

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

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**Case No. 69400**

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**NATIONSTAR MORTGAGE, LLC**

Appellant,

vs.

**SFR INVESTMENTS POOL 1, LLC**

Respondent.

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Elizabeth A. Brown  
Clerk of Supreme Court

Appeal from the Eighth Judicial District Court, Clark County

The Honorable Michael P. Villani, District Judge

District Court Case No. A-13-684715-C

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**MOTION OF AMICUS CURIAE FEDERAL HOUSING FINANCE  
AGENCY TO PARTICIPATE IN ORAL ARGUMENT**

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The above-captioned appeal is set for oral argument on March 7, 2017, with fifteen minutes allocated to each side. Pursuant to Nevada Rule of Appellate Procedure 29(h), amicus curiae Federal Housing Finance Agency (“FHFA”) respectfully requests leave to participate in oral argument in this case and be allotted five minutes for the argument. In support of this request, FHFA respectfully submits the following:

1. Appellant Nationstar has consented to FHFA’s participation in oral argument. If the Court does not extend the argument by five minutes for FHFA’s participation, Nationstar has agreed to yield five of its fifteen minutes of argument time to FHFA.

2. In 2008, Congress enacted the Housing and Economic Recovery Act (“HERA”), which established FHFA as the regulator for Fannie Mae and Freddie Mac (the “Enterprises”) as well as the Federal Home Loan Banks. 12 U.S.C. § 4617. FHFA’s mission is to strengthen and secure the Nation’s secondary mortgage markets. To that end, in September 2008, FHFA exercised its authority under HERA and placed the Enterprises into FHFA conservatorship, where they remain today. At the time of the homeowners’ association (HOA) foreclosure sale at issue in this case, Appellant was the servicer of a loan owned by Freddie Mac.

3. FHFA requests time at oral argument in order to assist the Court in addressing a core question presented in this appeal, and one that is particularly

relevant to FHFA: whether a party who is both the (1) record beneficiary of a deed of trust and (2) contractually authorized servicer of a loan owned by Freddie Mac, may assert protections Congress provided to the property of Freddie Mac while it is under FHFA's conservatorship.

4. NRAP 29(h) provides that the Court may grant the motion of an amicus curiae to participate in oral arguments for "extraordinary reasons." The circumstances presented here satisfy this requirement. FHFA has a strong interest in ensuring that servicers such as Nationstar may, in appropriate circumstances, assert the protections of FHFA's enabling statute to safeguard their property interests and those of the Enterprises. Indeed, FHFA has already publicly asserted that servicers have, and should maintain, the right to do so, based on legal and policy considerations FHFA is uniquely qualified to identify, consider, and present to the Court. Moreover, the resolution of this case could have far-reaching effects on hundreds of similar cases that the servicers of Freddie Mac and similarly situated Fannie Mae are litigating in state and federal courts across Nevada.

5. In response to the national crisis in the housing market, Congress provided a federal statutory protection shielding the property interests of the Enterprises from extinguishment while they are in the conservatorship of FHFA. *See* 12 U.S.C. § 4617(j)(3) (the "Federal Foreclosure Bar"). Precluding the Enterprises' servicers from asserting the protection of the Federal Foreclosure Bar

in quiet-title cases involving the Enterprises' lien interests would contravene the contractual relationships between those entities, undermine the public policy goals Congress sought to advance under HERA, squander valuable taxpayer resources, and introduce massive inefficiency and uncertainty into Nevada's housing market. *See* FHFA Amicus Br., Doc. No. 16-20435, at 4-7.

6. Recognizing the importance of the issue presented here, FHFA issued a public statement supporting the standing of servicers such as Nationstar to assert the Federal Foreclosure Bar. FHFA, Statement on Servicer Reliance on the Housing and Economic Recovery Act of 2008 in Foreclosures Involving Homeownership Associations, <https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Authorized-Enterprise-Servicers-Reliance.pdf>. FHFA also submitted an amicus brief arguing that the Enterprises' servicers may invoke the property protections provided the Federal Foreclosure Bar where necessary to protect the Enterprises' lien interests, as well as the servicers' own derivative interests. Specifically, as in this case, a servicer may raise the Federal Foreclosure Bar to defeat quiet-title claims that rely on a homeowners' association foreclosure sale that would otherwise extinguish an Enterprise's deed of trust. These public statements of FHFA's position rely on policy considerations unique to FHFA, including the conservation of taxpayer resources which FHFA would otherwise have to expend by needlessly intervening in hundreds of cases that raise the same

statutory argument. FHFA—which, as the Enterprises’ regulator and conservator, oversees the Enterprises’ implementation of the law and policy embodied in their federal statutory charters—is uniquely positioned to explain how allowing the Enterprises’ authorized servicers to assert the Federal Foreclosure Bar to protect their property interests and those of Freddie Mac and Fannie Mae promotes efficiency and advances FHFA’s and the Enterprises’ statutory missions.

For the foregoing reasons and those discussed in its amicus brief, FHFA respectfully requests leave to present five minutes of oral argument.

DATED: February 8, 2017.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

Pursuant to NEFCR 9(b)(d)(e), I certify that on the 8<sup>th</sup> day of February, 2017, a true and correct copy of the **MOTION OF AMICUS CURIAE FEDERAL HOUSING FINANCE AGENCY TO PARTICIPATE IN ORAL ARGUMENT**, was transmitted electronically through the Court’s e-filing system to the attorney(s) associated with this case. If electronic notice is not indicated through the court’s e-filing system, then a true and correct paper copy of the foregoing document was delivered via U.S. Mail.

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