both NRS 40.462 and 107.080 pre-date the enactment of NRS 116.3116, as does the opinion of the Nevada Supreme Court in *Erickson Construction Co. v. Nevada National Bank*, 89 Nev. 350 (1973) (holding that non-judicial foreclosure sales automatically extinguish junior liens). Thus, the Legislature must be presumed to have known when NRS 116.3116 was enacted that the normal consequence of a foreclosure sale in Nevada would be that all junior liens are automatically extinguished. Had the Legislature intended that NRS 116.3116 represent a singular departure from established legal norms, the Legislature certainly could have included language to that effect. The Court notes that the Legislature utilizes a variety of common phrases throughout the NRS when it intends to create exceptions to other statutes; *see, for example*, NRS 78.090(1) ("Notwithstanding the provisions of NRS 77.300..."); NRS 62B.390(1) ("Except as otherwise provided in NRS 62B.400..."); NRS 62E.010(2) ("Except as otherwise provided by specific statute...."); NRS 78.120(1) ("Subject only to such limitations as may be provided by this chapter..."); NRS 48.025 ("All relevant evidence is admissible, except as otherwise provided by this title..."); NRS 51.075(2) ("The provisions of NRS 51.085 to 51.305, inclusive, are...not restrictive of the exception provided by this section"). Yet none of these phrases are contained anywhere within NRS Chapter 116 in any context that suggests an intention to depart from the ordinary rule that, in Nevada, foreclosure sales extinguish junior liens. The absence of any language to this effect suggests that this was not the intention of the Legislature.

(34) Moreover, NRS 116.3116 et seq. contains a series of specific departures and deviations from the foreclosure proceedings established in NRS 40.462 and 107.080, but none that relate to the extinguishment or non-extinguishment of junior liens. For example, the idea of "super priority" exists nowhere in NRS Chapter 40 or 107. Similarly, neither NRS 40.462 nor 107.080 include the kinds of specific notice provisions required by NRS Chapter 116 before a foreclosure sale can be initiated. Yet the Legislature included no language in NRS 116.3116 that can be read as departing from the principle of extinguishment. It is well-settled that the inclusion of one thing must be read as the implying the omission of another (*"expressio unius est exclusio alterius"*). Thus, when the Legislature chose to include language designed to deviate in certain specific ways from established foreclosure practices, but not language that changes whether junior liens are extinguished, that choice must be deemed by this Court to have been intentional and deliberate.

(35) Furthermore, not only did the Legislature include no language departing from the principle of extinguishment under NRS Chapter 40 and 107, it included language in NRS Chapter 116 highly similar to language contained in NRS Chapter 107 that expressly recites that junior liens are extinguished. NRS 107.080(5) recites that a Trustee's Sale "vests in the purchaser the title of the grantor...without equity or right of redemption." NRS 116.31166(3) recites that a foreclosure sale initiated pursuant to NRS 116.3116 "vests in the purchaser the title of the unit's owner without equity or right of redemption." This similarity suggests that the Legislature intended that a purchaser at a NRS Chapter 116 foreclosure sale acquires exactly the same title as he would have acquired had the foreclosure been a NRS Chapter 107 Trustee's Sale, i.e., title free and clear of junior encumbrances. Moreover, the words "without equity or right of redemption" were defined long ago by the Nevada Supreme Court, which held that a sale "without equity or right of redemption" is one that vests the purchaser with "absolute legal title as complete, perfect and indefeasible as can exist...and a sale, upon due notice to the mortgagor, whether at public or private sale, forecloses all

equity of redemption as completely as a decree of court." *Bryant v. Carson River Lumbering Co.*, 3 Nev. 313, 317-18 (1867), quoted in *In re Grant*, 303 B.R. 205, 209 (Bankr.D.Nev. 2003).

(36) Thus, the operation of NRS 116.3116 appears to be as follows. NRS 116.316 creates a series of specific and unique requirements when an HOA imposes a lien against a property and wishes to initiate a foreclosure sale to satisfy unpaid assessments. Where NRC Chapter 116 is silent, the Court must presume that the Legislature intended that the ordinary and established principles governing the conduct of foreclosure sales in Nevada apply to "fill in the gaps."

(37) Accordingly, when a homeowners' association imposes a lien for unpaid assessments, a portion of the unpaid assessments (not exceeding nine months) are entitled to "super priority" status over existing liens and mortgages. NRS 116.3116(2). However, in order to perfect this "super priority" lien, the association must give proper notice to all parties including any holders of first security interests whose priority will have been adversely affected. NRS 116.31163(2). Furthermore, if the association wishes to foreclose upon the property in order to satisfy its lien, it may do so, but only after given specific notice to all subordinate lienholders of record. NRS 116.311635(1)(a)(2). As expressly contemplated by Comment 1 to UCIOA Section 3-116, most subordinate lienholders would likely protect their interest from extinguishment by simply paying off the unpaid assessments. Indeed, that appears to be the specific purpose of requiring that those lienholders be given notice under NRS 116.31163(2) and NRS 116.311635(1)(a)(2). But if those subordinate lienholders fail to stave off foreclosure by paying off the assessment, then their subordinate claims are paid off with any surplus proceeds of the foreclosure sale. NRS 116.31164(3)(c)(4). After the sale is completed, any subordinate claims are automatically extinguished by operation of law. *Erickson Construction Co. v. Nevada National Bank*, 89 Nev. 350 (1973) (holding that non-judicial foreclosure sales automatically extinguish junior liens). If the lender's mortgage remains unsatisfied after the foreclosure sale, it may be

able to pursue a deficiency action against the mortgagor of record (the original defaulting party), but not any claim against the property itself or against new bona fide third-party who purchased the property at the foreclosure sale.

(38) In their briefs, both parties advance various policy and "fairness" arguments in support of their respective positions. For example, the Defendant argues that permitting a bona-fide third-party purchaser to procure a property for a mere $2,000 while extinguishing a mortgage worth many times that amount is "unfair". However, any junior lienholder has a simple remedy for this unfairness -- as expressly contemplated by Comment 1 to UCIOA Section 3-116, a lender can avoid foreclosure and protect its interest from extinguishment by simply intervening to pay off the assessments.

(39) Moreover, the Court notes that the Defendant's argument would lead to an equally "unfair" result. In this case, if the Defendant's argument were adopted, then the net result would be that the Plaintiff will have paid $2,000 to satisfy the association's lien, yet does not own the Subject Property. In effect, the Plaintiff paid off the lien asserted by the HOA and acquired nothing in return, because immediately after it acquired the Subject Property, the property was taken by the Defendant and sold to someone else for more money. This result appears fundamentally unfair to bona fide third-party purchasers who will have paid off the assessments that the lender failed to pay despite having been given specific notice of the existence of the unpaid assessments, and despite the obvious intent of the drafters of the UCIOA that, in most cases, the lender would protect its own interest by paying off the assessments. This result would achieve the perverse outcome of actually rewarding sloth and inaction on the part of the lender, who, as expressly recognized by Comment 1 to UCIOA Section 3-116, is the one party (other than the defaulting owner) in a position to stop the foreclosure, protect its own interests, and make the association whole by paying the assessments. Instead, the Defendant's interpretation of NRS 116.3116 would result in the association and the lender being made whole at the expense of bona fide third-party

purchasers, a result that is quite obviously absurd.

(40) The Defendant appears to suggest this outcome, however unfair, is the natural consequence of the fact that the Plaintiff attempted to purchase the Subject Property for less than the cumulative total of all existing encumbrances upon the Subject Property, and "buyer beware" because, had the Plaintiff properly done its homework, it should have known that it might stand to lose the Subject Property unless it purchased the Subject Property for an amount sufficient to pay off all existing liens.

(41) But, as noted, the party best-positioned to protect its interests (and incidentally to protect any innocent third parties) is the lender whose interests are directly at stake. It is a well-recognized principle of Nevada law that when both potential interpretations of a statute or rule are unfair to someone, the brunt of any unfairness should not fall on innocent third parties. *E.g., NC-DSH Inc. v. Garner*, 125 Nev. 647, 656 (2009) (in choosing who should suffer from the fraudulent actions of an agent, "ordinarily, the sins of an agent are visited upon his principal, not the innocent third party with whom the dishonest agent dealt"); *Rothman v. Fillette*, 469 A.2d 543, 545 (Pa. 1983) (cited approvingly in *NC-DSH Inc. v. Garner*, 125 Nev. 647, 656 (2009)) ("a principal acting through an agent in dealing with an innocent third party must bear the consequences of the agent's fraud" because of "the long recognized principle that where one of two innocent persons must suffer because of the fraud of a third...the loss should be borne by him who put the wrongdoer in a position of trust and confidence and thus enabled him to perpetrate the wrong"). *See also, Tri-County Equipment & Leasing v. Klinke*, 128 Nev. Adv. Op. 33 (June 28, 2012) (Gibbons, J., concurring) (when one party is likely to receive a windfall, it should be the party who lacks any responsibility for the situation) (relevant citations omitted). In this case, it is true that the lender cannot be said to bear responsibility for the non-payment of assessments by the record owner. However, the lender is in a far better position to protect its interests, make the association whole, and eliminate the need for foreclosure than a third-party purchaser at the foreclosure sale with no connection to the lender, the

HOA, or the previous owner. Yet, accepting the Defendant's argument in this case would result in the Plaintiff being the only party who suffers any monetary loss from the non-payment of assessments, as both the HOA and the Defendant have been made whole. That result is fundamentally unfair and could not have been what the Legislature intended.

(42) In a sense, this outcome can be seen as unfair to the lender whose interest in this case was extinguished by the purchase of the Subject Property for a mere $2,000. However, Comment 1 to UCIOA Section 3-116 proposes two simple solutions. First, the lender (having been given specific notice of the association's "super priority" lien) can protect its interest by paying the unpaid assessments before foreclosure is initiated by the association, thereby removing the "super priority" lien and ensuring that its security interest is the most senior one remaining. Alternatively, and more proactively, as noted by Comment 1 the lender can ensure that there can never be a default or a "super priority" lien by simply impounding money in advance and paying the assessments itself, much as lenders now commonly impound money to pay tax bills in order to prevent tax liens and government tax foreclosures. In either case, the association will have been made whole, thus accomplishing the fundamental purpose of NRS 116.3116, and the lender can seek to satisfy its own security by initiating its own foreclosure at which its security interest would be the most senior encumbrance.

(43) In general, however, questions regarding the fairness of any public policy are for the Legislature to resolve, not for the Judiciary. The Legislature is entitled to enact legislation that may, in some instances, be unfair to some parties. But the Judiciary cannot substitute its own judgment for that of the Legislature and read a statute in a manner other than as it is drafted merely because the application of the statute might seem unwise. In this case, the disposition of this Motion is based upon the application of clear principles of statutory interpretation. In the complete absence of any language in NRS Chapter 116 reflecting a Legislative intent to depart from the

established principle that subordinate liens are extinguished by foreclosure sales, the Court must assume that the Legislature intended that Chapter 116 foreclosures operate precisely in the same manner.

(44) For the foregoing reasons, the Defendant's Motion to Dismiss is DENIED.

DATED: May 30, 2013

JEROME T. TAO
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing, by mailing, by placing copies in the attorney folder's in the Clerk's Office or faxing as follows:

Luis A. Ayon, Esq., and Margaret E. Schmidt, Esq. - Via Facsimile: 792-9002
Karl L. Nielson, Esq. - Via Facsimile: 692-8099
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Paula Walsh

Paula Walsh, Executive Assistant

BROADCAST REPORT

TIME : 05/30/2013 16:09
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TEL : 7026714440
SER.# : 000C9N858027

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DATE	TIME	FAX NO./NAME	DURATION	PAGE(S)	RESULT	COMMENT
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05/30	16:05	9461345	03:22	20	OK	ECM

BUSY: BUSY/NO RESPONSE
NG : POOR LINE CONDITION
CV : COVERPAGE
PC : PC-FAX

EXHIBIT 7

EXHIBIT 7

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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

Plaintiff,

vs.

WELLS FARGO BANK, N.A., a national association; JOSEPH A. HOLMES, an individual; SONJA J. PALMER, an individual; and DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No. 2:13-cv-01153-APG-PAL

ORDER GRANTING PRELIMINARY INJUNCTION

Plaintiff's motion for preliminary injunction was heard on July 23, 2013 at 2:00 p.m. Diana S. Cline, Esq. and Jacqueline A. Gilbert of Howard Kim & Associates appeared on behalf of Plaintiff SFR Investments Pool 1, LLC ("SFR"). Chelsea A. Crowton, Esq. of Wright Finlay & Zak LLP appeared on behalf of Defendant Wells Fargo Bank, N.A. ("Wells Fargo"). The court has considered the motion, the pleadings and papers on file herein, and the arguments of counsel.

The court hereby finds that SFR has met its burden for injunctive relief. Plaintiff has a substantial likelihood of success on the merits and will suffer irreparable harm if Wells Fargo continues with the non-judicial foreclosure proceedings before the conclusion of this litigation.

Before Wells Fargo filed its notice of removal, Plaintiff filed an application for temporary restraining order and motion for preliminary injunction, seeking to enjoin Defendant Wells Fargo, its successors, assigns and agents from continuing foreclosure proceedings, selling, transferring, or otherwise conveying the real property commonly known as **2650 Upland Bluff Drive, Las Vegas, NV 89142 Parcel No. 161-11-112-032** (the "Property"). On July 10, 2013,

this Court issued a temporary restraining order enjoining the trustee's sale scheduled for Friday, July 12, 2013 and required Plaintiff to post a $5,000 bond.

Plaintiff acquired title to the Property through a quit claim deed dated March 6, 2013 from Sunrise Highlands Community Association (the "Association"). According to a foreclosure deed recorded on February 14, 2013, the Association acquired title to the Property on June 27, 2012 at a publicly-held foreclosure auction pursuant to the powers conferred by the Nevada Revised Statutes 116 *et seq.* and a Notice of Delinquent Assessment (Lien), recorded on November 24, 2010.

Defendants Joseph A. Holmes and Sonja J. Palmer obtained title to the Property in August of 2007 through a Grant, Bargain, Sale Deed. On August 10, 2007, Wells Fargo recorded a deed of trust against the Property to secure a loan to Holmes and Palmer ("Deed of Trust"). A Notice of Default and Election to Sell pursuant to the terms of Deed of Trust was recorded on December 10, 2012. A Notice of Sale pursuant to the terms of the Deed of Trust was recorded on June 11, 2013.

Plaintiff argues that Wells Fargo's foreclosure of its Deed of Trust is improper because the July 27, 2013 foreclosure of the Association's lien containing super priority amounts extinguished the Deed of Trust. Wells Fargo argues that NRS 116.3116(2) establishes a "payment priority" that requires payment to the Association if a first security interest forecloses, but does not give the Association the ability to extinguish a first security interest through foreclosure of an Association's lien.

The court finds that NRS 116.3116 is clear, not ambiguous; therefore, the court need not look to the legislative history to interpret the statute.[1] Under NRS 116.3116(1), the Association has a lien on the Property for amounts including delinquent assessments. Pursuant to NRS 116.3116(4), the recording of the Association's declaration of covenants, conditions and

[1] Even if the court were to consider legislative history and other sources, the result would be the same. The court has considered the May 30, 2013 order issued by the Honorable Judge Jerome Tao in *First 100, LLC v. Burns, et al*, (Eighth Judicial District Court Case No. A-13-677693-C), which contains a detailed analysis of NRS 116.3116. The Court finds Judge Tao's analysis in that order persuasive.

restrictions on August 1, 2006 constituted perfection and record notice of the Association's lien.

NRS 116.3116(2) provides that the entire Association Lien

> is prior to all other liens and encumbrances of 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.

NRS 116.3116(2) further provides that a portion of the Association Lien has priority over a first security interest in the Property:

> [the Association 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[.]

The Association may foreclose on its lien, including the portion of its lien that has priority over a first security interest, through the procedures outlined in NRS 116.31162 through NRS 116.31168.

In this case, the Deed of Trust held by Wells Fargo is inferior to any super priority portion of the Association's lien. Therefore, the proper foreclosure of the Association's lien containing snper priority amounts would have extinguished the Deed of Trust. Accordingly, Plaintiff has demonstrated a likelihood of success on the merits.

It is up to the Nevada Legislature, not this court, to decide whether the statutory scheme that allows a homeowners association lien to have priority over a first security interest is sound public policy. This court's obligation is to enforce the law as written, absent some statutory or constitutional infirmity.

IT IS HEREBY ORDERED that Defendant Wells Fargo Bank, N.A. and its agents are restrained and enjoined from continuing with foreclosure proceedings regarding (and from selling, transferring, or otherwise conveying) the real property commonly known as **2650**

Upland Bluff Drive, Las Vegas, NV 89142 Parcel No. 161-11-112-032 (the "Property") until the conclusion of this litigation or further order of this court.

IT IS FURTHER ORDERED that the $5,000.00 bond posted by Plaintiff on July 11, 2013 as security for the temporary restraining order issued by this court on July 10, 2013 shall remain in place as security for this preliminary injunction. Plaintiff also shall post an additional security bond in the amount of $500.00 per month for each month that this injunction remains in place. The parties may stipulate to have the bond amounts deposited into an interest-bearing escrow or similar account, rather than into the court.

IT IS FURTHER ORDERED that Plaintiff shall maintain the Property including, but not limited to, paying all homeowners association assessments and taxes, and carrying hazard insurance in an appropriate amount. Plaintiff shall disclose to Wells Fargo the amount and coverage of that insurance. If, during the litigation, Wells Fargo believes the Property is not being properly maintained or protected, or that an additional bond amount is needed, it may seek appropriate relief from this court.

Dated this 25th day of July, 2013 at 8:15 a.m.

UNITED STATES DISTRICT JUDGE

EXHIBIT 8

EXHIBIT 8

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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7912 LIMBWOOD COURT TRUST, Plaintiff, v. WELLS FARGO BANK, N.A.; MTC FINANCIAL INC.; and FEDERAL HOME LOAN MORTGAGE CORPORATION, Defendants.	2:13-CV-00506-PMP-GWF ORDER

This case is one of many similar disputes over whether a foreclosure sale conducted by a homeowners' association ("HOA") to collect unpaid HOA assessments extinguishes all junior liens, including a first deed of trust. Presently before the Court are the following motions:

1. Defendant MTC Financial Inc.'s Motion to Dismiss (Doc. #37), filed on May 23, 2013. Defendants Federal Home Loan Mortgage Corporation and Wells Fargo Bank, N.A. filed a Joinder (Doc. #39) on May 28, 2013. Plaintiff 7912 Limbwood Court Trust did not file a response to this Motion.

2. Defendants Federal Home Loan Mortgage Corporation and Wells Fargo Bank, N.A.'s Motion to Dismiss (Doc. #40), filed on May 29, 2013. Defendant MTC Financial

Inc. filed a Joinder (Doc. #41) on May 29, 2013. Plaintiff filed an Opposition (Doc. #43) on June 10, 2013. Defendants Federal Home Loan Mortgage Corporation and Wells Fargo Bank, N.A. filed a Reply (Doc. #46) on June 24, 2013. Defendant MTC Financial Inc. filed a Joinder (Doc. #47) on June 25, 2013.

3. Defendants Federal Home Loan Mortgage Corporation and Wells Fargo Bank, N.A.'s Motion to Expunge Lis Pendens (Doc. #48), filed on June 28, 2013. Plaintiff filed an Opposition (Doc. #49) on July 15, 2013. Defendants Federal Home Loan Mortgage Corporation and Wells Fargo Bank, N.A. filed a Reply (Doc. #50) on July 22, 2013.

I. BACKGROUND

Because the matter is before the Court on motions to dismiss, the following recitation of background facts is taken largely from the Amended Complaint, which the Court takes as true. Williams v. Gerber Prods. Co., 552 F.3d 934, 937 (9th Cir. 2008). Additionally, the Court takes judicial notice of the fact that certain documents were recorded in the Office of the County Recorder for Clark County, Nevada. See United States v. Ritchie, 342 F.3d 903, 908-09 (9th Cir. 2003).

The property at issue, located at 7912 Limbwood Court in Las Vegas, Nevada, previously was owned by Sandra and Sonya Newton (the "Newtons"). (Am. Compl. (Doc. #33) at 1; Request for Judicial Notice (Doc. #38), Ex. 1.) The property was subject to a first deed of trust recorded in 2004 which identified Silver State Mortgage as the lender and Lawyers Title of Nevada as the trustee. (Request for Judicial Notice (Doc. #38), Ex. 1.) In 2011, Silver State Mortgage assigned the deed of trust to Defendant Wells Fargo Bank, N.A. ("Wells Fargo"). (Am. Compl. at 2-3; Request for Judicial Notice (Doc. #38), Ex. 2.) Defendant MTC Financial Inc. ("MTC") thereafter was substituted as the trustee under the deed of trust. (Request for Judicial Notice (Doc. #38), Ex. 3.)

The property is subject to the 1995 Covenants, Conditions, and Restrictions ("CC&Rs") recorded by the Elkhorn Community Association ("Elkhorn"). (Am. Compl. at

3; Request for Judicial Notice (Doc. #12), Ex. P.) In 2010, Elkhorn initiated an HOA foreclosure sale of the property pursuant to Nevada Revised Statutes § 116.3116, et seq. to recover unpaid HOA assessments. (Am. Compl. at 2; Request for Judicial Notice (Doc. #12), Exs. G-I.) According to the Amended Complaint, Elkhorn, through its agent Angius & Terry, LLC, conducted the foreclosure sale in compliance with all statutory notice requirements. (Am. Compl. at 2-3.) The sale was conducted on March 6, 2012, at which Plaintiff purchased the property. (Id. at 2; Request for Judicial Notice (Doc. #12), Exs. H-J.) The HOA foreclosure deed was recorded with the Clark County Recorder on March 16, 2012. (Am. Compl. at 2; Request for Judicial Notice (Doc. #12), Ex. J.)

On October 5, 2012, Wells Fargo and MTC recorded a notice of default and election to sell based on the Newtons' deed of trust. (Reqnest for Judicial Notice (Doc. #38), Ex. 4.) The sale was set for March 8, 2013. (Request for Judicial Notice (Doc. #38), Ex. 5.)

Plaintiff brought suit in Nevada state court on March 5, 2013, against Wells Fargo, MTC, Republic Services, and the Newtons to quiet title in the property. (Pet. for Removal (Doc. #1), Ex. A.) Plaintiff moved for a temporary restraining order and preliminary injunction seeking to enjoin Wells Fargo's foreclosure sale. (Pet. for Removal, Ex. E.) The state court set a hearing for March 12, 2013. (Pet. for Removal, Ex. F.) However, Wells Fargo and MTC sold the property on March 8, 2013, to Defendant Federal Home Loan Mortgage Corporation ("Freddie Mac"). (Id.; Am. Compl. at 3; Request for Judicial Notice (Doc. #38), Exs. 6-7.) The state court set a hearing for April 2, 2013, for Defendants to show cause why the sale should not be set aside. (Pet. for Removal, Ex. F.) Prior to the April 2 hearing, MTC removed the action to this Court. (Pet. for Removal.)

This Court set a hearing on Plaintiff's Motion for Preliminary Injunction and the Nevada state court's order to show cause why the sale should not be set aside. (Order (Doc. #18).) At the hearing, the Court denied Plaintiff's motion for injunctive relief without

prejudice for Plaintiff to file an Amended Complaint. (Mins. of Proceedings (Doc. #30).) Plaintiff filed an Amended Complaint against Wells Fargo, MTC, and Freddie Mac, asserting claims for wrongful foreclosure and to quiet title in the property. (Am. Compl.)

Defendant MTC now moves to dismiss, arguing MTC claims no interest in the property, and therefore it is not a proper defendant in a quiet title action. Additionally, MTC contends Plaintiff's wrongful foreclosure claim against MTC should be dismissed because MTC owes no common law duty to Plaintiff, MTC was an agent acting for a disclosed principal, and a wrongful foreclosure claim lies only as between trustors and mortgagors.

Defendants Wells Fargo and Freddie Mac join in MTC's Motion and also separately move to dismiss. Wells Fargo and Freddie Mac argue Wells Fargo's lien is superior to Elkhorn's HOA lien, and therefore it was not extinguished by the HOA foreclosure sale. Wells Fargo and Freddie Mac contend that under the Nevada statutory scheme, foreclosure on the HOA's lien does not extinguish the first deed of trust. Rather, the HOA's lien is a payment priority lien only, and the first deed of trust continues to encumber the property after foreclosure of the HOA lien. Wells Fargo and Freddie Mac contend that Plaintiff thus purchased merely a possessory interest in the property subject to the first deed of trust. Wells Fargo and Freddie Mac contend it would violate their due process rights to allow a later-recorded HOA assessment lien to extinguish the deed of trust lien recorded several years earlier. Wells Fargo and Freddie Mac also contend that Elkhorn's CC&Rs preserve the first deed of trust's priority over HOA liens. Defendants therefore also move to expunge the Notice of Lis Pendens that Plaintiff recorded on the property.

Plaintiff responds that Nevada's statutory scheme provides the HOA with a lien for nine months' worth of HOA assessments which is superior to the first deed of trust, referred to as the "super priority lien." According to Plaintiff, if the HOA forecloses on the

super priority lien, all junior liens, including the first deed of trust, are extinguished. Plaintiff further contends an HOA cannot waive its super priority lien through the CC&Rs. Plaintiff also argues Defendants received the statutory notice required, and all lenders were on notice of the possibility of a super priority lien extinguishing a first deed of trust upon enactment of the super priority statutory scheme in 1991. Plaintiff contends Defendants could have preserved the security interest by complying with the statutory requirements to receive notice and by paying off the HOA super priority lien, but they sat on their rights and cannot be heard to complain now.

II. DISCUSSION

In considering a motion to dismiss, "all well-pleaded allegations of material fact are taken as true and construed in a light most favorable to the non-moving party." Wyler Summit P'ship v. Turner Broad. Sys., Inc., 135 F.3d 658, 661 (9th Cir. 1998). However, the Court does not necessarily assume the truth of legal conclusions merely because they are cast in the form of factual allegations in the plaintiff's complaint. See Clegg v. Cult Awareness Network, 18 F.3d 752, 754-55 (9th Cir. 1994). There is a strong presumption against dismissing an action for failure to state a claim. Ileto v. Glock Inc., 349 F.3d 1191, 1200 (9th Cir. 2003). A plaintiff must make sufficient factual allegations to establish a plausible entitlement to relief. Bell Atl. Corp. v Twombly, 550 U.S. 544, 556 (2007). Such allegations must amount to "more than labels and conclusions, [or] a formulaic recitation of the elements of a cause of action." Id. at 555.

A. MTC's Motion to Dismiss

Under Nevada law, "[a]n action may be brought by any person against another who claims an estate or interest in real property, adverse to the person bringing the action, for the purpose of determining such adverse claim." Nev. Rev. Stat. § 40.010. Because the Amended Complaint does not allege MTC claims an interest in the property, and MTC disclaims any interest in the property, the Court will dismiss Plaintiff's quiet title claim as

against Defendant MTC.

As to the wrongful foreclosure claim against MTC, a trustee under a deed of trust owes no duties beyond those imposed by the deed of trust and applicable foreclosure statutes. Harlow v. MTC Fin. Inc., 865 F. Supp. 2d 1095, 1100 (D. Nev. 2012). Plaintiff has not alleged MTC breached the deed of trust or any requirement imposed by the foreclosure statutes. Rather, Plaintiff asserts a common law wrongful foreclosure claim. See Collins v. Union Fed. Sav. & Loan, 662 P.2d 610, 623 (Nev. 1983). The Court therefore will dismiss Plaintiff's wrongful foreclosure claim against MTC.

Defendants Wells Fargo and Freddie Mac filed a conclusory Joinder which did not explain how MTC's arguments applied to them. The Court therefore will deny Defendants Well Fargo and Freddie Mac's Joinder in MTC's Motion.

B. Wells Fargo and Freddie Mac's Motion to Dismiss

The parties dispute the effect of the HOA foreclosure sale on the first deed of trust. The parties also dispute whether Wells Fargo's due process rights would be violated by allowing foreclosure of the HOA lien to extinguish Wells Fargo's security interest based on the first deed of trust. Finally, the parties dispute whether the Elkhorn CC&Rs provide that the HOA lien is subordinate to the first deed of trust.

1. Priority

Wells Fargo and Freddie Mac contend the HOA super priority lien gives the HOA priority in payment only, and foreclosure on the HOA super priority lien does not extinguish Wells Fargo's security interest based on the first deed of trust. Plaintiff, on the other hand, contends foreclosure on the super priority lien extinguishes all junior liens, including the first deed of trust.

The Nevada Supreme Court has not addressed the statutory provisions at issue to determine whether a foreclosure sale on an HOA super priority lien extinguishes all junior liens, including a first deed of trust. "Where the state's highest court has not decided an

issue, the task of the federal courts is to predict how the state high court would resolve it." Giles v. Gen. Motors Acceptance Corp., 494 F.3d 865, 872 (9th Cir. 2007) (quotation omitted). "In answering that question, this court looks for 'guidance' to decisions by intermediate appellate courts of the state and by courts in other jurisdictions." Id. (quotation omitted).

This Court looks to Nevada rules of statutory construction to determine the meaning of a Nevada statute. In re First T.D. & Inv., Inc., 253 F.3d 520, 527 (9th Cir. 2001). Under Nevada law, a court should construe a statute to give effect to the legislature's intent. Richardson Constr., Inc. v. Clark Cnty. Sch. Dist., 156 P.3d 21, 23 (Nev. 2007). If the statute's plain language is unambiguous, that language controls. Id. If the statute's language is ambiguous, the Court "must examine the statute in the context of the entire statutory scheme, reason, and public policy to effect a construction that reflects the Legislature's intent." Id.

Chapter 116 of the Nevada Revised Statutes, enacted in 1991, codifies the Uniform Common-Interest Ownership Act and sets forth the statutory framework for common interest communities such as HOAs. Nev. Rev. Stat. § 116.001; A.B. 221, Summary of Legislation, 66th Leg. (Nev. 1991). Section 116.3116(1) provides for a lien in an HOA's favor "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." Additionally, unless the HOA's declaration provides otherwise, "any penalties, fees, charges, late charges, fines and interest charged pursuant to [§ 116.3102(1)(j)-(n)] are enforceable as assessments under this section." Nev. Rev. Stat. § 116.3116(1); see also id. § 116.3102(1)(j)-(n) (providing for charges for such items as late payment penalties, rental fees for common elements, and fines).

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The key provision in dispute between the parties is § 116.3116(2), which sets forth the priority of the HOA lien with respect to other liens on the property. Pursuant to § 116.3116(2), the HOA lien is prior to all other liens on the property except:

> (a) Liens and encumbrances recorded before the recordation of the declaration[1] 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 . . . ; and
> (c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

Although § 116.3116(2)(b) makes a first deed of trust superior to an HOA lien, the last paragraph of § 116.3116(2) gives what the parties refer to as "super priority" status to a portion of the HOA's lien which is superior to the first deed of trust:

> 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[2] 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. . . . This subsection does not affect the priority of mechanics' or materialmens' liens, or the priority of liens for other assessments made by the association.

Id. § 116.3116(2). Recording the HOA's declaration "constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required." Id. § 116.3116(4).

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[1] The declaration is "any instrument[], however denominated, that create[s] a common-interest community, including any amendments to th[at] instrument[]." Nev. Rev. Stat. § 116.037.

[2] Allowing for the HOA's executive board to enter a unit to conduct maintenance or remove or abate a nuisance, and permitting the imposition of fees and costs for any such activity.

The HOA may pursue a civil suit to recover unpaid assessments directly from the unit owner, or it may foreclose on a lien created under § 116.3116. Id. §§ 116.3116(6), (10), 116.31162. To conduct a foreclosure sale on its lien, the HOA must comply with certain notice requirements. First, the HOA must notify the owner of the delinquent assessments. Id. § 116.31162(1)(a). If the owner does not pay within 30 days, the HOA must record a notice of default and election to sell. Id. § 116.31162(1)(b). In addition to recording the notice of default, the HOA must mail it to "[a]ny holder of a recorded security interest encumbering the unit's owner's iuterest who has notified the association, 30 days before the recordation of the notice of default, of the existence of the security interest." Id. § 116.31163(2). If the unit owner has not paid the lien amount within 90 days of the notice of default being recorded, the HOA then must give notice of the sale to the owner and to the known holder of a security interest if the security interest holder "has notified the association, before the mailing of the notice of sale, of the existence of the security interest." Id. §116.311635(b)(2); see also id. § 116.61162(1)(c).

At the sale, the HOA must sell to the highest bidder, and the HOA may credit bid on the property "up to the amount of the unpaid assessments and any permitted costs, fees and expenses incident to the enforcement of its lien." Id. § 116.31164(2). After the sale, the seller must execute and deliver to the buyer "a deed without warranty which conveys to the grantee all title of the unit's owner to the unit." Id. §§ 116.31164(3)(a), 116.31166(3). The seller must apply the proceeds of the sale 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
> (5) Remittance of any excess to the unit's owner.

Id. § 116.31164(3)(c). "The sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit's owner without equity or right of redemption." Id. § 116.31166(3). A deed which recites there was a default, the proper notices were given, the appropriate amount of time has lapsed between notice of default and sale, and notice of the sale was given, "is conclusive against the unit's former owner, his or her heirs and assigns, and all other persons." Id. § 116.31166(2). Upon payment, the purchaser is "discharge[d] from obligation to see to the proper application of the purchase money." Id.

Section 116.3116(2) effectively separates the HOA's lien into two separate liens. The last paragraph of subsection 2, which generally consists of the last nine months of unpaid assessments and any unpaid nuisance abatement costs, constitutes the super priority portion of the HOA's lien. It provides that the super priority portion of the HOA's lien is prior to the first deed of trust. The rest of the HOA's lien, consisting of any charges not contained within the super priority lien, including any assessments unpaid for more than nine months, is junior to the first deed of trust under § 116.3116(2)(b). The parties agree the statute operates in this fashion, but disagree about the legal effect of the HOA's foreclosure on the super priority lien.

Nevada's statutory scheme is clear. Section 116.3116(2) unambiguously provides that the HOA super priority lien is prior to the first deed of trust. The statutory scheme also unambiguously provides for the HOA to resort to non-judicial foreclosure procedures to enforce its lien. The statute sets forth the order of priority by which the foreclosure sale proceeds must be distributed, and the association's lien must be satisfied before any other subordinate claim of record. The purchaser at an HOA foreclosure sale obtains the unit owner's title without equity or right of redemption, and a deed which contains the proper recitals "is conclusive against the unit's former owner, his or her heirs and assigns, and all other persons." Id. § 116.31166(2). Compare Nev. Rev. Stat.

§ 107.080 (providing that a mortgage foreclosure sale "vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption"); Bryant v. Carson River Lumbering Co., 3 Nev. 313, 317-18 (1867) (providing that such a sale vests absolute title in the purchaser). Consequently, a foreclosure sale on the HOA super priority lien extinguishes all junior interests, including the first deed of trust.

Even if these statutory provisions do not explicitly provide that foreclosure of the HOA super priority lien extinguishes the first deed of trust, § 116.1108 provides that general principles of law and equity "supplement the provisions of this chapter, except to the extent inconsistent with this chapter." Under settled foreclosure principles, foreclosure of a superior lien extinguishes junior security interests. Aladdin Heating Corp. v. Trustees of Central States, 563 P.2d 82, 86 (Nev. 1977); Erickson Constr. Co. v. Nev. Nat'l Bank, 513 P.2d 1236, 1238 (Nev. 1973). If junior lienholders want to avoid this result, they readily can preserve their security interests by buying out the senior lienholder's interest. See Carrillo v. Valley Bank of Nev., 734 P.2d 724, 725 (Nev. 1987); Keever v. Nicholas Beers Co., 611 P.2d 1079, 1083 (Nev. 1980).

Nothing in the statute suggests that anything other than normal foreclosure principles apply to an HOA foreclosure sale, nor is it inconsistent with Chapter 116 to apply the usual principle that foreclosure of a senior interest extinguishes junior interests. Rather, this result is consistent with the statutory purpose of the super priority lien to "ensure prompt and efficient enforcement of the association's lien for unpaid assessments." Uniform Common Interest Ownership Act § 3-116, cmt. 1 (1982); see also Nev. Rev. Stat. § 116.1109(2) ("This chapter must be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among state enacting it."). Moreover, the Nevada Legislature presumably was aware of the normal operation of foreclosure law when it enacted Chapter 116 in 1991. If the Legislature intended a different rule to apply to an HOA foreclosure sale, it could have said so.

While Nevada state trial courts and decisions from the United States District Court for the District of Nevada are divided on the question,[3] other guidance from Nevada confirms the Court's conclusion about the statutory meaning. The Nevada Real Estate Division of the Department of Business and Industry and the Commission for Common Interest Communities and Condominium Hotels ("Real Estate Division") is the entity charged with interpreting Chapter 116. State, Dep't of Bus. & Indus., Fin. Insts. Div. v. Nev. Ass'n Servs., Inc., 294 P.3d 1223, 1227-28 (Nev. 2012); see also Nev. Rev. Stat. §§ 116.043, 116.615, 116.623. The Nevada Supreme Court therefore would defer to the Real Estate Division's interpretation so long as that interpretation is within the statute's language. Dutchess Bus. Servs., Inc. v. Nev. State Bd. of Pharmacy, 191 P.3d 1159, 1165 (Nev. 2008); Folio v. Briggs, 656 P.2d 842, 844 (Nev. 1983) (stating the Nevada Supreme Court "attach[es] substantial weight" to the interpretation of a state agency "clothed with the power to construe the statutes under which it operates"). The Real Estate Division has interpreted the statute to mean that foreclosure on the HOA super priority lien results in extinguishment of all junior liens, including the first deed of trust.

In a December 2012 advisory opinion, the Real Estate Division addressed three questions: (1) whether, pursuant to § 116.3116, the HOA's super priority lien included collection costs; (2) whether the super priority lien can exceed nine times the monthly assessment plus charges; and (3) whether the HOA must institute a civil action for the super priority lien to exist. (Pl.'s Opp'n to Defs.' Mot. to Dismiss (Doc. #43), Ex. 1.) The Real Estate Division answered the first question by concluding the super priority lien does not include collection costs because the statute specifically states what constitutes the super priority lien. (Id. at 1, 3-7.) As to the second question, the Real Estate Division concluded

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[3] (See, e.g, Pet. for Removal, Ex. H, Attach. M; Request for Judicial Notice (Doc. #12), Exs. L-O, Q; Defs.' Mot. to Dismiss (Doc. #40), Exs. C-F; Pl.'s Opp'n to Defs.' Mot. to Dismiss (Doc. #43), Ex. 9.)

the super priority lien consists only of unpaid assessments and certain charges specifically identified in § 116.310312. (Id. at 2, 10-17.) As to the third question, the Real Estate Division asserted the HOA must take action to enforce its super priority lien, but it need not institute a civil lawsuit. (Id. at 2, 17-18.) Rather, the HOA could institute a non-judicial foreclosure under § 116.31162 or pursue other remedies. (Id.)

In reaching these conclusions, the Real Estate Division examined the priority of the HOA lien under § 116.3116(2). (Id. at 8-9.) The Real Estate Division sought to give guidance to HOAs on this point because "[u]nderstanding the priority of the lien is an important consideration for any board of directors looking to enforce the lien through foreclosure or to preserve the lien in the event of foreclosure by a first security interest." (Id. at 8.)

According to the Real Estate Division, the "ramifications of the super priority lien are significant in light of the fact that superior liens, when foreclosed, remove all junior liens. An association can foreclose its super priority lien and the first security interest holder will either pay the super priority lien amount or lose its security." (Id. at 9.) The Real Estate Division suggested it was "likely that the holder of the first security interest will pay the super priority lien amount to avoid foreclosure by the association." (Id.); see also Uniform Common Interest Ownership Act § 3-116, cmt. 1 (1982) ("As a practical matter, secured lenders will most likely pay the 6 months' assessments demanded by the association rather than having the association foreclose on the unit."). In its conclusion, the Real Estate Division stated that the "association can use the super priority lien to force the first security interest holder to pay that amount." (Pl.'s Opp'n to Defs.' Mot. to Dismiss, Ex. 1 at 19.) The HOA retains a junior lien for other charges and penalties, and thus if the first security interest holder pays off the super priority lien, the first deed of trust lienholder still may foreclose and the HOA's junior lien for items not included in the super priority lien may be extinguished by that foreclosure. (Id.) Thus, contrary to Defendants' argument that

§ 116.3116(2)(b) would be rendered meaningless by this construction of the statute, § 116.3116(2)(b) establishes that the first deed of trust takes priority over that portion of an HOA lien which does not comprise the super priority lien, including any unpaid assessments beyond the nine months of unpaid assessments comprising the super priority lien.

The State of Nevada Legislative Counsel Bureau reached the same conclusion in a December 2012 advisory letter. (Pl.' Opp'n to Defs.' Mot. to Dismiss, Ex. 4.) The Legislative Counsel Bureau concluded the statute unambiguously provides that "the ownership interest of a purchaser who obtains title through a deed properly containing the [statutory recitals in § 116.31164] is not subject to any claim made by the holder of a security interest who forecloses on an obligation after the purchase is made pursuant to NRS 116.31164." (Id. at 3.) The Legislative Counsel Bureau concluded that "no part of an ownership interest vested in the purchaser may be extinguished by a foreclosure on a security interest to which the previous owner was obligated that occurs after the purchaser obtains title to the property under NRS 116.31161." (Id. at 4.)

The Court rejects Defendants' argument that it would be inequitable to allow foreclosure of an HOA lien of relatively little value to extinguish a first deed of trust of considerable value. The Court must apply the plain and unambiguous statutory language. Moreover, statutory principles of priority, not the monetary value of the respective liens, control. Under the unambiguous statutory language, the HOA super priority lien is prior to the first deed of trust, and consequently foreclosure on the HOA super priority lien extinguishes all junior security interests, including the first deed of trust.

Moreover, the result in this case is neither novel nor unfair. Wells Fargo easily could have avoided this purportedly inequitable consequence by paying off the HOA super priority lien amount to obtain the priority position thereby avoiding extinguishment of its junior interest. Additionally, Wells Fargo could have required an escrow for HOA

assessments so that in the event of default, Wells Fargo could have satisfied the super priority lien amount without having to expend any of its own funds. See Uniform Common Interest Ownership Act § 3-116, cmt. 1 (1982).

Finally, the HOA foreclosure sale extinguished only Wells Fargo's security interest in the property, not the underlying debt. Olson v. Iacometti, 533 P.2d 1360, 1363 (Nev. 1975) ("Foreclosure of the first trust deed extinguished only the security for the Olson-Iacometti note, not the indebtedness represented by that note.") Wells Fargo still can pursue the Newtons for the unpaid balance. The Court therefore will deny Defendants' Motion to Dismiss on the basis that the HOA foreclosure sale did not extinguish Wells Fargo's security interest based on the first deed of trust.

2. Due Process

Wells Fargo and Freddie Mac argue that allowing a foreclosure sale based on a later-recorded notice of delinquent HOA assessments to extinguish the previously recorded first deed of trust violates their due process rights because Nevada is a race-notice state. Plaintiff responds that Defendants had adequate notice of the super priority lien based on the super priority statute's enactment in 1991, the 1995 Elkhorn CC&Rs, and the notice procedures in the statute.

"Nevada is a race notice state." Buhecker v. R.B. Petersen & Sons Constr. Co., 929 P.2d 937, 939 (Nev. 1996) (citing Nev. Rev. Stat. §§ 111.320, 111.325). Recorded security interests therefore "impart notice to all persons of the contents thereof; and subsequent purchasers and mortgagees shall be deemed to purchase and take with notice." Nev. Rev. Stat. § 111.320.

Under usual race notice rules, Wells Fargo's lien would be superior to the HOA delinquency notice because the first deed of trust was recorded in 2004, and the HOA did not record a notice of default on the assessments until 2010. However, Chapter 116 provides that an HOA perfects its lien by recording the declaration, which provides notice

to any future first deed of trust holder of the potential that, under the statute, a super priority lien may take priority over the first deed of trust, even if the notice of default on the assessments is recorded after the first deed of trust. Id. § 116.3116(4). Chapter 116 was enacted in 1991, and thus Wells Fargo was on notice that by operation of the statute, the 1995 Elkhorn CC&Rs might entitle the HOA to a super priority lien at some future date which would take priority over a first deed of trust recorded in 2004. Consequently, the conclusion that foreclosure on an HOA super priority lien extinguishes all junior liens, including a first deed of trust recorded prior to a notice of delinquent assessments, does not violate Wells Fargo's due process rights. Freddie Mac purchased the property after the HOA recorded the notice of default and conducted the HOA foreclosure sale. Freddie Mac therefore took the property with notice of the HOA foreclosure sale.

To the extent Wells Fargo contends Elkhorn failed to provide the required notice as a factual matter, the Amended Complaint alleges Elkhorn provided all statutorily required notices. (Am. Compl. at 2.) The Court must accept that allegation as true at this stage of the proceedings. In their Reply, Defendants assert that the statute violates due process because the statutory notice provisions do not necessarily require notice to the first deed of trust holder. The Court will not consider this issue raised for the first time in a reply brief. Carstarphen v. Milsner, 594 F. Supp. 2d 1201, 1204 n.1 (D. Nev. 2009). The Court therefore will deny Defendants' Motion to Dismiss on the basis that Defendants' due process rights are violated by operation of the statute.

3. CC&Rs

Defendants argue the Elkhorn CC&Rs provide that first deeds of trust are superior to Elkhorn's HOA liens. Plaintiff responds that the statute prohibits waiver of Chapter 116's provisions.

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Sections 6.16 and 6.17 of the Elkhorn CC&Rs provide as follows:

> **Section 6.16. Mortgages Protection.**
> Notwithstanding all other provisions hereof, no lien created under this Article VI, nor the enforcement of any provision of this Master Declaration shall defeat or render invalid the rights of the Beneficiary under any Recorded First Deed of Trust encumbering a Lot or Condominium, made in good faith and for value; provided that after such Beneficiary or some other Person obtains title to such Lot or Condominium by a judicial foreclosure or exercise of power of sale, such Lot or Condominium shall remain subject to this Master Declaration and the payment of all installments of assessments accruing subsequent to the date such Beneficiary or Person obtains title. The lien of the assessments, including interest and costs, shall be subordinate to the lien of any previously recorded First Mortgage upon the Lot or Condominium except as may be otherwise required in accordance with NRS Section 116.3116, as amended. The release or discharge of any lien for unpaid assessments by reason of the foreclosure or exercise of power of sale by the First Mortgage shall not relieve the prior Owner of his personal obligation for the payment of such unpaid assessments.
> **Section 6.17. Priority of Assessment Lien.**
> The lien of the assessments, including interest and costs (including attorneys' fees) as provided for herein, shall be subordinate to the lien of any previously Recorded First Mortgage upon any Lot or Condominium. The sale or transfer of any Single Family Residential Lot or Condominium shall not affect an assessment lien. However, the sale or transfer of any Single Family Residential Lot or Condominium pursuant to judicial or nonjudicial foreclosure of a previously Recorded First Mortgage shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer except as set forth in NRS Section 116.3116.

(Request for Judicial Notice (Doc. #12), Ex. P.) By the CC&Rs' plain language, in both sections 6.16 and 6.17 Elkhorn preserved its statutory super priority lien rights by reference to § 116.3116, which is the statutory section setting forth the relative priority of the HOA's super priority and junior liens in relation to a first deed of trust. Chapter 116 provides that its requirements "may not be varied by agreement, and rights conferred by it may not be waived," except as "expressly provided in this chapter." Nev. Rev. Stat. § 116.1104. Nothing in § 116.3116 expressly provides for a waiver of the HOA's right to a priority position for the HOA's super priority lien. Accordingly, the Court will deny Defendants' Motion to Dismiss on this basis.

C. Motion to Expunge Lis Pendens

Defendants' Motion to Expunge is based on the same arguments as presented in the Motion to Dismiss. Because the Court will deny Wells Fargo and Freddie Mac's Motion to Dismiss, the Court also will deny the Motion to Expunge.

III. CONCLUSION

IT IS THEREFORE ORDERED that Defendant MTC Financial Inc.'s Motion to Dismiss (Doc. #37) is hereby GRANTED. Judgment is hereby entered in favor of Defendant MTC Financial Inc. and against Plaintiff 7912 Limbwood Court Trust.

IT IS FURTHER ORDERED that Defendants Federal Home Loan Mortgage Corporation and Wells Fargo Bank, N.A.'s Joinder (Doc. #39) is hereby DENIED.

IT IS FURTHER ORDERED that Defendants Federal Home Loan Mortgage Corporation and Wells Fargo Bank, N.A.'s Motion to Dismiss (Doc. #40) is hereby DENIED.

IT IS FURTHER ORDERED that Defendants Federal Home Loan Mortgage Corporation and Wells Fargo Bank, N.A.'s Motion to Expunge Lis Pendens (Doc. #48) is hereby DENIED.

DATED: October 28, 2013

PHILIP M. PRO
United States District Judge

EXHIBIT 9

EXHIBIT 9

IN THE SUPREME COURT OF THE STATE OF NEVADA

9320 POKEWOOD CT TRUST,
Appellant,
vs.
WELLS FARGO BANK OF NEVADA, N.A.; AND QUALITY LOAN SERVICE CORPORATION,
Respondents.

No. 63009

FILED

APR 18 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER GRANTING TEMPORARY INJUNCTION

This is an appeal from a district court order denying a preliminary injunction. Appellant has filed an emergency motion seeking a preliminary injunction from this court to prevent respondents from conducting a foreclosure sale on the subject property.

Having reviewed appellant's motion and the supporting documents, we conclude that a temporary injunction is warranted. NRAP 8(c). Accordingly, we temporarily enjoin any foreclosure sale concerning the subject property, pending receipt and consideration of a response to appellant's motion. Respondents shall have 11 days from the date of this order to file and serve a response to appellant's motion for an injunction.

It is so ORDERED.

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Cherry

cc: Law Offices of Michael F. Bohn, Ltd.
McCarthy & Holthus, LLP/Las Vegas
Wright, Finlay & Zak, LLP/Las Vegas

IN THE SUPREME COURT OF THE STATE OF NEVADA

SATICO BAY LLC, SERIES 6629 TUMBLEWEED RIDGE 103 TRUST,
Appellant,
vs.
BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS CWALT, INC., ALTERNATIVE LOAN TRUST 2006-23CB MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-23B,
Respondent.

No. 63011

FILED

APR 19 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Moore
DEPUTY CLERK

ORDER GRANTING TEMPORARY INJUNCTION

This is an appeal from a district court order denying a preliminary injunction. Appellant has filed an emergency motion seeking a preliminary injunction from this court to prevent respondent from conducting a foreclosure sale on the subject property.

Having reviewed appellant's motion and the supporting documents, we conclude that a temporary injunction is warranted. NRAP 8(c). Accordingly, we temporarily enjoin any foreclosure sale concerning the subject property, pending receipt and consideration of a response to appellant's motion. Respondent shall have 11 days from the date of this order to file and serve a response to appellant's motion for an injunction.

It is so ORDERED.

I Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Cherry, J.
Cherry

cc: Hon. Allan R. Earl, District Judge
Law Offices of Michael F. Bohn, Ltd.
McCarthy & Holthus, LLP/Las Vegas
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

RIVER GLIDER AVE TRUST,
Appellant,
vs.
BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE OF THE CERTIFICATE HOLDERS CWALT, INC. ALTERNATIVE LOAN TRUST 2006-24CB, MORTGAGE PASS-THROUGH CERTIFICATES,
Respondent.

No. 63077

FILED

APR 29 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER GRANTING MOTION TEMPORARY INJUNCTION

This is an appeal from a district court order denying a preliminary injunction. Appellant has filed an emergency motion seeking a preliminary injunction from this court to prevent respondent from conducting a foreclosure sale on the subject property.

Having reviewed appellant's motion and the supporting documents, we conclude that a temporary injunction is warranted. NRAP 8(c). Accordingly, we temporarily enjoin any foreclosure sale concerning the subject property, pending receipt and consideration of a response to appellant's motion. Respondent shall have 11 days from the date of this order to file and serve a response to appellant's motion for an injunction.

It is so ORDERED.

_____, J.
Gibbons

_____, J.
Parraguirre

_____, J.
Cherry

cc: Hon. Allan R. Earl, District Judge
Law Offices of Michael F. Bohn, Ltd.
Miles, Bauer, Bergstrom & Winters, LLP
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAISY TRUST,
Appellant,
vs.
WELLS FARGO BANK, N.A.; AND MTC FINANCIAL INC., D/B/A TRUSTEE CORPS,
Respondents.

No. 63611

FILED

JUL 25 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER GRANTING MOTION FOR TEMPORARY INJUNCTION

This is an appeal from a district court order denying a preliminary injunction and granting a motion to dismiss in a quiet title action. Appellant has filed an emergency motion seeking a temporary injunction from this court to prevent respondents from conducting a foreclosure sale on the subject property.

Having reviewed appellant's motion and the supporting documents, we conclude that a temporary injunction is warranted. NRAP 8(c). Accordingly, we temporarily enjoin any foreclosure sale concerning the subject property, pending receipt and consideration of a response to appellant's motion. Respondents shall have 11 days from the date of this order to file and serve a response to appellant's motion for an injunction. In their response, respondents shall clarify whether there is, in fact, a pending foreclosure sale.

It is so ORDERED.

Hardesty, J.

Parraguirre, J.

Saitta, J.

cc: Hon. Stefany Miley, District Judge
Law Offices of Michael F. Bohn, Ltd.
Robison Belaustegui Sharp & Low
Snell & Wilmer LLP/Salt Lake City
Snell & Wilmer, LLP/Las Vegas
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

8025 VILLA ROSARITO STREET TRUST,
Appellant,
vs.
QUALITY LOAN SERVICE CORPORATION,
Respondent.

No. 63909

FILED

SEP 12 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Mallow
DEPUTY CLERK

ORDER GRANTING TEMPORARY INJUNCTION

This is an appeal from a district court order granting a motion to dismiss in a quiet title action. Appellant has filed an emergency motion seeking a preliminary injunction from this court to prevent respondent from conducting a foreclosure sale on the subject property.

Having reviewed appellant's motion and the supporting documents, we conclude that a temporary injunction is warranted. NRAP 8(c). Accordingly, we temporarily enjoin any foreclosure sale concerning the subject property, pending further order of this court. Respondent shall have until Monday, September 23, 2013, to file and serve any opposition to appellant's motion for an injunction. Thereafter, appellant shall have until Wednesday, October 2, 2013, to file and serve any reply to respondent's opposition.

It is so ORDERED.

_____, J.
Gibbons

_____, J.
Douglas

_____, J.
Saitta

cc: Hon. Mark R. Denton, District Judge
Law Offices of Michael F. Bohn, Ltd.
McCarthy & Holthus, LLP/Las Vegas
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

PARADISE HARBOR PLACE TRUST,
Appellant,
vs.
NATIONSTAR MORTGAGE, LLC.; AND COOPER CASTLE LAW FIRM, LLP,
Respondents.

No. 63823

FILED

AUG 21 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Walker
DEPUTY CLERK

ORDER GRANTING TEMPORARY INJUNCTION

This is an appeal from a district court order granting a motion to dismiss in a quiet title action. Appellant has filed an emergency motion seeking a preliminary injunction from this court to prevent respondents from conducting a foreclosure sale on the subject property.

Having reviewed appellant's motion and the supporting documents, we conclude that a temporary injunction is warranted. NRAP 8(c). Accordingly, we temporarily enjoin any foreclosure sale concerning the subject property, pending further order of this court. Respondents shall have until 4 p.m., on Tuesday, September 3, 2013, to file and serve any opposition to appellant's motion for an injunction. Thereafter, appellant shall have until 4 p.m., on Thursday, September 12, 2013, to file and serve any reply to respondents' opposition.

It is so ORDERED.

Douglas, J.

Hardesty, J.

Saitta, J.

cc: Hon. Stefany Miley, District Judge
Law Offices of Michael F. Bohn, Ltd.
The Cooper Castle Law Firm, LLC
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

PARADISE HARBOR PLACE TRUST,
Appellant,
vs.
SELENE FINANCE, LP,
Respondent.

No. 64183

FILED

OCT 17 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER GRANTING TEMPORARY INJUNCTION

This is an appeal from a district court summary judgment in a quiet title action. Appellant has filed an emergency motion seeking an injunction from this court to prevent respondent from conducting a foreclosure sale on the subject property.

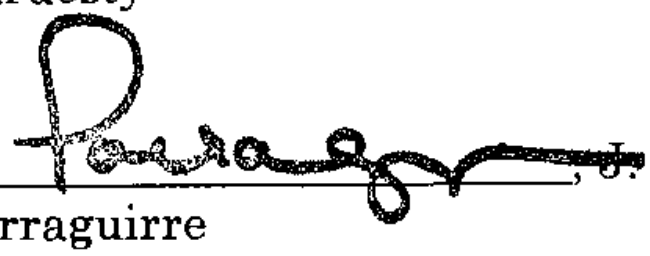
Having reviewed appellant's motion and the supporting documents, we conclude that a temporary injunction is warranted. NRAP 8(c). Accordingly, we temporarily enjoin any foreclosure sale concerning the subject property, pending further order of this court. Respondent shall have until October 29, 2013, to file and serve any opposition to appellant's motion for an injunction. Thereafter, appellant shall have until November 7, 2013, to file and serve any reply to respondent's opposition.

In the opposition and reply, we direct the parties, in addition to their contentions, to clarify whether respondent received notice of the previous foreclosure sale pursuant to NRS 116.31163 and NRS 107.090(3),

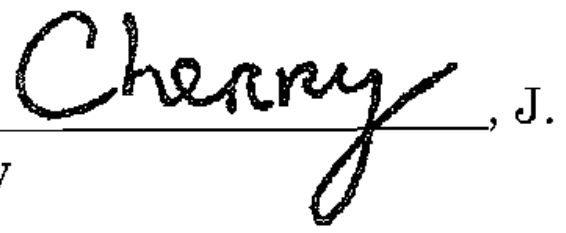
and if not, how the lack of notice affects appellant's current claim to title on the subject property.

It is so ORDERED.

Hardesty, J.



Parraguirre, J.



Cherry, J.

cc: Hon. Stefany Miley, District Judge
Hon. Elissa F. Cadish, District Judge
Law Offices of Michael F. Bohn, Ltd.
Wright, Finlay & Zak, LLP/Las Vegas
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

BOURNE VALLEY COURT TRUST,
Appellant,
vs.
JP MORGAN MORTGAGE TRUST 2004-S2, MORTGAGE PASS-THROUGH CERTIFICATES, BY PHH MORTGAGE CORPORATION AS SERVICER; AND COOPER CASTLE LAW FIRM, LLP,
Respondents.

No. 64530

FILED

DEC 06 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER GRANTING TEMPORARY INJUNCTION AND ORDER TO SHOW CAUSE

This is an appeal from a district court order dismissing a quiet title action. Appellant has filed an emergency motion seeking an injunction from this court to prevent respondents from conducting a foreclosure sale on the subject property. Having reviewed appellant's motion and the supporting documents, we conclude that a temporary injunction is warranted. NRAP 8(c). Accordingly, we temporarily enjoin any foreclosure sale concerning the subject property, pending receipt and consideration of a response to our jurisdictional concern, explained below, and any opposition to the stay motion.

Regarding the potential jurisdictional defect, our preliminary review of the documents submitted to this court pursuant to NRAP 3(g) reveals that notice of entry of the appealed-from order was served by mail on September 17, 2013, but that appellant did not file its notice of appeal until December 2, 2013, which is more than 33 days later. NRAP 4(a)(1); NRAP 26(c). Additionally, although appellant apparently served process on the former homeowner, who was named as a defendant in the complaint, it does not appear that service was accomplished until after the

action was already dismissed. And even if the former homeowner was properly served before the district court dismissed the action, no final judgment appears to have been entered as to the former homeowner.

Accordingly, appellant shall have 15 days from the date of this order within which to show cause why this appeal should not be dismissed for lack of jurisdiction. In responding to this order, appellant should submit documentation that establishes this court's jurisdiction, including but not limited to, points and authorities. We caution appellant that failure to demonstrate that this court has jurisdiction may result in this court's dismissal of this appeal. The preparation of transcripts and the briefing schedule in this appeal shall be suspended pending further order of this court. Within 11 days from the date that appellant's response is served, respondent may file any reply to appellant's response and an opposition to appellant's stay motion.

It is so ORDERED.

Pickering, C.J.
Pickering

Cherry, J.
Cherry

Saitta, J.
Saitta

cc: Hon. Jerry A. Wiese, District Judge
Law Offices of Michael F. Bohn, Ltd.
The Cooper Castle Law Firm, LLC
Eighth District Court Clerk

EXHIBIT 10

EXHIBIT 10

IN THE SUPREME COURT OF THE STATE OF NEVADA

SATICO BAY LLC, SERIES 6629 TUMBLEWEED RIDGE 103 TRUST,
Appellant,
vs.
BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS CWALT, INC., ALTERNATIVE LOAN TRUST 2006-23CB MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-23B,
Respondent.

No. 63011

FILED

JUN 10 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

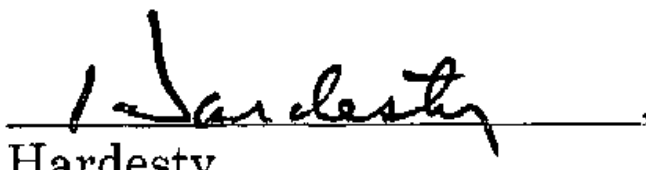
ORDER GRANTING INJUNCTION

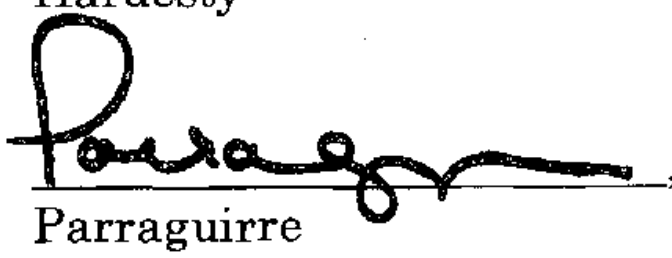
This is an appeal from a district court order denying a preliminary injunction in a real property action. Appellant filed a motion in this court seeking a preliminary injunction to prevent respondent from conducting a foreclosure sale on the subject property pending our resolution of this appeal. On April 19, 2013, we entered a temporary injunction, pending our consideration of any response to the motion. Respondent has since opposed the motion.

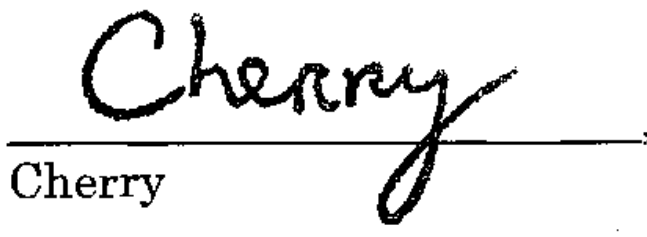
Having considered appellant's motion and the opposition in light of the NRAP 8 factors, we conclude that an injunction is warranted pending our consideration of the appeal. NRAP 8(c). Accordingly, we

enjoin any foreclosure sale concerning the subject property pending further order of this court.

It is so ORDERED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Cherry

cc: Hon. Allan R. Earl, District Judge
Law Offices of Michael F. Bohn, Ltd.
McCarthy & Holthus, LLP/Las Vegas
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

9320 POKEWOOD CT TRUST,
Appellant,
vs.
WELLS FARGO BANK OF NEVADA, N.A.; AND QUALITY LOAN SERVICE CORPORATION,
Respondents.

No. 63009

FILED

JUN 17 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER GRANTING INJUNCTION

This is an appeal from a district court order denying a preliminary injunction in a real property action. Appellant filed a motion in this court seeking a preliminary injunction from this court to prevent respondents from conducting a foreclosure sale on the subject property pending our resolution of this appeal. On April 18, 2013, we entered a temporary injunction pending our consideration of any response to the motion. Respondents have since opposed the motion.

Having considered appellant's motion and oppositions thereto in light of the NRAP 8 factors, we conclude that an injunction is warranted pending our consideration of the appeal. NRAP 8(c). Accordingly, we enjoin any foreclosure sale concerning the subject property pending further order of this court.

It is so ORDERED.

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Cherry

cc: Law Offices of Michael F. Bohn, Ltd.
McCarthy & Holthus, LLP/Las Vegas
Wright, Finlay & Zak, LLP/Las Vegas

IN THE SUPREME COURT OF THE STATE OF NEVADA

RIVER GLIDER AVE TRUST,
Appellant,
vs.
BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE OF THE CERTIFICATE HOLDERS CWALT, INC. ALTERNATIVE LOAN TRUST 2006-24CB, MORTGAGE PASS-THROUGH CERTIFICATES,
Respondent.

No. 63077

FILED

JUN 18 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER GRANTING INJUNCTION

This is an appeal from a district court order denying a preliminary injunction in a real property action. Appellant filed a motion in this court seeking a preliminary injunction to prevent respondent from conducting a foreclosure sale on the subject property pending our resolution of this appeal. On April 29, 2013, we entered a temporary injunction, pending our consideration of any response to the motion. Respondent has since opposed the motion.

Having considered appellant's motion and the opposition thereto in light of the NRAP 8 factors, we conclude that an injunction is warranted pending our consideration of the appeal. NRAP 8(c). Accordingly, we enjoin any foreclosure sale concerning the subject property pending further order of this court.

It is so ORDERED.

_____, J.
Gibbons

_____, J.
Parraguirre

_____, J.
Cherry

13-17958

cc: Hon. Allan R. Earl, District Judge
Law Offices of Michael F. Bohn, Ltd.
Akerman Senterfitt/Las Vegas
Miles, Bauer, Bergstrom & Winters, LLP
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAISY TRUST,
Appellant,
vs.
WELLS FARGO BANK, N.A.; AND MTC FINANCIAL INC., D/B/A TRUSTEE CORPS,
Respondents.

No. 63611

FILED

AUG 23 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER GRANTING INJUNCTION

This is an appeal from a district court order denying a preliminary injunction and granting a motion to dismiss in a quiet title action. Appellant filed a motion in this court seeking a preliminary injunction to prevent respondents from conducting a foreclosure sale on the subject property pending our resolution of this appeal. On July 25, 2013, we entered a temporary injunction, pending our consideration of any response to the motion. Respondent Wells Fargo Bank, N.A., has since opposed the motion.

Having considered appellant's motion and the opposition in light of the NRAP 8 factors, we conclude that an injunction is warranted pending our consideration of the appeal. NRAP 8(c). Accordingly, we enjoin any foreclosure sale concerning the subject property pending further order of this court.

It is so ORDERED.

Hardesty, J.

Parraguirre, J.

Cherry, J.

cc: Hon. Stefany Miley, District Judge
Law Offices of Michael F. Bohn, Ltd.
Robison Belaustegui Sharp & Low
Burke, Williams & Sorensen, LLP
Snell & Wilmer LLP/Salt Lake City
Snell & Wilmer, LLP/Las Vegas
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

PARADISE HARBOR PLACE TRUST,
Appellant,
vs.
NATIONSTAR MORTGAGE, LLC; AND
COOPER CASTLE LAW FIRM, LLP
Respondents.

No. 63823

FILED

OCT 18 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Mallow
DEPUTY CLERK

ORDER GRANTING INJUNCTION

This is an appeal from a district court order granting a motion to dismiss in a quiet title action. Appellant filed a motion in this court seeking a preliminary injunction to prevent respondents from conducting a foreclosure sale of the subject property pending our resolution of this appeal. On August 21, 2013, we entered a temporary injunction, pending our consideration of any response to the motion. Respondent has since opposed the motion.

Having considered the parties' filings in light of the NRAP 8 factors, we conclude that an injunction is warranted pending our consideration of the appeal. NRAP 8(c). Accordingly, we enjoin any foreclosure sale concerning the subject property pending further order of this court.

It is so ORDERED.

Douglas, J.

Hardesty, J.

Saitta, J.

cc: Hon. Stefany Miley, District Judge
Law Offices of Michael F. Bohn, Ltd.
The Cooper Castle Law Firm, LLC
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

PARADISE HARBOR PLACE TRUST,
Appellant,
vs.
SELENE FINANCE, LP,
Respondent.

No. 64183

FILED

NOV 18 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER GRANTING INJUNCTION

This is an appeal from a district court summary judgment in a quiet title action. Appellant filed in this court a motion seeking a preliminary injunction to prevent respondent from conducting a foreclosure sale of the subject property pending our resolution of this appeal. On October 17, 2013, we entered a temporary injunction, pending our consideration of any response to the motion. Respondent has since opposed the motion, and appellant has filed a reply.

Having considered the parties' filings in light of the NRAP 8 factors, we conclude that an injunction is warranted pending our consideration of the appeal. NRAP 8(c). Accordingly, we enjoin any foreclosure sale concerning the subject property pending further order of this court.

It is so ORDERED.

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Cherry

cc: Hon. Stefany Miley, District Judge
Hon. Elissa F. Cadish, District Judge
Law Offices of Michael F. Bohn, Ltd.
Wright, Finlay & Zak, LLP/Las Vegas
Eighth District Court Clerk

EXHIBIT 11

EXHIBIT 11

DC Judge	DC#	NSC #	Short Caption	Investor's Counsel	Bank's Law Firm
Williams	A682283	64099	SFR INVESTMENTS POOL 1 VS. WELLS FARGO BANK	Jacqueline Gilbert, Diana Cline, Howard Kim	David J. Merrill, P.C.
Adair/ Smith	A678715	64046	SFR INVESTMENTS POOL 1 VS. PHH MORTGAGE	Jacqueline Gilbert, Diana Cline, Howard Kim	Malcolm Cisneros
Delaney	A683666	63966	SFR INVESTMENTS POOL 1 VS. WELLS FARGO BANK	Jacqueline Gilbert, Diana Cline, Howard Kim	Wright Finlay & Zak
Villani	A674458	63929	SFR INVESTMENTS POOL 1 VS. BANK OF NEW YORK MELLON	Jacqueline Gilbert, Diana Cline, Howard Kim	Akerman Senterfitt
Johnson	A683133	63915	SFR INVESTMENTS POOL 1 VS. GREEN TREE SERVICING	Jacqueline Gilbert, Diana Cline, Howard Kim	Brooks Bauer
Kishner	A685896	63914	SFR INVESTMENTS POOL 1 VS. FIRST HORIZON	Jacqueline Gilbert, Diana Cline, Howard Kim	Ballard Spahr, LLP
Earl/ Loeher	A685826	63905	SFR INVESTMENTS POOL 1 VS. FIRST HORIZON	Jacqueline Gilbert, Diana Cline, Howard Kim	Ballard Spahr, LLP
Williams	A680573	63892	SFR INVESTMENTS POOL 1 VS. WELLS FARGO BANK	Jacqueline Gilbert, Diana Cline, Howard Kim	David J. Merrill, P.C.
Wiese	A686474	63817	SFR INVESTMENTS POOL 1 VS. DEUTSCHE BANK	Jacqueline Gilbert, Diana Cline, Howard Kim	Wright Finlay & Zak
Barker	A680565	63814	SFR INVESTMENTS POOL 1 VS. WELLS FARGO BANK	Jacqueline Gilbert, Diana Cline, Howard Kim	Wright Finlay & Zak
Kishner	A684596	63796	SFR INVESTMENTS POOL 1 VS. NATIONSTAR MORT.	Jacqueline Gilbert, Diana Cline, Howard Kim	Akerman Senterfitt
Kishner	A684630	63795	SFR INVESTMENTS POOL 1 VS. NATIONSTAR MORT.	Jacqueline Gilbert, Diana Cline, Howard Kim	Akerman Senterfitt
Escobar	A679714	63768	WELLS FARGO BANK VS. SFR INVESTMENTS POOL 1	Jacqueline Gilbert, Diana Cline, Howard Kim	David J. Merrill, P.C.
Bixler	A680704	63695	SFR INVESTMENTS POOL 1 VS. GREEN TREE SERVICING	Jacqueline Gilbert, Diana Cline, Howard Kim	Brooks Bauer
Barker	A678814	63614	SFR INVESTMENTS POOL 1 VS. US BANK	Jacqueline Gilbert, Diana Cline, Howard Kim	Wright Finlay & Zak
Bare	A678094	63613	SFR INVESTMENT POOL 1 VS. FED. NATIONAL MORTGAGE ASSOC.	Jacqueline Gilbert, Diana Cline, Howard Kim	Brooks Bauer
Herndon	A681847	63612	SFR INVESTMENT POOL 1 VS. FED. NATIONAL MORTGAGE ASSOC.	Jacqueline Gilbert, Diana Cline, Howard Kim	Wright Finlay & Zak
Delaney	A679361	63579	SFR INVESTMENTS POOL 1 VS. WELLS FARGO BANK	Jacqueline Gilbert, Diana Cline, Howard Kim	Wright Finlay & Zak
Walsh/ Gates	A674958	63451	SFR INVESTMENTS POOL 1 VS. FIRST HORIZON	Jacqueline Gilbert, Diana Cline, Howard Kim	Ballard Spahr, LLP
Herndon	A667931	63313	SFR INVESTMENTS POOL 1 VS. BANK OF AMERICA	Jacqueline Gilbert, Diana Cline, Howard Kim	Routh Crabtree Olsen, P.S.; Akerman Senterfitt
Allf	A673671	63078	SFR INVESTMENTS POOL 1 VS. US BANK, N.A.	Jacqueline Gilbert, Diana Cline, Howard Kim	Akerman Senterfitt
Barker	A675778	64206	80 HUNTFIELD DRIVE TRUST VS. WELLS FARGO BANK	Michael Infuso, Zachary Takos	Wright Finlay & Zak
Barker	A675778	63965	80 HUNTFIELD DRIVE TRUST VS. WELLS FARGO BANK	Michael Infuso, Zachary Takos	Wright Finlay & Zak

Kishner	A687798	63958	WOODRUFF VS. PITSICALIS	Michael Infuso, Zachary Takos	Pite Duncan
Earley	A671168	63824	SHINING SAND AVE TRUST VS. FLAGSTAR BANK	Michael Infuso, Zachary Takos	Snell & Wilmer
Vega	A667342	63542	DRYSDALE COURT TRUST VS. BANK OF AMERICA	Michael Infuso, Zachary Takos	Akerman Senterfitt
Earley	A676718	63409	3182 TARPON 103 TRUST VS. WELLS FARGO BANK	Michael Infuso, Zachary Takos	Wright Finlay & Zak
Wiese	A670423	63067 (c/w)	SANUCCI CT TRUST VS. ELEVADO C/W 63067	Michael Infuso, Zachary Takos	Kravitz, Schnitzer, Sloane & Johnson and Akerman Senterfitt
Herndon	A669301	63066	MANN STREET TRUST VS. NEWMAN	Michael Infuso, Zachary Takos	Lewis Roca Rothgerber LLp
Williams	A674595	62528	VILLA PALMS COURT 102 TRUST VS. RILEY	Michael Infuso, Zachary Takos	McCarthy & Holthus
Miley	A675032	64183	PARADISE HARBOR PLACE TRUST VS. SELENE FINANCE	Michael F. Bohn	Wright Finlay & Zak
Denton	A674872	64014	OLIVER SAGE DRIVE TRUST VS. BAC HOME LOAN	Michael F. Bohn	Ballard Spahr, LLP
Wiese	A679804	64006	AMERICAN RIVER LANE TRUST VS. CITIMORTGAGE	Michael F. Bohn	Akerman Senterfitt
Denton	A680190	63909	8025 VILLA ROSARITO ST. TRUST VS. QUALITY LOAN SERVICE	Michael F. Bohn	McCarthy & Holthus
Earl	A680362	63903	WELLS FARGO BANK VS. PARADISE HARBOR PLACE TRUST	Michael F. Bohn	David J. Merrill, P.C.
Williams	A677062	63882	DELTA WATER STREET TRUST VS. U.S. BANK NATIONAL	Michael F. Bohn	McCarthy & Holthus
Miley	A675227	63823	PARADISE HARBOR VS. NATIONSTAR MORTGAGE	Michael F. Bohn	Cooper Castle Law Firm
Williams	A679812	63615	RIVER GLIDER AVE TRUST VS. US BANK	Michael F. Bohn	McCarthy & Holthus
Miley	A679095	63611	TRUST VS. WELLS FARGO BANK	Michael F. Bohn	Snell & Wilmer
Miley	A678650	63550	RIVER GLIDER AVE TRUST VS. BANK OF AMERICA	Michael F. Bohn	Akerman Senterfitt
Delaney	A675228	63481	OLIVER SAGEBRUSH DRIVE TRUST VS. BAC HOME LOANS	Michael F. Bohn	Akerman Senterfitt
Delaney	A675505	63282	BOURNE VALLEY COURT TRUST VS. CITIBANK, N.A.	Michael F. Bohn	Smith Larsen & Wixom and McCarthy Holthus
Villani	A673750	63185	VILLA VECCHIO CT TRUST VS. DEUTSCHE BANK	Michael F. Bohn	Kravitz, Schnitzer, Sloane & Johnson and Akerman Senterfitt
Villani	A674883	63184	BOURNE VALLEY COURT TRUST VS. WELLS FARGO BANK	Michael F. Bohn	Kravitz, Schnitzer, Sloane & Johnson
Earl	A675507	63077	RIVER GLIDER AVE TRUST VS. BANK OF NEW YORK MELLON	Michael F. Bohn	Miles Bauer, Bergstrom & Winters and Akerman Senterfitt
Earl	A677973	63011	SATICO BAY VS. BANK OF NEW YORK MELLON	Michael F. Bohn	McCarthy & Holthus
Earl	A677406	63009	9320 POKEWOOD CT TRUST VS. WELLS FARGO BANK C/W 63384	Michael F. Bohn	Wright Finlay & Zak
Bare	A667397	62506	CENTENO VS. MONTESA LLC	Martin Centeno	Snell & Wilmer

Smith	A677349	64031	FIRST 100 VS. FIRST HORIZON	Luis Ayon, Margaret Schmidt	Ballard Spahr, LLP
Williams	A677353	63593	KAL-MOR-USA VS. SUNTRUST MORTGAGE	Luis Ayon, Margaret Schmidt	Akerman Senterfitt
Smith	A664235	63651	LV MOTOR COACH OWNERS ASSOC. VS. AMERICAN UNDERWRITERS LIFE INS.	Shana S. Gullickson, Brent A. Larsen	Ellis & Gordon
Wiese	A678626	63764	LN MANAGEMENT VS. WELLS FARGO BANK	Kerry P. Faughnan	Wright Finlay & Zak
Williams	A678628	64233	LN MANAGEMENT LLC SERIES VS. PIHI MORTGAGE CORP.	Kerry P. Faughnan	Cooper Castle Law Firm
Johnson	A685578	63836	LAS VEGAS DEV. GROUP VS. THE COOPER CASTLE LAW FIRM	Marilyn Fine, Rachel Donn	The Cooper Castle Law Firm
Vega	A682482	64185	KK REAL ESTATE INV. FUND VS. CAPITAL ONE	Bradley Bace, Huong X. Lam	Ballard Spahr, LLP
Johnson	A680743	63861	TRASHED HOME CORP. VS. MORTGAGE ELEC. REGISTRATION	Patrik W. Kang; Erica D. Loyd	Akerman Senterfitt
Williams	A653747	61416	CENTENO VS. NATIONAL DEFAULT SERVICING CORP.	Martin Centeno	Houser & Allison and Tiffany & Bosco
Bixler	A654878	60984	CENTENO VS. MAVERICK VALLEY PROPERTIES LLC	Martin Centeno	Snell & Wilmer