# Exhibit G

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DISTRICT COURT

CLARK COUNTY, NEVADA

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|---|---|
| BANK OF NEVADA, a Nevada banking corporation,<br><br>Plaintiff,<br><br>vs.<br><br>MURRAY PETERSEN, an individual,<br><br>Defendant. | Case No.: A-13-680012-C<br><br>Dept. No.: I<br><br>**Date of Hearing:**<br>**Time of Hearing:** |

**PLAINTIFF'S RULE 59(e) MOTION TO ALTER OR AMEND JUDGMENT**

Plaintiff Bank of Nevada ("BON"), by and through its counsel, Snell & Wilmer L.L.P., files its Motion to Alter or Amend Judgment pursuant to NRCP 59(e) and requests that the Court grant summary judgment in its favor. This Motion is based on the papers and pleadings on file

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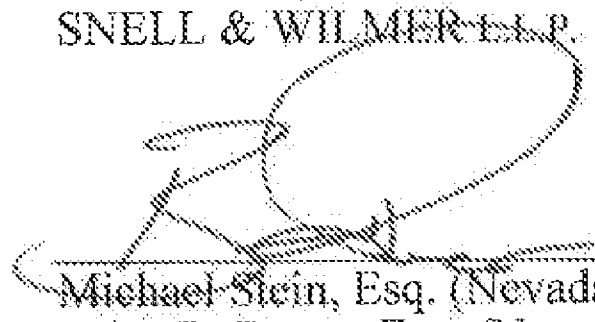
herein, the following Memorandum of Points and Authorities, the exhibits attached hereto and any oral argument the Court may entertain.

Dated this 23 day of May, 2014.

SNELL & WILMER L.L.P.

By: 

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**NOTICE OF MOTION**

TO: DEFENDANT MURRAY PETERSEN AND HIS COUNSEL OF RECORD

PLEASE TAKE NOTICE that Plaintiff will bring the foregoing PLAINTIFF'S RULE 59(e) MOTION TO ALTER OR AMEND JUDGMENT on for hearing/decision on the 23 day of June, 2014, in Department 1 of the above-entitled Court. In Chambers

Dated this 23 day of May, 2014.

SNELL & WILMER L.L.P.

By: 

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

The Court should alter or amend its Findings of Fact, Conclusions of Law and Judgment ("Judgment") and accompanying Order Denying Plaintiff's Motion for Summary Judgment and Granting Defendant's Countermotion for Summary Judgment ("MSJ Order") for three independent reasons.

First, NRS 40.455 does not apply to Plaintiff in its capacity as a junior lienholder. There are *two* promissory notes at issue in this case – Note A and Note B – evidencing two different loan amounts from BON to borrower Red Card, LLC. A First Deed of Trust secured Red Card's repayment of Note A and a Second Deed of Trust secured repayment of Note B. Defendant Petersen guaranteed repayment of both loans.

As a first deed of trust holder *and* a second deed of trust holder – *i.e.*, a junior lienholder – BON is governed by two separate statutory schemes for obtaining a deficiency judgment. NRS 40.455 does not apply to holders of junior liens. Rather, NRS 40.4631 through 40.4639 applies to junior lienholders seeking a money judgment when a foreclosure has occurred. Importantly, NRS 40.4639 only requires a junior lienholder to commence "[a] civil action" within six months of foreclosure; it makes no mention of an "application." Since BON indisputably commenced a "civil action" for a deficiency against Petersen, it is entitled to summary judgment with respect to the remaining indebtedness owed under Note B.

Second, by waiving the one action rule, Petersen waived the right to invoke NRS 40.455, and that right is not resurrected by NRS 40.495(3). This is a second, independent reason why the six month "application" requirement in NRS 40.455 does not apply.

Third, although NRS 40.455 is not applicable in this case because the deficiency is based upon BON's junior lienholder status, the Court's strict interpretation of the word "application" – *i.e.* that "application" means "motion" and nothing else – is inconsistent with legislative history, canons of statutory construction, and case law interpreting NRS 40.455. These sources of interpretation mandate a broader construction of the term "application" – one that encompasses the initiation of an

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"action" as well as a "motion."

## II. RELEVANT FACTUAL BACKGROUND[1]

BON and borrower Red Card, LLC entered into two promissory notes, Note A and Note B, evidencing two loans. Note A was in the amount of $1,444,898.00 and was secured by a First Deed of Trust. Note B was in the amount of $1,092,591.00 and was secured by a Second Deed of Trust. *See* Exhibits 1, 4, 5 and 6 to MSJ; Judgment at ¶¶ 1-7.

Petersen executed a Commercial Guaranty in favor of BON guaranteeing full and punctual payment of both loans. *See* Exhibit 7 to MSJ; Judgment at ¶¶ 9-11. Under NRS 40.495 and the terms in the "GUARANTOR'S WAIVERS" section of the Commercial Guaranty, Petersen *waived* the provisions of NRS 40.430. *Id.*

The Court found that Red Card failed to make the required loan payments and Petersen failed to repay Red Card's indebtedness as agreed in the Commercial Guaranty. *See* Judgment at ¶ 12; *see also* Exhibit 3 to MSJ. As a result of Petersen's default, BON filed this guarantor deficiency action on April 12, 2013 pursuant to NRS 40.495. As of the date of the commencement of this action, the amount of indebtedness due under Note A was $1,843,726.54 and the amount of indebtedness due under Note B was $1,256,071.75 for a total indebtedness in the sum of $3,099,798.29. *See* Judgment at ¶ 16; *see also* Exhibit 14 to MSJ.

On June 18, 2013, the property securing the loans was sold via trustee's sale for the amount of $1,400,000. *See* Judgment at ¶ 12; Exhibit 10 to MSJ. A Stipulation and Order was entered on December 13, 2013, wherein BON and Petersen agreed that the fair market value of the Property, as of April 12, 2013 (the commencement of the action), was $1,990,000. *See* Exhibit 11 to MSJ.

## III. LEGAL STANDARD

NRCP 59(e) allows a party to file a motion to alter or amend a judgment within 10 days after service of written notice of entry of the judgment. The requirements for filing a Rule 59(e) motion are minimal; in addition to being timely filed, the motion must "be in writing, . . . state with particularity [its] grounds [and] set forth the relief or order sought." *AA Primo Builders,*

[1] A complete recitation of the material facts is set forth in Plaintiff's Motion for Summary Judgment filed on January 16, 2014.

*LLC v. Washington*, 245 P.3d 1190, 1192 (Nev. 2010). Rule 59(e) motions have been interpreted as "cover[ing] a broad range of motions, [with] the only real limitation on the type of motion permitted [being] that it must request a substantive alteration of the judgment, not merely correction of a clerical error, or relief of a type wholly collateral to the judgment." *Id.* at 1193. "Among the 'basic grounds' for a Rule 59(e) motion are 'correct[ing] manifest errors of law or fact,' 'newly discovered or previously unavailable evidence,' the need 'to prevent manifest injustice,' or a 'change in controlling law.'" *Id.*

Plaintiff files the instant Motion to correct a manifest error of law and prevent a manifest injustice.

## IV. LEGAL ARGUMENT

### A. BON, as a Junior Lienholder, is Entitled to Summary Judgment On the Debt Evidenced by Note B and Formerly Secured by the Second Deed of Trust

The Court's Judgment concludes that NRS 40.455 applies to this deficiency action and that BON did not comply with the statute because it did not file a "motion" for a deficiency judgment within six months after foreclosure. BON is entitled to an amended judgment in its favor because NRS 40.455 does not apply to BON in its capacity as a junior lienholder. As a first deed of trust holder *and* a second deed of trust holder, BON is governed by two separate statutory schemes for obtaining a deficiency judgment. NRS 40.455 does not apply to holders of junior liens. Rather, NRS 40.4631 through 40.4639 applies to junior lienholders seeking a deficiency judgment.

#### 1. NRS 40.4631 through 40.4639 govern deficiency actions by junior lienholders

In 2011, the Legislature enacted a statutory scheme governing deficiency actions by junior lienholders. *See* NRS 40.4631-40.4639. NRS 40.4639 provides:

> ***A civil action*** not barred by NRS 40.430 or 40.4638 by a person to whom an obligation secured by a junior mortgage or lien on real property is owed to obtain a money judgment against the debtor after a foreclosure sale of the real property or a sale in lieu of a foreclosure sale ***may only be commenced within 6 months*** after the date of the foreclosure sale or sale in lieu of a foreclosure.

(Emphasis added). This statute specifies that a junior lienholder must commence a "*civil action*"

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within six months of foreclosure to obtain a deficiency judgment. The statute does not use the term "application" when referencing the institution of a deficiency judgment proceeding within six months of foreclosure like it does in NRS 40.455. A junior lienholder need only file a civil action, *i.e.* a complaint, to satisfy the requirements of NRS 40.4639.[2]

Here, Petersen waived the one action rule allowing BON to file suit before foreclosure in accordance with NRS 40.495(2) and (4). *See* Judgment at ¶¶ 9-11. Plaintiff filed this action on April 12, 2013 and subsequently foreclosed on the Property on June 18, 2013. BON filed its complaint before foreclosure, instead of within six months after foreclosure, but this is not a basis for denying BON's motion for summary judgment. First, the United States District Court for the District of Nevada has rejected the argument that a lender fails to comply with the statute by filing a complaint before foreclosure instead of after foreclosure:

> The opposition is based on Defendants' contention that N.R.S. 40.430, the "one action rule" and N.R.S. 40.455, the "deficiency judgment statute", protect them from a deficiency judgment, requiring application for judgment within six months after the date of the foreclosure sale. Plaintiff brought this action before the foreclosure sale, not after the foreclosure sale. **The Court rejects the argument that this action could not be brought until after the foreclosure sale. Defendant guarantors waived the one action rule. The subject time provision acts only as a limitation of time within which an action may be brought. It does not purport to address when the cause of action accrued. Defendants' interpretation flies in the face of N.R.S. 40.495 which allows actions against guarantors before a sale has occurred. Plaintiff's cause of action accrued upon default. The deficiency statute only functions to limit damages.**

*Interim Capital, LLC v. Herr Law Grp., Ltd.*, 2:09-CV-1606-KJD-LRL, 2011 WL 7053806 at *1 (D. Nev. Aug. 23, 2011) (emphasis added). Based on the reasoning of *Herr*, where a guarantor has waived the one action rule a lender may file a deficiency action before foreclosure under NRS 40.495 without running afoul of NRS 40.455 or 40.4639. The six month limitation period in NRS 40.4639 simply sets a deadline by which a civil action must be filed; it does not prescribe when a deficiency action accrues.

BON's pre-foreclose deficiency complaint satisfied the requirements of NRS 40.4639 such that no "amendment" was required after foreclosure. Like the defendant in *Herr*, Petersen

[2] Under NRCP 3, "[a] civil action is commenced by filing a complaint with the court."

waived the one action rule allowing BON to file suit separately and independently from the foreclosure sale. In addition, like the plaintiff in *Herr*, BON filed its complaint under NRS 40.495, which specifically authorizes a lender to file suit against a guarantor before foreclosure.

Second, as set forth in Plaintiff's Reply in support of Motion for Summary Judgment, the argument that BON was required to "amend" its complaint within six months after foreclosure yields an unreasonable and absurd result. *See* Reply at 16-17. Where a guarantor deficiency action is already pending, it makes no sense to require a party to "amend" its complaint within six months of a foreclosure to re-assert the same claim against the same party under the same facts. The entire purpose of an amended complaint is to add new parties, new claims or new material facts. *See* NRCP 15. The "amendment" contemplated by Petersen does none of these things.

Further, it is well-established that the law does not require the performance of idle or unnecessary acts. *See Allenbach v. Ridenour*, 51 Nev. 437, 279 P. 32, 37 (1929) ("the law does not require idle acts" that are unnecessary to do justice.); *Cox v. United States*, 31 U.S. 172, 202 (1832) ("the law surely ought not to be so construed as to require of a party a mere idle ceremony[,] the law was intended for real and substantial purposes[.]"); *Southern Pac. Co. v. Cal. Adjustment Co.*, 237 F. 954 (9th Cir. 1916) ("The law looks to the substance of things, and does not require useless forms or ceremonies."). When a lender has already filed a complaint seeking a deficiency against a guarantor pre-foreclosure, as permitted by NRS 40.495, it would be unnecessary to make the lender "amend" its complaint within six months of foreclosure to allege the same facts and the same claims. Such a needless act improperly exalts form over substance in contravention of Nevada law.

Third, this Court has previously recognized that an amended complaint is unnecessary:

> I tend to agree that it does not necessarily require an amendment to the Complaint but, you know, a literal reading of 455 just says an application for a deficiency judgment. That sounds like a motion to me.

*See* Transcript of Proceedings at 12:22-13:1 attached hereto as **Exhibit 1**. After hearing the Court's comments, Defendant's counsel changed his stance and began to argue that there is no need for an



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amended complaint, only an "application":

> THE COURT: Is -- is the purpose notice only? Is the purpose of 455 --
>
> MR. MCKNIGHT: The purpose is to make sure there is an application. He's saying --
>
> THE COURT: Well, but I mean that's --
>
> MR. MCKNIGHT: I don't -- Amended Complaint, ***there's no need for an Amended Complaint.*** The day after the stipulation they could've asked -- made an application and said, we got the amount, and this is what our fees are, and this is what the interest is, and et cetera, et cetera, give us a judgment. That would be an application.

*See* **Exhibit 1** at 31:4-14 (emphasis added). Ultimately, the Court's Judgment was based on the finding that Plaintiff had not filed an "application" – *i.e.* a "motion" – within six months after foreclosure under NRS 40.455. *But the Court's conclusion only applies to Plaintiff in its capacity as a first deed of trust holder.* The "application" requirement in NRS 40.455 does not apply to Plaintiff in its capacity as a second deed of trust holder; instead, junior lienholders only have to commence a "civil action," which is accomplished by filing a complaint. *See* NRS 40.4639. As a junior lienholder, BON was only required to file "an action" for a deficiency judgment, which it did, and was not required to subsequently amend its complaint or otherwise file an "application." Accordingly, the Court should grant summary judgment in BON's favor with respect to the indebtedness owed on Note B.

**2. BON is entitled to summary judgment on Note B in the amount of $1,109,798.29**

As a junior lienholder, BON is entitled to summary judgment on Note B, which was secured by the now wiped-out Second Deed of Trust. As of the date of the commencement of this action, the amount of indebtedness on Note A was $1,843,726.54. *See* Exhibit 14 to MSJ. The amount of indebtedness on Note B as of the same date was $1,256,071.75. The parties entered into a stipulation and order setting the fair market value ("FMV") of the Property at $1,990,000. *See* Exhibit 11 to MSJ. The Property was sold via trustee's sale for $1,400,000, but since the FMV is



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more than the price paid at foreclosure, FMV is used to calculate the deficiency amount. *See* Exhibit 10 to MSJ; *see also* NRS 40.495(4).

The FMV was sufficient to satisfy the entire indebtedness on Note A secured by the First Deed of Trust and a portion of the indebtedness on Note B. Specifically, after subtracting $1,843,726.54 (indebtedness on Note A) from $1,990,000 (FMV), there is $146,273.46 left over to apply towards the indebtedness on Note B. After subtracting $146,273.46 from $1,256,071.75 (indebtedness on Note B), the deficiency remaining on Note B is **$1,109,798.29**, plus prejudgment interest in the amount of **$150,932**. *See* Exhibit 14 to MSJ.

The Court should amend its Judgment by awarding Plaintiff the following amounts and denying Petersen's countermotion for summary judgment:

| | | |
|---|---|---|
| **Calculation of Deficiency** | | |
| Indebtedness on Note A | $ 1,843,726.54 | |
| FMV on Action Commencement | $ (1,990,000.00) | |
| Amt. FMV exceeds indebtedness on Note A | $ (146,273.46) | |
| Indebtedness on Note B | $ 1,256,071.75 | |
| Amt. FMV exceeds indebtedness on Note A | $ (146,273.46) | |
| **Deficiency remaining on Note B** | **$ 1,109,798.29** | |
| **Calculation of Interest** | | |
| Default Interest Rate | | 12.24% |
| Interest Period (4/26/2013 to 5/20/2014) | | 400 days |
| **Total Interest** | **$ 150,932.00** | ($377.33 X 400 days) |

**B. NRS 40.455 Does Not Apply Because Petersen Waived the One Action Rule**

Under NRS 40.430(1), an action filed pursuant to NRS 40.495(2) is not required to conform to the provisions of NRS 40.430 to NRS 40.459, inclusive. NRS 40.430(1) provides:

> ***Except in cases where a person proceeds under subsection 2 of NRS 40.495*** or subsection 1 of NRS 40.512, and except as otherwise provided in NRS 118C.220, ***there may be but one action*** for the recovery any debt, or for the enforcement of any right



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> secured by a mortgage or other lien upon real estate. ***That action must be in accordance with the provisions of NRS 40.430 to 40.459, inclusive***. In that action, the judgment must be rendered for the amount found due the plaintiff, and the court, by its decree or judgment, may direct a sale of the encumbered property, or such part thereof as is necessary, and apply the proceeds of the sale as provided in NRS 40.462.

(Emphasis added). NRS 40.495(2) provides:

> Except as otherwise provided in subsection 5, a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, may waive the provisions of NRS 40.430. If a guarantor, surety or other obligor waives the provisions of NRS 40.430, an ***action*** for the enforcement of that person's obligation to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a mortgage or lien upon real property ***may be maintained separately and independently from***: (a) An action on the debt; (b) The exercise of any power of sale; (c) Any action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby; and (d) Any other proceeding against a mortgagor or grantor of a deed of trust.

(Emphasis added).

NRS 40.430(1) states that *unless* an action is brought pursuant to 40.495(2), *that action* must comply with NRS 40.430 to 40.459. Hence, actions brought under NRS 40.495(2) are *not* required to be in accordance with NRS 40.430 to 40.459, which includes NRS 40.455. Any other interpretation would render the first sentence of NRS 40.430(1) meaningless and the Nevada Supreme Court has held that "[n]o part of a statute should be rendered meaningless[.]" *City of Reno v. Bldg. & Const. Trades Council of N. Nevada*, 12 Nev. Adv. Op. 2, 251 P.3d 718, 722 (2011).

Here, Petersen expressly waived the provisions of NRS 40.430 and BON indisputably filed its *action* under NRS 40.495 – *i.e.* the "exception" to the one action rule. *See* Exhibit 7 to MSJ; Judgment at ¶¶ 9-11. Petersen cannot waive the one action rule and then later assert its protections. Such a reading of the statutes would eviscerate the direct and express language of NRS 40.430 and 40.495(2), which provide that when a guarantor waives the provisions of NRS 40.430, a Lender may maintain an *action* against a guarantor "separately and independently from" an action on the debt or any action to foreclose or otherwise enforce a mortgage or lien and the indebtedness secured thereby, and that under such circumstances the lender need not comply with NRS 40.430 to NRS

40.459.

NRS 40.495(3) does not change the result. That provision states that "[i]f the obligee ***maintains an action*** to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby, the guarantor, surety, or other obligor may assert any legal or equitable defenses provided pursuant to the provisions of NRS 40.451 to 40.4639, inclusive." (Emphasis added). Petersen argues that NRS 40.495(3) applies and that one of the available legal defenses is the application of NRS 40.455. Petersen is incorrect. NRS 40.495(3) does not apply in this case because BON has never maintained an *action* to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligation secured thereby." A trustee's sale pursuant to NRS 107.080 is *not* "an action" and therefore the trustee's sale of the property in this case did *not* trigger NRS 40.495(3). *See* NRS 40.430(6) ("As used in this section, an 'action' does not include any act or proceeding: . . . (e) For the exercise of a power of sale pursuant to NRS 107.080.") In order to trigger NRS 40.495(3), one must initiate an *action* to foreclose or otherwise enforce a lien. Otherwise, without an action, a guarantor would have no forum in which to assert legal and equitable defenses. No such action to foreclose or otherwise enforce a lien has been filed by BON.

Neither is the instant case "an action to foreclose or otherwise enforce a mortgage or lien and the indebtedness secured thereby." Pursuant to the unambiguous language of NRS 40.495(2), BON initiated this action against Petersen on the Commercial Guaranty *separate and independent* from the type of foreclosure action contemplated in NRS 40.495(3). Because neither the trustee's sale of the property nor the instant action constitutes "an action to foreclose or otherwise enforce a mortgage or lien and the indebtedness secured thereby," NRS 40.495(3) does not apply. Petersen cannot assert NRS 40.455 as a legal defense[3] and BON is entitled to summary judgment in its favor.

**C. Legislative History, Canons of Statutory Construction and Relevant Case Law Support BON's Interpretation of NRS 40.455**

Assuming for sake of argument that BON's deficiency wasn't based upon being a junior

[3] Any concern that Petersen's waiver of the one action rule might result in a double recovery because NRS 40.455 through 40.459 do not apply is unfounded because the Legislature specifically included analogous "fair value" provision in NRS 40.495(4) that exist in NRS 40.455 through 40.459. Hence, guarantors are still protected from a double recovery.

lienholder and that NRS 40.455 applies, which for the reasons articulated above it does not, the Court's strict interpretation of the word "application" – *i.e.* that "application" means "motion" and nothing else – is inconsistent with legislative history, well-settled canons of statutory construction, and case law interpreting NRS 40.455. These sources of interpretation dictate a broader construction of the term "application" than the Court adopted in its Judgment – one that includes the initiation of an "action" as well as the filing of a "motion."

When construing a statute, courts first look to the statute's plain language. *Estate of Maxey v. Darden*, 124 Nev. 447, 454, 187 P.3d 144, 149 (2008). "When, however, a statute is susceptible to more than one reasonable interpretation, it is ambiguous, and we must then look beyond the plain language to '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.* "When a statute is ambiguous, this court determines the Legislature's intent by evaluating the legislative history and construing the statute in a manner that conforms to reason and public policy." *Great Basin Water Network v. State Eng'r*, 126 Nev. Adv. Op. 20, 234 P.3d 912, 918 (2010). "[W]here a statute has no plain meaning, a court should consult other sources such as legislative history, legislative intent, and analogous statutory provisions." *State Farm Mut. Auto. Ins. Co. v. Comm'r of Ins.*, 114 Nev. 535, 540-41, 958 P.2d 733, 736 (1998).

**1. The term "application" in NRS 40.455 is ambiguous**

The meaning of the term "application" in NRS 40.455 is ambiguous because it is susceptible to more than one reasonable interpretation. When the Legislature does not specifically define a term, the Nevada Supreme Court "presume[s] that the Legislature intended to use words in their usual and natural meaning." *Wyman v. State*, 125 Nev. 592, 607, 217 P.3d 572, 583 (2009). The term "application" has several common definitions, including "request" and "petition." *See* www.merriam-webster.com/dictionary/application. Both complaints and motions alike "request" or "petition" the court for relief and thus either document could qualify as an "application" under a plain meaning definition. The term is also ambiguous because it is inconsistent with the Legislature's use of the phrase "civil action" in NRS 40.4639. This

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inconsistency is especially troubling given the fact that both NRS 40.455 and NRS 40.4639 impose the same six-month limitations period.

Under this Court's interpretation of NRS 40.455, which was enacted in 1969, a beneficiary of a first deed of trust is required to file a "motion" for a deficiency within six months after foreclosure,[4] while under the plain language of NRS 40.4639, which was enacted in 2011, a junior deed of trust holder is only required to commence a "civil action" within six months of foreclosure. Why would the Legislature treat junior lienholders differently than senior lienholders? The answer is simple: it did not intend to treat them differently. The discrepancy between the two statutes can be reconciled by consulting legislative history, which clarifies that the Legislature intended for both statutes to be "statutes of limitation" and to put junior and senior lienholders on equal footing when it comes to deficiency actions. Legislative history reveals that the Legislature enacted NRS 40.455 and NRS 40.4639 to force secured parties to *commence the process* of obtaining a deficiency within six months of foreclosure.

**2. Legislative history shows the Legislature intended for NRS 40.455 to operate as a statute of limitations**

The legislative history pertaining to NRS 40.455 teaches that the statute was patterned after California's deficiency statute and that one of the purposes of the six-month rule was to avoid stale claims such that the "debtor cannot be left hanging in limbo for a number of months. ***Action*** has to be started within three months.[5] You are not faced with the problem of trying to find out what the property was worth say five years ago." *See* Minutes of Meeting – Assembly Committee on Judiciary, 55th Session, March 13, 1969 at 5, 7, attached hereto as **Exhibit 2** (emphasis added). Legislative history reveals the Legislature intended for "action" to be started within (at that time) three months of the foreclosure. *See* footnote 5. The Legislature's use of the term "application" therefore is specifically tied to the term "action."

[4] The Court's definition of "application" is presumably based on NRCP 7(b)(1) which provides that an "application to the court for an order shall be by motion . . . ." However, this definition of the term "application" is *not* in the statute and, an analysis of the plain language of the statute alone – *i.e.* without consulting the extra-textual Nevada Rules of Civil Procedure – yields more than one reasonable interpretation of the term.

[5] NRS 40.455 originally had a three month statute of limitation. In 1987, the statute of limitation was increased from three months to six months. *See* AB 300, 64th Session (1987).



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In 2011, the Legislature significantly changed NRS Chapter 40 in several significant respects, including the addition of NRS 40.4631 through 40.4639. The legislative history pertaining to these sections sheds critical light into the meaning of NRS 40.455.

On March 23, 2011, Assemblyman Marcus Conklin, the sponsor of the proposed addition of NRS 40.4631-40.4639, testified that the amendment:

> deals with the ***statute of limitations on the junior lienholder*** and was part of the original intent, but was never part of the bill. There are a lot of homes going through the foreclosure process because they cannot find a suitable short sale. In a short sale, particularly for a home that has two lienholders, ***the junior lienholder has a statute of limitations after foreclosure of six years to get a deficiency judgment. The first lienholder has a statute of limitation of six months*** . . . The second lienholder does not want to approve the short sale because he knows if he goes to foreclosure, he will have six years to wait for the economic circumstances to improve for the borrower before he chooses to sue them for any deficiency he did not get paid. Why should the second lienholder be in a better position than the first? The result is the first lienholder is not able to get a short sale done because the junior lienholder is holding up the short sale process. ***This amendment seeks to put the second lienholder in the same statute of limitations position of six months as the primary lienholder.***

*See* Minutes of Meeting – Assembly Committee on Commerce and Labor, 76th Session, March 23, 2011 at 5, attached hereto as **Exhibit 3** (emphasis added). Assemblyman Conklin reiterated later that under the law as it existed pre-2011, junior lienholders had a six year statute of limitations to collect a deficiency judgment after foreclosure, but "[b]y shortening the time and putting the junior lender on equal footing with the primary lender, it would be more likely that they would be willing to deal at the front end, because they know things are not going to get better before the statute of limitations runs out." *Id.* at 6.

On May 3, 2011, Assemblyman Conklin explained the interplay between NRS 40.455 and NRS 40.4639 as follows:

> Senior lienholders have six months from the commencement of a foreclosure sale ***to file for a deficiency judgment*** . . . . On the other hand, the ***junior lienholder has six years to commence this action.*** . . . All the junior lienholder needs to do is wait for the economic situation to get better and file a deficiency judgment at that time. This bill puts the second lienholder in the same position as the first lienholder. . . . ***[Junior lienholders currently] have a six-year statute of limitations that no one else has. They need to be on the***

> ***same basis as the primary lender***, who stands to lose far more and is willing to deal.

*See* Minutes of Meeting – Senate Committee on Judiciary, 76th Session, May 3, 2011 at 3-4, attached hereto as **Exhibit 4** (emphasis added). Assemblyman Conklin's Talking Points on A.B. 273, attached as an exhibit to the committee meeting, explain that A.B. 273 requires "a second or junior lender to *commence an action* for a money judgment against a borrower within six months—rather than the current six years—*just as the senior lender is required to do[.]*" *See* **Exhibit 5** attached hereto (emphasis added).

In addition, the Legislative Counsel's Digest concerning A.B. 273 provides:

> Under existing law, a judgment creditor or a beneficiary of a deed of trust may obtain, after a hearing, a deficiency judgment after a foreclosure sale or trustee's sale if it appears from the sheriff's return or the recital of consideration in the trustee's deed that there is a deficiency of the proceeds of the sale and a balance remaining due the judgment creditor or beneficiary of the deed of trust. *Existing law requires a judgment creditor or beneficiary of a deed of trust to bring* ***an action*** *for such a deficiency judgment within 6 months after the foreclosure sale or trustee's sale. . . .* Sections 3, 3.3 and 5.7 of this bill enact similar provisions to govern deficiency judgments sought be junior lienholders after a foreclosure sale. . . the [junior lienholder] may bring an action to obtain a personal judgment against the debtor only if the ***action*** is brought within 6 months after the foreclosure sale, trustee's sale or the sale in lieu of a foreclosure sale or trustee's sale.

*See* Legislative Counsel's Digest on A.B. 273 attached hereto as **Exhibit 6** (emphasis added).

According to legislative history, NRS 40.455 and NRS 40.4639 were both enacted as statutes of limitation. In discussing NRS 40.4639, the Legislature repeatedly stated that it wanted to impose the same six-month "statute of limitations" on junior lienholders that governed senior lienholders. "Statutes of limitation are procedural bars to a plaintiff's action[.]" *G&H Assoc. v. Ernest W. Hahn, Inc.*, 113 Nev. 265, 272, 934 P.2d 229, 233 (1997) (emphasis added); *see also* NRS 11.190. By repeatedly referring to NRS 40.455 as a statute of limitation and explaining that senior lienholders have six months to file a deficiency "action," legislative history clarifies that the Legislature intended the word "application" to mean "to start the deficiency judgment process."

In the case of a ***non-judicial*** foreclosure, *i.e.* a trustee's sale, one can only initiate the

deficiency judgment process by filing "an action" via complaint. The filing of the complaint satisfies the six-month "statute of limitation" intended by the Legislature. In the case of a *judicial* foreclosure, however, the term "application" certainly can mean "motion" because a foreclosure "action" is already pending and there would be no need to file a new action to obtain a deficiency.

**3. Canons of statutory construction support BON's interpretation**

Three additional canons of statutory construction support BON's interpretation. First, "[w]hen a former statute is amended or a doubtful interpretation rendered certain by subsequent legislation, it ha[s] been held that such amendment is persuasive evidence of what the Legislature intended by the first statute." *Woofter v. O'Donnell*, 91 Nev. 756, 762, 542 P.2d 1396, 1400 (1975). The Legislature's amendment of NRS Chapter 40 in 2011 to include NRS 40.4639 is persuasive evidence of what the Legislature intended when it enacted NRS 40.455 – *i.e.* to impose a six month statute of limitation within which a lender had to file a document making it known that a deficiency was being sought.

Second, it is well settled that the "meaning of a statute may be determined by referring to laws which are "in pari materia."" *State Farm Mut. Auto Ins. Co. v. Comm'r of Ins.*, 114 Nev. 535, 541, 958 P.2d 733, 737 (1998). When two statutory "sections relate to the same subject-matter" or "have the same purpose or object" they are "in pari materia" and should be construed together. *Id.*; *State v. Esser*, 35 Nev. 429, 129 P. 557, 559 (1913). "In so far as there is an irreconcilable conflict between the two sections, the section which last became a law controls the provisions of the earlier enactment." *Esser*, 129 P. at 559.

Here, the meaning of NRS 40.455 may be determined by referring to NRS 40.4639 because these provisions are "in pari materia." Both sections relate to the same subject matter as they impose a six month limitation period on lenders after foreclosure to seek a deficiency judgment. NRS 40.4639's unequivocal use of the phrase "civil action" informs the proper interpretation of the term "application" in NRS 40.455. Moreover, as NRS 40.4639 is the more recently enacted statute, its clear directive to commence a civil action controls over the seemingly inconsistent requirement to file an application in the forty-five year old NRS 40.455.

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Third, courts are required "to interpret provisions within a common statutory scheme 'harmoniously with one another in accordance with the general purpose of those statutes' and to avoid unreasonable or absurd results, thereby giving effect to the Legislature's intent." *S. Nev. Homebuilders Ass'n v. Clark Cnty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (emphasis added). In order to interpret NRS 40.455 harmoniously with NRS 40.4639, the Court must interpret "application" more broadly to include "complaint." Under NRCP 3, the filing of a complaint commences a civil action. NRS 40.4639 requires the commencement of an action within six months of foreclosure.

Interpreting "application" in NRS 40.455 to solely mean "motion" puts NRS 40.455 in conflict with NRS 40.4639 and produces an unreasonable result. It makes no sense for the Legislature to require senior lienholders to file a "motion" within the six months, but require junior lienholders to commence a civil action. To harmonize the statutes, NRS 40.455 should be interpreted as requiring the *commencement of the deficiency judgment process* within six months of foreclosure, whether via the filing of a complaint if no judicial foreclosure action is pending, or a motion if a judicial foreclosure proceeding is pending.

**4. Relevant case law supports BON's interpretation**

In addition to legislative history and canons of statutory construction, several courts have interpreted NRS 40.455 as requiring the institution of an "action" within six months of foreclosure. *See e.g. FBW Enterprises v. Victorio Co.*, 821 F.2d 1393, 1395-96 (9th Cir. 1987) (explaining that under NRS 40.455 "an action for deficiency judgment must be brought within three months after the date of the foreclosure or trustee's sale.");[6] *Behringer Harvard Lake Tahoe, LLC v. Bank of Am., N.A.*, 3:13-CV-00057-MMD, 2013 WL 4006867 (D. Nev. Aug. 5, 2013) ("NRS § 40.455 prevents a lender from bringing an action for a deficiency judgment after 6 months of a foreclosure sale[.]"); *Nevada State Bank v. Jamison Family Partnership*, 106 Nev. 792, 797-98, 801 P.2d 1377, 1381-82 (1990) (referring to NRS 40.455 as a statute of limitation and explaining that the lender's "opportunity to make a claim for a deficiency judgment resulting from the trustee's sale" expired on February 12, 1986 under NRS 40.455.). These cases support

[6] *See* footnote 5.

the interpretation that the timely commencement of "an action" satisfies the requirement of NRS 40.455.

## V. CONCLUSION

Based on the foregoing, BON respectfully requests that the Court alter or amend its Judgment and accompanying MSJ Order. Specifically, the Court should grant summary judgment in favor of BON with respect to the remaining indebtedness owed on Note B in the amount of **$1,109,798.29**, plus prejudgment interest in the amount of **$150,932**. The Court should also deny Petersen's Countermotion for Summary Judgment and vacate any award of costs to Petersen.

Dated: May 23, 2014.

SNELL & WILMER L.L.P.

By: _____

Michael Stein, Esq. (Nevada Bar. No. 4760)
Brian R. Reeve, Esq. (Nevada Bar No. 10197)
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*Attorneys for Plaintiff*

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## CERTIFICATE OF SERVICE

As an employee of Snell & Wilmer L.L.P., I certify that I served a copy of the foregoing **PLAINTIFF'S RULE 59(e) MOTION TO ALTER OR AMEND JUDGMENT** on May 23 2014, via United States Postal Service, postage prepaid, to the following:

Richard McKnight, Esq.
The McKnight Law Firm, PLLC
528 S. Casino Center Blvd., #335
Las Vegas, NV 89101

*Attorney for Defendant Murray Petersen*

_____
An employee of Snell & Wilmer L.L.P.

# EXHIBIT 1

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

| | |
|---|---|
| BANK OF NEVADA,<br><br>Plaintiff,<br><br>vs.<br><br>MURRAY PETERSON,<br><br>Defendant. | CASE NO. A-680012<br><br>DEPT. I<br><br>**TRANSCRIPT OF PROCEEDINGS** |

BEFORE THE HONORABLE KENNETH C. CORY, DISTRICT COURT JUDGE

**ALL PENDING MOTIONS**

TUESDAY, APRIL 15, 2014

APPEARANCES:

FOR THE PLAINTIFF: BRIAN R. REEVE, ESQ.
MICHAEL D. STEIN, ESQ.

FOR THE DEFENDANT: RICHARD McKNIGHT, ESQ.

COURT RECORDER:

BEVERLY SIGURNIK
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Englewood, CO 80110
(303) 798-0890

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

it's there in 455, but it's inconsistent with 495. So that's one reason of the three that I'm going to give you as to why you should grant our summary judgment.

Also, you know, guarantors are automatically entitled to a fair market value offset under the statutory scheme of 495(4) post-Lavi. Before, they were not. So you had to look to 455 in order to determine what, if any, offset they were entitled to. Again, general over specific.

Now, two; courts are required to interpret provisions with a common statutory scheme harmoniously and with one another in accordance with the general purpose of those statutes. This allows you to avoid an unreasonable and an absurd result.

We argue that Mr. Peterson's argument yields an unreasonable and absurd result. You see, where a guarantor's deficiency action is already pending the statutory -- it would make no sense to require a party to amend its Complaint within six months of a foreclosure to reassert the same claim. That's absurd. In fact, it violates Rule 1 of our Rules of Civil Procedure. The very first rule that governs procedure, it violates.

THE COURT: You know, here's my thinking on this so far. I tend to agree that it does not necessarily require an amendment to the Complaint but, you know, a literal reading of 455 just says an application for a deficiency judgment. That

sounds like a motion to me.

MR. STEIN: You know, in certain contexts it is, Your Honor. But, you know, you start -- you start a civil matter by Complaint. So when you come to the Court, you come to make your complaint or to assert your rights by Complaint, by Complaint. But nevertheless, under 455(4) it instructs you as a Judge what to do exactly if after the guarantor lawsuit is started a foreclosure occurs. It's very clear. It strikes you to now look to the value that was taken from that Trustee's Sale, the sales price a the Trustee sale. And if it's greater, if it's greater than the value of -- or greater than the fair market value at the time the Complaint was filed, that's the number you subtract from the amount owed to get a lesser deficiency.

You know what's really important about this to show you this distinction and why 495 is self-contained? Remember, under 455, you take the amount that's owed and you subtract one of two numbers, whichever is greater. The amount of fair market value at the time of the Trustee's sale, or the amount that the property sold for, at the time of the Trustee's sale. 495 is -- has to govern over that, because it instructs you, it mandates that you don't use the fair market value at the time of the Trustee's sale. You -- it mandates you to use the fair market value at the time the Complaint was filed. Not any application or motion filed, but the time the Complaint

our legal civil process. Not only does it violate Rule 15 -- think about this, Your Honor. Let me digress one moment. If I came to you with a Rule 15 motion -- remember, Lavi's unpublished. I've never seen that case. I show up to Court and say, Your Honor, I'm moving to amend my Complaint. All right, Mr. Stein, I do see you've attached an Amended Complaint, a proposed Amended Complaint as required by the rules. And I see it's -- my clerk tells me it's virtually identical to the one you filed. Can you tell me, Mr. Stein, why I shouldn't sanction you for violating Rule 1, Local Rule 7.60, and Rule 15? You've added nothing to this Complaint, but you've taken up judicial time and resources. And for what? And I wouldn't know what to tell you, sir. I would have no answer to that question because --

THE COURT: Well, that's if we accept the defendant's argument that -- which seems to say that your only way to comply is to file an Amended Complaint. What's wrong with just saying, you don't have to file an Amended Complaint, just file the motion?

MR. STEIN: That doesn't bring us any closer to anything either, Your Honor. Remember, the reason under 455 for the six months is so that borrowers weren't hanging. They weren't hanging out there wondering if they're going to get sued. This isn't the legislative history. They -- there's a date certain we need to -- when to close it off certain for

MR. McKNIGHT: Thank you.

THE COURT: Mr. McKnight?

MR. McKNIGHT: Yes, sir. The real --

THE COURT: Is -- is the purpose notice only? Is the purpose of 455 --

MR. McKNIGHT: The purpose is to make sure there is an application. He's saying --

THE COURT: Well, but I mean that's --

MR. McKNIGHT: I don't -- Amended Complaint, there's no need for an Amended Complaint. The day after the stipulation they could've asked -- made an application and said, we got the amount, and this is what our fees are, and this is what the interest is, and et cetera, et cetera, give us a judgment. That would be an application.

THE COURT: So I guess my question is, why would the legislature care enough to say, 455 should still apply, i.e. there should be a --

MR. McKNIGHT: Because --

THE COURT: -- six month -- if it's anything -- I mean, what other consideration besides notice would there be?

MR. McKNIGHT: There is nothing in the statutes that he is citing to you, 457, 495, that says when you do this. So we could sign that stipulation and then according to them, five years later, come back to court and figure out how much Mr. Peterson owes. There's got to be -- to follow his

MR. STEIN: Judge --

THE COURT: -- with guarantors?

MR. STEIN: -- just 455(1) is the only one we're dealing with that's not harmonious with the 495, Your Honor.

THE COURT: Well, okay, I thought that your argument described it as -- that there were several that would be non-harmonious.

MR. STEIN: Well, I gave you examples of how the application of those, but in our case, those other ones don't apply. Only 455(1), but I --

THE COURT: Okay, well, I leave it to the Supreme Court to make the determination of -- on both levels, that is, of whether or not 495 means 455 is out in a guarantee action, and also what other provisions between 455 and 463(9), being non-harmonious, are no longer applicable when it comes to a guarantee action. That's something our Supreme Court should deal with.

MR. STEIN: Yeah. But, Your Honor, do you -- are you -- because this order has to be reviewed by both of us, are you finding that our stipulation didn't satisfy that six month period, the stip and order that you signed?

THE COURT: No. I am finding that your motion is denied. And it seems to me that I am compelled by that logic to say that the countermotion is granted, because there was no application within the six months. And as illogical as that

may seem in light of 40.495, as it may seem to the bank, I think I as a trial court am required to make that ruling. And if there -- if there's to be the differentiation that is inherent in your logical argument about how 495 is an all inclusive act, then I think our Supreme Court's going to have to be the one to make that determination. It's the only way I know to get resolution. It's going to go up either way.

MR. McKNIGHT: Thank you. I'll draft the order and run it past counsel?

THE COURT: Yeah. It's -- either way it's got to go up there to get it resolved. So, you know, I'm going to --

MR. STEIN: Oh, no, I understand.

THE COURT: -- I'm going to give -- I'm going to try to give deference to the legislative acts I have before me and leave it to the Supreme Court to decide where you --

MR. STEIN: Understood. I thank you for your time though.

THE COURT: -- how you parse those. Yeah.

MR. McKNIGHT: Thank you.

THE COURT: Okay.

(Proceeding concluded at 11:04 a.m.)

* * * * *

## CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

## AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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Julie Lord
JULIE LORD, TRANSCRIBER

5-5-14
DATE

# EXHIBIT 2

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 55th Session
March 13, 1969

Meeting was called to order at 3:35 P.M. by Chairman Torvinen.

PRESENT: Torvinen, Kean, Fry, Reid, Prince, Bryan, Schouweiler, Lowman

ABSENT: Swackhamer

MR. TORVINEN: This is the day set for a hearing on AB 297, AB 298, AB 493, AB 494 and we will add AB 199.

MR. REID: There is another bill on this in the Senate. If these people know about it, I would like them to comment on that one, too. I would also like Mr. Van Patten to tell us how the California law is working.

MR. VAN PATTEN: Lawyer from California: The present law in Nevada is basically inadequate. It permits the creditor who forecloses under deed of trust to hold a sale and no one knows of it. He can get in 5 to 10% and then wait for the statute of limitations to run out and then bring suit against the borrower and recover the full amount. The debtor may lose his property at 10 cents on the dollar and yet end up having to pay the full amount of the debt later. Many times the creditor has collected twice and the debtor has lost twice. It is only because of the restraint and good sense of public relations of the banks and building and loan institutions that this has not happened oftener.

One safeguard against this "so-called" purchase money method - no deficiency judgment permitted then.

Mr. Hilbrecht's bill, AB 298, proposes to adopt this purchase money deed of trust for the method. In my experience, which is more than that of any other attorney in the State of California, and I have represented both sides, this is a strange method, a rather clumsy device. The only reason for it is a certain common law sanction which made it possible for it to be put into effect during the depression. I could talk for hours on purchase money deeds. It has a nice ring to it, but it is very difficult to determine. It is not an economical approach to this kind of thing because, simply be accident, some will fall into this category and some will not. While the deed is in your hands you cannot get a deficiency judgment. If you sell it to the bank, he may be able to exercise it. It has nothing to do with the borrower. In some states in the hands of the owner, in due course, it would be a purchase money deed.

Another problem: A third party lender comes in and loans the $70,000. In some states this would be a purchase money deed and in some states it would not. It was finally decided by the courts that in the hands of a third party purchase money deed still applies.

With AB 298 you are closing doors and it would take many many cases before an attorney could advise his client whether it was or was not purchase money deed, or trust.

AB 493 would have an adverse effect to some degree on lenders. We think that in so far as savings and loans are concerned, they are willing to live with this restriction.

After the deed of trust is sold, the deficiency judgment can only be the difference in amount of the sale and the value of the property. It doesn't hurt the debtor and it doesn't enable the creditor to deal unfairly. The debtor is not left to a haphazard situation.

AB 493 also provides that the debtor cannot be left hanging in limbo for a number of months. Action has to be started within three months. You are not faced with the problem of trying to find out what the property was worth say five years ago.

I believe that AB 493 would solve most of the problems. 494 is good if the committee feels that one should protect the small home buyer against deficiency judgment. This was the purpose of the California law. 494 does this for you.

One thing: There is a slight ambiguity in section 2 which ends with "under a contract of sale executed after Dec. 31, 1969." It should be made clear that this is talking about a secured instrument of sale. Also contract of sale that can be like a broker's contract of receipt. It should be clear we are referring here to the words "contract of sale" so add "all of the purchase price".

I think Clark Guild has pointed out to me there is a point of the Senate side, SB 35, which deals with deficiency judgment, sort of a shorthand version of the California law on this subject.

There are several things you should do. One, you should introduce fair market value for the protection of the debtor, same as in 493. However, it goes further and introduces the purchase money device which is not a good approach to the problem.

After 30 years in California, there have been cases interpreting different sections of this. We still do not know how the Supreme Court is going to interpret it. We have had three cases.

Second, you need a so-called judicial foreclosure procedure which applies to all. Provides for two trials. One, to provide valid deed of trust, then you get an interlocutory decree and then after the sale is held, two, they go back to decide what the fair market value was. Debtor still owes it, so a period of sometimes almost two years the property can be in the hands of a receiver. It is a very expensive process. It puts everyone to the burden of two trials. When you are all done, these are all court costs and the debtor ends up paying them.

This law is one which most of the attorneys in California think is a very bad law but we can't agree on how to change it. However, there is unanimous agreement that it is a bad law. This is one California law that Nevada should not copy.

MR. REID: What is in most of the other states?

MR. VAN PATTEN: Only eight or nine states that permit deeds of trust as opposed to mortgages so you are not really comparable to other states. Nevada is the only state which permits deficiency justment after sale of trust.

About 40 of the states have the fair market limitation. A foreclosed debtor should not have to rely on the vagaries of a trust sale.

MR. GUILD: 494 could stand on itself then. 493 just gives some protection.

MR. REID: Could we logically adopt both? It wouldn't have to be one or the other, would it?

MR. VAN PATTEN: You could adopt both. 493 would correct the present situation. 494 defines whether the burden should be on the small home owner or on the creditor.

MR. GUILD: I disagree. I think if you pass both bills there would be a problem of interpretation. Section 1 of 494 says judgment deficiencies shall not be rendered but 493 sets up a system for getting these deficiencies.

MR. VAN PATTEN: 493 brings Nevada law into accord with the laws of most other states. 494 goes one step further than that. I am only speaking in favor of 493.

BRUCE BECKLEY: Attorney from Las Vegas for Savings and Loan companies. The position of the three Savings and Loan companies for which I am speaking is substantially the same as that of Mr. Van Patten. We are opposed to SB 39 and we are opposed to the California law, AB 298. Mr. Van Patten has given us some idea of the difficulties with this. It was only two years ago that we even knew that there was a deficiency judgment under a trust deed.

We do support 493 and believe it will go a long way in preventing serious inequities in sale of property. We do not take a position of support of 494. However, we think we could live with it if we had to.

We believe 493 will do the job here in the state.

MR. BRYAN: Is there a statute in another jurisdiction after which 493 has been patterned? If so, are there decisions to guide us?

MR. VAN PATTEN: Yes. 493 is virtually the same as in the fair market value protection in the California law and very much the same as about ten other states have.

MR. GUILD: There would be states, then, to give you previous judicial decisions.

EDWARD HALE: Attorney from Reno: One technical matter: I think the policy of this legislation is very good. However, it seems to me there is no technical definition of indebtedness. I would like to suggest the following seven things which should be included in a definition of "indebtedness." (Mr. Hale's statement attached to minutes.)

1. Property money
2. Interest
3. Costs. Cycle of consideration in the trustee deed. Cycle of consideration not necessary in indebtedness.
4. Trustee's fees should be included.
5. Advances made during the period of foreclosure, such as insurance and taxes.
6. Additional indebtedness under an omnibus clause.
7. Provisions for creditor holding 1st, 2nd, and 3rd loans.

# EXHIBIT 3

# MINUTES OF THE MEETING
# OF THE
# ASSEMBLY COMMITTEE ON COMMERCE AND LABOR

## Seventy-Sixth Session
## March 23, 2011

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 1:42 p.m. on Wednesday, March 23, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Kelvin Atkinson, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblyman Richard (Skip) Daly
Assemblyman John Ellison
Assemblyman Ed A. Goedhart
Assemblyman Tom Grady
Assemblyman Cresent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Kelly Kite
Assemblyman John Oceguera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

**COMMITTEE MEMBERS ABSENT:**

None

protected against deficiency judgments. What was not in that bill was that some loans are complicated and have junior lienholders. We are attempting to go back to include in that legislation that all of the loans that are originally used to secure the house are now covered under deficiency. If it is part of the original purchase money mortgage deal, it will now be covered under deficiency protection.

There are two proposed amendments. The first amendment (Exhibit C) deals with the statute of limitations on the junior lienholder and was part of the original intent, but was never part of the bill. There are a lot of homes going through the foreclosure process because they cannot find a suitable short sale. In a short sale, particularly for a home that has two lienholders, is the junior lienholder has a statute of limitations after foreclosure of six years to get a deficiency judgment. The first lienholder has a statute of limitation of six months. The first lienholder sees that if he approves the short sale, he will never have to own or maintain the property, and he will take a loss no matter what he does. It is a simple transaction to a new homeowner. The lienholder can write off the asset, write off the loan, and walk away because he knows in six months the situation will not improve and the transaction does not make sense anymore. The second lienholder does not want to approve the short sale because he knows if he goes to foreclosure, he will have six years to wait for the economic circumstances to improve for the borrower before he chooses to sue them for any deficiency he did not get paid. Why should the second lienholder be in a better position than the first? The result is the first lienholder is not able to get a short sale done because the junior lienholder is holding up the short sale process. This amendment seeks to put the second lienholder in the same statute of limitations position of six months as the primary lienholder. It seems fair for the property owner because there will be more short sales and fewer properties waiting in foreclosure and more transactions taking place. I believe it will help the homeowner and the economy get back on track.

The second proposed amendment (Exhibit D) deals with commercial lending. This amendment revises *Nevada Revised Statutes* 40.495. If you are a guarantor of a loan, there is a loophole in the law that allows the bank to file a suit but not take the property when the loan is secured by the property, which may bankrupt the guarantor. The bank has as much risk as the borrower, and that is why they use property as collateral. I am trying to close that loophole with this amendment. If a bank wants to take action against a borrower to purchase land, and the loan is secured by the land, then before they can sue for money, they have to at least get a judicial appraisal of the property and subtract its value from the amount of the loan. Otherwise, what was the reason for the secured loan in the first place? The amendment provides that, in order to

secure a judgment against a creditor who has a loan that is secured by property, you must get a judicial appraisal and subtract the value from any loan amount.

**Chair Atkinson:**
Thank you for this bill, because it will help our constituents. My district was the number-one district in growth and is the number-one district in foreclosures. People are looking for relief but feel their hands are tied. They are concerned about the banks coming after them in six years. If a bank and the second lender sign off on the short sale, does that take the borrower out of the six years or six months for the deficiency collection?

**Assemblyman Conklin:**
There is no statute of limitations on a transaction of sale prior to foreclosure. It is the standard practice of a trained real estate agent that if we are going to conduct a short sale, there is a release for deficiency. What homeowner would "short sale" their house without a document? It is a standard course of practice. The law does not prevent a deficiency judgment for a transaction of sale that takes place prior to foreclosure. That is a standard practice and is what the homeowners expect. The bank is losing less, in that they never have to own or maintain the property or transfer a deed, and can sell it and write it off the books as opposed to a lengthy court process and ownership. It is a win-win situation, but when there are two banks dealing with this and one has a much longer period to collect for a deficiency, why would they ever sign away that right?

**Chair Atkinson:**
Do you feel that second lenders will be less likely to sign?

**Assemblyman Conklin:**
We have real estate salespeople who are negotiating these deals daily in Las Vegas, but the reality is there is currently no incentive for the junior lienholder to sign a transaction of sale prior to foreclosure. They have six years to wait for the economy to improve and collect their deficiency. By shortening the time and putting the junior lender on equal footing with the primary lender, it would be more likely that they would be willing to deal at the front end, because they know things are not going to get better before the statute of limitations runs out.

**Chair Atkinson:**
So the real estate people will say that the homeowners are insisting that the bank sign?

# EXHIBIT 4

# MINUTES OF THE
# SENATE COMMITTEE ON JUDICIARY

## Seventy-sixth Session
## May 3, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:06 a.m. on Tuesday, May 3, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

**COMMITTEE MEMBERS ABSENT:**

Senator Ruben J. Kihuen (Excused)

**GUEST LEGISLATORS PRESENT:**

Assemblyman Marcus Conklin, Assembly District No. 37
Assemblyman Jason Frierson, Assembly District No. 8

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Lynn Hendricks, Committee Secretary

**OTHERS PRESENT:**

Joanne Levy, Nevada Association of Realtors
Venicia Considine, Legal Aid Center of Southern Nevada

pennies on the dollar. Section 2, subsection 2 and section 5, subsection 1, paragraph (c) state that collection agencies can only go after the amount they actually expended. For example, if a deficiency judgment is $100,000 and the bank sells it to a collection agency for $20,000, the agency can only come after the former homeowner for $20,000 plus interest and fees. It is a chain of profiteering against the original homeowner. The purpose of this bill is clear. If the bank was willing to accept $20,000, it should have negotiated with the homeowner for that amount. We are trying to create an environment in which it is in everyone's best interest to negotiate at the spot where the loan was originally negotiated.

Section 3 applies protections to borrowers of secondary or junior loans under the same conditions as those given to senior loans by A.B. No. 471 of the 75th Session. That bill gave those protections only to the primary lienholder, the bank that made the primary loan. However, because there are many cases in which a second loan was used in the original purchase alone, it is necessary to include secondary loans under those protections. Under A.B. 273, the loan package in the original purchase is included in the protections under our deficiency judgment laws.

I have a proposed amendment to the bill (Exhibit D). Section 6 of the amendment adds back some language inadvertently left out when the bill was reprinted.

The purpose of section 3.3 is clear. If you are a homeowner trying to short sell your house, many primary banks are willing to negotiate with you. However, many loan packages were made such that the second lienholder is actually in the primary lienholder spot because the statute of limitations for secondary loans is significantly longer than for primary loans. Senior lienholders have six months from the commencement of a foreclosure sale to file for a deficiency judgment. They are only going to win a deficiency judgment if the person has the assets to pay out on a deficiency. It is unlikely that the person's financial situation will change enough in six months for him or her to have the assets to pay a deficiency. On the other hand, the junior lienholder has six years to commence this action. There is no benefit for the junior lienholder to help the homeowner get out from under the loan. All the junior lienholder needs to do is wait for the economic situation to get better and file a deficiency judgment at that time. This bill puts the second lienholder in the same position as the

first lienholder. That way, everyone negotiates from the same position and sees the same financial benefit or lack of benefit in a foreclosure versus a short sale.

Many banks have told me, "We'd like to help your constituent on this, but the problem is they have a $10,000 secondary note, and the secondary lienholder isn't willing to deal." Why are those secondary lenders not willing to deal? Because they do not have to. They have a six-year statute of limitations that no one else has. They need to be on the same basis as the primary lender, who stands to lose far more and is willing to deal.

Section 5.5 is a little harder to understand. The standard investor who invests in land requires two people: one who is willing to loan money and one who is willing to risk. For example, an investor might say, "I want to buy $30 million worth of land, and I have $5 million cash." That person goes to a bank and gets a loan secured by the land and the personal guarantee of the investor, who is known to have $5 million. This is not an unsecured loan.

What is happening from time to time is that if there is a foreclosure, instead of going after the land first and then going after the guarantor for the difference, banks are choosing to go after the guarantor for the total amount of the loan. If we allow banks to continue to do that, people will not invest in Nevada. No one is going to take that kind of position to guarantee a loan secured by property. It would be different if it was an unsecured loan. What we are trying to do here is force banks to choose one course of action. They can still choose to sue the guarantor, but they have to take the land first.

Think of it this way. If you cosigned a loan for your child and your child could not make the payments, would you think the bank could come after you for the total amount of the loan and leave the house? You would not; that is not what happens when you cosign a loan. The loan was secured by land, and all we are doing is clearing this up so the banks do not get two bites of the apple—a lawsuit and a potential foreclosure—but only one. If the bank chooses to file a suit, that is fine, but the bank must take the value of the property out of what is collected from the guarantor. That is what this provision does.

CHAIR WIENER:
Does Exhibit D, Amendment 6738, cover all your concerns?

# EXHIBIT 5

# TALKING POINTS ON A.B. 273 (First Reprint)
## Relates to deficiency judgments

## ASSEMBLYMAN MARCUS CONKLIN

**May 3, 2011**

## INTRODUCTION

This bill relates to deficiency judgments, which are judgments a court may award under Chapter 40 of NRS after a foreclosure sale, if the proceeds from the sale are less than what the borrower owes the lender.

Last session, in A.B. 471, we tightened up the law on deficiency judgments to protect homeowners who borrowed from a financial institution to purchase a home after October 1, 2009, who continuously occupied the home as their principal residence, and who didn't refinance.

In this bill, we are again tightening up the rules on deficiency judgments by:

- Preventing a lender from receiving double payment by obtaining a judgment for a loss that is covered by insurance;

- Preventing a creditor from profiting from a judgment in excess of the amount the creditor paid for the right to pursue the judgment;

- Extending the protections in A.B. 471 from the 2009 session to borrowers who take out "piggy-back" loans for the purchase of their home;

- Requiring a second or junior lender to commence an action for a money judgment against a borrower within six months—rather than the current six years—just as the senior lender is required to do; and

- In general, making our laws on deficiencies apply to both senior and junior lenders.

A.B. 273 also includes another change to Chapter 40 dealing with guaranteed loans and actions against the persons who guarantee them.

## WHAT THE BILL DOES

Preventing double payments

In subsection 1 of section 2, and in section 5 (page 5, lines 15 to 20), the bill eliminates the ability of a lender to go to court and get a judgment against a borrower for a loss that is covered by insurance. The court must reduce the amount of the judgment by the amount of any insurance proceeds received by or payable to the lender. Section 2 covers the junior lenders (i.e., second loans) and section 5 covers the senior lenders.

Preventing a lender from profiting from a judgment

In subsection 2 of section 2, and in section 5 (page 5, lines 7 to 13), the bill prevents a person who has purchased the rights to a loan from receiving a judgment for more than what they paid, plus interest. Again, section 2 covers second or junior lenders, and section 5 covers the senior lenders.

C-2

Extending the protections from 2009 to borrowers in "piggy-back" loans

Section 3 of the bill takes the provisions of A.B. 471 from the 2009 session and applies them to a junior lender, if the borrower is in the same circumstances—he borrows from a financial institution, uses the loan to buy a home, continuously occupies the home, and does not refinance.

Like the bill last session, these first three provisions apply to new loans commencing on or after the effective date.

Requiring the junior lender to commence action within 6 months

Section 3.3 of the bill is the section that requires a junior lender to commence action for a money judgment against a borrower, after a foreclosure sale or sale in lieu of foreclosure ("short sale"), within six months.

Under the current law, the junior lender has six years to commence an action, which just prolongs the agony for borrowers who have already lost their homes in the downturn, discourages short sales, and extends the time it takes for Nevada to get its economy back on track.

In the Assembly committee, we had intended for this section to apply to any action commenced after a foreclosure sale or sale in lieu of foreclosure occurring on or after July 1, 2011. This was inadvertently left out of the amendment and the first reprint, and therefore I am proposing an amendment today that would make this so.

C - 3

Comment on the "single action rule"

After this bill was introduced in the Assembly, one concern was that the bill not inadvertently create a loophole in what is known as the "single action rule," which is found in NRS 40.430. It says, "[T]here 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."

So, in sections 2 and 3.3, the bill includes language to make sure we don't create a loophole. (See page 3, lines 24 and 37, and page 4, line 31.)

Actions against a guarantor of a mortgage or deed of trust

Finally, section 5.5 of the bill relates to a different situation—primarily having to do with commercial lending and NRS 40.495. If, for example, a developer takes out a loan to develop a large parcel of land, the bank not only takes a secured position—with the land as collateral—but also may ask for and get a guarantee from someone to pay the debt in case the borrower fails to do so.

Section 5.5 says this:

- If the lender—before foreclosing on the property—sues the person who guaranteed the loan to require them to pay off the debt, the court must hold a hearing concerning the fair market value of the property.

- And if the court decides the person who guaranteed the loan is liable for the debt, the judgment can only be for the amount by which the debt exceeds the fair market value (or, if the foreclosure sale has gone through, the amount by which the debt exceeds the sale price).

C-4

- In other words, before the bank can get a judgment against the guarantor, they must get the property appraised, and subtract that amount from the what they seek to get from the guarantor.

It has come to my attention that there needs to be another small change in the bill in this section, on page 6, line 11. I want to make it clear that the court is not required to award a judgment against the person who guaranteed the loan, but if—after a hearing—such a judgment is warranted, then the provisions of this section would apply.

Conclusion

That concludes my remarks. Thank you, madam chair.

*Prepared by:*
Legislative Counsel Bureau
Research Division
May 2, 2011
W111296

C - 5

# EXHIBIT 6

Assembly Bill No. 273–Committee
on Commerce and Labor

CHAPTER.....

AN ACT relating to real property; revising provisions governing the amount which a person holding a junior lien on real property may recover in a civil action under certain circumstances; prohibiting certain persons holding a junior lien on certain residential property from bringing a civil action under certain circumstances; revising provisions governing the amount of a deficiency judgment after the foreclosure of a mortgage or a deed of trust; limiting the amount of certain judgments against guarantors, sureties or other obligors of obligations secured by real property under certain circumstances; revising provisions governing mortgages and deeds of trust; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Under existing law, a judgment creditor or a beneficiary of a deed of trust may obtain, after a hearing, a deficiency judgment after a foreclosure sale or trustee's sale if it appears from the sheriff's return or the recital of consideration in the trustee's deed that there is a deficiency of the proceeds of the sale and a balance remaining due the judgment creditor or beneficiary of the deed of trust. Existing law requires a judgment creditor or beneficiary of a deed of trust to bring an action for such a deficiency judgment within 6 months after the foreclosure sale or trustee's sale. For an obligation secured by a mortgage or deed of trust on or after October 1, 2009, a court may not award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if: (1) the creditor or beneficiary is a financial institution; (2) the real property is a single-family dwelling and the debtor or grantor was the owner of the property; (3) the debtor or grantor used the loan to purchase the property; (4) the debtor or grantor occupied the property continuously after obtaining the loan; and (5) the debtor or grantor did not refinance the loan. (NRS 40.455)

**Sections 3, 3.3 and 5.7** of this bill enact similar provisions to govern deficiency judgments sought by junior lienholders after a foreclosure sale, a trustee's sale or any sale or deed in lieu of a foreclosure sale or trustee's sale. **Section 3** provides that, if the circumstances prohibiting a deficiency judgment after a foreclosure sale or trustee's sale under current law exist with respect to a junior lienholder, the creditor may not bring a civil action to recover the debt owed to it after a foreclosure sale, a trustee's sale or a sale or deed in lieu of a foreclosure sale or trustee's sale.

Existing law authorizes a creditor under an obligation secured by a junior mortgage or deed of trust to bring an action to obtain a personal judgment against the debtor only if the action is commenced within 6 years after the date of the debtor's default. (NRS 11.190) Under **sections 3.3 and 5.7** of this bill, if the real property securing such an obligation is the subject of a foreclosure sale, a trustee's sale or a sale or deed in lieu of such a sale, the creditor may bring an action to obtain a personal judgment against the debtor only if the action is brought within 6 months after the foreclosure sale, the trustee's sale or the sale in lieu of a foreclosure sale or trustee's sale.

Under existing law, the amount of a deficiency judgment after a foreclosure sale or a trustee's sale may not exceed the lesser of: (1) the amount of the indebtedness minus the fair market value of the foreclosed property at the time of the sale; or (2) the amount of the indebtedness minus the amount for which the foreclosed property actually sold. (NRS 40.459) **Section 5** of this bill provides that, for a deficiency judgment sought by a secured creditor after a foreclosure sale, trustee's sale or sale in lieu of a foreclosure sale or trustee's sale, the amount of the deficiency judgment must be reduced by the amount of any insurance proceeds received by, or payable to, the creditor. **Section 2** of this bill enacts a corresponding provision for money judgments sought against a debtor by a junior lienholder after a foreclosure sale, a trustee's sale or a sale or deed in lieu of a foreclosure sale or trustee's sale.

**Sections 2 and 5** also limit the recovery of a creditor who acquired the right to obtain payment for an obligation secured by the real property from another person who owned that obligation. If the creditor is seeking a deficiency judgment after a foreclosure sale, a trustee's sale or a sale in lieu of a foreclosure sale or trustee's sale, **section 5** provides that the creditor may not receive an amount which exceeds the lesser of: (1) the consideration paid for the obligation minus the fair market value of the property at the time of the foreclosure sale, with interest from the date of sale and reasonable costs; or (2) the consideration paid for the obligation minus the amount for which the property actually sold, with interest from the date of sale and reasonable costs. If the creditor is a junior lienholder who filed a civil action to obtain a money judgment against the debtor, **section 2** provides that the creditor may not receive an amount greater than the consideration paid for the obligation, with interest from the date on which the person acquired the right to obtain payment and reasonable costs.

**Section 5.5** of this bill limits the amount of a judgment against a guarantor, surety or other obligor, other than a mortgagor or grantor of a deed of trust, in an action commenced before a foreclosure sale or trustee's sale to enforce the obligation to pay, satisfy or purchase all or part of an obligation secured by a mortgage or other lien on real property. Under **section 5.5**, the amount of the judgment may not exceed the lesser of: (1) the amount of the indebtedness minus the fair market value of the real property at the time of the commencement of the action; or (2) if a foreclosure sale or a trustee's sale is completed before the date on which judgment is entered, the amount of the indebtedness minus the amount for which the foreclosed property actually sold.

**Section 6** of this bill provides that the amendatory provisions of: (1) **sections 1-3** apply only prospectively to obligations secured by a mortgage, deed of trust or other encumbrance upon real property on or after the effective date of this bill; (2) **sections 3.3 and 5.7** apply only to an action commenced after a foreclosure sale or sale in lieu of a foreclosure sale that occurs on or after July 1, 2011; and (3) **section 5.5** apply only to an action against a guarantor, surety or other obligor commenced on or after the effective date of this bill. Under **section 7** of this bill, the amendatory provisions of **section 5** become effective upon passage and approval and thus apply to a deficiency judgment awarded on or after that effective date.

Section 6 of Assembly Bill No. 284 of this session requires the trustee under a deed of trust to be: (1) an attorney licensed in this State; (2) a title insurer or title agent authorized to do business in this State; or (3) a person licensed as a trust company or exempt from the requirement to be licensed as a trust company. **Section 5.8** of this bill amends section 6 of Assembly Bill No. 284 of this session: (1) to authorize any foreign or domestic entity which holds a current state business license to be the trustee under a deed of trust; and (2) to specifically describe certain persons who are exempt from the requirement to obtain a license as a trust

company and who are authorized to be the trustee under a deed of trust. Sections 5.9 and 5.95 of this bill change the effective date of Assembly Bill No. 284 of this session from July 1, 2011, to October 1, 2011.

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

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

**Section 1.** Chapter 40 of NRS is hereby amended by adding thereto the provisions set forth as sections 1.2 to 3.3, inclusive, of this act.

*Sec. 1.2. As used in sections 1.2 to 3.3, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 1.4, 1.6 and 1.8 of this act have the meanings ascribed to them in those sections.*

*Sec. 1.4. "Foreclosure sale" has the meaning ascribed to it in NRS 40.462.*

*Sec. 1.6. "Mortgage or other lien" has the meaning ascribed to it in NRS 40.433.*

*Sec. 1.8. "Sale in lieu of a foreclosure sale" means a sale of real property pursuant to an agreement between a person to whom an obligation secured by a mortgage or other lien on real property is owed and the debtor of that obligation in which the sales price of the real property is insufficient to pay the full outstanding balance of the obligation and the costs of the sale. The term includes, without limitation, a deed in lieu of a foreclosure sale.*

*Sec. 2. 1. If a person to whom an obligation secured by a junior mortgage or lien on real property is owed:*

*(a) Files a civil action to obtain a money judgment against the debtor under that obligation after a foreclosure sale or a sale in lieu of a foreclosure sale; and*

*(b) Such action is not barred by NRS 40.430,*

*in determining the amount owed by the debtor, the court shall not include the amount of any proceeds received by, or payable to, the person pursuant to an insurance policy to compensate the person for losses incurred with respect to the property or the default on the obligation.*

*2. If:*

*(a) A person acquired the right to enforce an obligation secured by a junior mortgage or lien on real property from a person who previously held that right;*

*(b) The person files a civil action to obtain a money judgment against the debtor after a foreclosure sale or a sale in lieu of a foreclosure sale; and*

*(c) Such action is not barred by NRS 40.430,*

*the court shall not render judgment for more than the amount of the consideration paid for that right, plus interest from the date on which the person acquired the right and reasonable costs.*

*3. As used in this section, "obligation secured by a junior mortgage or lien on real property" includes, without limitation, an obligation which is not currently secured by a mortgage or lien on real property if the obligation:*

*(a) Is incurred by the debtor under an obligation which was secured by a mortgage or lien on real property; and*

*(b) Has the effect of reaffirming the obligation which was secured by a mortgage or lien on real property.*

Sec. 3. *1. A person to whom an obligation secured by a junior mortgage or lien on real property is owed may not bring any action to enforce that obligation after a foreclosure sale of the real property which secured that obligation or a sale in lieu of a foreclosure sale if:*

*(a) The person is a financial institution;*

*(b) The real property which secured the obligation is a single-family dwelling and the debtor or grantor was the owner of the real property at the time of the foreclosure sale or sale in lieu of a foreclosure sale;*

*(c) The debtor or grantor used the amount of the obligation to purchase the real property;*

*(d) The debtor or grantor continuously occupied the real property as the debtor's or grantor's principal residence after securing the obligation; and*

*(e) The debtor or grantor did not refinance the obligation after securing it.*

*2. As used in this section, "financial institution" has the meaning ascribed to it in NRS 363A.050.*

Sec. 3.3. *A civil action not barred by NRS 40.430 or section 3 of this act by a person to whom an obligation secured by a junior mortgage or lien on real property is owed to obtain a money judgment against the debtor after a foreclosure sale of the real property or a sale in lieu of a foreclosure sale may only be commenced within 6 months after the date of the foreclosure sale or sale in lieu of a foreclosure.*

Sec. 4. (Deleted by amendment.)

Sec. 5. NRS 40.459 is hereby amended to read as follows:

40.459 *1.* After the hearing, the court shall award a money judgment against the debtor, guarantor or surety who is personally liable for the debt. The court shall not render judgment for more than:

~~[1.]~~ *(a)* The amount by which the amount of the indebtedness which was secured exceeds the fair market value of the property sold at the time of the sale, with interest from the date of the sale; ~~[or~~

~~2.]~~ *(b)* The amount which is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured, with interest from the date of sale ~~]~~ ; *or*

*(c) If the person seeking the judgment acquired the right to obtain the judgment from a person who previously held that right, the amount by which the amount of the consideration paid for that right exceeds the fair market value of the property sold at the time of sale or the amount for which the property was actually sold, whichever is greater, with interest from the date of sale and reasonable costs,*

➥ whichever is the lesser amount.

*2. For the purposes of this section, the "amount of the indebtedness" does not include any amount received by, or payable to, the judgment creditor or beneficiary of the deed of trust pursuant to an insurance policy to compensate the judgment creditor or beneficiary for any losses incurred with respect to the property or the default on the debt.*

Sec. 5.5. NRS 40.495 is hereby amended to read as follows:

40.495 1. The provisions of NRS 40.475 and 40.485 may be waived by the guarantor, surety or other obligor only after default.

2. Except as otherwise provided in subsection ~~[4,]~~ 5, a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, may waive the provisions of NRS 40.430. If a guarantor, surety or other obligor waives the provisions of NRS 40.430, an action for the enforcement of that person's obligation to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a mortgage or lien upon real property may be maintained separately and independently from:

(a) An action on the debt;

(b) The exercise of any power of sale;

(c) Any action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby; and

(d) Any other proceeding against a mortgagor or grantor of a deed of trust.

3. If the obligee maintains an action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby, the guarantor, surety or other obligor may assert any legal or equitable defenses provided pursuant to the provisions of NRS 40.451 to 40.463, inclusive.

4. *If, before a foreclosure sale of real property, the obligee commences an action against a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, to enforce an obligation to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a mortgage or lien upon the real property:*

*(a) The court must hold a hearing and take evidence presented by either party concerning the fair market value of the property as of the date of the commencement of the action. Notice of such hearing must be served upon all defendants who have appeared in the action and against whom a judgment is sought, or upon their attorneys of record, at least 15 days before the date set for the hearing.*

*(b) After the hearing, if the court awards a money judgment against the debtor, guarantor or surety who is personally liable for the debt, the court must not render judgment for more than:*

*(1) The amount by which the amount of the indebtedness exceeds the fair market value of the property as of the date of the commencement of the action; or*

*(2) If a foreclosure sale is concluded before a judgment is entered, the amount that is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured,*

*whichever is the lesser amount.*

5. The provisions of NRS 40.430 may not be waived by a guarantor, surety or other obligor if the mortgage or lien:

(a) Secures an indebtedness for which the principal balance of the obligation was never greater than $500,000;

(b) Secures an indebtedness to a seller of real property for which the obligation was originally extended to the seller for any portion of the purchase price;

(c) Is secured by real property which is used primarily for the production of farm products as of the date the mortgage or lien upon the real property is created; or

(d) Is secured by real property upon which:

(1) The owner maintains the owner's principal residence;

(2) There is not more than one residential structure; and

(3) Not more than four families reside.

6. As used in this section, "foreclosure sale" has the meaning *ascribed to it in NRS 40.462.*

**Sec. 5.7.** NRS 11.190 is hereby amended to read as follows:

11.190 Except as otherwise provided in NRS 125B.050 and 217.007, *and section 3.3 of this act,* actions other than those for the recovery of real property, unless further limited by specific statute, may only be commenced as follows:

1. Within 6 years:

(a) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.

(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

2. Within 4 years:

(a) An action on an open account for goods, wares and merchandise sold and delivered.

(b) An action for any article charged on an account in a store.

(c) An action upon a contract, obligation or liability not founded upon an instrument in writing.

(d) An action against a person alleged to have committed a deceptive trade practice in violation of NRS 598.0903 to 598.0999, inclusive, but the cause of action shall be deemed to accrue when the aggrieved party discovers, or by the exercise of due diligence should have discovered, the facts constituting the deceptive trade practice.

3. Within 3 years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for waste or trespass of real property, but when the waste or trespass is committed by means of underground works upon any mining claim, the cause of action shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the waste or trespass.

(c) An action for taking, detaining or injuring personal property, including actions for specific recovery thereof, but in all cases where the subject of the action is a domestic animal usually included in the term "livestock," which has a recorded mark or brand upon it at the time of its loss, and which strays or is stolen from the true owner without the owner's fault, the statute does not begin to run against an action for the recovery of the animal until the owner has

actual knowledge of such facts as would put a reasonable person upon inquiry as to the possession thereof by the defendant.

(d) Except as otherwise provided in NRS 112.230 and 166.170, an action for relief on the ground of fraud or mistake, but the cause of action in such a case shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the fraud or mistake.

(e) An action pursuant to NRS 40.750 for damages sustained by a financial institution or other lender because of its reliance on certain fraudulent conduct of a borrower, but the cause of action in such a case shall be deemed to accrue upon the discovery by the financial institution or other lender of the facts constituting the concealment or false statement.

4. Within 2 years:

(a) An action against a sheriff, coroner or constable upon liability incurred by acting in his or her official capacity and in virtue of his or her office, or by the omission of an official duty, including the nonpayment of money collected upon an execution.

(b) An action upon a statute for a penalty or forfeiture, where the action is given to a person or the State, or both, except when the statute imposing it prescribes a different limitation.

(c) An action for libel, slander, assault, battery, false imprisonment or seduction.

(d) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

(e) Except as otherwise provided in NRS 11.215, an action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another. The provisions of this paragraph relating to an action to recover damages for injuries to a person apply only to causes of action which accrue after March 20, 1951.

(f) An action to recover damages under NRS 41.740.

5. Within 1 year:

(a) An action against an officer, or officer de facto to recover goods, wares, merchandise or other property seized by the officer in his or her official capacity, as tax collector, or to recover the price or value of goods, wares, merchandise or other personal property so seized, or for damages for the seizure, detention or sale of, or injury to, goods, wares, merchandise or other personal property seized, or for damages done to any person or property in making the seizure.

(b) An action against an officer, or officer de facto for money paid to the officer under protest, or seized by the officer in his or her

official capacity, as a collector of taxes, and which, it is claimed, ought to be refunded.

Sec. 5.8. Section 6 of Assembly Bill No. 284 of this session is hereby amended to read as follows:

Sec. 6. Chapter 107 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. The trustee under a deed of trust must be:*

*(a) An attorney licensed to practice law in this State;*

*(b) A title insurer or title agent authorized to do business in this State pursuant to chapter 692A of NRS;*

*(c) A person licensed pursuant to chapter 669 of NRS;*

*(d) A domestic or foreign entity which holds a current state business license issued by the Secretary of State pursuant to chapter 76 of NRS;*

*(e) A person who does business under the laws of this State, the United States or another state relating to banks, savings banks, savings and loan associations or thrift companies;*

*(f) A person who is appointed as a fiduciary pursuant to NRS 662.245;*

*(g) A person who acts as a registered agent for a domestic or foreign corporation, limited-liability company, limited partnership or limited-liability partnership;*

*(h) A person who acts as a trustee of a trust holding real property for the primary purpose of facilitating any transaction with respect to real estate if he or she is not regularly engaged in the business of acting as a trustee for such trusts;*

*(i) A person who engages in the business of a collection agency pursuant to chapter 649 of NRS; or*

*(j) A person who engages in the business of an escrow agency, escrow agent or escrow officer pursuant to the provisions of chapter 645A or 692A of NRS.*

*2. A trustee under a deed of trust must not be the beneficiary of the deed of trust for the purposes of exercising the power of sale pursuant to NRS 107.080.*

*3. A trustee under a deed of trust must not:*

*(a) Lend its name or its corporate capacity to any person who is not qualified to be the trustee under a deed of trust pursuant to subsection 1.*

*(b) Act individually or in concert with any other person to circumvent the requirements of subsection 1.*

*4. A beneficiary of record may replace its trustee with another trustee. The appointment of a new trustee is not effective until the substitution of trustee is recorded in the office of the recorder of the county in which the real property is located.*

*5. The trustee does not have a fiduciary obligation to the grantor or any other person having an interest in the property which is subject to the deed of trust. The trustee shall act impartially and in good faith with respect to the deed of trust and shall act in accordance with the laws of this State. A rebuttable presumption that a trustee has acted impartially and in good faith exists if the trustee acts in compliance with the provisions of NRS 107.080. In performing acts required by NRS 107.080, the trustee incurs no liability for any good faith error resulting from reliance on information provided by the beneficiary regarding the nature and the amount of the default under the obligation secured by the deed of trust if the trustee corrects the good faith error not later than 20 days after discovering the error.*

*6. If, in an action brought by a grantor, a person who holds title of record or a beneficiary in the district court in and for the county in which the real property is located, the court finds that the trustee did not comply with this section, any other provision of this chapter or any applicable provision of chapter 106 or 205 of NRS, the court must award to the grantor, the person who holds title of record or the beneficiary:*

*(a) Damages of $5,000 or treble the amount of actual damages, whichever is greater;*

*(b) An injunction enjoining the exercise of the power of sale until the beneficiary, the successor in interest of the beneficiary or the trustee complies with the requirements of subsections 2, 3 and 4; and*

*(c) Reasonable attorney's fees and costs,*

*unless the court finds good cause for a different award.*

Sec. 5.9. Section 14.5 of Assembly Bill No. 284 of this session is hereby amended to read as follows:

Sec. 14.5. The amendatory provisions of:

1. Section 1 of this act apply only to an assignment of a mortgage of real property, or of a mortgage of personal property or crops recorded before March 27, 1935, and any assignment of the beneficial interest under a deed of trust, which is made on or after [July] *October* 1, 2011.

2. Section 2 of this act apply only to an instrument by which any mortgage or deed of trust of, lien upon or interest in real property is subordinated or waived as to priority which is made on or after [July] *October* 1, 2011.

3. Section 3 of this act apply only to an instrument encumbering a borrower's real property to secure future advances from a lender within a mutually agreed maximum amount of principal, or an amendment to such an instrument, which is made on or after [July] *October* 1, 2011.

4. Section 9 of this act apply only to a notice of default and election to sell which is recorded pursuant to NRS 107.080, as amended by section 9 of this act, on or after [July] *October* 1, 2011.

**Sec. 5.95.** Section 15 of Assembly Bill No. 284 of this session is hereby amended to read as follows:

Sec. 15. This act becomes effective on [July] *October* 1, 2011.

**Sec. 6.** The amendatory provisions of:

1. Sections 1 to 3, inclusive, of this act apply only to an obligation secured by a mortgage, deed of trust or other encumbrance upon real property on or after the effective date of this act.

2. Sections 3.3 and 5.7 of this act apply only to an action commenced after a foreclosure sale or sale in lieu of a foreclosure sale that occurs on or after July 1, 2011.

3. Section 5.5 of this act apply only to an action against a guarantor, surety or other obligor commenced on or after the effective date of this act.

**Sec. 7.** 1. This section and sections 1 to 3, inclusive, 5, 5.5 and 5.8 to 6, inclusive, of this act become effective upon passage and approval.

2. Sections 3.3 and 5.7 of this act become effective on July 1, 2011.

# Exhibit F

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09/18/2014 11:09:05 AM

CLERK OF THE COURT

Richard McKnight, Esq.
Nevada Bar No. 001313
THE MCKNIGHT LAW FIRM, PLLC
528 S. Casino Center Blvd., #335
Las Vegas, Nevada 89101
Phone: 702-388-7185
Fax: 702-589-9882

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

BANK OF NEVADA, a Nevada banking corporation,

Plaintiff,

vs.

MURRAY PETERSEN, an individual,

Defendant.

Case № A-13-680012-C

Dept. № I

Date: September 9, 2014
Time: 10:00 a.m.

## NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the Order Denying Plaintiff's Rule 59(e) Motion To Alter Or Amend Judgment was entered by the Clerk of Court on the 17th day of September 2014, a copy of which is attached.

DATED this 18th day of September 2014.

THE MCKNIGHT LAW FIRM, PLLC

By: /s/ Richard McKnight
Richard McKnight, Esq.
State Bar No. 1313
528 S. Casino Center Blvd., #335
Las Vegas, NV 89101
*Attorneys for Murray Petersen*

CERTIFICATE OF MAILING

I hereby certify that on this 18th day of September 2014, I mailed first-class, postage paid, a true and correct copy of the foregoing Notice Of Entry Of Order to the following:

Michael D. Stein, Esq.
Brian R.Reeve, Esq.
SNELL & WILMER, LLP
3883 Howard Hughes Pkwy., #1100
Las Vegas, NV 89169
*Attorneys for Bank of Nevada*

/s/ Gwen Kopang
An Employee of The McKnight Law Firm, PLLC

Electronically Filed
09/17/2014 11:56:51 AM

CLERK OF THE COURT

ORDR
Richard McKnight, Esq.
Nevada Bar No. 001313
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528 S. Casino Center Blvd., #335
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Phone: 702-388-7185
Fax: 702-589-9882
*Attorneys for Defendant Murray Petersen*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

BANK OF NEVADA, a Nevada banking corporation,

Plaintiff,

vs.

MURRAY PETERSEN, an individual,

Defendant.

Case № A-13-680012-C

Dept. № I

Date: September 9, 2014
Time: 10:00 a.m.

**ORDER DENYING PLAINTIFF'S RULE 59(e) MOTION TO ALTER OR AMEND JUDGMENT**

Plaintiff, Bank of Nevada's Rule 59(e) Motion To Alter Or Amend Judgment having been filed with this Court on May 23, 2014; Defendant Murray Petersen's Opposition To Motion To Alter Or Amend having been filed on June 6, 2014; Plaintiff's Reply in Support Of Rule 59(e) Motion To Alter Or Amend Judgment having been filed on June 16, 2014 ; Supplemental Points And Authorities In Support Of Defendant's Motion For Summary Judgment And In Opposition To Plaintiff's Motion For Summary Judgment having been filed on July 3, 2014; and Plaintiff's Supplemental Brief Regarding Lavi v. Eighth Judicial District Court then being filed on July 28, 2014, and Richard McKnight, Esq. of The McKnight Law Firm, PLLC appearing for Defendant Murray Petersen, and Michael D. Stein, Esq. of Snell & Wilmer, LLP, appearing for Plaintiff Bank of Nevada, and this matter having come before the Honorable Kenneth Cory, and the Court having heard the arguments of the parties, and the

Court having reviewed the pertinent pleadings and the relevant papers, and good cause appearing:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff's Rule 59(e) Motion To Alter Or Amend Judgment be, and the same hereby is, denied in all respects.

DATED this 16 day of September 2014.

District Court Judge

SUBMITTED BY:

THE MCKNIGHT LAW FIRM, PLLC

By: /s/ Richard McKnight
Richard McKnight, Esq.
Nevada State Bar No. 1313
528 S. Casino Center Blvd. #335
Las Vegas, Nevada 89101
*Attorneys for Defendant Murray Petersen*

APPROVED AS EMBODYING THE ORDER OF THE COURT:

SNELL & WILMER, LLP

By:
Michael D. Stein, Esq.
Nevada State Bar No. 4760
3883 Howard Hughes Pkwy., #1100
Las Vegas, Nevada 89169
*Attorneys for Plaintiff Bank of Nevada*

# Exhibit E

E-Filed on 5-9-14

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

BANK OF NEVADA, a Nevada banking corporation,

Plaintiff,

vs.

MURRAY PETERSEN, an individual,

Defendant.

Case № A-13-680012-C

Dept. № I

Date:
Time:

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that the Findings Of Fact, Conclusions Of Law And Judgment was entered by the Clerk of Court on the 8th day of May 2014, a copy of which is attached.

DATED this 9th day of May 2014.

THE MCKNIGHT LAW FIRM, PLLC

By: /s/ Richard McKnight
Richard McKnight, Esq.
State Bar No. 1313
528 S. Casino Center Blvd., #335
Las Vegas, NV 89101
*Attorneys for Murray Petersen*

Snell & Wilmer L.L.P.
MAY 12 2014
Received By:

CERTIFICATE OF MAILING

I hereby certify that on this 9th day of May 2014, I mailed first-class, postage paid, a true and correct copy of the foregoing Notice Of Entry Of Order to the following:

Michael D. Stein, Esq.
Brian R.Reeve, Esq.
SNELL & WILMER, LLP
3883 Howard Hughes Pkwy., #1100
Las Vegas, NV 89169
*Attorneys for Bank of Nevada*

/s/ Gwen Kopang
An Employee of The McKnight Law Firm, PLLC

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05/08/2014 10:40:26 AM

CLERK OF THE COURT

FFCL
Richard McKnight, Esq.
Nevada Bar No. 001313
THE MCKNIGHT LAW FIRM, PLLC
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Phone: 702-388-7185
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

BANK OF NEVADA, a Nevada banking corporation,

Plaintiff,

vs.

MURRAY PETERSEN, an individual,

Defendant.

Case № A-13-680012-C

Dept. № I

Date: 4/15/2014
Time: 9:00 a.m.

# FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Plaintiff's motion for summary judgment and Defendant's counter motion for summary judgment having come on regularly for hearing this 15th day of April 2014; Richard McKnight, Esq. appearing on behalf of Defendant Petersen and Michael Stein, Esq. and Brian Reeve, Esq. appearing on behalf of Plaintiff Bank of Nevada the court sets forth the following undisputed material facts, Conclusions of Law and Judgment:

1. Red Card, LLC ("Red Card") executed a Promissory Note (Note A) dated March 30, 2011 in favor of Bank of Nevada, pursuant to which it promised to pay Bank of Nevada the principal amount of $1,444,898 with interest on the unpaid principal balance from the date of the Note until paid ("Note A").

2. Red Card executed a Promissory Note (Note B) dated March 30, 2011 in favor of Bank of Nevada, pursuant to which it promised to pay Bank of Nevada the principal amount of $1,092,591 with interest on the unpaid principal balance from the date of the Note

until paid ("Note B").

3. Red Card, as Grantor, executed a First Deed of Trust dated March 30, 2011 for the benefit of Bank of Nevada.

4. The First Deed of Trust was recorded in Clark County, Nevada, on March 31, 2011 as Instrument No. 201103310004688, Official Records, Clark County, Nevada.

5. The First Deed of Trust encumbered the land described in Exhibit A attached to the First Deed of Trust and commonly known as 8490 Westcliff Dr., Las Vegas, Nevada 89145 bearing Assessor Parcel No. 138-28-401-009 (the "Property").

6. Red Card, as Grantor, executed a Second Deed of Trust dated March 30, 2011 for the benefit of Bank of Nevada.

7. The Second Deed of Trust was recorded in Clark County, Nevada, on April 1, 2011 as Instrument No. 2011004010000103, Official Records, Clark County, Nevada and also encumbered the Property.

8. Under the Loan Documents, an Event of Default has occurred if Red Card fails to make any payment when due under the Loan.

9. Petersen executed a Commercial Guaranty dated March 30, 2011 in favor of Bank of Nevada.

10. Under the terms of the Commercial Guaranty, Petersen absolutely and unconditionally guaranteed full and punctual payment and satisfaction of the Indebtedness, as defined therein, of Red Card to Bank of Nevada, and the performance and discharge of all Red Card's obligations under the note and the related documents, as defined therein.

11. Pursuant to NRS 40.495 and the terms set forth in the "GUARANTOR'S WAIVERS" section of the Commercial Guaranty, Petersen waived the provisions of NRS 40.430.

12. Red Card failed to make the monthly payments due on September 30, 2011, and all subsequent payments ("Payment Default"). Petersen, as Guarantor, did not make the required payments under the Loan as agreed in the Commercial Guaranty.

13. Plaintiff caused its legal counsel to provide Red Card and Petersen written Notice of Defaults and Acceleration and Demand for Payment and Cure (the "Letter of Default").

14. In the Letter of Default, Plaintiff's counsel reminded Red Card and Petersen that the entire unpaid principal balance under the Note with all accrued and unpaid interest was immediately due and that the breaches not related to the "Indebtedness" had to be cured.

15. On December 22, 2011, Plaintiff recorded a "Notice of Breach and Election to Sell Under Deed of Trust" in Clark County, Nevada as Instrument No. 201112220000692 pursuant to the First Deed of Trust and Second Deed of Trust.

16. Plaintiff filed its Complaint in this action on April 12, 2013. The amount of indebtedness due as of that date was $3,099,798.29.

17. On June 18, 2013, the Property was sold via trustee's sale with Plaintiff purchasing the Property for the sum of $1,400,000. The Plaintiff took ownership through a credit bid at the trustee's sale.

18. On December 13, 2013, this Court entered a Stipulation and Order pursuant to which Plaintiff and Petersen agreed that the fair market value of the Property, as of the commencement of this action, was $1,990,000.

19. NRCP 7(b)(1) provides that "[a]n application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought."

20. On January 16, 2014 Plaintiff filed its motion for summary judgment.

21. Petersen filed his Opposition to Plaintiff's Motion for Summary Judgment and Defendant's Counter Motion for Summary Judgment on March 20, 2014 and mailed it on the same day. Although filed, the court clerk rejected the filing for fees and the motion had to be refiled, the opposition was timely mailed.

## CONCLUSIONS OF LAW

1. The Court concludes that NRS 40.455(1) applies in guarantor deficiency

actions.

2. Plaintiff did not file an application within six months of the trustee's sale under NRS 40.455(1).

3. The court did not understand the citation of *Lavi v. Eighth Judicial Dist. Court of State ex rel. County of Clark*, 2013 WL 3278563, to be cited as precedent but rather as a means for dispute settling.

4. Petersen's opposition to the Bank's Motion for Summary Judgment was timely.

5. Defendant, Murray Petersen, is entitled to judgment in his favor on his motion for summary judgment.

DATED this 7 day of May 2014.

District Court Judge HB

SUBMITTED BY:

THE MCKNIGHT LAW FIRM, PLLC

By: _____
Richard McKnight, Esq.
Nevada State Bar No. 1313
528 S. Casino Center Blvd. #335
Las Vegas, Nevada 89101
*Attorneys for Defendant Murray Petersen*

APPROVED AS EMBODYING THE ORDER OF THE COURT:

SNELL & WILMER, LLP.

By: _____
Michael D. Stein, Esq.
Nevada State Bar No. 4760
Brian R. Reeve, Esq.
Nevada State Bar No. 10197
3883 Howard Hughes Pkwy., #1100
Las Vegas, Nevada 89169
*Attorneys for Plaintiff Bank of Nevada*

# Exhibit D

E-Filed on 5-9-14

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Nevada Bar No. 001313
THE MCKNIGHT LAW FIRM, PLLC
528 S. Casino Center Blvd., #335
Las Vegas, Nevada 89101
Phone: 702-388-7185
Fax: 702-589-9882

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

BANK OF NEVADA, a Nevada banking corporation,

Plaintiff,

vs.

MURRAY PETERSEN, an individual,

Defendant.

Case № A-13-680012-C

Dept. № I

Date:
Time:

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that the Order Denying Plaintiff's Motion For Summary Judgment and Order Granting Defendant's Countermotion For Summary Judgment was entered by the Clerk of Court on the 8th day of May 2014, a copy of which is attached.

DATED this 9th day of May 2014.

THE MCKNIGHT LAW FIRM, PLLC

By: /s/ Richard McKnight
Richard McKnight, Esq.
State Bar No. 1313
528 S. Casino Center Blvd., #335
Las Vegas, NV 89101
*Attorneys for Murray Petersen*

Snell & Wilmer L.L.P.
MAY 12 2014
Received By:

CERTIFICATE OF MAILING

I hereby certify that on this 9th day of May 2014, I mailed first-class, postage paid, a true and correct copy of the foregoing Notice Of Entry Of Order to the following:

Michael D. Stein, Esq.
Brian R.Reeve, Esq.
SNELL & WILMER, LLP
3883 Howard Hughes Pkwy., #1100
Las Vegas, NV 89169
*Attorneys for Bank of Nevada*

/s/ Gwen Kopang
An Employee of The McKnight Law Firm, PLLC

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05/08/2014 10:44:53 AM

CLERK OF THE COURT

ORDR
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Las Vegas, Nevada 89101
Phone: 702-388-7185
Fax: 702-589-9882
*Attorneys for Defendant Murray Petersen*

FINAL DISPOSITIONS
☐ Time Limit Expired
☐ Dismissed (with or without prejudice)
☒ Sum Jdgmt
☐ Non-Jury Trial
☐ Judgment Satisfied/Paid in full
☐ Jury Trial
☐ Stip Dis
☐ Stip Jdgmt
☐ Default Jdgmt
☐ Transferred
☐ Voluntary Dis
☐ Involuntary (stat) Dis
☐ Jdgmt on Arb Award
☐ Mtn to Dis (by deft)

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

BANK OF NEVADA, a Nevada banking corporation,

Plaintiff,

vs.

MURRAY PETERSEN, an individual,

Defendant.

Case № A-13-680012-C

Dept. № I

Date: 4/15/2014
Time: 9:00 a.m.

**ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT and ORDER GRANTING DEFENDANT'S COUNTERMOTION FOR SUMMARY JUDGMENT**

Plaintiff, Bank of Nevada's Motion For Summary Judgment having been filed with this Court on January 16, 2014; Defendant Murray Petersen's Opposition To Motion For Summary Judgment, Countermotion For Summary Judgment having been filed on March 20, 2014; Plaintiff's Reply in Support Of Motion For Summary Judgment And Opposition To Counter motion For Summary Judgment having been filed on April 3, 2014; and a Reply To Opposition To Defendant's Motion For Summary Judgment then being filed on April 9, 2014, and Richard McKnight, Esq. of The McKnight Law Firm, PLLC appearing for Defendant Murray Petersen, and Michael D. Stein, Esq. and Brian R. Reeve, Esq. of Snell & Wilmer, LLP, appearing for Plaintiff Bank of Nevada, and this matter having come before the Honorable Kenneth Cory, and the Court having heard the arguments of the parties, and the

Court having reviewed the pertinent pleadings and the relevant papers, and good cause appearing:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant Murray Petersen's Counter Motion For Summary Judgment be and the same hereby is granted.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiff's Motion For Summary Judgment be and the same hereby is denied in all respects.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiff take nothing by virtue of its complaint herein.

**IT IS SO ORDERED.**

DATED this 7 day of May 2014.

District Court Judge

SUBMITTED BY:

THE MCKNIGHT LAW FIRM, PLLC

By: _____
Richard McKnight, Esq.
Nevada State Bar No. 1313
528 S. Casino Center Blvd. #335
Las Vegas, Nevada 89101
*Attorneys for Defendant Murray Petersen*

APPROVED AS EMBODYING THE ORDER OF THE COURT:

SNELL & WILMER, LLP

By: _____
Michael D. Stein, Esq.
Nevada State Bar No. 4760
Brian R. Reeve, Esq.
Nevada State Bar No. 10197
3883 Howard Hughes Pkwy., #1100
Las Vegas, Nevada 89169
*Attorneys for Plaintiff Bank of Nevada*

*The McKnight Law Firm, PLLC*
*528 S. Casino Center Blvd., #335*
*Las Vegas, NV 89101*
*Address Correction Requested*


Michael D. Stein, Esq.
Brian R.Reeve, Esq.
SNELL & WILMER, LLP
3883 Howard Hughes Pkwy., #1100
Las Vegas, NV 89169

# Exhibit C

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09/17/2014 11:56:51 AM

CLERK OF THE COURT

ORDR
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528 S. Casino Center Blvd., #335
Las Vegas, Nevada 89101
Phone: 702-388-7185
Fax: 702-589-9882
*Attorneys for Defendant Murray Petersen*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

BANK OF NEVADA, a Nevada banking corporation,

Plaintiff,

vs.

MURRAY PETERSEN, an individual,

Defendant.

Case № A-13-680012-C

Dept. № I

Date: September 9, 2014
Time: 10:00 a.m.

**ORDER DENYING PLAINTIFF'S RULE 59(e) MOTION TO ALTER OR AMEND JUDGMENT**

Plaintiff, Bank of Nevada's Rule 59(e) Motion To Alter Or Amend Judgment having been filed with this Court on May 23, 2014; Defendant Murray Petersen's Opposition To Motion To Alter Or Amend having been filed on June 6, 2014; Plaintiff's Reply in Support Of Rule 59(e) Motion To Alter Or Amend Judgment having been filed on June 16, 2014 ; Supplemental Points And Authorities In Support Of Defendant's Motion For Summary Judgment And In Opposition To Plaintiff's Motion For Summary Judgment having been filed on July 3, 2014; and Plaintiff's Supplemental Brief Regarding Lavi v. Eighth Judicial District Court then being filed on July 28, 2014, and Richard McKnight, Esq. of The McKnight Law Firm, PLLC appearing for Defendant Murray Petersen, and Michael D. Stein, Esq. of Snell & Wilmer, LLP, appearing for Plaintiff Bank of Nevada, and this matter having come before the Honorable Kenneth Cory, and the Court having heard the arguments of the parties, and the

Court having reviewed the pertinent pleadings and the relevant papers, and good cause appearing:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff's Rule 59(e) Motion To Alter Or Amend Judgment be, and the same hereby is, denied in all respects.

DATED this 16 day of September 2014.

District Court Judge

SUBMITTED BY:

THE MCKNIGHT LAW FIRM, PLLC

By: /s/ Richard McKnight
Richard McKnight, Esq.
Nevada State Bar No. 1313
528 S. Casino Center Blvd. #335
Las Vegas, Nevada 89101
*Attorneys for Defendant Murray Petersen*

APPROVED AS EMBODYING THE ORDER OF THE COURT:

SNELL & WILMER, LLP

By:
Michael D. Stein, Esq.
Nevada State Bar No. 4760
3883 Howard Hughes Pkwy., #1100
Las Vegas, Nevada 89169
*Attorneys for Plaintiff Bank of Nevada*

# Exhibit B

Electronically Filed
05/08/2014 10:40:26 AM

CLERK OF THE COURT

FFCL
Richard McKnight, Esq.
Nevada Bar No. 001313
THE MCKNIGHT LAW FIRM, PLLC
528 S. Casino Center Blvd., #335
Las Vegas, Nevada 89101
Phone: 702-388-7185
Fax: 702-589-9882

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

BANK OF NEVADA, a Nevada banking corporation,

Plaintiff,

vs.

MURRAY PETERSEN, an individual,

Defendant.

Case № A-13-680012-C

Dept. № I

Date: 4/15/2014
Time: 9:00 a.m.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

Plaintiff's motion for summary judgment and Defendant's counter motion for summary judgment having come on regularly for hearing this 15th day of April 2014; Richard McKnight, Esq. appearing on behalf of Defendant Petersen and Michael Stein, Esq. and Brian Reeve, Esq. appearing on behalf of Plaintiff Bank of Nevada the court sets forth the following undisputed material facts, Conclusions of Law and Judgment:

1. Red Card, LLC ("Red Card") executed a Promissory Note (Note A) dated March 30, 2011 in favor of Bank of Nevada, pursuant to which it promised to pay Bank of Nevada the principal amount of $1,444,898 with interest on the unpaid principal balance from the date of the Note until paid ("Note A").

2. Red Card executed a Promissory Note (Note B) dated March 30, 2011 in favor of Bank of Nevada, pursuant to which it promised to pay Bank of Nevada the principal amount of $1,092,591 with interest on the unpaid principal balance from the date of the Note

until paid ("Note B").

3. Red Card, as Grantor, executed a First Deed of Trust dated March 30, 2011 for the benefit of Bank of Nevada.

4. The First Deed of Trust was recorded in Clark County, Nevada, on March 31, 2011 as Instrument No. 201103310004688, Official Records, Clark County, Nevada.

5. The First Deed of Trust encumbered the land described in Exhibit A attached to the First Deed of Trust and commonly known as 8490 Westcliff Dr., Las Vegas, Nevada 89145 bearing Assessor Parcel No. 138-28-401-009 (the "Property").

6. Red Card, as Grantor, executed a Second Deed of Trust dated March 30, 2011 for the benefit of Bank of Nevada.

7. The Second Deed of Trust was recorded in Clark County, Nevada, on April 1, 2011 as Instrument No. 20110040100000103, Official Records, Clark County, Nevada and also encumbered the Property.

8. Under the Loan Documents, an Event of Default has occurred if Red Card fails to make any payment when due under the Loan.

9. Petersen executed a Commercial Guaranty dated March 30, 2011 in favor of Bank of Nevada.

10. Under the terms of the Commercial Guaranty, Petersen absolutely and unconditionally guaranteed full and punctual payment and satisfaction of the Indebtedness, as defined therein, of Red Card to Bank of Nevada, and the performance and discharge of all Red Card's obligations under the note and the related documents, as defined therein.

11. Pursuant to NRS 40.495 and the terms set forth in the "GUARANTOR'S WAIVERS" section of the Commercial Guaranty, Petersen waived the provisions of NRS 40.430.

12. Red Card failed to make the monthly payments due on September 30, 2011, and all subsequent payments ("Payment Default"). Petersen, as Guarantor, did not make the required payments under the Loan as agreed in the Commercial Guaranty.

13. Plaintiff caused its legal counsel to provide Red Card and Petersen written Notice of Defaults and Acceleration and Demand for Payment and Cure (the "Letter of Default").

14. In the Letter of Default, Plaintiff's counsel reminded Red Card and Petersen that the entire unpaid principal balance under the Note with all accrued and unpaid interest was immediately due and that the breaches not related to the "Indebtedness" had to be cured.

15. On December 22, 2011, Plaintiff recorded a "Notice of Breach and Election to Sell Under Deed of Trust" in Clark County, Nevada as Instrument No. 201112220000692 pursuant to the First Deed of Trust and Second Deed of Trust.

16. Plaintiff filed its Complaint in this action on April 12, 2013. The amount of indebtedness due as of that date was $3,099,798.29.

17. On June 18, 2013, the Property was sold via trustee's sale with Plaintiff purchasing the Property for the sum of $1,400,000. The Plaintiff took ownership through a credit bid at the trustee's sale.

18. On December 13, 2013, this Court entered a Stipulation and Order pursuant to which Plaintiff and Petersen agreed that the fair market value of the Property, as of the commencement of this action, was $1,990,000.

19. NRCP 7(b)(1) provides that "[a]n application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought."

20. On January 16, 2014 Plaintiff filed its motion for summary judgment.

21. Petersen filed his Opposition to Plaintiff's Motion for Summary Judgment and Defendant's Counter Motion for Summary Judgment on March 20, 2014 and mailed it on the same day. Although filed, the court clerk rejected the filing for fees and the motion had to be refiled, the opposition was timely mailed.

## CONCLUSIONS OF LAW

1. The Court concludes that NRS 40.455(1) applies in guarantor deficiency

actions.

2. Plaintiff did not file an application within six months of the trustee's sale under NRS 40.455(1).

3. The court did not understand the citation of *Lavi v. Eighth Judicial Dist. Court of State ex rel. County of Clark*, 2013 WL 3278563, to be cited as precedent but rather as a means for dispute settling.

4. Petersen's opposition to the Bank's Motion for Summary Judgment was timely.

5. Defendant, Murray Petersen, is entitled to judgment in his favor on his motion for summary judgment.

DATED this 7 day of May 2014.

District Court Judge

SUBMITTED BY:

THE MCKNIGHT LAW FIRM, PLLC

By: _____
Richard McKnight, Esq.
Nevada State Bar No. 1313
528 S. Casino Center Blvd. #335
Las Vegas, Nevada 89101
*Attorneys for Defendant Murray Petersen*

APPROVED AS EMBODYING THE ORDER OF THE COURT:

SNELL & WILMER, LLP.

By: _____
Michael D. Stein, Esq.
Nevada State Bar No. 4760
Brian R. Reeve, Esq.
Nevada State Bar No. 10197
3883 Howard Hughes Pkwy., #1100
Las Vegas, Nevada 89169
*Attorneys for Plaintiff Bank of Nevada*

# Exhibit A

ORDR
Richard McKnight, Esq.
Nevada Bar No. 001313
THE MCKNIGHT LAW FIRM, PLLC
528 S. Casino Center Blvd., #335
Las Vegas, Nevada 89101
Phone: 702-388-7185
Fax: 702-589-9882
*Attorneys for Defendant Murray Petersen*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

BANK OF NEVADA, a Nevada banking corporation,

Plaintiff,

vs.

MURRAY PETERSEN, an individual,

Defendant.

Case № A-13-680012-C

Dept. № I

Date: 4/15/2014
Time: 9:00 a.m.



**ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT and ORDER GRANTING DEFENDANT'S COUNTERMOTION FOR SUMMARY JUDGMENT**

Plaintiff, Bank of Nevada's Motion For Summary Judgment having been filed with this Court on January 16, 2014; Defendant Murray Petersen's Opposition To Motion For Summary Judgment, Countermotion For Summary Judgment having been filed on March 20, 2014; Plaintiff's Reply in Support Of Motion For Summary Judgment And Opposition To Counter motion For Summary Judgment having been filed on April 3, 2014; and a Reply To Opposition To Defendant's Motion For Summary Judgment then being filed on April 9, 2014, and Richard McKnight, Esq. of The McKnight Law Firm, PLLC appearing for Defendant Murray Petersen, and Michael D. Stein, Esq. and Brian R. Reeve, Esq. of Snell & Wilmer, LLP, appearing for Plaintiff Bank of Nevada, and this matter having come before the Honorable Kenneth Cory, and the Court having heard the arguments of the parties, and the

Court having reviewed the pertinent pleadings and the relevant papers, and good cause appearing:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant Murray Petersen's Counter Motion For Summary Judgment be and the same hereby is granted.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiff's Motion For Summary Judgment be and the same hereby is denied in all respects.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiff take nothing by virtue of its complaint herein.

**IT IS SO ORDERED.**

DATED this 7 day of May 2014.

District Court Judge

SUBMITTED BY:

THE MCKNIGHT LAW FIRM, PLLC

By: _____
Richard McKnight, Esq.
Nevada State Bar No. 1313
528 S. Casino Center Blvd. #335
Las Vegas, Nevada 89101
*Attorneys for Defendant Murray Petersen*

APPROVED AS EMBODYING THE ORDER OF THE COURT:

SNELL & WILMER, LLP

By: _____
Michael D. Stein, Esq.
Nevada State Bar No. 4760
Brian R. Reeve, Esq.
Nevada State Bar No. 10197
3883 Howard Hughes Pkwy., #1100
Las Vegas, Nevada 89169
*Attorneys for Plaintiff Bank of Nevada*

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

| | |
|---|---|
| BANK OF NEVADA, a Nevada Banking corporation,<br><br>Appellant,<br><br>vs.<br><br>MURRAY PETERSEN, an individual,<br><br>Respondent. | SUPREME COURT CASE NO. 66568<br><br>District Court Case No. A-13-680012-C |



**APPEAL**
**From the Eighth Judicial District Court**
**The Honorable Kenneth Cory, District Judge**

# DOCKETING STATEMENT

MICHAEL STEIN
Nevada Bar No. 4760
BRADLEY T. AUSTIN
Nevada Bar No. 13064
SNELL & WILMER L.L.P.
3883 Howard Hughes Pkwy., Suite 1100
Las Vegas, NV 89169

*Attorneys for Appellant Bank of Nevada*

## GENERAL INFORMATION

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

## WARNING

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

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See K17I Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. **Judicial District:** Eighth; **Department:** 1; **County:** Clark;

**Judge:** The Honorable Ken Cory **District Ct. Docket No**.: A-13-680012-C

2. **Attorneys filing this docket statement**.

Attorneys: Michael Stein and Bradley Austin
Firm: Snell & Wilmer, L.L.P.
Address: 3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
Client(s): Bank of Nevada
Telephone: (702) 784-5200

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

3. **Attorney(s) representing Respondent(s).**

Attorney: Richard McKnight, Esq.
Firm: The McKnight Law Firm, PLLC
Address: 528 S. Casino center Blvd., #335
Las Vegas, NV 89101
Client(s): Murray Petersen
Telephone: (702) 388-7185

4. **Nature of disposition below (check all that apply).**

☐ Judgment after bench trial
☐ Judgment after jury verdict
☒ Summary judgment
☐ Grant/Denial of NRCP 60(h) relief
☐ Grant/Denial of injunction

☐ Default judgment

☐ Dismissal

☐ Lack of jurisdiction

☐ Failure to state a claim

☐ Failure to prosecute

☐ Other (specify) _____

☐ Grant/Denial of declaratory relief

☐ Review of agency determination

☐ Divorce decree:

☐ Original ☐ Modification

☒ Other disposition (specify):

Rule 59(e) Motion to Alter or Amend Judgment

5. **Does this appeal raise issues concerning any of the following.**

☐ Child custody

☐ Venue

☐ Adoption

☐ Termination of parental rights

☐ Grant/denial of injunction or TRO

☐ Juvenile matters

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

None.

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

None.

8. **Nature of the action**. Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below:

a. Nature of Action:

This is a breach of guaranty action in which Appellant Bank of Nevada sought a judgment against Respondent Petersen under NRS 40.495. Bank of Nevada loaned Red Card, LLC ("Red Card") over $2.5 million dollars to repay a loan previously made by Bank of Nevada to Red Card.

Mr. Petersen personally guaranteed Red Card's repayment of the debt. Red Card defaulted on the loan, which was secured by certain real property. The fair market value of the property was less than the amount of Red Card's indebtedness to Plaintiff. Accordingly, Plaintiff now seeks a judgment against Petersen. The loan was evidenced by two separate promissory notes - Note A in the principal amount of $1,444,898 and Note B in the principal amount of $1,092,591. Red Card executed two Deeds of Trust, which were recorded in the Clark County Recorder's office. Both deeds of trust encumbered the land commonly known as 8490 Westcliff Dr., Las Vegas, Nevada 89145 (the "*Property*").

Red Card and Petersen, as Guarantor, failed to make the monthly payments due under Note A and Note B constituting an Event of Default. The Property was sold via trustee's sale with Bank of Nevada purchasing the Property. Bank of Nevada and Petersen subsequently stipulated that for the purposes of a deficiency

calculation, the fair market value of the Property, as of the commencement date of the action, was $1,900,000.

b. List of Causes of Action:

(1) Breach of guaranty; (2) Breach of implied covenant of good faith and fair dealing.

c. Result Below:

In ruling on Bank of Nevada's Motion for Summary Judgment and Mr. Petersen's Countermotion for Summary Judgment, the District Court found that NRS 40.455(1) applies in guarantor deficiency actions and that Bank of Nevada did not file an application within six months of the trustee's sale under NRS 40.455(1). Based on these findings, the District Court granted Mr. Petersen's Countermotion for Summary Judgment.

Bank of Nevada filed a Rule 59(e) Motion to Alter or Amend Judgment, arguing that (1) because there were two promissory notes, NRS 40.455 did not apply to Bank of Nevada in its capacity as a junior lienholder; (2) by waiving the one action rule, Mr. Petersen waived the right to invoke NRS 40.455; and (3) the District Court misinterpreted the work "application" in its ruling. At the invitation of the Court, Bank of Nevada filed a Supplemental Brief Regarding *Lavi v. Eighth Judicial District Court*, arguing that *Lavi* does not control the outcome of the instant case because *Lavi* dealt solely with the application of NRS 40.455 to first

deed of trust holders suing guarantors in deficiency actions, whereas Bank of Nevada was also suing in its capacity as a junior lienholder. Thus, NRS 40.4639 is the governing statute. The District Court ultimately denied Bank of Nevada's Rule 59(e) Motion to Alter or Amend Judgment.

9. **Issue on appeal.** State concisely the principal issue(s) in this appeal:

(a) Whether NRS 40.455 applies where a lawsuit is commenced pursuant to NRS 40.495 and in conformity with NRS 40.4639 by a junior lienholder against a guarantor.

(b) Whether *Lavi v. Eighth Judicial Dist. Ct*., 130 Nev. Adv. Op. 38, 325 P.3d 1265 (2014) applies to junior lienholders, given that NRS 40.4639 provides a different limitation period than under 40.455—the statue addressed by the Court in *Lavi*.

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

None.

11. **Constitutional issues**. If this appeal challenges the constitutionality of a statute and the state, any state agency, or any officer or employee thereof is

not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A X Yes ____ No _____

If not, explain_____

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

☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))

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

☐ A substantial issue of first-impression

☒ An issue of public policy

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

☐ A ballot question

13. **Trial**. If this action proceeded to trial, how many days did the trial last? (N/A)

Was it a bench or jury trial? ( N/A)

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

No.

## TIMELINESS OF NOTICE OF APPEAL

15. **Date of entry of written judgment or order appealed from: May 8, 2014, September 17, 2014 Attach a copy. If more than one judgment or order is appealed from, attach copies of each judgment or order from which an appeal is taken. Orders attached hereto as Exhibit A, B and C.**

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

(N/A)

16. **Date written notice of entry of judgment or order served: May 9, 2014, September 18, 2014. Attach a copy, including proof of service, for each order or judgment appealed from. Attached hereto as Exhibits D, E and F.**

(a) Was service by delivery ___ or by mail X (specify).

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

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

NRCP 50(b) __Date served ___By delivery __or by mail_Date of filing____

NRCP 50(b) __Date served ___By delivery __or by mail_Date of filing____

NRCP 59 X Date served May 23, 2014 By delivery ____or by mail_X Date of filing May 23, 2014

**Attached as Exhibit G.**

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration do not toll the time for filing a notice of appeal.**

(b) Date of entry of written order resolving tolling motion: **September 17, 2014.**

(c) Date written notice of entry of order resolving motion served: **September 18, 2014.**

(i) Was service by delivery _or by mail X (specify).

18. **Date Notice of Cross-Appeal was filed:** (N/A)

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

19. **Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a), NRS 155.190, or other:**

NRAP 4(a).

**SUBSTANTIVE APPEALABILITY**

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

NRAP 3A(b)(1) X NRS 155.190 ____(specify subsection) _____

NRAP 3A(b)(2) __NRS 38.205 _____(specify subsection) _____

NRAP 3A(b)(3) __NRS 703.376 ____

Other (specify) _____

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

This is an appeal from a final judgment (summary judgment and subsequent Rule 59 Motion to Alter and/or Amend).

**COMPLETE THE FOLLOWING SECTION ONLY IF MORE THAN ONE CLAIM FOR RELIEF WAS PRESENTED IN THE ACTION (WHETHER AS A CLAIM, COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM) OR IF MULTIPLE PARTIES WERE INVOLVED IN THE ACTION. Attach separate sheets as necessary.**

21. **(a) List all parties involved in the action in the district court**:

Bank of Nevada and Murray Petersen.

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

(N/A)

22. **Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the trial court's disposition of each claim, and how each claim was resolved (*i.e.*, order, judgment, stipulation), and the date of disposition of each claim**. **Attach a copy of each disposition**.

Claims asserted by Bank of Nevada against Murray Petersen: Breach of guaranty and breach of implied covenant of good faith and fair dealing. The district court resolved both claims via countermotion for summary judgment, as is reflected in the judgment, attached hereto as Exhibits A, B and C.

**Attach copies of the last-filed version of all complaints, counterclaims, and/or cross-claims filed in the district court**.

See Exhibit H.

23. **Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below:**

Yes _X_ No _____

24. **If you answered "No" to the immediately previous question, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

Yes _____ No ___

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

Yes _____ No _____

25. **If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):**

(N/A)

26. **Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims.

  See Exhibit H.

- Any tolling motion(s) and order(s) resolving tolling motion(s)

  See Exhibits C and G.

- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, crossclaims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal.

- Any other order challenged on appeal.

  See Exhibits A and B.

- Notices of entry for each attached order

  See Exhibits D, E and F.

## VERIFICATION

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

/s/ *Bradley Austin*
Name of counsel of record

October 14, 2014
Signature of counsel of record

State of Nevada – Clark County
State and county where signed

## CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I electronically filed the foregoing DOCKETING STATEMENT with the Clerk of Court for the Supreme Court of Nevada by using the appellate CM/ECF system on October 14, 2014.

I further certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

*/s/ Bradley Austin*
An employee of Snell & Wilmer L.L.P.