NEVADA'S FORECLOSURE EPIDEMIC: HOMEOWNER ASSOCIATIONS' SUPER-PRIORITY LIENS NOT SO "SUPER" FOR SOME

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INTRODUCTION

In the early 2000s, the Nevada housing market was in full swing until the real estate bubble popped in 2007, resulting in a recession.[1] Since the recession,

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[1] *Las Vegas Homes for Sale Shrinking in Inventory as Real Estate Investing Dominates the #1 Market in America According to LasVegasRealEstate.org*, IREACH (June 4, 2013),

Nevada has had one of the top unemployment rates in the nation;[2] thus, unsurprisingly, Las Vegas has been at the epicenter of the national housing crisis with one of the highest numbers of foreclosures in the country.[3]

The state's foreclosures began to drop in 2011 after the Nevada Legislature passed Assembly Bill 284 in response to allegations that banks were "robo signing" foreclosures.[4] The bill set forth requirements that lending institutions had to meet before they could initiate foreclosures.[5] This new law impeded the banks' foreclosure processes, consequently allowing homeowners to remain in their homes for "free" because they no longer had to pay their mortgages and, for those living in common interest communities, their homeowners' association ("HOA") payments.[6] Because HOAs stopped receiving compensation for unpaid assessments from the banks' foreclosures, the associations began to foreclose on homes themselves in order to stay in business and to prevent an increase in the dues of residents who were paying.[7]

Today, HOAs are making it a common practice to conduct nonjudicial foreclosures on homes.[8] This action does not require associations to go through state courts; instead, an HOA initiates a foreclosure by recording a notice of

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http://www.ireachcontent.com/news-releases/las-vegas-homes-for-sale-shrinking-in-inventory-as-real-estate-investing-dominates-the-1-market-in-america-according-to-lasvegasrealestateorg-210072321.html.

[2] *Nevada Legislators Considering Reform for HOAs*, KOLO 8 (Feb. 26, 2011, 10:40 AM), http://www.kolotv.com/home/headlines/Nevada_Legislators_Considering_Reform_for_HOAs_116980213.html; *see also Current Unemployment Rates for States and Historical Highs/Lows*, BUREAU OF LABOR STATISTICS, http://www.bls.gov/web/laus/lauhsthl.htm (last visited Dec. 20, 2014) (showing Nevada's record-high unemployment rate of 13.9 percent in November 2010 as the fourth-highest record for any state, and highest in any state since 1983).

[3] Jennifer Robison, *Foreclosures Surge in August; Nevada Again No. 1 in U.S.*, LAS VEGAS BUS. PRESS, Sept. 11, 2013 (Housing); David McGrath Schwartz, *New Law Has Stalled, Not Stifled, Foreclosures*, VEGASINC (Jan. 29, 2012, 2:01 AM), http://www.vegasinc.com/business/tourism/2012/jan/29/new-law-has-stalled-not-stifled-foreclosures/.

[4] Letter from Michael E. Buckley, Co-Chair, Common Interest Comm., Real Prop. Section, State Bar of Nev., to Joint Editorial Bd. for Unif. Real Prop. Acts 9 (Oct. 31, 2013) [hereinafter Letter from Mr. Buckley], *available at* http://www.uniformlaws.org/shared/docs/jeburpa/buckleynevadaUCIOAcomments.pdf (discussing Assembly Bill 284).

[5] Schwartz, *supra* note 3; Hubble Smith, *Bill Tweaks "Robo-Signing" Law*, LAS VEGAS REV.-J., Apr. 3, 2013, at 1D ("The law currently requires lenders to provide a notarized affidavit of authority to exercise power of sale under a deed of trust. Anyone signing documents on behalf of a lender must have 'personal knowledge' of who owns the promissory note on the loan.").

[6] Andrew Doughman, *Higher Dues for Homeowners at Stake in HOA Legislation*, LAS VEGAS SUN, May 23, 2013 (Politics), *available at* http://www.lasvegassun.com/news/2013/may/23/higher-dues-homeowners-stake-hoa-legislation/.

[7] June Fletcher, *Foreclosures Close to Home*, WALL ST. J. ONLINE (Sept. 6, 2013, 3:35 PM), http://online.wsj.com/news/articles/SB10001424127887323623304579059054191366482.

[8] Colleen McCarty & Kyle Zuelke, *I-Team: HOAs Have Right to Foreclose for Delinquent Dues*, 8 NEWS NOW (May 22, 2013, 11:00 PM), http://www.8newsnow.com/story/22401616/i-team-hoas-have-right-to-foreclose-for-delinquent-dues (explaining that HOAs foreclosed on nearly 650 homes in 2012 alone).

default.[9] Subsequently, the association auctions the home at a foreclosure sale and usually sells it to a third-party bidder at a price well below its fair-market value.[10] Unfortunately for some buyers, many banks then foreclose on these recently purchased properties in an effort to collect on their original loans.[11] Customarily, HOA foreclosures did not affect banks because the third-party bidders acquired the properties' liens when purchasing the home.[12] However, this customary practice is no longer the case since third-party bidders have challenged Nevada State law due to its ambiguity; this issue has become the center of litigation in many of the state's courtrooms.[13]

Nevada's courts were faced with the difficult task of interpreting and applying Nevada Revised Statutes ("NRS") Chapter 116 to these issues regarding HOA foreclosure sales. The courts were to determine whether a foreclosure sale properly conducted pursuant to NRS Chapter 116 automatically extinguishes all prior encumbrances on the property, allowing a bona fide purchaser at an HOA foreclosure sale to obtain the property free and clear of all prior encumbrances or whether all prior encumbrances run with the property, transferring to the third-party buyer.[14] For a considerable length of time, Nevada's courts were split on this issue; however, in September 2014, the Nevada Supreme Court released its opinion regarding this matter.[15]

This Note seeks to address the issues involving Nevada's laws and HOA foreclosure sales. Part I begins with the history of Nevada's governing laws and then focuses on the problems that have recently plagued the state. Part II depicts the conflicting decisions in Nevada's courts, detailing the arguments from both sides, the reasoning behind the rulings, and the recent opinion issued by the Nevada Supreme Court. Finally, Part III discusses potential solutions to the HOA foreclosure sale crisis.

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[9] Amy Loftsgordon, *Nevada's Foreclosure Mediation Program*, NOLO: LAW FOR ALL, http://www.nolo.com/legal-encyclopedia/nevadas-foreclosure-mediation-program.html (last visited Nov. 30, 2014).

[10] Melissa Waite, *The HOA Foreclosure and Priority: Who Is in First?*, COMMUNIQUÉ (Clark Cnty. Bar Ass'n), Nov. 2013, at 26, 26 (2013) (stating that houses are auctioned for an average price of $3,000–$12,000).

[11] Amicus Curiae Brief of the Real Property Section of State Bar of Nevada in Opposition to U.S. Bank National Ass'n's Motion to Dismiss at 12, SFR Invs. Pool 1, LLC v. U.S. Bank N.A., No. A-13-678858-C (Nev. Dist. Ct. Aug. 1, 2013) [hereinafter Amicus Brief of Real Property Section].

[12] Waite, *supra* note 10.

[13] *Id.* at 26–27.

[14] First 100, LLC v. Burns, No. A677693 (Nev. Dist. Ct. May 30, 2013) (order denying defendant's motion to dismiss at 4).

[15] Abran Vigil & Bruce F. Johnson, *Residential Lenders in Nevada Losing Out in HOA Lien Foreclosures*, BALLARD SPAHR LLP (March 19, 2013), http://www.ballardspahr.com/alertspublications/legalalerts/2013-03-19-residential-lenders-in-nevada-losing-out-in-hoa-lien-foreclosures.aspx.

I. THE HISTORY AND RECENT ISSUES INVOLVING NEVADA'S HOA FORECLOSURE LAWS

Although the laws governing HOA foreclosures are relatively recent, it is important to look to legislative history in order to understand fully the issues at hand. This Note not only discusses the issue involving the split in Nevada's courts regarding the interpretation of NRS 116.3116, but it also briefly addresses other issues involving NRS Chapter 116 to emphasize the urgent need for statutory change.

A. The Uniform Common Interest Ownership Act and Nevada Revised Statutes Chapter 116

The Nevada legislature adopted and modified the Uniform Common Interest Ownership Act ("UCIOA") in 1991.[16] The act was introduced as Assembly Bill 221, and, with its adoption, the legislature introduced NRS Chapter 116, often known as the Nevada Uniform Common Interest Ownership Act ("NUCIOA").[17] NRS Chapter 116 provides a set of laws to govern common interest communities.[18]

The section of the statute relevant to the HOA foreclosure issue is NRS 116.3116, which is almost identical to section 3-116 of the UCIOA; this section governs liens against units for assessments.[19] The Nevada Supreme Court has stated the following:

> "[A] lien is a security device that binds property to a debt and puts a party on notice that someone besides the owner of the property has an interest in that property. It is 'a claim, encumbrance, or charge on property for the payment of some debt, obligation or duty.' Repayment of the debt evidenced by the lien does not occur until the property is sold or foreclosed upon."[20]

In part, NRS 116.3116 states the following:

> 2. A lien under this section is prior to all other liens and encumbrances on a unit except: . . . (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; . . . .
>
> The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS

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[16] Proposed Brief of Legal Aid Center of Southern Nevada, Inc. as Amicus Curiae in Support of Respondents at 6, Villa Palms Court 102 Trust v. Riley, No. 62528, 2014 WL 5840154 (Nev. Sep. 3, 2013) [hereinafter Amicus Brief of Legal Aid].

[17] Waite, *supra* note 10; *see also First 100*, No. A677693 (order denying defendant's motion to dismiss at 8).

[18] Amicus Brief of Legal Aid, *supra* note 16, at 2.

[19] *Id.* at 6.

[20] Amicus Brief of Real Property Section, *supra* note 11 (quoting State Dep't of Human Res. v. Estate of Ullmer, 87 P.3d 1045, 1051 (2004)).

> 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien . . . .[21]

Therefore, under NRS 116.3116, "a previously perfected first security interest retains its seniority over a subsequent lien asserted by a homeowners' association *except* to the extent that the subsequent association lien is based upon unpaid regular periodic assessments for common expenses."[22] Thus, a portion of the HOA's lien—limited to nine months of unpaid assessments preceding the lien—is given priority over the bank's first mortgage, creating a "super-priority" status.[23] In this case, the HOA's lien is considered "senior" to the bank's first deed of trust, which is often referred to as a "junior" security interest, even though the HOA lien was asserted subsequently in time.[24] However, any unpaid assessments over the nine-month period preceding the lien will be subordinate to previously perfected encumbrances.[25]

Throughout the years since the law's adoption in 1991, the Legislature has made some changes and modifications. For example, one change particularly pertinent to today's issues involving HOA foreclosures is the extension of the super-priority lien. Previously, super-priority liens were limited to six months of assessments as found in Section 3-116 of the Uniform Act.[26] However, in 2009, the Nevada legislature changed the "6 months" to "9 months" and added that the super-priority lien amount must include any abatement charges that are incurred.[27]

In recent years, the issue has become what expenses should be included as part of the super-priority lien for the nine-month period.[28] In 2006, the Court in *Korbel Family Trust v. Spring Mountain Ranch Master Ass'n* held that the super-priority lien included six months of unpaid assessments, including interest—this was prior to the 2009 change that extended six months to nine months—as well as collection costs that included legal fees and costs "that accrue prior to the date of foreclosure of the first deed of trust."[29] Subsequently, some individuals raised claims of excessive collection costs, and the Legislature responded in 2009 by enacting a law that limited associations to the recovery of "reasonable fees to cover the costs of collecting any past due obliga-

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[21] NEV. REV. STAT. § 116.3116(2) (2013).

[22] *First 100*, No. A677693 (order denying defendant's motion to dismiss at 5); Amicus Brief of Legal Aid, *supra* note 16, at 6–7.

[23] Amicus Brief of Legal Aid, *supra* note 16, at 7.

[24] *First 100*, No. A677693 (order denying defendant's motion to dismiss at 6).

[25] *Id.* (order denying defendant's motion to dismiss at 5).

[26] The Super Priority Lien, Nev. Dep't of Bus. & Indus., Real Estate Div. Advisory Op. No. 13-01, at 9–10 (Dec. 12, 2012) [hereinafter Advisory Op. No. 13-01].

[27] *Id.* at 10–11.

[28] *Id.* at 10.

[29] Letter from Mr. Buckley, *supra* note 4, at 6 (quoting Korbel Family Trust v. Spring Mountain Ranch Master Ass'n, No. 06-A-523959-C (Nev. Dist. Ct. Dec. 2006) (order)).

tion."[30] The new law also required the Commission to "adopt regulations 'establishing the amount of the fees that an association may charge pursuant to this section.'"[31] In 2010, the Commission adopted a new regulation;[32] however, neither the new law nor the regulation addressed whether collection costs were included in the super-priority lien.[33]

The State of Nevada Department of Business and Industry, Real Estate Division ("NRED"), issued an Advisory Opinion on December 12, 2012, that addressed the issue of whether an HOA's super-priority lien contains "costs of collecting" as defined by Nevada law. The Advisory Opinion states that NRS 116.3116 does not incorporate such costs in the association's lien.[34] Furthermore, an HOA's super-priority lien cannot exceed nine months of assessments.[35] When an HOA incurs fees and costs in the foreclosure process of the association's lien, those expenses are the personal liability of the homeowner.[36] If the homeowner does not pay the association for the expenses, the association can only recover the cost from the association's foreclosure sale.[37] Although some argued that the Advisory Opinion was not binding authority, the Nevada Supreme Court stated that the plain language of NRS Chapter 116 requires an interpretation by NRED to determine which fees are recoverable and to what extent.[38] Since the Court gave deference to the opinion, NRED's Advisory Opinion was the most recent authority until the Court ruled on the issue in September 2014. Interestingly, both Legislative sessions in 2011 and 2013 failed to resolve this issue.[39] In the future, when the Legislature examines the costs of collecting, advocates suggest that the compensation of the super-priority lien should include "any amounts owed to the association that are a lien on the unit, including collection charges."[40]

In addition to the costs-of-collecting issue, another recent assembly bill has also created a change in the housing market crisis. In 2011, the Nevada Legislature passed Assembly Bill 273 in response to banks selling their loans to companies at huge discounts when the same banks refused to give similar con-

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[30] *Id.* (quoting NEV. REV. STAT. § 116.310313(1) (2013)).

[31] *Id.* (quoting § 116.310313(1)).

[32] *Id.* (explaining that the new regulation adopted by the Commission was Nevada Administrative Code 116.470).

[33] *Id.*

[34] Advisory Op. No. 13-01, *supra* note 26, at 6.

[35] Hubble Smith, *Ruling Spells Out Limits on HOA Superpriority Liens*, LAS VEGAS REV.-J., Dec. 15, 2012, at 2D, *available at* http://www.reviewjournal.com/news/crime-courts/ruling-spells-out-limits-hoa-superpriority-liens.

[36] *Real Estate Division Issues Super Priority Lien Advisory Opinion*, STATE OF NEV. DEP'T OF BUS. & INDUS. (Dec. 13, 2012), http://business.nv.gov/News_Media/Press_Releases/2012/Real_Estate/Real_Estate_Division_Issues_Super_Priority_Lien_Advisory_Opinion/.

[37] *Id.*

[38] State Dep't of Bus. & Indus. v. Nev. Ass'n Servs., Inc., 294 P.3d 1223, 1227 (Nev. 2012).

[39] Letter from Mr. Buckley, *supra* note 4, at 6.

[40] *Id.* at 14.

cessions to the debtors themselves.[41] AB 273 indicates a legislative concern that "a homeowner should not face the loss of his or her home through an association foreclosure during the time the homeowner is permitted to negotiate with the bank."[42] Essentially, the bill requires that homeowners facing foreclosure be automatically enrolled into the State of Nevada Foreclosure Mediation Program upon filing of the Notice of Default.[43]

This change in the law has had a tremendous impact on HOA foreclosures, due to established deadlines that have delayed the foreclosure process.[44] Furthermore, the bill "prohibits an association from foreclosing its lien on the delinquent homeowner (a homeowner must occupy the home) while the homeowner is eligible to participate or is participating in the mediation program."[45] Thus, HOAs are often required to wait for final dispositions in the mediation process before proceeding with foreclosures.[46] Although the bill states that a homeowner "must continue to pay any obligation other than past-due obligations" during the mediation process, the bill does not clarify what happens if the homeowner does not pay the regular HOA assessments during the mediation process.[47] Although more cases will be filed over this omission, the bill has ultimately allowed delinquent homeowners to delay foreclosure, while requiring the HOAs to wait even longer before they can be reimbursed for past assessments.[48]

Although the issues regarding "costs of collecting" and mediation programs still remain, the ambiguous language of the statute has caused a much bigger problem, resulting in a flood of litigation. The ambiguity pertains to whether a foreclosure sale, properly conducted pursuant to NRS Chapter 116, automatically extinguishes all prior encumbrances on the property, thereby allowing a bona fide purchaser at an HOA foreclosure sale to obtain the property free and clear of all prior encumbrances.[49]

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[41] Robert S. Larsen, *Nevada Gamble: Stacking the Deck for Debtors and Guarantors*, GORDON REES SCULLY MANSUKHANI LLP (Sept. 2011), http://www.gordonrees.com/publications/2011/nevada-gamble-stacking-the-deck-for-debtors-and-guarantors.

[42] Letter from Mr. Buckley, *supra* note 4, at 14.

[43] Ryan Devine, *Homeowners Facing Foreclosure Are Now Automatically Enrolled in Mediation*, COGBURN LAW OFFICES (Oct. 18, 2014), http://cogburnlaw.com/blog/homeowners-facing-foreclosure-now-automatically-enrolled-mediation/.

[44] Barbara Holand, *Recent HOA Laws Affect Foreclosures*, LAS VEGAS REV.-J. (Sept. 6, 2013, 11:20 PM), http://www.reviewjournal.com/real-estate/recent-hoa-laws-affect-foreclosures.

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] First 100, LLC v. Burns, No. A677693 (Nev. Dist. Ct. May 30, 2013) (order denying defendant's motion to dismiss at 4).

B. The Ambiguity of Nevada Revised Statutes Chapter 116

Since the enactment of AB 284 in 2011, banks have slowed down their foreclosures; this delay has spurred HOAs to initiate foreclosures themselves.[50] In order for a foreclosure sale to be properly conducted under NRS Chapter 116, an association must take specific steps. The foreclosure process starts with a "notice of delinquent assessment" ("NDA").[51] Associations are not required to record the NDA, but most do.[52] "Not less than 30 days after the mailing of the NDA, the association may record a 'notice of default and election to sell the unit,' i.e., an NOD."[53] Ninety days after recording the NOD, the association must give notice of sale "in the manner and for a time not less than that required by law for the sale of real property upon execution."[54] The foreclosure sale is a cash auction sale that "vests in the purchaser the title of the unit's owner without equity or right of redemption."[55] Once the HOA has received money for the property, it must apply the proceeds of the sale in the following order:

> (1) The reasonable expenses of sale; (2) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by the declaration, reasonable attorney's fees and other legal expenses incurred by the association; (3) Satisfaction of the association's lien; (4) Satisfaction in the order of priority of any subordinate claim of record; and (5) Remittance of any excess to the unit's owner.[56]

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[50] Fletcher, *supra* note 7.

[51] Letter from Mr. Buckley, *supra* note 4, at 12 (citing NEV. REV. STAT. § 116.31162(1)(a)).

[52] *Id.*

[53] *Id.* (quoting § 116.31162(1)(b)).

Under NRS 116.31163 notice of the NOD must be given to "Each person who has requested notice pursuant to NRS 107.090 or 116.31168" and "Any holder of a recorded security interest encumbering the unit's owner's interest who has notified the association, [thirty] days before the recordation of the notice of default, of the existence of the security interest." NRS 107.090(4) requires that notice of default and sale be given to "Each other person with an interest whose interest or claimed interest is subordinate to the deed of trust." NRS 107.090(1) defines "person with an interest" as "any person who has or claims any right, title or interest in, or lien or charge upon, the real property described in the deed of trust, as evidenced by any document or instrument recorded in the office of the county recorder of the county in which any part of the real property is situated."

Id. at 12 n.36.

[54] *Id.* at 12 (quoting NEV. REV. STAT. § 116.311635) (also citing § 116.31165).

The statute also requires that notice be given to "The holder of a recorded security interest or the purchaser of the unit, if either of them has notified the association, before the mailing of the notice of sale, of the existence of the security interest, lease or contract of sale, as applicable."

Id. at 12 n.38 (quoting § 116.311635(1)(b)(2)).

[55] *Id.* (quoting § 116.31166(3)).

[56] NEV. REV. STAT. § 116.31164(3)(c) (2013).

Soon after these HOA foreclosure auctions were initiated, litigation regarding these sales began to proliferate.[57] Typically, mortgage lenders often bring action because of their low priority in the order in which proceeds of the sales must be applied and the fact that the sale proceeds generally are far less than what is required to pay off all liens on the property.[58] Furthermore, many of the buyers at HOA foreclosure sales, as well as the first mortgage lenders and buyers at bank foreclosures, have filed quiet title actions in an effort to secure ownership of the property.[59] A recent trend has investors buying properties at HOA foreclosure sales and then filing for quiet title in an effort to wipe out the mortgage and other liens on the property.[60] While waiting on the mortgage holder to bring action or during court proceedings, many investors rent out the homes, often making more money than what they initially paid to obtain the property.[61] In addition to quiet title actions, associations have sought judicial determination of the rightful ownership of properties, dramatically increasing interpleader actions.[62]

With the increase of litigation, courts were left with the task of applying NRS Chapter 116 to such cases. However, the difficulty arose due to the ambiguous language of the statute that created one portion of the lien to be senior, while another portion was junior to the first priority deed of trust.[63] The statute includes three primary provisions creating the following: "(1) an omnibus HOA lien (NRS 116.3116(1)); (2) an exception to HOA lien priority for previously recorded deeds of trust (NRS 116.3116(2)(b)); and (3) an exception to the exception creating a 'super-priority' amount for 9 months of past-due HOA assessments (NRS 116.3116(3)).[64]

Customarily, an HOA's nonjudicial foreclosure of a lien did not carry the possibility of extinguishing a first lien, but, instead, created a back due of assessments that the purchaser acquired at an HOA foreclosure sale.[65] In other words, the purchaser would take the property subject to the first lien.[66] However, contrary to Nevada custom, some courts have recently held that the subordi-

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[57] Letter from Mr. Buckley, *supra* note 4, at 10.

[58] First 100, LLC v. Burns, No. A677693 (Nev. Dist. Ct. May 30, 2013) (order denying defendant's motion to dismiss at 7).

[59] Letter from Mr. Buckley, *supra* note 4, at 10.

[60] Vigil & Johnson, *supra* note 15.

[61] Hubble Smith, *Lien Auctions Paying Off*, LAS VEGAS REV.-J., Mar. 18, 2013, at 1A.

[62] Letter from Mr. Buckley, *supra* note 4, at 10.

[63] Amicus Curiae Brief of the Nevada Bankers Association in Support of Motion to Dismiss at 2, SFR Invs. Pool 1, LLC v. U.S. Bank N.A., No. A-13-678858-C (Nev. Dist. Ct. Aug. 1, 2013) [hereinafter Amicus Brief of Nevada Bankers].

[64] *Id.* at 1–2.

[65] Brett P. Ryan, *HOA Foreclosure, Nevada-Style*, SERVICING MGMT (March 2013), http://www.mortgageorb.com/issues/SVM1303/index.html.

[66] *Id.*

nate liens are extinguished by foreclosure sales.[67] The Nevada Supreme Court reaffirmed these holdings in 2014.

Thus, when the proceeds of a foreclosure sale were inadequate to satisfy all subordinate interests, the big questions for Nevada's courts became, do "those subordinate interests survive the foreclosure sale to the extent that they remain unsatisfied," or are they "extinguished by operation of law such that a bona fide third-party purchaser at the foreclosure sale takes the property free and clear of any unsatisfied subordinate encumbrances?"[68] Until the Nevada Supreme Court issued its opinion, Nevada courts were split on the answer to this question.

II. THE RISE OF LITIGATION—COURTS PROVIDE CONFLICTING DECISIONS

Generally, proponents of HOAs and third-party buyers argued that all subordinate interests are extinguished when the property is sold at the HOA foreclosure sales.[69] On the other hand, those arguing in favor of the first mortgage lenders—usually banks—generally argued that the subordinate interests survive the HOA foreclosure sales because the interest remains unsatisfied from the proceeds of the sale.[70] Proponents of the banks believe that the third-party buyers of these properties acquire the properties "subject to those unsatisfied encumbrances" and that banks still have the right to foreclose upon the property.[71]

Because of the ambiguous language of Nevada's law, courts have interpreted the statute differently and were split as to the outcome of HOA foreclosures.[72] Clark County District Court Judge Jerry Tao illustrates this dilemma: "By my count, five Judicial Departments have ruled in the same manner as I have, while roughly the same number have reached the opposite conclusion."[73] Nevada's courts, both state and federal, interpreted the statutory language differently. When NRS Chapter 116 is read in its entirety, there is "no statutory provision that expressly states that an unsatisfied junior lien either is, or is not, extinguished by operation of law as a consequence of a foreclosure sale conducted pursuant to NRS 116.31164."[74] After having read the ambiguous language in the statute, many courts looked to legislative history of the statute and the intent of both the Legislature and the drafters of the UCIOA.[75] Again, this

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[67] First 100, LLC v. Burns, No. A677693 (Nev. Dist. Ct. May 30, 2013) (order denying defendant's motion to dismiss at 19).
[68] *Id.* at 7.
[69] *See id.*
[70] *See id.*
[71] *See id.*
[72] *See* Vigil & Johnson, *supra* note 15.
[73] Letter from Mr. Buckley, *supra* note 4, at 13 (quoting Judge Jerry Tao).
[74] *First 100*, No. A677693 (order denying defendant's motion to dismiss at 7).
[75] *Id.* (order denying defendant's motion to dismiss at 9).

process established no definitive guidelines. Thus, the courts continued to disagree.[76]

After having considered many sources, some courts have held that the subordinate liens are extinguished after the property is sold at an HOA foreclosure sale. These courts are referred to as "Pro-HOA" and have often ruled in favor of HOAs and third-party buyers. Contrary to the Pro-HOA courts, other courts have held that the subordinate liens are not extinguished and survive the HOA foreclosure sale. These courts are referred to as "Pro-Bank" and have often ruled in favor of the banks or the first mortgage lenders. Proponents of each side have made various assertions to support their cases and the following sections discuss five of them and then consider the impact of a recent Nevada Supreme Court decision.

A. *Statutory Interpretation*

One of the first sources courts have looked to is the text of NRS 116.3116. Both Pro-HOA and Pro-Bank courts have made different arguments in regards to interpretations of the statute. For example, proponents of HOAs and third-party buyers have stated that:

> The plain language of NRS 116.3116(4) grants an association lien priority from the date an association's CC&Rs [Covenants, Conditions & Restrictions] are recorded, stating that the recordation of an association's declaration of CC&Rs "constitutes record notice of perfection of the lien." "No further recordation or any claim for assessments [under NRS 116.3116] is required."[77]

In most cases, associations have already recorded their CC&Rs before a lender records its deed of trust; therefore, associations' liens will more than likely be first in time and first in right.[78]

Additionally, some argued that NRS 116.31162(b) limits the priority of a first security interest.[79] When there are delinquent assessments, the statute provides that the HOA's assessment lien becomes prior to the first security interest.[80] Furthermore, if the super-priority portion of the lien is not paid before the HOA foreclosure, the lender loses its security interest.[81] Although HOA proponents have made many arguments, some Pro-HOA courts have simply claimed that, because there is no statutory provision in NRS Chapter 116 that expressly states whether unsatisfied junior liens are extinguished because of a foreclosure sale, the court must look to other sources.[82]

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[76] *See* Vigil & Johnson, *supra* note 15.

[77] Appellant's Opening Brief at 14, SFR Invs. Pool 1, LLC v. Bank of America, N.A., No. 63313 (Nev. Dec. 10, 2013) (footnote omitted).

[78] *Id.*

[79] *Id.* at 15.

[80] *Id.* at 16.

[81] *Id.*

[82] First 100, LLC v. Burns, No. A677693 (Nev. Dist. Ct. May 30, 2013) (order denying defendant's motion to dismiss at 7–8).

While HOA proponents have argued that the statute supports extinguishment of the first security interest, proponents of lenders have argued otherwise. Supporters of banks have stated that "a first mortgage recorded before HOA assessments become delinquent is senior to an HOA lien, except to the extent of nine months of regular HOA dues immediately preceding the action to enforce the HOA lien."[83] Pro-Bank courts have made the interpretation that the "first mortgage rule prevents a prior-recorded first mortgage from being extinguished by foreclosure of an HOA lien that contains a super-priority amount."[84]

Thus, an HOA lien arising before a first mortgage is recorded is senior and acts as a traditional lien surviving a foreclosure of the first mortgage, and its own foreclosure extinguishes the first mortgage.[85] However, an HOA lien arising after a first mortgage is recorded does not act as a traditional lien.[86] Instead, the "super-priority amount is senior to an earlier-recorded first mortgage in the sense that it must be satisfied before a first mortgage upon its own foreclosure, but it is in parity with an earlier-recorded first mortgage with respect to extinguishment, i.e., the foreclosure of neither extinguishes the other."[87] There are two options that arise under this interpretation: (1) if an HOA forecloses its lien, the first mortgagee's lien survives the foreclosure and the first mortgagee may later foreclose against the HOA auction buyer if the lien is not satisfied, or (2) if a first mortgagee forecloses while an HOA lien exists, the super-priority amount of the HOA lien survives the foreclosure and the HOA may later foreclose against the buyer if the super-priority amount is not satisfied.[88] Furthermore, under both options, any subordinate amount of an HOA lien and other junior liens is extinguished, and it is the responsibility of the junior lien holders to pursue the defaulted party for any deficiencies.[89] Thus, the "foreclosure of neither a super-priority lien nor a first mortgage extinguishes the other."[90]

B. Legislative Intent and History

After having read the text of NRS Chapter 116, some courts have looked to the legislative history of NRS 116.31164 and other similar statutes.[91] In 1991, when NRS Chapter 116 was adopted, the "super-priority" lien language was identical to the language in the statute today, with the exception of the change the Legislature made in 2009 by changing the super-priority lien limit from six

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[83] Bayview Loan Servicing, LLC v. Alessi & Koenig, LLC, 962 F. Supp. 2d. 1222, 1225 (D. Nev. 2013).
[84] *Id.*
[85] *Id.*
[86] *Id.*
[87] *Id.* (emphasis omitted).
[88] *Id.* at 1226.
[89] *Id.*
[90] *Id.*
[91] First 100, LLC v. Burns, No. A677693 (Nev. Dist. Ct. May 30, 2013) (order denying defendant's motion to dismiss at 8).

to nine months of assessments.[92] In 1993, Assembly Bill 612 introduced numerous "technical amendments" to NRS 116.3116; however, none of the super-priority language was affected.[93] During that time, one of the drafters of the bill "expressly urged that the Nevada Legislature adhere as closely as practicable to the uniform version of the UCIOA."[94] Subsequently, the Legislature enacted the super-priority language from the UCIOA into NRS 116.3116 without amendments or debate.[95] Unfortunately, the language of the statute did not resolve the issue, and courts constructed different theories in regards to the Legislature's intent.

Pro-HOA courts have stated that the Legislature intentionally adopted the language of the UCIOA without any amendments to allow courts to "look to precedent in other uniform law jurisdictions as well as the background and explanatory comments accompanying the UCIOA in resolving questions relating to the scope and meaning of NRS 116.3116."[96] In Official Comment 1, of Section 3-116 of the UCIOA (Comment 1), the drafters suggest that the holder of the first security interest could simply pay the unpaid assessments owed to the HOA in order to prevent the foreclosure and its interest from being extinguished.[97] However, the drafters make no mention of extinguishment of the first security interest if the holder does not pay the unpaid assessments.[98] Although no other comment or text of the UCIOA specifically answers the question of extinguishment, "Comment 1 suggests that the drafters . . . intended to leave this question to state law rather than establishing uniform national standards."[99]

On the other hand, proponents of lenders have taken a different stance in regards to the UCIOA, and one proponent, Professor Andrea Boyack has provided an explanation.[100] Boyack opines that the drafters of the UCIOA recognized that HOA liens would ordinarily be junior in priority to first mortgage liens; thus, the drafters "crafted an 'innovative' solution to the problem of assessment nonpayment during mortgage default: the six-month 'limited priority lien.'"[101] Furthermore, she states that the six-month, super-priority portion of the lien "does not have a true priority status under UCIOA since the six-month assessment lien cannot be foreclosed as senior to a mortgage lien."[102] Further-

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[92] *Id.*
[93] *Id.*
[94] *Id.* (order denying defendant's motion to dismiss at 9).
[95] *Id.*
[96] *Id.*
[97] *Id.* (order denying defendant's motion to dismiss at 10).
[98] *Id.*
[99] *Id.*
[100] Respondent's Opening Brief at 12, Villa Palms Court 102 Trust v. Riley, No. 62528 (Nev. July 30, 2013).
[101] *Id.* at 13 (quoting Andrea J. Boyack, *Community Collateral Damage: A Question of Priorities*, 43 LOY. U. CHI. L.J. 53, 98 (2011)).
[102] *Id.* (quoting Boyack) (emphasis omitted).

more, Boyack claims that it instead, "either creates a payment priority for some portion of unpaid assessments, which would take the first position in the foreclosure repayment 'waterfall,' or grants durability to some portion of unpaid assessments, allowing the security for such debt to survive foreclosure."[103] Therefore, proponents of lenders have used Boyack's explanation to argue that the super-priority exception provides HOAs a "payment priority" not a "lien priority" over a first mortgage for a portion of the assessments.[104]

In addition to other arguments stated above, both sides have debated over a letter written by one of the UCIOA's drafters. In 2013 the Common-Interest Committee of the Real Property Section of the Nevada State Bar ("Committee") sought guidance from a drafter of the UCIOA, Carl H. Lisman.[105] Lisman wrote a letter to the Committee in response to their inquiry on whether an HOA foreclosure extinguishes a first security interest and other junior interests.[106] In his letter Lisman states, "[t]he association enjoys a statutory limited priority ahead of a first security interest similar to the priority given to property taxes and other governmental charges. Because of the statutory priority, foreclosure by the association extinguishes the first security interest and all other junior interests."[107]

Although Lisman's letter seems to be clear, proponents of lenders have argued that by relying on the Restatement of Property, Lisman "asserts that extinguishment is only appropriate if the lender is properly joined in the action or receives notice. But the Lisman Letter ignores the fact that under the Statute, there is no affirmative notice requirement to the lender. As such the Lisman Letter actually supports the [lender's] position."[108] Additionally, proponents of lenders have stated that the Lisman Letter directly conflicts with the "actual, written, commentary provided by the drafters of the Uniform Act" and should not be considered by courts.[109]

In addition to looking at the Legislative history of NRS 116.31164, courts have often looked to other similar statutes.[110] Proponents of HOAs and third-party buyers have claimed that foreclosures extinguish all junior interests under general Nevada law.[111] Their claim is substantiated in Restatement Third, Property (Mortgages) Section 7.1, which states as follows:

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[103] *Id.* (quoting Boyack) (emphasis omitted).
[104] *Id.*
[105] Letter from Carl H. Lisman, to Michael E. Buckley & Karen D. Dennison, Co-Chairs, Common Interest Comm., Real Prop. Section, State Bar of Nev. 1 (May 29, 2013), *available at* https://www.nvbar.org/sites/default/files/RP_Lisman%20on%20Super%20Priority%20May%202013.pdf.
[106] *Id.*
[107] *Id.* at 7.
[108] Amicus Brief of Nevada Bankers, *supra* note 63, at 30.
[109] *Id.*
[110] First 100, LLC v. Burns, No. A677693 (Nev. Dist. Ct. May 30, 2013) (order denying defendant's motion to dismiss at 8).
[111] Amicus Brief of Real Property Section, *supra* note 11, at 4.

> A valid foreclosure of a mortgage terminates all interests in the foreclosed real estate that are junior to the mortgage being foreclosed and whose holders are properly joined or notified under applicable law. Foreclosure does not terminate interests in the foreclosed real estate that are senior to the mortgage being foreclosed.[112]

Furthermore, the Nevada Supreme Court has confirmed this claim in *Brunzell* and *Erickson*, both of which involved statutory mechanics' liens.[113] These cases confirm the application of the general rule to security interests and statutory liens "which include not only mechanics' liens under NRS 108.221 *et seq.*, but also association liens under NRS 116.3116."[114] Therefore, if the HOA's lien is prior to the first deed of trust, the HOA's foreclosure sale extinguishes the first deed of trust.[115]

Moreover, Pro-HOA courts have stated that it is "well-settled that any foreclosure sale conducted pursuant to NRS 40.462, 107.080, or 107A.260 automatically extinguishes all junior security interests against the property."[116] Thus, if foreclosures conducted pursuant to NRS 116.3114 were different from other foreclosures in Nevada, then the Legislature would have indicated it in the legislative history or text of the statute.[117] However, the "complete absence of anything within NRS Chapter 116 regarding the question of extinguishment suggests that the Legislature intended that Chapter 116 foreclosures would be handled as any other type of foreclosure."[118] Furthermore, NRS 40.462 and NRS 107.080 were enacted before NRS 116.3116; therefore, the Legislature would have known that normally foreclosure sales result in automatic extinguishments of all junior liens, and, if the Legislature had intended NRS Chapter 116 to depart from the legal norms, it would have included such language in the statute.[119] Thus, "[w]here NRS Chapter 116 is silent, the Court must presume that the Legislature intended that the ordinary and established principles governing the conduct of foreclosure sales in Nevada apply to 'fill in the gaps.'"[120]

Although Pro-HOA courts have found that the legislative intent and history suggest subordinate liens at HOA foreclosure sales are extinguished, Pro-Bank

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[112] *Id.* (quoting RESTATEMENT (THIRD) OF PROP.: MORTGAGES § 7.1 (1997)).

[113] *Id.* (citing Brunzell v. Lawyers Title Ins. Corp., 705 P.2d 642, 644 (1985); Erickson Constr. Co. v. Nev. Nat'l Bank, 512 P.2d 1236, 1238 (1973)).

[114] *Id.*

[115] *Id.* at 5.

[116] First 100, LLC v. Burns, No. A677693 (Nev. Dist. Ct. May 30, 2013) (order denying defendant's motion to dismiss at 12). ("For example, the holder of a mortgage may initiate a judicial foreclosure via NRS 40.430 et seq. The holder of a deed of trust may initiate a non-judicial foreclosure (commonly known as a 'Trustee's Sale') pursuant to NRS 107.080 et seq. A landlord . . . may also seek the appointment of a receiver to initiate a foreclosure upon a security instrument pursuant to NRS 107A.260.").

[117] *Id.* (order denying defendant's motion to dismiss at 13).

[118] *Id.*

[119] *Id.*

[120] *Id.* (order denying defendant's motion to dismiss at 15).

courts have taken a different stance. Pro-Bank courts have stated that the "legislative intent was to ensure that no matter which entity forecloses, an HOA will be made whole (up to a limited amount), while also ensuring that first mortgagees who record their interest before notice of any delinquencies giving rise to a super-priority lien do not lose their security."[121] Proponents of lenders have further argued that if the Legislature intended HOA foreclosures to extinguish an earlier recorded security interest, it would have avoided any ambiguity by omitting from the statute subsection 2(b), which creates an exception for the priority of an association's lien.[122] Instead, proponents claim that the Legislature included the subsection to "provide an incentive for lenders to loan money to prospective home buyers in Nevada and to give confidence and security to lenders that their property interests would be protected."[123] In addition to legislative intent and history, both sides have provided arguments in regards to other sources as well.

C. Nevada Real Estate Division Advisory Opinion

Proponents of HOAs and third-party buyers have used NRED's Advisory Opinion to support their cases. The Advisory Opinion states that "[t]he ramifications of the super priority lien are significant in light of the fact that superior liens, when foreclosed, remove all junior liens. An association can foreclose its super priority lien and the first security interest holder will either pay the super priority lien amount or lose its security."[124] The Advisory Opinion also refers to comments in Section 3-116 of the UCIOA and mentions that the statute was adopted with the belief that the holder of the first security interest would pay the super-priority lien in order to avoid foreclosure by the association.[125]

Although the Advisory Opinion has provided proponents of HOAs and third-party buyers with a strong argument, Pro-Bank courts have rejected the Advisory Opinion's interpretation of the statute.[126] These courts have emphasized the reference to the explanations in section 3-116 of the UCIOA and have stated that those comments still say nothing about extinguishment.[127] Furthermore, proponents of banks have argued that the Advisory Opinion is not binding authority and should have no legal effect on their cases. However, in a recent case the Nevada Supreme Court has held that the "plain language of the statutes requires that the CCICCH [Commission on Common Interest Commu-

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[121] Bayview Loan Servicing, LLC v. Alessi & Koenig, LLC, 962 F. Supp. 2d 1222, 1227 (D. Nev. 2013).
[122] Amicus Brief of Nevada Bankers, *supra* note 63, at 7.
[123] *Id.*
[124] Advisory Op. No. 13-01, *supra* note 26, at 9.
[125] *Id.*
[126] *Bayview*, 962 F. Supp. 2d at 1227.
[127] *Id.*

nities and Condominium Hotels] and the Real Estate Division, and no other commission or division, interpret NRS Chapter 116."[128]

D. Out-of-State Authority

In addition to the Advisory Opinion, proponents of both sides have often used out-of-state cases to support their arguments. Proponents of HOAs and third-party buyers have turned to *Summerhill Village HOA v. Roughly*, an opinion by a Washington State appellate court.[129] In *Summerhill Village*, the court interpreted a statute identical to the UCIOA and found that "a foreclosure based upon a 'super priority' lien extinguished a first security interest that was given notice of the pending foreclosure and yet chose not to participate."[130] Although courts in Nevada have agreed with the Washington opinion, Pro-Bank courts have also cited recent Nevada opinions to reject the reasoning of *Summerhill Village*.[131]

In *Weeping Hollow Ave. Trust v. Spender*, for example, a Nevada trial court held that the "limited priority lien provision did not create a true lien priority, but instead merely provided that the association's lien would continue to encumber the property following a foreclosure sale by the first mortgagee, to the extent of the assessments unpaid during the preceding nine months."[132] Furthermore, proponents of lenders state that *Weeping Hollow* interprets NRS Chapter 116 to provide HOAs with two options: "(1) the HOA may initiate a non-judicial foreclosure to recover the delinquent assessments and the purchaser at the sale takes the property subject to the security interest; or, (2) initiate a judicial action to pursue the assessments."[133] Although *Weeping Hollow* and other similar Nevada cases have provided support for lenders, proponents of banks also have used out-of-state authority to support their arguments.

Proponents of lenders often cited opinions from Massachusetts cases, such as *MacIntosh Condo. Ass'n v. FDIC*.[134] In *MacIntosh*, the court held that a condominium lien reaches super-priority over the first mortgage when the as-

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[128] State Dep't of Bus. & Indus. v. Nev. Ass'n Servs., Inc., 294 P.3d 1223, 1227 (Nev. 2012).

[129] First 100, LLC v. Burns, No. A677693 (Nev. Dist. Ct. May 30, 2013) (order denying defendant's motion to dismiss at 11) (citing Summerhill Village HOA v. Roughly, 270 P.2d 639 (Wash. Ct. App. 2012)).

[130] *Id.*

[131] Appellant's Opening Brief, *supra* note 77, at 47; *see* Weeping Hollow Ave. Trust v. Spencer, No. 2:13-CV-00544-JCM-VCF, 2013 U.S. Dist. LEXIS 74065, at *16 (D. Nev. May 24, 2013); Diakonos Holdings, LLC v. Countrywide Home Loans, Inc., No. 2:12-CV-00949-KJD-RJJ, 2013 U.S. Dist. LEXIS 18718, at *6–7 (D. Nev. Feb. 11, 2013).

[132] Appellant's Opening Brief, *supra* note 77, at 47 (quoting a 2013 report by the Joint Editorial Board for Uniform Real Property Acts, entitled *The Six-Month "Limited Priority Lien" for Association Fees Under the Uniform Common Interest Ownership Act* (citing *Weeping Hollow*, 2013 U.S. Dist. LEXIS 74065, at *16)).

[133] *Weeping Hollow*, 2013 U.S. Dist. LEXIS 74065, at *17.

[134] Respondent's Opening Brief, *supra* note 100, at 19–20.

sociation institutes "an action to enforce the lien"; thus, the lien is prior to other mortgages with respect to association assessments due during the six months immediately preceding institution of an action to enforce the lien.[135] In other words, the condominium lien is given a super-priority status only for the unpaid fees for the preceding six months.[136] "It is uncontested by the parties that a lawsuit is required before a lien for unpaid condominium fees achieves a 'super-priority' status."[137] Without a commencement of action to enforce such fees, a lien for the unpaid fees is prior to all other liens except "a first mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent."[138] This exception makes the lien junior until an action is commenced.[139] "Indeed, if the lien was anything but junior to the first mortgage, there would be no reason to require that an action be filed in order to grant that lien super-priority status."[140] Therefore, proponents of lenders have used *MacIntosh* to argue that HOAs must file an action for a super-priority lien to exist over a first position deed of trust.[141] While out-of-state opinions do not provide binding authority, both lenders and HOAs have found support for their arguments from these sources.

E. Policy Arguments

Next, the court has also considered policy arguments when determining the outcomes of HOA issues.[142] For example, proponents of HOAs have argued that because NRS Chapter 116 requires multiple notices be provided to lenders, there is sufficient time to secure their interest.[143] A lender does not lose its interest until the property is sold at an HOA foreclosure sale; therefore, lenders have ample time to cure delinquent assessments on the home.[144] In Nevada, a nonjudicial foreclosure under NRS Chapter 116 requires: (a) "thirty days between mailing the notice of delinquent assessments and recording and mailing of the notice of default and election to sell";[145] (b) "ninety days between recording and mailing the notice of default and recording and mailing the notice

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[135] *Id.* at 19 (citing Trs. of MacIntosh Condo. Ass'n v. FDIC, 908 F. Supp. 58, 63 (D. Mass. 1995)).

[136] *Id.* at 20.

[137] *Id.* (quoting *Trs. of MacIntosh*, 908 F. Supp. at 63) ("[T]he establishment of the lien is not dependent on the commencement of a lawsuit, which is only a step necessary to elevate the status of the lien to a position superior to other encumbrances, other than municipal liens and first mortgages.").

[138] *Id.* (quoting *Trs. of MacIntosh*, 908 F. Supp. at 64).

[139] *Id.* (citing *Trs. of MacIntosh*, 908 F. Supp. at 64).

[140] *Id.* (quoting *Trs. of MacIntosh*, 908 F. Supp. at 64).

[141] *Id.* at 21.

[142] First 100, LLC v. Burns, No. A677693 (Nev. Dist. Ct. May 30, 2013) (order denying defendant's motion to dismiss at 16).

[143] Appellant's Opening Brief, *supra* note 77, at 33.

[144] *Id.*

[145] *Id.* at 34 (citing NEV. REV. STAT. §§ 116.31162(1)(b)–(c), 116.31163, 116.31168 (2013)).

of sale";[146] and (c) "twenty-one days notice between the notice of sale and the actual sale."[147] Proponents of HOAs have argued "[e]ach of these mandated periods gives time for a party in interest to cure or seek judicial intervention, if necessary."[148]

Furthermore, the HOA's notices provide lenders with the sufficient information to protect their interests.[149] "The notices provide the *what*, *who*, *when*, and *where* necessary to meet the due process requirements for any affected party to stop the foreclosure sale, including the unit owner and all potential subordinate lienholders."[150] For example, the Notice of Default and the Election to Sell provide an explicit and clear warning that a lender's security interest is in jeopardy: "WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE."[151]

Proponents of HOAs have argued that not only does a Notice of Default and the Election to Sell notify lenders, but the HOA's Notice of Trustee's Sale—an HOA's foreclosure sale—also provides lenders with an additional warning and the HOA's contact information[152]:

> WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL (name and telephone number of the contact person for the association). IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT (toll-free telephone number designated by the Division) IMMEDIATELY.[153]

In addition to using Nevada law and examples of notices to support their cases, proponents of HOAs also have argued that lenders are not being unfairly treated.[154] "Requiring the lenders to pay a nominal amount of assessment dues does not impose an unfair burden on the lenders."[155] "Both Fannie Mae and Freddie Mac instituted policies requiring payment of the super-priority amount."[156] Furthermore, "Fannie Mae's servicing guidelines actually require servicers to protect its priority by paying the super-priority amounts in states

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[146] *Id.* (citing §§ 116.311635, 116.31163, 116.31168).
[147] *Id.* (citing §§ 116.311635(1)(a), 116.21.130(1)(c)).
[148] *Id.*
[149] *Id.*
[150] *Id.* (emphasis added).
[151] *Id.* at 35.
[152] *Id.* at 36.
[153] *Id.*
[154] *Id.* at 49.
[155] *Id.*
[156] *Id.* at 49–50.

that grant super-priority liens to associations."[157] Likewise, "Freddie Mac requires servicers to pay any association 'assessments prior to the foreclosure sale date if they are, or may become, a First Lien priority on [the property].'"[158] In addition to both Fannie Mae's and Freddie Mac's policies, "Henry L. Judy, former General Counsel for Freddie Mac, expressly acknowledged that foreclosure, preferably by sale, of the super-priority lien extinguishes a first security interest."[159]

However, proponents of banks have argued, for example, that it is simply unfair to allow a third-party buyer to obtain a property for $2,000, while extinguishing a mortgage worth much more.[160] However, Pro-HOA courts have referred to Comment 1 and stated that the banks or lenders could have avoided the foreclosure and protected their interests from extinguishment by paying the assessments.[161]

Furthermore, "Nevada law requires that if two interpretations of an ambiguous statute are both potentially unfair to someone, an innocent third party should not bear the brunt of the harm."[162] Essentially, it would be unfair to the third-party buyer who paid the association lien to obtain the property, only to have it taken away when the bank sold the property to another buyer.[163] Ultimately, this action would

> achieve the perverse outcome of actually rewarding sloth and inaction on the part of the lender, who, as expressly recognized by Comment 1 to UCIOA Section 3-116, is the one party (other than the defaulting owner) in a position to stop the foreclosure, protect its own interests, and make the association whole by paying the assessments.[164]

The outcome would make both the bank and the association whole at the expense of the third-party buyer.[165]

On the other hand, proponents of banks have suggested that third-party buyers should have done their homework, realized the amount they were paying was not enough to pay off all the encumbrances on the property, and concluded they might lose it as a result.[166] However, Pro-HOA courts have reiterated that the lender is in a better position to protect its interest and any

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[157] *Id.* (citing Fannie Mae Servicing Guide Announcement SVC-2012-05 (Apr. 11, 2012))
[158] *Id.* (quoting Freddie Mac Bulletin, No. 2013-15 (Aug. 15, 2013)).
[159] *Id.* (citing Henry J. Judy & Robert A. Wittie, *Uniform Condominium Act: Selected Key Issues*, 13 REAL PROP. PROB. & TR. J. 437, 480, 484, 515–16 (1978)).
[160] First 100, LLC v. Burns, No. A677693 (Nev. Dist. Ct. May 30, 2013) (order denying defendant's motion to dismiss at 16).
[161] *Id.*
[162] Appellant's Opening Brief, *supra* note 77, at 50 (citing NC-DSH Inc. v. Ganrer, 218 P.3d 853, 859 (2009)).
[163] *First 100*, No. A677693 (order denying defendant's motion to dismiss at 16).
[164] *Id.*
[165] *Id.*
[166] *Id.* (order denying defendant's motion to dismiss at 17).

unfairness should not be placed on a bona fide third-party buyer.[167] Additionally, Comment 1 states two simple solutions lenders can use to ensure their interest is not extinguished.[168] As mentioned previously, one solution is that the lender can protect its interest by paying off the unpaid assessments before a foreclosure, thereby removing the super-priority lien and guaranteeing its interest is senior.[169] Another solution would require the lender to impound money in advance and pay the assessments itself, thus ensuring that a default or super-priority lien will never arise.[170]

Noticeably, some Pro-Bank courts have based their decisions regarding HOA foreclosures around other policy arguments. For example, one Pro-Bank Court stated that even if the statute were ambiguous, there is only one interpretation of the statute.[171] "A statute's language should not be read to produce absurd or unreasonable results."[172] The Court went on to say that, if an HOA foreclosure extinguished a first position deed of trust, it would produce absurd results for four reasons.[173]

First, the amount of the HOA delinquent assessment will almost always be a small fraction of the amount of the mortgage.[174] In addition, "Nevada is a race notice state" and "[p]ermitting an HOA super priority lien to wipe out a prior deed of trust contravenes the principles and purpose of a race-notice jurisdiction."[175] Second, the reasoning of Pro-HOA courts that banks will be incentivized to foreclose at a faster pace in order to secure their interests misunderstands greater points.[176] Banks make thousands of loans in Nevada and, possibly, even across the country; whereas an HOA's scope is limited to a neighborhood or two.[177] In addition to the banks having a much wider scope to monitor, courts should not incentivize banks to foreclose on homes at the first sign of distress; instead, banks should be encouraged to work with homeowners to help them stay in their homes and also to recoup as much of its loan as possible.[178] Third, an HOA's lien should not be elevated over other liens because HOAs take the smallest amount of risk, compared to lenders, and provide the least amount of services to a homeowner.[179] "The services provided by an

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[167] *Id.*
[168] *Id.* (order denying defendant's motion to dismiss at 18).
[169] *Id.*
[170] *Id.*
[171] Premier One Holdings, Inc. v. BAC Home Loans Servicing LP, No. 2:13-CV-895-JCM, 2013 WL 4048573, at *4 (D. Nev. Aug. 9, 2013).
[172] *Id.* (quoting Leven v. Frey, 168 P.3d 712, 716 (Nev. 2007); Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 575 (1982)).
[173] *Id.*
[174] *Id.*
[175] *Id.*
[176] *Id.* at 5.
[177] *Id.*
[178] *Id.*
[179] *Id.*

HOA are luxuries, not necessities."[180] Finally, "it would be absurd to permit an HOA foreclosure to extinguish a bank's deed of trust because it would risk plunging the local economy back towards a recession."[181] "Banks will not lend money to buy houses when their deed of trust could be eliminated by HOA charges."[182]

Despite the various sources used in this complicated matter—statutory interpretation, legislative intent and history, Nevada Real Estate Division Advisory Opinion, out-of-state authority, and policy arguments—the court still remained split in their pro-HOA and pro-lending institution positions. Because of the courts' conflicting decisions, this HOA-versus-bank dilemma eventually reached the level of the Nevada Supreme Court.

F. Supreme Court Ruling

Finally, on September 18, 2014, the Nevada Supreme Court issued a long-awaited opinion.[183] The Court decided whether a foreclosure on an HOA's super-priority lien extinguishes a first deed of trust on a property, and, if so, whether it can be foreclosed nonjudicially.[184] The Court answered both questions in the affirmative.[185]

When deciding the issue, the Court looked to the text of NRS 116.3116(2) and determined that an HOA lien is divided into two parts: "a superpriority piece" and a "subpriority piece."[186] The superpriority piece is prior to a first deed of trust and consists of the last nine months of unpaid HOA dues and maintenance and nuisance-abatement charges.[187] On the other hand, the subpriority piece is subordinate to a first deed of trust and consists of all other HOA fees or assessments.[188] The Court stated that "prior" refers to the lien, and not to payment priorities; thus, NRS 116.3116 establishes a true priority lien.[189] The Court also looked to the official comments of UCIOA and noted that the Legislature still enacted NRS 116.3116(2) with UCIOA § 3116's superpriority provision intact.[190]

To further its holding, the Court discussed the Uniform Law Commission and its establishment of the Joint Editorial Board for Uniform Real Property Acts ("JEB"), which monitors all uniform real property acts, including the

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[180] *Id.*
[181] *Id.* at 6.
[182] *Id.*
[183] SFR Invs. Pool 1, LLC v. U.S. Bank, N.A., 130 Nev. Adv. Op. 75 (2014).
[184] *Id.* at *1.
[185] *Id.*
[186] *Id.* at *2.
[187] *Id.*
[188] *Id.*
[189] *Id.* at *4.
[190] *Id.* at *5.

UCIOA.[191] In 2013, JEB issued a report that addressed the foreclosure crisis, endorsed the decision in *Summerhill Village*, and criticized two Nevada Pro-Bank court decisions, stating that the courts "misread and misinterpret[ed] the Uniform Laws limited priority lien provision, which . . . constitutes a true lien priority, [such that] the association's proper enforcement of its lien . . . extinguish[es] the otherwise senior mortgage lien."[192] JEB's 2013 report further explained that an HOA is usually limited to common assessments as a source of revenue; thus, an HOA's ability to foreclose is essential for common-interest communities.[193] In addition, in a memorandum dated June 11, 2014, the JEB stated, "as originally drafted, § 3-116(c) was intended to create a true lien priority, and thus the association's foreclosure properly should be viewed as extinguishing the lien of the otherwise first mortgagee."[194]

Additionally, the Court expressed that U.S. Bank, as a junior lienholder, could have simply paid off the lien to avert loss of its security or it could have established an escrow for the HOA assessments to avoid having to use its own funds to pay delinquent dues.[195] Finally, after determining that NRS 116.3116(2) establishes a true superpriority lien, the Court looked to the text of the statute and further determined that such liens may be foreclosed nonjudicially and do not require judicial foreclosure.[196] However, three dissenting justices asserted that a civil judicial foreclosure complaint should be filed in order to extinguish a first deed of trust rather than a nonjudicial foreclosure.

Although the Court ruling provided some clarity for courts across the state, it left some issues unresolved. The first of these issues deals with notice. The banks have often contended that they had not received notice or, if they had, that the HOA had either closed communication lines or had demanded too much money. Unfortunately, the Court did not address whether an HOA foreclosure is invalid if the bank did attempt to pay off the lien and the HOA refused to cooperate.[197] Additionally, in the Supreme Court decision, the Court also failed to address whether action can be taken against bona fide purchasers—the third-party buyers who purchased the property in good faith. Because lenders will be left with an unsecured debt, they will most likely try to take ac-

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[191] *Id.*

[192] *Id.* (second, third, and fourth alterations in original) (quoting a 2013 report by the Joint Editorial Board for Uniform Real Property Acts, entitled *The Six-Month "Limited Priority Lien" for Association Fees Under the Uniform Common Interest Ownership Act*, at 10 n.9, stating that the *Weeping Hollow* and *Diakonos* cases were on the payment-priority side of the NRS 116.3116(2) split).

[193] *Id.*

[194] *Id.* at *6 (citing 7912 Limbwood Court Trust v. Wells Fargo Bank, NA, 979 F. Supp. 2d 1142, 1149 (D. Nev. 2013)).

[195] *Id.*

[196] *Id.*

[197] Abran Vigil & Matthew D. Lamb, *HOA Lien Extinguishes First Deed of Trust in Foreclosure, Nevada Supreme Court Holds*, BALLARD SPAHR LLP (Sept. 19, 2014), http://www.ballardspahr.com/alertspublications/legalalerts/2014-09-19-hoa-lien-extinguishes-first-deed-of-trust-in-foreclosure-nevada-supreme-court-holds.aspx.

tion against the third-party buyers or the original homeowners in an effort to secure those debts.

III. POTENTIAL SOLUTIONS

With the plethora of litigation and confusion surrounding the HOA foreclosure issue, something must be done in order to solve this statewide dilemma. It is clear that the Nevada Legislature needs to make changes or clarifications regarding NRS Chapter 116. The question then becomes, "What modifications should be made to the statute in order to remedy one of Nevada's most litigated issues?" Amidst the disputes, there have been some suggestions and comments as to how the Legislature should act in regards to NRS Chapter 116.[198]

In a letter discussing NRS Chapter 116, Michael E. Buckley provides some suggestions and recommendations as to how the statute should be changed.[199] Buckley first states that the Legislature should place a "cap" on the super-priority lien amount.[200] The cap—the amount of the super-priority lien—would depend on whether the foreclosure is made by an HOA or a bank.[201] If an HOA forecloses, there should be a specific number of months of common assessments as to the amount of the super-priority lien.[202] Buckley states that some individuals believe that an overall cap of twenty-four months is appropriate; however, if an HOA with a low monthly assessment is involved, some have argued that adjustments should be made. For example, the HOA should also be able to include its collection costs, in addition to the base monthly assessments.[203] Unfortunately, if a specific cap is set, there are some problems that may arise. For example, if there is a specific monthly cap on an HOA foreclosure, bank foreclosure remediation programs may have an effect on the HOA's ability to proceed.[204] As noted above, the Legislature has stated that homeowners should not lose their homes through an HOA foreclosure when the homeowner is allowed to negotiate with the bank.[205]

In addition to a cap for HOA foreclosures, some believe a flexible cap should be applied to bank foreclosures as well.[206] A flexible cap would require the amount of the super-priority lien to fluctuate depending on the time it takes the bank to foreclose.[207] For example, if a bank completes its foreclosure in less than one year, it would be required to pay the HOA nine months of assessments; if the bank completes its foreclosure between one and two years, it

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198 Letter from Mr. Buckley, *supra* note 4, at 13.
199 *Id.*
200 *Id.*
201 *Id.*
202 *Id.*
203 *Id.*
204 *Id.* at 14.
205 *Id.*
206 *Id.*
207 *Id.*

would have to pay twelve months of assessments; if the foreclosure were completed between two and three years, the bank would pay the HOA eighteen months of assessments, and so on.[208] With a flexible cap, lenders may no longer have an incentive to delay foreclosure proceedings, and, if they do, HOAs will receive more money to compensate for the budget gaps caused by the foreclosures.[209] However, if a flexible cap that depends on different time periods is established, the time periods need to be easily ascertainable from the record in order to avoid questions of interpretation.[210]

Next, Buckley suggests that the Legislature must address the abundance of quiet title actions that have been filed in Nevada and that still remain undetermined. Some proponents of this request have argued that the UCIOA should be amended to include language that provides a clear explanation regarding the effect of an association lien foreclosure.[211] "Such amendments should be approved by and acceptable to the title insurance industry, so that a purchaser at an association foreclosure sale is able to obtain marketable and insurable title . . . ."[212]

Although Buckley provides suggestions addressing sections of the statute that need clarification, the Legislature should not only take those suggestions into consideration, but contemplate making more drastic changes to the law in order to resolve other facets of this ever-changing issue. For example, Daniel Goldmintz offers a solution to issues involving super-priority liens. Goldmintz suggests that super-priority liens should be eliminated and that associations should be given full priority over all mortgages in order to insure the financial stability of HOAs.[213] Giving associations full priority would allow HOAs to recover all back maintenance fees, to put their budgets back on track, and to eliminate the need to cut services, raise maintenance fees, or pursue any other necessary course of action.[214] Not only would this action help HOA's maintain financial stability, but it would also place the burden on lenders who are better situated to protect themselves.[215]

> Moreover, granting a full priority to associations thus incentivizes the further maximization of sale prices—in order to compensate for lost dollars given to the association—as well as the quick execution of foreclosure proceedings, since, the longer the bank waits, the more money [it will] have to pay to associations.[216]

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[208] *Id.*

[209] Daniel Goldmintz, Note, *Lien Priorities: The Defects of Limiting the "Super Priority" for Common Interest Communities*, 33 CARDOZO L. REV. 267, 288 (2011).

[210] Letter from Mr. Buckley, *supra* note 4, at 14.

[211] *Id.*

[212] *Id.*

[213] Goldmintz, *supra* note 209, at 289.

[214] *Id.*

[215] *Id.*

[216] *Id.*

Giving HOAs full priority would not only benefit associations, but lenders as well, because financially stable associations will impact the value and desirability of the properties. As a result of a more valuable and desirable properties, asset lenders will be able to sell the properties for a higher price at foreclosure sales and potentially make a profit or at least further close the gap between the money owed and that which was recouped.[217]

Although Goldmintz believes this proposal would solve the issues regarding HOAs, he states that the problem may require more than a simple legislative fix at a state level.[218] Because of their direct impact on the mortgage market, both Fannie Mae and Freddie Mac would also have to make changes to their guidelines.[219] Although Goldmintz's idea seems plausible and could help solve some problems, those working to solve the HOA crisis should use caution in giving HOAs more authority than necessary.

On the other hand, NRS Chapter 116 may be susceptible to constitutional challenges. Already, proponents of lenders have challenged the statute on due process grounds by arguing that the lenders' due process rights are being violated; the statute does not require that actual notice be given to the lender of the HOA lien unless the lender affirmatively requests notice from the HOA.[220] Pro-Bank courts have already stated that the extinguishment of the deed of trust "potentially violate[s] due process."[221] Furthermore, proponents of lenders have also made the constitutional argument that NRS Chapter 116 is an impermissible taking.[222] Additionally, another constitutional argument has the potential to invalidate the ambiguous statute in its entirety under the U.S. Constitution's Contract Clause:

> No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.[223]

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[217] *Id.* at 290.

[218] *Id.*

[219] *Id.* at 292–93 ("Certainly, amending the guidelines to provide for an unlimited superpriority is within the interests of all parties involved.").

[220] Robin E. Perkins, *High Stakes in Nev.'s Lender vs. HOA Fight*, LAW 360 (Apr. 30, 2014, 12:34 PM), http://www.swlaw.com/assets/pdf/news/2014/04/30/HighStakesInNevsLenderVsHOAFight_Perkins.pdf.

[221] *Id.* (citing Premier One Holdings, Inc. v. BAC Home Loans Servicing LP, No. 2:13-CV-895-JCM, 2013 WL 4048573, at *4 (D. Nev. Aug. 9, 2013)).

[222] *Id.* (stating "that the government 'simply impos[ing] a general economic regulation' which 'in effect transfers the property interest from a private creditor to a private debtor' is a taking; and a 'takings analysis is not necessarily limited to outright acquisitions by the government for itself.' " (citing United States v. Sec. Indus. Bank, 459 U.S. 70, 78 (1982))).

[223] U.S. CONST. art. I, § 10, cl. 1.

The clause prohibits states from enacting any law that retroactively impairs contract rights.[224] If NRS Chapter 116 extinguishes the first deed of trust after an HOA forecloses on a home, the statute essentially alters the contract between the lender and homeowner and is, in fact, a "Law impairing the Obligation of Contracts."[225] On these grounds, NRS 116 is unconstitutional per the contracts clause of the United States Constitution. Proponents of lenders could argue that the entire statute is unconstitutional on its face. On the other hand, proponents of HOAs could argue that the Nevada Supreme Court would not have made its recent ruling if the statute were, indeed, unconstitutional.

Furthermore, in July 2014, the National Conference of Commissioners of Uniform State Laws approved amendments to the Uniform Common Interest Ownership Act Section 3-116 and recommended such amendments for enactment in all the states.[226] One such amendment, in subsection (r), states "Foreclosure of the lien under this section does not terminate an interest that is subordinate to the lien to any extent unless the association provides notice of the foreclosure to the person that is the record holder of the subordinate interest."[227] Further, the amendment includes a legislative note that states in part: "[I]n a state that permits nonjudicial foreclosure, but has a statute that provides that a foreclosure sale does not extinguish a subordinate lien unless the subordinate lienholder was provided notice of the sale, subsection (r) may be omitted."[228] Thus, the amendments confirm that the drafters of the UCIOA intended to give HOA liens a true superpriority over a lender's lien. Moreover, if the Nevada Legislature agrees with the recent Nevada Supreme Court ruling, the law-making body should consider enacting the July 2014 amendments to the UCIOA in order to clarify the language of the statute.

Although a few possible solutions to the HOA foreclosure issue are presented in this Note, the Legislature can choose from a range of endless possibilities to remedy this problem. Lawmakers must devise an immediate solution.

CONCLUSION

Over the past several years, Nevada's courts have been flooded with litigation regarding NRS Chapter 116; a permanent solution to the problems resulting from this statute does not seem imminent. Prior to the recession and the downfall in the housing market, courts in Nevada did not see these types of issues involving HOA foreclosures. Now with the large volume of cases being filed regarding the state's ambiguous statute, the Legislature must act to draw a clear line and to end the confusion. Specifically, Nevada's law-making body

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[224] Elmer W. Roller, *The Impairment of Contract Obligations and Vested Rights*, 6 MARQ. L. REV. 129, 129 (1922).
[225] U.S. CONST. art. I, § 10, cl. 1.
[226] UNIF. COMMON INTEREST OWNERSHIP ACT § 3-116 (2014).
[227] *Id.* § 3-116(r).
[228] *Id.* (legislative note to § 3-116(r)).

must make changes that provide clear answers to all of the issues regarding NRS Chapter 116 and eliminate any ambiguities that may arise. Most importantly, the Legislature must use caution in giving an HOA's lien true super-priority since this action could lead to absurd and damaging results, especially to lenders. With this in mind, the Legislature should also consider amending the State's existing law to clarify that a bank's lien cannot be extinguished by an HOA foreclosure. Unfortunately, with the current statutes in place, so many ambiguities exist that courts will continue to be overwhelmed with cases involving HOA foreclosures until specific actions are taken to clarify the law.

Compilation of U.S. District Court, District of Nevada, cases filed between January 1, 2009 and June 20, 2016, with filing code 290, “Real Property: Other” Summarized by Year		
Filing year	**Number filed**	**Monthly avg.**
2009	85	7.08
2010	88	7.33
2011	108	9.00
2012	90	7.50
2013	91	7.58
2014	50	4.17
2015	219	18.25
2016	150	25.00
before SFR	494	7.20
after SFR	387	18.31

Compilation of U.S. District Court, District of Nevada, cases filed between January 1, 2009 and June 20, 2016, with filing code 290, "Real Property: Other"				
Case No.	**Case Name**	**filed**	**closed**	**filing year**
2:09-cv-00018-ECR-GWF	Arrastia et al v. DHI Mortgage Company, Ltd et al.	1/4/2009	6/17/2009	2009
2:09-cv-00048-KJD-LRL	Rosen v. Fremont Investments & Loan, et al.	1/7/2009	3/4/2009	2009
2:09-cv-00056-PMP-PAL	Griffin et al v. Homeq Servicing, Inc.	1/8/2009	2/25/2009	2009
2:09-cv-00079-ECR-GWF	Ingram v. First Magnus Financial Corporation et al.	1/12/2009	11/20/2009	2009
2:09-cv-00095-PMP-LRL	Arrastia et al v. Linear Financial, L.P. et al.	1/13/2009	6/30/2009	2009
2:09-cv-00202-NA-NA	NOT USED	1/29/2009	2/2/2009	2009
2:09-cv-00256-KJD-LRL	LID Acquisition, LLC v. Wells Fargo Bank National Association	2/5/2009	7/2/2009	2009
2:09-cv-00290-RLH-GWF	Lovett et al v. GMAC Mortgage, LLC et al.	2/10/2009	6/2/2010	2009
2:09-cv-00311-BES-PAL	Giscombe v. Carrington Mortgage Services	2/16/2009	6/24/2009	2009
2:09-cv-00350-RLH-RJJ	Singlewald v. Option One Mortgage Corporation et al.	2/22/2009	3/6/2009	2009
2:09-cv-00353-ECR-GWF	Rojo et al v. Fremont Investment & Loan et al.	2/22/2009	8/25/2009	2009
2:09-cv-00354-RCJ-RJJ	Hayes et al v. Fremont Investment & Loan et al.	2/22/2009	3/8/2012	2009
2:09-cv-00363-NA-NA	NOT USED	2/24/2009	2/26/2009	2009
2:09-cv-00384-PMP-GWF	Schaab v. DHI Mortgage Company, Ltd et al.	2/25/2009	3/24/2009	2009
2:09-cv-00500-LDG-GWF	Guevarra et al v. Gateway Bank FSB et al.	3/15/2009	3/25/2010	2009
2:09-cv-00529-KJD-GWF	Guevarra v. Aegis Wholesale Corporation et al.	3/18/2009	7/16/2009	2009
2:09-cv-00534-RCJ-PAL	Southern New England Telephone Company v. Sahara and Arden, Inc. et al.	3/18/2009	5/24/2010	2009
2:09-cv-00555-RCJ-RJJ	Castillo v. Financial Guaranty Financial Corporation et al.	3/23/2009	8/18/2009	2009
2:09-cv-00630-LDG-LRL	Rioja, Jr. et al v. Linear Financial LP et al.	4/6/2009	7/8/2009	2009
2:09-cv-00671-PMP-GWF	Baroi et al v. Platinum Condominium Development, LLC et al.	4/14/2009	4/15/2013	2009
2:09-cv-00690-RLH-PAL	Penrod v. Atwood	4/16/2009	8/9/2010	2009
2:09-cv-00749-JCM-RJJ	Preciado et al v. Wachovia Mortgage et al.	4/26/2009	6/17/2009	2009
2:09-cv-00759-NA-NA	NOT USED	4/28/2009	4/29/2009	2009
2:09-cv-00761-KJD-RJJ	Elegue v. Fremont Reorganizing Corporation et al.	4/28/2009	1/19/2011	2009
2:09-cv-00900-LDG-PAL	Galvez-Sandoval v. National Default Servicing Corp. et al.	5/19/2009	9/17/2009	2009
2:09-cv-00957-KJD-PAL	Goodman et al v. Platinum Condominium Development, LLC et al.	5/27/2009	8/2/2012	2009
2:09-cv-00981-LDG-LRL	Oree v. Homeq Servicing Corporation et al.	5/31/2009	4/13/2010	2009
2:09-cv-01002-PMP-LRL	Barnes v. Aurora Loan Services et al.	6/1/2009	7/30/2009	2009
2:09-cv-01118-JCM-LRL	Baretinicich v. MIT Lending et al.	6/21/2009	7/27/2009	2009
2:09-cv-01193-LRH-LRL	Avila v. American Brokers Conduit et al.	6/30/2009	8/11/2009	2009
2:09-cv-01215-NA-NA	NOT USED	7/5/2009	7/6/2009	2009

Compilation of U.S. District Court, District of Nevada, cases filed between January 1, 2009 and June 20, 2016, with filing code 290, "Real Property: Other"				
Case No.	**Case Name**	**filed**	**closed**	**filing year**
2:09-cv-01218-PMP-PAL	Benito et al v. Indymac Mortgage Services	7/5/2009	9/14/2010	2009
2:09-cv-01256-JCM-LRL	Thomas v. U.S. Bank Corporation	7/12/2009	8/24/2009	2009
2:09-cv-01277-GMN-VCF	New Century Bank v Tam Drive, LLC	7/15/2009	4/16/2012	2009
2:09-cv-01278-PMP-RJJ	New Century Bank v Gull Brothers South Beach, LLC	7/15/2009	12/30/2010	2009
2:09-cv-01280-RCJ-LRL	New Century Bank v. Gull Las Vegas, LLC	7/15/2009	4/26/2010	2009
2:09-cv-01281-LDG-PAL	New Century Bank v. AG Las Vegas, LLC et al.	7/15/2009	5/3/2011	2009
2:09-cv-01297-KJD-LRL	Cheyenne Pointe Holdings, LLC v. Gen X Clothing, Inc. et al.	7/16/2009	11/3/2009	2009
2:09-cv-01299-APG-GWF	City Parkway V, Inc. et al v. Union Pacific Railroad Company	7/16/2009	11/6/2015	2009
2:09-cv-01301-PMP-GWF	Benson et al v. Platinum Condminium Development LLC et al.	7/16/2009	4/30/2013	2009
2:09-cv-01337-RLH-PAL	Selda v. Countrywide Home Loans	7/22/2009	10/28/2009	2009
2:09-cv-01456-LDG-RJJ	Bohn et al v. Countrywide Home Loans Inc. et al.	8/5/2009	3/26/2010	2009
2:09-cv-01521-KJD-GWF	Sneath v. GMAC Mortgage et al.	8/12/2009	9/27/2010	2009
2:09-cv-01527-ECR-LRL	Lehman RE, LTD. v. Lusardi Construction Co. et al.	8/13/2009	7/29/2010	2009
2:09-cv-01585-RCJ-LRL	Zamora-Prado v. Wells Fargo Bank, N.A. et al.	8/20/2009	10/26/2009	2009
2:09-cv-01622-JCM-RJJ	Union Pacific Railroad Company v. Guard Dog Heaven, LLC	8/25/2009	8/8/2012	2009
2:09-cv-01745-LDG-GWF	Zeletes v. BankUnited FSB et al.	9/2/2009	12/28/2009	2009
2:09-cv-01771-MMD-GWF	Deutsch Bank National Trust Company v. Anderson	9/3/2009	4/1/2010	2009
2:09-cv-01847-RCJ-RJJ	Sicam et al v. Flagstar Bank, FSB et al.	9/17/2009	8/4/2010	2009
2:09-cv-01880-LRH-RJJ	Farthing v. Palms Place, LLC	9/24/2009	3/23/2010	2009
2:09-cv-01884-GMN-PAL	Saggese v. Chase Home Finance, LLC et al.	9/24/2009	12/22/2010	2009
2:09-cv-01900-RCJ-NJK	Federal Deposit Insurance Corporation v. Matt Construction, LLC et al.	9/29/2009	1/7/2013	2009
2:09-cv-01904	NOT USED	9/29/2009	9/30/2009	2009
2:09-cv-01905-RLH-RJJ	Tubin v. Washington Mutual Savings Bank et al.	9/29/2009	4/4/2012	2009
2:09-cv-02015-RLH-PAL	Bevers v. D.R. Horton, Inc. et al.	10/15/2009	1/26/2011	2009
2:09-cv-02025-KJD-RJJ	Harvey v. California Reconveyance Company et al.	10/18/2009	7/14/2010	2009
2:09-cv-02030-KJD-PAL	Pena v. Countrywide Home Loans, Inc et al.	10/18/2009	5/2/2010	2009
2:09-cv-02105-PMP-VCF	Henry et al v. Lennar Corporation et al.	11/1/2009	1/8/2013	2009
2:09-cv-02111-PMP-PAL	Aquino et al v. Countrywide Home Loans Inc. et al.	11/2/2009	12/1/2009	2009
2:09-cv-02177	NOT USED	11/12/2009	11/13/2009	2009
2:09-cv-02183-PMP-PAL	Chicago Title Insurance Company v. Guard Dog Heaven LLC	11/12/2009	12/28/2009	2009
2:09-cv-02189	NOT USED	11/15/2009	11/16/2009	2009

Compilation of U.S. District Court, District of Nevada, cases filed between January 1, 2009 and June 20, 2016, with filing code 290, "Real Property: Other"				
Case No.	**Case Name**	**filed**	**closed**	**filing year**
2:09-cv-02191-RLH-RJJ	Morse et al v. Phoenix Renovation Corp. et al.	11/17/2009	8/10/2011	2009
2:09-cv-02271-GMN-PAL	Neiswonger v. Federal Trade Commission et al.	11/29/2009	7/23/2010	2009
2:09-cv-02333-KJD-GWF	Demarco et al v. BAC Home Loans Servicing, et al.	12/8/2009	6/16/2011	2009
2:09-cv-02407-JCM-LRL	Lopez v. Midbar Condominium Develepment, LP et al.	12/21/2009	4/4/2011	2009
2:09-cv-02430	NOT USED	12/28/2009	12/29/2009	2009
2:09-cv-02431	NOT USED	12/28/2009	12/29/2009	2009
2:10-cv-00027-RCJ-RJJ	Velazquez et al v. Aurora Loan Services et al.	1/7/2010	5/25/2010	2010
2:10-cv-00095-LRH-PAL	Weinstein v. Village Oaks Mortgage LLC et al.	1/21/2010	5/12/2010	2010
2:10-cv-00096-PMP-LRL	Lozano v. Lenzi et al.	1/21/2010	4/4/2010	2010
2:10-cv-00116-PMP-RJJ	Vazquez et al v. Bank of America Home Loans et al.	1/25/2010	8/22/2010	2010
2:10-cv-00183-GMN-RJJ	Bank of America, National Association v. Chaddah	2/9/2010	2/2/2011	2010
2:10-cv-00208-KJD-PAL	Sterling Savings Bank v. Blum et al.	2/16/2010	6/2/2010	2010
2:10-cv-00286-JCM-LRL	Cooley v. JPMorgan Chase Bank, N.A.	3/1/2010	5/16/2010	2010
2:10-cv-00298-KJD-RJJ	Sphouris v. Aurora Loan Services	3/3/2010	2/27/2011	2010
2:10-cv-00300-GMN-LRL	Simon v. Bank Of America, N.A. et al.	3/3/2010	6/22/2010	2010
2:10-cv-00313-PMP-LRL	Ludlow v. Silver State Financial Services et al.	3/7/2010	4/26/2011	2010
2:10-cv-00321-JCM-GWF	Robinson et al v. Ocwen Loan Servicing, LLC et al.	3/8/2010	10/22/2010	2010
2:10-cv-00336-JCM-PAL	Josephson et al v. EMC Mortgage Corporation et al.	3/9/2010	10/10/2011	2010
2:10-cv-00372-KJD-PAL	Bukhari v. American Home Mortgage Acceptance, Inc. et al.	3/16/2010	4/5/2010	2010
2:10-cv-00373-GMN-VCF	Bukhari v. Direct Mortgage Corp et al.	3/16/2010	1/8/2012	2010
2:10-cv-00374-GMN-PAL	Bernstein v. Noteworld, LLC et al.	3/16/2010	1/19/2012	2010
2:10-cv-00476-RLH-PAL	Hasan v. Ocwen Loan Servicing LLC	4/5/2010	7/11/2010	2010
2:10-cv-00478-RCJ-PAL	Weinstein v. Shea Mortgage et al.	4/5/2010	5/23/2010	2010
2:10-cv-00487-PMP-PAL	Weinstein v. American Residential Funding, Inc. et al.	4/6/2010	6/1/2010	2010
2:10-cv-00492-RLH-PAL	Cotton v. City Of Las Vegas et al.	4/7/2010	8/3/2010	2010
2:10-cv-00510-GMN-NJK	Copper Sands Homeowners Association, Inc. v. DFT, Inc.	4/8/2010	2/3/2016	2010
2:10-cv-00648-GMN-RJJ	CitiMortgage Inc v Brown et al.	5/4/2010	10/12/2010	2010
2:10-cv-00677-JCM-LRL	Brooks v. Power Default Services, Inc. et al.	5/9/2010	7/28/2010	2010
2:10-cv-00916-KJD-GWF	Katich et al v. Bank of America Home Loans et al.	6/13/2010	4/13/2011	2010
2:10-cv-00947-KJD-LRL	Sena et al v. Bank of America Home Loans et al.	6/16/2010	3/29/2011	2010
2:10-cv-00948-LRH-RJJ	Cartagena et al v. Mortgage Source Home Loans et al.	6/16/2010	7/22/2010	2010

Compilation of U.S. District Court, District of Nevada, cases filed between January 1, 2009 and June 20, 2016, with filing code 290, "Real Property: Other"				
Case No.	**Case Name**	**filed**	**closed**	**filing year**
2:10-cv-00978	NOT USED	6/20/2010	6/21/2010	2010
2:10-cv-00986-MMD-VCF	Integrated Financial Associates, Inc. v. Blanchard et al.	6/21/2010	4/8/2013	2010
2:10-cv-00991-MMD-VCF	Integrated Financial Associates, Inc. v. Blanchard et al.	6/22/2010	4/8/2013	2010
2:10-cv-00992-MMD-VCF	Integrated Financial Associates, Inc. v. Blanchard et al.	6/22/2010	4/8/2013	2010
2:10-cv-00993-MMD-VCF	Integrated Financial Associates, Inc. v. Blanchard et al.	6/22/2010	4/8/2013	2010
2:10-cv-00994-MMD-VCF	Integrated Financial Associates, Inc. v. Blanchard et al.	6/22/2010	4/8/2013	2010
2:10-cv-01003-PMP-RJJ	Johnston v. Indymac Bank FSB et al.	6/23/2010	8/24/2010	2010
2:10-cv-01014-JCM-VCF	Sparks et al v. American Home Mortgage Servicing, Inc.	6/23/2010	3/12/2013	2010
2:10-cv-01125-JCM-LRL	Weinstein v. Preferred Home Mortgage Company et al.	7/7/2010	3/1/2011	2010
2:10-cv-01133-JCM-GWF	Abrea et al v. Bank of America Corporation et al.	7/8/2010	3/16/2011	2010
2:10-cv-01198-KJD-VCF	United States v. Kahre et al.	7/19/2010	7/10/2012	2010
2:10-cv-01206-PMP-PAL	Colombo v. Bank of America Corporation, N.A. et al.	7/19/2010	2/28/2011	2010
2:10-cv-01207-LDG-LRL	Ritter v. Shepro et al.	7/20/2010	9/21/2010	2010
2:10-cv-01262-GMN-RJJ	Ellis v. Rotella et al.	7/27/2010	1/4/2011	2010
2:10-cv-01303-PMP-GWF	Federal Home Loan Mortgage Corporation v. Lantana-Fountains, LLC et al.	8/1/2010	1/14/2011	2010
2:10-cv-01416-ECR-RJJ	First Memphis Company LLC v. Mary Crest Partners III, LLC	8/19/2010	3/19/2012	2010
2:10-cv-01438	NOT USED	8/24/2010	8/25/2010	2010
2:10-cv-01463-KJD-LRL	Aaron P Brooks, et al v. Lehman Brothers Holdings, Inc., et al.	8/27/2010	3/3/2011	2010
2:10-cv-01473-JCM-LRL	Yuzon et al v. Indymac Bank, F.S.B. et al.	8/29/2010	12/1/2010	2010
2:10-cv-01474	NOT USED	8/29/2010	8/30/2010	2010
2:10-cv-01514-PMP-RJJ	Boffelli et al v. EMC Mortgage Corporation et al.	9/4/2010	12/22/2011	2010
2:10-cv-01515-LDG-PAL	Thompson v. New Line Mortgage et al.	9/4/2010	8/28/2011	2010
2:10-cv-01530	NOT USED	9/8/2010	9/9/2010	2010
2:10-cv-01546-JCM-GWF	Wells Fargo Bank N.A. v. United States of America et al.	9/9/2010	6/9/2013	2010
2:10-cv-01610-KJD-LRL	Brannan v. BAC Home Loan Servicing, LP	9/19/2010	10/26/2010	2010
2:10-cv-01773-RLH-PAL	Carlwood Development, Inc. et al vs USA	8/24/2009	3/21/2011	2009
2:10-cv-01856-JCM-RJJ	Phillip et al v. Qualified West, LLC et al.	10/21/2010	12/18/2011	2010
2:10-cv-01866-RLH-GWF	Gaitan et al v. Bank Of America, N.A. et al.	10/24/2010	2/22/2012	2010
2:10-cv-01907-PMP-LRL	Bonaldi v. BAC Home Loans Servicing, LP a subsidiary of Bank of America, N.A.,	10/28/2010	5/9/2011	2010
2:10-cv-01965-PMP-RJJ	Hennings v Bank of America Loans et al.	11/8/2010	12/5/2010	2010
2:10-cv-02006-RLH-RJJ	Akopian v. Bay Capital Corporation et al.	11/15/2010	2/9/2011	2010

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2:10-cv-02041	NOT USED	11/21/2010	11/23/2010	2010
2:10-cv-02055-RLH-PAL	Reinecke v. Federal National Mortgage Association et al.	11/22/2010	11/7/2011	2010
2:10-cv-02056-GMN-CWH	West v. Bank of America Home Loans et al.	11/22/2010	12/12/2011	2010
2:10-cv-02095-GMN-GWF	Potter et al v. BAC Home Loans Servicing, LP	11/30/2010	6/8/2013	2010
2:10-cv-02252-ECR-GWF	Davila v. BAC Home Loans Servicing, LP	12/27/2010	11/3/2011	2010
2:10-cv-02260-KJD-GWF	Runvee, Inc. v. United States of America	12/29/2010	3/27/2014	2010
2:11-cv-00022-ECR-GWF	Murray et al v. Taylor Bean & Whitaker Mortgage Corporation et al.	1/5/2011	4/12/2012	2011
2:11-cv-00095	NOT USED	1/17/2011	1/18/2011	2011
2:11-cv-00136-RLH-PAL	North v. Bank of America Corporation et al.	1/24/2011	7/28/2011	2011
2:11-cv-00149-JAD-PAL	Pettit v. Pulte Mortgage LLC et al.	1/27/2011	2/11/2014	2011
2:11-cv-00167-JCM-RJJ	BAC Home Loans Servicing LP v. Stonefield II Homeowners Association et al.	1/30/2011	7/21/2011	2011
2:11-cv-00197	NOT USED	2/2/2011	2/3/2011	2011
2:11-cv-00263-RLH-CWH	Feda v. Homeq Servicing et al.	2/16/2011	10/6/2011	2011
2:11-cv-00265-KJD-CWH	Federal Deposit Insurance Corporation v. Adams Family 1993 Trust et al.	2/16/2011	5/15/2013	2011
2:11-cv-00348-PMP-PAL	Charov et al v. Deutsche Bank Trust Company et al.	3/3/2011	5/22/2011	2011
2:11-cv-00366-RLH-RJJ	Satterfield v DB Home Lending LLC	3/8/2011	7/27/2011	2011
2:11-cv-00414-PMP-CWH	Butterfield et al v. Platinum Condominium Development, LLC	3/17/2011	8/18/2013	2011
2:11-cv-00465-JCM-LRL	Turner et al v. Bank of America Home Loans et al.	3/27/2011	6/23/2011	2011
2:11-cv-00517-GMN-RJJ	Teal v. BAC Home Loans Servicing LP et al.	4/6/2011	5/3/2011	2011
2:11-cv-00519-GMN-RJJ	Adair v. Bank of America Home Loans Servicing LP et al.	4/6/2011	1/9/2012	2011
2:11-cv-00523-GMN-PAL	Jordan v. Mountain View Mortgage et al.	4/6/2011	8/22/2012	2011
2:11-cv-00527-KJD-RJJ	Porter v. Federal National Mortgage Association	4/7/2011	1/22/2012	2011
2:11-cv-00529-GMN-RJJ	Reyes et al v. Countrywide Home Loans, Inc. et al.	4/7/2011	6/8/2011	2011
2:11-cv-00531-GMN-NJK	Brooks et al v. Lehman Brothers Holdings Inc. et al.	4/7/2011	12/3/2013	2011
2:11-cv-00557-JCM-CWH	Hine v. Bank of America N.A. et al.	4/12/2011	8/21/2012	2011
2:11-cv-00577-KJD-CWH	HSBC Bank USA, NA v. Frederick et al.	4/14/2011	11/2/2011	2011
2:11-cv-00645-JCM-CWH	Gauthier v. Universal American Mortgage Company, LLC et al.	4/24/2011	8/29/2012	2011
2:11-cv-00648-GMN-CWH	Banks v. The Cooper Castle Law Firm, LLP, et al.	4/24/2011	8/26/2014	2011
2:11-cv-00661-JCM-GWF	Parsons et al v. Bank of America Corporation et al.	4/26/2011	5/12/2011	2011
2:11-cv-00686-KJD-CWH	Davenport v. Bank Of America, N.A. et al.	4/28/2011	10/12/2011	2011
2:11-cv-00725-JCM-GWF	Bailey v. Wells Fargo Bank	5/5/2011	8/7/2011	2011

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Case No.	**Case Name**	**filed**	**closed**	**filing year**
2:11-cv-00740	NOT USED	5/8/2011	5/9/2011	2011
2:11-cv-00770-KJD-CWH	Stent et al v. Bank of America et al.	5/11/2011	3/7/2012	2011
2:11-cv-00777-KJD-GWF	Willis et al v. Federal National Mortgage Association	5/12/2011	11/17/2011	2011
2:11-cv-00778-PMP-GWF	Willis et al v. Hafen et al.	5/12/2011	6/27/2011	2011
2:11-cv-00842-PMP-PAL	D'Haenens v. Bank Of America, N.A. et al.	5/23/2011	6/27/2011	2011
2:11-cv-00845-PMP-RJJ	Hopper v. Bank of America et al.	5/23/2011	3/25/2012	2011
2:11-cv-00890-GMN-RJJ	DLJ Mortgage Capital, Inc. v. Rodis	6/1/2011	8/28/2011	2011
2:11-cv-00911-PMP-CWH	Duross v. Bank of America, N.A. et al.	6/2/2011	2/24/2013	2011
2:11-cv-00944-PMP-PAL	City Of North Las Vegas v. Clark County Nevada et al.	6/8/2011	7/8/2012	2011
2:11-cv-00953-GMN-PAL	Griffin v. Countrywide Home Loan Servicing LP et al.	6/9/2011	6/4/2012	2011
2:11-cv-00966-PMP-CWH	Ortiz v. BAC Home Loans Servicing, LP et al.	6/12/2011	6/14/2012	2011
2:11-cv-00998-PMP-CWH	First Bank v. Church at South Las Vegas	6/16/2011	1/10/2013	2011
2:11-cv-01064	NOT USED	6/27/2011	6/30/2011	2011
2:11-cv-01077-PMP-CWH	Ralph Korte Revocable Indenture of Trust v. D & R Partners, LLC	6/28/2011	4/29/2012	2011
2:11-cv-01295-JCM-RJJ	Davenport v. Recontrust Company, N.A.	8/10/2011	9/13/2011	2011
2:11-cv-01367-KJD-CWH	Reyes v. Bank of America, N.A. et al.	8/23/2011	12/4/2012	2011
2:11-cv-01403-MMD-GWF	Freedom Mortgage Corporation v. Trovare Homeowners Association et al.	8/30/2011		2011
2:11-cv-01420-KJD-GWF	Bishara v. BAC Home Loans et al.	9/1/2011	9/18/2012	2011
2:11-cv-01459-JCM-GWF	Domingo et al v. BAC Home Loans Servicing, LP et al.	9/8/2011	10/18/2011	2011
2:11-cv-01521-KJD-CWH	Marshall v. All The World et al.	9/21/2011	10/20/2011	2011
2:11-cv-01583-JCM-PAL	Lee v. BAC Home Loans Servicing, LP et al.	9/28/2011	11/17/2011	2011
2:11-cv-01586-PMP-PAL	Hansen et al v. Countrywide Financial Corporation et al.	9/29/2011	9/25/2013	2011
2:11-cv-01642	NOT USED	10/10/2011	10/11/2011	2011
2:11-cv-01727-KJD-RJJ	Chattam v. BAC Home Loan Servicing LP	10/24/2011	10/8/2012	2011
2:11-cv-01880-KJD-CWH	Joson v. Mortgage Electronic Registration Systems, Inc. et al.	11/20/2011	12/28/2011	2011
2:11-cv-01913-JCM-CWH	Manjarrez v. Federal National Mortgage Association et al.	11/28/2011	11/4/2012	2011
2:11-cv-01924-MMD-PAL	Engelbrecht et al v. Realty Mortgage Corp. et al.	11/30/2011	6/5/2012	2011
2:11-cv-01927-PMP-PAL	Hendrickson et al v. Wells Fargo Bank, N.A. et al.	11/30/2011	12/4/2012	2011
2:11-cv-01936-JCM-NJK	Federal Deposit Insurance Corporation v. 26 Flamingo, LLC et al.	12/4/2011	10/17/2013	2011
2:11-cv-02009-GMN-GWF	Jing Lin et al vs BAC Home Loans Servicing LP, et al.	12/14/2011	6/7/2013	2011
2:11-cv-02020-PMP-PAL	Shlesinger v. Bank of America, et al.	12/15/2011	5/2/2012	2011

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2:11-cv-02036-MMD-PAL	Firestone v. BAC Home Loans Servicing, LP et al.	12/18/2011	3/28/2013	2011
2:11-cv-02066-KJD-GWF	Bellon v. Bank of America Corporation et al.	12/20/2011	4/25/2012	2011
2:12-cv-00028-JCM-NJK	Marrocco v. Hill et al.	1/8/2012	11/12/2013	2012
2:12-cv-00120-JCM-RJJ	Bella Homes, LLC v. Quality Loan Service, Corp. et al.	1/22/2012	2/25/2012	2012
2:12-cv-00151-KJD-GWF	Lopez v. America's Servicing Company et al.	1/29/2012	2/29/2012	2012
2:12-cv-00154-LDG-GWF	Yballe v. Community Lending, Inc. et al.	1/29/2012	2/22/2012	2012
2:12-cv-00165-LDG-RJJ	Liu et al v. America Home Loans, Inc. et al.	1/31/2012	11/28/2012	2012
2:12-cv-00170-GMN-RJJ	Thomas Family Trust et al v Ocwen Loan Servicing Inc et al.	1/31/2012	4/4/2012	2012
2:12-cv-00186-MMD-CWH	JP Morgan Chase Bank, N.A. v. Paikai et al.	2/2/2012	7/24/2012	2012
2:12-cv-00190-MMD-CWH	Gill v. National Default Servicing Corp. et al.	2/5/2012	11/26/2013	2012
2:12-cv-00200-JCM-RJJ	Valdez v. Countrywide Home Loans, Inc. et al.	2/7/2012	7/13/2012	2012
2:12-cv-00201-GMN-PAL	Quimson et al v. CTX Mortgage Company, LLC et al.	2/7/2012	4/9/2012	2012
2:12-cv-00254-GMN-CWH	Wells Fargo Bank, N.A. v. Paraguya et al.	2/16/2012	8/15/2012	2012
2:12-cv-00255-JCM-PAL	Federal Home Loan Mortgage Corp. v. Lorenzo	2/16/2012	6/26/2012	2012
2:12-cv-00256-GMN-GWF	Angeles v. Wells Fargo Bank, N.A. et al.	2/16/2012	8/25/2014	2012
2:12-cv-00257-GMN-PAL	Brickel v. American Mortgage Network, Inc. et al.	2/16/2012	7/31/2012	2012
2:12-cv-00258-GMN-CWH	Pinzon v. People's Choice Home Loan, Inc. et al.	2/16/2012	7/31/2012	2012
2:12-cv-00259-KJD-GWF	Espinosa et al v. Meridias Capital, Inc. et al.	2/16/2012	7/29/2012	2012
2:12-cv-00260-GMN-VCF	Agustin et al v. Option One Mortgage Corporation et al.	2/16/2012	7/30/2012	2012
2:12-cv-00269-JCM-GWF	Horner v. Mortgage Electronic Registration Systems, Inc. et al.	2/19/2012	6/4/2012	2012
2:12-cv-00279-JCM-PAL	Coleman v. Bank of America Corporation	2/21/2012	9/26/2013	2012
2:12-cv-00365-KJD-GWF	Bernabe v. GMAC Mortgage Corporation	3/5/2012	11/14/2012	2012
2:12-cv-00366-KJD-PAL	Javate et al v. Nevada Federal Credit Union et al.	3/5/2012	8/13/2012	2012
2:12-cv-00385-KJD-GWF	Aboulafia v. Mortgage Electronic Registration Systems, Inc. et al.	3/7/2012	10/3/2012	2012
2:12-cv-00389-JCM-PAL	Aboulafia v. Mortgage Electronic Registration Systems, Inc. et al.	3/8/2012	8/2/2012	2012
2:12-cv-00390-MMD-CWH	Aboulafia v. Mortgage Electronic Registration Systems, Inc. et al.	3/8/2012	11/5/2012	2012
2:12-cv-00405-LDG-PAL	Caverte v. Countrywide Home Loans, Inc. et al.	3/11/2012	11/1/2013	2012
2:12-cv-00406-KJD-PAL	Viloria et al v. Premium Capital Funding LLC	3/11/2012	9/20/2012	2012
2:12-cv-00415-KJD-GWF	Silvestre v. BAC Home Loans Servicing, LP	3/12/2012	12/13/2012	2012
2:12-cv-00421-JCM-CWH	Mackovska v. Recontrust Company, N.A. et al.	3/13/2012	5/16/2013	2012
2:12-cv-00493-JCM-PAL	Pattison et al v. Silver State Financial Services, Inc. et al.	3/22/2012	6/26/2012	2012

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2:12-cv-00525-JCM-RJJ	Javate et al v. Universal American Mortgage Company, LLC et al.	3/28/2012	9/11/2012	2012
2:12-cv-00541-KJD-VCF	Wellington v. Mortgage Electronic Registrations Systems, Inc. et al.	4/1/2012	10/30/2012	2012
2:12-cv-00580-GMN-VCF	Parubrub v. National Default Servicing Corporation et al.	4/9/2012	8/5/2012	2012
2:12-cv-00582	NOT USED	4/9/2012	4/10/2012	2012
2:12-cv-00585-KJD-CWH	Reyes v. Wells Fargo Bank et al.	4/9/2012	1/6/2013	2012
2:12-cv-00701-GMN-CWH	Von Arnswaldt et al v. PHH Mortgage Corporation et al.	4/26/2012	10/14/2012	2012
2:12-cv-00703-JCM-RJJ	Barawid v. American Home Mortgage et al.	4/26/2012	10/3/2012	2012
2:12-cv-00707-APG-CWH	Barawid et al v. Countrywide Bank, FSB et al.	4/26/2012	5/28/2013	2012
2:12-cv-00756-JCM-CWH	Curtis v. Litton Loan Servicing, LP et al.	5/6/2012	7/24/2012	2012
2:12-cv-00801-JCM-CWH	Lopez v. Bank of America, N.A. et al.	5/13/2012	4/9/2013	2012
2:12-cv-00804-LDG-GWF	United States of America v. Bundy	5/13/2012	7/8/2013	2012
2:12-cv-00806-PMP-GWF	Collins et al v. Platinum Condominium Development, LLC et al.	5/13/2012	1/27/2013	2012
2:12-cv-00852-JCM-RJJ	Blanford v. SunTrust Mortgage, Inc.	5/17/2012	9/30/2012	2012
2:12-cv-00855-JCM-CWH	Matsumoto et al vs. Transnational Financial Network, Inc. et al.	5/20/2012	10/29/2012	2012
2:12-cv-00859-MMD-CWH	Owens et al v. Deutsche Bank National Trust Company et al.	5/20/2012	10/17/2012	2012
2:12-cv-00860	NOT USED	5/20/2012	5/21/2012	2012
2:12-cv-00964	NOT USED	6/5/2012	6/7/2012	2012
2:12-cv-00967-KJD-VCF	Fegert v. JPMorgan Chase Bank, N.A.	6/5/2012	10/17/2013	2012
2:12-cv-00969-JCM-RJJ	Amar et al v. LSREF2 APEX 2, LLC et al.	6/6/2012	11/7/2012	2012
2:12-cv-00994-KJD-NJK	Silvas et al v. Bank of America Home Loans et al.	6/11/2012	1/23/2013	2012
2:12-cv-01002-LDG-CWH	Terra Bella Blue Properties, LLC v. Great Western Bank	6/12/2012	3/12/2013	2012
2:12-cv-01040-GMN-NJK	Tello v. Bank Of America, N.A. et al.	6/18/2012	1/2/2014	2012
2:12-cv-01143-KJD-CWH	LSREF2 APEX 2, LLC v. Miller	6/28/2012	10/29/2012	2012
2:12-cv-01147-LDG-CWH	LSREF2 APEX 2, LLC v. Cichon et al.	6/28/2012	9/25/2013	2012
2:12-cv-01149-GMN-VCF	LSREF2 APEX 2, LLC v. Gutierrez et al.	6/28/2012	3/25/2014	2012
2:12-cv-01253-JCM-GWF	Roundy et al v. Bank Of America, N.A. et al.	7/15/2012	2/12/2013	2012
2:12-cv-01307-RCJ-GWF	Ognibene v. Lagori et al.	7/24/2012	1/6/2015	2012
2:12-cv-01366-GMN-GWF	Ranchez et al v. HSBC Bank USA, National Association et al.	7/31/2012	2/19/2014	2012
2:12-cv-01467	Curitti et al v. JPMorgan Chase Bank, N.A. et al.	8/16/2012	8/16/2012	2012
2:12-cv-01476-LDG-VCF	Xanterra Parks & Resorts, Inc. v. The Hood Cleaning Company, Inc. et al.	8/19/2012	7/7/2014	2012
2:12-cv-01521-RCJ-CWH	Wells Fargo Bank, N.A. v. Elefante et al.	8/26/2012	1/9/2014	2012

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2:12-cv-01524-MMD-PAL	NNN Siena Office Park I 2, LLC et al v. Wachovia Bank National Association et al.	8/26/2012	9/8/2014	2012
2:12-cv-01678-MMD-GWF	Las Vegas Development Group, LLC v. Sierra Pacific Mortgage Company, Inc.	9/23/2012	12/18/2012	2012
2:12-cv-01685-APG-VCF	Emory v. CitiMortgage, Inc.	9/24/2012	3/20/2014	2012
2:12-cv-01694-GMN-PAL	Turpin et al v. Bank of America, N.A.	9/25/2012	11/4/2013	2012
2:12-cv-01798-GMN-CWH	Brown v. Chapel Funding, LLC	10/11/2012	1/7/2013	2012
2:12-cv-01976-RCJ-GWF	Hansen v. Federal National Mortgage Association	11/13/2012	4/1/2013	2012
2:12-cv-01999-GMN-PAL	Nance v. Green Point Mortgage et al.	11/18/2012	9/19/2013	2012
2:12-cv-02013-JCM-CWH	Holmes v. Countrywide Home Loans et al.	11/20/2012	4/24/2013	2012
2:12-cv-02115-JCM-PAL	Trilogy Land Holdings, LLC et al v. Kennedy Funding, Inc.	12/11/2012	12/17/2012	2012
2:13-cv-00140	NOT USED	1/24/2013	1/25/2013	2013
2:13-cv-00164-RCJ-NJK	Bayview Loan Servicing, LLC v. Alessi & Koenig, LLC et al.	1/29/2013	6/5/2013	2013
2:13-cv-00188-APG-CWH	Starks v Barber, et al.	2/4/2013	7/14/2013	2013
2:13-cv-00192	Jordan et al v. Bank of America, N.A. et al.	2/4/2013	2/5/2013	2013
2:13-cv-00196-MMD-CWH	Hidalgo et al v. National Default Servicing Corporation et al.	2/5/2013	2/26/2013	2013
2:13-cv-00269-PMP-PAL	Markey v. JP Morgan Chase Bank, N.A. et al.	2/18/2013	4/15/2013	2013
2:13-cv-00299-JCM-GWF	Santivanes v. Bank of New York Mellon et al.	2/24/2013	5/16/2013	2013
2:13-cv-00323-JCM-NJK	Hernandez v. Saxon Mortgage Services et al.	2/25/2013	4/25/2014	2013
2:13-cv-00363-GMN-NJK	Torres v. Deutsche Bank AG et al.	3/4/2013	7/18/2013	2013
2:13-cv-00477-APG-VCF	Estrada v. Goldman Sachs et al.	3/19/2013	2/2/2014	2013
2:13-cv-00478-JCM-PAL	Pacchiega v. Federal Home Loan Mortgage Corp. et al.	3/19/2013	7/4/2013	2013
2:13-cv-00503-APG-PAL	US Bank v. Harkey	3/21/2013	10/7/2013	2013
2:13-cv-00523-RCJ-PAL	Billy Casper Golf, LLC v. Clark County, Nevada	3/26/2013	7/8/2013	2013
2:13-cv-00544-JCM-VCF	Weeping Hollow Avenue Trust v. Spencer et al.	3/28/2013	5/23/2013	2013
2:13-cv-00554-JCM-VCF	Torres v. Federal National Mortgage Association	3/31/2013	7/22/2013	2013
2:13-cv-00569-GMN-GWF	Avila v. Federal National Mortgage Association	4/2/2013	11/26/2013	2013
2:13-cv-00572-JCM-PAL	Abbott v. Bank of New York Mellon et al.	4/2/2013	8/7/2013	2013
2:13-cv-00575-JCM-GWF	Hernandez v. Federal National Mortgage Association	4/3/2013	6/10/2013	2013
2:13-cv-00640-GMN-GWF	Sandridge et al v. Universal Mortgage Corporation et al.	4/15/2013	4/17/2014	2013
2:13-cv-00669-JCM-PAL	Najera v. Federal National Mortgage Association	4/21/2013	6/27/2013	2013
2:13-cv-00680-LDG-VCF	Kal-Mor-USA, LLC v. Bank of America, NA et al.	4/21/2013		2013
2:13-cv-00682-GMN-PAL	Kal-Mor-USA, LLC v. US Bank et al.	4/21/2013		2013

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Case No.	**Case Name**	**filed**	**closed**	**filing year**
2:13-cv-00687-RCJ-CWH	Beebe v. Federal Home Mortgage Corporation	4/22/2013	9/16/2013	2013
2:13-cv-00703-RCJ-PAL	Carmona-Licon v. Federal Home Loan Mortgage Corporation et al.	4/23/2013	9/15/2013	2013
2:13-cv-00705-KJD-NJK	Burd v. Bank of New York Mellon	4/24/2013	9/16/2013	2013
2:13-cv-00706-GMN-NJK	Ramirez v. Federal Home Loan Mortgage Corporation	4/24/2013	6/18/2013	2013
2:13-cv-00722-JAD-PAL	BAC Home Loan Servicing, LP v. Advanced Funding Strategies, Inc.	4/25/2013	1/7/2015	2013
2:13-cv-00885-JCM-GWF	Premier One Holdings, Inc. v. Bank of America NA et al.	5/19/2013	8/8/2013	2013
2:13-cv-01011-JCM-GWF	Salvador v. National Default Servicing Corporation et al.	6/5/2013		2013
2:13-cv-01033-GMN-NJK	LN Management LLC Series 5884 Greenery View v. Weimer et al.	6/10/2013	3/3/2014	2013
2:13-cv-01110-GMN-VCF	Premier One Holdings, Inc. v. JPMorgan Chase Bank, N.A. et al.	6/23/2013	3/9/2014	2013
2:13-cv-01153-APG-PAL	SFR Investments Pool 1, LLC v. Wells Fargo Bank, N.A. et al.	6/27/2013	3/24/2016	2013
2:13-cv-01174-MMD-VCF	Premier One Holdings, Inc. v. BAC Home Loans Servicing LP et al.	7/2/2013	3/14/2014	2013
2:13-cv-01200-LDG-PAL	LN Management LLC Series 5204 Painted Sands v. Haugland et al.	7/8/2013		2013
2:13-cv-01202-APG-PAL	Wagenaar et al v. Robison et al.	7/8/2013	10/23/2014	2013
2:13-cv-01220-GMN-CWH	8457 Amherst Valley Trust v. Wells Fargo Bank, N.A. et al.	7/10/2013	3/6/2014	2013
2:13-cv-01221-GMN-NJK	Bank of America, National Association v. One Queensridge Place Homeowners' Association, Inc.	7/10/2013		2013
2:13-cv-01231-RCJ-GWF	Wells Fargo Bank, N.A. v. SFR Investments Pool 1, LLC	7/10/2013		2013
2:13-cv-01241-RCJ-PAL	Nationstar Mortgage, LLC v. Rob and Robbie, LLC	7/11/2013		2013
2:13-cv-01249-APG-VCF	JPMorgan Chase, N.A. v. Las Vegas Development Group LLC	7/14/2013	9/1/2014	2013
2:13-cv-01280-JCM-PAL	Good et al v. BAC Home Loan Servicing et al.	7/18/2013	9/30/2013	2013
2:13-cv-01288-APG-GWF	Quiroz v. U.S. Bank National Association	7/18/2013	3/19/2014	2013
2:13-cv-01301-APG-VCF	Saticoy Bay LLC Series 227 Big Horn v. JPMorgan Chase Bank N.A. et al.	7/22/2013	4/14/2016	2013
2:13-cv-01307-JCM-PAL	Zzyzx 2 v. Wells Fargo Bank, N.A. et al.	7/22/2013	3/24/2016	2013
2:13-cv-01325-MMD-GWF	Wells Fargo, N.A. v. Timberlake Street and Landscape Maintenance Association et al.	7/24/2013	6/17/2014	2013
2:13-cv-01327-APG-NJK	Perez v. Federal National Mortgage Association	7/24/2013	12/11/2013	2013
2:13-cv-01328-APG-CWH	Federal National Mortgage Association v. Canyon Willow Owners Association et al.	7/24/2013	9/10/2015	2013
2:13-cv-01339-JAD-VCF	Points West Financial Group SPE, LLC v. First 100 LLC	7/25/2013	9/19/2013	2013
2:13-cv-01349-GMN-NJK	Jauregui-Arbayo v. Bank of America, N.A.	7/29/2013	9/17/2013	2013
2:13-cv-01375-JCM-PAL	Wells Fargo Bank N.A. v. SFR Investments Pool 1 LLC,	8/4/2013	8/18/2014	2013
2:13-cv-01418-JCM-NJK	JP Morgan Chase Bank, N.A. v. Underwood Partners LLC	8/7/2013	4/22/2014	2013

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2:13-cv-01420-RCJ-GWF	LN Management, LLC Series 5664 Divot v. Dansker et al.	8/7/2013		2013
2:13-cv-01566-APG-GWF	The Bank of New York Mellon v. Daisy Trust	8/28/2013	11/15/2013	2013
2:13-cv-01589-JCM-VCF	Saticoy Bay LLC v. Flagstar Bank, FSB et al.	8/29/2013	3/16/2016	2013
2:13-cv-01679-GMN-NJK	U.S. Bank, N.A. v. Queen Victoria #20-00104 NV West Servicing LLC	9/12/2013	1/29/2015	2013
2:13-cv-01737-APG-GWF	Glasser v. Blixseth	9/22/2013		2013
2:13-cv-01788-APG-PAL	LN Management LLC Series 2200 Fort Apache 1093 v. Federal National Mortgage Association	9/29/2013	11/23/2015	2013
2:13-cv-01789	NOT USED	9/29/2013	10/1/2013	2013
2:13-cv-01819-JCM-GWF	Bank of America, N.A. v. Arizona Labor Force, Incorporated et al.	10/3/2013		2013
2:13-cv-01845-GMN-GWF	Washington & Sandhill Homeowners Association v. Bank of America, N.A. et al.	10/8/2013	9/25/2014	2013
2:13-cv-01912-GMN-PAL	Park v. U.S. Bank, N.A. et al.	10/16/2013	2/18/2016	2013
2:13-cv-01925-MMD-NJK	Trevino v. Bank of New York Mellon	10/20/2013	11/17/2013	2013
2:13-cv-02026	NOT USED	11/2/2013	11/12/2013	2013
2:13-cv-02041-RFB-PAL	JPMorgan Chase Bank, N.A. v. MEI-GSR Holdings, LLC	11/4/2013	6/30/2015	2013
2:13-cv-02060-GMN-GWF	Koronik v. Ocwen Loan Servicing LLC et al.	11/6/2013		2013
2:13-cv-02066-APG-CWH	JPMorgan Chase Bank, National Association v. SFR Investments Pool 1, LLC	11/7/2013	11/18/2013	2013
2:13-cv-02073-APG-VCF	JPMorgan Chase Bank, N.A. v. Las Vegas Cay Club Homeowners' Association	11/7/2013	11/19/2013	2013
2:13-cv-02089-RFB-NJK	Raymond James Bank, N.A. v. Saticoy Bay LLC Series 2918 Currant	11/12/2013		2013
2:13-cv-02093-APG-PAL	Vix et al v. Agents for International Monetary Fund et al.	11/12/2013	3/24/2014	2013
2:13-cv-02110-RFB-GWF	JPMorgan Chase Bank v. Las Vegas Cay Club Homeowners' Association	11/14/2013	2/16/2015	2013
2:13-cv-02138-LDG-PAL	JP Morgan Chase Bank, NA v. 7290 Sheared Cliff Lane Un 102 Trust	11/18/2013		2013
2:13-cv-02139-GMN-VCF	Olarte v. Peterson	11/18/2013	4/13/2014	2013
2:13-cv-02194-APG-VCF	Las Vegas Development Group, LLC v. Healy et al.	11/25/2013		2013
2:13-cv-02307-GMN-CWH	Asuncion v. Specialized Loan Servicing, Inc. et al.	12/17/2013	8/20/2014	2013
2:13-cv-02331-APG-GWF	Prather v. 3000 Paradise Road, L.L.C.	12/22/2013	6/8/2014	2013
2:14-cv-00022-JAD-PAL	Jaye v. Jaye	1/5/2014	6/3/2014	2014
2:14-cv-00056-JAD-CWH	Martinez v. Internal Revenue Service et al.	1/12/2014	3/16/2015	2014
2:14-cv-00168-GMN-VCF	Platinum Realty and Holdings, LLC v. Larsen et al.	1/28/2014		2014
2:14-cv-00177-RFB-GWF	Harkey v. US Bank, N.A. et al.	1/31/2014		2014
2:14-cv-00335-JCM-GWF	McGee v. CitiMortgage, Inc. et al.	3/3/2014	2/17/2015	2014
2:14-cv-00350-JAD-VCF	Melbostad et al v. City of Cascade, Idaho et al.	3/5/2014	10/20/2014	2014

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2:14-cv-00393-APG-PAL	Nevada New Builds, LLC v. Secretary of Housing and Urban Development, Washington, D.C.	3/16/2014	3/10/2015	2014
2:14-cv-00464-JAD-NJK	Saticoy Bay LLC Series 2605 Cattrack v. Secretary of Housing and Urban Development	3/26/2014	3/18/2015	2014
2:14-cv-00572-RFB-VCF	Morales et al v. Gresytone Nevada, LLC et al.	4/14/2014	3/18/2015	2014
2:14-cv-00719	NOT USED	5/6/2014	5/9/2014	2014
2:14-cv-00746	Macchiarella, et al v. PennyMac Loan Services, LLC et al.	5/12/2014	5/13/2014	2014
2:14-cv-00765-JAD-PAL	Jorissen v. Quality Loan Service	5/14/2014	4/7/2015	2014
2:14-cv-00885-JCM-GWF	Bank of America, N.A. v. Bailey et al.	6/5/2014		2014
2:14-cv-00978-GMN-PAL	Kal-Mor-USA, LLC v. United States Department of Housing and Urban Development	6/17/2014	2/8/2016	2014
2:14-cv-01043-JAD-NJK	Leavitt et al v. Elizarde	6/26/2014	1/20/2016	2014
2:14-cv-01047	NOT USED	6/26/2014	6/30/2014	2014
2:14-cv-01048-GMN-NJK	Cortez v. Merscorp Holdings Inc. et al.	6/26/2014		2014
2:14-cv-01076-GMN-GWF	Platinum Unit-Owners' Association v. Residential Constructors, LLC	6/30/2014	7/27/2015	2014
2:14-cv-01131-APG-VCF	Deutsche Bank National Trust Company v. SFR Investments Pool 1, LLC	7/9/2014		2014
2:14-cv-01177-JCM-VCF	Yeske et al v. Bendetov et al.	7/17/2014	11/13/2014	2014
2:14-cv-01210-LDG-VCF	Fuller Family Trust et al v. Nationstar Mortgage, LLC et al.	7/23/2014		2014
2:14-cv-01266-RFB-GWF	Harkey v. Earl and Eve Beutler Family Trust et al.	7/31/2014		2014
2:14-cv-01279-GMN-VCF	Bonvicin v. Bank of America Corporation et al.	8/4/2014	2/17/2016	2014
2:14-cv-01463-RFB-NJK	Pengilly et al v. Nevada Association Services, Inc. et al.	9/9/2014		2014
2:14-cv-01542-JCM-VCF	Yeske et al v. Bendetov et al.	9/21/2014		2014
2:14-cv-01574-LDG-GWF	Crossen v. Capital One, N.A.	9/24/2014	8/17/2015	2014
2:14-cv-01679-JCM-PAL	Dowers et al v. Nationstar Mortgage LLC et al.	10/12/2014	12/31/2014	2014
2:14-cv-01875-JCM-GWF	Bayview Loan Servicing, LLC v. SFR Investments Pool 1, LLC et al.	11/6/2014		2014
2:14-cv-01928-JAD-NJK	Freedom Mortgage Corporation v. Las Vegas Development Group, LLC et al.	11/18/2014	5/18/2015	2014
2:14-cv-01936-APG-GWF	LN Management LLC Series 7241 Brook Crest v. Jhun et al.	11/19/2014		2014
2:14-cv-01975-KJD-NJK	Saticoy Bay, LLC Series 1702 Empire Mine v. Federal National Mortgage Association et al.	11/25/2014		2014
2:14-cv-02019-JCM-VCF	My Home Now, LLC v. Citibank, N.A.	12/2/2014		2014
2:14-cv-02038-GMN-PAL	Williston Investment Group, LLC v. JP Morgan Chase Bank NA et al.	12/3/2014	11/24/2015	2014

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Case No.	**Case Name**	**filed**	**closed**	**filing year**
2:14-cv-02046-JAD-PAL	Federal National Mortgage Association et al v. SFR Investments Pool 1, LLC et al.	12/4/2014		2014
2:14-cv-02079	NOT USED	12/8/2014	12/16/2014	2014
2:14-cv-02080-RFB-GWF	JPMorgan Chase Bank, N.A. v. SFR Investments Pool 1, LLC, et al.	12/8/2014		2014
2:14-cv-02123-JCM-GWF	1597 Ashfield Valley Trust et al v. Federal National Mortgage Association System et al.	12/14/2014		2014
2:14-cv-02134-LDG-GWF	Emhof v. Nationstar Mortgage LLC et al.	12/15/2014		2014
2:14-cv-02225-MMD-PAL	Salomon v. Federal National Mortgage Association et al.	12/30/2014		2014
2:15-cv-00002-JAD-CWH	Azure Manor/Rancho de Paz Homeowners Association v. U.S. Home Corporation et al.	1/1/2015		2015
2:15-cv-00004-GMN-PAL	U.S. Bank Trust National Association v. Ahlm et al.	1/1/2015	11/30/2015	2015
2:15-cv-00025-JCM-VCF	H&N Properties, LLC v. Quality Loan Service Corporation et al.	1/5/2015	5/13/2015	2015
2:15-cv-00043-GMN-VCF	Skylights LLC v. Byron et al.	1/7/2015		2015
2:15-cv-00064-JAD-PAL	Nationstar Mortgage, LLC et al v. Eldorado Neighborhood Second Homeowners Association et al.	1/11/2015		2015
2:15-cv-00108-RFB-CWH	PNC Bank, National Association v. Starfire Condominium Owners' Association	1/19/2015		2015
2:15-cv-00112-MMD-CWH	LN Management LLC Series 2543 Citrus Garden v. Gelgotas et al.	1/19/2015		2015
2:15-cv-00117-MMD-PAL	U.S. Bank, N.A. v. Emerald Ridge Landscape Maintenance Association et al.	1/19/2015		2015
2:15-cv-00123-JCM-CWH	U.S. Bank, National Association v. Mission Pointe Homeowners Association	1/20/2015		2015
2:15-cv-00125-GMN-NJK	Augusta Investment Management, LLC v. Grunstad et al.	1/21/2015		2015
2:15-cv-00131-JAD-NJK	LN Management LLC Series 5271 Lindell v. Estate of Anne Piacentini et al.	1/21/2015		2015
2:15-cv-00133-APG-PAL	Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC	1/22/2015		2015
2:15-cv-00153-MMD-PAL	CitiMortgage, Inc. v. HOLM International Properties, LLC	1/26/2015	4/29/2015	2015
2:15-cv-00154-JCM-VCF	CitiMortgage, Inc. v. MDGGG Trust	1/26/2015		2015
2:15-cv-00196-APG-GWF	Nationstar Mortgage, LLC v. Club Aliante Homeowners Association et al.	2/3/2015		2015
2:15-cv-00211-RCJ-NJK	My Global Village LLC v. Federal National Mortgage Association et al.	2/4/2015		2015
2:15-cv-00218-KJD-NJK	U.S. Bank, National Association v. SFR Investments Pool I, LLC et al.	2/5/2015		2015
2:15-cv-00226-JAD-GWF	Richard W. Morris, et al, v. Harley et al.	2/8/2015	5/15/2016	2015
2:15-cv-00235-JCM-NJK	Ludlow v. Silver State Financial Services, Inc. et al.	2/9/2015	7/15/2015	2015
2:15-cv-00236-MMD-CWH	Motorola Solutions, Inc. v. Pick et al.	2/9/2015	10/7/2015	2015
2:15-cv-00240-APG-CWH	Rugged Oaks Investment v. Nelson et al.	2/10/2015		2015
2:15-cv-00242-APG-GWF	Barron et al v. The Bank of New York Mellon et al.	2/10/2015		2015

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2:15-cv-00248	NOT USED	2/11/2015	2/13/2015	2015
2:15-cv-00271-JCM-GWF	HOLM International Properties, LLC v. BAC Home Loan Servicing L.P. et al.	2/15/2015	3/19/2015	2015
2:15-cv-00287-APG-GWF	US Bank v. SFR Investments Pool I, LLC.	2/17/2015		2015
2:15-cv-00293-RFB-NJK	Tyrone & In-Ching, LLC v. JPMorgan Chase Bank, N.A. et al.	2/18/2015		2015
2:15-cv-00302-JAD-VCF	U.S. Bank, N.A. v. Ascente Homeowners Association et al.	2/19/2015		2015
2:15-cv-00332-GMN-VCF	Solomon v. Federal National Mortgage Association et al.	2/24/2015		2015
2:15-cv-00346-GMN-PAL	Garcia et al v. Nationstar Mortgage LLC, et al.	2/25/2015		2015
2:15-cv-00354-MMD-GWF	CapSource, Inc. et al v. Moore	2/26/2015	10/29/2015	2015
2:15-cv-00366-APG-CWH	Bank of New York Mellon vs Astoria Trails Homeowner's Association, et al.	3/1/2015	5/27/2016	2015
2:15-cv-00396-RFB-GWF	Las Vegas Development Group, LLC v. 2014-IH Borrower, LP, et al.	3/3/2015		2015
2:15-cv-00409-LDG-PAL	Summit Canyon Resources, LLC v. Locanas et al.	3/5/2015		2015
2:15-cv-00412-GMN-GWF	Cohen v. Turrentine et al.	3/5/2015		2015
2:15-cv-00476-JCM-VCF	Green Tree Servicing LLC v. SFR Investments Pool1, LLC et al.	3/15/2015		2015
2:15-cv-00477-APG-VCF	Green Tree Servicing LLC v. Elkhorn Community Association et al.	3/15/2015		2015
2:15-cv-00515-JCM-VCF	Vita Bella Homeowners Association v. Federal National Mortgage Association et al.	3/19/2015		2015
2:15-cv-00517-APG-CWH	Saticoy Bay LLC Series 3012 Silver Canyon v. Green Tree Servicing LLC et al.	3/19/2015	4/19/2016	2015
2:15-cv-00537-JAD-PAL	Green Tree Servicing LLC v. Las Vegas Rental & Repair LLC et al.	3/23/2015		2015
2:15-cv-00542-RCJ-CWH	U.S Bank, NA v. Bacara Ridge Association	3/23/2015		2015
2:15-cv-00565-JAD-GWF	Smith v. Accredited Home Lenders, Inc et al.	3/25/2015		2015
2:15-cv-00583-RCJ-PAL	Nationstar Mortgage LLC v. SFR Investments Pool 1, LLC	3/29/2015		2015
2:15-cv-00588-GMN-VCF	Nevada Sand Castle, LLC v. Green Tree Servicing LLC et al.	3/30/2015		2015
2:15-cv-00590-RFB-GWF	Green Tree Servicing LLC v. NV Eagles, LLC et al.	3/30/2015		2015
2:15-cv-00596-LDG-PAL	Kwak-Tran et al v. Rushmore Loan Management Services, LLC et al.	3/31/2015	5/12/2015	2015
2:15-cv-00617	Green Tree Servicing LLC v. William Won Holdings, LLC et al.	4/2/2015	4/3/2015	2015
2:15-cv-00630-APG-NJK	Green Tree Servicing LLC v. SFR Investments Pool1, LLC et al.	4/5/2015		2015
2:15-cv-00654-GMN-VCF	Wells Fargo Bank, N.A. v. MEI-GSR Holdings, LLC et al.	4/8/2015		2015
2:15-cv-00656-RFB-VCF	Summit Canyon Resources, LLC v. Tanksley et al.	4/8/2015		2015
2:15-cv-00660-GMN-PAL	Bob Moore, LLC v. Bureau of Land Management	4/9/2015	4/15/2016	2015
2:15-cv-00670	NOT USED	4/12/2015	4/14/2015	2015
2:15-cv-00699-APG-VCF	JPMorgan Chase Bank v. Cornerstone Homeowners Association	4/15/2015	5/23/2016	2015
2:15-cv-00700-GMN-GWF	Green Tree Servicing LLC v. Collegium Fund LLC-Series 31 et al.	4/15/2015		2015

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2:15-cv-00725-JCM-PAL	Green Tree Servicing LLC v. Valencia Management LLC Series 4 et al.	4/20/2015		2015
2:15-cv-00774-RFB-PAL	Green Tree Servicing LLC v. Villas at Huntington Homeowners Association, et al.,	4/26/2015	7/14/2015	2015
2:15-cv-00790	NOT USED	4/27/2015	4/29/2015	2015
2:15-cv-00791-JCM-CWH	Nevada New Builds, LLC v. Green Tree Servicing LLC et al.	4/27/2015	10/8/2015	2015
2:15-cv-00801-APG-CWH	Southern Capital Preservation, LLC, et al v. Federal Home Loan Mortgage Corporation et al.	4/28/2015		2015
2:15-cv-00806-APG-NJK	SFR Investments Pool 1, LLC v. Federal Home Loan Mortgage Corporation et al.	4/28/2015		2015
2:15-cv-00808-GMN-PAL	Alessi & Koenig LLC v. Byron et al.	4/28/2015		2015
2:15-cv-00823-GMN-PAL	Nationstar Mortgage, LLC v. Elkhorn Community Association et al.	4/30/2015		2015
2:15-cv-00825-GMN-NJK	Fitzwater et al v. Bank of America, N.A., as Successor in Interest to BAC Home Loans Servicing, LP	4/30/2015	1/19/2016	2015
2:15-cv-00830-RFB-GWF	Prestige Rentals, LLC v. Russell et al.	5/3/2015		2015
2:15-cv-00860-JCM-NJK	Bank of America, N.A. v. Premier One Holdings, Inc. et al.	5/6/2015	3/13/2016	2015
2:15-cv-00893-APG-GWF	Opportunity Homes, LLC v. Federal Home Loan Mortgage Corporation	5/11/2015	3/10/2016	2015
2:15-cv-00907-JCM-NJK	G & P Investment Enterprises, LLC v. Wells Fargo Bank, N.A. et al.	5/12/2015		2015
2:15-cv-00909-JCM-CWH	Nationstar Mortgage, LLC v. Berezovsky et al.	5/12/2015		2015
2:15-cv-00917-GMN-NJK	Las Vegas Development Group, LLC v. 14-00003 IH Equity Owner, LP et al.	5/14/2015		2015
2:15-cv-00922-RCJ-PAL	Las Vegas Development Group, LLC, a Nevada Limited liability company v. Heuke	5/17/2015	7/27/2015	2015
2:15-cv-00923	Selene Finance, L.P. v. Premier One Holdings, Inc.	5/17/2015	5/18/2015	2015
2:15-cv-00925-GMN-NJK	Selene Finance, L.P. v Premier One Holdings, Inc.	5/17/2015		2015
2:15-cv-00926-RFB-VCF	Selene Finance, L.P. v. Holm	5/17/2015		2015
2:15-cv-00943-RCJ-GWF	Middleton et al v. Guaranteed Rate, Inc. et al.	5/18/2015	6/25/2015	2015
2:15-cv-00964-JCM-CWH	Tarr v. Select Portfolio Servicing Inc et al.	5/20/2015	6/23/2015	2015
2:15-cv-00971-JAD-GWF	Talamante et al v. Mortgage Portfolio Services, a Texas Corporation et al.	5/21/2015	10/9/2015	2015
2:15-cv-00975-MMD-VCF	Equity trust Company Custodian FBO Melissa Scalera IRA v. Midfirst Bank	5/25/2015	7/2/2015	2015
2:15-cv-00989	NOT USED	5/28/2015	6/3/2001	2015
2:15-cv-00991-MMD-PAL	Goldsmith Enterprises LLC v. US Bank, NA, et al.	5/28/2015		2015
2:15-cv-01018-APG-PAL	Torno v. Green Tree Servicing, LLC et al.	6/1/2015		2015
2:15-cv-01034-GMN-VCF	Green Tree Servicing LLC v. Park Silverada Condominiums Owners Association	6/2/2015	8/24/2015	2015
2:15-cv-01039-RFB-GWF	Green Tree Servicing LLC v. SFR Investments Pool 1, LLC et al.	6/2/2015	8/23/2015	2015
2:15-cv-01078-APG-PAL	Bank of New York Mellon v. SFR Investments Pool I, LLC et al.	6/7/2015		2015

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Case No.	**Case Name**	**filed**	**closed**	**filing year**
2:15-cv-01109-JAD-NJK	Antoine v. Bell et al.	6/10/2015	8/26/2015	2015
2:15-cv-01121-JCM-NJK	U.S. Bank, National Association v. Premier One Holdings, Inc., et al.	6/14/2015		2015
2:15-cv-01130-KJD-VCF	Smith v. Accredited Home Lenders et al.	6/14/2015	3/14/2016	2015
2:15-cv-01139-JCM-PAL	Deutsche Bank National Trust Company v. Talasera and Vicanto Homeowners' Association et al.	6/15/2015		2015
2:15-cv-01146-RFB-PAL	Nationstar Mortgage, LLC v. Tierra De Las Palmas OA et al.	6/16/2015		2015
2:15-cv-01149-RFB-VCF	Christiana Trust v. SFR Investments Pool 1, LLC et al.	6/16/2015		2015
2:15-cv-01153-APG-GWF	U.S. Bank, National Association, v. Woodchase Condominium Homeowners Association et al.	6/17/2015		2015
2:15-cv-01154-JCM-GWF	MCM Capital Partners, LLC v. Haddad et al.	6/17/2015		2015
2:15-cv-01164-KJD-VCF	PNC Bank, National Association v. Mao and Zhang LV LLC	6/18/2015		2015
2:15-cv-01167-RCJ-CWH	The Bank of New York Mellon Trust Company, N.A. v. Bass Dr. Trust	6/18/2015		2015
2:15-cv-01170-RFB-PAL	The Bank of New York Mellon FKA The Bank of New York As Trustee for the Certificate Holders CWMBS, Inc. et al v. Martinez	6/18/2015	3/30/2016	2015
2:15-cv-01174-RFB-NJK	Nationstar Mortgage, LLC v. Sierra Gardens Home Owners Association et al.	6/18/2015		2015
2:15-cv-01177-GMN-VCF	U.S. Bank v. Diamond Creek Community Association et al.	6/21/2015		2015
2:15-cv-01178-RFB-NJK	The Bank of New York Mellon v. Riverwalk Homeowners Association et al.	6/21/2015		2015
2:15-cv-01182-GMN-CWH	BHH Management Group, Inc. v. Federal National Mortgage Association	6/21/2015	4/5/2016	2015
2:15-cv-01186-GMN-GWF	Berezovsky v. Moniz et al.	6/21/2015	12/14/2015	2015
2:15-cv-01204-MMD-PAL	Wells Fargo Bank, N.A. v. Tides I HOA	6/23/2015		2015
2:15-cv-01205-JAD-GWF	Nationstar Mortgage, LLC v. Hidden Canyon Homeowners Association	6/23/2015	4/19/2016	2015
2:15-cv-01211-JAD-PAL	HSBC Bank USA, National Association v. Charleston Heights 50G Townhouse Owners Association	6/24/2015		2015
2:15-cv-01217-JAD-GWF	Nationstar Mortgage, LLC v. The Springs at Spanish Trail Association et al.	6/25/2015		2015
2:15-cv-01232-RCJ-NJK	Nationstar Mortgage, LLC v. Hometown West II Homeowners Association et al.	6/28/2015		2015
2:15-cv-01254-RFB-GWF	George et al v. U.S. Bank National Association, et al.	7/1/2015		2015
2:15-cv-01255	NOT USED	7/1/2015	7/6/2015	2015
2:15-cv-01257-JCM-NJK	RJRN Holdings LLC v. Davis et al.	7/1/2015		2015
2:15-cv-01259-JAD-PAL	HSBC Bank National Association v. Stratford Homeowners Association et al.	7/1/2015		2015
2:15-cv-01262-JAD-NJK	First Horizon Home Loans v. Day Dawn Crossing Homeowners Association et al.	7/5/2015		2015

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Case No.	**Case Name**	**filed**	**closed**	**filing year**
2:15-cv-01268-RFB-NJK	Nationstar Mortgage, LLC v. Flamingo Trails No. 7 Landscape Maintenance Association, Inc. et al.	7/5/2015		2015
2:15-cv-01270-JAD-NJK	U.S. Bank National Association v. Evalobo et al.	7/5/2015	10/14/2015	2015
2:15-cv-01272-APG-PAL	Bank of New York Mellon v. Elkhorn Community Association, et al.	7/5/2015	2/18/2016	2015
2:15-cv-01276-RFB-NJK	Deutsche Bank National Trust Company v. Southern Highlands Community Association et al.	7/5/2015		2015
2:15-cv-01282-APG-VCF	Nationstar Mortgage LLC v. Foothills at Southern Highlands HOA et al.	7/6/2015		2015
2:15-cv-01302-APG-GWF	BOFA Holdings, LLC v. Bank of America, N.A.	7/8/2015	7/29/2015	2015
2:15-cv-01303-APG-PAL	First 100, LLC v. Federal Home Loan Mortgage Corporation et al.	7/8/2015		2015
2:15-cv-01313-RFB-NJK	Bank v. Quality Loan Service Corporation	7/9/2015	3/23/2016	2015
2:15-cv-01322	NOT USED	7/12/2015	7/15/2015	2015
2:15-cv-01323	NOT USED	7/12/2015	7/15/2015	2015
2:15-cv-01324-KJD-PAL	Capital One, National Association v. SFR Investments Pool 1, LLC	7/12/2015		2015
2:15-cv-01325-JCM-CWH	Absolute Business Solutions, Inc. et al v. Mortgage Electronic Registration Sys. Inc (MERS) et al.	7/12/2015		2015
2:15-cv-01338-GMN-CWH	Federal Home Loan Mortgage Corporation et al v. SFR Investments Pool 1, LLC et al.	7/14/2015	5/2/2016	2015
2:15-cv-01371	NOT USED	7/19/2015	7/20/2015	2015
2:15-cv-01373-APG-NJK	Deutsche Bank National Trust Company v. Seven Hills Master Community Association et al.	7/19/2015		2015
2:15-cv-01375-LDG-VCF	Nationstar Mortgage LLC v. Highland Ranch Homeowners Association et al.	7/19/2015	7/19/2015	2015
2:15-cv-01377-JCM-NJK	Carrington Mortgage Services, LLC v. SFR Investments Pool 1, LLC	7/19/2015		2015
2:15-cv-01388-JCM-VCF	U.S. Bank National Association v. Black Hawk Homeowners Association et al.	7/20/2015	2/12/2016	2015
2:15-cv-01390-RFB-VCF	Deutsche Bank National Trust Company v. Pecos Park Sunflower Homeowners Association et al.	7/20/2015	11/1/2015	2015
2:15-cv-01394-RFB-CWH	Las Vegas Development Group, LLC v. Colfin AI-NV 2, LLC et al.	7/20/2015		2015
2:15-cv-01411	NOT USED	7/23/2015	7/27/2015	2015
2:15-cv-01423-JCM-PAL	U.S. Bank N.A. v. Antelope Canyon Homeowners Association, et al.	7/26/2015		2015
2:15-cv-01436-JAD-PAL	Capital One, NA., v. Las Vegas Development Group, LLC,	7/27/2015		2015
2:15-cv-01463-RCJ-GWF	U.S. Bank, National Association vs Countryside Homeowners Association, et al.	7/30/2015		2015
2:15-cv-01472-JCM-CWH	Nationstar Mortgage LLC v. The Bluffs Village II Community Association et al.	8/2/2015		2015

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Case No.	**Case Name**	**filed**	**closed**	**filing year**
2:15-cv-01484-KJD-VCF	U.S. Bank, National Association v. Southern Highlands Community Association et al.	8/3/2015		2015
2:15-cv-01505-JCM-CWH	Ordal et al v. Las Vegas Apartment Lenders, LLC et al.	8/5/2015	10/2/2015	2015
2:15-cv-01506	Deustche Bank National Trust Company v. TBR I, LLC	8/5/2015	8/7/2015	2015
2:15-cv-01507-JAD-VCF	Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 5501 Wells Cathedral et al.	8/5/2015		2015
2:15-cv-01513-GMN-NJK	Yeske et al v. Bendetov	8/6/2015	4/21/2016	2015
2:15-cv-01527-JCM-NJK	U.S. Bank N.A. v. SFR Investments Pool 1, LLC	8/10/2015		2015
2:15-cv-01534-RCJ-VCF	Christiana Trust v. K&P Homes	8/11/2015		2015
2:15-cv-01537-GMN-NJK	Ordal v. Olympic Coast Investment, Inc. et al.	8/11/2015	9/11/2015	2015
2:15-cv-01545-GMN-VCF	Hillcrest Investments, Ltd. et al v. Robison et al.	8/11/2015		2015
2:15-cv-01547-GMN-PAL	Hopkins v. MortgageIt, Inc.	8/11/2015		2015
2:15-cv-01597-MMD-NJK	Nationstar Mortgage, LLC v. Sahara Sunrise Homeowners Association et al.	8/19/2015		2015
2:15-cv-01606-APG-VCF	Hagos v. Washington Mutual Bank, F.A. et al.	8/20/2015		2015
2:15-cv-01636-RCJ-CWH	Nationstar Mortgage, LLC v. LVDG, LLC et al.	8/24/2015		2015
2:15-cv-01664-RFB-GWF	Deutsche Bank National Trust Company v. SFR Investments Pool I, LLC	8/26/2015		2015
2:15-cv-01665-JAD-PAL	Nationstar Mortgage, LLC, a Delaware Company v. Thompson	8/26/2015		2015
2:15-cv-01666-GMN-VCF	U.S. Bank N.A., v. 508 Brundy Island Trust	8/26/2015		2015
2:15-cv-01677-GMN-CWH	SRMOF II 2012-I Trust v. SFR Investment Pool 1, LLC	8/30/2015		2015
2:15-cv-01683-JCM-CWH	Nationstar Mortgage, LLC v. Maplewood Springs Homeowners Association, et al.	8/30/2015		2015
2:15-cv-01692-RFB-VCF	Terra West Collections Group, LLC v. Federal National Mortgage Association et al.	9/2/2015		2015
2:15-cv-01701-JCM-VCF	JP Morgan Chase Bank, N.A. et al v. Las Vegas Development Group, LLC	9/2/2015		2015
2:15-cv-01705-MMD-PAL	Nationstar Mortgage, LLC v. Augusta Belford and Ellingwood Homeowners Association, et al.	9/3/2015		2015
2:15-cv-01709-RFB-GWF	Pennymac Corp. v. Javalina Options, et al.	9/3/2015	11/22/2015	2015
2:15-cv-01710-MMD-VCF	Loeza et al v. Ordal et al.	9/3/2015		2015
2:15-cv-01711-JCM-CWH	Bank of New York Mellon v. Southern Highlands Community Association, et al.	9/3/2015		2015
2:15-cv-01731-APG-PAL	Bank of America, N.A. v. Premier One Holdings, Inc. et al.	9/8/2015		2015
2:15-cv-01744-JAD-GWF	Nationstar Mortgage, LLC v. Equity Trust Company Custodian FBO Z130255 et al.	9/9/2015		2015
2:15-cv-01776-KJD-CWH	Nationstar Mortgage, LLC v. RAM LLC et al.	9/14/2015		2015
2:15-cv-01804-RFB-CWH	Hellerstein, et al v. Desert Lifestyles, LLC et al.	9/17/2015		2015
2:15-cv-01817-JAD-CWH	Design 3.2 Trust v. Kennison et al.	9/21/2015		2015
2:15-cv-01819-APG-VCF	The Bank of New York Mellon vs. Schuetz, et al.,	9/21/2015		2015

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Case No.	**Case Name**	**filed**	**closed**	**filing year**
2:15-cv-01841-APG-CWH	Ocwen Loan Servicing, LLC v. BFP Investment 5, LLC	9/23/2015		2015
2:15-cv-01867-APG-NJK	Middleton v. Bank of America, N.A. et al.	9/28/2015	2/24/2016	2015
2:15-cv-01875-LDG-PAL	Middleton v. Wells Fargo, N.A. et al.	9/29/2015		2015
2:15-cv-01889-JAD-GWF	Geraci v. Black et al.	9/30/2015	11/9/2015	2015
2:15-cv-01903-MMD-PAL	1209 Village Walk Trust, LLC v. Bank of America, N.A., et al.	10/1/2015		2015
2:15-cv-01914-JCM-PAL	Bank Of New York Mellon v. Sierra Ranch Homeowners Association et al.	10/5/2015		2015
2:15-cv-01931-JCM-GWF	JPMorgan Chase Bank, N.A. v. Equisource, LLC, et al.	10/6/2015		2015
2:15-cv-01946-GMN-VCF	Alessi & Koenig LLC v. Federal National Mortgage Association et al.	10/7/2015		2015
2:15-cv-01977-APG-PAL	Middleton v. Carrington Mortgage Services, LLC et al.	9/28/2015		2015
2:15-cv-01992-LDG-CWH	Nationstar Mortgage, LLC v. Giavanna Homeowners Association et al.	10/14/2015		2015
2:15-cv-01999-RFB-CWH	Billman Property, LLC v. Bank of America, N.A., et al.	10/14/2015		2015
2:15-cv-02026-MMD-CWH	Bank Of New York Mellon v Log Cabin Manor Homeowners Association, et al.	10/19/2015		2015
2:15-cv-02062-RFB-CWH	U.S. Bank National Association v. SFR Investments Pool 1, LLC, et al.	10/25/2015		2015
2:15-cv-02068-JAD-VCF	Guzman v. Partners for Payment Relief, DE, II, LLC et al.	10/26/2015	4/13/2016	2015
2:15-cv-02072-JCM-CWH	PennyMac Loan Services, LLC v. Giavanna Homeowners Association	10/27/2015		2015
2:15-cv-02081-JAD-CWH	BHH Management Group, Inc. v. Nationstar Mortgage LLC et al.	10/29/2015		2015
2:15-cv-02088	NOT USED	10/29/2015	11/2/2015	2015
2:15-cv-02146-JCM-PAL	Pintar Investment Company Residential, L.P. v. Martha S. Espiritu	11/9/2015	3/4/2016	2015
2:15-cv-02148-GMN-GWF	Coleman-Toll Limited Partnership v. Administration for Community Living, et al.	11/9/2015	4/15/2016	2015
2:15-cv-02159-RFB-GWF	JPMorgan Chase Bank, N.A. v. Las Vegas Development Group, LLC	11/12/2015		2015
2:15-cv-02164-JCM-VCF	Beebe et al v. New Penn Financial LLC	11/12/2015		2015
2:15-cv-02168-APG-VCF	Bakhsh v. Khan et al.	11/12/2015	11/23/2015	2015
2:15-cv-02173-JAD-VCF	Bank Of New York Mellon v. Catmint BPB Trust, et al.	11/15/2015		2015
2:15-cv-02205-APG-GWF	S&J Investments, LLC v. Booth et al.	11/19/2015	5/19/2016	2015
2:15-cv-02218-JCM-VCF	Principal Real Estate Investors, LLC, a Delaware limited liability company v. Tawk Development, LLC, a Nevada limited liability company	11/23/2015		2015
2:15-cv-02241-APG-PAL	Bank Of New York Mellon v. Blackhorse Homeowners Association et al.	11/24/2015		2015
2:15-cv-02247-APG-NJK	Woodbury Law, Ltd. v. Bank of America National Association et al.	11/29/2015		2015
2:15-cv-02254-RFB-PAL	Argueta v. Bank of America N.A. et al.	11/29/2015		2015
2:15-cv-02275-JCM-PAL	Nave v. Capital One et al.	12/1/2015		2015

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Case No.	**Case Name**	**filed**	**closed**	**filing year**
2:15-cv-02289-RFB-CWH	U.S. Bank National Association, as Trustee, on Behalf of the Holders of the Asset Securities Corporation Home Equity Loan Trust, Series AEG 2006-HE1 Asset Backed Pass-Through ***	12/2/2015		2015
2:15-cv-02293-JAD-PAL	Wilmington Trust, National Association v. First 100, LLC, et al.	12/3/2015		2015
2:15-cv-02294-JCM-GWF	Cox v. PNC Bank, National Association	12/3/2015		2015
2:15-cv-02295-RFB-NJK	Christiana Trust v. 9796 Mount Cupertino Trust, et al.	12/3/2015		2015
2:15-cv-02312-GMN-VCF	Riekki v. Bank of America et al.	12/6/2015		2015
2:15-cv-02347-APG-CWH	TH Paradise, LLC et al v. Paradise Spa Owners Association	12/8/2015		2015
2:15-cv-02366-JCM-GWF	Federal National Mortgage Association v. Willis et al.	12/9/2015		2015
2:15-cv-02369	NOT USED	12/9/2015	12/18/2015	2015
2:15-cv-02370-GMN-NJK	Riekki v. Bank of America et al.	12/10/2015		2015
2:15-cv-02420-APG-GWF	Deutsche Bank National Trust Company v 5916 Post Mountain Trust	12/17/2015		2015
2:15-cv-02471-APG-PAL	Springer v. U.S. Bank National Association as Trustee for Mastr Asset Backed Securities Trust 2005-HE1, Mortgage Pass Through Certificates, Series 2005-HE1 et al.	12/22/2015		2015
2:15-cv-02495-RFB-GWF	Laurent v. Bush et al.	12/29/2015		2015
2:16-cv-00008-JCM-CWH	Ditech Financial, LLC v. SHI, et al.	1/4/2016	2/17/2016	2016
2:16-cv-00010	NOT USED	1/4/2016	1/5/2016	2016
2:16-cv-00012-GMN-CWH	Loewer v. Sables, LLC et al.	1/4/2016		2016
2:16-cv-00038-RFB-GWF	Las Vegas Development Group, LLC v. Evergreen Moneysource Mortgage Company, et al.	1/7/2016		2016
2:16-cv-00046-JCM-PAL	ABC Recycling Industries, Inc. v. American Borate Co. et al.	1/10/2016		2016
2:16-cv-00050-GMN-GWF	Bank of New York Mellon v. SFR Investment Pool 1, LLC	1/10/2016		2016
2:16-cv-00066-MMD-GWF	U.S. Bank Trust, N.A. v. Ski Way Trust et al.	1/11/2016		2016
2:16-cv-00124-JCM-VCF	Bank of America, N.A. v. Saticoy Bay LLC Series 164 Golden Crown et al.	1/21/2016		2016
2:16-cv-00127-GMN-NJK	Ditech Financial LLC v. SFR Investments Pool 1, LLC et al.	1/21/2016		2016
2:16-cv-00128-RFB-NJK	Ditech Financial LLC v. SFR Investments Pool 1, LLC et al.	1/21/2016	4/27/2016	2016
2:16-cv-00176-JCM-PAL	Federal Home Loan Mortgage Corporation v. Donel	1/28/2016		2016
2:16-cv-00178-GMN-CWH	JPMorgan Chase Bank, N.A. v. Wildcreek Garden Condominiums Association	1/28/2016		2016
2:16-cv-00192	Shepard v. Bank of America, N.A. et al.	1/31/2016	2/2/2016	2016
2:16-cv-00198	NOT USED	1/31/2016	2/3/2016	2016

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Case No.	**Case Name**	**filed**	**closed**	**filing year**
2:16-cv-00199-JCM-PAL	Williams v. Bank of America, N.A., et al.	1/31/2016		2016
2:16-cv-00203-JCM-CWH	Federal National Mortgage Association v. Canyon Willow Owners Association, et al.	2/1/2016		2016
2:16-cv-00206-MMD-CWH	Yuichi v. Federal Home Loan Mortgage Corporation et al.	2/1/2016		2016
2:16-cv-00245-GMN-PAL	Deutsche Bank National Trust Company v. Foothills at Southern Highlands Homeowners Association et al.	2/7/2016		2016
2:16-cv-00246-MMD-CWH	Bank Of New York Mellon v. Saticoy Bay LLC Series 4800 Fiesta Lakes et al.	2/7/2016		2016
2:16-cv-00248-JAD-GWF	The Bank Of New York Mellon, et al. v. Cape Jasmine Ct Trust, et al.	2/7/2016		2016
2:16-cv-00253-JCM-NJK	Hine v. Wells Fargo Bank, N.A. et al.	2/8/2016		2016
2:16-cv-00255-JCM-NJK	Bank of America, N.A. v. Tapestry at Town Center Homeowners Association et al.	2/8/2016		2016
2:16-cv-00262-APG-PAL	Bank of America, N.A. v. Maravilla at Mountain's Edge Homeowners Association et al.	2/9/2016		2016
2:16-cv-00270-GMN-NJK	Federal National Mortgage Association v. Bell et al.	2/9/2016	5/16/2016	2016
2:16-cv-00272-RFB-CWH	Deutsche Bank National Trust Company v. Villagio Community Association et al.	2/10/2016		2016
2:16-cv-00274-APG-PAL	Bank of America, N.A. v. Via Valencia/Via Ventura Homeowners Association et al.	2/10/2016		2016
2:16-cv-00285-RFB-NJK	Fitzwater et al v. Bank of America, N.A.	2/10/2016		2016
2:16-cv-00308-APG-GWF	Italspain Corporation v. Moore et al.	2/15/2016		2016
2:16-cv-00309-GMN-GWF	Bank of America, N.A. v. Woodcrest Homeowners Association et al.	2/16/2016		2016
2:16-cv-00317-GMN-NJK	U.S. Bank, N.A. v. Azure Estates Owners Association, Inc., et al.	2/16/2016		2016
2:16-cv-00321-RFB-GWF	Bank of America, N.A. v. Renaissance at Tierra De Las Palmas Homeowners Association et al.	2/16/2016		2016
2:16-cv-00326-RFB-PAL	Wilmington Trust Company v. SFR Investments Pool 1, LLC et al.	2/16/2016		2016
2:16-cv-00329-JCM-NJK	Bank of America, N.A. v Giavanna Homeowners Association et al.	2/17/2016		2016
2:16-cv-00336-GMN-PAL	Bank of America, N.A. v. Sahara Sunrise Homeowners Association et al.	2/17/2016		2016
2:16-cv-00345-JCM-GWF	Bank of America, N.A. v. Travata and Montage at Summerlin Centre Homeowners Association et al.	2/18/2016		2016
2:16-cv-00356-JCM-PAL	HSBC Bank USA, National Association v. Thunder Properties, Inc. et al.	2/21/2016		2016
2:16-cv-00370-APG-PAL	The Bank Of New York Mellon v. Nevada Association Services, Inc. et al.	2/22/2016		2016
2:16-cv-00380-JCM-NJK	Bank of America, N.A. v. Treasures Landscape Maintenance Association et al.	2/23/2016		2016
2:16-cv-00386-JCM-NJK	Bank of America, N.A. v. Log Cabin Ponderosa Homeowners Association et al.	2/24/2016		2016
2:16-cv-00392-RFB-GWF	Bank of America, N.A. v. Lake Mead Court Homeowners Association et al.	2/24/2016		2016
2:16-cv-00394-APG-GWF	Bank of America, N.A. v. Ladera Homeowner's Association et al.	2/24/2016		2016

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2:16-cv-00398-JCM-GWF	CitiMortgage, Inc. v. Corte Madera Homeowners Association et al.	2/25/2016		2016
2:16-cv-00404-MMD-NJK	Bank of America, N.A. v. Southern Highlands Community Association et al.	2/25/2016		2016
2:16-cv-00405-KJD-PAL	Bank of America, N.A. v. Diamond Point Homeowners Association et al.	2/25/2016		2016
2:16-cv-00414-GMN-CWH	Klaizner v. Ditech Financial Services LLC	2/25/2016		2016
2:16-cv-00416-JCM-GWF	Bank of New York Mellon v. Castle Bay Shore Village of Los Prados Homeowners Association et al.	2/28/2016		2016
2:16-cv-00422-JCM-PAL	Bank of America, N.A. v. The Villas at Sky Vista Homeowners Association et al.	2/28/2016		2016
2:16-cv-00438-MMD-VCF	Bank of America, N.A. v. Inspirada Community Association et al.	2/29/2016		2016
2:16-cv-00442-JAD-VCF	U.S. Bank National Association v. 1727 N Lamont Trust et al.	2/29/2016		2016
2:16-cv-00447-JCM-GWF	Bank of America, N.A. v. Copper Creek Estates Homeowners Association et al.	3/1/2016		2016
2:16-cv-00449-JCM-PAL	Bank of America, N.A. v. Antelope Homeowners' Association et al.	3/1/2016		2016
2:16-cv-00456-JCM-VCF	Bank of America, N.A.v. Monte Bello Homeowners Association, Inc. et al.	3/1/2016		2016
2:16-cv-00469-APG-CWH	Wilmington Trust, NA v. Ironhorse Village Condominium Association	3/2/2016		2016
2:16-cv-00470-APG-CWH	Deutsche Bank National Trust Company v. SFR Investments Pool 1, LLC et al.	3/2/2016		2016
2:16-cv-00472-APG-VCF	Bank of America, N.A. v. Montara Estates Homeowners Association et al.	3/3/2016		2016
2:16-cv-00473-JCM-VCF	Bank of America, N.A. v. Travata and Montage at Summerlin Centre Homeowners' Association et al.	3/3/2016		2016
2:16-cv-00474-APG-VCF	Bank of America, N.A. v. Bernini Dr Trust et al.	3/3/2016		2016
2:16-cv-00475-RFB-GWF	Bank of America, N.A. v. Remington Place Homeowners' Association et al.	3/3/2016		2016
2:16-cv-00477	Bank of America, N.A. v. Sierra Cedars Condominium Homeowners Association et al.	3/3/2016	3/3/2016	2016
2:16-cv-00496-GMN-CWH	Bank of America, N.A. v. Regency Village Owner's Association, Inc. et al.	3/7/2016		2016
2:16-cv-00498-JCM-NJK	Bank of America, N.A. v. Mesa Verde Homeowners Association et al.	3/7/2016		2016
2:16-cv-00501-RFB-GWF	Bank of America, N.A. v. Crescendo at Silver Springs HOA et al.	3/7/2016		2016
2:16-cv-00504-GMN-NJK	Bank of America, N.A. v. Lake Mead Court Homeowners Association et al.	3/7/2016		2016
2:16-cv-00523-JCM-CWH	Bank of New York Mellon v. Southern Highlands Community Association et al.	3/8/2016		2016
2:16-cv-00524-RFB-NJK	Bank of America, N.A. v. Elkhorn Community Association et al.	3/8/2016		2016
2:16-cv-00525-JCM-VCF	Paradise Spa Owners Association v. TH Paradise, LLC et al.	3/8/2016		2016
2:16-cv-00540-JCM-NJK	Bank of America, N.A. v. Mountain Gate Homeowners' Association et al.	3/9/2016		2016
2:16-cv-00544-JCM-PAL	Bank of America, N.A. v. Duck Creek Village Homeowners Association et al.	3/9/2016		2016
2:16-cv-00549-APG-NJK	Bank of New York Mellon v. Terra Bella Owners Association, Inc. et al.	3/10/2016		2016

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Case No.	**Case Name**	**filed**	**closed**	**filing year**
2:16-cv-00571-APG-GWF	Nationstar Mortgage LLC v. Sommerset Homeowners Association et al.	3/14/2016		2016
2:16-cv-00577-GMN-GWF	U.S. Bank National Association v. SFR Investments Pool 1 LLC	3/14/2016		2016
2:16-cv-00580-RFB-PAL	Deutsche Bank Trust Company Americas v. Los Prados Community Association, Inc. et al.	3/15/2016		2016
2:16-cv-00604-GMN-CWH	Bank of America, N.A. v. Cortez Heights Homeowners Association et al.	3/17/2016		2016
2:16-cv-00605-MMD-VCF	Bank of America, N.A. v. Inspirada Community Association et al.	3/17/2016		2016
2:16-cv-00606-JCM-CWH	Bank of America, N.A. v. Cactus Creek at Mountain's Edge Homeowners Association et al.	3/17/2016		2016
2:16-cv-00607-APG-NJK	Bank of New York Mellon v. Gleneagles Homeowner Association, Inc.	3/17/2016		2016
2:16-cv-00610-JCM-CWH	CitiMortgage, Inc. v. Tierra De Las Palmas Owners Asscoiation et al.	3/17/2016		2016
2:16-cv-00611-APG-GWF	Bank of America, N.A. v. Tiara Summit Homeowners Association et al.	3/17/2016		2016
2:16-cv-00612-JCM-VCF	Bank of America, N.A. v. Giavanna Homeowners Association, et al.	3/17/2016		2016
2:16-cv-00635-APG-PAL	Bank of America, N.A. v. Lakeview Owners' Association et al.	3/22/2016		2016
2:16-cv-00654-APG-CWH	The Bank of New York Mellon v. Terra Bella Owners Association, Inc. et al.	3/24/2016		2016
2:16-cv-00656-RFB-CWH	Bank of America, N.A. v. Madeira Canyon Homeowners' Association et al.	3/24/2016		2016
2:16-cv-00659-JCM-NJK	Bank of America, N.A. v. Redrock Park Homeowner's Association, et al.	3/24/2016		2016
2:16-cv-00660-MMD-CWH	Bank of America, N.A. v. Peccole Ranch Community Association et al.	3/24/2016		2016
2:16-cv-00673-KJD-CWH	Bank of America N.A v. Inspirada Community Association et al.	3/28/2016		2016
2:16-cv-00675-JCM-VCF	Bank of America, N.A. v. Hollow De Oro Homeowners' Association et al.	3/28/2016		2016
2:16-cv-00678-APG-CWH	Bank of America, N.A. v. The Willows Homeowners' Association, et al.	3/28/2016		2016
2:16-cv-00703-MMD-GWF	Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC	3/29/2016		2016
2:16-cv-00717-RFB-PAL	Bank Of New York Mellon v. Willow Creek Community Association et al.	3/30/2016		2016
2:16-cv-00726-RFB-GWF	Bank of America, N.A. v. Breckenridge at Mountains Edge Homeowners Association et al.	3/31/2016		2016
2:16-cv-00727-GMN-NJK	My Home Now, LLC v. JPMorgan Chase Bank, N.A. et al.	3/31/2016		2016
2:16-cv-00731-JCM-PAL	Bank Of New York Mellon v. Sahara Sunrise Homeowners Association, et al.	3/31/2016		2016
2:16-cv-00751-JCM-VCF	Elizon Master Participation Trust I, U.S. Bank Trust National Association, as Owner Trustee v. Saticoy Bay LLC Series 8920 El Diablo et al.	4/4/2016		2016
2:16-cv-00764-GMN-GWF	Bank of America, N.A. v. Azure Manor/Rancho de Paz Homeowners Association et al.	4/5/2016		2016
2:16-cv-00776-RFB-GWF	Bank of America, N.A. v. Elkhorn Community Association et al.	4/6/2016		2016

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2:16-cv-00794-GMN-CWH	Bank of America, N.A. v. Monte Bello Homeowners Association, Inc. et al.	4/7/2016		2016
2:16-cv-00796-JAD-GWF	The Bank of New York Mellon v. Antigua Maintenance Corporation, et al.,	4/7/2016		2016
2:16-cv-00844-RFB-PAL	U.S. Bank, National Association v. Warm Springs Reserve Owners Association et al.	4/13/2016		2016
2:16-cv-00845-MMD-NJK	Bank of America, N.A., v. Treo North and South Homeowners' Association, Inc. et al.	4/13/2016		2016
2:16-cv-00866-GMN-PAL	US Bank National Association v. BDJ Intestments, LLC, et al.	4/14/2016		2016
2:16-cv-00880-JCM-PAL	Bank of America, N.A. v. Nevada Trails II Community Association, Inc. et al.	4/17/2016		2016
2:16-cv-00884-APG-NJK	Bank of America, N.A. v. Four Winds Owners' Association et al.	4/17/2016		2016
2:16-cv-00899-GMN-PAL	U.S. Bank, National Association v. Sunridge Heights Homeowners Association et al.	4/19/2016		2016
2:16-cv-00907-JCM-CWH	Seare et al v. Bank of New York Mellon et al.	4/20/2016		2016
2:16-cv-00917-RFB-PAL	Bank of America, N.A. v. Los Prados Community Association, Inc. et al.	4/21/2016		2016
2:16-cv-00932-JCM-GWF	Anniversary Mining Claims L.L.C. v. United States of America et al.	4/24/2016		2016
2:16-cv-00962-MMD-CWH	Bank of America, N.A. v. Aliante Master Association et al.	4/27/2016		2016
2:16-cv-00963-RFB-GWF	Lee v. ReconTrust Company, NA et al.	4/27/2016		2016
2:16-cv-01004-GMN-GWF	Brannan v. Bank of America, et al.	5/3/2016		2016
2:16-cv-01011	NOT USED	5/3/2016	5/8/2016	2016
2:16-cv-01012-JCM-CWH	Wong v. Countrywide Home Loans Inc et al.	5/3/2016		2016
2:16-cv-01046-JAD-VCF	U.S. Bank National Association v. Fairway Pines Association et al.	5/8/2016		2016
2:16-cv-01069-MMD-VCF	Wells Fargo Bank, N.A. v. SFR Investments Pool 1, LLC, et al.,	5/11/2016		2016
2:16-cv-01077-APG-NJK	Mendez v. Wright, Findlay and Zak LLP et al.	5/12/2016		2016
2:16-cv-01081-JAD-VCF	Bank Of New York Mellon v. Shadow Crossing Homeowners' Association et al.	5/12/2016		2016
2:16-cv-01082-APG-NJK	Wells Fargo Bank, National Association, v. LVDG II, et al.	5/12/2016		2016
2:16-cv-01120-RFB-PAL	Carrington Mortgage Services, LLC v. Tapestry at Town Center Homeowners Association et al.	5/17/2016		2016
2:16-cv-01124-JCM-NJK	Agha-Kahn v. Pacific Community Mortgage Inc et al.	5/18/2016		2016
2:16-cv-01128-APG-NJK	The Bank Of New York Mellon v. Seven Hills Master Community Association, et al.	5/18/2016		2016
2:16-cv-01129-RFB-CWH	The Bank Of New York Mellon v. SBH 2 Homeowners' Association et al.	5/18/2016		2016
2:16-cv-01171-JCM-VCF	HSBC Bank USA, N.A. v. Ochoa-Delgado et al.	5/23/2016		2016
2:16-cv-01177-JCM-VCF	The Bank Of New York Mellon v. Southern Highlands Community Association, et al.	5/24/2016		2016
2:16-cv-01187-GMN-CWH	Federal Housing Finance Agency et al v. Las Vegas Development Group	5/25/2016		2016
2:16-cv-01188-GMN-CWH	Federal Housing Finance Agency et al v. Nevada New Builds, LLC	5/25/2016		2016

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2:16-cv-01199-GMN-VCF	Bank of America v. Pueblo at Sante Fe Condominium Association, Inc., at al.	5/26/2016		2016
2:16-cv-01216-KJD-NJK	HSBC Bank USA National Association v. Suzannah R. Noonan IRA, LLC et al.	5/31/2016		2016
2:16-cv-01218-JAD-GWF	Nationstar Mortgage, LLC v. Copper Sands Homeowners Association, Inc. et al.	5/31/2016		2016
2:16-cv-01226-JCM-GWF	Christiana Trust v. SFR Investments Pool 1, LLC, et al.	6/1/2016		2016
2:16-cv-01239-RFB-CWH	The Bank of New York Mellon v. Mesa Homeowners Association et al.	6/2/2016		2016
2:16-cv-01274-KJD-NJK	Fresquez v. Nationstar Mortgage, LLC et al.	6/7/2016		2016
2:16-cv-01291-GMN-GWF	HMLV Capital LLC v. U.S. Bank National Association	6/8/2016		2016
2:16-cv-01303-KJD-NJK	Bank Of New York Mellon v Nevada Association Services, Inc.	6/9/2016		2016
2:16-cv-01319-GMN-GWF	Bank of America, N.A. v. Boulder Ranch Master Association et al.	6/13/2016		2016
2:16-cv-01327-GMN-VCF	Bank of America, N.A. v. Canyon Willow Trop Owners' Association et al.	6/13/2016		2016
2:16-cv-01330-APG-NJK	Bank of America, N.A. v. Spring Mountain Ranch Master Association et al.	6/14/2016		2016
2:16-cv-01339-RFB-GWF	Coleman v. Bank of New York Mellon et al.	6/14/2016		2016
2:16-cv-01346-JCM-CWH	U.S. Bank National Association v. Saticoy Bay LLC, Series 5526 Moonlight Garden Street	6/14/2016		2016
2:16-cv-01347-RFB-GWF	U.S. Bank National Association v. SFR Investments Pool 1, LLC	6/14/2016		2016
2:16-cv-01385-GMN-CWH	U.S. Bank National Association v. Heritage Estates Homeowners Association et al.	6/16/2016		2016
3:09-cv-00139-LRH-VPC	Servidio v. Aurora Loan Services LLC et al.	3/15/2009	8/11/2009	2009
3:09-cv-00228-RCJ-VPC	Chapman et al v. Deutsche Bank National Trust Company et al.	4/28/2009	4/16/2014	2009
3:09-cv-00233-KJD-VPC	Mausert et al v. Countrywide Home Loans, Inc. et al.	4/30/2009	9/24/2012	2009
3:09-cv-00306-RCJ-PAL	Goodwin et al v. Executive Trustee Services, LLC et al.	6/8/2009	4/22/2015	2009
3:09-cv-00374-ECR-GWF	Green et al v. Country Home Loans, Inc., et al.	7/9/2009	5/3/2011	2009
3:09-cv-00478-RCJ-RAM	LEAGUE TO SAVE LAKE TAHOE v. Tahoe Regional Planning Agency et al.	8/20/2009	3/13/2013	2009
3:09-cv-00486-HDM-VPC	Carlwood Development, Inc. et al vs USA	8/24/2009	10/12/2010	2009
3:09-cv-00534-LDG-VPC	Dalton et al vs Citimortgage, Inc., et al.	9/13/2009	11/16/2011	2009
3:09-cv-00538-ECR-RAM	Serpa et al v. Washoe County	9/15/2009	4/4/2010	2009
3:09-cv-00578-LRH-WGC	Randall v. U.S. Dept. of Forest Service, et al.	9/29/2009	2/20/2014	2009
3:09-cv-00594-ECR-VPC	Carucci et al v. Bank of America Home Loans et al.	10/4/2009	4/30/2010	2009
3:09-cv-00677-LRH-WGC	Barlow v. BNC Mortgage Inc. et al.	11/15/2009	3/13/2014	2009
3:09-cv-00700-RCJ-VPC	Carucci v. Bank of America Home Loans Servicing, LP, et al.	11/29/2009	7/7/2010	2009
3:09-cv-00712-RCJ-VPC	Carucci et al v. Wells Fargo Home Mortgage et al.	12/3/2009	5/25/2012	2009
3:09-cv-00713-LDG	Kroshus et al v. United States of America, et al.	12/6/2009	4/12/2016	2009

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3:09-cv-00747-LRH-RAM	Abeyta et al v. Chase Home Finance LLC et al.	12/20/2009	3/4/2010	2009
3:10-cv-00001-RCJ-VPC	Fitzgerald v. Quality Loan Service Corporation et al.	1/2/2010	10/27/2011	2010
3:10-cv-00004-MMD-VPC	Riehm et al v. Countrywide Home Loans, Inc et al.	1/3/2010	8/27/2012	2010
3:10-cv-00199-LRH-VPC	Reilly v. BAC Home Loans Servicing, LP et al.	4/6/2010	9/21/2010	2010
3:10-cv-00212-LRH-VPC	Garand v. J.P. Morgan Chase Bank, N.A. et al.	4/12/2010	9/10/2013	2010
3:10-cv-00243	Yeghiyaian v. Pulte Mortgage LLC d/b/a Del Webb Home Finance, a Delaware corporation et al.	4/25/2010	4/27/2010	2010
3:10-cv-00252-LRH-VPC	Sandefur v. First Horizon Home Loans et al.	4/27/2010	7/16/2012	2010
3:10-cv-00256-RCJ-RAM	Kehoe et al v. Aurora Loan Services LLC et al.	4/27/2010	3/24/2011	2010
3:10-cv-00267-RCJ-VPC	Spracklin et al v. Recontrust Company et al.	4/29/2010	1/14/2014	2010
3:10-cv-00297-LRH-VPC	Longoni v. GMAC Mortgage, LLC et al.	5/19/2010	9/24/2013	2010
3:10-cv-00331-RCJ-VPC	Harnist v. Colonial Bank NA et al.	6/3/2010	5/14/2015	2010
3:10-cv-00368-RCJ-VPC	Agee, Jr. v. Countrywide Home Loans, Inc. et al.	6/17/2010	4/23/2015	2010
3:10-cv-00376-RCJ-WGC	Lopez v. Bank Of America, N.A. et al.	6/20/2010	8/21/2012	2010
3:10-cv-00399-PMP-VPC	Larson et al v. Aegis Wholesale Corporations et al.	6/30/2010	12/27/2011	2010
3:10-cv-00407-RCJ-VPC	Bates et al v. Mortgage Electronic Registration System, Inc.,et al.	7/5/2010	4/25/2011	2010
3:10-cv-00425-LRH-VPC	Rosselli et al v. Braddock and Logan Group II, L.P. et al.	7/12/2010	10/19/2010	2010
3:10-cv-00444-RCJ-WGC	Bell et al v. Recontrust Company, N.A. et al.	7/15/2010	8/3/2012	2010
3:10-cv-00500	NOT USED	8/9/2010	8/11/2010	2010
3:10-cv-00501-RCJ-VPC	Saterbak v. Flagstar Bank et al.	8/9/2010	2/4/2011	2010
3:10-cv-00520-RCJ-VPC	Arredondo v. American Home Mortgage et al.	8/19/2010	7/5/2011	2010
3:10-cv-00533-RCJ-VPC	Becker et al v. First American Title Company et al.	8/24/2010	12/30/2011	2010
3:10-cv-00553-RCJ-WGC	Smith v Home123 Corporation et al.	9/8/2010	10/27/2011	2010
3:10-cv-00575-RCJ-VPC	Ahmadi v. First Horizon Home Loan Corporation et al.	9/15/2010	7/13/2011	2010
3:10-cv-00649-RCJ-VPC	Bird v. Recontrust Company, N.A. et al.	10/14/2010	10/15/2013	2010
3:10-cv-00651-RCJ-VPC	Smith v. Community Lending Incorporated et al.	10/17/2010	1/3/2014	2010
3:10-cv-00653-RCJ-VPC	Smith v. Community Lending Incorporated et al.	10/17/2010	7/30/2014	2010
3:10-cv-00681-RCJ-VPC	Oravetz et al v. Bank of America, N.A. et al.	10/30/2010	5/24/2011	2010
3:10-cv-00734-RCJ-RAM	TGilbert Investments et al v. Bank of America Nevada et al.	11/21/2010	4/22/2011	2010
3:11-cv-00001-LRH-VPC	Burns v. Ocwen Loan Servicing LLC	1/2/2011	4/28/2011	2011
3:11-cv-00005-RCJ-WGC	The Estate of How Tzu Huang v. Bank of America, N.A. et al.	1/2/2011	5/22/2015	2011

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3:11-cv-00082-RCJ-WGC	Fossum et al v. Bank of America Corporation et al.	2/2/2011	3/27/2015	2011
3:11-cv-00085-HDM-RAM	The Edge at Reno Condominium Unit-Owners Association v. Larry C. Kester dba Architects Collective et al.	2/6/2011	4/12/2011	2011
3:11-cv-00109-ECR-VPC	Hoots vs D. Earl Harris, et al.	2/14/2011	6/5/2012	2011
3:11-cv-00110-RCJ-RAM	Hoots vs Federal Land Bank of Berkeley, et al.	2/14/2011	4/14/2011	2011
3:11-cv-00113-RCJ-WGC	Thacker et al v. Bank of America Corporation et al.	2/14/2011	5/21/2015	2011
3:11-cv-00152-RCJ-VPC	Tracy v. Saldino	3/1/2011	7/5/2011	2011
3:11-cv-00165-RCJ-VPC	Tracy v. Saldino et al.	3/2/2011	7/5/2011	2011
3:11-cv-00176-LRH-VPC	Gibson et al v. Fieldstone Mortgage Company et al.	3/7/2011	2/13/2013	2011
3:11-cv-00201-RCJ-WGC	Hoffman v. Countrywide Home Loans, Inc. et al.	3/16/2011	10/22/2012	2011
3:11-cv-00209-RCJ-WGC	Moon et al v. Moynihan et al.	3/20/2011	9/8/2011	2011
3:11-cv-00244	NOT USED	4/4/2011	4/6/2011	2011
3:11-cv-00245-RCJ	Storey et al v. Mortgage Electronic Registration Systems, Inc. et al.	4/4/2011	5/25/2011	2011
3:11-cv-00247-LRH-VPC	Cloud et al v. Quality Home Services, Inc. et al.	4/5/2011	3/6/2013	2011
3:11-cv-00270-RCJ-VPC	Tonkin et al v. CTX Mortgage Company, LLC et al.	4/14/2011	4/28/2014	2011
3:11-cv-00306-RCJ-WGC	Singh et al v. New Century Mortgage Corporation et al.	4/28/2011	10/21/2011	2011
3:11-cv-00347-RCJ-WGC	Riahi v. JPMorgan Chase Bank, N.A.	5/12/2011	6/5/2013	2011
3:11-cv-00352-RCJ-WGC	Pritchard et al v. Countrywide Home Loans, Inc. et al.	5/16/2011	9/20/2011	2011
3:11-cv-00356-LRH-VPC	Polanski et al v. U.S. Bank National Association, as Trustee of Mastr Adjustable Rate Mortgages Trust 07-00003 et al.	5/17/2011	6/29/2011	2011
3:11-cv-00384-RCJ-WGC	Freidus v. Countrywide Bank, FSB et al.	5/26/2011	10/7/2011	2011
3:11-cv-00414-RCJ-WGC	Justus v. Bank Of America, N.A. et al.	6/9/2011	9/8/2011	2011
3:11-cv-00435-RCJ-VPC	Ging v. Countrywide Home Loans, Inc. et al.	6/19/2011	5/14/2012	2011
3:11-cv-00444-RCJ-WGC	Western Highland Mortgage Fund I, LLC v. Tahoe Regional Planning Agency et al.	6/21/2011	1/22/2015	2011
3:11-cv-00465-RCJ-VPC	Duckett et al v. LoanCity, A California Corporation et al.	6/29/2011	1/20/2012	2011
3:11-cv-00479-RCJ-WGC	Mathison et al v. Countrywide Home Loans, Inc. et al.	7/6/2011	2/21/2013	2011
3:11-cv-00484-RCJ-VPC	Ging v. Countrywide Home Loans Inc. et al.	7/7/2011	10/7/2011	2011
3:11-cv-00566-ECR-WGC	Junas v. Advantix Lending, Inc. et al.	8/3/2011	8/3/2012	2011
3:11-cv-00568	NOT USED	8/3/2011	8/5/2011	2011
3:11-cv-00617-RCJ-WGC	Hughes v. Bank Of America, N.A. et al.	8/25/2011	2/23/2012	2011

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3:11-cv-00622-RCJ-VPC	Winnemucca Indian Colony et al v. United States of America Department of the Interior et al.	8/28/2011		2011
3:11-cv-00634-RCJ-VPC	Knight v. Academy Mortgage Corporation et al.	8/31/2011	12/9/2011	2011
3:11-cv-00652-ECR-WGC	Villagrana v. Recontrust Company, N.A. et al.	9/8/2011	5/22/2012	2011
3:11-cv-00657-LRH-WGC	Reynolds v. Wells Fargo Bank, N.A. et al.	9/11/2011	7/11/2014	2011
3:11-cv-00722-RCJ-VPC	Finoimoana et al v. First Horizon Home Loan Corporation et al.	10/5/2011	12/12/2011	2011
3:11-cv-00728-RCJ-VPC	Rogerson et al v. Countrywide Bank, A Division of Tresasury Bank, N.A. et al.	10/9/2011	11/1/2012	2011
3:11-cv-00732-LRH-WGC	Elwing et al v. Allied Home Mortgage Capital Corporation et al.	10/10/2011	5/4/2012	2011
3:11-cv-00753-RCJ-WGC	Rogerson et al v. Countrywide Bank, a Division of Treasury Bank, N.A. et al.	10/16/2011	12/19/2012	2011
3:11-cv-00764-RCJ-VPC	Roberts et al v. Countrywide Home Loans, Inc. et al.	10/20/2011	10/2/2012	2011
3:11-cv-00766-RCJ-WGC	Wilson v. American Sterling Bank. a Missouri Corporation et al.	10/20/2011	2/25/2013	2011
3:11-cv-00767-RCJ-WGC	Baeza et al v. Bank of America, N.A. et al.	10/20/2011	10/19/2012	2011
3:11-cv-00774-RCJ-VPC	LaBrosse v. Bank of America, N.A. et al.	10/23/2011	1/15/2013	2011
3:11-cv-00791-LRH-VPC	Frausto v. Wells Fargo Bank, N.A. et al.	10/27/2011	5/21/2012	2011
3:11-cv-00823-RCJ-VPC	Gillett v. Bank Of America, N.A. et al.	11/14/2011	8/30/2013	2011
3:11-cv-00867-RCJ-WGC	Moran et al v. Wells Fargo Bank, N.A. et al.	11/30/2011	8/3/2012	2011
3:11-cv-00872-RCJ-WGC	Cortez et al v. Mortgage Electronic Registration Systems, Inc. et al.	12/4/2011	5/11/2012	2011
3:11-cv-00886-RCJ-WGC	Butcher v. Mortgage Electronic Registration Systems, Inc. et al.	12/8/2011	8/30/2013	2011
3:11-cv-00887-RCJ-VPC	Haskill v. PNC Bank, N.A.,	12/11/2011	11/26/2012	2011
3:11-cv-00906-RCJ-VPC	Price v. Soma Financial et al.	12/20/2011	4/10/2013	2011
3:11-cv-00908-RCJ-WGC	Shannon v. Recontrust Company, N.A.	12/20/2011	4/8/2013	2011
3:12-cv-00006-LRH-WGC	Erwin v. Lehman Brothers Bank FSB, a Federal Savings Bank et al.	1/4/2012	5/16/2012	2012
3:12-cv-00025-RCJ-WGC	Mendoza-Quintana et al v. Countrywide Bank, a Div. of Treasury Bank, N.A. et al.	1/12/2012	8/3/2012	2012
3:12-cv-00036-RCJ-WGC	Rogerson et al v. Bank of America, N.A. et al.	1/17/2012	12/19/2013	2012
3:12-cv-00045-RCJ-VPC	Wortman et al v. Countrywide Home Loans, Inc. et al.	1/22/2012	1/14/2014	2012
3:12-cv-00047-RCJ-WGC	Hower v. Countrywide Home Loans, Inc. et al.	1/22/2012	3/6/2013	2012
3:12-cv-00051-RCJ-VPC	Anthony Gazzigli v. Countrywide Home Loans, Inc. et al.	1/25/2012	3/11/2013	2012
3:12-cv-00071-RCJ-VPC	Bryant v. Fidelity National Title Insurance Company, et al.	2/6/2012	6/12/2012	2012
3:12-cv-00074-LRH-WGC	Barrington v. Quality Loan Service Corporation et al.	2/6/2012	10/24/2012	2012
3:12-cv-00090-RCJ-VPC	Oster v. Bank of America, N.A. et al.	2/9/2012	8/3/2012	2012
3:12-cv-00106-LRH-WGC	Perez et al v. Wells Fargo, N.A. et al.	2/22/2012	5/18/2012	2012

Compilation of U.S. District Court, District of Nevada, cases filed between January 1, 2009 and June 20, 2016, with filing code 290, "Real Property: Other"				
Case No.	**Case Name**	**filed**	**closed**	**filing year**
3:12-cv-00118-PMP-WGC	Navarro-Alejandre v. Soma Financial et al.	2/29/2012	5/8/2012	2012
3:12-cv-00124-LRH-WGC	Vasquez et al v. Countrywide Home Loans, Inc. et al.	3/4/2012	10/30/2012	2012
3:12-cv-00243-MMD-VPC	Roberts v. Ocwen Loan Servicing, LLC et al.	5/3/2012	8/8/2012	2012
3:12-cv-00268-MMD-VPC	Masterman v. Deutsche Bank National Trust Company, as trustee for the registered holders of Morgan Stanley ABS Capital I Inc. Trust 2007-NC3 Mortgage Pass-Through Certificates,***	5/20/2012	11/27/2012	2012
3:12-cv-00308-LRH-VPC	Kells v. First Horizon Home Loan Corporation et al.	6/5/2012	1/7/2013	2012
3:12-cv-00374-LRH-WGC	Sterling Savings Bank v. Portfolio Group Management, Inc. et al.	7/9/2012	8/9/2001	2012
3:12-cv-00442-RCJ-WGC	Curitti et al v. JPMorgan Chase Bank, N.A. et al.	8/16/2012	10/18/2013	2012
3:12-cv-00480-MMD-WGC	Duval v. Sturgill et al.	9/9/2012	9/16/2015	2012
3:12-cv-00548-MMD-WGC	Addington et al v. Bank of America, N.A. et al.	10/8/2012	12/4/2013	2012
3:12-cv-00650-RCJ-WGC	Humboldt County, et al v. Secretary of the United States Department of the Interior et al.	12/10/2012	6/9/2015	2012
3:12-cv-00669-RCJ-WGC	DeLong Ranches, Inc., a Nevada Corporation v. Secretary of the United States Department of the Interior et al.	12/18/2012		2012
3:13-cv-00036-RCJ-WGC	Nelson et al v. Bank of America, N.A.	1/24/2013	4/25/2013	2013
3:13-cv-00058-MMD-WGC	Jordan et al v. Bank of America, N.A. et al.	2/4/2013	9/19/2013	2013
3:13-cv-00238-MMD-WGC	Magee vs Crockett et al.	5/6/2013	7/11/2013	2013
3:13-cv-00242-RCJ-VPC	RJT Whelchel Development Company LLC v. Whelchel Mines Company et al.	5/7/2013	8/21/2013	2013
3:13-cv-00288-RCJ-VPC	Airlift Helicopters, Inc vs Zika Zivanovic, et al.	5/30/2013	3/12/2014	2013
3:13-cv-00326	NOT USED	6/18/2013	6/20/2013	2013
3:13-cv-00330-MMD-VPC	Federal Home Loan Mortgage Corporation v. Knolls Homeowners Association	6/18/2013	1/16/2014	2013
3:13-cv-00348-LRH-VPC	Beverly, Trustee of the Beverly-Blair Meadowridge Trust v. Weaver-Farley et al.	6/27/2013	2/26/2015	2013
3:13-cv-00373-HDM-WGC	Tuttle v. Stewart Title Company	7/11/2013	1/15/2014	2013
3:13-cv-00436-MMD-WGC	LVDG, LLC v. Wells Fargo Financial Nevada 2, Inc. et al.	8/13/2013	9/13/2013	2013
3:13-cv-00568N/A		10/9/2013	10/11/2013	2013
3:13-cv-00569-MMD-VPC	Robert A. Slovak vs Golf Course Villas Homeowners Association, et al.	10/9/2013	6/19/2014	2013
3:13-cv-00662-MMD-VPC	BLT Associates, LLC v. Bank of America, N.A. et al.	12/2/2013	3/21/2014	2013
3:13-cv-00665-RCJ-VPC	JPMorgan Chase Bank, N.A., a national association et al vs MEI-GSR HOLDINGS, LLC	12/3/2013	5/26/2015	2013
3:13-cv-00694-LRH-WGC	Laurrance vs Deutsche Bank National Trust Company, et al.	12/18/2013		2013

Compilation of U.S. District Court, District of Nevada, cases filed between January 1, 2009 and June 20, 2016, with filing code 290, "Real Property: Other"				
Case No.	**Case Name**	**filed**	**closed**	**filing year**
3:13-cv-00698-RCJ-VPC	Shepard v. Bank of America, N.A. et al.	12/19/2013	1/22/2015	2013
3:14-cv-00018	NOT USED	1/7/2014	1/9/2014	2014
3:14-cv-00019-LRH-WGC	Green Tree Servicing, LLC v. Escobar et al.	1/7/2014	12/10/2014	2014
3:14-cv-00036	NOT USED	1/15/2014	1/21/2014	2014
3:14-cv-00037-LRH-VPC	U.S. Bank National Association v. Kendall Creek Homeowners Association	1/15/2014	3/17/2014	2014
3:14-cv-00108-MMD-WGC	Finn et al v. Bank of America, N.A.	2/23/2014	4/17/2015	2014
3:14-cv-00116-HDM-WGC	JPMorgan Chase Bank, N.A. v. WMC Mortgage Corp	3/2/2014	8/1/2014	2014
3:14-cv-00250-RCJ-WGC	Macchiarella, et al v. PennyMac Loan Services, LLC et al.	5/12/2014	6/16/2014	2014
3:14-cv-00377-HDM-VPC	Scutier v. King et al.	7/16/2014		2014
3:14-cv-00583-RCJ-WGC	VFC Partners 30 LLC v. Murad Management Trust et al.	11/13/2014	2/9/2015	2014
3:14-cv-00627-RCJ-VPC	The Flicka Group et al v. Carson City et al.	12/3/2014	6/23/2015	2014
3:14-cv-00681-LRH-WGC	Heritage Bank of Nevada v. O'Neil et al.	12/23/2014		2014
3:15-cv-00044-HDM-WGC	GMAT Legal Title Trust 13-00001, by U.S. Bank v. Fitchner et al.	1/21/2015		2015
3:15-cv-00066-LRH-VPC	South Fork Livestock Partnership v. USA, et al.	1/29/2015		2015
3:15-cv-00141-MMD-VPC	Thunder Properties, Inc. v. Kathleen J. Treadway, et al.	3/5/2015		2015
3:15-cv-00197-HDM-WGC	Green Tree Servicing LLC v. William Won Holdings, LLC et al.	4/2/2015		2015
3:15-cv-00211-LRH-VPC	Reilly et al.	4/13/2015	2/16/2016	2015
3:15-cv-00297-MMD-WGC	Green Tree Servicing LLC v. Rainbow Bend Homeowners Association et al.	6/3/2015		2015
3:15-cv-00328-MMD-WGC	U.S. Bank National Association, as Trustee, Master Alternative Loan Trust 04-00002 Mortgage Pass Through Certificates, Series 04-00002 v. Thunder Properties Inc.	6/18/2015		2015
3:15-cv-00349-MMD-VPC	PNC Bank, N.A. v. Wingfield Springs Community Association et al.	7/6/2015		2015
3:15-cv-00375-MMD-VPC	Nationstar Mortgage LLC v. Highland Ranch Homeowners Association et al.	7/19/2015		2015
3:15-cv-00377-RCJ-VPC	Nationstar Mortgage, LLC v. D'Andrea Community Association et al.	7/20/2015		2015
3:15-cv-00401-LRH-WGC	Deustche Bank National Trust Company v. TBR I, LLC	8/5/2015		2015
3:15-cv-00504-MMD-VPC	Jacobsen v. Clear Recon Corp et al.	10/4/2015		2015
3:15-cv-00515-RCJ-VPC	GMAT Legal Title Trust 2014-I, U.S. Bank National Association as Legal Title Trustee v. BLT Associates, LLC;	10/12/2015		2015
3:15-cv-00518-MMD-WGC	GMAT Legal Title Trust 13-00001, US Bank National Association as Legal Title Trustee vs SFR Investments Pool I, LLC	10/14/2015		2015

Compilation of U.S. District Court, District of Nevada, cases filed between January 1, 2009 and June 20, 2016, with filing code 290, "Real Property: Other"				
Case No.	**Case Name**	**filed**	**closed**	**filing year**
3:15-cv-00549-MMD-VPC	Alpine Vista II Homeowners Association v. Federal National Mortgage Corporation et al.	11/10/2015		2015
3:16-cv-00039-MMD-VPC	Deutsche Bank National Trust Company v. Thunder Properties, Inc.	1/27/2016		2016
3:16-cv-00051-RCJ-WGC	Shepard v. Bank of America, N.A. et al.	1/31/2016	3/31/2016	2016
3:16-cv-00065-RCJ-WGC	Mesi et al v. Select Portfolio Servicing et al.	2/9/2016		2016
3:16-cv-00071-RCJ-VPC	HSBC Bank USA, National Association as Trustee for Deutsche Alt-A Securities, Inc., Mortgage Pass-Through Certificates Series 2006-AR3 v. Park Towers Homeowners Association***.	2/11/2016		2016
3:16-cv-00127-HDM-WGC	Bank of America, N.A. v. Sierra Cedars Condominium Homeowners Association et al.	3/3/2016		2016
3:16-cv-00132-LRH-VPC	U.S. Bank, National Association, as Trustee for The Holders of the Banc of America Funding Corporation, 2008-FTI Trust, Mortgage Pass-Through *** v. Huffaker Hills Association ***.	3/7/2016		2016
3:16-cv-00158-MMD-WGC	Bank of America, N.A. v. Tenaya Creek Homeowners Association et al.	3/17/2016		2016
3:16-cv-00172-HDM-WGC	Bank of America, N.A. v. Pine View Estates Home Owner's Association et al.	3/24/2016		2016
3:16-cv-00192-MMD-VPC	Bank of America, N.A. v. Yorkshire Manor I Homeowners Association et al.	4/6/2016		2016
3:16-cv-00204-RCJ-WGC	Romano v. Nevada Division of Water Resources	4/13/2016		2016
3:16-cv-00227-MMD-WGC	Ditech Financial LLC et al v. TBR I, LLC et al.	4/25/2016		2016

Inst #: 20160308-0000565
Fees: $21.00
N/C Fee: $0.00
03/08/2016 08:55:58 AM
Receipt #: 2702870
Requestor:
ALESSI & KOENIG, LLC
Recorded By: ANI Pgs: 5
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:
THE ALESSI & KOENIG, LLC
9500 WEST FLAMINGO ROAD, SUITE 205
LAS VEGAS, NV 89147
Phone: 702-222-4033

A.P.N. **140-05-712-064** Trustee Sale No. **40832**

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default is recorded or the date on which it is mailed, whichever is latest. The amount due is **$4,849.51** as of the date of this notice and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **Craigmont Villas Homeowners Association**, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 205, Las Vegas, NV 89147, (702)222-4033. Alessi & Koenig is the entity designated to enforce the Homeowner's Association's Lien by sale.

THIS NOTICE pursuant to that certain Notice of Delinquent Assessment Lien, recorded on **July 23, 2015** as document number **0002025** of Official Records in the County of **Clark**, State of Nevada. Owner(s): **4300 N LAMONT 279 TRUST** , of **CRAIGMONT VILLAS CONDO UNIT 10 BLOCK 4 (AKA CRAIGMONT VILLAS NORTH)**, as per map recorded in Book **28**, Pages **67**, as shown on the Plan and Subdivision map recorded in the Maps of the County of **Clark**, State of Nevada. PROPERTY ADDRESS: **4300 N LAMONT ST APT 279, LAS VEGAS, NV 89115-2438** If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT Alessi & Koenig, LLC is appointed trustee agent under the above referenced lien, dated **July 23, 2015**, on behalf of **Craigmont Villas Homeowners Association** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from **November 1, 2014** and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated: MAR 0 7 2016

Robert Koenig, Esq. of Alessi & Koenig, LLC on behalf of **Craigmont Villas Homeowners Association**

PLEASE SEE NEXT PAGE FOR ADDITIONAL INFORMATION

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN (Cont.)

NOTICE TO HOMEOWNER(S)

If you fail to bring your account current before the mandatory 90 day waiting period elapses, your property may be set for foreclosure sale. If your property is sold at foreclosure, you will have a 60 day period to redeem the property by paying the purchase price paid at the foreclosure auction with 1% interest per month together with additional costs and expenses as allowed by Nevada Revised Statutes, §116.31166(3) and any other charges or expenses authorized bylaw.

The Amount due as of the date of this document: **$4,849.51.** This amount consists of the following:

$3,350.00	**Total of Assessments, Late Fees, Interest, Service Charges, Management Company Fees**
$905.00	**Total of Collection Fees**
$594.51	**Total amount of Collection Costs**

The total amount of the delinquent obligation will continue to increase due to regular assessments, special assessments, late fees, interest and additional attorney and/or collection fees and costs. Please contact Alessi & Koenig to obtain an accurate pay off amount prior to making payment.

NOTICE TO HOLDERS OF FIRST DEED OF TRUST OR FIRST MORTGAGE:

Pursuant to Nevada Revised Statutes, §116.3116(2), the HOA's assessment lien is senior to all other liens and encumbrances on the property except for: (1) liens and encumbrances recorded prior to the recordation of the Declaration; (2) a first security interest recorded before the assessment sought to be enforced became delinquent and (3) liens for real estate taxes and other governmental assessments or charges. HOWEVER, pursuant to NRS §116.3116(3), the HOA's assessment lien is senior to a first security interest to the extent of: (1) any charges incurred by the Homeowner's Association pursuant to NRS §116.310312; (2) the unpaid amount of assessments, not to exceed an amount equal to assessments for common expenses based on the periodic budget adopted by the HOA pursuant to NRS §116.3115 which would have come due in the absence of acceleration during the 9 months preceding the date on which this Notice of Default and Election to Sell is recorded pursuant to paragraph (b) of subsection 1 of NRS §116.31162; and (3) certain costs of collection incurred by the HOA in enforcing the delinquent assessment lien as set forth in NRS §116.3116(5). The portion of the HOA's delinquent assessment lien which is senior to any first security interest is commonly referred to as the Super Priority Lien ("SPL"). As of the recordation of this Notice of Default and Election to Sell, the amount of the Super Priority Lien is as follows:

$1,485.00	**Total amount of SPL Assessments (See, NRS §116.3115, 3116)**
$1,365.00	**Total amount of SPL Collection Fees/Costs (See, NRS §116.3116(5))**
$2,850.00	**Total Super Priority Lien Amount as of the recordation of this Notice of Default**

NOTICE TO ALL PARTIES REGARDING ABATEMENT OF NUISANCE(S)

The amount of this lien attributable to expenses incurred in abating a public nuisance pursuant to NRS 116.310312 is $ **0.00.** Please be advised that nuisance abatement costs, if any, may be included in a separate abatement lien, the amount of which would not be reflected in this Notice of Default. Please contact Alessi & Koenig for information on any separately recorded abatement lien.

PLEASE SEE NEXT PAGE FOR ADDITIONAL INFORMATION

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN (Cont.)

WARNING TO HOLDERS OF FIRST SECURITY INTEREST

PURSUANT TO NRS §116.31162(b)(3), please be advised that:

The amount of the HOA's Super Priority Lien pursuant to NRS §116.3116(3), as set forth above, is **$2,850.00.**

Any person or party claiming a first security interest in the property set forth herein is hereby notified that:

- If the holder of the first security interest on the unit does not satisfy the amount of the association's lien that is prior to that first security interest pursuant to subsection 3 of NRS 116.3116, the association may foreclose its lien by sale and that the sale may extinguish the first security interest as to the unit;

- If, not later than 5 days before the date of the sale, the holder of the first security interest on the unit satisfies the amount of the association's lien that is prior to that first security interest pursuant to subsection 3 of NRS 116.3116 and, not later than 2 days before the date of the sale, a record of such satisfaction is recorded in the office of the recorder of the county in which the unit is located, the association may foreclose its lien by sale but the sale may not extinguish the first security interest as to the unit.

Please contact Alessi & Koenig at 9500 W. Flamingo Rd, Ste 205, Las Vegas, NV 89147, (702)222-4033. Alessi & Koenig is the entity designated to enforce the Homeowner's Association's Lien by sale.

AFFIDAVIT (DECLARATION) OF SERVICE

HO # **40832**

Azra Vidovic, being duly sworn says: That all times herein, affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings for which this affidavit is made.

Affiant received copy(ies) of the Notice of Default and Election to Sell ("NOD") for the property commonly known as: **4300 N LAMONT ST APT 279, LAS VEGAS, NV 89115-2438** with said property having the Assessor's Parcel Number **140-05-712-064**. Affiant served the same on MAR 0 8 2016 by mailing said document(s) via regular and certified or registered mail, return receipt requested, as follows:

SEE ATTACHED LIST

The affiant has reviewed a Trustee Sales Guarantee or similar product and/or the business records of the **Craigmont Villas Homeowners Association** and/or the business records of Alessi & Koenig, and the internet website maintained by the Nevada Financial Institutions Division pursuant to NRS 657 in order to identify the names and addresses of each holder of a security interest on the afore-referenced unit that is entitled to notice pursuant to NRS 116.31163 and NRS 116.311635

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed on: MAR 0 8 2016

By: Azra Vidovic

Azra Vidovic

Alessi & Koenig, LLC
9500 West Flamingo Rd, Suite 205
Las Vegas, NV 89147

No Notary is Required Per NRS 53.045

HO # **40832**
APN # **140-05-712-064**
Property Address:
4300 N LAMONT ST APT 279
LAS VEGAS, NV 89115-2438

...../.....

4300 N LAMONT 279 TRUST
3455 ERVA ST APT 202
LAS VEGAS, NV 89117-6349

4300 N LAMONT 279 TRUST
4300 N LAMONT ST APT 279
LAS VEGAS, NV 89115-2438

Decision One Mortgage Co. LLC
6060 J A Jones Dr Ste 1000
Charlotte, NC 28287

Ticor Title
2285 Corporate Circle Ste 130
Henderson, NV 89074-7757

MERS, Inc.
1901 E Voorhees St Ste C
Danville, IL 61834-4512

Deutsche Bank, NTC
Ocwen Loan Servicing, LLC
5720 Premier Park Dr.
West Palm Beach, FL 33407-1610

Western Progressive - Nevada Inc.
1000 Abernathy Rd NE Ste 200 Bldg 400
Atlanta, GA 30328-5606

...../.....

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nlehman@wrightlegal.net
Attorneys for Secured Creditor Christiana Trust, a division of Wilmington Savings Fund Society, FSB, not in its individual capacity but as Trustee of ARLP Trust 3

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

IN RE:	Case No.: 12-12508-mkn
LYNN C. BURKE,	Chapter 7
Debtor	**OPPOSITION TO MOTION BY K&P HOMES, a series LLC of DEK HOLDINGS, LLC, TO REOPEN CHAPTER 7 CASE AND RETROACTIVELY ANNUL THE AUTOMATIC STAY**
	Hearing Date: March 30, 2016 **Hearing Time: 1:30 p.m.**

COMES NOW CHRISTIANA TRUST, a division of WILMINGTON SAVINGS FUND SOCIETY, FSB, not in its individual capacity but as TRUSTEE OF ARLP TRUST 3 ("CHRISTIANA TRUST") by and through its attorneys Edgar C. Smith, Esq. and Natalie C. Lehman, Esq. of WRIGHT, FINLAY & ZAK, LLP and opposes the Motion to Reopen Chapter 7 Under 11 USC §350 by K&P HOMES, a series LLC of DEK HOLDINGS, LLC [DOC #40] (hereafter "Motion.")

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This Opposition is based on the pleadings and papers on file with this Court, any facts subject to judicial notice, any argument this Court might consider, and any evidence this Court might entertain.

Dated: March 14, 2016

WRIGHT, FINLAY & ZAK, LLP

/s/ *Edgar C. Smith, Esq.*

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Nevada Bar No. 12995
7785 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
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Attorneys for Christiana Trust

I. INTRODUCTION

Movant purchased real property formerly owned by the Debtor. Movant neither conducted the sale nor authorized the sale, but claims standing after a stay violation to seek this relief. The stay violation in this case consisted of an HOA and its sale trustee who included discharged debt in the Notice of Lien and Notice of Default. The relief sought by this Movant does not provide any benefit to the debtor, but instead rewards parties not before this Court for their willful stay violation. The Motion should be denied.

There is no factual or legal basis shown to this Court to validate a homeowners association lien foreclosure sale that possibly resulted in the sale of real property worth $160,000.00 [Schedule A, Doc 1] based on a bid of $40,000.00. [Motion, Page 3, ¶ 15]

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II. ARGUMENT

A. Movant Has Offered No "Cause" for Annulling the Automatic Stay.

Although "the bankruptcy court has wide latitude in crafting relief from the automatic stay, including … retroactive relief," *In re Fjeldsted*, 293 B.R. 12, 21 (B.A.P. 9th Cir. 2003), the court should apply "[r]etroactive annulment [of the stay] … only in extreme circumstances." *In re Kissinger*, 72 F.3d 107, 108-09 (9th Cir. 1995) (internal citation and quotation marks omitted). Movant has failed to demonstrate extreme circumstances warranting this kind of relief.

There are a number of factors for this Court to evaluate a Motion to Annul, and each must be considered on a case-by-case basis. *In re Nat'l Envtl. Waste Corp.*, 129 F.3d 1052, 1055 (9th Cir. 1997); *Fjeldsted v. Lien (In re Fjeldsted)*, 293 B.R. at 21, 25. But out of those factors, "[m]any courts have focused on two factors …: (1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *See In re Nat'l. Envtl. Waste Corp.*, 129 F.3d at 1055; *In re Fjeldsted*, 293 B.R. at 24-25. The burden on satisfying the above factors lies with the moving party. *In re Webb*, 294 B.R. 850, 853 (Bankr. E.D. Ark. 2003). The burden is not met in this case.

Here, Movant fails to satisfy either of the factors described above. First, Movant neither authorized the sale nor conducted the sale. Tuscalante Homeowners Association "was listed on the Creditor's Matrix," (*Motion*, Page 2, ¶ 3). Tuscalante is therefore presumed to have notice of this bankruptcy.[1]

[1] Movant helpfully point out that Nevada Association Services ("Tuscalante's agent" *Id.*) and K&P Homes were not listed in the creditor's matrix. *Id.* Neither was a creditor, so this was not likely an oversight. It is notable only because the party who violated the discharge injunction is not the one seeking retroactive relief.

Second, there is nothing to suggest the debtor engaged in unreasonable or inequitable conduct, as Movant cannot impute to Debtor any blame for market conditions. Debtor stated the intent to surrender her property, which is likewise neither unreasonable nor inequitable. So the second factor does not weigh in favor of retroactive relief.

Movant notes the Debtor's discharge was entered June 11, 2012, and the decree closing the case was entered on August 6, 2012. However, the Association recorded its Notice of Delinquent Lien on July 31, 2012 (*Motion*, Page 3, ¶¶ 11,12). NAS was actually undertaking efforts to collect the debt accruing from January 1, 2012 *before* entry of the order for discharge. (*See*, Exhibit 1). NAS and its principal, Tuscalante, were therefore actively engaged in violating the automatic stay granted to Debtor under 11 USC § 362.

When the Association's agent recorded its Notice of Delinquent Lien, the Association was demanding Debtor pay #$1,115.23 – all of the amounts accruing since January 1, 2012 through July. (*See* Exhibit 2). Collection efforts directed at the Debtor picked up again on August 6, 2012, the same date the decree closing the case was entered and again on August 28, 2012. (*See*, Exhibits 3 and 4). Tuscalante and NAS pressed the Debtor to pay every penny that had accrued dating to at least January 2012. At this point, Tuscalante and NAS were violating the discharge injunction issued on June 11, 2012.

In a chapter 7 case, with exceptions not relevant here, "[t]he [bankruptcy] court shall grant the debtor a discharge." §727(a). When entered, that order "discharges the debtor from all debts that arose before the date of the [bankruptcy filing]." § 727(b). To give the discharge teeth, § 524(a)(2) prescribes that a discharge "operates as an injunction against the commencement or continuation of an action ... to collect, recover or offset any such debt as a

personal liability of the debtor, whether or not discharge of such debt is waived[.]" In re Wallace, BAP NV-11-1681-KIPAD, 2012 WL 2401871, at *5 (B.A.P. 9th Cir. 2012).

When the Notice of Default recorded on September 20, 2012, the debt had ballooned to **$2,099.52 –** clearly much more than the "four months of post-petition assessments" Movant suggests. (*See*, Motion, Page 3, ¶10). Tuscalante and NAS were still attempting to collect discharged debt. (*See* Exhibit 5). It should not surprise then, that *nunc pro tunc* relief from these willful stay violations is sought not by the actor who committed them, but its benefactor. And "benefactor" as used in this sense does not mean "*bona fide purchaser*," the Ninth Circuit rejected that status as cause in deciding whether to grant retroactive relief from stay. *Fjeldsted*, 293 B.R. at 26.

Movant argues only that the Debtor had no equity in the property and therefore no harm accrues in violating the stay, the discharge injunction, or granting retroactive relief from the violations. But the key consideration in the balancing of the equities is whether or not NAS and Tuscalante *could have* sought relief from stay – but whether it would have been granted. If Tuscalante had asserted a lien in senior position it was seeking to foreclose, then: (i) other secured creditors would have been placed on notice of the risk of loss; (ii) the motion would likely have been *denied*, as the association was adequately protected by its equity cushion. Instead, the Association and its sale trustee decided to jump ahead of the other creditors, which is why their actions in this case do not warrant retroactive relief from stay.

B. This Court's Remedies are Both Limited and Dependent, and Likely Not Sufficient to Grant Full and Final Relief in this Matter.

Finally, the request for annulment should *not* be granted because, as the Movant's Motion makes clear, this property is not part of the bankruptcy estate. Nevertheless, a finding

that the Movant has not shown cause to obtain retroactive annulment of the stay in light of the intentional violations of both 11 USC § 362(a) and 11 USC § 727(b) committed by a creditor of the Estate. Such a finding may result in the foreclosure sale being rescinded as voidable, but it will likely also bring a prompt resolution of the issues raised in the state court action.

III. CONCLUSION.

For the foregoing reasons, Christiana Trust respectfully requests that this Court deny the Motion to Annul the Automatic Stay Retroactively with sufficient findings to show that the HOA lien sale in question was void as a matter of law.

Dated: March 14, 2016

WRIGHT, FINLAY & ZAK, LLP

/s/Edgar C. Smith, Esq..

Edgar C. Smith, Esq.
Nevada Bar No. 5506
Natalie Lehman, Esq.
Nevada Bar No. 12995
7785 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
(702) 666-0632; Fax: (702) 946-1345

Attorneys for Christiana Trust

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am an employee of WRIGHT, FINLAY & ZAK, LLP; that service of the foregoing **OPPOSITION TO MOTION BY K&P HOMES, a series LLC of DEK HOLDINGS, LLC, TO REOPEN CHAPTER 7 CASE AND RETROACTIVELY ANNUL THE AUTOMATIC STAY** was made on the 14th day of March, 2016, by electronic means or depositing a copy of same in the United States Mail, at Las Vegas, Nevada, addressed as follows:

John Henry Wright, Esq.
The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
Phone: (702) 405-0001
Fax: (702) 405-8454
Attorney for Defendants,
K&P HOMES, A SERIES LLC OF DEK HOLDINGS, LLC

Haines & Krieger, LLC
David Krieger, Esq.
5041 N. Rainbow Blvd.
Las Vegas, NV 89130
Attorney for Debtor

Lenard E. Schwartzer
2850 S. Jones Blvd., #1
Las Vegas, NV 89146

/s/Jill M. Sallade _____
An Employee of WRIGHT, FINLAY & ZAK, LLP

Exhibit 1

Exhibit 1

Exhibit 1

Debbie Kluska

From: Debbie Kluska
Sent: Tuesday, June 19, 2012 12:50 PM
To: 'Kent Delaney'
Subject: RE: TUS - 7461 Glimmering Sun

What we can do is start the account over. We sent the demand letter while she was still in bankruptcy. If you need to send her a letter first and you want the account cancelled, please let me know.

Sincerely,

Debbie Kluska
Nevada Association Services, Inc.
6224 W. Desert Inn Rd.
Las Vegas, NV 89146
702-804-8885 Office
702-804-8887 Fax

From: Kent Delaney [mailto:kent@lvvcm.com]
Sent: Monday, June 18, 2012 4:44 PM
To: Debbie Kluska
Subject: TUS - 7461 Glimmering Sun

Hello Debbie. I received a message from Lynn Burke earlier today stating that she filed bankruptcy on 3/6/2012 and that we should not have turned her over to collections in May. I called back and left a message with her asking for a copy of the filing because we did not have it.

After hanging up, I decided to check a small group of filings that we cannot identify and found it. Rita Wiegard is listed first in VMS, and Lynn is listed 2nd so she is on the Salutation line in VMS. Lynn also has a different address from her property address. As a result, there was no way to locate her through a VMS search. I have scanned attached a copy of the bankruptcy filing, and a discharge dated 6/11/2012.

Kent
Accounting

Las Vegas Valley Community Management
10501 W. Gowan Ave, Suite 160
Las Vegas, NV 89129
Phone 655-7064 Fax 655-7051

LAS VEGAS VALLEY
COMMUNITY MANAGEMENT, LLC

June 21, 2012

Good morning June:

The Debtor was discharged from Bankruptcy. The Demand Letter was sent in violation of the automatic stay. Debbie asked that I give these to you, is that correct? I hope you had a wonderful weekend ☺

Susan #3~

United States Bankruptcy Court
District of Nevada

Case No. 12-12508-mkn
Chapter 7

In re: (Name of Debtor)
LYNN C BURKE
HC 33 BOX 2725
LAS VEGAS, NV 89161

Social Security No.:
xxx-xx-9851

ORDER DETERMINING DEBTOR COMPLIANCE WITH FILING REQUIREMENTS OF 11 U.S.C. § 521(a)(1)

Pursuant to 11 U.S.C. § 521(i), if an individual debtor in a voluntary case under Chapter 7 or Chapter 13 fails to file all of the information required under 11 U.S.C. § 521(a)(1) within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition. The Court has reviewed the file in this case and has determined that the debtor (see note below) has complied with the information filing requirement of 11 U.S.C. § 521(a)(1) and Local Rule 4002.1. Accordingly, it is

ORDERED:

1. This case is not subject to automatic dismissal under 11 U.S.C. § 521(i)(1) or (2).

2. If any party in interest has any reason to contest the Court's finding that the debtor has filed all information required by 11 U.S.C. § 521(a)(1), that party shall:

(a) File a Motion for Reconsideration not later than **10** days from the date of the entry of this order. The motion should specifically identify the information and document(s) required by 11 U.S.C. § 521(a)(1) that the debtor has failed to file.

(b) Comply with the provisions of LR 9014 and obtain a hearing date and time.

(c) Serve such motion and notice of hearing on the trustee, debtor and debtor's counsel, if any;

and

(d) File a Certificate of Service of the motion and notice of hearing within two business days of filing the motion.

Dated: 3/7/12

BY THE COURT

Mary A. Schott
Clerk of the Bankruptcy Court

Note: All references to "debtor" shall include and refer to both of the debtors in a case filed jointly by two individuals.

B9A (Official Form 9A) (Chapter 7 Individual or Joint Debtor No Asset Case) (12/11) Case Number 12-12508-mkn

UNITED STATES BANKRUPTCY COURT District of Nevada

Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on 3/6/12.

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice. Case documents may be viewed at www.nvb.uscourts.gov.

Important Notice to Individual Debtors: Debtors who are individuals must provide government–issued photo identification and proof of social security number at the meeting of creditors. Failure to do so may result in dismissal of their case.

See Reverse Side For Important Explanations

Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):
LYNN C BURKE
HC 33 BOX 2725
LAS VEGAS, NV 89161

Case Number: 12–12508–mkn Judge: MIKE K. NAKAGAWA	Social Security / Individual Taxpayer ID / Employer Tax ID / Other nos: 470–84–9851
Attorney for Debtor(s) (name and address): GEORGE HAINES HAINES & KRIEGER, L.L.C. 5041 N. RAINBOW BLVD. LAS VEGAS, NV 89130 Telephone number: (702) 880–5554	Bankruptcy Trustee (name and address): LENARD E. SCHWARTZER 2850 S. JONES BLVD., #1 LAS VEGAS, NV 89146 Telephone number: (702) 307–2022

Meeting of Creditors

Date: **April 9, 2012** Time: **12:30 PM**

Location: **300 Las Vegas Blvd., South, Room 1500, Las Vegas, NV 89101**

Presumption of Abuse under 11 U.S.C. § 707(b)

See "Presumption of Abuse" on reverse side.

The presumption of abuse does not arise.

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to Object to Debtor's Discharge or to Challenge Dischargeability of Certain Debts: 6/8/12

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Please Do Not File a Proof of Claim Unless You Receive a Notice To Do So.

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Do Not File a Proof of Claim at This Time" on the reverse side.

Address of the Bankruptcy Clerk's Office: 300 Las Vegas Blvd., South Las Vegas, NV 89101 Telephone number: (702) 527–7000	**For the Court:** Clerk of the Bankruptcy Court: Mary A. Schott Mary A. Schott
Hours Open: Monday – Friday 9:00 AM – 4:00 PM	Date: 3/7/12

EXPLANATIONS

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code §362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Presumption of Abuse	If the presumption of abuse arises, creditors may have the right to file a motion to dismiss the case under § 707(b) of the Bankruptcy Code. The debtor may rebut the presumption by showing special circumstances.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court.
Do Not File a Proof of Claim at This Time	There does not appear to be any property available to the trustee to pay creditors. *You therefore should not file a proof of claim at this time.* If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim. If this notice is mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code §727(a) *or* that a debt owed to you is not dischargeable under Bankruptcy Code §523(a)(2), (4), or (6), you must file a complaint — or a motion if you assert the discharge should be denied under §727(a)(8) or (a)(9) — in the bankruptcy clerk's office by the "Deadline to Object to Debtor's Discharge or to Challenge the Dischargeability of Certain Debts" listed on the front of this form. The bankruptcy clerk's office must receive the complaint or motion and any required filing fee by that deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objections by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office or at www.nvb.uscourts.gov.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

EXPLANATIONS (CONTINUED)

B9A (Official Form 9A) (12/10)

Trustee Information	The United States Trustee has appointed the herein named person as interim trustee effective the date of filing as shown on page 1 of this form. The case is covered by a trustee's blanket bond, the original of which is on file with the court. The trustee may abandon property of the estate that is burdensome or is of inconsequential value and benefit to the estate without further notice of abandonment, pursuant to 11 U.S.C. Section 554(a). Further notice will be provided upon request only. Any non–exempt property scheduled, but not administered at the time of closing of a case will be deemed abandoned pursuant to 11 U.S.C. Section 554(c). Please note that the trustee may use, sell or lease all non–exempt property of the estate which has an aggregate value of less than $2,500 WITHOUT FURTHER NOTICE TO CREDITORS. Pursuant to Federal Bankruptcy Rule 6004(d) any objection to the sale of estate property may be filed and served by a party in interest within 25 days of the mailing of this Notice of Commencement of Case.

Refer to Previous Page for Important Deadlines and Notices

BAPCPA, MEANSNO

U.S. Bankruptcy Court
District of Nevada (Las Vegas)
Bankruptcy Petition #: 12-12508-mkn

Date filed: 03/06/2012
Debtor discharged: 06/11/2012

Assigned to: MIKE K. NAKAGAWA
Chapter 7
Voluntary
No asset

Debtor
LYNN C BURKE
HC 33 BOX 2725
LAS VEGAS, NV 89161
CLARK-NV
SSN / ITIN: xxx-xx-9851

represented by **DAVID KRIEGER**
HAINES & KRIEGER, L.L.C
5041 N. RAINBOW BLVD.
LAS VEGAS, NV 89130
(702) 880-5554
Fax : (702) 385-5518
Email: dkrieger@hainesandkrieger.com

GEORGE HAINES
HAINES & KRIEGER, L.L.C.
5041 N. RAINBOW BLVD.
LAS VEGAS, NV 89130
(702) 880-5554
Fax : (702) 385-5518
Email: ghaines@hainesandkrieger.com

Trustee
LENARD E. SCHWARTZER
2850 S. JONES BLVD., #1
LAS VEGAS, NV 89146
(702) 307-2022

U.S. Trustee
U.S. TRUSTEE - LV - 7
300 LAS VEGAS BOULEVARD, SO.
SUITE 4300
LAS VEGAS, NV 89101

Filing Date	#	Docket Text
03/06/2012	1	Chapter 7 Voluntary Petition. Fee Amount $306. Filed by GEORGE HAINES on behalf of LYNN C BURKE (HAINES, GEORGE) (Entered: 03/06/2012)
		Statement of Social Security Number(s). **This document contains sensitive information and cannot be viewed by the public.** Filed by GEORGE

03/06/2012	2	HAINES on behalf of LYNN C BURKE (HAINES, GEORGE) (Entered: 03/06/2012)
03/06/2012	3	Declaration Re: Electronic Filing Filed by GEORGE HAINES on behalf of LYNN C BURKE (HAINES, GEORGE) (Entered: 03/06/2012)
03/06/2012	4	Chapter 7 Statement of Current Monthly Income and Means Test Calculation - Form 22A . Filed by GEORGE HAINES on behalf of LYNN C BURKE (HAINES, GEORGE) (Entered: 03/06/2012)
03/06/2012	5	Certificate of Credit Counseling Filed by GEORGE HAINES on behalf of LYNN C BURKE (HAINES, GEORGE) (Entered: 03/06/2012)
03/06/2012	6	Meeting of Creditors and Notice of Appointment of Trustee LENARD E. SCHWARTZER, . 341 meeting to be held on 04/09/2012 at 12:30 PM at 341s - Foley Bldg,Rm 1500. Deadline to Object to Debtor's Discharge or to Challenge Dischargeability of Certain Debts due by 06/08/2012. (Entered: 03/06/2012)
03/07/2012	7	Receipt of Filing Fee for Voluntary Petition 7(12-12508) [misc,volp7pb] (306.00). Receipt number 12200431, fee amount $ 306.00. (U.S. Treasury) (Entered: 03/07/2012)
03/07/2012	8	Order Determining Debtor's Compliance with Filing Requirements of 11 U.S.C. Section 521(a)(1) (anc) (Entered: 03/07/2012)
03/09/2012	9	BNC Certificate of Mailing (Related document(s)6 Meeting of Creditors Chapter 7 No Asset (BNC)) No. of Notices: 44. Notice Date 03/09/2012. (Admin.) (Entered: 03/09/2012)
03/09/2012	10	BNC Certificate of Mailing. (Related document(s)8 Order Determining Debtor's Compliance with Filing Requirements of 11 U.S.C. Section 521(a)(1) (BNC)) No. of Notices: 61. Notice Date 03/09/2012. (Admin.) (Entered: 03/09/2012)
03/14/2012	11	Debtor's Certification of Completion of Instructional Course Concerning Personal Financial Management. Filed by GEORGE HAINES on behalf of LYNN C BURKE (Attachments: # 1 Financial Management) (HAINES, GEORGE) (Entered: 03/14/2012)
04/11/2012	12	Statement Adjourning Meeting of 341(a) Meeting of Creditors. Section 341(a) Meeting Continued on 5/14/2012 at 12:30 PM at 341s - Foley Bldg,Rm 1500. (SCHWARTZER, LENARD) (Entered: 04/11/2012)
		Amended Schedule[s] F, Creditors Holding Unsecured Nonpriority Claims Amount: $ 70711, Declaration Concerning Debtor[s] Schedules, Fee Amount $30. Filed by DAVID KRIEGER on behalf of LYNN C BURKE (KRIEGER,

04/13/2012	13	DAVID) (Entered: 04/13/2012)
04/13/2012	14	Amended Schedule[s] F, Creditors Holding Unsecured Nonpriority Claims Amount: $ 70711, Declaration Concerning Debtor[s] Schedules, Fee Amount $30. Filed by GEORGE HAINES on behalf of LYNN C BURKE (HAINES, GEORGE) (Entered: 04/13/2012)
04/13/2012	15	Certificate of Service Filed by GEORGE HAINES on behalf of LYNN C BURKE (Related document(s)6 Meeting of Creditors Chapter 7 No Asset (BNC)) (HAINES, GEORGE) (Entered: 04/13/2012)
04/13/2012	16	Amended Schedule[s] B, Personal Property Amount: $ 17515, Declaration Concerning Debtor[s] Schedules, Filed by GEORGE HAINES on behalf of LYNN C BURKE (HAINES, GEORGE) (Entered: 04/13/2012)
04/13/2012	17	Amended Schedule[s] D, Creditors Holding Secured Claims Amount: $ 831569, Declaration Concerning Debtor[s] Schedules, Fee Amount $30. Filed by GEORGE HAINES on behalf of LYNN C BURKE (HAINES, GEORGE) (Entered: 04/13/2012)
04/16/2012	18	Receipt of Filing Fee for Schedules(12-12508-mkn) [misc,amdschsa] (30.00). Receipt number 12378453, fee amount $ 30.00. (U.S. Treasury) (Entered: 04/16/2012)
04/16/2012	19	Receipt of Filing Fee for Schedules(12-12508-mkn) [misc,amdschsa] (30.00). Receipt number 12378453, fee amount $ 30.00. (U.S. Treasury) (Entered: 04/16/2012)
04/16/2012	20	Receipt of Filing Fee for Schedules(12-12508-mkn) [misc,amdschsa] (30.00). Receipt number 12378463, fee amount $ 30.00. (U.S. Treasury) (Entered: 04/16/2012)
04/16/2012	21	Amended Schedule[s] B, Personal Property Amount: $ 18222, Declaration Concerning Debtor[s] Schedules, Filed by GEORGE HAINES on behalf of LYNN C BURKE (HAINES, GEORGE) (Entered: 04/16/2012)
04/26/2012	22	Motion for Relief from Stay Property: 8850 Kulka Road, Las Vegas, NV 89124 Fee Amount $176. with Proposed Order Filed by KEVIN HAHN on behalf of OneWest Bank, FSB (Attachments: # 1 Exhibit 1-4)(HAHN, KEVIN) (Entered: 04/26/2012)
04/26/2012	23	Notice of Hearing Hearing Date: 5/30/12 Hearing Time: 1:30 p.m. with Certificate of Service Filed by KEVIN HAHN on behalf of OneWest Bank, FSB (Related document(s)22 Motion for Relief from Stay filed by Creditor OneWest Bank, FSB) (HAHN, KEVIN) (Entered: 04/26/2012)
		Receipt of Filing Fee for Motion for Relief from Stay(12-12508-mkn)

04/26/2012	24	[motion,mrlfsty] (176.00). Receipt number 12433392, fee amount $ 176.00. (U.S. Treasury) (Entered: 04/26/2012)
04/26/2012	25	Motion for Relief from Stay Property: 8850 Kulka Road, Las Vegas, Nevada 89124 Fee Amount $176. with Proposed Order Filed by KEVIN HAHN on behalf of OneWest Bank, FSB (Attachments: # 1 Exhibit)(HAHN, KEVIN) (Entered: 04/26/2012)
04/26/2012	26	Notice of Hearing Hearing Date: 05/30/2012 Hearing Time: 1:30 p.m. with Certificate of Service Filed by KEVIN HAHN on behalf of OneWest Bank, FSB (Related document(s)25 Motion for Relief from Stay filed by Creditor OneWest Bank, FSB) (HAHN, KEVIN) (Entered: 04/26/2012)
04/26/2012	27	Receipt of Filing Fee for Motion for Relief from Stay(12-12508-mkn) [motion,mrlfsty] (176.00). Receipt number 12434009, fee amount $ 176.00. (U.S. Treasury) (Entered: 04/26/2012)
04/27/2012	28	Hearing Scheduled/Rescheduled. Hearing scheduled 5/30/2012 at 01:30 PM at MKN-Courtroom 2, Foley Federal Bldg. (Related document(s)25 Motion for Relief from Stay filed by Creditor OneWest Bank, FSB) (slh) (Entered: 04/27/2012)
04/27/2012	29	Hearing Scheduled/Rescheduled. Hearing scheduled 5/30/2012 at 01:30 PM at MKN-Courtroom 2, Foley Federal Bldg. (Related document(s)22 Motion for Relief from Stay filed by Creditor OneWest Bank, FSB) (slh) (Entered: 04/27/2012)
05/15/2012	30	Chapter 7 Trustee's Report of No Distribution: I, LENARD E. SCHWARTZER, having been appointed trustee of the estate of the above-named debtor(s), report that I have neither received any property nor paid any money on account of this estate; that I have made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law. Pursuant to Fed R Bank P 5009, I hereby certify that the estate of the above-named debtor(s) has been fully administered. I request that I be discharged from any further duties as trustee. Key information about this case as reported in schedules filed by the debtor(s) or otherwise found in the case record: This case was pending for 2 months. Assets Abandoned (without deducting any secured claims): $ 474044.75, Assets Exempt: $ 5177.25, Claims Scheduled: $ 902280.00, Claims Asserted: Not Applicable, Claims scheduled to be discharged without payment (without deducting the value of collateral or debts excepted from discharge): $ 902280.00. (SCHWARTZER, LENARD) (Entered: 05/15/2012)
05/18/2012	31	Response Filed by DAVID KRIEGER on behalf of LYNN C BURKE (Related document(s)25 Motion for Relief from Stay filed by Creditor OneWest Bank, FSB.) (KRIEGER, DAVID) (Entered: 05/18/2012)

06/11/2012	32	Order Discharging Debtor (Admin.) (Entered: 06/11/2012)
06/12/2012	34	Trustee Voucher Amount Paid: $60.00 Voucher Number: 12464800791 (admin) (Entered: 06/14/2012)
06/13/2012	33	BNC Certificate of Mailing (Related document(s)32 Order Discharging Debtor (BNC)) No. of Notices: 49. Notice Date 06/13/2012. (Admin.) (Entered: 06/13/2012)

PACER Service Center			
Transaction Receipt			
06/21/2012 06:10:20			
PACER Login:	ca0265	Client Code:	
Description:	Docket Report	Search Criteria:	12-12508-mkn Fil or Ent: filed Doc From: 0 Doc To: 99999999 Term: included Format: html
Billable Pages:	3	Cost:	0.30

United States Bankruptcy Court
District of Nevada

Case No. 12-12508-mkn
Chapter 7

In re: (Name of Debtor)
LYNN C BURKE
HC 33 BOX 2725
LAS VEGAS, NV 89161

Social Security No.:
xxx-xx-9851

ORDER DETERMINING DEBTOR COMPLIANCE WITH FILING REQUIREMENTS OF 11 U.S.C. § 521(a)(1)

Pursuant to 11 U.S.C. § 521(i), if an individual debtor in a voluntary case under Chapter 7 or Chapter 13 fails to file all of the information required under 11 U.S.C. § 521(a)(1) within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition. The Court has reviewed the file in this case and has determined that the debtor (see note below) has complied with the information filing requirement of 11 U.S.C. § 521(a)(1) and Local Rule 4002.1. Accordingly, it is

ORDERED:

1. This case is not subject to automatic dismissal under 11 U.S.C. § 521(i)(1) or (2).

2. If any party in interest has any reason to contest the Court's finding that the debtor has filed all information required by 11 U.S.C. § 521(a)(1), that party shall:

(a) File a Motion for Reconsideration not later than **10** days from the date of the entry of this order. The motion should specifically identify the information and document(s) required by 11 U.S.C. § 521(a)(1) that the debtor has failed to file.

(b) Comply with the provisions of LR 9014 and obtain a hearing date and time.

(c) Serve such motion and notice of hearing on the trustee, debtor and debtor's counsel, if any;

and

(d) File a Certificate of Service of the motion and notice of hearing within two business days of filing the motion.

Dated: 3/7/12

BY THE COURT

Mary A. Schott

Mary A. Schott
Clerk of the Bankruptcy Court

Note: All references to "debtor" shall include and refer to both of the debtors in a case filed jointly by two individuals.

B8 (Form 8) (12/08)

United States Bankruptcy Court
District of Nevada

In re Lynn C Burke (Debtor(s)) Case No. _____ Chapter 7

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

PART A - Debts secured by property of the estate. (Part A must be fully completed for **EACH** debt which is secured by property of the estate. Attach additional pages if necessary.)

Property No. 1	
Creditor's Name: **Bank of America**	**Describe Property Securing Debt:** **Single Family Home** **7461 Glimmering Sun Ave** **Las Vegas, NV 89178** **To be surrendered**

Property will be (check one):
- ☒ Surrendered ☐ Retained

If retaining the property, I intend to (check at least one):
- ☐ Redeem the property
- ☐ Reaffirm the debt
- ☐ Other. Explain _____ (for example, avoid lien using 11 U.S.C. § 522(f)).

Property is (check one):
- ☐ Claimed as Exempt ☒ Not claimed as exempt

Property No. 2	
Creditor's Name: **Citimortgage Inc**	**Describe Property Securing Debt:** **Single Family Home** **8850 Kulka Road** **Enterprise, NV 89161**

Property will be (check one):
- ☐ Surrendered ☒ Retained

If retaining the property, I intend to (check at least one):
- ☐ Redeem the property
- ☐ Reaffirm the debt
- ☒ Other. Explain **Negotiate Loan Modification with Lender** (for example, avoid lien using 11 U.S.C. § 522(f)).

Property is (check one):
- ☐ Claimed as Exempt ☒ Not claimed as exempt

NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146

9171 9000 0718 5000 6108 65

N71583

Lynn Burke
7461 Glimmering Sun Ave
Las Vegas, NV 89178

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

NEVADA ASSOCIATION SERVICES, INC.

Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
Phone (702) 804-8885
Fax (702) 804-8887
Toll Free (888) 627-5544

June 8, 2012

Lynn Burke
HC 33 Box 2725
Las Vegas, NV 89161

VIA REGULAR AND
CERTIFIED MAIL

Re: NAS# N71583
7461 Glimmering Sun Ave, Las Vegas, NV 89178
Tuscalante

Dear Sir/Madam:

Nevada Association Services, Inc. (NAS) has been contracted by Tuscalante (also called the Association) to collect from you the overdue homeowner's assessments you owe to the Association. As of today's date, records show a balance due on your account of $637.98. Your account balance may periodically increase due to the addition of other charges provided within the Association's governing documents or as otherwise provided by law including NAC 116.470.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt, or any portion thereof, this office will assume the debt is valid. If you notify this office in writing within 30 days from receiving this notice that the debt, or any portion thereof, is disputed, this office will: obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request from this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

If you have any questions, please contact an account manager at *(702) 804-8885.*

Sincerely,

Megan Molina

Megan Molina
Nevada Association Services, Inc.

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Fax (702) 804-8887
Toll Free (888) 627-5544

June 21, 2012

Lynn Burke
HC 33 Box 2725
Las Vegas, NV 89161

VIA REGULAR AND
CERTIFIED MAIL

Re: NAS# N71583
7461 Glimmering Sun Ave, Las Vegas, NV 89178
Tuscalante

Dear Sir/Madam:

Nevada Association Services, Inc. (NAS) has been contracted by Tuscalante (also called the Association) to collect the overdue homeowner's assessments still due to the Association. As of today's date, records show a balance due of $687.23. The account balance may periodically increase due to the addition of other charges provided within the Association's governing documents or as otherwise provided by law including NAC 116.470.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt, or any portion thereof, this office will assume the debt is valid. If you notify this office in writing within 30 days from receiving this notice that the debt, or any portion thereof, is disputed, this office will: obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request from this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

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Sincerely,

Veronica Meraz
Nevada Association Services, Inc.

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Wiegand, Rita
7461 Glimmering Sun Ave

Tuscalante
Account No.:54101

NAS #N71583

Assessments, Late Fees, Interest, Attorneys Fees & Collection Costs	**Amount (Monthly)** Present Rate	**Amount (CURRENT)** NAS FEES	**Amount (TOTAL)** NAS COSTS
Dates of Delinquency:	1/1/2012	1/1/2012	1/1/2012
01/01/2012-7/1/2012	7/1/2012	7/1/2012	7/1/2012
Balance Forward	(9.00)	0.00	0.00
Assessment Amount	49.25	0.00	0.00
No. of Periods Delinquent	7	0	0
Total Assessments Due	344.75	0.00	0.00
Late fee amount	0.00	0.00	0.00
No. of Periods Late Fees Incurred	1	0	0
Total Late Fees Due	76.40	0.00	0.00
Interest Due	1.08	0.00	0.00
HOA Intent to Lien	50.00	0.00	0.00
Management Co. Fee/ Admin Fee	50.00	0.00	0.00
Transfer Fee	0.00	0.00	0.00
Demand Letter	0.00	135.00	0.00
Notice of Delinquent Assessment Lien/Violations Lien	0.00	0.00	0.00
Release of Notice of Delinquent Assessment Lien/Violations Lien	0.00	0.00	0.00
Mailing	0.00	16.00	23.00
Recording Costs	0.00	0.00	0.00
Intent to Notice of Default	0.00	0.00	0.00
Payment Plan Fee	0.00	0.00	0.00
Payment Plan Breach Letters	0.00	0.00	0.00
Escrow Demand Fee	0.00	0.00	0.00
Notice of Default Fees	0.00	0.00	0.00
Title Report	0.00	0.00	0.00
Property Report	0.00	0.00	0.00
Notice of Sale Fee	0.00	0.00	0.00
Posting & Publication Cost	0.00	0.00	0.00
Courier	0.00	0.00	0.00
Postponement of Sale	0.00	0.00	0.00
Conduct Foreclosure Sale	0.00	0.00	0.00
Prepare/Record Deed	0.00	0.00	0.00
Property Transfer Tax	0.00	0.00	0.00
Subtotals	$513.23	$151.00	$23.00

Credit	**Date**	**Type**	**Amount**
			(0.00)
OTHER CREDITS			
TOTAL			**0.00**

Payment Credits	**Amount**
Assessments/Violations	(0.00)
Interest	(0.00)
Late charges	(0.00)
Management Co	(0.00)
NAS Fees	(0.00)
NAS Costs	(0.00)
PAYMENTS TOTAL	**0.00**
TOTAL	**687.23**

Assessments:	$385.75
Interest:	$1.08
Late charges:	$76.40
Management Co:	$50.00
Collection fees:	$151.00
Collection costs:	$23.00
GRAND TOTAL:	$687.23

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

NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146

9171 9000 0718 5000 6283 58

N71583

Rita Wiegand
7461 Glimmering Sun Ave
Las Vegas, NV 89178

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NAS
NEVADA ASSOCIATION SERVICES, INC.

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6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
Phone (702) 804-8885
Fax (702) 804-8887
Toll Free (888) 627-5544

June 21, 2012

Rita Wiegand
HC 33 Box 2725
Las Vegas, NV 89161

VIA REGULAR AND
CERTIFIED MAIL

Re: NAS# N71583
7461 Glimmering Sun Ave, Las Vegas, NV 89178
Tuscalante

Dear Sir/Madam:

Nevada Association Services, Inc. (NAS) has been contracted by Tuscalante (also called the Association) to collect the overdue homeowner's assessments still due to the Association. As of today's date, records show a balance due of $687.23. The account balance may periodically increase due to the addition of other charges provided within the Association's governing documents or as otherwise provided by law including NAC 116.470.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt, or any portion thereof, this office will assume the debt is valid. If you notify this office in writing within 30 days from receiving this notice that the debt, or any portion thereof, is disputed, this office will: obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request from this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

If you have any questions, please contact an account manager at (702) 804-8885.

Sincerely,

Veronica Meraz

Veronica Meraz
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NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146

9171 9000 0718 5000 6283 72

N71583

Lynn Burke
7461 Glimmering Sun Ave
Las Vegas, NV 89178

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June 21, 2012

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9171 9000 0718 5000 6283 89

N71583

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Demand Letter:

Sent by First Class Mail & Certified Mail with a Return Receipt requested.

The following is the returned, unclaimed or signed for mail for this mailing that we received back.

NAS
6224 W. Desert Inn Rd., Las Vegas, Nevada 89146
Return Service Requested

N71583

NIXIE 891 DE 1 00 07/24/12
RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD
BC: 89146661224 *0194-01252-24-39

Rita Wiegand
7461 Glimmering Sun Ave
Las Vegas, NV 89178

54 ORDFMIT 89146@6612

K&P00048

NAS
6224 W. Desert Inn Rd., Las Vegas, Nevada 89146
Return Service Requested

N71583

NIXIE 891 DE 1 00 07/24/12
RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD
BC: 89146661224 *0194-01253-24-39

Lynn Burke
7461 Glimmering Sun Ave
Las Vegas, NV 89178

54 ORDFMIT 89146@6612

CTADD2241

CERTIFIED MAIL

NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146

9171 9000 0718 5000 6283 58

ELECTRONIC RATE
UNITED STATES POSTAGE PITNEY BOWES
02 1M $ 04.52⁴
0004293086 JUN 21 2012
MAILED FROM ZIPCODE 89146

RECEIVED
JUL 16 2012
NEVADA ASSOC. SP

6-28

N71583

Rita Wiegand
7461 Glimmering Sun Ave
Las Vegas, NV 89178

NIXIE 891 DE 1 00 07/13/12
RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD
BC: 89146661224 *0294-03936-13-39

54 DRDFN 89146661224

K&P00049

CERTIFIED MAIL

NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146

9171 9000 0718 5000 6283 72

ELECTRONIC RATE
UNITED STATES POSTAGE PITNEY BOWES
02 1M $ 04.52⁴
0004293086 JUN 21 2012
MAILED FROM ZIPCODE 89146

RECEIVED
JUL 16 2012
NEVADA ASSOC. SP

N71583

Lynn Burke
7461 Glimmering Sun Ave
Las Vegas, NV 89178

NIXIE 891 DE 1 00 07/13/12
RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD
BC: 89146661224 *0294-02937-13-39

54 DRDFN 89146661224

CTADD2242

CERTIFIED MAIL

NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146

9171 9000 0718 5000 6283 65

02 1M $ 04.52⁴
0004293086 JUN 21 2012
MAILED FROM ZIP CODE 89146

RECEIVED
JUL 16 2012
NEVADA ASSOC. SR'

N71583

Rita Wiegand
HC 33 Box 2725
Las Vegas, NV 89161

6/27 RTN 7-7

89161899206 HD33

CERTIFIED MAIL

NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146

9171 9000 0718 5000 6283 89

02 1M $ 04.52⁴
JUN 21 2012
ZIP CODE 89146

RECEIVED
JUL 16 2012
NEVADA ASSOC. SR'

N71583

Lynn Burke
HC 33 Box 2725
Las Vegas, NV 89161

6/22 6/27 RTN 7-7

89161899206 HD33

K&P00050

CTADD2243

Debbie Kluska

From: Debbie Kluska
Sent: Wednesday, July 18, 2012 2:44 PM
To: 'Kent Delaney'
Subject: RE: TUS - 7461 Glimmering Sun

Sounds good, thanks

Sincerely,

Debbie Kluska
Nevada Association Services, Inc.
6224 W. Desert Inn Rd.
Las Vegas, NV 89146
702-804-8885 Office
702-804-8887 Fax

From: Kent Delaney [mailto:kent@lvvcm.com]
Sent: Wednesday, July 18, 2012 12:38 PM
To: Debbie Kluska
Subject: RE: TUS - 7461 Glimmering Sun

Hello Debbie. I checked with Kelly and she said for you to go ahead with the notice. The discharge from the bankruptcy court was 6/11/12, so the homeowner is fair game now.

Kent

From: Debbie Kluska [mailto:debbie@nas-inc.com]
Sent: Tuesday, July 17, 2012 4:45 PM
To: Kent Delaney
Subject: RE: TUS - 7461 Glimmering Sun

We are ready to proceed with recording a notice of delinquent lien on this account that we have previously corresponded about. I believe you want us to proceed however, I figured I would check with you. If I don't hear from you we will proceed with preparing the notice of lien on Friday.

Sincerely,

Debbie Kluska
Nevada Association Services, Inc.
6224 W. Desert Inn Rd.
Las Vegas, NV 89146
702-804-8885 Office
702-804-8887 Fax

From: Debbie Kluska
Sent: Friday, June 29, 2012 11:24 AM
To: 'Kent Delaney'
Subject: RE: TUS - 7461 Glimmering Sun

HI Kent,

Sorry for the delay on my part as well. I was sick this week and missed some work so I'm playing catch up too! You don't have to explain auditors to me, we have our annual review as well ☺

A new demand letter has been sent but if you would like I can still cancel the account. Just let me know. Have a great day!

Sincerely,

Debbie Kluska
Nevada Association Services, Inc.
6224 W. Desert Inn Rd.
Las Vegas, NV 89146
702-804-8885 Office
702-804-8887 Fax

PERSONAL AND CONFIDENTIAL: Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose. This message originates from Nevada Association Services, Inc. This message and any file(s) or attachment(s) transmitted with it are confidential, intended only for the named recipient, and may contain information that is a trade secret, proprietary, or is otherwise protected against unauthorized use or disclosure. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. Personal messages express only the view of the sender and are not attributable to Nevada Association Services, Inc.

Michele W. Shafe, Assessor

REAL PROPERTY PARCEL RECORD

Click Here for a Print Friendly Version

Assessor Map | Aerial View | Building Sketch | Ownership History | Neighborhood Sales | New Search

GENERAL INFORMATION	
PARCEL NO.	176-27-312-159
OWNER AND MAILING ADDRESS	WIEGAND RITA BURKE LYNN HC 33 BOX 2725 LAS VEGAS NV 89161-9206
LOCATION ADDRESS CITY/UNINCORPORATED TOWN	7461 GLIMMERING SUN AVE ENTERPRISE
ASSESSOR DESCRIPTION	MOUNTAINS EDGE POD 211 PLAT BOOK 131 PAGE 17 LOT 226 SEC 27 TWP 22 RNG 60
RECORDED DOCUMENT NO.	* 20071003:01902
RECORDED DATE	10/03/2007
VESTING	JOINT TENANCY

*Note: Only documents from September 15, 1999 through present are available for viewing.

ASSESSMENT INFORMATION AND SUPPLEMENTAL VALUE	
TAX DISTRICT	635
APPRAISAL YEAR	2011
FISCAL YEAR	12-13
SUPPLEMENTAL IMPROVEMENT VALUE	0
SUPPLEMENTAL IMPROVEMENT ACCOUNT NUMBER	N/A

REAL PROPERTY ASSESSED VALUE		
FISCAL YEAR	2011-12	2012-13
LAND	6650	6650
IMPROVEMENTS	67517	45593
PERSONAL PROPERTY	0	0
EXEMPT	0	0
GROSS ASSESSED (SUBTOTAL)	74167	52243
TAXABLE LAND+IMP (SUBTOTAL)	211906	149266
COMMON ELEMENT ALLOCATION ASSD	0	0
TOTAL ASSESSED VALUE	74167	52243

Wiegand, Rita
7461 Glimmering Sun Ave

Tuscalante
Account No.:54101

NAS #N71583

Assessments, Late Fees, Interest, Attorneys Fees & Collection Costs	**Amount (Monthly)** Present Rate	**Amount (CURRENT)** NAS FEES	**Amount (TOTAL)** NAS COSTS
Dates of Delinquency:	1/1/2012	1/1/2012	1/1/2012
01/01/2012-7/25/2012	7/25/2012	7/25/2012	7/25/2012
Balance Forward	(9.00)	0.00	0.00
Assessment Amount	49.25	0.00	0.00
No. of Periods Delinquent	7	0	0
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Late fee amount	0.00	0.00	0.00
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Management Co. Fee/ Admin Fee	50.00	0.00	0.00
Transfer Fee	0.00	0.00	0.00
Demand Letter	0.00	135.00	0.00
Notice of Delinquent Assessment Lien/Violations Lien	0.00	325.00	0.00
Release of Notice of Delinquent Assessment Lien/Violations Lien	0.00	30.00	0.00
Mailing	0.00	32.00	46.00
Recording Costs	0.00	0.00	34.00
Intent to Notice of Default	0.00	0.00	0.00
Payment Plan Fee	0.00	0.00	0.00
Payment Plan Breach Letters	0.00	0.00	0.00
Escrow Demand Fee	0.00	0.00	0.00
Notice of Default Fees	0.00	0.00	0.00
Title Report	0.00	0.00	0.00
Property Report	0.00	0.00	0.00
Notice of Sale Fee	0.00	0.00	0.00
Posting & Publication Cost	0.00	0.00	0.00
Courier	0.00	0.00	0.00
Postponement of Sale	0.00	0.00	0.00
Conduct Foreclosure Sale	0.00	0.00	0.00
Prepare/Record Deed	0.00	0.00	0.00
Property Transfer Tax	0.00	0.00	0.00
Subtotals	$513.23	$522.00	$80.00

Credit	**Date**	**Type**	**Amount**
			(0.00)
OTHER CREDITS			
TOTAL			**0.00**

Payment Credits	**Amount**
Assessments/Violations	(0.00)
Interest	(0.00)
Late charges	(0.00)
Management Co	(0.00)
NAS Fees	(0.00)
NAS Costs	(0.00)
PAYMENTS TOTAL	**0.00**
TOTAL	**1115.23**

Assessments:	$385.75
Interest:	$1.08
Late charges:	$76.40
Management Co:	$50.00
Collection fees:	$522.00
Collection costs:	$80.00
GRAND TOTAL:	$1115.23

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

APN # 176-27-312-159
N71583

NOTICE OF DELINQUENT ASSESSMENT LIEN

In accordance with Nevada Revised Statutes and the Association's declaration of Covenants Conditions and Restrictions (CC&Rs), recorded on November 22, 2006, as instrument number 0000748 BK 20061122, of the official records of Clark County, Nevada, the Tuscalante has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as 7461 Glimmering Sun Ave Las Vegas, NV 89178 particularly legally described as: MOUNTAINS EDGE POD 211 PLAT BOOK 131 PAGE 17 LOT 226 in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are):
Rita Wiegand, Lynn Burke

Mailing address(es):
HC 33 Box 2725 Las Vegas, NV 89161
HC 33 Box 2725 Las Vegas, NV 89161

*Total amount due as of today's date is $1,115.23.

This amount includes late fees, collection fees and interest in the amount of $729.48
* Additional monies will accrue under this claim at the rate of the claimant's regular assessments or special assessments, plus permissible late charges, costs of collection and interest, accruing after the date of the notice.
Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Dated: July 25, 2012

Megan Molina

By Megan Molina, of Nevada Association Services, Inc., as agent for Tuscalante

When Recorded Mail To:
Nevada Association Services
TS # N71583
6224 W. Desert Inn Rd, Suite A
Las Vegas, NV 89146
Phone: (702) 804-8885 Toll Free: (888) 627-5544

Exhibit 2

Exhibit 2

Exhibit 2

Inst #: 201207310002531
Fees: $17.00
N/C Fee: $0.00
07/31/2012 09:22:46 AM
Receipt #: 1254302
Requestor:
NORTH AMERICAN TITLE COMPAN
Recorded By: JACKSM Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

Accommodation

APN # 176-27-312-159
N71583

NOTICE OF DELINQUENT ASSESSMENT LIEN

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Dated: July 25, 2012

Megan Molina

By Megan Molina, of Nevada Association Services, Inc., as agent for Tuscalante

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Nevada Association Services
TS # N71583
6224 W. Desert Inn Rd, Suite A
Las Vegas, NV 89146
Phone: (702) 804-8885 Toll Free: (888) 627-5544

Exhibit 3

Exhibit 3

Exhibit 3

NEVADA ASSOCIATION SERVICES, INC.

Nevada Association Services
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
Phone: (702) 804-8885
Fax: (702) 804-8887
Toll Free: (888) 627-5544

August 6, 2012

Lynn Burke
HC 33 Box 2725
Las Vegas, NV 89161

VIA REGULAR AND
CERTIFIED MAIL

RE: NAS # N71583
7461 Glimmering Sun Ave, Las Vegas, NV, 89178
Tuscalante / Lynn Burke

Dear Sir/Madam:

As you were previously advised, Nevada Association Services, Inc. (NAS) has been contracted by Tuscalante (the Association) to collect from you the overdue homeowner's assessments you owe the Association. As of the date the lien was prepared, the total amount due, including collection fees and costs is $1,115.23 (also called the balance due or debt). Since you have decided not to reinstate your account, a Notice of Delinquent Assessment Lien was recorded on your property. A copy of the notice of lien is enclosed. The amount stated above does NOT include assessments, late fees, interest, fines, collection fees and costs, and other applicable charges including those permitted under NAC 116.470 that may have come due since the date the lien was recorded. Those additional amounts must be included when you submit your payment. Therefore, you may wish to contact this office to verify the amount due prior to sending your payment.

NAS is required by law to send the Notice of Delinquent Assessment. Important: This Notice does not change the 30 day Fair Debt Collection Practices Act dispute and validation period which commenced when you received NAS' first letter.

Sincerely,

Pearl Agustin

Pearl Agustin
Nevada Association Services, Inc.
encl.

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

Exhibit 4

Exhibit 4

Exhibit 4

NAS
NEVADA ASSOCIATION SERVICES, INC.

Nevada Association Services
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
Phone: (702) 804-8885
Fax: (702) 804-8887
Toll Free: (888) 627-5544

August 28, 2012

Lynn Burke
HC 33 Box 2725
Las Vegas, NV 89161

RE: 7461 Glimmering Sun Ave
Tuscalante / Lynn Burke
NAS # N71583

Dear Sir/Madam:

As you know, your failure to pay your homeowner's association assessments has resulted in a Notice of Delinquent Assessment Lien being recorded against your property. The Association will soon proceed with a non-judicial foreclosure action, which could result in you losing your property. You will also be responsible to pay the additional foreclosure fees and costs, which could total approximately $700 in additional charges.

Both this office and your Association urge you to contact Nevada Association Services, Inc. in order to arrange for immediate payment. Should you decide not to remit full payment in the form of cashier's check or money order, to this office, within 10 days of the date of this letter, foreclosure proceedings will commence.
YOU MUST CONTACT THIS OFFICE TO VERIFY THE AMOUNT DUE PRIOR TO SENDING YOUR PAYMENT.

This will be the final correspondence you will receive prior to a Notice of Default being recorded on your property.

Thank you in advance for your immediate payment.

Sincerely,

Debbie Kluska

Debbie Kluska
Nevada Association Services, Inc.

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

Exhibit 5

Exhibit 5

Exhibit 5

APN # 176-27-312-159
NAS # N71583
North American Title # 38121
Property Address: 7461 Glimmering Sun Ave

DOCUMENT RECORDED ON 9/20/2012
DOCUMENT # 0001177 Book 20120920
Clark COUNTY
DATE MAILED 9/28/2012

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

IMPORTANT NOTICE

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

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

This amount is $2,099.52 as of September 14, 2012 and will increase until your account becomes current.

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

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

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

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

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

NAS # N71583

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

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

NOTICE IS HEREBY GIVEN THAT NEVADA ASSOCIATION SERVICES, INC.

is the duly appointed agent under the previously mentioned Notice of Delinquent Assessment Lien, with the owner(s) as reflected on said lien being Rita Wiegand, Lynn Burke, dated July 25, 2012, and recorded on July 31, 2012 as instrument number 0002531 Book 20120731 in the official records of Clark County, Nevada, executed by Tuscalante, hereby declares that a breach of the obligation for which the Covenants Conditions and Restrictions, recorded on November 22, 2006, as instrument number 0000748 BK 20061122, as security has occurred in that the payments have not been made of homeowner's assessments due from 1/1/2012 and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, trustee's fees and costs, attorney's fees and costs and Association fees and costs.

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

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

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

Legal_Description: MOUNTAINS EDGE POD 211 PLAT BOOK 131 PAGE 17 LOT 226 in the County of Clark

Dated: September 14, 2012

By: Autumn Fesel, of Nevada Association Services, Inc.
on behalf of Tuscalante

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

While banks adapt to new law, Nevada foreclosures plunge

By Eli Segall (contact)

Wednesday, July 10, 2013 - 9:01 p.m.

Last month, Gov. Brian Sandoval signed a bill that is supposed to make it easier for banks to foreclose on delinquent homeowners.

So far, things haven't quite worked out that way.

A mere 249 notices of default were filed statewide last month, down 88 percent from 2,108 notices in May, according to a new report from Irvine, Calif.-based RealtyTrac.

Notices of default start the foreclosure process. Although it's not entirely clear what caused the plunge in filings, it helped improve Nevada's overall foreclosure rate. One in every 720 housing units statewide had a foreclosure-related filing in June, down 58 percent from May, RealtyTrac reported. Filings include default notices, scheduled auctions and bank repossessions.

Nevada's foreclosure rate was fifth-highest in the country last month, compared to second-highest in May.

Sandoval on June 1 signed Assembly Bill 300, which changed a key provision of Nevada's "robosigning law." Under that bill, which Sandoval signed in 2011, banks were forced to prove they have the legal right to foreclose on a home before they take action. Using the threat of criminal or civil penalties, it

required bank employees to sign an affidavit saying they have personal knowledge of the property's document history.

The law took effect in October 2011, and afterward, the foreclosure process in Nevada practically ground to a halt, crimping the inventory of homes for sale. In September that year, 4,684 notices of default were filed statewide. The next month, there were only 80.

AB300, meanwhile, took effect the day Sandoval signed it. Under that law, a bank's affidavit can be based simply on a review of internal lending records and either title paperwork or filings with the local county recorder.

With the legal barrier from the robosigning law pushed aside, it's now "entirely upon the banks" whether they seize more homes, Las Vegas Valley real estate agent Keith Lynam said.

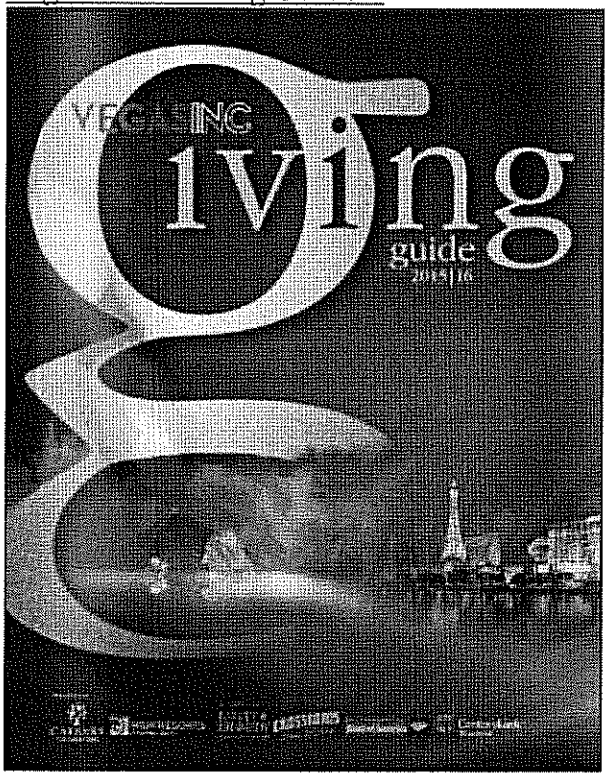
"They have no more bogeyman to hide behind," said Lynam, the 2013 legislative chairman of the Nevada Association of Realtors, which pushed for the changes to the robosigning law.

Nevada Bankers Association CEO Bill Uffelman said lenders must rewrite their foreclosure policies to adapt to AB300, as that might explain the drop in default notices.

However, he cautioned against reading too much into one month's worth of data, saying he wants to see numbers for July and August before determining a new trend has taken hold.

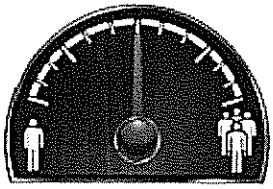
"I wouldn't use one month's stats to say life has changed," he said.

Digital Edition »
Vegas Inc's Giving Guide »



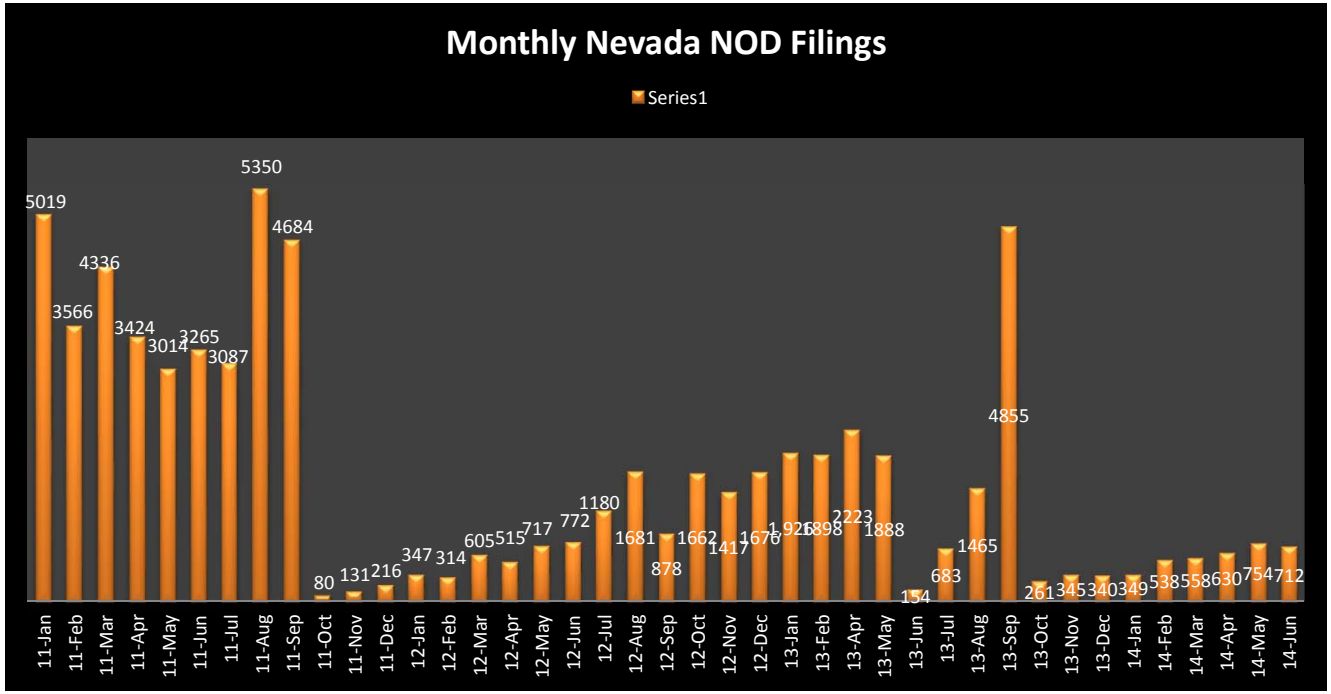
Guest Gauge
Visitor forecast for Las Vegas this weekend:
Average

CTADD2260



* The Guest Gauge is not a scientific measurement and should only be read as an estimate of weekend crowds in Las Vegas. An indication of "very slow" corresponds with the lowest typical occupancy rate for rooms in Las Vegas.

Month	Number of NOD's
11-Jan	5019
11-Feb	3566
11-Mar	4336
11-Apr	3424
11-May	3014
11-Jun	3265
11-Jul	3087
11-Aug	5350
11-Sep	4684
11-Oct	80
11-Nov	131
11-Dec	216
12-Jan	347
12-Feb	314
12-Mar	605
12-Apr	515
12-May	717
12-Jun	772
12-Jul	1180
12-Aug	1681
12-Sep	878
12-Oct	1662
12-Nov	1417
12-Dec	1676
13-Jan	1,926
13-Feb	1898
13-Apr	2223
13-May	1888
13-Jun	154
13-Jul	683
13-Aug	1465
13-Sep	4855
13-Oct	261
13-Nov	345
13-Dec	340
14-Jan	349
14-Feb	538
14-Mar	558
14-Apr	630
14-May	754
14-Jun	712



CTADD2262

THE WALL STREET JOURNAL.

http://www.wsj.com/articles/SB10001424127887323687604578467260571838502

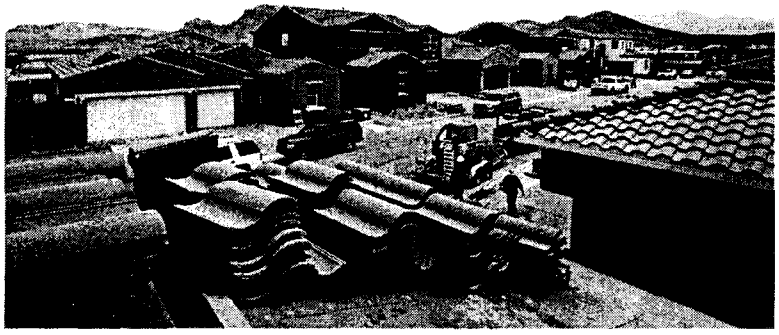
ECONOMY

Foreclosure Squeeze Crimps Las Vegas Real-Estate Market

By NICK TIMIRAOS
July 9, 2013 11:05 p.m. ET

LAS VEGAS—In a city dotted with tens of thousands of vacant houses, Jericho Guarin figured it would be easy to buy his first home. But nearly a year after beginning a search late last summer, he has come up dry.

"It has been a nightmare," says the 37-year-old U.S. Air Force officer. "There are plenty of empty houses, but they're just not for sale."



Houses are going up in a southwest Las Vegas development. Some builders have waiting lists of buyers locked out of the existing-home market. *ALEX FEDEROWICZ FOR THE WALL STREET JOURNAL*

Indeed, it is a lopsided equation. The number of available homes has plunged here after a sweeping state law subjected lenders to stiff new foreclosure rules and penalties. With banks exercising caution, many homeowners—including those seriously delinquent on their loans—have been allowed to remain in place. As a result, there is little on the market at a time when first-time buyers and real-estate speculators are anxious to tap both cheap prices and low-interest mortgages.

Many real-estate agents, home builders and consumer advocates argue that the law, intended to remedy foreclosure-processing abuses, has backfired. Some owners who are behind on payments aren't maintaining their homes as banks refrain from eviction proceedings. The perverse outcome: Inventory shortages have spurred new developments despite a glut of properties stuck in foreclosure limbo.

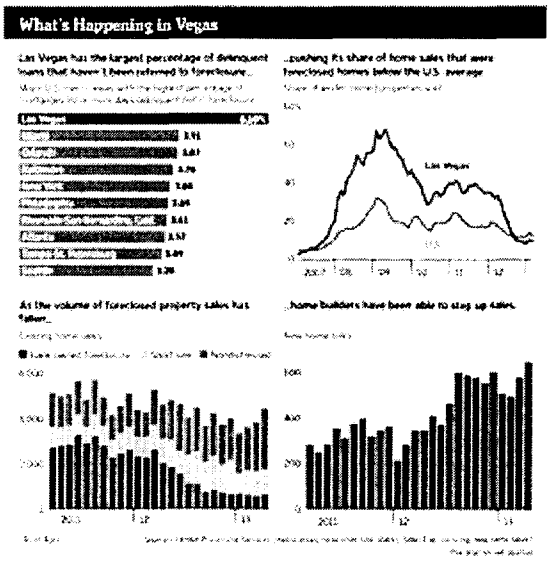
"The people hurt most by this law are the middle class," says Steve Hawks, a real-estate agent in Henderson, Nev. He refers to the phenomenon wrought by the foreclosure measure, Assembly Bill 284, as the "A.B. 284 bubble."

Until last decade's housing boom, prices didn't rise much here, making it possible for casino dealers or cocktail waitresses to buy into the American dream. Now, a tight market is pushing up values and making it harder for buyers to find homes to purchase.

Mr. Guarin, the Air Force Captain, is preapproved for a mortgage backed by the Veterans Administration for up to $185,000. But like many buyers who need financing, he is at a severe disadvantage because sellers often prefer all-cash deals that won't be tied up by a low appraisal or other red tape. "There's no way I can match the cash offers," says Mr. Guarin.

With investors in the game, more properties are commanding prices above asking—a phenomenon real-estate agent Bryan Lebo knows all too well. Recently, he listed a bank-owned property for $86,000. The home, which he said needed around $20,000 in repairs, drew 41 offers—39 of them all-cash—and sold to an investor for $135,000. "If you're an honest working person, you pretty much don't have a chance," says Mr. Lebo of current market conditions. All cash transactions accounted for nearly 60% of sales in May, according to DataQuick. Nationally, all cash transactions accounted for roughly a third of sales in the month, according to the National Association of Realtors.

The inventory shortages, meanwhile, have been a boon for some—especially builders. "A.B. 284 has been great for us. It darn near eliminated the constant inflow of foreclosures on the resale market," says Robert Beville, president of Harmony Homes, a local home builder. Mr. Beville says Harmony has sold 57 homes this year to cash buyers, compared to 70 in all of 2012. Realtors say investors are planning to flip the homes to a new buyer on the bet that prices will have jumped even more by the time the homes are built.



The real-estate boom and bust hit few places as hard as Las Vegas, where home prices doubled from 2002 to 2006 before falling by 62% through early last year. Fed up with piecemeal efforts by the federal government to create voluntary foreclosure-relief programs, a number of states and local governments proposed measures to raise the costs associated with foreclosure.

In Nevada, the measures were particularly tough. A.B. 284 threatened criminal penalties for bank officials who didn't follow new rules to certify that foreclosures were being processed properly—a reaction to the "robo-signing" scandal of late 2010, when employees at some of the nation's largest banks allegedly forged foreclosure paperwork as a routine practice.

Among other changes, the Nevada law made it a felony for anyone making false representations concerning real-estate title. Large lenders grew reluctant to foreclose on properties due to ambiguous language in the law, says Bill Uffelman, president of the Nevada Bankers Association.

The Nevada law "just stopped foreclosures cold," says local developer Tom McCormick. In October 2011, the first month after the law took effect, lenders filed just 600 notices of default, an 88% drop from the previous month, according to PropertyRadar. Banks' inventories of foreclosed properties subsequently plunged. In May, foreclosed homes, which accounted for half of all homes sold here in recent years, represented just 11% of home sales.

Economists fear that some states like Nevada run the risk of overreaching with laws that create as many problems as they solve. Studies by researchers at the Federal Reserve Bank of Boston show that "delaying the foreclosure process does not in the end lead to fewer foreclosures," said Paul Willen, a senior economist at the Boston Fed. "If they're delaying a foreclosure that is going to happen eventually, what we're really concerned about is that they're reducing the quality of life for the neighborhood."

Backers of the foreclosure bill say the law has been unfairly cited as the cause for the drop-off in distressed-property listings that has fueled the market rebound. "It is not all 284," said Catherine Cortez Masto, the Nevada attorney general who was an early sponsor of the measure. "Do I think it had an impact and slowed down foreclosures? Absolutely."

In some ways, the real-estate narrative here reflects a tale of two cities. That is because, in basic economic terms, the trends haven't been all bad for the city or its residents. The foreclosure delays have helped distressed homeowners like Scott Chatley, who went 54 months without making a mortgage payment. That gave him enough time to pay off debts, repair his credit, and begin saving for a down payment on his next home. Mr. Chatley, who bought a home here in 2005 for $495,000 with no money down, stopped making his $4,000 monthly mortgage payments in mid-2008 when he lost his job as a software engineer.

Mr. Chatley says he delayed foreclosure first by seeking loan modifications and then by filing for bankruptcy. His mortgage company, Bank of America Corp., last fall approved a short sale of his home for $169,000 to an investor. Though he moved out in September, Mr. Chatley says he probably could have stayed longer because the bank hadn't been actively moving along the foreclosure.

Recently, he was prequalified by a credit union for a new mortgage and hopes to buy a new place later this year or early next. "If I see a rule that exists to help me recover without having to do anything illegal, why would I not use that?" says Mr. Chatley.

A Bank of America spokesman said it isn't able to tell how much, if any, effect the state law had on Mr. Chatley's foreclosure delay.

The inventory situation has also allowed more builders to get back into the game. According to the most recent available statistics, Las Vegas had just 4,300 previously owned homes listed for sale in April, down 70% from two years ago. New home sales, meanwhile, are up by 87% so far this year. Overall home prices have risen by 22% in the year ending in April—more than double the growth for the U.S. as a whole, according to the S&P/Case-Shiller home-price index. So far this year, the number of new building permits issued for new home construction is up 52% from the year-ago period—one of the largest jumps in the nation.

Regulators, meanwhile, have raised concerns about the unintended consequences of stalled foreclosures. In some states, "much of the supply of homes that should be available for sale is locked up," says Edward DeMarco, the acting director of the agency that controls mortgage-finance giants Fannie Mae and Freddie Mac, in a March speech to economists. "We have seen the somewhat perverse result of home-building activity expanding while a considerable backlog of homes languished in the foreclosure pipeline."

A lack of affordable homes for resale prompted buyers like Dennis Jordan to turn to the new-home market. "We figured that would be a cut-and-dry deal, but it turns out it's not," says the 66-year-old retired construction manager, who lives in Greenwood, Ind., and wants to move with his wife to Las Vegas.

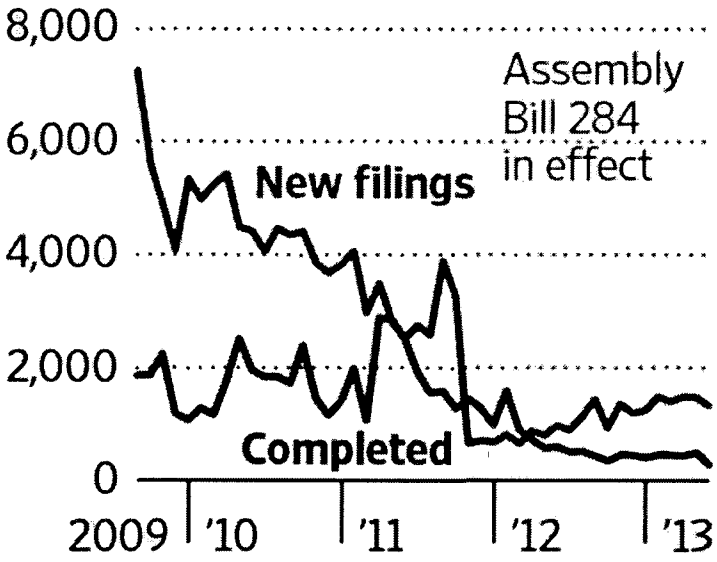
Mr. Jordan spent six months looking for an existing home and another three months looking for new properties before he signed a contract to pay $362,500 on a four-bedroom house that broke ground last month. The home, which was about 10% above his initial budget, should be completed by September.

Many builders are raising prices for homes on their existing lots. Increasingly, buyers must join wait lists or enter lotteries for the chance to bid on new homes. At a development called Villa Trieste, Pulte Homes is selling new Tuscan-style two-bedrooms starting at $261,000. A year ago, comparable newly built homes sold for $190,000 and previously owned homes sold for around $160,000. A spokeswoman for Pulte says it has been able to raise prices due to less competition from foreclosures and low interest rates.

Not all developers are so optimistic. Some worry that there is still a sizable inventory of distressed homes that could hit the market, leading prices of all homes to soften. Mr. McCormick, chief executive of Astoria Homes, stopped building homes five years ago and said he hopes to break ground on his first project this summer. But he is in no hurry to dive in headlong. "I'm still very worried about the foreclosures—the same way people said we didn't have a bubble and then we did," he says.

Inventory Lockup

Foreclosure filings in Las Vegas plunged after a state law took effect in October 2011.



Source: PropertyRadar

The Wall Street Journal

Among the nation's 30 largest metro areas, Las Vegas had the highest share of loans that were 90 days or more past due but not yet referred to foreclosure as of April, according to the most recent data from Lender Processing Services.

Nearly 45,000 loans are either 90 days or more past due or in foreclosure. Local electric-utility data showed nearly 64,000 vacant homes at the end of last September, according to a tally by analysts at the University of Nevada-Las Vegas. Fewer than 8,000 of those units were listed for sale.

A lag in foreclosures has had other deleterious effects. Homeowners' associations aren't collecting dues from borrowers who are behind on their mortgages. Some associations have begun taking advantage of their rights to file liens ahead of the bank—and then sell the liens to investors, who pay a few thousand dollars for the right to take control of the home until the bank forecloses.

Investors buy the liens "in the hopes that the mortgage is going to be lost in la-la-land, and the bank won't foreclose for six months or two years," says Richard Weiss, a real-estate investor who said he has taken ownership of around seven properties. While waiting for the bank to get its act together and foreclose, "you can do whatever you want—put a tenant in there and collect the rent," says Mr. Weiss.

Investors "know they can rent out these properties and get a cash flow without having to spend much money," says Xenophon Peters, an attorney who represents clients facing foreclosure at the law firm Peters & Associates LLP. He says a few large investors have been buying up hundreds of the liens. The practice is "terrible" but legal, he said. "They're just taking advantage of the law."

Mr. Weiss argues that renting out the houses is better for the communities than leaving them vacant. "You had vandals coming in and destroying these homes," he says. "These were eyesores on the community."

A.B. 284's supporters maintain that the law was never a "borrower-protection bill" intended to prevent foreclosures. Instead, they say it was designed to safeguard buyers of foreclosed properties from having title problems associated with defective repossessions.

Still, concerns raised by the real-estate industry earlier this year prompted Ms. Cortez Masto, a Democrat, to convene a working group that proposed a series of technical revisions. The amendments, signed into law last month, require that officials certify to having "business knowledge" of loan ownership from written corporate records, as opposed to the more open-ended "personal knowledge" requirement.

Meanwhile, Mr. Peters sees little to celebrate. Even though A.B. 284 has benefited his clients, "there has to be turnover in the housing market for it to recover," he says. "It's caused another bubble to erupt. We saw the same thing eight years ago. We know it's unsustainable."

Write to Nick Timiraos at nick.timiraos@wsj.com

LexisNexis

User Name: Samantha Smith
Date and Time: 24 Jun 2016 6:23 p.m. EDT
Job Number: 34012059

Document(1)

1. *1991 Nev. Rev. Stat. Ann. § 116.3116*

Client/Matter: wiegand
Search Type: Natural Language
Narrowed by:

Content Type	Narrowed by
Statutes and Legislation	-None-

§ 116.3116. Lien for assessments. [Effective January 1, 1992.]

1. The association has a lien on a unit for any assessment levied against that unit or fines imposed against the unit's owner from the time the assessment or fine becomes due. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j), (k) and (*l*) of subsection 1 of NRS 116.3102 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

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

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

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

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

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

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

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

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

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

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

8. The association upon written request shall furnish to a unit's owner a statement setting forth the amount of unpaid assessments against the unit. If the interest of the unit's owner is real estate, the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board and every unit's owner.

9. In a cooperative, upon nonpayment of an assessment on a unit, the unit's owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as provided by this section or by NRS 116.31162 to 116.31168, inclusive.

10. In a cooperative where the owner's interest in a unit is personal property (NRS 116.1105), the association's lien may be foreclosed in like manner as a security interest under NRS 104.9101 to 104.9507, inclusive.

History

1991, ch. 245, § 100, p. 567.

LexisNexis

User Name: Samantha Smith
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Document(1)

1. *1993 Nev. Rev. Stat. Ann. § 116.3116*

Client/Matter: wiegand
Search Type: Natural Language
Narrowed by:

Content Type	Narrowed by
Statutes and Legislation	-None-

§ 116.3116. Lien for assessments

1. The association has a lien on a unit for any assessment levied against that unit or fines imposed against the unit's owner from the time the assessment or fine becomes due. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j), (k) and (*l*) of subsection 1 of NRS 116.3102 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

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

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

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

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

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

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

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

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

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

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

8. The association upon written request shall furnish to a unit's owner a statement setting forth the amount of unpaid assessments against the unit. If the interest of the unit's owner is real estate, the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board and every unit's owner.

9. In a cooperative, upon nonpayment of an assessment on a unit, the unit's owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as provided by this section or by NRS 116.31162 to 116.31168, inclusive.

10. In a cooperative where the owner's interest in a unit is personal property (NRS 116.1105), the association's lien may be foreclosed in like manner as a security interest under NRS 104.9101 to 104.9507, inclusive.

History

1991, ch. 245, § 100, p. 567.

User Name: Samantha Smith
Date and Time: 24 Jun 2016 3:23 p.m. EDT
Job Number: 34001401

Document(1)

1. *2009 Nev. Rev. Stat. Ann. § 116.3116*

Client/Matter: wiegand
Search Type: Natural Language
Narrowed by:

Content Type	Narrowed by
Statutes and Legislation	-None-

2009 Nev. Rev. Stat. Ann. § 116.3116

2009 Nevada Code Archive

NEVADA REVISED STATUTES ANNOTATED > TITLE 10. Property Rights and Transactions. > CHAPTER 116. Common-Interest Ownership (Uniform Act). > Article 3 Management of Common-Interest Communities. > Liens.

116.3116. Lien against units for assessments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History

1991, ch. 245, § 100, p. 567; *1999, ch. 104*, § 163, p. 390; *2003, ch. 385*, § 76, p. 2243; *2003, ch. 390*, § 8, p. 2272; *2009, ch. 248*, § 3, p. 1010; *2009, ch. 286*, § 2, p. 1207.

User Name: Samantha Smith
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Document(1)

1. *2011 Nev. Rev. Stat. Ann. § 116.3116*

Client/Matter: wiegand
Search Type: Natural Language
Narrowed by:

Content Type	Narrowed by
Statutes and Legislation	-None-

2011 Nev. Rev. Stat. Ann. § 116.3116

2011 Nevada Code Archive

NEVADA REVISED STATUTES ANNOTATED > TITLE 10. Property Rights and Transactions. > CHAPTER 116. Common-Interest Ownership (Uniform Act). > Article 3 Management of Common-Interest Communities. > Liens.

116.3116. Lien against units for assessments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History

1991, ch. 245, § 100, p. 567; *1999, ch. 104*, § 163, p. 390; *2003, ch. 385*, § 76, p. 2243; *2003, ch. 390*, § 8, p. 2272; *2009, ch. 248*, § 3, p. 1010; *2009, ch. 286*, § 2, p. 1207.

User Name: Samantha Smith
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Document(1)

1. *2013 Nev. Rev. Stat. Ann. § 116.3116*

Client/Matter: wiegand
Search Type: Natural Language
Narrowed by:

Content Type	Narrowed by
Statutes and Legislation	-None-

2013 Nev. Rev. Stat. Ann. § 116.3116

2013 Nevada Code Archive

Nevada Revised Statutes Annotated > Title 10. Property Rights and Transactions. > Chapter 116. Common-Interest Ownership (Uniform Act). > Article 3 Management of Common-Interest Communities. > Liens.

116.3116. Liens against units for assessments.

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

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

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

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

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

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

3. The holder of the security interest described in paragraph (b) of subsection 2 or the holder's authorized agent may establish an escrow account, loan trust account or other impound account for advance contributions for the payment of assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 if the unit's owner and the holder of that security interest consent to the establishment of such an account. If such an account is established, payments from the account for assessments for common expenses must be made in accordance with the same due dates as apply to payments of such assessments by a unit's owner.

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

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

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

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

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

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

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

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

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

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

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

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

History

1991, ch. 245, § 100, p. 567; 1999, ch. 104, § 163, p. 390; 2003, ch. 385, § 76, p. 2243; 2003, ch. 390, § 8, p. 2272; 2009, ch. 248, § 3, p. 1010; 2009, ch. 286, § 2, p. 1207; 2011, ch. 389, § 49, p. 2448; 2013, ch. 552, § 7, p. 3787.

User Name: Samantha Smith
Date and Time: 24 Jun 2016 3:29 p.m. EDT
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Document(1)

1. *Nev. Rev. Stat. Ann. § 116.3116*
   Client/Matter: wiegand
   Search Terms: NRS 116.3116
   Search Type: Natural Language

Nev. Rev. Stat. Ann. § 116.3116

This document is current through legislation from the Seventy-Eighth Regular Session (2015) and the Twenty-Ninth Special Session (2015), subject to revision by the Legislative Counsel Bureau.

Nevada Revised Statutes Annotated **>** ***Title 10. Property Rights and Transactions.*** **>** ***Chapter 116. Common-Interest Ownership (Uniform Act).*** **>** ***Article 3 Management of Common-Interest Communities.*** **>** ***Liens.***

116.3116. Liens against units for assessments.

1. The association has a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to *NRS 116.310305*, any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due. Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of *NRS 116.3102* and any costs of collecting a past due obligation charged pursuant to NRS 116.310313 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

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

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

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent , except that a lien under this section is prior to a security interest described in this paragraph to the extent set forth in subsection 3;

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

; and

(d) Liens for any fee or charge levied pursuant to subsection 1 of NRS 444.520.

3. A lien under this section is prior to all security interests described in paragraph (b) of subsection 2 to the extent of:

(a) Any charges incurred by the association on a unit pursuant to *NRS 116.310312*;

(b) The unpaid amount of assessments, not to exceed an amount equal to assessments for common expenses based on the periodic budget adopted by the association pursuant to *NRS 116.3115* which would have become due in the absence of acceleration during the 9 months immediately preceding the date on which the notice of default and election to sell is recorded pursuant to paragraph (b) of subsection 1 of NRS 116.31162; and

(c) The costs incurred by the association to enforce the lien in an amount not to exceed the amounts set forth in subsection 5,

unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) of subsection 2 must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for

the lien must not be less than the 6 months immediately preceding the recording of a notice of default and election to sell pursuant to paragraph (b) of subsection 1 of NRS 116.31162 or the institution of a judicial action to enforce the lien.

4. This section does not affect the priority of mechanics" or materialmen's liens, or the priority of liens for other assessments made by the association.

5. The amount of the costs of enforcing the association's lien that are prior to the security interest described in paragraph (b) of subsection 2 must not exceed the actual costs incurred by the association, must not include more than one trustee's sale guaranty and must not exceed:

(a) For a demand or intent to lien letter, $150.

(b) For a notice of delinquent assessment, $325.

(c) For an intent to record a notice of default letter, $90.

(d) For a notice of default, $400.

(e) For a trustee's sale guaranty, $400.

No costs of enforcing the association's lien, other than the costs described in this subsection, and no amount of attorney's fees may be included in the amount of the association's lien that is prior to the security interest described in paragraph (b) of subsection 2.

6. Notwithstanding any other provision of law, an association, or member of the executive board, officer, employee or unit's owner of the association, acting under the authority of this chapter or the governing documents of the association, or the community manager of the association, or any employee, agent or affiliate of the community manager, while engaged in the management of the common-interest community governed by the association, is not required to be licensed as a collection agency pursuant to chapter 649 of NRS or hire or contract with a collection agency licensed pursuant to chapter 649 of NRS to collect amounts due to the association in accordance with subsection 1 before the recording of a notice of default and election to sell pursuant to paragraph (b) of subsection 1 of NRS 116.31162.

7. The holder of the security interest described in paragraph (b) of subsection 2 or the holder's authorized agent may establish an escrow account, loan trust account or other impound account for advance contributions for the payment of assessments for common expenses based on the periodic budget adopted by the association pursuant to *NRS 116.3115* if the unit's owner and the holder of that security interest consent to the establishment of such an account. If such an account is established, payments from the account for assessments for common expenses must be made in accordance with the same due dates as apply to payments of such assessments by a unit's owner.

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

9. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

10. A lien for unpaid assessments is extinguished unless a notice of default and election to sell is recorded as required by paragraph (b) of subsection 1 of NRS 116.31162, or judicial proceedings to enforce the lien are instituted, within 3 years after the full amount of the assessments becomes due.

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

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

13. The association, upon written request, shall furnish to a unit's owner a statement setting forth the amount of unpaid assessments against the unit. If the interest of the unit's owner is real estate or if a lien for the

unpaid assessments may be foreclosed under *NRS 116.31162 to 116.31168*, inclusive, the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board and every unit's owner.

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

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

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

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

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

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

16. Notwithstanding any other provision of law, any payment of an amount due to an association in accordance with subsection 1 by the holder of any lien or encumbrance on a unit that is subordinate to the association's lien under this section becomes a debt due from the unit's owner to the holder of the lien or encumbrance.

History

1991, ch. 245, § 100, p. 567; *1999, ch. 104*, § 163, p. 390; *2003, ch. 385*, § 76, p. 2243; *2003, ch. 390*, § 8, p. 2272; *2009, ch. 248*, § 3, p. 1010; *2009, ch. 286*, § 2, p. 1207; *2011, ch. 389*, § 49, p. 2448; *2013, ch. 552*, § 7, p. 3787; *2015, ch. 266*, § 1, p. 1333.

Annotations

Notes

Editor's note.

This section was amended by two 2009 acts which do not appear to conflict and have been compiled together.

Effect of amendment.

The 2009 amendment, by ch. 248, § 3, effective October 1, 2009, added "any charges incurred by the association on a unit pursuant to section 1 of this act and to the extent of" in the first sentence of the concluding language of (2).

The 2009 amendment, by ch. 286, § 2, effective October 1, 2009, in the first sentence of the concluding language of (2), substituted "9 months" for "6 months" and added "unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations,

except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien."

The 2011 amendment, effective January 1, 2012, added (10).

The 2013 amendment, effective October 1, 2013, added (3); and redesignated former (3) through (10) as (4) through (11).

Notes to Decisions

Lien priority.

Foreclosure sale by a homeowners' association (HOA), to collect unpaid HOA assessments, extinguished a prior filed security interest based on a first deed of trust because the HOA super priority lien was prior to the first deed of trust, and, consequently, foreclosure on the HOA super priority lien extinguished all junior security interests, including the first deed of trust. The HOA foreclosure sale extinguished only the first deed of trust holder's security interest in the property, not the underlying debt. *7912 Limbwood Court Trust v. Wells Fargo Bank, N.A., 979 F. Supp. 2d 1142, 2013 U.S. Dist. LEXIS 154250 (D. Nev. 2013)*.

Court defendant's motion to dismiss a foreclosure sale buyer's suit seeking a declaration that a homeowners association's (HOA's) foreclosure on its lien against the property extinguished defendant's deed of trust lien, as Nevada law gave "super priority" status to a portion of the HOA's lien, and its foreclosure on that portion of the lien extinguished all junior liens, including defendant's first deed of trust. *SFR Invs. Pool 1, LLC v. Wells Fargo Bank, N.A., 2014 U.S. Dist. LEXIS 41447 (D. Nev. Mar. 26, 2014)*.

Court correctly granted preliminary injunction because this provision unambiguously explained when liens have equal priority, and when one equal priority lienholder forecloses on its lien, any other equal priority liens were extinguished and must be paid from the sale proceeds in full or on a pro-rata basis if the sale proceeds were insufficient to fully pay all equal priority liens. *S. Highlands Cmty. Ass'n v. San Florentine Ave. Trust, 365 P.3d 503, 131 Nev. Adv. Rep. 3, 2016 Nev. LEXIS 2 (Nev. 2016)*.

Super priority's lien.

Statute unambiguously provided that the homeowners' association's (HOA) super priority lien was prior to the first deed of trust, and the HOA could use non-judicial foreclosure procedures to enforce its lien; a foreclosure sale on the HOA super priority lien extinguished all junior interests, including the first deed of trust. *SFR Invs. Pool 1, LLC v. Wells Fargo Bank N.A., 2014 U.S. Dist. LEXIS 31445 (D. Nev. Mar. 10, 2014)*.

Lender's argument that a homeowners' association (HOA) had to foreclose judicially to invoke the super-priority provisions of subsection 2 was rejected, as the term "action" does not include only civil actions. This section does not appear to use the word "action" in a way that made the super-priority status dependent upon whether an action had been instituted; but rather, the word is used (in the subjunctive mode) as a way to measure the portion of an HOA lien that had super-priority status. *Nationstar Mortgage, LLC v. Rob & Robbie, LLC, 2014 U.S. Dist. LEXIS 100328 (D. Nev. July 23, 2014)*.

Superpriority lien under this provision is a true priority lien such that its foreclosure extinguishes a first deed of trust on the property. A lien was not subordinated by the mortgage savings clause in the covenants, conditions, and restrictions. *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A., 334 P.3d 408, 130 Nev. Adv. Rep. 75, 2014 Nev. LEXIS 88 (Nev. 2014)*.

Superpriority lien for a homeowners' association (HOA) can be foreclosed nonjudicially, and such a foreclosure did not violate the due process rights of the lender that held the first deed of trust, given that the requirement to comply

with statutory notice provisions. *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A., 334 P.3d 408, 130 Nev. Adv. Rep. 75, 2014 Nev. LEXIS 88 (Nev. 2014)*.

Foreclosure sale of property conducted by a homeowners' association (HOA) to collect unpaid HOA assessments under a super priority lien extinguished a first deed of trust on the property, since the recitals in the foreclosure deed constituted conclusive proof that required statutory notices were provided to the holder of the deed of trust. *Bourne Valley Court Trust v. Wells Fargo Bank, N.A., 80 F. Supp. 3d 1131, 2015 U.S. Dist. LEXIS 8057 (D. Nev. 2015)*.

Substantial discrepancy between the foreclosure sale price for the amount of assessments by a homeowners' association (HOA) and the fair market value of the property did not establish that the sale price was commercially unreasonable given the uncertainty at the time of the sale concerning the risk of purchasing property in an HOA foreclosure under its super priority lien. *Bourne Valley Court Trust v. Wells Fargo Bank, N.A., 80 F. Supp. 3d 1131, 2015 U.S. Dist. LEXIS 8057 (D. Nev. 2015)*.

COMPILATION OF RECORDS OF THE STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY—REAL ESTATE DIVISION OFFICE OF THE OMBUDSMAN FOR THE OWNERS IN COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS

	FY 2007[1]	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	TOTALS
No. of NOS Received	288	324	1,137	3,404	3,143	2,913	3,811	2,972	2,150	**20,142**
Sale Cancelled, Owner Retained	175	273	647	2266	1907	2082	2352	1,894[2]	34	**11,630**
New Listings	28[3]	0	203	440	298	234	172[4]	42[5]	1,756[6]	-------
Sale Postponed	48	4	250	576	685	45	136	102	57	**1,903**
Property Sold to Third Party	39	45	37	122	253	244	1,151	932	303	**3,126[7]**

[1] Dates refer to the Fiscal Year, measured from July 1 through June 30, e.g., FY 2007 extends from July 1, 2006- June 30, 2007.
[2] For FY 2014, these cancellations denote sales that were to take place in FY 14, in which the Trustee Sale was cancelled by the collection agency, the sale did not take place on that date, or a bank sale took place instead.
[3] For FY 2007-2012— these figures represent the number of listings which were recently added to the Nevada Legal News website.
[4] For FY 2013, this figure is labeled “Open Listings” with no definition of how the figure was calculated.
[5] For FY 2014, this figure represents all undisposed of NOS with a sale date of 7/1/14 and beyond (144) minus the postponements.
[6] For FY 2015, this figure represents all undisposed of NOS with a sale date of 8/1/14 and beyond, minus the postponements.
[7] This figure does not take into account sales where the HOA credit bid and took title at its own sale.

SIGTARP

Office of the Special Inspector General for the Troubled Asset Relief Program

Advancing Economic Stability Through Transparency, Coordinated Oversight, and Robust Enforcement

Quarterly Report to Congress
July 24, 2013

MISSION

SIGTARP's mission is to advance economic stability by promoting the efficiency and effectiveness of TARP management, through transparency, through coordinated oversight, and through robust enforcement against those, whether inside or outside of Government, who waste, steal or abuse TARP funds.

STATUTORY AUTHORITY

SIGTARP was established by Section 121 of the Emergency Economic Stabilization Act of 2008 ("EESA"), as amended by the Special Inspector General for the Troubled Asset Relief Program Act of 2009 ("SIGTARP Act"). Under EESA and the SIGTARP Act, the Special Inspector General has the duty, among other things, to conduct, supervise and coordinate audits and investigations of any actions taken under the Troubled Asset Relief Program ("TARP") or as deemed appropriate by the Special Inspector General. In carrying out those duties, SIGTARP has the authority set forth in Section 6 of the Inspector General Act of 1978, including the power to issue subpoenas.

Office of the Special Inspector General
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Message from the Special Inspector General

I am pleased to present the July 2013 Quarterly Report to Congress of the Office of the Special Inspector General for the Troubled Asset Relief Program ("SIGTARP"). Congress created SIGTARP to combat white collar crime committed by those who view Troubled Asset Relief Program ("TARP") bailout funds as an opportunity for fraud and other illicit activity. Congress authorized SIGTARP to investigate, search, seize, and arrest. SIGTARP investigations have already resulted in 51 defendants sentenced to prison for their TARP-related crime.

It is morally reprehensible that anyone would commit crimes related to the TARP bailout. All TARP-related crime equates to crime against the American taxpayers. SIGTARP generated safeguards to prevent TARP-related fraud and developed tools to detect and stop ongoing fraud. The fraudulent schemes we have uncovered have been creative, complex, and covert. In our 4½ years, SIGTARP investigations with its law enforcement partners have resulted in 144 defendants being criminally charged, including 92 senior executives. Already 107 of these defendants have been convicted, while others await trial. In addition to the 51 defendants already sentenced to prison, 9 defendants were sentenced to probation, and 47 additional convicted defendants await sentencing. Our investigations have resulted in court orders for $4.3 billion in assets to be returned to victims or the Government. This includes forfeiture to the Government of 38 vehicles, 25 properties, 20 bank accounts, bags of silver, U.S. currency, antique and collector coins, artwork, and antique furniture.

The average prison sentence for TARP-related crime investigated by SIGTARP is 68 months, nearly double the national average length of prison sentences involving white collar crime. Ten defendants investigated by SIGTARP were sentenced to 10 years or more in Federal prison. Many of the criminal schemes uncovered by SIGTARP had been ongoing for years, involve millions of dollars, and complicated conspiracies with multiple co-conspirators.

In this report, we summarize several SIGTARP investigations that resulted in prison sentences including Lee Farkas, the former chairman of Taylor, Bean, and Whitaker, who is serving a 30 year prison sentence for a nearly 10-year, $2.9 billion bank fraud scheme involving TBW and Colonial Bank, and former senior vice president of Colonial Bank Catherine Kissick who is serving an 8 year sentence. We also discuss several bankers who have been sentenced to prison resulting from a SIGTARP investigation including the former president of Orion Bank Jerry Williams (sentenced to 6 years), former senior vice president of Appalachian Community Bank Adam Teague (sentenced to 5 years), former president, CEO and chairman of FirstCity Bank Mark Conner (sentenced to 12 years), former vice president of FirstCity Clayton Coe (sentenced to 87 months), and former President and CEO of First Community Bank Reginald Harper. We describe how the former CEO of a mortgage originator Scott Powers and the vice president David McMaster were sentenced to 8 years and 15 years resulting from a SIGTARP investigation for their fraud that caused $28 million in losses to TARP bank BNC National Bank, who was then unable to pay millions of dollars in TARP dividend payments. We describe how our investigation led to Howard R. Shmuckler being sentenced to 7½ years imprisonment for a $2.8 million scam that preyed on 865 homeowners by making empty money-back guarantees that they would get their mortgage modified under HAMP if they paid him a fee.

In Section 3 of this report, we examine Treasury's data that shows that the longer homeowners remain in HAMP, the greater the chance that they will redefault out of the program. Homeowners with HAMP modifications from 2009 are redefaulting at an alarming rate of 46%, 38% for 2010 modifications. SIGTARP made 4 recommendations to Treasury designed to curb HAMP redefaults. I hope you find this report useful.

Respectfully yours,

CHRISTY L. ROMERO
Special Inspector General

CONTENTS

APPENDICES

TABLE 2.5

TARP INVESTMENTS IN FINANCIAL INSTITUTIONS

TARP Program	Remaining Treasury Investment
Capital Purchase Program	Preferred stock in 142 banks; warrants for stock in an additional 53 banks
Community Development Capital Initiative	Preferred stock in 73 banks/credit unions
Automotive Industry Financing Program	14% stake in GM 74% stake in Ally

Notes: Treasury held a 14% stake in GM as of June 6, 2013.

Sources: Treasury, *Transactions Report*, 6/28/2013; Treasury, response to SIGTARP data call, 7/7/2013.

Housing Support Programs

The stated purpose of TARP's housing support programs is to help homeowners and financial institutions that hold troubled housing-related assets. Although Treasury originally committed to use $50 billion in TARP funds for these programs, it subsequently obligated only $45.6 billion, then in March 2013, reduced its obligation to $38.5 billion.[28] As of June 30, 2013, $8.6 billion (22% of obligated funds) has been expended.[29] However, some of these expended funds remain as cash on hand or for administrative expenses with the state Housing Finance Agencies participating in the Hardest Hit Fund program.

- **Making Home Affordable ("MHA") Program** — According to Treasury, this umbrella program for Treasury's foreclosure mitigation efforts is intended to "help bring relief to responsible homeowners struggling to make their mortgage payments, while preventing neighborhoods and communities from suffering the negative spillover effects of foreclosure, such as lower housing prices, increased crime, and higher taxes."[30] MHA, for which Treasury has obligated $29.9 billion of TARP funds, consists of the Home Affordable Modification Program ("HAMP"), which includes HAMP Tier 1 and HAMP Tier 2, which both modify first-lien mortgages to reduce payments; the Federal Housing Administration ("FHA") HAMP loan modification option for FHA-insured mortgages ("Treasury/FHA-HAMP"); the U.S. Department of Agriculture Office of Rural Development ("RD") HAMP ("RD-HAMP"); the Home Affordable Foreclosure Alternatives ("HAFA") program; and the Second Lien Modification Program ("2MP").[31] HAMP in turn encompasses various initiatives in addition to the modification of first-lien mortgages, including Home Price Decline Protection ("HPDP"), the Principal Reduction Alternative ("PRA"), and the Home Affordable Unemployment Program ("UP").[32] Additionally, the overall MHA obligation of $29.9 billion includes $2.7 billion to support the Treasury/FHA Second-Lien Program ("FHA2LP"), which complements the FHA Short Refinance program (discussed later) and is intended to support the extinguishment of second-lien loans.[33]

  As of June 30, 2013, MHA had expended $5.8 billion of TARP money (20% of $29.9 billion).[34] Of that amount, $4.8 billion was expended on HAMP,

$586.5 million on HAFA, and $411 million on 2MP.[35] As of June 30, 2013, there were 455,815 active permanent first-lien modifications under the TARP-funded portion of HAMP (Tier 1 and Tier 2), an increase of 23,581 active permanent modifications over the past quarter.[36] As of June 30, 2013, there were 446,327 Tier 1 active permanent modifications, an increase of 17,892 over the previous quarter.[37] There were 9,488 Tier 2 active permanent modifications, an increase of 5,689 over the previous quarter.[38] For more detailed information, including participation numbers for each of the MHA programs and subprograms, see the "Housing Support Programs" discussion in this section.

- **Housing Finance Agency ("HFA") Hardest Hit Fund ("HHF")** — The stated purpose of this program is to provide TARP funding for "innovative measures to help families in the states that have been hit the hardest by the aftermath of the housing bubble."[39] Treasury obligated $7.6 billion for this program.[40] As of June 30, 2013, $2.7 billion had been drawn down by the states from HHF.[41] However, as of March 31, 2013, the latest data available, only $1.32 billion had been spent assisting 109,874 homeowners, with the remaining funds used for administrative expenses and cash-on-hand.[42] For more detailed information, see the "Housing Support Programs" discussion in this section.
- **FHA Short Refinance Program** — Treasury has provided a TARP-funded letter of credit for up to $1 billion in loss protection on refinanced first liens.[43] As of June 30, 2013, there have been 3,136 refinancings under the FHA Short Refinance program, an increase of 446 refinancings during the past quarter.[44] For more detailed information, see the "Housing Support Programs" discussion in this section.

Financial Institution Support Programs

Treasury primarily invested capital directly into financial institutions including banks, bank holding companies, and, if deemed by Treasury critical to the financial system, some systemically significant institutions.[45]

Systemically Significant Institutions: Term referring to any financial institution whose failure would impose significant losses on creditors and counterparties, call into question the financial strength of similar institutions, disrupt financial markets, raise borrowing costs for households and businesses, and reduce household wealth.

- **Capital Purchase Program ("CPP")** — Under CPP, Treasury directly purchased preferred stock or subordinated debentures in qualifying financial institutions.[46] CPP was intended to provide funds to "stabilize and strengthen the U.S. financial system by increasing the capital base of an array of healthy, viable institutions, enabling them [to] lend to consumers and business[es]."[47] Treasury invested $204.9 billion in 707 institutions through CPP, which closed to new funding on December 29, 2009.[48] As of June 30, 2013, 195 of those institutions remained in TARP; in 53 of them, Treasury holds only warrants to purchase stock. Treasury does not consider these 53 institutions to be in TARP. As of June 30, 2013, 142 of the 195 institutions had outstanding CPP principal investments.[49] Of the 707 banks that received CPP investments, 565 banks no longer have outstanding principal investments in CPP. Nearly a quarter of the 707 banks, or 165, refinanced into other Government programs — 28 of them into TARP's CDCI and 137 into SBLF, a non-TARP program.[50] Only 214 of the banks that exited, or 30% of the original 707, fully repaid CPP otherwise.[51]

HOUSING SUPPORT PROGRAMS

On February 18, 2009, the Administration announced a foreclosure prevention plan that became the Making Home Affordable ("MHA") program, an umbrella program for the Administration's homeowner assistance and foreclosure prevention efforts.[117] MHA initially consisted of the Home Affordable Modification Program ("HAMP"), a Treasury program that uses TARP funds to provide incentives for mortgage servicers to modify eligible first-lien mortgages, and two initiatives at the Government-sponsored enterprises ("GSEs") that use non-TARP funds.[118] HAMP was originally intended "to help as many as three to four million financially struggling homeowners avoid foreclosure by modifying loans to a level that is affordable for borrowers now and sustainable over the long term."[119] On June 1, 2012, HAMP expanded the pool of homeowners potentially eligible to be assisted through the launch of HAMP Tier 2; however, Treasury has not estimated the number of homeowners that HAMP Tier 2 is intended to assist.[120] On June 13, 2013, Treasury generally extended MHA programs for an additional two years, from December 31, 2013, to December 31, 2015.[121]

Treasury over time expanded MHA to include sub-programs. Treasury also allocated TARP funds to support two additional housing support efforts: TARP funding for 19 state housing finance agencies, called the Housing Finance Agency Hardest Hit Fund ("Hardest Hit Fund" or "HHF") and a Federal Housing Administration ("FHA") refinancing program. The HHF program is scheduled to expire on December 31, 2017. The FHA refinancing program, it is currently scheduled to expire on December 31, 2014.[122]

Not all housing support programs are funded, or completely funded, by TARP. Of the originally anticipated $75 billion cost for MHA, $50 billion was to be funded by TARP, with the remainder funded by the GSEs.[123] Although Treasury originally committed to use $50 billion in TARP funds for these programs, it subsequently obligated only $45.6 billion, and in March 2013, reduced its obligation to $38.5 billion, which includes $29.9 billion for MHA incentive payments, $7.6 billion for the Hardest Hit Fund, and $1 billion for FHA Short Refinance.[124]

Under EESA and the SIGTARP Act, SIGTARP is required to report quarterly to Congress to provide certain information about TARP over that preceding quarter. This quarter, for the fourth quarter in a row, Treasury failed to provide certain end-of-quarter data on two MHA programs, Principal Reduction Alternative and Home Affordable Foreclosure Alternatives. This quarter, for the second quarter in a row, Treasury also failed to provide certain end-of-quarter data on three other MHA programs, the Second-Lien Modification Program, FHA-HAMP, and RD-HAMP. Accordingly, SIGTARP is unable to provide or analyze end-of-quarter data as noted below and thus is not able to fully report on the status of these programs. Instead, this report contains the most recent data provided by Treasury, and it is noted as such in the relevant sections.

Government-Sponsored Enterprises ("GSEs"): Private corporations created and chartered by the Government to reduce borrowing costs and provide liquidity in the market, the liabilities of which are not officially considered direct taxpayer obligations. On September 7, 2008, the two largest GSEs, the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac"), were placed into Federal conservatorship. They are currently being financially supported by the Government.

Loan Servicers: Companies that perform administrative tasks on monthly mortgage payments until the loan is repaid. These tasks include billing, tracking, and collecting monthly payments; maintaining records of payments and balances; allocating and distributing payment collections to investors in accordance with each mortgage loan's governing documentation; following up on delinquencies; and initiating foreclosures.

Investors: Owners of mortgage loans or bonds backed by mortgage loans who receive interest and principal payments from monthly mortgage payments. Servicers manage the cash flow from borrowers' monthly payments and distribute them to investors according to Pooling and Servicing Agreements ("PSAs").

Short Sale: Sale of a home for less than the unpaid mortgage balance. A borrower sells the home and the investor accepts the proceeds as full or partial satisfaction of the unpaid mortgage balance, thus avoiding the foreclosure process.

Deed-in-Lieu of Foreclosure: Instead of going through foreclosure, the borrower voluntarily surrenders the deed to the home to the investor, as satisfaction of the unpaid mortgage balance.

Housing support programs include the following initiatives:

- **Home Affordable Modification Program ("HAMP")** — HAMP is intended to use incentive payments to encourage loan servicers ("servicers") and investors to modify eligible first-lien mortgages so that the monthly payments of homeowners who are currently in default or generally at imminent risk of default will be reduced to affordable and sustainable levels.[125] Incentive payments for modifications to loans owned or guaranteed by the GSEs are paid by the GSEs, not TARP.[126] As of June 30, 2013, there were 878,555 active permanent HAMP Tier 1 modifications, 446,327 of which were under TARP, with the remainder under the GSE portion of the program.[127] While HAMP generally refers to the first-lien mortgage modification program, it also includes the following subprograms:
  - **Home Price Decline Protection ("HPDP")** — HPDP is intended to encourage additional investor participation and HAMP modifications in areas with recent price declines by providing TARP-funded incentives to offset potential losses in home values.[128] As of June 30, 2013, there were 195,288 (Tier 1 and Tier 2) loan modifications under HPDP.[129]
  - **Principal Reduction Alternative ("PRA")** — PRA is intended to encourage the use of principal reduction in modifications for eligible borrowers whose homes are worth significantly less than the remaining outstanding balances of their first-lien mortgage loans. It provides TARP-funded incentives to offset a portion of the principal reduction provided by the investor.[130] Treasury failed to provide end-of-quarter data on several aspects of PRA to SIGTARP before publication. As of May 31, 2013, the latest data provided by Treasury, there were 91,037 (Tier 1 and Tier 2) active permanent modifications through PRA.[131]
  - **Home Affordable Unemployment Program ("UP")** — UP is intended to offer assistance to unemployed homeowners through temporary forbearance of all or a portion of their payments.[132] As of May 31, 2013, which according to Treasury is the most recent data available, 6,538 borrowers were actively participating in UP.[133]
- **Home Affordable Modification Program Tier 2 ("HAMP Tier 2")** — HAMP Tier 2 is an expansion of HAMP to permit HAMP modifications on non-owner-occupied "rental" properties, and to allow borrowers with a wider range of debt-to-income ratios to receive modifications.[134] As of June 30, 2013, 9,714 HAMP Tier 2 modifications had become permanent, of which 9,488 remained active.[135] Of Tier 2 modifications started, 1,911 were previously HAMP Tier 1 permanent modifications.
- **Home Affordable Foreclosure Alternatives ("HAFA")** — HAFA is intended to provide incentives to servicers, investors, and borrowers to pursue short sales and deeds-in-lieu of foreclosure for borrowers in cases in which the borrower is unable or unwilling to enter or sustain a modification. Under this program, the servicer releases the lien against the property and the investor waives all rights to seek a deficiency judgment against a borrower who uses a short sale

or deed-in-lieu when the property is worth less than the outstanding amount of the mortgage.[136] Treasury failed to provide end-of-quarter data on the number of short sales and deeds-in-lieu under HAFA to SIGTARP before publication. As of May 31, 2013, the latest data provided by Treasury, there were 117,341 short sales or deeds-in-lieu under HAFA.[137]

- **Second-Lien Modification Program ("2MP")** — 2MP is intended to modify second-lien mortgages when a corresponding first lien is modified under HAMP by a participating servicer.[138] As of June 30, 2013, 16 servicers are participating in 2MP.[139] These servicers represent approximately 55–60% of the second-lien servicing market.[140] As of May 31, 2013, the latest data provided by Treasury, there were 72,337 active permanently modified second liens in 2MP.[141]
- **Agency-Insured Programs** — These programs are similar in structure to HAMP, but apply to eligible first-lien mortgages insured by FHA or guaranteed by the Department of Agriculture's Office of Rural Development ("RD") and the Department of Veterans Affairs ("VA").[142] Treasury provides TARP-funded incentives to encourage modifications under the FHA and RD modification programs. As of May 31, 2013, the latest data provided by Treasury, there were 31 RD-HAMP active permanent modifications and 11,370 FHA-HAMP active permanent modifications.[143]
- **Treasury/FHA Second-Lien Program ("FHA2LP")** — In FHA2LP, Treasury uses TARP funds to provide incentives to servicers and investors who agree to principal reduction or extinguishment of second liens associated with an FHA refinance.[144] As of June 30, 2013, no second liens had been partially written down or extinguished under the program.[145]
- **Housing Finance Agency Hardest Hit Fund ("HHF")** — A TARP-funded program, HHF is intended to fund foreclosure prevention programs run by state housing finance agencies in states hit hardest by the decrease in home prices and in states with high unemployment rates. Eighteen states and Washington, DC, received approval for aid through the program.[146] As of March 31, 2013, the latest data available, 109,874 borrowers had received assistance under HHF.[147]
- **FHA Short Refinance Program** — This program, which is partially supported by TARP funds, is intended to provide borrowers who are current on their mortgage an opportunity to refinance existing underwater mortgage loans that are not currently insured by FHA into FHA-insured mortgages with lower principal balances. Treasury has provided a TARP-funded letter of credit for up to $1 billion in loss coverage on these newly originated FHA loans.[148] As of June 30, 2013, 3,136 loans had been refinanced under FHA Short Refinance.[149]

Underwater Mortgage: Mortgage loan on which a homeowner owes more than the home is worth, typically as a result of a decline in the home's value. Underwater mortgages also are referred to as having negative equity.

Status of TARP Funds Obligated to Housing Support Programs

Treasury initially obligated $45.6 billion to housing support programs, which was reduced to $38.5 billion, of which $8.6 billion, or 22%, has been expended as of June 30, 2013.[150] Of that, $1.3 billion was expended in the quarter ended June 30, 2013. However, some of the expended funds remain as cash on hand or paid for

MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-third Session
May 17, 2005

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 7:05 a.m. on Tuesday, May 17, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 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 at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Sandra J. Tiffany
Senator Joe Heck
Senator Michael Schneider
Senator Maggie Carlton
Senator John Lee

GUEST LEGISLATORS PRESENT:

Assemblywoman Barbara E. Buckley, Assembly District No. 8
Assemblywoman Ellen M. Koivisto, Assembly District No. 14
Assemblyman Mark A. Manendo, Assembly District No. 18
Assemblyman John W. Marvel, Assembly District No. 32
Assemblywoman Genie Ohrenschall, Assembly District No. 12
Assemblyman David R. Parks, Assembly District No. 41

STAFF MEMBERS PRESENT:

Kevin Powers, Committee Counsel
Jeanine Wittenberg, Committee Secretary
Scott Young, Committee Policy Analyst
Jane Tetherton, Committee Secretary

OTHERS PRESENT:

James F. Nadeau, Nevada Association of Realtors
Robert C. Maddox, Community Associations Institute
Renny Ashleman, Southern Nevada Home Builders Association
Bert Gurr, Nevada Association of Realtors
Lisa Young, Deputy Administrator, Real Estate Division, Department of Business and Industry
M. J. Harvey
Jim Avance, Nevada Manufactured Housing Association
Renee Diamond, Administrator, Manufactured Housing Division, Department of Business and Industry
Garry Hayes
David Stone
Sabrina Gayhart
Mike Randolph
Karen D. Dennison, Lake at Las Vegas Joint Venture
Marilyn Brainard
Doris Green
Karene Williams
Constance Kosuda
Steve Ray
Michael Ingenluyff
Lillian DeBolt
Karl Braun
Joseph Guild, Manufactured Home Community Owners
Marolyn Mann, Manufactured Home Community Owners
Mike Cirello
Teresa Maloney
Mary Fischer
Jeanne Parrett
Thomas A. Morley, Laborers Local No. 872
Danny L. Thompson, American Federation of Labor-Congress of Industrial Organizations
John (Jack) E. Jeffrey, Southern Nevada Building and Construction Trades
Susan Fisher, Washoe County Employees Association
Rose E. McKinney-James, Clark County School District
Greg Mourad
Christina Dugan, Las Vegas Chamber of Commerce

John L. Wagner, Burke Consortium of Carson City
Raymond Bacon, Nevada Manufacturers Association
Randall C. Robinson, Associated Builders and Contractors
Cheryl Blomstrom, National Federation of Independent Business
Mark W. Shumar, International Brotherhood of Teamsters

CHAIR TOWNSEND:
The hearing is now open on Assembly Bill 290.

ASSEMBLY BILL 290 (1st Reprint): Makes various changes to provisions relating to common-interest communities. (BDR 10-951)

ASSEMBLYMAN DAVID R. PARKS (Assembly District No. 41):
Assembly Bill 290 makes changes to statutes relating to common-interest communities. It entails five issues which I will briefly read from the bill under An Act: "... requiring a member ... ."

CHAIR TOWNSEND:
Have you spoken with Senator Schneider on this bill? Senator Schneider has a similar bill, S.B. 325 that he is working on.

SENATE BILL 325 (1st Reprint): Makes various changes concerning common-interest communities. (BDR 10-20)

ASSEMBLYMAN PARKS:
I have not spoken to Senator Schneider lately relative to this bill. However, when the bills were introduced, we did have a brief conversation.

CHAIR TOWNSEND:
Senator Schneider had indicated that there were some issues with the bill and the Committee wants to make sure that they are discussed.

ASSEMBLYMAN PARKS:
Yes, Mr. Chairman.

JAMES F. NADEAU (Nevada Association of Realtors):
I have given to the Committee a copy of an amendment (Exhibit C) to this bill. We support this legislation. During our discussions with the Assembly the language in section 3 of A.B. 290 was amended from the original bill. This

amendment will change the language to be consistent with the language in S.B. 325. At this time, I do not have the specific section in S.B. 325 to which it relates.

During our discussions with the Assembly regarding the removal of the $400,000 cap, we discovered in *Nevada Revised Statutes* (NRS) 116.31123 that the term "commercial transient lodging" would cause confusion to the application of the language. Therefore, we are trying to amend the language. This amendment has been discussed with Assemblyman Parks.

SENATOR HARDY:
Is the amendment agreeable with Assemblyman Parks?

ASSEMBLYMAN PARKS:
Yes, it is.

CHAIR TOWNSEND:
Assemblyman Parks, with regard to section 3 in your amendment where it states, "… an association may not require a unit's owner to secure or obtain any approval from the association in order to rent or lease … ," the original language was the result of serious issues that occurred at one of the homeowners associations in southern Nevada. Are you familiar with what happened?

ASSEMBLYMAN PARKS:
I am familiar with what you are talking about; however, Mr. Ashleman has more knowledge of the matter than I do.

MR. NADEAU:
Nevada Revised Statutes 116.31123 deals with short-term rentals that are less than 30 days. I believe there was one homeowners association in southern Nevada where the issues arose because of the short-term rentals. The language in the amendment would allow the Covenants, Conditions and Restrictions (CC&Rs) to preclude rentals. The amendment would also provide protection to the owner of the mobile-home unit from the CC&Rs.

SCOTT YOUNG (Committee Policy Analyst):
Mr. Chairman, for the Committee's assistance, the provisions in section 3 of A.B. 290 correspond to section 42 of S.B. 325. The Committee should have a copy of S.B. 325 to compare the two bills.

CHAIR TOWNSEND:
MR. NADEAU, did the Committee make that change in S.B. 325?

MR. NADEAU:
The language in our amendment is consistent with the language in the first reprint of that bill.

CHAIR TOWNSEND:
Mr. Young, did you say section 42 of S.B. 325?

MR. YOUNG:
That is correct.

CHAIR TOWNSEND:
Assemblyman Parks, you mentioned the issue of "reserves" which relate to some of the older communities and that they may not be adequately reserved. In section 8 of A.B. 290, on line 39, the words "... of the association," were added. What is the bill trying to imply with regard to the "reserve" issue?

ASSEMBLYMAN PARKS:
We did have a longer definition, but after discussions we came up with that revised language. I was assured that the language would accomplish what it is supposed to do.

CHAIR TOWNSEND:
Mr. Nadeau, section 10, subsection 2 states: "The purchaser may cancel, by written notice, the contract of purchase until midnight of the fifth calendar day ... ." Why would an acquisition of a unit in a common-interest community be any different than a home in a noninterest community?

MR. NADEAU:
This language is a clean up of existing language, because the homeowner has an opportunity to back out of a sale on their mobile home if they do not agree with the CC&Rs.

CHAIR TOWNSEND:
Do you have any concerns with that happening?

MR. NADEAU:
No, I do not. Another issue is that homeowners associations entertained the idea of questioning the suitability of a potential renter. We felt that was inappropriate so the language in section 3 was added to address that issue.

MR. YOUNG:
I would like to point out to the Committee that section 10 of A.B. 290 touches on the same issues in section 76 of S.B. 325. I believe Mr. Nadeau had stated that there are a few differences in the language, so the Committee will need to consider how to conform those provisions.

ROBERT C. MADDOX (Community Associations Institute):
My understanding from the testimony today on A.B. 290 is that an amendment was proposed to section 3 to make the language consistent with the language in section 42 of S.B. 325, is that correct?

CHAIR TOWNSEND:
Yes, section 42 in S.B. 325 looks like it has already been amended and section 3 in A.B. 290 would be amended to be consistent with the change in S.B. 325.

MR. MADDOX:
The Community Associations Institute (CAI) will support A.B. 290. With regard to section 4 relating to opening bids at a meeting of the executive board (Exhibit D), the managers of CAI feel that it would be preferable if the language was changed to reflect the bids to be opened at a specified time and in the presence of a representative of the CAI. The CAI prefers that a manager review the bids and provide a write up on the bid and present it to the board at the meeting. The proposed language would be: "If an association solicits bids for an association project, the bids must be opened at a specified time in the presence of a representative of the CAI."

CHAIR TOWNSEND:
Your point is well taken; however, the Committee cannot implement a proposal without having some idea of what the impact may be. My understanding is that

most boards do ask for an analysis to be performed. Either Mr. Powers or Mr. Young can review your proposed language.

MR. MADDOX:
I will meet with Mr. Powers or Mr. Young regarding the proposals.

RENNY ASHLEMAN (Southern Nevada Home Builders Association):
The Assembly modified section 42 of S.B. 325 to remove some of the language concerning governing documents prohibiting the use of transient lodging. I should know before your Committee adjourns this morning, whether or not that would cause the homeowners association, Heritage South, to be governed by using their CC&Rs or by using other parts of their master documents. I would ask the Committee to hold the vote on A.B. 290 until I can inform you on that issue. I would also like to point out to the Committee that there is considerable discussion in the Assembly relating to S.B. 325 and I am helping in the drafting of language to try to deal with the problems of conversions and the reserves issue. I can provide the Committee the results of those discussions.

CHAIR TOWNSEND:
The hearing is closed on A.B. 290. We will now hear discussions on A.B. 114.

ASSEMBLY BILL 114 (1st Reprint): Revises provisions governing manufactured homes, mobile homes and Real Estate Education, Research and Recovery Fund. (BDR 43-1162)

ASSEMBLYMAN JOHN W. MARVEL (Assembly District No. 32):
I am the chief sponsor of A.B. 114 and the bill was introduced on behalf of the Nevada Association of Realtors. At this time, I would like to turn the testimony over to two members of the Association, Mr. Nadeau and Mr. Gurr.

MR. NADEAU:
This bill is a very important to the Nevada Association of Realtors. The first part of the bill removes the requirement that a real estate licensee obtain limited dealers' licensure from the Manufactured Housing Division, Department of Business and Industry. A real estate transaction that involves a used mobile home that sits on real estate that has not been converted to real property, requires that a real estate licensee either have a limited dealers' license or work with a manufactured-housing dealer in order to conduct a sale. This bill will allow a real estate licensee the ability to handle the transaction without having a

limited dealers' license. There are a variety of reasons why our Association became involved in the bill. The first reason is the cost of a limited dealers' license has been significantly increased over the past few years by the Manufactured Housing Division so cost becomes complicated in that it would require a cost-benefit analysis as to whether or not a licensure is required. Second, the implementation of a contract for the most part does not apply to the purchase of a mobile home. The Association is asking that these issues be placed solely under the Real Estate Division's jurisdiction. We have worked with the Manufactured Housing Division to ensure that the consumer is protected.

BURT GURR (Nevada Association of Realtors):
I have provided the Committee my written testimony of which I will read from now (Exhibit E). One point I would like to make is that there are very few limited licensed dealers in rural Nevada. Those individuals have dropped their licensees because of the cost-benefit ratios. Currently, if a mobile-home unit has not been converted to real property, an individual is required to use two different entities for the purpose of selling the unit. The Association feels that is not to the benefit of the consumer. The Association asks for support of this bill.

SENATOR CARLTON:
There are several mobile homes in southern Nevada that have not been converted to real property. My concern is that there will be real estate agents that do not understand the specifics of a mobile home and be able to be objective to concerns that may arise. Will that particular agent be operating outside of their expertise?

MR. GURR:
I do not believe so, there are transactions going on right now.

SENATOR CARLTON:
Maybe I am confused on this issue, because what I understand the Association is trying to do is make it so the agent is not required to obtain a limited dealers' license. Does that particular license provide specific training in the sale of mobile-home units or conversions to real property?

MR. GURR:
No. To obtain a limited dealers' license, you simply complete an application and pay a fee. I personally had that type of license for several years and was never required to take any type of educational training.

SENATOR CARLTON:
I still have some concerns though, thank you.

SENATOR HECK:
Could you address section 9 of the bill with regard to the increasing of the Recovery Fund balance?

MR. NADEAU:
The Real Estate Education, Research and Recovery Fund for the Real Estate Division was $50,000 and the Division felt it would be appropriate to increase the amount based on their agreement with the Legislature involving used manufactured homes. Although, to my knowledge, I do not think there have been any claims under either the Manufactured Housing Division or the Real Estate Division towards the Recovery Fund in regard to these types of sales.

SENATOR HECK:
So, the Real Estate Division requested the increase in the Fund balance from $50,000 to $300,000 because they potentially foresee a problem by allowing this bill to pass. Is that correct?

MR. NADEAU:
The current Recovery Fund carry-over balance for the Manufactured Housing Division is $500,000. That was part of the Association's negotiated agreement in trying to make sure that the consumer was protected. I would defer to Ms. Young of the Real Estate Division to explain.

LISA YOUNG (Deputy Administrator, Real Estate Division, Department of Business and Industry):
Our Division has worked with both the sponsor of this bill and the Manufactured Housing Division. We are willing to make adjustments referenced in sections 9 and 10 of the bill to increase the Recovery Funds.

SENATOR HECK:
What is the reason for increasing the Fund balance?

MS. YOUNG:
The reason is for the possibility of claims against the Fund.

SENATOR HECK:
Is the Division expecting increased claims because of the other changes being made in this bill?

MS. YOUNG:
The Fund balance is being increased due to this bill.

MR. NADEAU:
Even though there have not been any claims filed against the Manufactured Housing Division, I believe the Division felt there needed to be a cushion in order for all involved to come to an agreement. It is my understanding that there have not been any claims filed, but there are potential claims that may be filed.

MR. GURR:
There are several individuals who are currently operating outside the current law without a limited dealers' license. This bill would take care of potential or unforeseen problems. This would also clarify who would handle any disciplinary actions, should they arise.

CHAIR TOWNSEND:
Ms. Young, your Division wants to increase the Fund balance by $250,000. How is that going to be accomplished?

MS. YOUNG:
Currently, our licensees pay a $40 fee that goes to a research and recovery fund and this would come out of that particular reserve.

CHAIR TOWNSEND:
The Division is not increasing the fee?

MS. YOUNG:
No.

CHAIR TOWNSEND:
The Division is just taking more money out of those funds?

MS. YOUNG:
The money goes into a fund that has a rolling balance. The Division is taking from that balance-forward fund and increasing that amount. I believe the current

balance in the Fund is $50,000 that is used when claims are made against the fund.

CHAIR TOWNSEND:
I understand what the Fund is used for, I just do not understand how the increase will be accomplished.

MR. GURR:
I believe the Fund is based on a rolling cap and the $50,000 is the current cap amount on the Fund.

CHAIR TOWNSEND:
It is not a cap; it is a base because it states, "A balance of not less than … ."

MR. NADEAU:
I am not an expert on this matter, but what I believe happens is the $50,000 is a carryover fund amount and anything over that amount goes into the Division's education fund. If the Fund is increased to $300,000 then any amount over the $300,000 would go to the education fund. The education fund provides licensee education which is sponsored by the Division. If the Division is able to raise the balance to $300,000, there would be a sufficient balance in that account to become a rolling account. At that time, the Fund should not require any additional fees to operate.

SENATOR CARLTON:
If the money in the Fund goes toward the education for continuing licensees and the Fund becomes reduced, will the licensees then be paying more in continuing education but not in fees?

MS. YOUNG:
That money does not go for continuing education for licensees. There is an education section that provides a variety of programs related to licensee education. Currently, the Division has a reserve in that account and the Fund increase we are requesting will help to bridge the gap between the new limit and the current limits to which we have access.

SENATOR HECK:
How much revenue is generated annually on the $40 licensing fee that goes into the Fund?

MS. YOUNG:
I do not have those figures with me today, but I can obtain those for the Committee.

SENATOR HECK:
Just so I understand, the Division collects a fee and sets it aside in the Fund for claims and at the end of the year whatever has not been expended in claims, the Division will keep $300,000 as the balance amount and put the remaining amount into the educational fund.

MS. YOUNG:
That is correct.

SENATOR HECK:
I would like to see those figures when you get the opportunity to do so.

MS. YOUNG:
I will provide those figures.

CHAIR TOWNSEND:
The figures we have been discussing pose a question. Originally, the Division was not going to keep less than $50,000 in the Fund and the Division was not going to allow a claim of more than $10,000 per judgment. That is approximately 20 percent of the Fund. Now the Division is asking to keep not less than $300,000 in the Fund and allow a claim of not more than $100,000 per judgment. That is approximately a 33-percent difference. Is there a reason the Division chose not to keep the percentage amount the same?

MR. NADEAU:
I do not get involved in working with those figures. My understanding is that the claims filed against the Division come from a court judgment and the incidents of those types of judgments are very small.

M. J. HARVEY:
Mr. Chairman, I am testifying from the Grant Sawyer State Office Building in Las Vegas and did not have the opportunity to speak in regard to A.B. 290 and would like to do so now.

CHAIR TOWNSEND:
Committee, the hearing is reopened for discussions of A.B. 290.

MS. HARVEY:
I have been involved in a property-owners' association for 26 years. I support sections 2, 4 and 8 in A.B. 290. I am also in support of opening bids at a board meeting, which is also open to the public. In section 8 with regard to adequate reserves, we were looking for flexibility in the reserve amounts between larger and smaller homeowners associations.

CHAIR TOWNSEND:
Are there any further questions on A.B. 290? If not, the hearing is now reopened on A.B. 114.

JIM AVANCE (Nevada Manufactured Housing Association):
When this bill was first introduced, the Nevada Manufactured Housing Association was opposed to it. Specifically, our opposition related to consumer protection issues. The Association also had a concern as to how the Real Estate Division could use their recovery fund to settle an issue on private property that was not permanently attached to real estate.

CHAIR TOWNSEND:
A claim against the Fund is related to a claim against a licensee as it reads in section 10, subsection 1: " ... upon grounds of fraud, misrepresentation or deceit with reference to any transaction ... ." It has nothing to do with whether the issue related to real or personal property, it is about the transaction. The claim would be against the licensee if they misrepresented the mobile-home unit or anything inside of real property lines; those were the types of issues. Am I misunderstanding the bill?

MR. NADEAU:
That is the issue here. Because the issue deals with a transaction and if the licensee is involved in a transaction that ends up with a judgment against them, the recovery fund will handle it.

CHAIR TOWNSEND:
Mr. Avance, does that answer your concern?

MR. AVANCE:
Yes sir, our concern is for the consumer and the image of the industry overall.

RENEE DIAMOND (Administrator, Manufactured Housing Division, Department of Business and Industry):
My concerns on this bill are twofold. Our Division's first concern is that the consumer be given disclosure on all the issues that are unique to manufactured homes. I believe a disclosure was incorporated into this bill that would cover those unique situations. The second concern was that the manufactured-housing Recovery Fund provided up to $25,000 per occurrence. The cumulative total of $100,000 is per licensee. When the discussions began on this bill, $10,000 did not seem enough to cover issues of fraud, et cetera. I have provided my written testimony for the Committee (Exhibit F). I would like to point out that in my manufactured housing budget, the 140 limited dealers represent $28,000 lost to our self-funded agency in the next biennium. The manufactured housing recovery fund would lose $84,000 over the next biennium. I have pointed out to Mr. Nadeau that the first time a manufactured home as personal property comes before their Association, they will be puzzled because they are not experienced enough in the construction of these types of homes. Those are the only reservations I had on this bill, and I believe the consumer issue had been addressed.

CHAIR TOWNSEND:
Are there any further questions on A.B. 114? If not, the hearing is open for discussions on A.B. 383.

ASSEMBLY BILL 383 (1st Reprint): Creates right of redemption for owner of property in common-interest community in certain instances of nonjudicial foreclosure. (BDR 10-1242)

ASSEMBLYMAN MARK A. MANENDO (Assembly District No. 18):
I brought forth this legislation on behalf of a constituent by the name of Garry Hayes. I will let Mr. Hayes go over the issues of this bill with the Committee.

GARRY HAYES:
I am an attorney, but I am not representing anyone on this particular bill. I have come across several issues in this bill which prompted me to review the NRS to

see if there was a right of redemption when a person loses their home for failure to pay their fees in a common-interest community.

A right of redemption means that a person can, within a certain period of time after a forced sale of their home, redeem their home by paying the person who bought the home. This bill states that within 180 days after the forced sale of a home, that person can redeem that home by paying what was paid by the purchaser, plus interest and any outstanding charges such as liens against the home. It is a statutory right to sell those homes and, in all fairness, people should not be forced to lose tremendous amounts of equity in a sale. The goal of the sale provision is to allow the homeowners association to collect the money that they are owed and this legislation does not interfere with that collection.

I would like to point out to the Committee that NRS 21.200 allows for a 1-year redemption of a property in case a person has a judgment against them and that judgment forced the sale of any real property. What we are trying to accomplish with this bill is to spread those provisions to common-interest communities. I believe this legislation would keep cases from going to court and I would appreciate the Committee's support on A.B. 383.

ASSEMBLYMAN MANENDO:
I would like to make a disclosure; I do live in a common-interest community.

DAVID STONE:
I am the owner of Nevada Association Services, Incorporated which is an assessment-collection company. Our association works exclusively with homeowners associations in collecting past-due assessments. As the bill is written, I am opposed to it because I find the language to be detrimental to homeowners associations. I think this bill has been presented under the assumption that there is an enormous foreclosure problem in this State. Our company actually forecloses on approximately 1 out of 600 delinquent accounts. With the revisions in S.B. 325, it will make the notice to foreclose more significant to a homeowner.

SABRINA GAYHART:
I am a qualified manager for Red Rock Financial Services and we also do assessment collections. I agree with Mr. Stone, and I am also in opposition to the bill.

MIKE RANDOLPH:
I am a licensed manager of Homeowners Association Services which is a licensed collection agency specializing in homeowner-association assessment recovery. I am opposed to A.B. 383 for a number of reasons. I believe this bill will remove a lot of the consumer's protection. The first problem I found was in section 1, subsection 2, paragraph (a) which relates to a person who loses their home and has to pay the purchaser what the owner paid for the unit, plus interest. My question is, "What happens with the ongoing assessments that the purchaser pays such as the transfer fees, extra mortgage fees, et cetera?" Does the purchaser get that money back?

Also, there are a number of forms this bill references such as a notice of redemption, an affidavit of redemption, and a certificate of redemption which I and a number of individuals in the business of foreclosures have never seen. Who is supposed to create those forms? What about the proof of payment of other items such as junior liens? Who receives payment for those items? It also states in the bill that the person who purchased the property through foreclosure has seven days after the property has been redeemed, and the purchaser had been paid, to produce a deed and a certificate of redemption. Seven days is not enough time to handle that process. In section 1, subsection 3, it states that the homeowner has 180 days to begin the redemption process and is allowed another 30 days to complete the process. The question is what constitutes the beginning of the process? Is it a phone call in the afternoon of the 179th day? The process is not listed in the bill.

As a trustee who is going to be forced to deal with this bill, it leaves a lot of areas open that I would not know how to handle and the bill does not address those issues. In section 1, subsection 8, it talks about successors in interest where the defaulting homeowners' heirs and assigns can redeem the property. This opens the door for abuse. The reason I am against this bill is that I see a chance for a lot of abuse to occur. As NRS 116 stands today, excess monies due to foreclosure sales is going back to the original homeowners, so the homeowners in some cases are not losing everything due to a foreclosure. I have provided the Committee with my written testimony (Exhibit G), which includes my opinion. Mr. Urbanetti of the Alternative Dispute Resolution office on behalf of common-interest communities requested I do this. Mr. Urbanetti asked me for my opinion on this bill ten days ago. I do not have any concerns with a right of redemption. I just have concerns with all the problems this bill creates.

SENATOR CARLTON:
You stated that you were asked for your opinion approximately ten days ago?

MR. RANDOLPH:
Yes.

SENATOR CARLTON:
Did you testify on this issue in the Assembly?

MR. RANDOLPH:
No, because I was not aware of this bill until ten days ago.

SENATOR CARLTON:
Have you discussed your concerns with the proponents of the bill?

MR. RANDOLPH:
Not yet, I have not had that opportunity.

KAREN D. DENNISON (Lake at Las Vegas Joint Venture):
We have a neutral position on A.B. 383. I would like to comment on the length of the redemption period. When I served on the State Bar of Nevada committee, the committee reviewed the issue of redemption and we recognized that some individuals do not realize that they have lost their homes after a foreclosure sale. The committee believed that 90 days would be sufficient time to balance the interest of the homeowners association to collect money to pay any bills that had occurred versus the interest of the homeowner. Our recommendation would be to shorten the redemption period to 90 days. Additional disclosures have been added to S.B. 325 relating to the notice of foreclosures in order to make sure individuals are aware of the consequences if their assessments are not paid. In addition, we added a mechanism to make sure the individual receives the notice of intent to foreclose, by either personal service or posting.

SENATOR SCHNEIDER:
Taking into consideration that the time period to redeem a unit is 180 days; if I were to buy a unit that is in a foreclosure status and then refurbish it and sell it within 90 days, would the original owner be able to redeem the unit?

MS. DENNISON:
I believe the seller of the unit would be able to sell their certificate of sale which is subject to the right of redemption. The seller would not receive the deed until either the 180-day or 90-day period of redemption passes.

MR. RANDOLPH:
Currently, with regard to the individual who bought the property at a foreclosure sale and wants to resell the property, that individual would have to sue for quiet title or obtain a quick claim. Presently, there are two companies who provide title insurance and a new mortgage company will not loan on a property that does not have title insurance. Of the two title companies that offer title insurance in Nevada, they will not insure title unless one of the following occurs: there is a quit claim from the defaulting homeowner, releasing interest in the property; a court decision was made stating that the foreclosure is valid and a quiet-title action was done or a two-year time frame has passed. At present, there is already close to 120 days after the foreclosure that the purchaser, who bought the property, has to sue for quiet title. That gives the homeowner another day in court. This process is just adding more time to the original time frame.

MARILYN BRAINARD:
I represent the vast majority of homeowners who live in common-interest communities by serving on the state board of Community Associations Institute. I also serve as a board member for Wingfield Springs Community Association. In the seven years that I have attended board meetings, there has been only one foreclosure. I believe the new provisions included in the amended version of S.B. 325, relating to the notice of foreclosures, works in favor of the consumers' protection. I also do not feel it is fair to the homeowners who do pay their fees on time to be burdened by delinquent homeowners who do not pay their fees. I am not in favor of A.B. 383, because I do not feel it is necessary.

CHAIR TOWNSEND:
The hearing is now closed on A.B. 383. The hearing is now open on A.B. 216.

ASSEMBLY BILL 216: Requires landlord to reduce rent for certain older persons who are tenants of manufactured home parks. (BDR 10-201)

ASSEMBLYWOMAN GENIE OHRENSCHALL (Assembly District No. 12):
I am the primary sponsor of A.B. 216. There is a crisis in affordable housing in southern Nevada. I have provided the Committee my written remarks (Exhibit H) relating to this bill and I will briefly read them. The schedule of rent amounts would only apply to an individual over age 55 who has lived in the same mobile home park for 5 years and owns their unit. I will continue to read from my written remarks. If the adjusted gross income is above $40,000 annually, this bill would not apply or give any further protection, because we understand that the owner of a mobile-home park needs to make some type of profit, otherwise there would be no incentive to keep the park open or in habitable condition for the tenants.

Section 11 requires the administrator of the Manufactured Housing Division to adopt regulations to carry out the bill's provisions. The burden is on the renter to inform the mobile-home-park owner that they fall into one of the schedule-of-rents categories and that they are entitled to rent relief. At that point, the park will either grant the rent relief or deny it. If the park objects to the rent relief, then the matter will be sent to the Manufactured Housing Division to determine whether or not the renter is entitled to rent relief. Unfortunately, I have visited individuals in mobile-home parks in the summer where there was nothing else but a bucket of ice in front of a fan, with no lights on because they could not afford to pay the electricity to run an air conditioner.

SENATOR HECK:
Are these rents locked in for perpetuity or is there something in the bill stating they can be adjusted based on the Consumer Price Index (CPI) or anything in the outer years?

ASSEMBLYWOMAN OHRENSCHALL:
I am not sure the bill provides for future adjustments. I believe what is being done now in all mobile home parks is leases are based on CPIs. I assume the Manufactured Housing Division would adopt regulations to include the CPI.

KEVIN POWERS (Committee Counsel):
Section 10 of the bill contains a component whereby the landlord may apply to the Manufactured Housing Division for permission to increase the rents. The Division is required to increase the rents if the landlord establishes that the increase is necessary to ensure a fair and reasonable return on the investment. This provision is,

essentially, the constitutional safety valve to prevent a taking of property without just compensation.

ASSEMBLYWOMAN OHRENSCHALL:
Thank you for clarifying that Mr. Powers.

ASSEMBLYMAN MANENDO:
I support A.B. 216 as a representative of my district which has several manufactured-housing communities. I am also here as a public citizen because the individuals affected by this bill are my extended family and friends. It is sad when we hear stories such as the one Assemblywoman Ohrenschall spoke about. I hear those same types of stories. We have been fighting this cause for 14 years and when you knock on an individual's door you find that they are just struggling to make ends meet; the rents keep going up and some have even lost their homes. Something must be done.

SENATOR LEE:
Could you clarify as to what is happening with regard to rent increases?

ASSEMBLYWOMAN OHRENSCHALL:
Mr. Chair, there is a resident, Mr. Ray from Tahoe Shores Mobile Home Estates, testifying about the rent explosion in his park. And if the Committee agrees, I would like to provide his presentation titled, Tahoe Shores Mobile Homes Estates Rent Explosion (Exhibit I). You can see that the rent amounts have skyrocketed.

ASSEMBLYMAN MANENDO:
There was actually one manufactured-housing community in my district where the rents were increased $100 per month. The homeowners received a notice of the rent increase; however, the increase in rents did not result in proper maintenance of the mobile-home park.

ASSEMBLYWOMAN OHRENSCHALL:
I believe the rent issue is more of a problem in southern Nevada. There are investors who will purchase a mobile-home park and immediately increase the rent amount because they state they need to refurbish the park. In turn, these investors hold onto the park just long enough to get the tax advantages and once the tax basis has been prorated-out, the investor sells the park to another investor. It is like a game of musical chairs and the individuals who get hurt are

the owners of the mobile homes. No one is stating that the mobile-home-park owner should not make a profit; that is on what America is based. However, there is a difference between a business profit and affecting a person's livelihood.

SENATOR HECK:
In your handout, Exhibit H, how did you arrive at the income levels and rent levels?

ASSEMBLYWOMAN OHRENSCHALL:
The levels were created by a group called the Nevada Association of Manufactured Homeowners. I cannot give you the exact formula because it is not my formula.

CHAIR TOWNSEND:
Assemblywoman Ohrenschall or Assemblyman Manendo, do you have a list of testifiers on this bill?

ASSEMBLYWOMAN OHRENSCHALL:
I do not have a list, but I am aware of individuals from both northern and southern Nevada who would like testify in support of this bill.

DORIS GREEN:
I am a resident of a manufactured-home community in Las Vegas. I have provided the Committee with my written testimony (Exhibit J) from which I will now read.

KARENE WILLIAMS:
I am vice president of the Cactus Ridge Homeowners Association. I have provided the Committee my written testimony (Exhibit K) and will read from my testimony at this time.

CONSTANCE KOSUDA:
I am a retired trial lawyer. For over 20 years, I have dealt with clients who have not only lost their homes but some have committed suicide because of the loss of their homes. Others have passed away because of frigid winters, so I do understand how the weather can affect a person. I am also the vice president of the American Psychiatric Association Alliance and I would like to point out that Nevada still ranks as the number-one senior-citizen, suicide-related death state

in the nation. The loss of a home can be devastating to someone who is too old or too ill to work. This is an issue of morality and ethics. I am in support of this bill.

STEVE RAY:
I am here today on behalf of the Tahoe Shores Homeowners Association. We represent the member homeowners of Tahoe Shores Mobile Home Park. I have provided the Committee with two exhibits. One, Exhibit I, was given out during Assemblywoman Ohrenschall's testimony and the other is titled, "Tahoe Shores Mobile Homes Estates Rent Explosion" (Exhibit L). The photograph on the front cover of the exhibit which was just handed out symbolizes the history of our mobile-home-park since new ownership took over in 2002 and the direction it is currently going. The photograph is one of the many homes that have been turned over to the park owner either due to abandonment or by a sell-out. On page 3 of my exhibit, it shows the Tahoe Shores Rent Explosion graph which is at the heart of our presentation today. This graph represents our rent increases relative to the State of Nevada on average and the inflationary cost of business. Note that the explosion I am referring to occurs right after the new park ownership took place in 2002. We believe it is a deliberate attempt to drive out homeowners in anticipation of a park closure. To date, only 68 of the original 155 homesites are occupied by a resident homeowner of which many are low-income seniors.

Pages 4 and 5 are comparisons of rent by counties. If you notice, there is a big difference in rent between Tahoe Shores and the other counties. The graphs serve to illustrate an important point. Our mobile-home-park owner asserts that our rents are a reflection of a market standard because of the location of the park. We know that this is untrue for two reasons. The first reason is the owner of the park issued a notice of intent to redevelop which tells the homeowners that the park owner has no interest in the park business, and the park owner has no interest in being competitive.

On page 6, the CPI graph represents why we are all here today. The graph shows the increases in rent relating to the most vulnerable citizens which are the seniors. If you will look at the photos on pages 7 through 10, these are maintenance photos of the streets in our mobile-home park. There have been arguments in the past that lower rents mean less maintenance is provided to a park. If you accept that idea, then higher rent would mean that park is better maintained which is not true. On page 11 titled "Nevada's Lot Rent Subsidy

Program Is It Enough." We are aware that the Committee has information pertaining to the park owner's contribution to the subsidy program. We did a follow-up communication with the Manufacturing Housing Division and were made aware of certain facts that the Committee may or may not have been aware. The Rent Subsidy Program only assists 1 percent of Nevada's 31,000 homeowners in mobile-home parks. On page 13, you will see that the subsidy benefits have been reduced. The interesting statistic is that the average rent-subsidy check per month is approximately $40. Page 14 shows that park owners' fees have not increased in the last 12 years; however, rents have increased. On page 15, it shows the fees collected versus the benefits paid. It also shows the subsidy balance of 2005 which I will address later.

Finally, on page 17, is a perspective on why we think this bill will work. Seniors are the fastest growing segment of the Nevada population, but you have also seen by the graphs presented today that they are also the most vulnerable. Regardless of the number of people affected, we know that those individuals will be subject to the same kind of skyrocketing rents to which we at Tahoe Shores have been subjected. We ask the Committee to please pass this bill.

SENATOR SCHNEIDER:
What has been the increase in property taxes for Tahoe Shores in the last five years?

MR. RAY:
I do not have the property-tax information, that information is held by the park owner. For the last three years, that information has not been provided to the homeowners. However, the park owner did finally mail that information to the homeowners, but I do not have it with me today.

CHAIR TOWNSEND:
You made reference to seniors in your testimony; do you reside in the mobile-home park as well?

MR. RAY:
Yes, Mr. Ingenluyff is the president of the homeowners' association, and I am the vice president. As a matter of fact, we are both here to testify on this bill and will probably be the least affected because we are not senior citizens.

CHAIR TOWNSEND:
Were you going to address the subsidy balance on page 15 of your handout?

MR. RAY:
Yes, this is correct. I will have Mr. Ingenluyff explain the subsidy balance.

MICHAEL INGENLUYFF:
The reason we highlighted the subsidy balance on page 15 on the handout is because over the last 12 years there has been a balance of over $800,000 in the Fund. The Manufactured Housing Division has indicated that there may be fiscal difficulties with implementing the provisions in A.B. 216 so we wanted to bring to the Committee's attention that there could be potential funds available that would maybe fill the gap while the subsidy program is being implemented. The number of people that the subsidy program is actually assisting is low. In the fiscal note on this bill, the Manufactured Housing Division indicated that there could be a potential number of 16,000 individuals who would be eligible for benefits under this bill. I do not understand how the Division arrived at that number, because if you look at the Division's data, the average lot rent for a single-wide mobile home in Nevada is $289. The vast majority of single-wide mobile homes are below the $300 threshold to become eligible for a rent subsidy.

I encourage the Committee to ask the Division for a better breakdown of the number of mobile homes such as single-wide versus double-wide and also a breakdown on the ages of mobile-home occupants as well as the income threshold. Based on the information in the current fiscal note provided to the Committee, I do not think that it is sufficient.

CHAIR TOWNSEND:
Is there anyone here from the Manufactured Housing Division who can address the issue regarding the $800,000 subsidy-program reserve amount?

MS. DIAMOND:
I am not sure which budget account the testifier was referring to. The lot-rent subsidy account takes in a certain amount every year. The mobile-home-park owner sends in $12 for every space in their park. The fund is totally expended at the end of the fiscal year. We do have a program officer and some fixed expenses that are also paid out of that Fund. The lot-rent subsidy history report we provided the Committee is a projection of the benefits paid and the amounts

that were taken in. As you can see in the more recent years, the amounts have been stable. Now that we are losing spaces, we will have fewer funds in the rent-subsidy program. The rent-subsidy program is a separate budget. The budget that the fiscal note and the enforcement of the rest of NRS 118B comes under does not have anywhere near this amount in reserve. The Division has no position on the policy issues of this bill. The dilemma for the Division is that this is an unfunded mandate for a self-funded agency.

There is no requirement for the resident of a mobile home park to provide their income levels except to check their credit background in order to rent a space. The Division is not privy to that information. The Division's staff members to handle the adjudication of cases that come from the park owners are stretched thin. The current regulations on the lot-subsidy program are in statute, and if this bill passes, it will be two years before the statute can be changed. There will be no money available to be transferred over to other funds.

SENATOR SCHNEIDER:
If the owner of a mobile-home park wanted to sell the park, how much notice is given to the residents of that park?

MS. DIAMOND:
I believe it is 6 months or 180 days. When a mobile-home park changes uses or it is closed down permanently, then the owner is obligated to either move the residents or to buy the homes. The dilemma is that you cannot compensate someone for the loss of their community life.

SENATOR SCHNEIDER:
If the mobile-home-park owner ends up buying the homes, how are they appraised?

MS. DIAMOND:
If the mobile-home owner is buying a home, it would be based on an appraisal. In NRS 118B, it provides protection for the homeowner when a sale occurs.

CHAIR TOWNSEND:
Ms. Diamond, in the handout, Exhibit I, there is a letterhead from the Manufactured Housing Division, which looks like it came from your office, titled "Lot Rent Subsidy History Report." Is this report accurate? Because that is

where Mr. Ray and Mr. Ingenluyff made reference to the fees collected in Mr. Ray's handout.

MS. DIAMOND:
The numbers on the Division's report are accurate for the amount paid. I do not know how Mr. Ray came up with the amount of $828,375 as a subsidy balance which is shown in his handout on page 15. What the handout shows is only the fees collected and the subsidy benefits paid out. It does not show since the inception of the program what the administration costs have been.

MR. INGENLUYFF:
Senator Schneider, I would like to clarify the answer to your question regarding the closure of a mobile-home park and what the obligations are for the owner of a park. Ms. Diamond is correct, the obligations are to move the homeowner or to purchase the home. The value of the home is not based on what you would consider a normal real estate appraisal. The value of the home is determined by the price a dealer would get for the mobile home, on the dealership's lot, not the value of the home where it is actually located.

MS. DIAMOND:
The Division does not have any standing through statute regarding the sale of the homes or the value of the homes. The Division does not license appraisers and the Division does not have any authority over those issues. It is between the mobile-home-park owner and the seller.

LILLIAN DEBOLT:
I live in Villa Borega Manufactured Home Community. I was a member of a homeowners committee that created the guidelines for the drafting of this bill. I have provided the Committee with a handout (Exhibit M). I believe it is important to note that a subsidy program indicates that there is a need in Nevada for assistance. All I ask is that you sincerely and logically review the benefits that would come with the passing of this bill. I think the bill is a win-win proposal.

KARL BRAUN:
I am a resident of Boulder Cascade Mobile Home Park. I have provided the Committee with a written copy of my testimony (Exhibit N) of which I will read from briefly. Near downtown Las Vegas, there are 4 adjoining senior mobile-home parks and there are approximately 1,500 spaces. The highest

rental space is $405 a month. The rents in my particular park range from $500 to $575 a month. If there was a way to move into another park economically, then our park would be virtually empty. On behalf of the residents of Boulder Cascade Mobile Home Park, we would be happy to consider an amendment to this bill with an application fee for those seniors who are in need of subsidy funds.

ASSEMBLYWOMAN BARBARA E. BUCKLEY (Assembly District No. 8):
I have had the privilege for the last ten years of representing many residents who live in mobile-home parks. The residents are willing to pay rent increases but cannot afford high increases because some residents are seniors on fixed incomes. The possibility of moving their home is out of the question because of the high cost of moving. I want to make a plea for the many thousands of individuals whom I personally represent as this is an important issue to them. I urge the Committee to consider and support this bill.

JOSEPH GUILD (Manufactured Home Community Owners):
I am here today on behalf of the Manufactured Home Community Owners and we oppose A.B. 216. I have provided the Committee with a handout (Exhibit O) titled "Facts You Should Know About Rent Control." I want to make the point that this is a rent-control bill. In section 6, quote: " ... if a tenant satisfies the eligibility requirements set forth in this section, a landlord or his agent or employee shall not charge a tenant monthly rent ... ." The rent should not exceed certain criteria set forth in the rest of this section of the bill. In section 6, subsection 3 is part of the bill that begins to involve the Manufactured Housing Division. Page 3, line 12 of the bill relates to an eligibility requirement. For the tenant to be eligible for rent reduction they have to be 55 years of age or older. This bill puts an age limit on eligibility for rent reductions. There are no age limits for the lot-rent-subsidy program.

There are individuals in Nevada who do need some assistance to pay their rent in mobile-home parks. With the Legislature's assistance, my clients brought forth the only subsidy program of its kind in this country. The subsidy program was established by landlords for the benefit of the tenants. In section 9 of the bill, it again shows that the State is involved. Section 8 lists requirements that the landlord has to meet if the landlord objects to the request by the tenant for reduction in rent. The landlord cannot make a request to object if the request by the tenant resulted in the insolvency of the landlord.

Remember, this is a bill that would affect the entire State of Nevada. I would like to refer to the totals relating to rent increases in Nevada. I am going to make reference to a statistic which was compiled by the Manufactured Housing Division which gives statistics on mobile-home-park rent averages for the State of Nevada. For double-wide mobile homes over the last 5 years, there has been a 13-percent increase. That works out to be a 2.2-percent increase per year, so the notions that have been presented to the Committee of 60-percent and 85-percent increases do not reflect the statewide averages.

I reviewed the Lot Rent Subsidy History Report prepared by the Manufacturing Housing Division (Exhibit I). If you subtract the subsidy benefits paid from the total fees collected, you have an approximate figure of $828,955 which was alluded to as a reserve. But, Ms. Diamond stated, there were also costs associated with administration of the subsidy program. I would categorically oppose any notion that there is a reserve amount of $828,000 in this program.

Regarding Senator Schneider's question about what would happen to the residents if a mobile-home park closed and how the homes would be appraised, the testifier from Tahoe Shores answered by stating that the method of appraisal does not include the real estate. The reason is based on law where there is a line of cases which says that it is a piece of personal property and you cannot logically appraise its value sitting upon a piece of real estate owned by another individual. That is why the method of appraisal is conducted based on the home sitting on a dealer's lot. I believe if this bill were passed, it would be unconstitutional, because it would violate the Fifth Amendment's takings clause of the *United States Constitution* in that it would be a state action taking private property without just compensation.

Finally, I would like to address the Tahoe Shores' situation, because I represent Tahoe Shores as an attorney. What you were not told about that mobile-home park is that it is one of the premier locations at Lake Tahoe. There is no way to compare that park's rent to any other comparable property at Lake Tahoe, because there is no comparable property at Lake Tahoe. The residents have been informed that the intention of the park owner is to eventually close down the park and will do so in accordance with state law. I can assure you that my client has worked with the residents of that park to try to accommodate them. The park has a voluntary rent-subsidy program.

MAROLYN MANN (Manufactured Home Community Owners):
I am the executive director for the Manufactured Home Community Owners. We represent approximately 65 percent of the total number of mobile-home spaces in Nevada. Economists are virtually unanimous in their condemnation of rent control and that is why we feel rent control in any form is a bad idea, cannot be justified and is not a solution to a problem of affordable housing. The detrimental effects are well documented in the handout, Exhibit O.

First and foremost, rent control is contrary to the fundamental principals of our free-marketplace economic system. Assembly Bill 216 would treat privately owned, operated and developed property as if it were a public utility, singling out mobile-home-park owners. That obligates one group of private citizens to assume the public burden of subsidizing another group.

Second: rent control means an increased bureaucracy, higher taxes and fewer services. The bill does not factor in a clause needed to administer it, nor bureaucracy of lawyers, accountants, inspectors and other public employees needed to defend the special interest in court. All homeowners and taxpayers will foot the bill, taking millions of dollars away from other programs, services and infrastructure projects.

Third: rent control reduces the quality and quantity of affordable housing. It is a fact that mobile-home-park living continues to be the best bargain and is the most affordable housing alternative. We believe, in the end, this bill would hurt the very people it is supposed to help, condemning all residents to live in a downward spiral of deterioration. If owners are unable to afford maintenance, the property would deteriorate and surrounding neighborhoods would be devalued as well. I have been told by individuals that they would be affected by as much as 60 percent if this bill passes. Our costs of doing business in mobile-manufactured communities increases every year. In addition, every Legislative Session added regulations that have also increased the cost of doing business. What small business can afford to stay in business with such a drastic reduction and still be required to provide the same level of services? Contrary to what has been discussed here today, the majority of parks are not owned by large corporations. According to my records, approximately 80 percent are family owned. Rent control does not offer an incentive for developers, it is quite the opposite.

Fourth: rent increases have not been out of line and do not warrant such a drastic legislative step. The increase in rent for mobile homes in the last 15 years is less than $10 a year. Many seniors supporting this bill did not plan on the retirement income needed in today's economy. Our Nevada lot subsidy is the only mandatory program of its kind and is funded entirely by our park owners. Since 1992, our community has contributed over $4.5 million to help residents keep their mobile homes.

The evidence is clear that in every city that has tried rent control, there has been a negative impact on residents, mobile-home owners, taxpayers and the entire community and State. I believe A.B. 216 probably violates the Federal Fair Housing Act (FFHA). We believe what is needed are incentives for the free-enterprise system to work better.

MIKE CIRELLO:
I am the president of the Manufactured Home Community Owners. I am also the owner of a mobile-home park. I have experience with rent control and rent-control litigation. I do not believe this bill passes the constitutional test. On page 5 in section 10 of the bill, there is reference to fair and reasonable return on investment. That language in and of itself does not work. This bill would be subject to attacks on its constitutionality and could be struck down. There is a tremendous exposure for the Department and the state to be burdened with the cost of conducting hearings for eligible individuals without a funding basis to do so. Additionally, this bill really creates a subsidy program for the people who qualify. Over time, that subsidy most likely will be paid by the other residents in the park through the form of higher rents.

This bill only applied to persons over the age of 55. This bill may also serve as an incentive for park owners operating senior communities to change them to all-age communities as a way to avoid the impact of this bill. The bill creates a de facto rent rollback for those parks that have residents who are subject to this bill. The rollback is indicative of a regulatory taking without compensation. Many of the parks have adopted voluntary subsidy programs that they fund with their own monies. We do not need another government program to further infringe on our ability to do business.

Lastly, the aging communities in Nevada are contemplating going out of business because the life cycle of a mobile home has been reached. In turn, the land will become more valuable with a different use. Overall, the number of

mobile-home spaces will decline. A free market will address a lot of these issues.

TERESA MALONEY:
My family and I own Lucky Lane Mobile Home Park. I have provided a handout (Exhibit P) to the Committee from which I will now read. I would like to point out the pie chart in my handout which shows of the 187 spaces in our park, 127 spaces are occupied by someone over the age of 55. Potentially, 68 percent of our spaces could be affected by the provisions of this bill. Committee, please turn to the graph in the handout. In the graph, it shows 23 of the spaces where the household income is under $20,000. In 9 of the spaces the income is $20,000 to $30,000. In 12 of the spaces, the income range is $30,000 to $40,000 and these spaces fall under the rent cap. In the remaining 68 spaces, we do not have any income information. If you look at these specific numbers in our park alone, the potential of this bill would affect our bottom line by as much as $10,000 a month. I can assure you, if this bill passes and if we are affected in the way I just stated, we will be forced to close our park. The only requirement in proving an individual is eligible for the subsidy program in this bill is to provide one year's income tax returns.

In closing, the cost of housing for seniors is a critical issue and if A.B. 216 is the solution, then why do not the rent controls contained in this bill apply to all forms of rental housing? Assembly Bill 216 clearly is not the solution and I remain unconvinced that there is a problem.

MR. GUILD:
I would just like the Committee to see a raise of hands from the people in this room who are not going to testify but are opposed to this bill.

MARY FISCHER:
I own Cottonwood Mobile Home Park in Carson City. Until just recently, my family and I have performed all the maintenance required at the park to help keep rents at a reasonable level. If this bill passes, will we be able to continue maintaining the standards of our park or will we have to let it go? Seniors make up 100 percent of our residents. An accountant has estimated that our park will take a negative hit as high as $54,000. Please do not pass this bill.

MR. NADEAU:
We feel this is a private-property issue and rent control is not the way to address the problem. Utilizing lot subsidies and those types of programs are more beneficial in approaching the issues.

JEANNE PARRETT:
I am the manager of El Dorado Estates Mobile Home Parks. In our community park, based on my knowledge of what is the resident's income, we would incur approximately a 32.7-percent drop in income. When you relate that to our net profit of 12 to 14 percent, the numbers just do not compute. Most of our senior residents would be forced to look for other types of living arrangements. It would take away their pride of ownership, their sense of stability and their sense of safety; therefore, we oppose A.B. 216.

CHAIR TOWNSEND:
The hearing is closed on A.B. 216. The hearing is now open for discussions on A.B. 69.

ASSEMBLY BILL 69 (2nd Reprint): Authorizes labor organization to require employee in bargaining unit who is not member of that labor organization to pay service fee under certain circumstances. (BDR 53-956)

ASSEMBLYWOMAN ELLEN M. KOIVISTO (Assembly District No. 14):
I hesitate to say A.B. 69 is truly a very simple bill. At this time, I would like to turn the testimony over to the proponents of the bill.

THOMAS A. MORLEY (Laborers Local No. 872):
This bill in no way affects the right-to-work law. This simply codifies the Nevada Supreme Court's decision, *Cone v. Nevada Service Employees Union.* The Laborers Local No. 872 is asking for a fair share in being able to charge a service fee in the private sector with what they are already charging in the public sector. Currently, the Service Employees International Union, the city of Las Vegas and the city employees association charge fees for service and we are simply asking to do the same. Some opponents of this bill will say that we are attacking the right to work and to force union membership, which is simply not true. The bill clearly states that the employee must go to a union for representation if they are charged a fee. The bill also states that none of the monies collected will be used for public office or the passage or defeat of a

question or group of questions on a ballot. We ask that the Committee pass this bill.

DANNY L. THOMPSON (American Federation of Labor-Congress of Industrial Organizations):
This bill provides that an employee who has a grievance has to go to the union. Currently, in an established bargaining unit, if a nonunion member requests an individual to represent them, that individual would have to represent the person at no charge. If a case goes into arbitration, each side usually pays half of the costs associated with the arbitration, including the arbitrator. The case has to be recorded so there is a court recording fee and a possible rent charge to hear the case in a neutral setting. The bottom line is that the costs can add up to thousands of dollars. The bill implies that if someone chooses to use union representation, then they would have to pay a reasonable service fee.

SENATOR HECK:
Mr. Thompson, when you stated if a person chooses to use the union representative to represent them, would that imply that a person has a choice not to use a union representative and instead can hire a private attorney?

MR. THOMPSON:
Yes, there are a lot of attorneys who handle labor law.

SENATOR HECK:
So, it is not mandatory that they use union representation, is that correct?

MR. THOMPSON:
That is correct, nothing is mandatory in this bill. You could choose to represent yourself if you wanted to do so.

SENATOR SCHNEIDER:
I will read the conclusion portion of the Nevada Supreme Court ruling on the *Cone* case (Exhibit Q) where it states: "Accordingly, we hold that the policy is not violative of NRS 288.027, Nevada's right to work laws ... we therefore affirm the order of the district court." Is the Nevada Supreme Court stating that the act does not violate the right-to-work laws in Nevada?

MR. THOMPSON:
That is correct. Again, it is if a person comes to you and asks for representation.

MR. MORLEY:
Mr. Chair, in order to save some time, I would like to have the people in support of this bill just stand up to show their support.

CHAIR TOWNSEND:
Thank you.

JOHN (JACK) E. JEFFREY (Southern Nevada Home Builders Association):
The Southern Nevada Home Builders Association is in favor of the bill. I would like to explain what right to work means. You have the choice whether or not to join a union, but you do have to pay a fee for service which is only a matter of fairness. There is no logical reason why members of a union that have to pay full dues should have to carry persons who choose not to join.

SUSAN FISHER (Washoe County Employees Association):
On behalf of our 1,250, we are in strong support of A.B. 69 without regard to membership. In the Washoe County Employees Association, we have and do represent Washoe County employees on negotiating shift differential payment, sick leave, buyouts, et cetera. We do these things without any charge to employees if they ask for such services, whether or not they are a member.

ROSE E. MCKINNEY-JAMES (Clark County School District):
While we did testify against this bill in the Assembly, we are now removing our objections consistent with the amended version of the bill.

GREG MOURAD:
I am the director of legislation for the National Right to Work Committee. I have provided a handout (Exhibit R) to the Committee from which I will briefly read. I would like to add that employees have no ability to make a free choice. Federal law does state that an employee can retain legal counsel outside of a union. The law also states that an employer can refuse to meet with their outside counsel. This gives the employer an incentive to refuse a meeting. If an employer does refuse to meet with an employee or their outside counsel and they come to a resolution that is out of alignment with the union's interpretation of the contract, the employer has now exposed themselves to an unfair labor practice

charge. If an employer did meet with outside counsel and the grievance is denied, at that point the employee cannot go forth with the grievance unless they have the union's help. Arbitration is completely a construct of the collective-bargaining agreement. Without the union's participation, there is no arbitration or appeal process. Unions do not have to write an exclusive-representation contract. I believe the unions are trying in this bill to get out of the obligations that go along with the power of exclusive representation.

You have heard testimony today that this bill is a codification of the *Cone* case. That is simply not true. The *Cone* case was an issue involving a public-sector union. All employees fall into one of two broad categories, either the public or the private sector. Private-sector labor relations are entirely governed by federal law. Public-sector labor relations are not touched by federal law. The *Cone* case was a public-sector union with a public-sector employee. If the Committee will turn to page 8 of the *Cone* case handout, Exhibit Q, it states:

> Although appellants cite much precedent, including NLRB opinions, in support of their position, we reject this authority. Preliminarily, we note that this court is not bound by an NLRB decision when it determines that the statutes involved do not fall within the purview of the National Labor Relations Act. ... activities not listed in sections seven and eight of the National Labor Relations Act are within the jurisdiction of the state courts.
>
> Further, we disagree with this authority because it leads to an inequitable result that we cannot condone, by essentially requiring union members to shoulder the burden of costs associated with nonunion members' individual grievance representation.

What the law is stating here is that they do not like the concept of the right-to-work. We are free to ignore the National Labor Relations Board (NLRB) precedent; we are free to ignore federal law for public-sector workers because federal law applied to the private-sector employee, not the public sector employee.

MR. MOURAD:
There was a case in North Dakota where a similar bill was passed. An employee had a grievance; the union processed it and charged him $10,000. The

employee went to the NLRB with a complaint and it became apparent to the union that the NLRB was going to approve the employee's complaint. The union quickly settled and gave the $10,000 back to the employee. It is much more than a codification of the *Cone* case. It is an extension of that case in an area that the case cannot and does not apply. This issue is not a decision of the Nevada Supreme Court based on the *Nevada Constitutio*n. This is an interpretation of laws written by this Legislature.

At the end on my handout on page 7, I had my attorneys draft a strike-all-and-replace amendment to this bill. In that amendment under section 2, subsection 1, it reads: "No person shall be denied the opportunity to obtain or retain employment because of nonmembership in a labor organization, nor shall any person be required to pay any dues, fees, assessments, or other charges of any kind or amount to a labor organization, ..." Private-sector workers do not need that protection, but this would fix the situation for public-sector workers. A right to work means that no one shall be forced to join a union or pay any dues to a union in order to get or keep their job. A union is organized and a union gets certified as the exclusive representative. Individual employees have had their right to represent themselves taken from them in both contract negotiations and grievance processes. In exchange, the union has to represent the employee. In a right-to-work state such as Nevada you do not have to pay to have your rights taken away. I would urge the Committee to vote against this bill.

SENATOR CARLTON:
I have a question on your last statement of not having a choice of someone to represent you. I am a union member and involved in the process. The unions have an obligation to educate their members, and they have a choice to have a union steward with them in a meeting or not, it is their choice. I do not understand on what you are basing that comment?

MR. MOURAD:
I am basing that comment on the fact that if they do so without the union's official representative present and the agreement is out of alignment with the union's interpretation of the contract, you as the union could then file charges of unfair labor practices with the NLRB against the employer, and the employer does not want to take that risk.

SENATOR CARLTON:
I do not understand what you just said.

MR. MOURAD:
That is the problem; labor relations are extraordinarily complicated and this is not a simple bill. It is written simply, the language makes it sound simple but it is leaving a lot of unsaid federal law that governs these issues.

SENATOR CARLTON:
I think you are reading a lot more into this bill than there really is to it. The employee does have a choice when they have a grievance.

MR. MOURAD:
You are comparing apples with oranges, Senator. You are discussing the question of whether the employee wants to proceed with a grievance issue at all. I am discussing that once an individual decides they have a legitimate grievance, whether or not they want the unions help.

SENATOR CARLTON:
I am in agreement with the Nevada Supreme Court's decision on this issue. I guess we are in disagreement on the issue.

MR. MOURAD:
That is not what the Nevada Supreme Court decided for the private sector; the Supreme Court was dealing with a public-sector case.

CHRISTINA DUGAN (Las Vegas Chamber of Commerce):
The Las Vegas Chamber of Commerce was in opposition to this bill with the Assembly and we continue to be opposed to this bill. We do have some concerns about how the bill would apply to the private-sector employers. Also, we are questioning the need to codify the *Cone* decision. If that is put forward on the judicial books, then certainly the unions already have those rights and provisions as dictated by the *Cone* case. Therefore, to make it a law in statute we feel would be redundant and unnecessary.

JOHN WAGNER (Burke Consortium of Carson City):
The Burke Consortium of Carson City is against this bill. We believe in the freedom of choice of the individual. When an individual is forced to take representation by someone they did not choose, this to me is unfair.

RAYMOND BACON (Nevada Manufacturers Association):
We agree with Ms. Dugan's testimony in opposition to the bill.

RANDALL C. ROBINSON (Associated Builders and Contractors):
The Associated Builders and Contractors have had a long-standing opposition to this type of legislation. We echo the comments of Mr. Mourad and the chamber of commerce as well.

CHERYL BLOMSTROM (National Federation of Independent Business):
The National Federation of Independent Business is in opposition to the bill for the same reasons that have been stated previously.

MARK W. SHUMAR (International Brotherhood of Teamsters):
I am in support of this bill. In regard to the *Cone* case, that North Dakota century code is still there, fair-share fees are based on this type of legislation that we are looking to codify that private and public sectors exist. What happened in that case was a witness testified that someone charged above and beyond the fair-share fee; it was not for the recovery of fees.

CHAIR TOWNSEND:
Committee, we have also received written testimony from Bonnie McDaniel (Exhibit S) who was unable to testify today because of conflicting schedules. The meeting of the Senate Committee on Commerce and Labor is now adjourned at 10:39 a. m.

RESPECTFULLY SUBMITTED:

_____
Jane Tetherton,
Committee Secretary

APPROVED BY:

_____
Senator Randolph J. Townsend, Chair

DATE:_____

AB 383 Mike Randolph

Homeowner Association Services, Inc.

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Las Vegas, Nevada 89119
(702) 312-9150 • Fax (702) 312-9156
www.hoaservices.com

Steve Urbanetti
Assistant to the Ombudsman
2501 E. Sahara Ave.
Las Vegas, NV 89104

Re: AB 383 opinion

Dear Sir,

I appreciate the opportunity to pass on my thoughts regarding this piece of potential legislation.

I am totally opposed to the idea. Let me explain my position.

History:

NRS116.3102 was based on NRS107- trust deed foreclosures. The method, manner and procedures required in trust deed foreclosures.
NRS 107.080(5) states " 5. Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and his successors in interest without equity or right of redemption. The sale of a lease of a dwelling unit of a cooperative housing corporation vests in the purchaser title to the shares in the corporation which accompany the lease."

Last session, NRS 116 was amended to extend the "redemption period" from sixty to ninety days from the filing of the Notice of Default. The time frame for the process now is a minimum of 150 days. First a Notice of Lien must be recorded and mailed; usually when the homeowner is ninety days delinquent, and a thirty-day waiting period is required. A Notice of Default is then recorded, with a ninety-day redemption period. Notice of Sale and publication are then started, taking another twenty-eight days. At this point, 238 days have passed, or close to eight months, with no response from the homeowner.

Problems:

1. Associations don't want the property
It is my experience that Associations do not want the property. They are most fearful that the property would not be bid on, and that they would then get title to the property. Most

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Associations are run on a very tight budget, have limited reserves, and are fearful of the liability. If the property were to revert to the Association, they would then be responsible to bring the mortgage current, pay the past due property taxes, go through the court eviction process, and spend the money to rehab the property to make it saleable. Then there are Realtor commissions and closing costs. All this would only create a bigger problem for the association than the original non-payment problem. As a non-profit Corporation, with limited capital, this could be devastating to them.

2. No bidders

Typically, the majority of bidders at a Trustee's Sale are professional bidders, in the business to buy foreclosures and then either re-sell them or rent them out. They are fully cognizant of the procedures and cost previously explained. They are also aware that once they have purchased a property at an Association's Sale, they must then sue to quiet title in District Court. No title company at this time will insure title without either court action or a signed quick claim from the defaulting owner, and lenders will not make new loans on the property without title insurance.

Should a six-month redemption period be imposed, these bidders would not bid. Their profit margin is based on how quickly they can rehab and re-sell the property. This would tie that property up, not allowing them to re-sell or lease the property for at least six months. With a six-month redemption period by statute, the courts would refuse to hear a quiet title suit until the redemption period has expired, leaving the investor's money tied up for at least nine months.

3. Improbability of Redemption.

Once the sale has occurred, title is now vested with the purchaser. The defaulting owner would not be able to secure financing, as they have no security, and now have a foreclosure on their credit. With home prices escalating ten percent per year or more in Nevada, it is relatively easy to find lenders to make loans during the process, no matter what the credit, if there is equity in the property. The owner has approximately six months to arrange it prior to the foreclosure. If the homeowner cannot find financing to pay the debt while they still own the house, how are the going to find it six moths later, without the property to secure the loan?

4.Abuse

If investor A purchased the property at Trustee Sale, Investor B would then go find the defaulting owner, offer to finance the redemption through a double escrow, thus ending up with the property, and the defaulting owner getting little or nothing. If at a Trustee Sale, the property is bid above the delinquent amount, the excess proceeds are then returned to the defaulting owner. I have personally written checks over $500,000 to defaulting owners. They do benefit from the equity position. If a six month right of redemption were enacted, this would not be the case. The defaulting owner would receive no benefit. They would actually

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be hurt more by this legislation. Bidders would bid little, others would try the "back door" approach, and the homeowner would not be helped.

Conclusion:
I believe that this legislation would be bad for the homeowner, the investors, and the Associations. This would not serve the State of Nevada, or it's people. Associations would not foreclose, in fear of the property reverting to them and being tied up for nine months, Investors would either bid little or not at all, and homeowners being aware of this would not pay their Association dues. The possibility of Associations filing bankruptcy increases greatly, or the needed reserves to deal with this potential problem would increase assessments exponentially. If the idea were to force Associations to go through judicial foreclosure, it would only be worse and more expensive for all, especially the homeowner.

If I can be of further help, or more information is wanted, please feel free to call.

Sincerely,

Mike Randolph
Manager
Homeowner Association Services, Inc.

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Eighth Session
April 7, 2015

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:28 p.m. on Tuesday, April 7, 2015, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 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 Greg Brower, Chair
Senator Becky Harris, Vice Chair
Senator Michael Roberson
Senator Scott Hammond
Senator Ruben J. Kihuen
Senator Tick Segerblom
Senator Aaron D. Ford

GUEST LEGISLATORS PRESENT:

Senator Mark Lipparelli, Senatorial District No. 6
Senator David R. Parks, Senatorial District No. 7

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Lynette Jones, Committee Secretary

OTHERS PRESENT:

Alfred Pollard, Federal Housing Finance Agency
Jennifer Gaynor, Nevada Credit Union League
Rocky Finseth, Nevada Association of Realtors; Nevada Land Title Association
Diana Cline, SFR Investments Pool 1, LLC

Steve VanSickler, Nevada Mortgage Lenders Association; Silver State Schools Credit Union
Samuel P. McMullen, Nevada Bankers Association
Garrett Gordon, Community Associations Institute; Southern Highlands Homeowners Association
Gayle Kern, Community Associations Institute
Jon Sasser, Legal Aid Center of Southern Nevada
Pamela Scott, The Howard Hughes Corporation
Marilyn Brainard
Michael Alonso, Nevada Trust Companies Association
Mark Dreschler, Premier Trust
Gregory Crawford, Nevada Trust Companies Association; Alliance Trust Company
Bob Dickerson

Chair Brower:
I will open the hearing on Senate Bill (S.B.) 306.

SENATE BILL 306: Revises provisions relating to liens on real property located within a common-interest community. (BDR 10-55)

Senator Aaron D. Ford (Senatorial District No. 11):
I will present S.B. 306. I provided the Committee a copy of a memorandum from the Real Property Law Section, State Bar of Nevada (Exhibit C). This bill is the quintessential example of compromise legislation. Work on this bill began last year. I gathered a group of individuals to address the superpriority lien issue after the Nevada Supreme Court ruled on its effectiveness relative to canceling out a first deed of trust. Senator Hammond, the cosponsor of the bill, joined the working group, and we worked in a bipartisan manner toward developing a solution to the superpriority lien issue.

Senate Bill 306 balances the interest of all parties involved when a homeowners' association (HOA) forecloses its lien on a unit to collect past-due association assessments. The foreclosure of an HOA lien has an effect on homeowners, HOAs, banks, mortgage lenders, government-sponsored entities that insure and guarantee the vast majority of mortgages in Nevada, investors who purchase foreclosed homes and the title industry. A wide swath of entities and individuals are affected when a superpriority lien is foreclosed. Senate Bill 306 seeks to do a number of things to help this situation.

The bill provides protection for homeowners who have fallen behind in their HOA dues. It enables HOAs to effectively collect the assessments necessary to preserve and maintain the community, and it allows banks and mortgage lenders to protect their lien interests in a home when the HOA proceeds with a foreclosure. The bill creates certainty about the consequences of the HOA foreclosure so that HOA home titles do not become clouded. Under law, when the HOA has a lien on a unit within its community, the HOA can foreclose the lien through a nonjudicial foreclosure process. The HOA's lien is prior to all other liens on the unit except liens recorded before the declaration curating the community, the first mortgage lien, certain taxes and governmental charges. The HOA's lien can be prior to the first mortgage lien based upon certain maintenance and abatement charges and the amount of assessments for common expenses.

The portion of the HOA's lien is referred to as the superpriority lien. The superpriority lien is intended to balance the need for the HOA to collect assessments with the need to encourage lending for the purchase of units in HOAs. In *SFR Investments Pool 1, LLC v. U.S. Bank,* 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014), the Nevada Supreme Court determined that the foreclosure of the superpriority lien by the HOA extinguishes the first mortgage lien on the unit.

I will go through the provisions of S.B. 306 that include changes in Proposed Amendment 6077 (Exhibit D).

Section 1 amends provisions governing the superpriority lien. Section 1, subsection 1 states the collection and foreclosure costs incurred by the HOA are included in the HOA's lien.

Section 1, subsection 2, paragraph (b) and section 1, subsection 5 establish a limit on the amount of collections included in the superpriority lien.

Section 1, subsection 6 states that the HOA and its community manager are not required to hire a collection agency to take certain actions early in the process of foreclosing the HOA's lien.

Section 1, subsection 2, paragraph (d) states the HOA's lien is not prior to certain charges authorized by local government or trash collection. There has

been uncertainty about whether these charges are prior to the HOA lien and this provision treats those charges in the same manner as governmental charges.

Section 1, subsection 16 states any payment of the HOA's lien by the holder of a subordinate lien becomes a debt due from the unit owner to the holder of the lien.

Sections 2 through 7 revise provisions governing procedures for the foreclosure of the HOA's lien. Because a foreclosure of the HOA's superpriority lien extinguishes the first mortgage lien on a home and other subordinate liens, it is important lienholders receive sufficient notice of the HOA foreclosure to enable lienholders to protect their interests.

Section 2, subsection 1, paragraph (b) requires additional information to be included in the notice of default and election to sell that must be recorded by the HOA or the person conducting the sale.

Section 2, subsection 5, and section 3 require the HOA to mail an actual copy of the notice to each holder of a recorded interest on the unit being foreclosed upon by the HOA, using certified mail return receipt requested. In addition, section 2, subsection 1, paragraphs (b) and (e) require additional information be recorded by the HOA in order to create certainty as to the status of the title of the property if the HOA forecloses on the lien.

Section 2 contains an important protection for homeowners by prohibiting the HOA from proceeding with a foreclosure 30 days after sending a homeowner notice of a proposed repayment plan or right to request a hearing before the executive board. This gives the homeowner a realistic opportunity to enter into a repayment plan or request a hearing.

Section 4 is a provision designed to enhance notice of the HOA foreclosure to homeowners and to lienholders, which is one of the key components of S.B. 306. Under law, there is a 90-day waiting period after the mailing of the notice of default and election to sell; the HOA must provide notice of the foreclosure sale to certain persons. Section 4 makes the notice required for the HOA foreclosure similar to the notice required for a nonjudicial bank foreclosure.

Section 5 enacts provisions governing the manner in which a home is sold at the HOA foreclosure sale. This section intends to establish a process to ensure

a fair and reasonable price is obtained. An example is a home foreclosed upon with a $500,000 first lien interest being sold at the HOA foreclosure sale for $5,000. Section 5 seeks to address these types of issues. Section 5, subsection 2 as amended in Proposed Amendment 6077 states,

> If the holder of the security interest described in paragraph (b) of subsection 2 of NRS 116.3116 satisfies the amount of the association's lien that is prior to its security interest not later than 5 days before the date of the sale, the sale may not occur unless a record of such satisfaction is recorded in the office of the county recorder of the county in which the unit is located not later than 2 days before the date of sale.

Section 5 enacts sale procedures similar to procedures for a nonjudicial bank foreclosure and requires the person conducting the sale to announce at the sale whether the superpriority lien has been satisfied. This ensures persons interested in the home know what they will be buying.

Chair Brower:
You indicated section 5 includes a provision affecting the amount of the home at a foreclosure sale. I am not finding that. Can you direct me to that section?

Senator Ford:
There is no specific provision in the bill that contains this language. The notices required under section 5 will help people ascertain the actual value of the home so they will know what they are buying. If the superpriority lien has not been paid, the potential buyer will know it must be addressed.

Chair Brower:
You provided an example about a home worth $500,000 being sold for $5,000. This scenario is not prohibited by S.B. 306.

Senator Ford:
It is not prohibited, but this bill seeks to remedy that situation through the additional notices required before a superpriority lien sale can take place. Before you get to a foreclosure sale, you will know if the payment of the superpriority lien has been made.

Senator Scott Hammond (Senatorial District No. 18):
Over the last few years, home foreclosure sales were made without notification. No one knew sales were being conducted, the time of the sale or who was initiating the sale. As a result, you had situations in which homes were being sold for $5,000. What the bill seeks to do is require thorough notification so everyone will know the location, time and place sales will be conducted. The notification process will ensure more buyers show up at sales and the sale price of homes gets closer to market value.

Senator Ford:
Section 6 enacts provisions governing the period following the HOA foreclosure sale. Section 6, subsection 1 states if the holder of the first mortgage lien satisfies the superpriority lien no later than 5 days before the date of the sale, the seller does not extinguish the first mortgage lien. The remaining provisions of section 6 establish a redemption period so that after the HOA foreclosure sale, the unit owner or a lienholder may redeem the property by paying certain amounts to the purchaser within 60 days after the sale. As originally drafted, section 6 authorized successive redemptions, which would have allowed the unit owner or another lienholder to redeem the property from the prior redeemer. Proposed Amendment 6077 removes the concept of successive redemptions and instead authorizes one redemption during the redemption period. Section 6 also contains provisions to create certainty of the status of the title of the unit after a foreclosure sale.

Section 6, subsection 8 provides that the deed recorded after the foreclosure sale is conclusive proof of the default and compliance with the provisions of law governing the foreclosure process. Section 6, subsection 10 provides that failure to comply with requirements of the foreclosure process does not affect the rights of a bona fide purchaser or bona fide encumbrancer for value.

Section 7 is an additional notice provision that authorizes a person with an interest to record a request to receive a copy of the notice of default and election to sell or notice of sale. Law refers to provisions in *Nevada Revised Statute* (NRS) 107.090 regarding this notice. Section 7 incorporates the language of NRS 107.090 into statute and conforms the language to HOA foreclosures.

Section 2, subsection 7 amends provisions governing the foreclosure of the HOA lien during the period the homeowner is eligible to participate in a

foreclosure mediation program. Under law, if a home with an HOA is subject to the foreclosure mediation program, the HOA may not foreclose its lien until the home is no longer subject to the program. Section 2, subsection 7 revises language of law to specify that the HOA may foreclose its lien on a home that is subject to the mediation program if the unit owner fails to pay association fees that accrued during the pendency of the foreclosure mediation.

Section 8 requires the trustee, under the deed of trust, to notify HOAs when a homeowner is eligible to participate in a foreclosure mediation program and when the trustee receives the required certificate from the mediation program.

Senator Harris:
How does this work with the foreclosure mediation program? An example is a homeowner who is delinquent on the HOA dues and in default. The notice of default has been filed and the lender and the homeowner agree to go into foreclosure mediation. Sometimes HOA fees have not been paid for more than 16 months. Does S.B. 306 provide that as long as the homeowner pays the HOA fees during the time he or she elects and remains in the foreclosure mediation program, which takes about 9 months, the HOA cannot foreclose? Is the homeowner protected if he or she has outstanding HOA fees but pays the fees while in the mediation program?

Senator Hammond:
Yes. This is the intent of the bill. The bill will allow your scenario to unfold as described.

Senator Harris:
If homeowners elect mediation, will there be documentation with regard to the foreclosure mediation program putting them on notice that they are now required to pay their HOA fees and keep them current?

Senator Ford:
That is not in S.B. 306, but it is something we can consider.

Senator Hammond:
I do not recall seeing this language in the bill.

Senator Harris:
This is important because most homeowners in default do not anticipate they will pay fees of any kind while in mediation. It would be bad for a person in mediation to be forced out of the program because he or she was not on notice that HOA fees had to be paid.

Senator Hammond:
We will determine if a provision in the bill provides notification to homeowners of the requirement for payment of HOA dues during their participation in the mediation program.

Senator Ford:
I believe S.B. 306 strikes a balance between the interests of homeowners, HOAs, banks, mortgage lenders, government-sponsored entities, investors and the title industry. Senate Bill 306 provides all homeowners with a realistic opportunity to enter into a repayment plan and an opportunity to redeem their units if they fall behind on their HOA dues. Homeowner associations can collect assessments needed to maintain their communities. Banks, mortgage lenders and government-sponsored entities will receive enhanced notice of HOA foreclosures and greater opportunities to protect their interests. Investors in the title industry will receive greater certainty regarding the title status of units that have been foreclosed upon by the HOA.

The process of the HOA foreclosure sale will be improved to ensure the sale is conducted in a reasonable manner. Alfred Pollard, a representative for the Federal Housing Finance Agency (FHFA), is here in support of the bill. The FHFA is one of the government-sponsored entities interested in Nevada's superpriority lien statutes. Mr. Pollard will speak about how this bill will provide better security for the federal government relative to its role in underwriting Nevada loans.

Senator Hammond:
The drafting of S.B. 306 has been a collaborative effort with many entities involved. The bill presented today is important to the housing industry and the FHFA. Questions raised by Senator Harris may be answered by those who have worked on the bill and are aware of the fine details of the notification process. The bill codifies the notification process and is a great example of a collaborative effort.

Senator Ford:
The Committee must understand the version of the bill endorsed by the sponsors and the FHFA is the one I presented that includes Proposed Amendment 6077. Subsequent amendments coming forward today have not been vetted and may not be approved by governmental entities.

Senator Harris:
Did you have an opportunity to meet with Verise Campbell, Deputy Director of the Foreclosure Mediation Program for Nevada, to discuss how this bill will impact the program?

Senator Ford:
I did not.

Senator Hammond:
No.

Chair Brower:
Since the Nevada Supreme Court decision regarding HOA superpriority liens, there has been confusion and displeasure about the situation. This bill attempts to fix the issue.

Alfred Pollard (General Counsel, Federal Housing Finance Agency):
I support S.B. 306 and I will read from my written testimony (Exhibit E).

Chair Brower:
You referred to a drastic or extraordinary remedy. Can you pinpoint for the Committee what you are referring to with respect to the bill?

Mr. Pollard:
Extinguishing a first mortgage in the hundreds of thousands of dollars is a strong remedy. The goal of the remedy is to make sure someone pays or helps pay outstanding association dues. This seems to be a broader remedy than is necessary to accomplish the goal.

Chair Brower:
The lending community has experienced heartburn from the Nevada Supreme Court case. The Supreme Court case ruled that a first mortgage may be

extinguished because of an HOA foreclosure. You stated that S.B. 306 does not do away with that possibility but helps the lender avoid this situation.

Mr. Pollard:
Yes. The bill helps avoid that possibility by providing clarity and certainty. Those are the real contributions of the bill. This is a complex provision of law, but there is sufficient clarity. It will help the HOAs get payment for outstanding dues and help unit owners in some cases.

In loan modification efforts, homeowners avoid responding to messages until told, "You can lose your home." This notice prompts homeowners to either go into mediation or go directly to the servicer for assistance.

When we look at the broad picture, we are trying to help Nevada homeowners stay in their units. When they cannot, what happens? Fannie Mae and Freddie Mac get involved in the preforeclosure process with the hope that foreclosure can be avoided. The goal is to get homeowners out of foreclosure without a disproportionate remedy looming. Senate Bill 306 can help reduce that possibility, but it is still controversial from our prospective.

Chair Brower:
This is a complicated bill and a complex area of the law. The Committee will simplify it as much as possible, but some issues are complicated and cannot be made simple.

Jennifer Gaynor (Nevada Credit Union League):
We support S.B. 306 with Proposed Amendment 6077. I am not proffering an amendment to the bill, but I understand the Nevada Bankers Association has put forth one that we support. We share many concerns of the FHFA, and we appreciate the efforts made by the bill sponsors and the working group.

Rocky Finseth (Nevada Association of Realtors; Nevada Land Title Association):
We support S.B. 306. We agree with Mr. Pollard. Our main issue is the ability for Nevadans to get loans. It is about helping homeowners get into homes. If lending stops, it will create a big problem for Realtors. In regard to the Nevada Land Title Association, I want to put on the record that regardless of whether S.B. 306 is in its original form or as amended, there is no guarantee any passage of legislation will ensure the issuance of title insurance. It is decided on

a case-by-case basis. The work of the group has gone a long way toward resolving a number of our concerns.

Diana Cline (SFR Investments Pool 1, LLC):
We are members of the working group on S.B. 306. We support the version of the bill as presented by Senator Ford. After years of litigation, the Nevada Supreme Court clarified the effect of lien foreclosures containing superpriority amounts. This clarification allowed markets to have foreclosure sales where prices were no longer $5,000 for a $200,000 property. Homes were sold at market value, the same price you would see at a bank foreclosure sale. This bill cleans up some of the notice concerns we have. I have concerns about the additional amendments being proffered today.

Steve VanSickler (Nevada Mortgage Lenders Association; Silver State Schools Credit Union):
We support S.B. 306. I will read from my written testimony (Exhibit F). Enhanced notification is not sufficient to satisfy a commercially reasonable standard such as in the example of $5,000 being paid for a home worth $500,000.

Extinguishment of the first mortgage lien, addressed by the FHFA, adds additional risk that impacts access to credit in common-interest communities. The FHFA stated the regulated agencies, Fannie Mae, Freddie Mac and federal home loan banks, will no longer buy loans for properties in common-interest communities in Nevada, especially in light of the extinguishment of the first mortgage lien. That alone will add additional risk to the underwriting even if the agencies agree with other prospective changes. This additional risk will result in Nevada homeowners being denied credit, and the cost of their loans will be higher. An inability to access credit will affect the value of homes in common-interest communities. This loss of value may be dramatic due to the additional risk involved when a first mortgage lienholder can be stripped of a lien.

Chair Brower:
Have you provided your suggested changes to the Committee in writing?

Mr. VanSickler:
I submitted my suggestions, and Marcus Conklin will make sure you receive them.

Chair Brower:
I am not sure you accurately quoted Mr. Pollard; perhaps you misstated his intent. The testimony of the FHFA is clear. The Committee will review your suggestions.

Samuel P. McMullen (Nevada Bankers Association):
We support S.B. 306, but we have proposed amendments (Exhibit G) in addition to Proposed Amendment 6077. We have aggressively promoted the bill and some of its ideas. We have wrapped the whole Association around a couple of concepts. We want this bill to be HOA-positive and allow it to be helpful for other participants in what has been a complicated and interest-ridden process. We want to resolve as many issues as possible through the promotion of a few ideas.

We do not want to change the superpriority extinguishment of loans if foreclosed upon by the HOA. A better way to help everyone is the genesis of this bill. The idea for S.B. 306 has been in process since the 77th Legislative Session.

Chair Brower:
Tell the Committee the problems the Bankers Association has with the bill as presented. What would you change?

Mr. McMullen:
I want to be positive about the bill.

Chair Brower:
I thought there was a global deal on this bill. I thought the Committee would hear a presentation of a globally resolved agreed-upon bill. It is fine if this is not the case, but I want to know what you like and do not like about the bill as presented so we can weigh the pros and cons of further changes.

Mr. McMullen:
There is a lot of agreement of this bill by the parties. Most of what we agree upon is in front of the Committee. We had conversations until 7:30 p.m. last night, which raised other issues we want to address today. Some of our proposed amendments may be disagreeable, but they are small.

Chair Brower:
Run the Committee through your proposed amendments. What do the bankers not like about the bill?

Mr. McMullen:
It is not that we do not like it.

Chair Brower:
You love the bill, but you think it could be better with a couple of changes.

Mr. McMullen:
Our role is to make sure we are standing up for what we believe but also facilitating other solutions. I will present my proposed amendments for the Committee. These concepts were the topic of our discussions.

Proposed Amendment 1 addresses how we should calculate the 9-month period for measuring the superpriority lien period back from its payment. This makes it easier for those who always looked back to calculate the time period. We want to put it into a model that fits the existing situation.

The most appropriate suggestion is to look back from the payment of the superpriority lien. There may be a need for clarification about the period that covers the postnotice of default. This is the 90-day delay before you can issue a notice of sale. This could be handled in the notice of sale or notice of default, which could define the per month fee so the lender pays off the superpriority lien in full, making it current given the 9-month situation.

Chair Brower:
The Committee has your proposed amendments. I interpret page 1 as a summary of eight proposed amendments; the following pages provide more details, referencing specific sections of the bill where the proposed amendments fit.

Mr. McMullen:
I did not consider Proposed Amendment 6077 in my document of proposed amendments. I used the original draft of S.B. 306. This is why I provided a summary on the first page.

Chair Brower:
Are any of your proposed Amendments 1 through 8 already part of the revised bill as presented by the sponsors?

Mr. McMullen:
Proposed Amendment 6077 is not incorporated into my proposed changes. If my proposed amendments conflict with Proposed Amendment 6077, they will be minor issues of textual juxtaposition. We support everything in Proposed Amendment 6077. I did not have time to cross-check my proposed amendments to determine if they may change Proposed Amendment 6077.

Chair Brower:
Can you tell the Committee what sections of Proposed Amendment 6077 need further changes?

Mr. McMullen:
My proposed amendments will be in addition to Proposed Amendment 6077.

Chair Brower:
Run the Committee through each of your proposed amendments.

Mr. McMullen:
Proposed Amendment 2 addresses an issue of additional costs incurred by the HOA when it starts the notice of sale process. This amendment clarifies if a lender does not act soon enough on the right to pay off the superpriority lien before the HOA starts a notice of sale, the lender must pay additional costs.

Proposed Amendment 3 clarifies the 3-year limitation applies only to the extinguishment of the HOA's lien by either the issuance of the notice of default or judicial proceedings.

Proposed Amendment 4 is critical to the Bankers Association. This gives the HOA the option to use any address and any method of finding an address, and the lender will pay for the associated costs. This was addressed in both the original bill and Proposed Amendment 6077. We do not want HOAs going through a process in which they did not accurately provide notice or did not have a receipt or written confirmation of the mailing in the file. We want to make sure everyone receives notice to avoid the need for additional notification. This is an important part of my proposed amendments.

Senator Harris:
I am concerned about the confirmation of receipt. I have dealt with banks for many years as a homeowner advocate, and I can tell you the No. 1 problem we have is communication with banks. I am concerned because in addition to banks having a corporate presence often outside the State, there are many branches and different locations within the State. I go online to determine whom I need to contact and deal with, but the process is convoluted and frustrating. How is an HOA to know whom they must notify? When the HOA does give notice, how do they guarantee any confirmation of receipt? I have personally submitted hundreds of documents to banks, and I have a hard time getting banks to acknowledge they received the documents. When you deal with the notification process in this context, it becomes important.

This issue is the same for the HOAs. How do they get confirmation of receipt of documents or proof they submitted those documents from banks that sometimes do not know the right hand from the left, or the banks are large with many units and different individuals responsible for mail intake? I agree the notice provisions are critical, but how do you guarantee it? How do you provide guidance to HOAs to ensure they get their notices to the right party and get the confirmations of receipt you require?

Mr. McMullen:
It is a critical and important point. This is why we propose the banks pay for every cost up to notice of default and provide a trustee sale guarantee policy. The title industry indicates this is similar to a statement of condition of title that lists lenders in existence at the time the trustee sale guarantee title policy is issued. They also get what is referred to as "dated down." We have gone the extra mile because it is so important to us. We want to give HOAs a tool, and banks will pay for it when they pay the collection costs. The HOAs will have no concern about whom they attempting to notify. We had offered them a registered agent, but the HOAs did not agree because they perceived liability in transferring the corporate name to the resident agent. I do not think we can solve that concern. You deal with banks a lot, and the experience has not been great.

Senator Harris:
That is not true. I have a complicated relationship with banks, having seen banks do frustrating things. I have also seen banks do some pretty incredible things.

Mr. McMullen:
My point is that banks are not perfect. Banks have said they need a strong, targeted notice process. We started by asking for critical time deadlines based on receipt. It is important that everyone is allowed to come in and get notice, not just the first mortgage company. I cannot make the language totally comfortable, but banks understand the importance of notification. They want it to go through a process. They will set up a process approach more like special assets, special projects and special problems.

In the early stages, we discussed allowing 30 to 60 days to respond. Now we have over 90 days. In the banks' best interest, they sign the notifications and get them back as the best confirmation for us of the HOAs' compliance. They have to make sure people can get notice. You do not want a situation in which you have not confirmed you received notice, but your business records contain a mailed notification. It is a waste of time to notify and later learn it was not done correctly. The notification process is a one-shot deal that must be done correctly; otherwise, you must unwind the process.

Senator Harris:
I do not disagree with what you said. For me to be satisfied, I will need more clarity with regard to where the notice needs to be sent because it is confusing. I would hate for someone to send a notice and receive confirmation the notice did not make it to the correct branch or bank representative with the ability to keep the process going forward. I have seen this situation go awry, and then we have a serious issue on the table with a person's home.

Mr. McMullen:
Yes. Based on your experience, you could help us ensure other alternatives. I want the Committee to know this is as far as we have gotten negotiating around the table. At some point, the Committee needs to decide on the best process. We want to prevent a situation where people can game the system by saying they are not signing the notification. This gives them control over the timing, and we cannot let them have that either.

My proposed Amendment 5 says the HOA cannot proceed to notice of sale if the superpriority lien has been paid. The HOA may not proceed with a sale unless it has confirmation of receipt and the superpriority lien has not been paid.

Proposed Amendment 6 is the back part of the bill. Banks need to have a strong record of paying superpriority liens and taking over the loan in a time-sensitive manner to avoid situations in which delinquent HOA dues are pushing people out of their homes. We want to give them another option. The proposed amendment provides if you go to a foreclosure sale with a paid superpriority lien, there is a material change in terms and the notice for the sale does not work. Requirements must exist for the sale in this case. You could have a situation in which the bank pays the superpriority lien 5 or 6 days before the sale, which then requires a document be recorded 2 days before the sale.

All those people who show up for the sale need to know that circumstances have changed, including the payment of the superpriority lien. This changes the dynamics of who might show up for the sale. When the terms of sale have changed, there should be disclosure and additional notice.

Proposed Amendment 7 builds more incentive for banks to pay the superpriority lien prior to the 90-day period. This is the waiting period after the notice of default has been sent. The HOAs cannot file a notice of sale within 90 days after filing a notice of default. If banks pay before the 90 days, an important piece of information is given to the HOAs. The HOAs must be notified that the outstanding superpriority portion of the lien no longer exists and decide whether to foreclose on the nonsuperpriority lien; they may still want to foreclose and banks want an indication of the HOAs' intent to proceed. A foreclosure at this point would affect lenders rights even when no superpriority issues are involved.

Proposed Amendment 8 clarifies any lender can come in and pay the superpriority lien, not just the first mortgage. In addition, we should change statute to make it clear a second or lower lender can pay the lien, but it must first pay off the full HOA superpriority lien and then pay the nonsuperpriority delinquency. We will continue to work this out with the interested parties.

It has been the banker's position to find a way to make S.B. 306 work. This bill provides a way for everyone to win. Banks can control the priority of liens and loans and make sure HOAs get paid off in a short period of time, compared to the 20 or 21 months the process may take now.

I want to clarify we did not say you only have one 9-month period for each loan. If the bank pays off the lien and the homeowner starts to regenerate a deficiency, the bank will count up to the next 9-month period. We estimate it

will be less than 2 months before the property is processed, but it could take longer. This is not about taking property away from homeowners.

Senator Harris:
You are anticipating the possibility, not the reality, of multiple defaults along the life of the loan.

Mr. McMullen:
Yes. Banks do not want to give the impression they are trying to get away with doing the process once. Many banks cover the costs of defaulting or delinquent homeowners. Banks may get those costs at the end of the loan as part of the additional lien.

Senator Harris:
You are in a tough spot. You can have the HOA come in after 9 months of delinquent payments and say it will take the house. The bank is unsecured and does not get its money back.

I have a concern about the concept of multiple defaults. This puts HOAs in a bad position, especially if those multiple defaults are close together. I recognize you can catch it quicker in the process, but you essentially have 9 months of default before the superpriority lien gets paid off to make the homeowner current—and then the homeowner becomes delinquent again. While we are getting some money to HOAs by paying off the superpriority lien, this notion of recurrent defaults on HOA fees does not put them in any better position. I am not saying that foreclosure on a superpriority lien is the right answer. I am saying there is little protection for HOAs.

Mr. McMullen:
This is a place in which the Committee should use judgment. We were responding in the negotiation part of this bill. We said we would not harm HOAs. We want the time period to rebase as soon as liens are paid off. This will push the nonpriority lien elements over and keep them as debts owed by the unit owners; the HOA can collect as they wish but not as superpriority. This issue has multiple sides. We also do not want to give unit owners the impression they never have to pay. We talked about the theory, and banks stepping in make the most sense. Banks that have already processed one default will maintain the rest. The HOAs are in control. They may or may not

foreclose. They may decide to work it out with the homeowners. We did not get to that stage in our discussions.

Senator Segerblom:
Can we have a punitive banker registry?

Mr. McMullen:
I know that is a serious question, and my answer is no.

Senator Segerblom:
Could you have a Website that provides instructions regarding the notification process? I have tried to find a registered agent for a bank, and it is impossible.

Mr. McMullen:
Some national banks have registered agents, but there is no requirement that Nevada banks have registered agents. We are working on this. Our main concern is giving the process attention and moving it through the correct channels.

Chair Brower:
The Committee is bringing everyone together to process S.B. 306 and get it right. Have all of your proposed amendments been proffered to the primary sponsors of the bill?

Mr. McMullen:
No. We did not have time.

Chair Brower:
That is the first step.

Mr. McMullen:
The working group represents all stakeholders, and most of them are aware of my proposed amendments. The bill sponsors may have issues with my proposed amendments, but I want a consensus before bringing it to the sponsors. This is a difficult bill, and it is a group effort.

Chair Brower:
It is a work in progress.

Mr. McMullen:
The Committee will have the proposed amendments by tomorrow.

Chair Brower:
The first step is to speak with the primary sponsors of the bill, and then we will see what progress can be made. We have now heard from the lenders with testimony from Mr. VanSickler and Mr. McMullen. We heard from the federal government with testimony from Mr. Pollard. Now we are going to hear testimony from the HOA representatives.

Garrett Gordon (Community Associations Institute; Southern Highlands Homeowners Association):
We support S.B. 306. Working off Proposed Amendment 6077 and Mr. McMullen's proposed amendments, we put together a compromise amendment for the approval of the bill sponsors. I submitted a document of my proposed amendments (Exhibit H).

Mr. McMullen:
It is my understanding that Mr. Gordon's proposed amendments are in addition to Proposed Amendment 6077.

Chair Brower:
Mr. Gordon, have your proposed amendments been submitted to the primary sponsors of the bill?

Mr. Gordon:
When we received Proposed Amendment 6077, I contacted the Bankers Association to get input before speaking with the sponsors. The bill sponsors are not aware of our proposed amendments, but during the working group, we have all consistently spoken about these issues.

Chair Brower:
Did you have a conversation with Mr. McMullen about the proposed amendments?

Mr. Gordon:
Yes.

Chair Brower:
Is it true you both agree to some but not all of the proposed amendments?

Mr. Gordon:
Yes.

Mr. McMullen:
I would like to clarify that it is not just me. We did everything in a group.

Chair Brower:
We need to narrow this group in order to go forward with S.B. 306.

Mr. Gordon:
I will address the remaining issues we have with the bill. In regard to the rolling lien, if the first security interest pays off the superpriority lien during the 9-month period, it does not stop there. The superpriority lien rolls or retriggers. We are concerned about the 9-month superpriority lien retriggering or rolling in the event it is paid off.

Our next issue relates to the doughnut hole problem. The intent is to give banks notice of default when borrowers are in arrears on their assessments and there is an opportunity to cure. Under statute, 90 days go by before the HOA has a right to give notice of sale. The bank has a 90-day cure period in which the HOA can take no action and no additional costs will be incurred. What if the bank pays 60 days after the notice of default? The doughnut hole issue relates to counting what is due—not at notice of default but at the time of payment—so we can capture 2 months of additional assessments. Mr. McMullen's proposed Amendment 1 attempts to address this issue.

My next issue relates to cost. We appreciate the bill sponsors working with us on a compromise to get collection costs into statute. We have one remaining issue. If the bank comes in and cures a notice of default, we have costs in statute that we cannot exceed and cannot expect to recover. This assumes the bank cured the notice of default. What if the bank does not cure within the 90-day window, which is the period the HOA cannot take action? If the HOA goes to notice of sale, it will incur the cost of publishing and posting. This can be expensive, $800 or $900 depending upon the publication or newspaper. We propose if the bank does not cure the notice of default until after the 90-day

period, the bank will reimburse the HOA $275 for the notice of sale and the amount the HOA paid for posting and publishing the notice.

Senator Harris:
I do not want to complicate the issue, but what happens when you have a partial cure? This happens when a 50 percent payment is made to keep the homeowner in the house longer, but it is not a full cure. Based on your proposed amendment, do we apply what has been received to the most postdated delinquency?

Mr. Gordon:
Yes. Gayle Kern, who has practiced HOA law for over 25 years, is here and she can give us some examples. In law, we must send a 60-day letter to inform homeowners who are behind in their payments that they have the opportunity to challenge this with the HOA board and the option to elect a payment plan. Senate Bill 306 says if the HOA has not filed a notice of default within 3 years, we lose our right to extinguish the first mortgage lien.

We are concerned with the 3-year period. If the HOAs are working with homeowners and it takes years for dues to get caught up, we would be forced to file the notices of default and get the banks involved. This is a disincentive for HOAs to work with homeowners over long periods of time. This outlines the notice of sale issue if we are forced to go all the way through the process to make sure HOAs get reimbursed.

The first two bullet points on page 2 of Exhibit H have been retracted.

Senate Bill 306 proposes that the HOA must record a notice of satisfaction or a notice of release once the superpriority lien has been paid. If the HOA is required to publish and record this notice and incurs costs, we propose a fair amount of reimbursement in an amount not to exceed $50. This would be included in the bill.

Another issue in the bill deals with the time period in which the bank pays the HOA. The bank must do so within 5 days before the sale; if that occurs, the HOA cannot proceed to sale for 2 days. We request the bill be amended to say 2 business days. Two days is not a lot of time to do something pretty substantial. If there is a weekend or holiday, 2 business days would be our preference.

In the case of a foreclosure, S.B. 306 contemplates a 60-day redemption period in which the bank or homeowner has the ability to satisfy the lien. We request the redeemer or the lender pay the cost the home was sold for and any lingering assessments still outstanding. For example, if there is a 60-day redemption period, the redeemer or lender must pay the HOA superpriority lien plus the additional 2 months of assessments. This will ensure revenue capture for other unit owners.

My final point relates to a situation in which the HOA must credit bid. This happens when the HOA goes forward with the foreclosure but has no buyer for the property. The HOA will credit bid what it is due and take title to the home.

The bill proposes only an investor or a third-party purchaser of the property at an HOA foreclosure sale. The redemption period makes clear that the HOA cannot get paid a second time. During the HOA foreclosure, an investor purchases the property and pays the HOA in full. The bank comes in and redeems, and the HOA does not get paid a second time, which is fair. If the HOA does a credit bid, it takes title to the property short of being paid. In this case, if the bank comes in and redeems the lien, the HOA needs to get paid the amount owed the association.

Gayle Kern (Community Associations Institute):
I have represented HOAs for over 25 years in northern Nevada. With respect to the noticing process, I agree notice is required and needed. I was appalled and surprised over concern of notice not being given. This is required by statute and must be done. I have no problem that our notice is triggered, and we give notice based upon the recorded records. If a lender records something with the Washoe County Recorder's Office and does an assignment, it shows up on our Trustee Sale Guarantee and notice is sent to all those places.

I cannot be bound by limiting my ability to proceed based on someone signing for a notice or getting a return receipt notification back from the post office. I have no control of this. I can control sending the notice and show I provided it. Sometimes the recipient does not return the receipt slip, and sometimes the post office does not return it. You also have a situation in which the lender has signed for the notice and we do not receive the receipt.

Chair Brower:
Do you agree the procedure we use in court for notification is good enough in this context?

Ms. Kern:
Yes. You can include protections to make sure notice is given to the necessary parties, but you cannot limit procedure based on confirmation the notice was received. We do not have control over receipt. I only have control over providing the notice.

Chair Brower:
Mr. Gordon and Ms. Kern, I hesitate to address this issue; however, from my perspective, we want to do several things by way of S.B. 306. We want to make sure HOAs get paid, we do not want to allow an unfair foreclosure vis-à-vis the rights of homeowners and we want to make sure the lender is treated fairly. There is another issue with respect to the lender: Why should the lender ever lose its first mortgage lien because the HOA is owed a couple of thousand dollars?

Ms. Kern:
From my standpoint, this is the proverbial hammer. I agree this should be a last resort, but when you say an association is owed a couple of thousand dollars, you must appreciate that might be a lot of money to the HOA's budget. That money gets distributed to the assessment-paying homeowners. I did not participate in or conduct an HOA foreclosure until approximately 5 years ago.

Chair Brower:
I did not know there was such a thing until a couple of sessions ago. It seemed so illogical to me when I first heard about this situation and wondered if it was right. How can the HOA foreclose on a home worth $500,000 because it is owed a few thousand dollars? I now know the state of the law, and I understand the rationale.

Ms. Kern:
I want the Committee to know when a property, such as a condominium, has an HOA, the common elements paid for with homeowner dues affects collateral. The lender only has a security interest in what we call "air space." The HOA and all the assessment-paying homeowners are paying for roofs, siding and a lot

of other things involved in that collateral. Assessments take care of more than just property values, it is far greater than that.

Chair Brower:
That makes sense. Mr. McMullen, your issue is a lender should not lose its first security interest without adequate notice and an opportunity to step in and cure the problem, even if it is not the bank's obligation to do so.

Mr. McMullen:
Yes. We have offered to pay costs associated with research needed to ensure HOAs get correct addresses for notification with a receipt for their records. This is one of the primary things we are asking for. People may not know that banks have moved significantly to put the world back in order. Another idea we had, but did not include in our proposed amendments, was service of process. We will pay the costs incurred up to the notice of default at the time we pay for the superpriority lien.

Chair Brower:
We have a lot of work to do on this bill, but the issues are narrowing.

Jon Sasser (Legal Aid Center of Southern Nevada):
I do not support S.B. 306 in its current form. I was included in the working group formed by Senators Ford and Hammond. At the first meeting of the working group, the primary focus was on the notice process, but the main issue was not being addressed. At issue are the concerns of the federal government and the ability for Nevadans to get loans. Mr. Pollard's testimony did not directly answer all my questions. First, will Nevadans have the ability to get loans if we continue to allow the first security interest to be extinguished?

Chair Brower:
Mr. Pollard said they would. He did not say Nevadans could not get loans if the bill, as presented by the sponsors, was passed.

Mr. Sasser:
I do not believe he was asked that exact question. I heard him say he did not think the extinguishment was the proper or appropriate approach. He had great reservations at the end of his testimony about the extinguishment, and it is a great concern to the FHFA. It gives pause to lenders as to whether they might lend in Nevada, and it would affect agency underwriting standards.

Chair Brower:
We can clarify that information before we move forward.

Mr. Sasser:
My suggestion is to put one line in S.B. 306 to state that the sale of an HOA nonjudicial foreclosure does not extinguish the first security interest. An amendment proposed by the mortgage bankers may be forthcoming.

Another issue is the inclusion of collection costs in the superpriority lien. Dealings between collection agencies and HOA management companies have led to a lot of the problems. The HOA management companies hand it off to collection companies with a guarantee they will get their 9 months back because of the superpriority lien. It does not matter how much it costs for collections. It could cost $5,000 to collect a $200 debt. This vague area in law has not been clarified by the Nevada Supreme Court. Choosing one side over another in statute continues the present system.

Some people ask why collection costs matter as long as the bank or investor pays them. It matters because 90 percent of the time, these cases do not go to a foreclosure sale. Either the homeowner comes up with the money after collection costs start running up or in some cases, banks steps in. Collection costs are paid by the homeowner most of the time, and only 10 percent of homes go to a foreclosure sale. If HOA collection costs remain in the bill, I cannot support it.

Pamela Scott (The Howard Hughes Corporation):
We support S.B 306 in its original form with Proposed Amendment 6077. We also support the proposed amendments discussed today. One sticking point for us is the confirmation of receipt. You cannot get that by using the postal service. In my hand are letters mailed to our office from attorneys with the green return receipt slip still attached because the post office does not always make you sign for the letter. The post office will leave these in mailboxes. I tested the process by mailing myself a letter with a return receipt request, and the post office representative left the letter without my signature. I do not see how we can be asked to do confirmation of receipt.

Marilyn Brainard:
I support S.B. 306 with the proposed amendments. I submitted my written testimony (Exhibit I). You have not yet heard from a homeowner, and we have a real stake in this fight.

Chair Brower:
Is Nevada unique in allowing the extinguishment of a first mortgage lien pursuant to an HOA foreclosure? It sounds like not all states do it that way.

Senator Ford:
No, we are not unique. Some states have adopted a uniform act that deals with this. The experts here today can answer that question. I had the idea to convene a group of individuals together to talk about how we could address this issue after watching the Nevada Supreme Court hearing. I asked Senator Hammond to cosponsor the bill. Exploring this issue has been an interesting journey. Initially, we wanted to make certain banks would not sit on their rights and take no action when given notice of unpaid dues by an HOA.

We talked to banks that indicated they were not getting proper notice, and the notice they did get did not include the amount owed. We talked about strengthening the notice provisions that require banks, within a specified amount of time, to respond. If no response is received, the superpriority lien kicks in, the Supreme Court decision applies and the bank loses the first lien.

It was never our intention to undo the superpriority lien component. This is where the working group started. What came into play was the issue of a bonafide purchaser and commercial reasonableness which avoids a $5,000 sale for a $500,000 home. The idea expanded and eventually became S.B. 306. Mr. McMullen is correct in stating that judgment by Committee will be needed. Someone needs to say "enough." I thought we were done with the bill when we got Proposed Amendment 6077 after subsequent conversations and the initial bill draft. This was the point when I reached out to FHFA to request a review of the language. The FHFA indicated if the bill was amended as suggested, the agency would support it. I presented the FHFA recommended changes to the working group and noted if the bill is amended further, we will run the risk of Mr. Sasser's concerns regarding Nevadans not receiving loans coming true. There is room for more conversation about this bill. The bill is in the hands of the Committee to decide which of these amendments will be adopted. I will offer my input, but I give the Committee the full context of the bill as it stands.

I recommend the bill be considered as is with Proposed Amendment 6077. If the Committee wants to entertain further amendments, you need to be aware of the FHFA concerns.

Senator Hammond:
One of the last things I said to the working group is we need to draft a bill and if not everyone agreed to all the amendments, they should be brought to the Committee for consideration. That is what you heard today. What you have before you are ideas. We already had Mr. Pollard telling us the FHFA is not in favor of some of the proposed amendments. You can tinker with something to the point that it is no longer what you want. I am afraid this could happen with S.B. 306. We have a bill, and we are ready to go forward with Proposed Amendment 6077.

Senator Kihuen:
Mr. Sasser was part of the working group on the bill. How do you feel about his proposed amendments?

Senator Ford:
I am not certain we can accommodate Mr. Sasser. He was involved in the working group the entire time. His changes do not take us where we want to go with this bill.

I was not in support of the redemption component we added to the bill because it defeated the purpose of having a bank come to the table early if all that was needed at the end was to give banks a right to come back and pay for a foreclosed home. I thought this would be sufficient enough incentive to address Mr. Sasser's concerns by offering an additional protection afforded homeowners that does not otherwise exist.

Chair Brower:
I will appoint myself as an ex officio member of the working group. That does not mean the working group must let me know when it meets, but I volunteer to help work on the bill over the next few days. I will close the hearing on S.B. 306 and open the hearing on S.B. 264.

SENATE BILL 264: Exempts spendthrift trusts from the application of the Uniform Fraudulent Transfer Act. (BDR 10-780)

Senator Mark Lipparelli (Senatorial District No. 6):
I will present S.B. 264 with Proposed Amendment 6259 (Exhibit J). The general idea behind the bill is to keep Nevada as competitive as we can be in the area of trusts.

Michael Alonso (Nevada Trust Companies Association):
We support S.B. 264. This bill provides clarification of statute. The bill clarifies that the provisions of the Uniform Fraudulent Transfer Act do not apply to transfers made to a spendthrift trust pursuant to the Spendthrift Trust Act of Nevada. The law refers to NRS 112.230 except as provided in NRS 166.170 which is not enough and too vague. We want to clarify language to make it clear that NRS 112 applies to spendthrift trusts only in the areas of statute of limitations and burden of proof.

Chair Brower:
The first place I go to when dealing with a trust issue in the legislative context is the Probate and Trust Law Section of the State Bar of Nevada. I am informed there are no objections from the Section with respect to this bill, which gives the Committee comfort.

Mark Dreschler (Premier Trust):
We are in support of S.B. 264. The bill provides clarification, and it does not expand or modify any language in existing law. Ambiguity in law puts Nevada at a disadvantage. The trust business is competitive nationwide; when it is said we are no longer advantaged, word gets around quickly which could result in loss of business.

Chair Brower:
Do you support the bill with Proposed Amendment 6259?

Mr. Dreschler:
Yes.

Gregory Crawford (Nevada Trust Companies Association; Alliance Trust Company):
I can speak to the fact that other jurisdictions have used the inconsistency between NRS 166 and NRS 112 against us. South Dakota, Delaware, Wyoming and Alaska are fellow states that are all strong competitors in the field of attracting out-of-state trust business. These states have used this issue against

us. The intent in Nevada has always been clear, but we are often dealing with practitioners who do not deal with Nevada law on a day-to-day basis. Clarification of existing law as intended by the Legislature will put us back in a more competitive position with other jurisdictions in the United States.

Chair Brower:
This bill is straightforward, and the Committee can process it this week.

Bob Dickerson:
I oppose S.B. 264. The Uniform Fraudulent Transfer Act was enacted in Nevada in 1987. It took the place of an earlier act, the Uniform Fraudulent Conveyance Act, which was enacted around 1918. The purpose of these Acts is to prevent fraudulent acts from occurring in Nevada. They prevent individuals from transferring assets to defraud creditors.

Senate Bill 264 exempts the Nevada Spendthrift Trust Act from the provisions of the Uniform Fraudulent Transfer Act. I do not see any justification or reason for doing this. Individuals may transfer assets to a self-settled spendthrift trust without meeting the requirements of the Uniform Fraudulent Transfer Act applying to the transfer. This allows individuals to transfer their entire estate. I see no reason why you would exempt this. If an honest person acting in good faith is transferring his or her assets to a trust, there should be no problem meeting the requirements of Nevada law with respect to fraudulent transfers. The Uniform Fraudulent Transfer Act prohibits any transfer that will delay, hinder or defraud a creditor. It contains a badge of fraud a court can look to in order to determine whether a transfer violates law. Exempting transfers to a self-settled spendthrift trust opens the door to fraud. Individuals acting in good faith should have no problem complying with law or having the law apply to them.

Senator Segerblom:
Two years ago, we had this same issue with respect to transferring assets away from a spouse. Does this bill impact that issue?

Mr. Dickerson:
No. The bill you are referring did not pass Committee. The purpose of that bill was to exempt alimony and child support obligations from self-settled spendthrift trusts. Alimony and child support obligations could be satisfied and honored by an individual who established the trust.

Senator Segerblom:
This is a different issue.

Mr. Dickerson:
Yes. The primary purpose of S.B. 264 is to change the statute of limitations from a 4-year limit that applies under the Uniform Fraudulent Transfer Act to make it clear the 2-year statute of limitations under NRS 166 applies to self-settled spendthrift trusts. I suggest it goes further than simply changing the statute of limitations. The bill strikes out the word "fraudulent," and it says provisions of NRS 112 do not apply to NRS 166. This is my concern. *Nevada Revised Statutes* 166 sets out the badges of fraud the court uses to determine whether a transfer will defraud creditors.

Mr. Alonso:
Is Mr. Dickerson referring to Proposed Amendment 6259?

Chair Brower:
He referenced the amendment. Mr. Dickerson, the Committee and the testifiers in Carson City have Proposed Amendment 6259. Do you have a copy?

Mr. Dickerson:
What I have appears to be the original bill draft. I do not see the amendment.

Chair Brower:
Testifiers use the word "amendment" when referring to the bill that seeks to change statute, not an amendment that seeks to change the bill. I think Mr. Alonso identified the problem. Mr. Dickerson, let us address the details of Proposed Amendment 6259 to S.B. 264 which may take care of your concerns about the bill.

Mr. Alonso:
Section 1 of the bill has been deleted. The only thing we are doing now is amending NRS 112.230 to delete the language that says, "Except as otherwise provided in NRS 166.170 … ." This language will be replaced with language that says, "This section does not apply to a claim for relief with respect to a transfer of property to a spendthrift trust subject to chapter 166 of NRS." The Legislative Counsel Bureau confirmed this is a clarification that makes no other changes. The terminology used with respect to deleting fraudulent transfers in section 3 has been removed from the bill.

Chair Brower:
Mr. Dickerson, though you do not have Proposed Amendment 6259, I recommend you review it and let the Committee know if you still have concerns.

Mr. Dickerson:
Is the sole reason for the bill to change the statute of limitations from 2 years to 4 years?

Mr. Alonso:
No. We are not changing the statute of limitations. If the limit is 2 years under NRS 166, that stays the same. If it is a 4-year limitation under NRS 112, that stays the same.

Chair Brower:
I will close the hearing on S.B. 264 and open the work session on S.B. 164 which has been added to today's work session. The Committee questioned if there was a problem with the previously presented language in the bill; however, we determined the bill is fine as originally drafted.

SENATE BILL 164: Revises provisions prohibiting certain discriminatory acts. (BDR 18-59)

Patrick Guinan (Policy Analyst):
We had S.B. 164 in the Committee a few days ago. It was scheduled for yesterday's work session, and we understood there was an amendment coming based on the Nevada Equal Rights Commission's concerns with language in the bill. The Commission and the bill sponsor have confirmed there is no need to make any changes. This bill updates language concerning discrimination throughout statutes. The bill is clean and ready to go with the sponsor's approval on a do pass vote, if that is the pleasure of the Committee.

Chair Brower:
The Legal Division of Legislative Counsel Bureau confirmed the bill language.

SENATOR FORD MOVED TO DO PASS S.B. 164.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY. (SENATORS HAMMOND, HARRIS AND SEGERBLOM WERE ABSENT FOR THE VOTE.)

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Chair Brower:
I will open the work session on S.B. 60.

SENATE BILL 60: Revises various provisions related to the Office of the Attorney General. (BDR 16-470)

Mr. Guinan:
I will read from the work session document on S.B. 60 (Exhibit K). With Chair Brower's support, there are proposed amendments from the Attorney General's Office as follows:

- Delete sections 6 through 8 regarding notification of rulings on constitutionality. Ongoing discussions with the involved parties indicate no legislative action needed at this time.

- Delete sections 12 through 15 of the bill regarding victim's services. The Attorney General elected to forgo reorganizing the Victim's Services unit pending an outside assessment of the unit's current configuration.

- Amend section 18 to provide a July 1 effective date for sections 1 through 5 and sections 10 through 11 to grant the Attorney General's Office authority over the Confidential Address Program and the Office of Military Legal Assistance beginning on that date instead of October 1.

Chair Brower:
I believe the proposed amendment is in order, but I do not have a copy.

Mr. Guinan:
The proposed amendment is in conceptual form as I read it to the Committee.

Chair Brower:
We do not have a mock-up of the proposed amendments?

Mr. Guinan:
No. The proposed amendments are in conceptual form.

Chair Brower:
The Committee will confirm the language when the mock-up is produced.

SENATOR KIHUEN MOVED TO AMEND AND DO PASS AS AMENDED S.B. 60 WITH THE CONCEPTUAL AMENDMENTS FROM THE ATTORNEY GENERAL'S OFFICE.

SENATOR FORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY. (SENATORS HAMMOND, HARRIS AND SEGERBLOM WERE ABSENT FOR THE VOTE.)

* * * * *

Chair Brower:
I will open the work session on S.B. 244.

SENATE BILL 244: Establishes requirements governing a contingent fee contract for legal services provided to the State of Nevada or an officer, agency or employee of the State. (BDR 18-658)

Mr. Guinan:
I will read from the work session document on S.B. 244 (Exhibit L). There are no amendments on the bill.

SENATOR ROBERSON MOVED TO DO PASS S.B. 244.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY. (SENATORS HAMMOND, HARRIS AND SEGERBLOM WERE ABSENT FOR THE VOTE.)

* * * * *

Chair Brower:
I will open the work session on S.B. 329.

SENATE BILL 329: Revises provisions relating to partnerships. (BDR 7-784)

Mr. Guinan:
I will read from the work session document on S.B. 329 (Exhibit M). There is a proposed amendment submitted by Senator Lipparelli with the approval of Chair Brower. The amendment conceptually revises language in section 1, subsection 3 and section 2, subsection 6 such that the provisions of the bill will apply to "a" singular business development and only to such a development undertaken by a corporation or a limited-liability company. The amendment would also make the bill effective upon passage and approval rather than on October 1, as previously listed in the bill.

Chair Brower:
The original language was awkward, and the proposed amended language intends to remedy the problem. The various stakeholders agree the amendments work, and I have heard no objections.

> SENATOR ROBERSON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 329 WITH THE CONCEPTUAL AMENDMENT FROM SENATOR LIPPARELLI.
>
> SENATOR KIHUEN SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY. (SENATORS HAMMOND, HARRIS AND SEGERBLOM WERE ABSENT FOR THE VOTE.)

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Chair Brower:
I will open the work session on S.B. 444.

SENATE BILL 444: Revises provisions governing civil actions. (BDR 3-1137)

Mr. Guinan:
I will read from the work session document on S.B. 444 (Exhibit N). There is a proposed amendment from Todd Mason supported by Chair Brower. The amendment adds language regarding when a court should be required to allow discovery in these types of cases, provides that appeals may be taken and defines the word "plaintiff" for the purposes of this bill.

Chair Brower:
We learned lessons since last Session with the revisions of the Strategic Lawsuits Against Public Participation suits scheme. The bill intends to fix some perceived problems.

Senator Ford:
The proposed amendment adds new language to section 13 that says, "An appeal may be taken from the denial or grant of a special motion to dismiss." Does this contemplate a stay of the entire case during an appeal?

Chair Brower:
I believe that is intended to be an interlocutory appeal.

> SENATOR ROBERSON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 444 WITH THE PROPOSED AMENDMENT FROM TODD MASON.
>
> SENATOR FORD SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY. (SENATORS HAMMOND, HARRIS AND SEGERBLOM WERE ABSENT FOR THE VOTE.)

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Chair Brower:
I will open the work session on S.B. 446.

SENATE BILL 446: Revises provisions relating to businesses. (BDR 7-1088)

Mr. Guinan:
I will read from the work session document on S.B. 446 (Exhibit O). There are proposed amendments from Robert Kim with the support of Chair Brower. The amendments offer technical amendments to the bill. A handwritten mock-up of changes has been provided for consideration by the Committee.

Chair Brower:
This is the biennial cleanup bill from the Business Law Section of the State Bar of Nevada. The proposed amendments were reviewed with Mr. Kim at the time of the hearing.

SENATOR ROBERSON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 446 WITH THE PROPOSED AMENDMENTS FROM ROBERT KIM.

SENATOR FORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY. (SENATORS HAMMOND, HARRIS AND SEGERBLOM WERE ABSENT FOR THE VOTE.)

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Chair Brower:
I will open the work session on S.B. 464.

SENATE BILL 464: Revises criminal penalties for the consumption or possession of an alcoholic beverage by a person under 21 years of age. (BDR 15-651)

Mr. Guinan:
I will read from the work session document on S.B. 464 (Exhibit P). There is a proposed amendment from Chair Brower to prohibit the sale, possession or use of powdered alcohol. A violation of these prohibitions would constitute a misdemeanor.

Chair Brower:
This is the bill sponsored by the Nevada Youth Legislature. There is a minor amendment on the bill relating to powdered alcohol.

SENATOR KIHUEN MOVED TO AMEND AND DO PASS AS AMENDED S.B. 464 WITH THE PROPOSED AMENDMENT BY SENATOR BROWER PROHIBITING THE SALE, POSSESSION OR USE OF POWDERED ALCOHOL.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY. (SENATORS HAMMOND, HARRIS AND SEGERBLOM WERE ABSENT FOR THE VOTE.)

* * * * *

Chair Brower:
I will bring the Committee's attention to S.B. 451, which relates to the Indigent Defense Fund. This bill was previously heard by the Committee and should be referred to the Senate Committee on Finance due to its fiscal impact.

SENATE BILL 451: Revises provisions relating to public defenders. (BDR 14-514)

SENATOR KIHUEN MOVED WITHOUT RECOMMENDATION TO REREFER S.B. 451 TO THE SENATE COMMITTEE ON FINANCE.

SENATOR FORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY. (SENATORS HAMMOND, HARRIS AND SEGERBLOM WERE ABSENT FOR THE VOTE.)

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Chair Brower:
I will close the work session and adjourn the meeting at 6:08 p.m.

RESPECTFULLY SUBMITTED:

_____
Lynette Jones,
Committee Secretary

APPROVED BY:

_____
Senator Greg Brower, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	**Exhibit**		**Witness or Agency**	**Description**
	A	2		Agenda
	B	6		Attendance Roster
S.B. 306	C	3	Real Property Law Section, State Bar of Nevada	Memorandum
S.B. 306	D	12	Senator Aaron D. Ford	Proposed Amendment 6077
S.B. 306	E	8	Federal Housing Finance Agency	Written Testimony
S.B. 306	F	4	Nevada Mortgage Lenders Association	Written Testimony
S.B. 306	G	5	Nevada Bankers Association	Proposed Amendments
S.B. 306	H	2	Community Associations Institute	Proposed Amendments
S.B. 306	I	5	Marilyn Brainard	Written Testimony; Statistical Review
S.B. 264	J	3	Senator Mark Lipparelli	Proposed Amendment 6259
S.B. 60	K	1	Patrick Guinan	Work Session Document
S.B. 244	L	1	Patrick Guinan	Work Session Document
S.B. 329	M	2	Patrick Guinan	Work Session Document
S.B. 444	N	2	Patrick Guinan	Work Session Document
S.B. 446	O	9	Patrick Guinan	Work Session Document
S.B. 464	P	2	Patrick Guinan	Work Session Document

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Eighth Session
April 28, 2015

The Committee on Judiciary was called to order by Chairman Ira Hansen at 7:59 a.m. on Tuesday, April 28, 2015, in Room 3138 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/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblyman David M. Gardner
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

Assemblywoman Olivia Diaz (excused)
Assemblywoman Michele Fiore (excused)

GUEST LEGISLATORS PRESENT:

Senator Aaron D. Ford, Senate District No. 11
Senator Becky Harris, Senate District No. 9
Senator Scott T. Hammond, Senate District No. 18

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Linda Whimple, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Mandy S. Shavinsky, representing the Common Interest Community Subcommittee, Real Property Section, State Bar of Nevada
Mark Leon, Private Citizen, Las Vegas, Nevada
Glen Proctor, Private Citizen, Las Vegas, Nevada
Garrett Gordon, representing Community Associations Institute and Southern Highlands Community Association
Jon Sasser, representing Legal Aid Center of Southern Nevada
Gayle Kern, representing Community Associations Institute
Pamela Scott, representing The Howard Hughes Corporation
Jonathan Gedde, Chairman, Board of Governors, Nevada Mortgage Lenders Association
Samuel P. McMullen, representing Nevada Bankers Association
Jennifer Gaynor, representing Nevada Credit Union League
Russell Rowe, representing One Nevada Credit Union
Randolph Watkins, Private Citizen, Las Vegas, Nevada
Erin McMullen, representing American Resort Development Association
Jonathan Friedrich, Private Citizen, Las Vegas, Nevada
Bob Robey, Private Citizen, Las Vegas, Nevada
Tim Stebbins, Private Citizen, Henderson, Nevada
George Crocco, Private Citizen, Las Vegas, Nevada
Robert Frank, Private Citizen, Las Vegas, Nevada
Catherine O'Mara, representing DK Las Vegas, LLC
Robert C. Herr, P.E., Assistant Director, Public Works and Parks and Recreation, City of Henderson
Lorne Malkiewich, representing Expedia
Jenny Reese, representing Nevada Association of Realtors and Nevada Land Title Association
Diana Cline, representing SFR Investments Pool 1, LLC

Steve VanSickler, Chief Credit Officer, Silver State Schools Credit Union, Las Vegas, Nevada
Silvia Villanueva, representing One Nevada Credit Union
George E. Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry
Marilyn Brainard, Private Citizen, Sparks, Nevada

Chairman Hansen:
[Roll was called and protocol was explained.] We have seven bills on the docket today. We will start with Senate Bill 389, which revises provisions relating to condominium hotels, and it will be presented this morning by Senator Ford.

Senate Bill 389: Revises provisions relating to condominium hotels. (BDR 10-76)

Senator Aaron D. Ford, Senate District No. 11:
Senate Bill 389 is a cleanup bill for all intents and purposes. It is a bill that the State Bar of Nevada requested I submit. I have a colleague with me from the State Bar if the Chairman would allow Mandy Shavinsky to proceed with the introduction of the bill. As I have indicated, it is a cleanup bill and nothing too controversial, but it does have some substantive changes that need to be explained by someone from the particular section of the State Bar.

Mandy S. Shavinsky, representing the Common Interest Community Subcommittee, Real Property Section, State Bar of Nevada:
I am here today speaking in support of S.B. 389 and to give some background on why we are supporting this legislation. The Common Interest Community Subcommittee of the Real Property Section of the State Bar of Nevada met on several occasions in the spring and summer of 2012 to consider changes to *Nevada Revised Statutes* (NRS) Chapter 116B, which is the Condominium Hotel Act. These changes are based on applicable provisions from the Uniform Common Interest Ownership Act (2008), the Uniform Act on which NRS Chapter 116 was based. There were also changes passed in the Nevada Legislature in 2011 with Senate Bill No. 204 of the 76th Session.

The changes in this bill are basically duplicate changes that were already made to NRS Chapter 116 with the passage of S.B. No. 204 of the 76th Session and came, for the most part, from the Uniform Common Interest Ownership Act. The participants who met in this subcommittee included Michael Buckley, Karen Dennison, and myself. As I explained, the amendments incorporate the applicable provisions of the 2008 draft of the Uniform Common Interest Ownership Act and S.B. No. 204 of the 76th Session.

In addition, the subcommittee discovered and corrected a number of minor changes to existing law. Some of these changes included moving provisions of existing law into sections which address the same topic. I have included a section-by-section explanation of the proposed changes (Exhibit C) that correspond to the Legislative Counsel Bureau's draft that was distributed earlier. None of these changes are policy-driven, and we do not expect any of them to be controversial in any manner. They do not take any policy positions whatsoever. There are two sections that I would like to call out to you that were not based on S.B. No. 204 of the 76th Session or the Uniform Common Interest Ownership Act, and those are sections 7 and 26. These are also cleanup changes, but I bring these to your attention because I notice that the highlighting in these sections did not come through when this section-by-section explanation was copied. With that introduction, I am happy to go through it section by section with the explanation for the technical corrections if you like, or answer any questions you have.

Chairman Hansen:
Are there any questions at this time for Senator Ford or Ms. Shavinsky?

Assemblyman Elliot T. Anderson:
Section 12 crosses out the requirement that any right or obligation declared by the chapter is enforceable by judicial proceeding. If that is crossed out, what remedies do people have if they are aggrieved by violation of the chapter?

Mandy Shavinsky:
The language in that section was moved, so the remedy was not removed. It now would appear in what would be NRS 116B.790. It is not removed in its entirety; it is just moved to a different section.

Assemblyman Elliot T. Anderson:
Would you give me that citation again?

Mandy Shavinsky:
Yes, you are talking about section 12, and this was intended to be moved to NRS 116B.790. I need to find that exact section for you. I will be happy to do that because these citations I have do not correspond to the draft of the bill I have now.

Chairman Hansen:
Are there any further questions from members of the Committee? [There were none.] At this time, Senator Ford and Ms. Shavinsky, I do not want to go

through the entire bill section by section. We have seven bills on the docket today, and this is a cleanup bill. Do you have anyone else you would like me to call up at this time to testify in regard to S.B. 389?

Senator Ford:
I do not.

Chairman Hansen:
Is there anyone in Carson City or Las Vegas who would like to testify in favor of S.B. 389? [There was no one.] Is there anyone in Carson City or Las Vegas who would like to testify in opposition to S.B. 389? [There was no one.] Is there anyone in the neutral position? [There was no one.] We will close the hearing on S.B. 389. We have three bills that are going to be presented this morning by Senator Harris, and we will start with Senate Bill 154 (1st Reprint).

Senator Becky Harris, Senate District No. 9:
With your indulgence, since Senator Ford has such a tight time frame, could we do Senate Bill 260 (1st Reprint)? He is here to be supportive of that bill.

Chairman Hansen:
That would be fine. We will go to Senate Bill 260 (1st Reprint), which revises provisions governing common-interest communities.

Senate Bill 260 (1st Reprint): Revises provisions governing common-interest communities. (BDR 10-726)

Senator Becky Harris, Senate District No. 9:
I am here to present Senate Bill 260 (1st Reprint), which is a bill that would result in the imposition of impound accounts for homeowners' association (HOA) fees. If a homeowner has a mortgage in addition to impounding for insurance and taxes, the lender would also impound for HOA fees. The idea here is that individuals who may travel a lot and prefer the convenience, and who may have some concerns about foreclosure, would be able to give to their lender all of the payments that are due that are associated with their mortgage. With the impound accounts with regard to the lender, as long as the impound account is current, the super-priority lien for the HOA would not exist.

In the event the impound account was not kept current by the lender, then the super-priority lien would spring back into existence, and the HOA would still have a remedy with regard to it. It helps clear up some of the issues regarding foreclosure. It also helps deal with the super-priority issue while it still allows the integrity of that super-priority lien to be in place in the event the HOA is not appropriately paid.

One of the benefits of this is that the first mortgage lender would have real-time knowledge of what is going on with their investment because they would be collecting monthly in an impound account for those HOA fees. They would know exactly whether or not those HOA dues are being paid and they would know exactly where they are with regard to their interest. That is the thought behind this. I practice in a pro bono capacity with regard to homeowner advocacy, and I can tell you that this really helps clear up a lot of issues. It is something that consumers really like.

The HOAs are all on board with this as well. The only concern they have with the bill is that in section 1, subsection 3, on page 3, lines 32 through 40, the drafting did not come out exactly as we intended. We intended for the HOA account to be established, and then if the consumer wanted to opt out, they would be able to. To me, when I read this, it reads as an opt-in. I would propose a conceptual amendment if the Committee is willing to entertain it so we could make sure those impound accounts are established. Then, at the request of the homeowner, if they did not want to participate and wanted to pay directly to the HOA, they would be afforded that ability.

The other option is that we tied this to where taxes and insurance in impound accounts are being required as a condition of the loans. Homeowners who do not have a loan, or have that 80/20 requirement, would then be able to pay the HOA directly if they wanted to. I like to keep the flexibility in the hands of the consumer and have the banks go ahead and impound so they are getting the knowledge they need, the fees for the HOA, and the HOAs are being made whole because the lenders are then transmitting those HOA fees on a quarterly basis to them. Everyone is protected under this bill.

Chairman Hansen:
Senator Ford, do you have anything to add prior to questioning?

Senator Ford:
No. I am here to offer support for this particular bill.

Assemblywoman Seaman:
Because we have had so many bills that had unintended consequences and deterred a lot of lenders, have you spoken to the lenders? How do they feel about this impound account for the HOAs?

Senator Harris:
There is not a lot of support for the bill through the lending community, but I have not received any documentation that would compel me to believe that lending is going to be impacted. The conversations tend to be more of "We do

not like it." I have exerted myself on several occasions and asked for input directly from the lenders. It had support for a much more stringent version of this bill. They would not have a dialogue with me. They would not offer me suggestions as to how to make this bill workable. They do not want to be a part of the conversation; they just want to oppose.

Assemblyman Trowbridge:
In your earlier testimony, you mentioned a particular section that you had a problem with. I missed the citation.

Senator Harris:
Section 1, subsection 3, on page 3, lines 32 through 40.

Assemblyman Elliot T. Anderson:
Are there any other states that do escrow accounts for HOAs?

Senator Harris:
They do not. I can give you an anecdotal conversation I had with one person in the lending community where imposition of the HOA impound accounts are being discussed at the national level. What that will look like, and whether or not it will actually be something that will be required in the future, I do not know, but it is a topic that is being discussed.

Assemblyman Gardner:
How would a bank find out who the property manager is for the HOAs? I have had three different management companies in a single year in my HOA, and I had trouble getting the address of where these payments go. How are the banks going to be able to track that?

Senator Harris:
This is going to be prospective applying to new loans. The way I envision it working is that at closing, banks will be notified of the HOA as well as the homeowner's address, and they will be able to keep up that way.

Assemblyman Nelson:
I have a question on first-time borrowers. It seems to me they are going to have to impound a year's worth of HOA fees now in addition to whatever else they usually do. I am wondering if this is going to affect first-time buyers, particularly those in the lower cost homes as opposed to the giant homes who can probably afford it easily. Have you thought about that issue?

Senator Harris:
I have, but I have not received an answer back from the real estate community. When you look at closing documents, you typically do not impound for a year's worth; it is usually a quarter, maybe up to six months. How many months we are going to actually impound for those HOA fees I could not tell you, but I would anticipate it would be at least three months' worth, maybe between three and six months, depending on where the closing falls.

Assemblyman Thompson:
In my district there are many HOAs. I know you have had limited conversations with the financial institutions, but have you heard that they might charge service fees for doing the impounding? People are already as tight as they can be when they have their mortgage loans.

Senator Harris:
There are a lot of answers to that particular question. As I have talked to different people throughout the community and different stakeholders, a lot of people actually see this as a convenience so they do not have to write another check. I have heard talk that perhaps lenders would charge large fees, so we have contemplated that. In the bill, we provide for third parties to be able to come in and collect on behalf of the bank for impounds. I think that is the way to help keep those fees low.

Chairman Hansen:
Senator Harris, is there anyone else you would like to testify in favor of this bill?

Senator Harris:
Yes, there are gentlemen in Las Vegas who represent HOAs, as well as Garrett Gordon here in Carson City.

Mark Leon, Private Citizen, Las Vegas, Nevada:
I support S.B. 260 (R1) because it makes life easier for homeowners who live in my community of Mountain's Edge Master Association. The bill is beneficial to us because it has the bank handling timely payments for five different entities, that is, county tax, county special improvement districts, master association, subassociation, and insurance, while the homeowner makes just one payment a month. This is also beneficial to the banks because they do not have to worry about the homeowner falling behind making their timely assessment payments that might put their first security interest in jeopardy. Senate Bill 260 (R1) is a win for everyone.

Glen Proctor, Private Citizen, Las Vegas, Nevada:
I am sure I am like the rest of you. We have mortgages, and in the mortgages, we are either paying insurance or special improvement district funds or taxes. We know the escrow system works. I have had home mortgages in Las Vegas for eight years now, and I have never received a notice from the government saying they did not get their taxes or the special improvement district funds. This is a wonderful opportunity for everyone to come away with a win-win. The homeowner gets a win, the association gets a win, and so does the banker. I am sure the bankers are going to tell you—as the gentleman said—it is an extra cost. They already have a system in place that is doing it. There may be some extra cost, but there are some extra benefits too. In my particular case, they are collecting money for three months in advance and they are using that money. That is what they do. They use money. Then they do not pay it out for three months and then they collect it again. They are making money on this, even though they may be incurring some cost, which I am not sure about.

As far as I am concerned, this is a bill that could solve a tremendous number of problems. I checked with my association and they spent $375,000 last year trying to collect past dues. If everyone who had an escrow account were paying their dues, they may not have had to spend that amount of money and my dues—or my assessments—may not be what they are now. They might have been a lot less. There is another win. As far as I am concerned, it is a win-win-win situation. There are very few bills like that.

Garrett Gordon, representing Community Associations Institute:
I am here in behalf of Community Associations Institute, which is not only made up of HOA professionals, but also homeowners, board members, and all who stand in strong support of this bill. We commend Senator Harris for bringing this bill forward. As you all know, we have been dealing with issues such as super-priority liens, collections costs, and the cost and time of the new Nevada Supreme Court case of extinguishing the first mortgage. We believe this resolves all of those issues going forward. The fact that impound accounts would be paid and the homeowners' associations would be able to collect their money would mean there would be no need for nonjudicial foreclosures, super-priority liens, or collection costs. We support her bill and also support the amendments made on the Senate side.

The bill started off as mandatory impound accounts. Senator Harris amended it and did two things to make it what she thought was more of a compromise for everyone. One, you have to get the borrowers' consent. The borrower has to be behind it. You cannot do a mandatory impound account unless the borrower says yes, this is something I want, this is a convenience that I think will be very helpful. Two, there already has to be an impound account for taxes and

insurance on the property. We understand there was concern from the lenders that if there were no impound accounts already set up, just doing a random Nevada HOA assessment impound account would be difficult to administer. There already has to be other impound accounts in place in addition to ours.

To address Assemblyman Thompson's question, if you go to section 1.3, it talks about regulations. Certainly, with these kinds of new ideas, the devil can be in the details. This bill authorizes the Commission for Common-Interest Communities and Condominium Hotels to promulgate regulations on a number of things, including cost of servicing. That is no different than the process HOAs went through with the Commission to create a system for collection costs and how much those should be. The Commission is used to doing this and can hold workshops. We think it is a well-balanced bill and something that the HOAs can get behind.

Jon Sasser, representing Legal Aid Center of Southern Nevada:
We are also in support of S.B. 260 (R1). I think we need to start with the Supreme Court decision from last summer that says a first mortgage held by a bank is extinguished if there is an HOA foreclosure sale. I guess all the banks will have some difficulty with some of the hassle or procedures of putting this in place. The bottom line is that it is there to protect their investment so these HOAs fees do not get behind and there is not a loss of their first mortgage as a result of a foreclosure.

Assemblyman Anderson asked what is going on around the rest of the country. It is a new thing, but if you read the comments to the Uniform Common Interest Ownership Act that came out about a year ago, they talk about the super-priority liens and the difficulties in different states and the different ways states might have to invest those. Impound accounts is one of the specific items they put forward as a way to take care of investments.

For the homeowners, it takes away the difficulty of today's system where you end up with a lot of collection costs that may be in the super-priority lien that are avoided if someone gets in trouble down the road where they lose their job, or they become disabled and they fall behind in their payments. They now have some coverage through the impound account; therefore, we are not looking at the nonjudicial foreclosure with a large collection cost. I think this is a rare win-win-win for everyone involved. The HOA protects its financial integrity, it protects the homeowner from the high collection cost, and the banks protect their interest in not having their purse extinguished.

Gayle Kern, representing Community Associations Institute:
I am with the Community Associations Institute's Legislative Action Committee and I am also an attorney practicing for about 30 years in northern Nevada. I wanted to address Assemblyman Gardner's question. There are two places where it would be able to be protected. First, when the loan is first established, there is an escrow. During that escrow, the community manager provides a demand on behalf of the association, so all information with respect to where that association is, the association address, and the community manager would be identified. Recognizing, though, that sometimes community managers change, just as lenders change and beneficial interests are transferred, in this case the Real Estate Division, Department of Business and Industry, actually requires that every association register with the Division. The form they prepare, which is provided and able to be seen by anyone, is an identification of whoever is the community manager for that association. It is a very simple process to make sure you know who would be managing it and what the address would be.

Assemblyman Gardner:
Our HOA had three management companies in one year. Even as a homeowner, I was having difficulty finding out where to send my payment. That is why I had the concern. Do we have any other law that forces a third party to be a collection company for another group? Basically, in my reading of this bill, the banks are going to be required to collect on behalf of the HOA. Do we have any other statutes like that? I have not seen any, but I am wondering if I missed it.

Garrett Gordon:
I would say it is similar to the other two impound accounts that are currently existing. Banks impound taxes for borrowers and also impound insurance for borrowers, so this would be the number three impound for assessments for borrowers with the borrower's consent.

Assemblyman Gardner:
Are those in statute? That is what I could not find. It was my understanding that banks were doing those voluntarily.

Garrett Gordon:
We can look it up and get back to you.

Chairman Hansen:
I have directed our Committee Counsel to do the same, so we will try to answer it that way.

Assemblyman Nelson:
Generally speaking, the banks are already paying monthly payments for taxes and insurance, but for taxes there is one payee. It is my understanding there is one payee for insurance also, because there is a clearinghouse. There are thousands of HOAs. Most of us live in two, so what you are telling the banks is that they have to keep track of thousands of HOAs, if they have that many loans, pay them every month, and be the collection agent. Mr. Proctor has testified that his HOA spent $375,000 last year on collection costs. I assume it is the hope of the bill that because of the impound the collection costs will go down.

First, please answer my question on the thousands of payees. My second question is what if someone does default? There are still going to be defaults. There may be three to six months' worth of HOA fees in the impound, but what if someone totally quits paying?

Garrett Gordon:
All of us have been working together on Senate Bill 306 (1st Reprint) while also trying to find a solution to the Nevada Supreme Court's recent *SFR* case [*SFR Investments Pool 1, LLC v. U.S. Bank, N.A.,* 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014)]. I believe lenders have been very involved in S.B. 306 (R1) and their biggest concern is an HOA foreclosure extinguishing the first mortgage. Because of that, I think lenders now have to focus on which homes are in which HOAs and whether or not the borrowers are getting behind in their payments because they could lose their interest. We think that S.B. 306 (R1), which you will hear shortly, provides more notice to the banks and provides more safeguards for the banks. We think this is a good companion bill, as while they are monitoring all HOAs and getting additional noticing from us, which you will also hear about in S.B. 306 (R1), if a borrower or unit owner would like to impound their account, they can. They will have the information at closing and will be able to manage it going forward in the event that they would not lose their first deed of trust.

Assemblyman Nelson:
What happens when someone defaults?

Garrett Gordon:
As the bill is written, when an impound account is created, the super-priority lien is nonexistent. There is no need for it. If the unit owner gets behind with his bank, then the impound account would continue to pay. If the bank does not pay, for whatever reason, the super-priority lien kicks back in and,

unfortunately, the homeowners' association would have to move down the path of foreclosure with—if S.B. 306 (R1) passes—the additional safeguards to the lenders.

Assemblyman Elliot T. Anderson:
Conceptually, I think this is something a lot of us have thought about that seems to make sense. Then I think about how this would be implemented. I am looking at the *Federal Register* (Exhibit D) and it looks like the U.S. Department of Housing and Urban Development (HUD) considered this in 2007 and said they did not think it was feasible to do it [*72 Federal Register 56155, 56157* (Oct. 2, 2007)]. Do you know why HUD said it was not feasible and why they did not go that route? They obviously have a lot of experience with these issues. I did not have time to look for the comments to the proposed rule.

Garrett Gordon:
I am not particularly educated on that piece of literature. We are happy to provide the Committee more information. There is also literature saying why this is a good idea and why it is consistent with current federal law. If you look at federal law—and I can provide the cite—which deals with impound accounts, may it be title or tax, that it does say subject to any other state prescribed impound accounts. We think there is a mechanism through state law. The reason why that catchall is there is for instances such as this. We are happy to get the Committee some literature on why this is a good idea and why it is compatible with federal law if you like.

Assemblyman Elliot T. Anderson:
I am not saying it is not compatible. I am saying that HUD looked at requiring this in a proposed rule, they received comments on the rule, and the final rule in the *Federal Register* said it was not feasible. I do not need to see a cite of why it is consistent. I want to know why HUD said this would not work, because I think that is useful information for us as we consider this bill.

Garrett Gordon:
We will be happy to look at it and get back to you.

Assemblyman Trowbridge:
I would do whatever is available to help the HOAs clarify this entire mess that is going on. This sounds pretty clean and easy until you get a little deeper into it. Establishing these escrow accounts is not just like it is for taxes and insurance. Those are fairly stable. My experience with HOAs—which do change periodically—is that there are other things that complicate it, such as when there are special assessments or fines that tend to muddy the water quite a bit.

There is also the potential for the 3,000 HOAs that exist in the state to all have developed their own little software systems to take care of the relationship with the multitude of lenders that are out there. It seems more complicated than it appears on the surface. I think we need to talk more about it offline to see if we can clarify some of the concerns that I have and that exist for others.

Garrett Gordon:
We are happy to meet with the lending community and any other interested third parties who want to sit down and fine-tune any of those details, and we would certainly welcome your involvement as well.

Pamela Scott, representing The Howard Hughes Corporation:
We would like to be on the record that we do support impound accounts. We understand that there will be work for us and the banks, but we feel that it just makes sense that if someone cannot qualify for their loan without impound accounts for insurance and taxes, why would the banks think they can qualify without impounding their assessments given that the assessment delinquencies can wipe out their super priority? We feel it is in the best interest of the banks to figure this out as well.

I will repeat that the banks know where to find us. Every title company knows where to find us. We have daily requests come through our office from banks who are qualifying persons for mortgages, wanting to confirm what the assessments are for, and whether it is an association plus a subassociation. The title companies know how to find us. They update their databases on a semiannual basis, and we cooperate with it.

As far as the fees go, I believe that when the banks are making their loans, their interest rate is tied into the creditworthiness of their applicants. I think they put a small fraction of a percentage in there to cover the cost of the impound account, so I do not really see why there would have to be exceptional fees for any borrower who wanted this money. It could probably be worked into the original loan.

Chairman Hansen:
Is there anyone else in Carson City or Las Vegas who would like to testify in favor of S.B. 260 (R1) at this time? [There was no one.] Is there anyone who would like to testify against S.B. 260 (R1)?

Jonathan Gedde, Chairman, Board of Governors, Nevada Mortgage Lenders Association:
The bill's intention is to have a simple solution to what has become a significant problem. The Nevada Mortgage Lenders Association must strongly oppose

this bill. We recognize that the good intention is to provide a simple solution to the issue of super-priority liens. As I think my testimony will show, requiring impounds on some loans will have significant consequences to consumers, and the problem with super-priority liens will remain. It does not do anything to protect homeowners without a mortgage.

The first issue that we come to are the logistical problems that it presents. This would require massive system overhauls to be sending to as many as three associations per property. Sending those payments on a regular basis, and keeping track of who they are going to and when they need to be sent, will be is a significant technical challenge. This will mean a significant increase in loan servicing expense and will likely result in loan level price adjustments, which is higher cost for all loans in homeowners' associations. It will also result in higher settlement charges beyond the aforementioned costs as impounding homeowners' association dues plus a two-month cushion—which is standard for impound accounts—would require additional funds to be collected from the buyer at closing. This will have adverse impacts on qualifications, mostly affecting low-end borrowers, and it will push some buyers out of the market.

The requirement applies for homeowners' association units that have a loan and will also have an impound account already established for those unit owners who opt in. This covers only a small portion of units. As such, it does not seem to solve any particular problem. Those with no loans are still at risk of expedited super-priority lien foreclosure, and losing a property without any of the protections of the Homeowner's Bill of Rights or other reasonable protections. A simple oversight updating their contact information has caused some unit owners to lose their property, with several hundred thousand dollars, because of a few months of delinquent association dues.

I would like to reiterate the statement that Assemblyman Anderson referenced which HUD released in 2007 (Exhibit D). It states in part that initially HUD proposed amending the *Code of Federal Regulations,* Title 24, Section 203.23 and Section 203.24 to require the payment of homeowners' or condominium association fees among other payments that the mortgager is required to make under the mortgage. The Department of Housing and Urban Development has determined that a mandatory escrow account requirement for condominium and homeowners' association fees is not feasible. As the assemblyman was referencing, I do not have the specific reasoning how they came to that conclusion. It is the conclusion they came to, and that is HUD, who specifically looked at this issue for the exact same reasons we are looking at it today.

Along with overall opposition to the bill, we have specific issues with a couple of portions of it. Section 1.3, subsections 2 and 3 give broad regulatory authority to the Commission on Common-Interest Communities and Condominium Hotels, which has no lending or loan servicing members on it, to add bonding requirements, create forms, adopt procedures, et cetera. These actions were most commonly performed by mortgage servicers and the Advisory Council on Mortgage Investments and Mortgage Lending—or another body that has experience with loan servicing—would be a more appropriate body to complete that type of work. Also section 1, subsection 4, states that payments from an escrow account shall be made either on the normal due dates or quarterly. It does not mention who would have the option, and the aforementioned section 1.3, subsections 2 and 3, gives the broad power to the Commission, which may claim the payee, not the payor, has the option.

Going back to the problem with the settlement charges, the higher settlement charges are going to be significant to borrowers that opt in for this. Assuming that a resident owns a house which is located in a common-interest community that has two associations, as is very common, especially in Clark County, the average impound is going to be somewhere in the neighborhood of five months' worth of payments per association. We are talking about ten months' worth of payments that the borrower would have to bring in at the time of the closing in addition to the down payment and closing costs that are already being brought to the table. This will have a specific adverse impact on lower-income borrowers and lower-end borrowers who are already looking for low down payments and closing cost loans such as Federal Housing Administration and loans from the U.S. Department of Veterans Affairs. We believe it will have an adverse impact, specifically on lower-end borrowers.

As a whole, the bill seems to accomplish very little other than adding regulatory burden and administrative costs to an already overregulated industry. While we understand the intention of the bill was to help solve the super-priority lien issue, it seems to cause more problems than it actually solves. Consumers will be hurt by the increased cost and settlement charges, and it does not address the core problems of super-priority liens. The Nevada Mortgage Lenders Association and its members oppose this bill.

[Assemblyman Nelson assumed the Chair.]

Vice Chairman Nelson:
You have mentioned the extra costs for the banks. Is it not true that the banks have spent hundreds of thousands of dollars—probably millions of dollars—on attorney fees and litigating these cases and lost millions of dollars in first priority liens being wiped out?

Jonathan Gedde:
I cannot speak to that specifically. I am sure there have been significant attorney fees accrued throughout the process of protecting their lien rights. The cost of revamping an information technology (IT) system at a large servicer would be massive. Of course, the larger the servicer, the better their ability to deal with those types of changes. For smaller and middle-sized servicers, those technological changes, as well as the support to manage those systems and update their records, would be difficult to handle. As Assemblyman Gardner mentioned, common-interest community managers can change as often as three times per year. When you have three homeowners' associations, with each of them changing their management association periodically, you can imagine what kind of logistical nightmare it is and the kind of cost that it will create for the loan servicers. It is a cost that will ultimately be borne by the consumer.

[Assemblyman Hansen reassumed the Chair.]

Assemblyman Nelson:
Are you aware of any problems with the federal Real Estate Settlement Procedures Act (RESPA) as far as violating it or being inconsistent with RESPA provisions?

Jonathan Gedde:
I am not aware of any problems with violation of RESPA.

Assemblyman Jones:
A significant part of your testimony was regarding the fact that it would be hard for low-income borrowers to be able to pay these funds, but is that not very important that they are able to pay these? They are due. It seems like an argument that is almost violating itself. People who get into HOA communities need to be able to pay their dues, and if they cannot pay their dues, they should not be getting a loan. Why would that be an argument in support of your position?

Jonathan Gedde:
To clarify, the part of the cost that I was referring to being challenging for lower-income borrowers is the initial down payment. Anyone who qualifies

for a mortgage is qualified with their entire mortgage expense, including the homeowners' association fees and monthly payment. They are deemed to have sufficient income on a monthly basis to pay their mortgage, including the principal, interest, taxes, insurance, and association dues, as well as other obligations that they have. This specific concern is about the amount of money they would need to bring to closing just to start the home ownership process, and just to buy the house. At closing, they would have to bring in roughly an additional five months per association depending on exactly how this is regulated out in cases where association dues are collected annually. They may have to bring up to 14 months of homeowners' association dues payments to closing just to start their impound account.

Samuel P. McMullen, representing Nevada Bankers Association:
I would like to clarify our position. Regarding what Senator Harris discussed, we actually did try to communicate. I think there is no meeting of the minds. I believe that is the import of her characterization of our conversations, but we did bring up a lot of concerns and I think they are the same concerns we still have. She did try to amend it, but I do not believe that has solved our concerns. I just want the record to reflect that we certainly did talk to her.

It may sound funny coming from a representative of banks, but the biggest concern that we see in this is that this is going to be a large cost. We believe, even if you get past startup, there will be costs with this. What is effectively happening here is that the collection for part of the dues, or assessments, for HOAs will be shifted to the banks. Mr. Gardner is correct. This is an interesting requirement in the statute that a third party would collect other people's costs and assessments and that we would have a cost. On page 5, this allows the Commission to set this up. We are very concerned about what our actual costs would be, and we are concerned on two fronts. One is that it is expensive to start something like this. Currently, there are vendors who do taxes and insurance. There are third parties who are in the business of doing that and many people and banks utilize them. There is no vendor right now that collects HOA impound accounts that we are aware of. This puts the obligation to start and create that process with the IT costs being put on the banks. As it was indicated, it can be a very significant cost. The costs of collecting it, which I guess will be packaged into the loan as a percentage, will be additional. We want to make sure that what everyone is thinking about is that this is not just an HOA collection mechanism; this is an additional cost to a borrower.

You really need to look at it from the homeowner's point of view. If you talk about the system that is being created here, you are charging this to new owners only. The HOA will continue to have all of its collection mechanisms for all of its other assessments, liens, fines, and anything else that predates this

consistently collected under the cost structure that the HOA has right now. As Assemblyman Trowbridge said, there are a number of other things that are basically for purposes of this that are going to continue to be with the HOA. This bill says that it is prospective only, so 100 percent of those new lenders, whether they are existing residents or residents that are new to an HOA are buying in and having a loan, all of those are going to have to do it under her amendment today. They would all be included. They would have to decide to opt out if they wanted to.

What happens is that 100 percent will be charged this cost, and I guess everyone has decided that they know what is best for banks and unit owners, but the point is that only 20 percent or fewer of those are going to default. That has been our history. So this cost will be pushed off to 100 percent of the buyers past the effective date of this bill but you will be building 100 percent mechanism basically for maybe 20 families hopefully, which is another thing that needs to be said. This is a phenomenon that was created by the recession that we just went through. Hopefully, we are digging out and there will not be these continued issues. Consequently, you are building one heck of a system. If you think about it, from the HOA to the bank, it is easy to figure out who the community manager is and more importantly, it is easy to figure out who the homeowners' association is if there is an escrow document. Then what has to happen is the HOA has to have a connecting mechanism. I guess it is the bank that will have to have this connecting mechanism for all of the dozens, maybe hundreds, of banks that will have loans for some of these HOAs. There will have to be an informational connector between both of those.

The one thing that has not been discussed is that, in fact, we are now the collection agency for the HOA and not just for ourselves. We are going to have to be responsible for the flip side of the equation, which is the information going back to the HOA about default. Then what do we do? Are we supposed to be the people who collect that other debt and turn into a collection agency? Those are some of the things that I do not know if they are clear here. Under the Commission's obligation to do regulations, we would clearly like to make this law recoup our actual costs of instituting and operating this program. It should not just be the regulatory exercise protecting the unit owner. It should actually be something where, like a business transaction, we would actually get the cost of providing these services, and that is not clear in this bill at all. If you start envisioning what this is, on one side there will be homeowners' associations and on the other side for each homeowners' association there will be these strings connecting for collection across to a multitude of lenders for each HOA.

If you look at this years from now, it will be a very sophisticated mechanism if it is put into place with, I think, cost and reciprocal duties to inform. It is bigger than just the normal collection mechanism. Again, there is no one there that does it now.

My last comment is if we second a loan out to someone, there will be this requirement. The requirement will be on the bank. A new lender who buys this loan probably will not be interested in picking up this obligation, so does it reside with the originating bank? Does it stay there forever even if they do not have the bank? How do we handle that? These are the kinds of things that were discussed and have been out there as practical issues. There evidently was not a meeting of the minds with respect to how we would handle these. We really appreciate the interest in this. We came up with S.B. 306 (R1), which will be discussed shortly, and which is a very costly program for banks. Then all of a sudden there is another one like this. It seems to us that we either do one or the other, and we do these things very practically because there is an awful lot of money, cost, and damage that can be associated with these types of things in terms of lost loans, lost revenue, and charges to homeowners.

Jennifer Gaynor, representing Nevada Credit Union League:
I represent 18 credit unions and more than 300,000 members in Nevada. I want to put on the record that one of our members, WestStar Credit Union, has experimented with doing such impound accounts. They have done it on a very limited level with about six homeowners, and they have found it is very challenging and costly and not feasible to roll out on a large level. Our members have called and sent letters to many of you detailing what are real concerns for them. I will not go over what Mr. McMullen and the others have talked about as far as implementation and costs. I am going to add a couple of concerns to that list.

We have addressed federal concerns. We have had Mr. Pollard from the Federal Housing Finance Agency (FHFA) comment in the Senate hearing on S.B. 306 (R1) that such impound accounts would be almost impossible. As Assemblyman Anderson noted, HUD looked at this in 2007 and they found it would not be feasible to require such impound accounts. We are looking at other federal regulations such as Regulation Z, which is the Truth in Lending Act. We need to make sure this would not conflict with it. For example, that rule would exempt certain transactions from escrow requirements such as mortgage transactions extended by creditors to operate in predominately rural or underserved areas, have a limited number of first name

cover transactions, have assets below a certain threshold, and do not maintain escrowed accounts on other mortgage obligations they currently serve. I think there are a lot of questions. There are a lot of issues with implementation of this.

Another concern that I had not heard addressed today is what happens when there is a dispute between the homeowner and HOA over amounts that have been impounded? How would that be refunded to them? Would they be out the money if they have already paid it? Who would be responsible for dealing with that and how would it happen? We have shared these concerns with Senator Harris. They are such that the only amendment that would make it acceptable to us would be to look at it some more. I think it is an interesting idea, but implementation is very challenging and very complex, as you have all heard today. Let us experiment and study this situation, as our member at WestStar Credit Union is doing. Let us find out what the trouble spots are and work them out before we make this mandatory. [Jennifer Gaynor submitted a memorandum from Nevada Credit Union League (Exhibit E).]

Russell Rowe, representing One Nevada Credit Union:
With respect to the cost, we ran some numbers and it is interesting that the gentleman testified earlier about the cost for an HOA of roughly $300,000 a year for their own collections. That is in the ballpark of what we estimated the cost for our credit union and its members would be, so it really is a cost shift. It is a mandate on the industry. I understand the intent, but it seems to be an ineffective way to solve a problem where we have to collect for all members, but it is only a small minority who have problems making their HOA payments. We think there are other options to address this, but we would certainly be willing to continue working with the Senator on what her goal and intent are.

Assemblyman Ohrenschall:
I am looking at the testimony of Mr. Pollard, the general counsel for the FHFA, and I see the part where he says trying to collect these payments in an impound account, in his opinion, is virtually impossible. His testimony talks about how the climate is going to dissuade lending. If this passes as is, do you think lending will be further dissuaded, or do you think the banks will be able to operate in this kind of environment?

Samuel McMullen:
Yes or no would be excellent.

Assemblyman Ohrenschall:
Please opine.

Samuel McMullen:
We think this is going to make it incredibly difficult and increase the cost to the unit owner, to the borrower. I do not think we need anything to make it more difficult to get people into loans that are affordable.

Assemblyman Thompson:
Ms. Gaynor, you mentioned WestStar Credit Union and basically having a pilot program with the six mortgage holders. I heard you say there were challenges, but I want to dig deeper. What were the challenges? Whenever you are doing a pilot project, what you are looking to do is weigh the pros and cons and see if it is something you want to move forward with. Would you share what those challenges were and if they were mainly through the financial institution or through the mortgage holders?

Jennifer Gaynor:
I could put you in touch with the chief executive officer (CEO) from WestStar Credit Union and have him answer those questions. I know generically what some of those problems were, such as getting information about the HOAs, who the management company is, when there are changes in the management company, dealing with shifting fees and costs that are not steady every month the way our taxes and insurance are, and not having a database or system set up to do this the way that we do with taxes and insurance. There are third-party companies set up to interface with the lenders to provide this information to them. In the case of HOAs, there are no such third-party companies set up to do that. The HOAs come in various levels of sophistication and size. Some have thousands of homes and some have only two or three homes. You would be dealing with each and every one of those should this become mandatory.

Chairman Hansen:
Is there anyone else in Carson City or Las Vegas who would like to testify in opposition to S.B. 260 (R1)? [There was no one.]

Senator Harris:
I will have the Committee know that I learned a lot today from the lending community as to why they do not like my bill. Anyone who knows me, or the way I operate with my bills, knows I am more than happy to listen to those concerns. I am happy to work with them and to address them. I apologize that testimony was so lengthy today. Had I understood the nature of all the different concerns that the banking community had, we would have addressed them and not spent so much time on this.

I would like to hit a couple of quick points with regard to databases. I looked into it and with the few contacts that I have in the banking community, I am not going to presume to tell them how they run their business and what their software systems look like, but someone had mentioned to me that it would be possible to track this on an Excel spreadsheet and be able to operate an HOA impound account that way. As far as communication goes, it was brought out in testimony that the HOAs are already listed on the Real Estate Division's site. The banks would have a stable source of information to figure out who those HOA community leaders are, and S.B. 306 (R1), which you will hear at the end of your hearing today, in its present form requires the banks to have a website as well. There should not be any problem connecting these individuals together, and it would all be done electronically through websites that can be updated quickly with limited expense.

The other thing I would point out is that this is voluntary. Consumers are able to opt out, so if it becomes an expense issue or they simply do not want to do it, they can opt out. They do not have to participate. They felt that rather than allowing banks to opt out or HOAs, putting the tools in the hands of the consumer was the best way to handle this. There is a lot of support from consumers for this bill and, ultimately, they get to decide.

With regard to the feasibility of HUD, I cannot answer specifically to that, but I can suppose that perhaps mandatory nationwide impound accounts for HOAs do not make sense because not every state has a super-priority lien issue like Nevada. I would argue to you that mandatory impound accounts are actually voluntary impound accounts in Nevada per my bill, they do make sense and, ultimately, it will save banks money. It will stabilize lending because they are going to be able to know exactly where their asset is and it is going to lower their risk.

I would also make the point that there is an assumption that this is a default-only bill, and that is simply not the case. This is also a bill of convenience for homeowners who may never be in default but do not want to worry about paying their HOA fees every month. They can have them automatically taken out. This would be particularly convenient if they are traveling, live in Nevada part-time, or have a second home here.

I will also tell you that I found out about the WestStar Credit Union's ability to impound, and unfortunately, despite repeated phone calls to the CEO, have been unable to connect with him to talk to him about his specifics. I did talk to one of his employees, and she mentioned that she really liked it and her mortgage was one of those that was impounded. That is the genesis for my decision to go forward with this bill.

As far as the costly expense of preimpounding for HOA fees, I think a particular average for HOA fees in Nevada is about $35 to $50 per month. While I am sensitive to those who are on the lower end of affordability for a home, we are not talking about thousands of dollars. We are talking hundreds and while that may impact the lender, I do not think it is going to have the detrimental impact on lending that has been suggested. I look forward to working with the banking community. I would like to have some real substantive conversations. It is true; we have had conversations, but nothing as substantive as what we have had in this hearing. I will continue to work with them to see if we can find some solutions, because I think this is a great idea. I think it solves a lot of problems and I think it will fit nicely with S.B. 306 (R1), should the Committee decide there is an interest there as well.

Chairman Hansen:
I will close the hearing on Senate Bill 260 (1st Reprint) and will now open the hearing on Senate Bill 154 (1st Reprint), which revises provisions relating to common-interest communities.

Senate Bill 154 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-725)

Senator Becky Harris, Senate District No. 9:
Senate Bill 154 (1st Reprint) deals with common-interest community managers, and is basically a way for them to fulfill the legal requirement they have with regard to their continuing education. Currently we do not offer enough legal classes, so those who do not renew during the year that the Legislature is in session have a hard time getting their legal credits. Typically, updates on homeowners' association (HOA) bills through the Legislature have served as that legal requirement.

I am going to quickly walk you through the bill because we are going to add a couple of provisions to *Nevada Revised Statutes* (NRS) Chapter 116A. The new provisions, which are found on page 3 beginning at line 24, require the Commission for Common-Interest Communities and Condominium Hotels, Real Estate Division, Department of Business and Industry, to adopt regulations establishing the qualifications necessary for managers to renew their certificates. Those regulations must include provisions that require the certificate be renewed biennially, that set the number of hours as not more than five hours for continuing education necessary for renewal, and that allow hours required to be satisfied by observing a disciplinary hearing conducted by the Commission only with the involved parties' permission, or by observing a mediation or arbitration that arises from a claim within the Real Estate Division's jurisdiction.

That is basically the contents of the bill. I think it is a good idea to allow property managers for common-interest communities to attend some disciplinary hearings. I find through the alternative dispute resolution component of my practice that sitting in situations where problems are presented and resolutions of those problems are dealt with are very helpful for those actors in this particular situation. It is anticipated that this type of continuing education for property managers would be at no cost, is readily available, and concerns issues they are going to deal with on a regular basis. By allowing them to sit in on these disciplinary hearings, or arbitrations and mediations, they are going to get some great education with regard to issues they will be dealing with on a regular basis and other issues that communities face in Nevada. That is basically the sum total of it.

The Commission requires 18 hours of continuing education for renewal and of that, 3 hours must be in a subject designated by the Division relating to Chapter 116A of NRS. The other 15 hours may be completed by taking courses the Commission has preapproved. Senate Bill 154 (R1) would simply allow community managers to use five of those hours and getting first-hand experience with disciplinary hearings and arbitrations by observing them. The bill gives managers credit towards their continuing education requirement for doing this because they will have a better understanding of how the proceedings work and get some real-time knowledge as to what the current issues are with regard to common-interest communities. I think it is a great way to help them stay current with their licenses and requirements.

Assemblyman Thompson:
Is there any place in that list of elective classes where they actually learn about mediation and then do it? Observing is one thing but actually doing it is another. Homeowners' associations are always dealing with conflict and confrontation, and they need to know how to approach people in the right way. Do you foresee that in here at all?

Senator Harris:
We are not necessarily training property managers to be mediators. There are classes for that, but they have a lot of credit hours where they can learn some skills to help them handle conflict. This is simply a way for them to get those legal credits that we do not currently offer enough of. A disciplinary hearing is something we would like them not to ever have to be involved in. The alternative dispute resolution components with mediation and arbitration are a way for them to actually get a full perspective of who has the problem, who is saying they are not a part of the problem, and to watch that interchange.

As a mediator myself, I often find that it is very helpful to get a fuller view of perspectives and situations by watching how parties interact and being able to sit as an observer and watch how that conflict gets resolved.

Randolph Watkins, Private Citizen, Las Vegas, Nevada:
I am a licensed community manager in the state, the chief executive officer of an HOA management company, and the former chair of the Commission for Common-Interest Communities and Condominium Hotels. I am definitely in support of S.B. 154 (1st Reprint) because it allows additional opportunities for community managers to obtain the law credits that are required for the 18 hours of continuing education requirement. By observing the Commission's disciplinary hearings, there is no better way for a manager to see the application of the statutes in real time. As the former chair of the Commission, we always encouraged community managers to attend the disciplinary hearings, and I think this will give them an additional reason to attend those hearings, not only to see how the laws apply, but also to have an opportunity to receive additional law credits.

As the Senator pointed out, there are just not enough law credit classes for the community managers, as the Legislature is only in session every two years. After each session, a couple of the major law firms develop a law update class, which is then approved by the Commission. After the session closes, it sometimes takes two to three months for those new updates to be available. The Commission meets on a quarterly basis every year, so within two years a manager can obtain all the necessary credits that are needed to satisfy the law portion of the 18 hours of continuing education. As a manager, I fully support this law, and all 23 managers who work for my organization are also very excited to have this opportunity. I would like to thank Senator Harris for introducing this bill.

Chairman Hansen:
Is there anyone else in Carson City or Las Vegas who would like to testify in favor of S.B. 154 (R1) at this time? [There was no one.] Is there any opposition testimony? [There was none.] Is there anyone in the neutral position? [There was no one.] We will close the hearing on S.B. 154 (R1), and open the hearing on Senate Bill 320 (1st Reprint), which revises provisions relating to time shares.

Senate Bill 320 (1st Reprint): Revises provisions relating to time shares. (BDR 10-1034)

Senator Becky Harris, Senate District No. 9:
I brought Senate Bill 320 (1st Reprint) at the request of a constituent. I have also noticed throughout my practice that there are some concerns with this area. We have a lot of visitors who come to Las Vegas, and many of them have stayed at a time-share property or visited one during their trip. Time-share sales attract visitors who are enjoying their vacation and are attracted to the possibility of purchasing a place to stay on return trips rather than paying for a hotel stay. Despite the fact that time-share properties have been around for decades, there are still a lot of misconceptions that remain about exactly what a time-share is. Many consumers still believe that the purchase of a time-share is an asset that will appreciate and can potentially be sold for a profit. Interestingly, time-share interests were never meant to be guaranteed or have a guaranteed return on their investment. I see this most acutely when a time-share purchaser is experiencing a significant life change, such as filing for bankruptcy, divorce, or for estate planning. I cannot tell you the number of times I have had a client come in when filing for bankruptcy or filing for divorce and they are so excited because they think that they have this great asset in a time-share that they can use to pay off debts, split with a spouse, or use to satisfy a debt to a spouse. It is even more devastating in terms of estate planning when family members think they have a way to help pay for funeral expenses and other things.

Senate Bill 320 (R1) is a one-page disclosure. I do not have a copy of the point of sale with me, but they are typically about a half inch thick and the disclosures are scattered throughout all of those documents. I propose we have a one-page disclosure sheet that a person purchasing a time-share interest would then sign. It is particular language that says:

> By signing this disclosure statement, you are indicating that you understand the following: Any time-share interest is for personal use and is not an investment for a profit or tax advantage. The purchase of a time-share interest should be based upon its value as a vacation experience or for spending leisure time, and not considered for purposes of acquiring an appreciating investment or with an expectation that the time-share interest may be resold.
>
> Resale of your time-share interest may be subject to restrictions, including, without limitation, limitations on the posting of signs, limitations on the rights of other parties to enter the project

> unaccompanied, membership prerequisites or approval requirements, the developer's right of first refusal and the developer's continued sale of time-share inventory. Any future purchaser may not receive any ancillary benefits which were not part of the time-share plan that the developer may have offered to the purchaser at the time of purchase.
>
> You should check your contract and the governing documents for any such restrictions and also note whether your purchase contract or note, or any other obligation, would affect your right to sell your time-share interest. Real estate agents may not be interested in listing your time-share interest or unit.

I have worked very meticulously with the Nevada Resort Association and the time-share interest individuals and we have really honed in on this language. We are in agreement except for the very last statement, which reads, "Real estate agents may not be interested in listing your time-share interest or unit." Their argument is perhaps they might, and my argument is that for customer protection reasons, I would like them to know that should they decide they want to resell their time-share interest, they may not be able to find a listing agent. We disagree there, but we have agreement on every other component with regard to this bill.

Assemblyman Gardner:
Have you thought about putting in a statement that says, "disregarding the difficulty of reselling a time share"? I have a lot of clients who were unable to sell at all for any price. The only offers they received were when they had to pay someone money to take it. That is my concern. I really like your bill, and was wondering if it was the final language.

Senator Harris:
I am open to that language. We are probably on version five or six, and I am happy to entertain that language. I think we get around the edges of what you are talking about in different places with regard to the three paragraphs. We talk about how there is no value necessarily other than a vacation experience, and that you should not purchase it for purposes of acquiring an appreciating investment, or with the expectation that the time-share interest may be resold. That is found on page 2, lines 13 and 14. If that is not specific, I am happy to work on more specific language. The point that you just made is really why I think the last line is important.

Assemblyman Jones:
I have a concern on this. It seems like we, as government, continually think we have to protect everyone from everything. I personally have not bought a time-share, but when people buy time-shares, I know these contracts keep getting thicker and thicker and it gets to the point where it is overwhelming and no one reads it. They just go ahead and sign the contract. We, as government, cannot protect everyone from everything all the time. Is this really needed? Are these disclosures not already included somewhat throughout the documentation? At what point do we stop? People have to take personal responsibility for the actions they enter into and they need to be aware of the agreements they enter into. It is just like boilerplate. Who reads the boilerplate now in these contracts? Again, at what point do we stop?

Senator Harris:
I could not agree with you more. The government's job is not to protect everyone. Nothing in this bill would protect them from any of the consequences of purchasing a time-share. As you so eloquently stated, these are scattered throughout a multipage document that no one is going to read. The idea is that this disclosure would be one sheet of paper they sign and date because they are basically attesting that they have been put on notice and are buying a vacation interest and not a property interest. It is not an investment, and there is no anticipation that it is going to appreciate. This is a way for them to get notice of all of that. You are right; no one is going to read those very thick documents and they are not going to pay a lawyer to tell them what kind of rights and responsibilities they are going to have as a result of signing that contract.

Assemblywoman Seaman:
Is this true with every time-share, even a time-share that is just for personal use and not an investment for profit or tax advantages?

Senator Harris:
That is my understanding, but Ms. McMullen is here and when she comes up to talk to you about that last sentence, I am sure she would be happy to answer in specificity.

Chairman Hansen:
We will open it up to the general public. If there is anyone who would like to testify in favor of S.B. 320 (R1) at this time, please come up. [There was no one.] Is there anyone in Carson City or Las Vegas in opposition to the bill? [There was no one.] Is there anyone in the neutral position?

Erin McMullen, representing American Resort Development Association:
As some of you may know, our members include places such as the Marriott Vacation Club, Wyndham Worldwide, Diamond Resorts International, and Disney Vacation Club—basically the time-share industry. It is the national trade association for those companies. As Senator Harris indicated, we have been working with her on this since it came out of the Senate side. I am in the neutral position because we have agreed to the language and what is in the document except for the last sentence. We do not believe this is necessary as written. There is a public offering statement that is required during the contract period when you buy a time-share. Because of federal laws, almost every company does these additional buyer's statements of understanding or buyer acknowledgements, which have almost identical language to some of what is in Senator Harris's bill. Those are separate from the public offering statement and our additional documentation the buyer will sign. We feel it is already accounted for; however, we applaud her desire to make sure all consumer protection issues are covered thoroughly.

I would defer to the Real Estate Division, Department of Business and Industry, if there are consumer complaints or issue areas that are not covered, but I do not think that is the case. That is why I am in the neutral position. Regarding the last statement about the real estate broker or real estate agent not wanting to list someone's time-share, our concern there is that is a speculative statement that may or may not be true. If it is by law that an individual is required to be a registered real estate broker in order to sell time-shares, that would be something that is more accurate so that people know the different requirements that are out there.

Chairman Hansen:
Is there anyone else who would like to testify in the neutral position on this bill? [There was no one.] We will close the hearing on S.B. 320 (R1) and open the hearing on Senate Bill 174 (1st Reprint), which revises provisions governing eligibility to be a member of the executive board or an officer of a unit-owners' association.

Senate Bill 174 (1st Reprint): Revises provisions governing eligibility to be a member of the executive board or an officer of a unit-owners' association. (BDR 10-617)

Scott T. Hammond, Senate District No. 18:
As many of you probably have already read Senate Bill 174 (1st Reprint), you know it is not a very long bill. We just want to tighten up the language in order

to make it more clear as to who can be on homeowners' association (HOA) board. We had a couple of amendments in the Senate and I believe we have a couple more things to consider in the Assembly as well. There will be some who will speak to that when they give neutral testimony.

However, there is one thing I want to point out. That is on page 4, section 1, subsection 9, paragraph (a), subparagraph (3) and it says, "The person owns more than one unit in the association." This has been brought to our attention by several who have a problem with it. I do not think it detracts from the intent of the bill, but just so you are aware of it, we are amenable to removing it from the bill as an amendment. [Submitted memorandum from the Common Interest Community Committee of the Real Property Section of the State Bar of Nevada (Exhibit F).]

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
I am a former commissioner on the Commission for Common-Interest Communities and Condominium Hotels and am now with Legislative Affairs of the Nevada Homeowner Alliance. There is very similar language in Assembly Bill 238 that has passed out of this Committee. This was brought forth because of abuses by certain individuals whereby the husband and wife or a domestic partnership have secured positions on a board. Usually this happens with a three-person and sometimes a five-person board. When this occurs, the control of the board is limited to just two people. It allows for embezzlement and restricts discussion, conflicts of interest occur, and many times predetermined decisions on the agenda items are arrived at before the individuals even call the meeting to order.

There is a gentleman in Las Vegas who will testify about a recent election at Canyon Willow Pecos. I would point out that due to this type of an arrangement where a husband and wife or domestic partners are on the same board, the husband and wife were removed from the board of the Autumn Chase Homeowners Association by the Commission.

Chairman Hansen:
Mr. Friedrich, please stick to the bill. There are a lot of cases to justify it and I appreciate it, but we need the specifics of the bill itself. I understand there is obviously a need; that is why Senator Hammond and Assemblywoman Dooling have brought very similar bills forward, and we appreciate it. If there is something specific to the bill that you want to add to the testimony, please proceed.

Jonathan Friedrich:
I have already given it. I think it is pretty clear why we need it.

Chairman Hansen:
Senator Hammond, is there anyone else you would like me to bring up to testify at this time prior to questioning?

Senator Hammond:
I do not believe I have anyone on the docket.

Assemblyman Elliot T. Anderson:
I voted for A.B. 238 out of Committee, but then voted against it because an amendment was added on the floor. On page 4, in section 1, subsection 9, paragraph (a), subparagraph (2), it talks about a person who stands to gain any personal profit or compensation of any kind. I have never really quite figured out how you would determine that when someone is going on the executive board. How do you know if you stand to gain something? Do you know what every contract that the executive board is going to have before you are on the executive board? As an example, if a bill comes up, then we know at that time if we have a conflict. You are not going to know every contract or issue that is going to come up to an executive board before you are on it. How would this be enforced so you would know if someone stands to gain any personal profit in the future?

Senator Hammond:
I am going to defer to Mr. Friedrich, who proffered the language for that particular part of the bill.

Jonathan Friedrich:
In a number of the cases, once the people got on the board, that is when they went to town. In the Autumn Chase case, the president took out a credit card in the board's name and he ran up bills all over the country including Texas and California. In the Cactus Springs case, the individuals concocted a very clever scheme. They decided to do the security amongst themselves and they billed the association three or four times the normal cost. They embezzled $300,000 in less than a year.

Assemblyman Elliot T. Anderson:
Every person could do that. Every person could take out a credit card, commit fraud, or embezzle. If the language is designed to go after that example, that would disqualify everyone, because everyone could stand to gain if they embezzled or committed fraud.

Jonathan Friedrich:
When there are just a few people on the board, there is no one to oversee them or challenge them. If they are living under the same roof and it is

a husband and wife and they are hell-bent on embezzling from the association, the husband is not going to challenge the wife and the wife is not going to challenge the husband.

Assemblyman Thompson:
On page 4, line 28, it mentions that a person who owns more than one unit in the association cannot be on the executive board.

Jonathan Friedrich:
That was amended out.

Mr. Chairman, just a clarification. The line about the person owning more than one unit has not been removed yet. It has been proposed to be removed.

Chairman Hansen:
So it is a conceptual amendment at this point. Assemblyman Thompson, would you like to get clarification on it?

Assemblyman Thompson:
Yes. Would you tell us why?

Jonathan Friedrich:
There was a lot of objection to it.

Assemblyman Ohrenschall:
My wife and I see a house that is up for a short sale in our HOA and her mother-in-law gets into poor health and we want to purchase it so she is close by and we can keep an eye on her. Let us say that I own two houses in that HOA. I am not sure I should be disqualified from being able to serve on the board. I am concerned about that line.

Senator Hammond:
It was just an oversight when we processed this. We heard the bill and it was some time later that we sat down and talked about what amendments we wanted to add in. That was one we were seriously considering striking from the very beginning. We do not want to disqualify someone from being eligible for the board because they own more than one house. We are trying to disqualify someone who has family on the board; for example, you own a house and your daughter buys a house in the same association. Then your son also buys a house in the association, and now we have three family members who are on the board of a five-member board.

Assemblyman Ohrenschall:
I agree with that, too. I was the sponsor for A.B. 238 until I voted against it after it was amended on the floor like Assemblyman Elliot T. Anderson. I did like the original; I did not like the tow truck part.

Assemblyman Thompson:
I just want to put in my brief statement as to why I think it would be good that they are allowed to do so. A lot of times we hear about investors leaving and they do not invest in properties. This might be a good way to ensure that if a person owns multiple units, at least they are going to be accountable and make sure their properties in the associations are going to look good. We hear all the time that investors will invest in properties and then they leave.

Chairman Hansen:
Is there anyone else in Carson City or Las Vegas who would like to testify in favor of S.B. 174 (R1)?

Bob Robey, Private Citizen, Las Vegas, Nevada:
I am here with more minutia. Yes, we need this bill. One would think that it is not necessary, but it is definitely needed. One of the questions that was asked by Assemblyman Anderson was in regard to whether the person stands to gain any personal profit. I can understand his position and I agree with him. It is pretty broad. What happens is that you get two people who are married on a board and they then appoint their daughter as a secretary and pay her to do the minutes of the meeting.

Chairman Hansen:
Mr. Robey, we have covered that several times now on this bill. We understand the problem. Is there anything specific to the bill that needs to be amended out or changed?

Bob Robey:
No. I love the bill; I am all for this.

Chairman Hansen:
That is great testimony right there.

Tim Stebbins, Private Citizen, Henderson, Nevada:
I am a member of the Nevada Homeowner Alliance, and I would like to say that I am very much in favor of this bill. I think it offers wonderful protections against bad situations that have arisen in the past in homeowners' associations where homeowners have been harmed by married or closely related people

being on the board. Without getting into detail, I would like to say that I am very much in favor of it and I certainly hope that the Assembly will support this bill.

George Crocco, Private Citizen, Las Vegas, Nevada:
I support S.B. 174 (R1). It is protection for the homeowners' association and is also protection for any of the board members. I testified about a month ago in support. Needless to say, I highly support this bill.

Robert Frank, Private Citizen, Las Vegas, Nevada:
I am representing myself, although I am an active member of the HOA Commission at this time. I think this is a good bill. I have personal experiences where this will help prevent some problems. It is not a massive problem, but it is certainly something that needs to be fixed and I thank you for considering this bill.

Chairman Hansen:
I think we have a pretty good idea what the potential problem is, so hopefully we can get these issues solved. Is there anyone in Carson City or Las Vegas who would like to testify against S.B. 174 (R1) at this time?

Catherine O'Mara, representing DK Las Vegas, LLC:
I am here on behalf of DK Las Vegas, which owns five of the large condominium high-rises in the Las Vegas area. We signed in as opposed to this bill, but with Senator Hammond's commitment to removing the part regarding owning more than one unit, we would change our testimony to neutral.

I want to state why we are opposed to the part regarding owning more than one unit so the Committee is aware why this change is so important. I know the Committee already voted to strike that language in A.B. 238, so I am hopeful they will make the same change here. As I mentioned, DK Las Vegas owns five large condominium high-rises in the Las Vegas area and they are not the declarant. Under the language of S.B. 174 (R1) as currently written, they would not be able to protect their investment in any of these condos because they own more than one, and in many cases they own less than 75 percent. To Assemblyman Thompson's point, when you have investors investing a lot of money into these buildings, they want to see them succeed. They are actually putting a lot of money into the HOAs because they know that future homeowners are going to want to have a vibrant HOA. This bill, as currently written, would really put a damper on that and significantly impact my clients. With the amendment we are neutral, and we encourage you to support striking that language from the bill.

Mark Leon, Private Citizen, Las Vegas, Nevada:
I am testifying against S.B. 174 (R1) because it is inferior to the same provision that was in A.B. 238, which passed the Assembly on April 21, 2015. The problem with S.B. 174 (R1) is that an ineligible person can still get on the ballot, run for the board, and win. They just cannot serve. Assembly Bill 238 took care of that. I would recommend amending S.B. 174 (R1) to match the language in A.B. 238.

Glen Proctor, Private Citizen, Las Vegas, Nevada:
My objection is basically on the way the bill is written, and not so much the intent of it. For instance, section 1, subsection 9, paragraph (a), subparagraph (1), regarding the two people residing in the same unit and being on the same board, that applies basically to a three-member board. If that was amended to state that it was a three-member board, I think it would be much clearer. If it was a five-member board or a seven-member board, I do not think it is as impactful.

I am pleased to see subparagraph (3), regarding a person owning more than one unit, was scrapped because it was in direct conflict with section 1, subsection 10, paragraph (a), which says someone who owns 75 percent of the homes can be appointed to the board. I guess it was like if you own 1, that is bad, or 2, 4, or 70, but if you own 75 percent, it is okay. I am glad to see that change; it helped me a lot. Other than that, it is my only objection.

Chairman Hansen:
Are there any questions? [There were none.] Is there anyone else who would like to testify in opposition or in the neutral position on S.B. 174 (R1) at this time?

Garrett Gordon, representing Community Associations Institute and Southern Highlands Community Association:
We are working with the sponsor on a couple of tweaks. All of them were mentioned in the opposition testimony—removing the one unit. Also mentioned was what happens if these rules are applied and there are not enough people running for the board. In these small communities, it is difficult to get anyone to run for the board. What happens if you apply these rules and it disqualifies people who would want to run? We are working with the sponsor and will hopefully have a conceptual amendment before a work session.

Chairman Hansen:
Senator Hammond, do you have anything more to add?

Senator Hammond:
No.

Chairman Hansen:
We will close the hearing on S.B. 174 (R1) and open the hearing on Senate Bill 348 (1st Reprint), which revises provisions governing unclaimed property.

Senate Bill 348 (1st Reprint): Revises provisions governing unclaimed property. (BDR 10-770)

Robert C. Herr, P.E., Assistant Director, Public Works and Parks and Recreation, City of Henderson:
I would like to thank Senate Majority Leader Michael Roberson for sponsoring this bill on behalf of the City of Henderson. We truly appreciate his support. To provide some background, when a development is proceeding through the entitlement process, the City of Henderson requires that a traffic analysis be conducted by a registered professional engineer working for the developer. The traffic study identifies the additional traffic likely to result from the project and recommends ways to mitigate it. In the event traffic signal construction is not yet mandated, the City may request cash security toward the construction of future traffic signal and intersection improvements, and refers to this cash security as traffic signal participation funds. They are based on a pro rata share of the cost of constructing the intersection and traffic signal improvements at specific locations. The funds are held in a separate account until conditions warrant and sufficient funds are collected to construct the necessary improvements. The City has typically acknowledged the acceptance of these funds by letter and committed to returning any unexpended funds after five years. However, there may be several reasons why funds have not been expended for the traffic signal and infrastructure improvements.

During the recession, development in the City slowed significantly, and in several cases, anticipated increases in traffic have yet to materialize. The traffic signal location may not meet nationally prescribed warrants for installation or there are insufficient funds to complete an intersection improvement. As a result of these issues, many of the funds held by the City have expired. The City has refunded expired funds upon request and has also attempted to contact owners, but a significant amount of the expired funds remain in the City's account. The City has approximately $8 million in traffic signal participation funds that have expired and remain unclaimed, and an additional $1.1 million that will expire in the future.

Senate Bill 348 (1st Reprint) would exempt these public infrastructure proceeds as defined in section 1.5 of the bill so they can be used for their original intent. This would allow the City of Henderson and similarly situated cities and counties in Nevada to utilize these funds precisely when local governments are needing to reinvest in public safety and infrastructure improvements.

We also have what we deem a friendly amendment in section 1 of the bill, and we have Mr. Malkiewich here to address it.

Lorne Malkiewich, representing Expedia:
Section 1 is a separate amendment to the Uniform Unclaimed Property Act that creates a very limited business-to-business exemption. A business-to-business exemption is basically saying that amounts due and owing between businesses would not be deemed unclaimed property as long as there is an ongoing business relationship and that business relationship is continuing over time. It is a very limited exemption. The first sentence of section 1, subsection 1, provides that it is limited to credit memoranda, overpayments, credit balances, deposits, unidentified remittances, nonrefunded overcharges, discounts, refunds, and rebates. Basically, these are accounts between businesses and they are things that ought to be settled between the businesses and probably should not be deemed unclaimed property anyway; however, it is further limited by the ongoing business relationship requirements.

Subsection 2 says an ongoing business relationship exists if there is activity between businesses within each three-year period that follows the date of the transaction giving rise to this. If you have one of these items, overpayment or a credit balance on one business owing to another, or if there is any business conducted between those two entities, over a three-year period, you have an ongoing business relationship and it should be settled that way. If, over the following three-year period, there is not an ongoing business relationship, then it would become unclaimed property and would be subject to escheat to the state. It is a very simple provision.

Assemblyman Jones:
How many funds are brought in through this reclaiming process each year? How big of an issue is it?

Lorne Malkiewich:
I do not know the exact amount, but it is a fairly large account. I believe the account gets $7 million for unclaimed property. Every year, $7 million or $8 million goes to the Millennium Scholarship Trust Fund, and the remainder goes to the state subject to future claims against it. I believe the amount going

to the state in a year is in the neighborhood of $15 million or more. Again, I do not know the exact numbers; I would have to check with the Office of the State Treasurer.

Chairman Hansen:
It is substantial. I remember in 2011 we had a bill on it. In fact, I have been in contact with former Chairman William Horne on this exact bill and he raised some concerns. I will have to visit with you on that.

Mr. Herr, is there anyone else you would like to have me call up at this time to testify in favor of this bill?

Robert Herr:
No.

Assemblyman Nelson:
On this issue of funds that the City of Henderson is holding and not able to refund because either the company that put the money up is out of business or you have lost contact with them, perhaps there should be legislation or a regulation stating that after a certain amount of time the City of Henderson can keep those funds for economic development or working on the project. Do you think that is a good idea? What do you do with those funds?

Robert Herr:
I think we would obviously favor that, but we also want to have a commitment to the developers who are making these contributions that their funds will be expended for the intended purpose. That was the original rationale for having a time frame that we needed in order to get these projects out the door and utilize the funds.

Assemblyman Nelson:
What if you do not have anyone you can send them to? What do you do with these funds?

Robert Herr:
That is the issue that faces us. Many of these limited liability companies that were created to develop these particular projects are now gone, so we would certainly favor it in those instances where we are not able to locate the developer.

Assemblyman Ohrenschall:
In section 1, currently without the proposed language in statute, the credit balances do escheat to the state. There is no hope that the person who

is actually owed the money will ever get paid. Unclaimed property rarely goes back and settles the debt. That is going to have to be settled in some other way. This will probably help to make sure things do not end up in litigation or bankruptcy.

Lorne Malkiewich:
I believe that, in general, the types of debts that are shown here are things that normally would never become unclaimed property because they would be worked out between the businesses. If for some reason they ever did, without this bill you have a three-year period before they are deemed unclaimed. The dormancy period before it would go to the state—and if after all that period it has gone to the state—I think you are right. The odds are that it is not going to be claimed by the business since maybe it has gone out of business and is no longer available for this. The Treasurer's Office works very hard to make sure that unclaimed property is returned to the rightful owners, but you are still talking 30 to 40 percent ever getting returned and the rest just sitting in the State General Fund in case someone claims it in the future. I would agree with your claim that if it becomes unclaimed property and goes to the state, it is unlikely to be recovered.

Chairman Hansen:
Is there anyone else in Carson City or Las Vegas who would like to testify in favor of S.B. 348 (R1) at this time? [There was no one.] Is there anyone in opposition to S.B. 348 (R1)? [There was no one.] Is there anyone in the neutral position on S.B. 348 (R1)? [There was no one.]

Assemblywoman Seaman:
Is there a fiscal note on this?

Robert Herr:
I believe the Treasurer submitted a fiscal note and the R value was zero. I am not sure if there are other fiscal notes.

Assemblywoman Seaman:
I received an email that there was a fiscal note on this. Would you mind checking and getting back to us?

Robert Herr:
We will certainly do that and get back with you.

Chairman Hansen:
We will close the hearing on Senate Bill 348 (1st Reprint) and open the hearing on Senate Bill 306 (1st Reprint), which revises provisions relating to liens on real property located within a common-interest community.

Senate Bill 306 (1st Reprint): Revises provisions relating to liens on real property located within a common-interest community. (BDR 10-55)

Senator Aaron D. Ford, Senate District No. 11:
I am here today with my colleague Senator Scott Hammond to present Senate Bill 306 (1st Reprint) as it was amended in the Senate. The bill represents a culmination or, as I call it, a quintessential example of compromise legislation over the interim on the homeowners' association (HOA) foreclosure issue. Senate Bill 306 (R1) makes a number of changes that we think will result in a better process for homeowners, banks, and associations.

Before I get into the bill, I think a little background is in order. As you may know, there is such a thing called a super-priority lien. Last year there was litigation which resulted in a Nevada Supreme Court opinion that ultimately states, in essence, that foreclosure on an HOA super-priority lien wipes out a first mortgage. That obviously raised a lot of antennas and caused a lot of discussion to occur. As an attorney, I happened to be watching the oral arguments during that time and took it upon myself to see if we could do something to address this issue. To my delight, Senator Hammond had already looked into doing something of this sort last session. Ultimately, I reached out to Senator Hammond and together we, in a bipartisan manner with a group that would start at about six people and grow to a lot of people, tried to come up with a solution for this.

As I understood the case and what the primary concerns were, the argument is as follows. There were HOA dues that were outstanding and were not paid. By some accounts, the banks were told about it and they would not take care of the HOA liens, so the HOAs were forced to foreclose on the property. Under the current iteration of the law, it wiped out the first mortgage—the bank's lien. The story was, well, they gave us notice, but that notice did not tell us how much was actually owed. We would pay it and they would still say that we owed more. There was a lot of confusion around what was due and owing, whether notice was proper, and whether notice was given according to the statutes. We undertook the task of attempting to address some of those issues. What you see in this hefty bill is, in fact, that effort. I will go over a few of the major provisions.

As I have indicated, the main concern was to address the notice issues and then ultimately discuss what happens in the instance of a failure after proper notice has been given of what is due and owing, what happens to the super-priority lien in that regard, and what happens to the first mortgage interest.

Starting with section 1, the bill allows the costs of collection to be included within the scope of a super-priority lien but very specifically limits what those collection costs would be. By virtue of an amendment in the Senate, the bill now also clarifies that liens for municipal waste collection have the same status as other governmental liens. Section 1 also provides that if a subordinate lienholder makes a payment to the association, it becomes a debt that is actually owed by the unit owner to the lienholder.

Section 2 adds a requirement that the notice of default and election to sell must include a detailed and itemized statement of the amounts due to the association and must be mailed to each holder of a recorded security interest. Again, this addresses the notice issue and the specificity issue that were the main contentions of disagreement. Section 2 also prevents any sale from occurring if the association has received notice that the unit is subject to the foreclosure mediation program unless the owner has not paid assessments that became due during the mediation period. The bill also requires the association to record an affidavit containing the name and address of each security holder to whom the notice of default was mailed.

Section 3 ramps up the standard for mailing a notice by requiring notices to be sent by certified or registered mail to each holder of a recorded security interest and it eliminates the current requirement that security holders must notify the association of their interest in order to receive notice.

To further enhance the efficacy of the notice, section 4 additionally requires (1) a recording of the notice of the time and place of the sale, (2) a posting in a public place typically used for such notices, and (3) publication in a newspaper.

We have inserted a requirement in section 5 that all such sales be held during normal business hours, and for more transparency, the bill also requires that sales in Clark County and Washoe County be conducted at a place designated for foreclosure sales of units subject to deeds of trust. In the other 15 counties, the sale must be held at a courthouse.

Another problem we tackled in this bill is the postponement of sales. To that end, if a sale is postponed by oral proclamation, which happens frequently, then the rescheduled sale must be held at the same time and location. If a sale is

postponed three times, then the bill requires going back through the hoops required for the original notice of the sale, which is something that echoes current practices when it comes to notice of default and election to sell. As an amendment in the Senate, we also added a requirement that an announcement be made at the sale as to whether the mortgage holder has satisfied the association's lien.

Section 6 of the bill creates a right of redemption which is a key component. This right of redemption is not something that I was initially enamored with, and still not enamored with, but as a matter of compromise has arrived in our bill. Section 6 creates a right of redemption by the unit owner or the holder of the security interest by allowing a unit owner or security holder to redeem the unit by paying certain amounts as laid out in that section. It also lays out the rights of the parties and procedures to be followed in the redemption process. If the required amounts are paid within 60 days after the sale, the unit owner or security holder—as the case may be—will gain ownership of the unit. The unit owner or the security holder receives a 60-day right of redemption period. However, after the 60-day redemption period ends, the bill makes it clear that the purchaser at the foreclosure sale has the clear title. Section 6 also provides that if the first security holder pays the amount of the super-priority lien no later than five days prior to the sale, the foreclosure will not extinguish the deed of trust.

Section 7 spells out the process for persons with an interest in the property or a related debt and to record a request for notice and the duties of the association to respond. Section 8 requires the bank to notify the HOA if the unit is subject to the foreclosure mediation program and if the bank has received a certificate from the program. Section 8.5 was added based on testimony in the Senate, and it requires banks, credit unions, and similar entities that hold residential mortgages to provide the Division of Financial Institutions of the Department of Business and Industry with a name of a person and an address to which borrowers must send documents related to financial foreclosure mediation and to which an HOA must send the notices related to foreclosures. Again, this is a provision that deals with notice and making certain that everyone who has an interest in this property should receive proper notice. This amendment was actually suggested by our colleague, Senator Becky Harris. The Division of Financial Institutions must post these addresses on its website in a prominent location so they can be easily retrieved.

That is the overview of the bill. As we know, there are many bills addressing the super-priority lien situation this legislative session, along with the other common-interest communities issues. In our view, this bill represents a collaboration—a quintessential example of compromise legislation—of many

different points of view, and we think S.B. 306 (R1), as revised by the Senate with amendments, does a better job of protecting everyone's interests in making the process more transparent and fair for everyone involved. I urge your support of this critical legislation.

Senator Scott T. Hammond, Senate District No. 18:
Two years ago, I presented a bill that was similar to this, although I think this is much more comprehensive and what we need. The bill basically addressed the idea that the original intent of a super-priority lien involved the ability of the lien of the first to be extinguished by HOAs. There was some talk that maybe that was not correct, but ultimately the bill did not get out of committee and failed to get through the first committee passage in 2013. That was left up to the courts to decide and, of course, they went back to the original intent, an intent that I had read and had been presented going back to the group in the 1970s.

Someone had presented me with some of the remarks from Carl Lisman, an attorney and graduate of Harvard Law School, who basically said yes, this was always supposed to be a hammer to get the banks to the table and the HOAs talking together. When the Supreme Court decided that case, I smiled on the day after the decision was rendered because it confirmed everything that I had said two years ago. I also knew that it would be the beginning of more talks. Senator Ford approached me one day and said that he liked what we had tried to do two years ago and was going to go back to bat, so to speak, and wanted to know if I would like to come back. I was hesitant at first because this is definitely not my wheelhouse and not what I do all the time, but with his encouragement and knowing that there was going to be a very large group of interested members, I decided to go ahead and jump back in. I will say that it has been a phenomenal experience. There have been a lot of people and stakeholders who have been involved, and we had a lot of bipartisan support in this, which I think we need here more often.

As Senator Ford reviewed the sections, you could tell it took a long time to get through the bill. There are a lot of processes we put in the bill, which involved a lot of steps—a lot of things to protect the interest of not only the banks but also the homeowner and HOAs. In my mind, this was the way to go: an HOA foreclosure method that was nonjudicial to keep the cost down as well as putting in notifications. I am very happy with the way it turned out. One of the things we were also aiming at was to make sure we were not going to stymie any of the investment that would go on in the state of Nevada. We also received the buy-in from the federal government as well. They came in the Senate and testified that this is exactly what they wanted to see and that they would support this and we could move on. It was great to see the process work this way. We had a lot of meetings and a lot of people involved.

There will be some people who come up to the table today, probably in the neutral testimony, and say they liked the process, they liked what we did, but they want to add some amendments. We know it will happen. We all came to an agreement and this is what we said we liked, but if there is anything you think needs to be added and you want to lay it at the feet of the Committee, then by all means go ahead. What we have right now is pretty much what the federal government likes. It would take a lot for us to be moved from the position we are in right now.

Senator Ford:
I want to reiterate what Senator Hammond just said. Alfred Pollard, General Counsel of the Federal Housing Finance Agency (FHFA), testified during the Senate hearing on April 7, and I believe his testimony was submitted for the record testifying in support of this bill. Previous to this version, there was an amendment made that we do not think is going to change his endorsement. The amendment is the one about posting addresses on the website of the Financial Institutions Division.

This has been a labor of love. I neglected to tell you who was involved; I said there were from 6 to 60 people. We had banks, mortgage associations, legal aid, title companies, collection agencies, HOAs, and investors involved. This was an effort to bring all of the stakeholders together. The conversations primarily began right after the Supreme Court case around September of last year when we had our first meeting. We had three meetings before the year was out, two meetings afterwards, and then we have had half a dozen meetings since the session began. What you have before you is work that has been participated in by a lot of different entities, not the least of which is the federal agency which underwrites about 70 percent of the mortgages here, buys them up and, ultimately, the notice of provisions that are within this bill satisfy the concerns they have. To be sure, it will not necessarily stop the litigation that is ongoing, but this will not add to the litigation. It will assist in those efforts and our efforts to ensure we can bring some sanity back to the housing market.

Chairman Hansen:
We have been hearing about this bill for quite a while. All of those groups you mentioned have been coming to see me about this bill that is going on in the Senate and how we are going to solve these problems. I am all for solving the problems.

Assemblyman Nelson:
Thank you, Senators, for bringing this bill. I commend you—it is fantastic legislation. I have seven cases that I am litigating right now in this very area, and I know it is a giant quagmire. You are doing a great job.

Senator Ford, you pretty much answered what I was going to ask when you were talking about the stakeholders. You mentioned that title companies came to the table also. What I found in a number of these cases is that even if it is resolved, or even if a court says yes, the purchaser has clear title, they cannot get title insurance. I am curious about what the title companies have said about your bill and what they will do going forward.

Senator Hammond:
Title companies have been one of the stakeholders. We took everyone's concerns and addressed them, but when they were in the room, we understood that that was one of the primary stakeholders we needed to make sure was satisfied. I think they will testify that they are in favor of the procedures we put into place. They like that when they get done with this, we have a bona fide purchaser. I think you are going to find their testimony, if they are here today, also testifies to their acceptance of this because if they were not in favor of this bill, they would certainly tell you. They were very accepting of this process and have been there from the second meeting on that we had.

Assemblyman Elliot T. Anderson:
I would like to echo Assemblyman Nelson's comments for all the work. It is a complicated issue and the process really needs to be good because it is a big issue. It is very important and it affects mortgage finance. I wanted to get back on the conceptual issue. You mentioned FHFA testifying. I am looking at the FHFA general counsel's testimony where he said he thought the bill moves the ball forward. I do not know if it was as much as a support notion as it was that this moves the law forward. I agree with that; it certainly does. Notice and redemption are both very good provisions that I like in this bill. On April 21, the FHFA released a statement stating that federal law prohibits foreclosure of their interest. If I recall, federally backed loans are about 80 percent of our mortgage market here. I am wondering, is that exception here under federal law going to swallow the rule? Do you think it would be cleaner if federal law prohibits 80 percent of our mortgages from being extinguished by an HOA? Does it not make sense to write that in there and maybe make the exception for the 20 percent?

Senator Ford:
To your first point about whether it was a support testimony or moving the ball forward, I will say it this way—he accompanied me to the table, sat next to me,

and offered support for the bill. In view of the fact that there is litigation out there, I think he had to be a little cautious with the way he phrased things, but there is no question in my mind that the FHFA representative supports the bill as presented to the Senate. As to the legal issue that you have addressed, as you may know, there is a lot of litigation going on right now and the FHFA is involved in some of the litigation. The litigation is not complete. A statement by a federal agency, state agency, you, or me in litigation does not win the deck. Until those court cases are culminated, we will not know what the actual state of the law is. We are operating under the premise that our state's law is accurate and a first lien can be foreclosed upon and eliminated by the foreclosure super-priority lien. If we are wrong about that, the federal court will let us know and we will take a look at that. I do not desire to legislate around statements made. I want to legislate around laws as they currently exist and we do not know what the state law is in that regard, at least in regard to the statement that we just got from the FHFA.

Assemblyman Elliot T. Anderson:
I am looking at page 13, section 5, subsection 2. It is dealing with when the sale can be postponed after a first security interest satisfies the association super-priority amount. I am wondering about the wording of this. The sale may not occur unless a record of such satisfaction is recorded. Am I reading that wrong? Satisfaction to me means that the lien was taken care of and it was recorded as such—that the super-priority amount was paid off by the first security interest. I am wondering if that is worded correctly?

Senator Ford:
I am sorry, but I am trying to find the language.

Assemblyman Elliot T. Anderson:
I am specifically looking at lines 4 and 5 on page 13. It says, if the holder of the security interest satisfies the amount of the super-priority lien five days before the date of the sale, the sale may not occur. But then it says, "the sale may not occur unless a record of such satisfaction is recorded...." I do not understand what a record of satisfaction is, because I would take that to mean that a record of satisfaction means the lien was satisfied—it was paid off. I am wondering why it is fitting into the exception to the general rule of subsection 2.

Senator Ford:
I was listening to your question, but we have a different version of page numbers. Would you give me a section, please?

Assemblyman Elliot T. Anderson:
The language is in section 5, subsection 2. The exception starts on the fourth line of subsection 2. It does not make sense to me because the plain reading of that to me is you have satisfied something; you have paid off something. It does not seem to fit like it should in the exception. It should be that if you record the satisfaction, I would think that that is when the lien is paid, at least to the outside world, and there has been notice of that fact.

Senator Ford:
I hear what your question is; I am not certain I can answer that for you just yet.

Chairman Hansen:
Senator Ford, we have Committee Counsel looking into it and he is wondering as well. We will bypass that question and come back to it, perhaps if not in the hearing then during our work session.

Assemblywoman Seaman:
I want to clarify something. The FHFA is satisfied with this bill, and I think it is a great bill. Is it true that the litigation is moving forward because they really want to do away with the super priority and extinguishing the first priority lien? They are satisfied, but was this a question they were trying to work with you on with what they are in litigation over?

Senator Ford:
I will not purport to speak on behalf of the FHFA on that particular issue. I will say that he was very careful not to intertwine litigation conversation with legislative conversation. They have litigation going on and it is clear what their positions are because they say it goes into legislation. I think the statement that Assemblyman Anderson read a moment ago from the FHFA clearly delineates what they believe should be the state of the law and they can do what they want to in that regard. I can say that the notice provisions, the specificity provisions, the redemption provisions, and the other provisions that we have placed in this bill, the FHFA supports.

Assemblyman Ohrenschall:
My question has to do with the bill's section 2, lines 28 through 32, on page 10, changing the provisions about when an association may not foreclose regarding the foreclosure mediation program. Now the association, under the proposed language, would be able to foreclose if the homeowner is in arrears during the process of foreclosure mediation. What is the thought process behind it? I would think we would want to be shielded while mediation is taking place and hopefully get the person back on their feet.

Senator Hammond:
If they are in mediation and they are still paying their assessments, they will be all right. We are looking again at making sure they are still paying their assessments and still being a part of the process as they are going through it, but if they fail to do so, they could then be foreclosed upon.

Assemblyman Ohrenschall:
Under current law, as you understand it, even if they are not keeping current in their assessments, the association would not be able to foreclose, correct?

Senator Ford:
Not during the foreclosure mediation process, but those would still become due upon the ending of the foreclosure mediation process.

Assemblyman Gardner:
Section 5, subsection 5, talks about how the association can postpone a foreclosure sale by oral proclamation at the hearing. As of right now, I have had litigation issues on this when they postpone it. They will not tell anyone except for the people who were there, so they eventually pick and choose who is going to be at these hearings because they can move it at their discretion without any notice to any of the lienholders. Why is this still in here? I thought this was one of the things that was going to be fixed. Why would we allow people to postpone based on the oral proclamation?

Senator Ford:
Frankly, that was not one of the issues that I was looking to address when I undertook this bill. As you indicated, oral proclamations have been part of this current statute. I practice tangentially as well and I understand the concerns that can arise but, frankly, it was not one of the concerns that we were looking to address with this. We have added some additional provisions under that section that deal with oral proclamations indicating that if the sale is postponed by oral proclamation, the sale must be postponed to a later date at the same time and location. If such a date has been postponed by oral proclamation three times, any new sale information must be provided by the notice as provided in another part of the *Nevada Revised Statutes* (NRS).

Senator Hammond:
This came up when the work group started talking about how to make sure we make the process correct. As part of the process of oral proclamations, we also added language that was more specific so as to not allow these secret meetings

or secret sales to go on where all of a sudden you tell one person this is when the sale is going to take place. I think because of the other provisions we put there, we are going to see that the sale of the property is commercially reasonable.

Chairman Hansen:
Are there any questions? [There were none.] Senator Ford, do you have anyone else you would like me to call up at this time to testify in favor of the bill?

Senator Ford:
No, not anyone in particular.

Chairman Hansen:
Is there anyone in Carson City or Las Vegas who would like to testify in favor of S.B. 306 (R1)?

Senator Becky Harris, Senate District No. 9:
I am here to lend my support to S.B. 306 (R1). I want to give you a quick background on section 8.5 that came out of some discussion in the Senate. The reason we added it as an amendment was to help anyone who needed a notice of bank credit, union savings bank, savings and loan, et cetera, have one place they could go to in order to find contact information for that bank so they could be assured they were contacting the right individual at that bank with regard to default. I have a lot of experience with attorneys communicating with banks and I can tell you that it is very frustrating because the contact information changes constantly. If you try to look them up online, sometimes the information is old or has been changed. This was an attempt to help with the process in a practical way and to make sure the right people at the right institutions are being notified. That came about in response to a proposed amendment that I see the Nevada Bankers Association is also submitting to your Committee. Section 8.5 is still working in conjunction with section 3 where a copy of the notice is sent by certified mail and that is deemed notice to a lending institution for purposes of default and to not require confirmation of receipt from a lender with regard to that notice of default.

I can tell you I have represented many homeowners in default and I have yet to get any kind of a confirmation receipt from a bank with regard to submission of a document, whether that is email, fax, or written notice. It was a concern for me because I practice in this area from time to time with regard to the

practicability of the communication and making sure we can notice a lender without awaiting a response. I think section 8.5 adequately addresses that concern with regard to the one location where we can find the correct contact information for the lending institutions.

Chairman Hansen:
Do we have any questions specific to section 8.5?

Assemblyman Elliot T. Anderson:
Senator Harris has a lot of experience with foreclosure mediation, so I want to dovetail on Assemblyman Ohrenschall's question. I do not know if that provision makes sense because the whole point of the foreclosure mediation program is to get them back on their feet. Why would we allow another foreclosure to happen while they are in the process of this? Theoretically, the bank could take on the arrears, bring them current, and transfer that debt as a part of the deal for the foreclosure mediation program. Would we not want to give the homeowners some space to take part in that mediation?

Senator Harris:
I have that same concern and raised that during the hearing in the Senate. Because of time constraints and the need to get this onto the Senate floor, we were not able to appropriately address the issue. I think there were some fiscal note concerns as well. I would agree there are some concerns with regard to requiring a homeowner to continue to pay those HOA fees while they are part of the foreclosure mediation program. I think at some point you start income excluding people from remedies, and I have a real problem with that. Senator Ford and I had a fairly lengthy conversation about waiving those. The lobbyists for the HOA community have been very good and said they agree and they are willing to go ahead and waive those but we were just not actually able to achieve it in the time frame we had. If that is something this Committee would like to take up, I have a lot of expertise with regard to the foreclosure mediation program. I have been an appointed mediator with them for four years and I no longer serve in that capacity because of my state Senate service. I have also represented homeowners before that committee, so I could speak particularly to my experience. Verise Campbell, who is the director of that program, would also be a great resource. I would like to see some clarity with regard to what actually happens. At the end of the day in the Senate, we decided to go with current law. Current law is that you can still proceed with foreclosure. Current practice is that you do not. In order to provide that clarity for people who are in default and if that is something you would like to take up, I would be more than pleased to be helpful.

Chairman Hansen:
Is there anyone who would like to testify in favor of S.B. 306 (R1)?

Mark Leon, Private Citizen, Las Vegas, Nevada:
I support S.B. 306 (R1) because it protects the laws of homeowners in an association by placing the burden of collection costs onto the persons who caused the problem. Regarding foreclosures by an association for unpaid assessments, it gives both the homeowner and the mortgage holder one last chance to get right with the association, even after the sale occurs.

Finally, S.B. 306 (R1) prevents abuse of the foreclosure mediation process as a delaying tactic and reduces the burden on homeowners who are diligently paying their association assessments.

Glen Proctor, Private Citizen, Las Vegas, Nevada:
I support this bill. I think it does a marvelous job of cleaning up the communication between all parties and the super-priority lien. I also think it does a wonderful job of detailing that the collection costs are part of the super-priority lien. The problem is that if they are not, those costs do not go away. They are still there. They are absorbed by the HOA, which in turn means they are absorbed by the homeowners who have been paying their assessments. That is a wonderful part of this. Based on the testimony from the banks, the mortgage lenders, and the credit unions against the escrow one, maybe they are for this one, too, because it sure does clean up a lot of language.

Jennifer Gaynor, representing Nevada Credit Union League:
We support S.B. 306 (R1). This is an important bill and we believe it takes real steps to address the issues that Nevada faces today in light of the recent Supreme Court decision and the ramifications that it has for residential lending in Nevada. We really cannot overemphasize the danger facing Nevada's residential lending market where the FHFA has made it clear that they have real concerns with HOA super-priority liens being able to extinguish their loans. We also hope the steps taken in this bill will mitigate the bad HOA foreclosures and will be sufficient to protect Nevada's lending market and satisfy FHFA concerns. We believe the protections in this bill, including improved notice and a redemption period, do help with some of our major concerns. We thank Senator Ford and Senator Hammond for spearheading this effort. Procedurally, it gets a little complicated, but we do also support the amendments that you will see brought by the Nevada Bankers Association.

Again, this was genuinely a group effort and a consensus, with the exception of two of the bullets in the amendments. One of the two I would like to specifically address, which is to require the sale of a unit to be commercially reasonable. This provision is particularly important to ensure HOAs do not proceed with foreclosure sales that are far below market value. Noncommercially reasonable sales may adversely affect the lending market in Nevada. Property owners in the surrounding area who see the market value of their homes fall because similar properties have been sold at dramatically reduced prices is an ongoing issue. Overall, we support S.B. 306 (R1) and hope that you will adopt this bill. [Jennifer Gaynor submitted written testimony (Exhibit G).]

Jenny Reese, representing Nevada Association of Realtors and Nevada Land Title Association:

The Nevada Association of Realtors is in support of this bill. We applaud Senator Ford and Senator Hammond for their efforts in getting us all together. Maintaining lending in Nevada is an important aspect of Realtors and their business. In regard to the Nevada Land Title Association, we also applaud their efforts. We wanted to clarify on the record that if this bill is passed, it is not going to guarantee that title will issue insurance. They are going to have to look at each case on a case-by-case basis as to whether or not they want your title.

Diana Cline, representing SFR Investments Pool 1, LLC:

I have been a member of the working committee for S.B. 306 (R1). We have been involved in litigation concerning the interpretation of NRS 116.3116 for years, and we support S.B. 306 (R1) in its current form because it addresses the concerns in the dissent of the *SFR v. U.S. Bank* decision [*SFR Investments Pool 1, LLC v. U.S. Bank, N.A.,* 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014)] and other practical concerns.

I have not seen all of the proposed amendments before this morning, but several of them would create some ambiguity in the statute and I have concerns about those. To address the "far below market value" prices at the sales, those days are long gone. As soon as the *SFR* decision came out back in September 2014, the next day the prices went to market. There is still ongoing litigation; purchasers at the sales have lowered the prices again but still they are nowhere near the situation of $6,000 for an $800,000 house. The statute, in its current form and in S.B. 306 (R1), would provide a process that would allow investors to go to the sales and bid up to the same amount that you would get at a bank foreclosure sale.

Steve VanSickler, Chief Credit Officer, Silver State Schools Credit Union, Las Vegas, Nevada:
The bill before us today assumes that a unit owner in a common-interest community has a lienholder obligation recorded against their home and strives to provide notice to regulated lienholders to satisfy past due obligations owed to the unit owner's HOA under NRS Chapter 116.

Today I appear before you to speak about our members and Nevada homeowners who own their common-interest community home free and clear. In a state with a Homeowner's Bill of Rights that provides for a foreclosure mediation program, no such mediation right vests to our members and Nevada homeowners who face foreclosure under NRS Chapter 116 or in this bill when they own their home debt free. *Nevada Revised Statutes* Chapter 116 provides only that they may appeal to the same HOA board that is seeking to take their home for past due assessments. Demographic and recorder's office data represents that as much or more than 70 percent of Nevada homes are in a common-interest community, and as much or more than 40 percent of those homes are free and clear.

Taking away a Nevada homeowner's most significant financial asset must come with significant protections, particularly when there is no recorded lienholder. Instilling a requirement that a super-priority lien on a free and clear home is protected under the Nevada Homeowner's Bill of Rights and that mediation is required, not elected, is a step in the right direction, but excluding a super-priority lien right, under NRS Chapter 116, for free and clear homes is a better solution. Many Nevada homeowners who own their homes free and clear are elderly or infirm and may suffer from diminished mental capacity or have other health issues. Falling behind on HOA assessments may not come with a recognition that they could lose their home.

Jonathan Gedde, Chairman, Board of Governors, Nevada Mortgage Lenders Association:
The Nevada Mortgage Lenders Association has been part of the working group since October 2014. I would like to thank Senators Ford and Hammond for their excellent work on this bill and getting many divergent groups together to try to reach some common goals. We are certainly proud of most of the compromises reached within it. We support S.B. 306 (R1) for providing the desperately needed clarity to a process that has been incredibly vague, which has led to extensive litigation. We also support this bill for introducing fairness and reasonableness to the process.

As Nevada mortgage lenders, our primary goal is to ensure continued access to affordable mortgage financing options for all Nevadans. The issue of super-priority liens has been a growing national topic garnering the attention of every federal lending agency and enterprise. It is imperative that we act to add clarity, certainty, and reasonableness to the process of super-priority lien foreclosure. While there will continue to be concerns about other sections of existing law, as evidenced by Mr. Pollard's testimony on the bill in the Senate and practices under that law, this bill is a great step in the right direction.

I would like to share with you a couple of the remarks from Mr. Pollard's testimony. He said Senate Bill 306 (R1) as amended "would improve elements of the current statute for parties in interest including unit owners and lenders in some of the majority of amendments to improve current law and current statute…The FHFA finds most provisions of S.B. 306 (R1) improve the situation from lenders and secondary participants in Nevada and support common interest communities." I would add to those comments that Nevada homeowners benefit by the changes made in this bill as well. Taking away someone's property that is worth hundreds of thousands of dollars is not a matter that should be taken lightly and there are quite a few consumer protections in this bill. We certainly support S.B. 306 (R1), but would like to stipulate to the Nevada Bankers Association's amendments that we are in support of those amendments as they will testify to shortly.

Silvia Villanueva, representing One Nevada Credit Union:
We would like to express our support for this bill and also thank Senator Hammond and Senator Ford for bringing this bill and supporting the underlying goal of addressing the HOA super-priority issue. We specifically support section 3 of the bill, which requires that notice be provided to the lender in the event of an HOA foreclosure. We also believe it would keep homeowners in their homes and allow us an opportunity to protect our interests.

Chairman Hansen:
We will now go to opposition testimony.

Jon Sasser, representing Legal Aid Center of Southern Nevada:
I like 90 percent of the bill, and with one amendment, I will be happy. I was very pleased and honored to serve on the interim working group with Senators Ford and Hammond, and I think they did a tremendous job. Again, I support 90 percent of what is in here. I think it is a step forward. I have two remaining concerns, and I have addressed those in a proposed amendment (Exhibit H).

The problem that is to be addressed by this bill I do not think is still addressed. In my Senate testimony, I called this the elephant in the room, which is the FHFA. Yes, they came to the table and said they supported the bill. Yes, they said it improves the situation in Nevada, but they were a long way from saying they will not continue to file lawsuits against everyone who buys one of these at a sale. I think there are 12 pending in Las Vegas right now. I think both the statement they put out last week about their intent to file such lawsuits and the testimony in the Senate when he gets to the part following what was read about his reservations indicates they will continue to do that. I think it is also clear in terms of underwriting loans in Nevada, that as long as we have a super-priority lien in Nevada that trumps the first, there is real danger in terms of people being able to get these loans in Nevada and for those to be packaged in other parts of the country. I propose an amendment basically borrowing the language of Assemblyman Gardner in Assembly Bill 359 (1st Reprint), which would make it clear that the first is not extinguished. I think for 80 percent of those people in Nevada who are looking to the FHFA to back their loans, that is the best for our real estate market and the best for Nevada homebuyers and consumers.

The second amendment is against the change in current law that puts the collection cost in the super-priority lien that is in the bill. I think one of the major problems with our current system is that collection agencies are basically able to go to HOAs and say, give us your account, it will not cost you a penny, we will get you your money back, and you do not have to worry about what we get out of it. As a result, accounts are turned over to them, they begin running up the cost very rapidly, and then this bill is some $1,400 that would be blessed to be put into the super-priority lien. Those are done very quickly in the process, and I think that putting those collection costs into the statutes encourages that practice to continue. Does it make a difference in terms of whether it is the investor or the bank that gets the money at the sale? Not to my clients. Our clients are concerned, however, because in 90 percent of the cases these do not go to sale. They are settled prior to sale, and I think in 50 percent of the cases, the homeowners respond within the first 60 days under the new 60-day letter we got in the last session. After that it is a combination of homeowners and banks stepping up to the plate. Once they fall behind, they are the ones who have to come up with this money, so I cannot support the bill as long as those collection costs are in there. That is in my amendment as well.

Samuel P. McMullen, representing Nevada Bankers Association:
I would like to explain that. We were a great part of this bill and its interaction to get it to this point. We started off by proposing a basic draft that I think in great part has made it here, but our understanding of the rules is that if we are

going to propose an amendment, we have to oppose. I want to commend Senator Ford and Senator Hammond and the interests of Senator Harris as well because I think we have made a lot of progress.

This bill will work only as far as it goes. What is going to happen in Nevada is we are going to have two types of loan structures for homeowners. One this will clearly apply to will be all private loans. There will be no government servicing entity, which is what the technical term is for the Federal Housing Administration (FHA) or other governmental lenders. The Federal Housing Finance Agency (FHFA) is now the organization that manages those in conservatorship. That is why you hear about this new set of letters, but it is all the same, so I am going to call them either government servicing or federal programs.

If you have a loan that has no federal program, no FHA loan, no Fannie Mae or Freddie Mac, or any of that, then this will still apply to those because everything will be as normal. If it has 80 percent of the loans in Nevada, be it 70 percent or higher—actually, Mr. Sasser is my source on this because he cares about exactly what is offered to people, and right now, FHA has a 3 percent package you can get. It is a wonderful thing for our borrowers in Nevada, but we want to make sure they get to it. I appreciate Senator Ford's testimony that Mr. Pollard spoke grandly to the bill, but after his testimony after the bill came out, there are two things we forwarded to you, a statement last week from the FHFA (Exhibit I) and then also the December 22 statement they have given (Exhibit J), he indicated that they—and he was consistent in this—still have serious concerns about the extinguishment of any federal loan. They will not countenance it, they will fire on it in court, and they have.

The last paragraph of the December 22 statement (Exhibit J) says that they will "aggressively" protect themselves "by bringing actions to void foreclosures that purport to extinguish Enterprise property interests in a manner that contravenes federal law." We are going to have a lot of litigation. What is in front of you is a hybrid system where we are going to have two types of loans with different rights that bankers are going to have to try and figure out. Even if there is a first that is a federal loan, there is probably going to be a private second. How do those interests juxtapose themselves? The interesting decision you have is whether or not you are going treat all loans the same in Nevada. The FHFA is very aggressively sending out the notice to all of us that they do not like the right of extinguishment in Nevada law. I think you are going to have to deal with whether there are going to be two types of loans and whether you are going to subject people to this kind of lawmaking by litigation.

What we do not want to do is to finish this session and then find out we did it wrong. The people who will be affected are going to be your constituents, and they are going to be the people who are relying on the ability to get an FHA loan or secondarily, which is equally important to banks and to unit owners, is that a bank will issue a loan, but then they will package the loan up and give it over to the federal agencies and if they do not take it, then all of a sudden our capital is limited for additional loans. There are a lot of implications here and this is a very hard issue for you. Again, we are fine with S.B. 306 (R1) to the extent it operates, and we think it will on a component of these. But the issue is going to be, if the first does not extinguish and the second does, how does that lender protect itself? This goes so far, but you still have a lot of other issues.

In the interest of time, I submitted an amendment that is basically about 90 percent of what I submitted to the Senate committee, but we were too late for it to be considered. We told them we would bring it over here. It may be that you delegate one of your individuals on the Committee to work with all of us about those. There is a lot of agreement in those. You will see in the amendment that I have noted the agreement of the mortgage lenders, the Realtors, and the credit unions. We do not presume to speak for the Community Associations Institute, but I think there are significant portions of those amendments that are okay with those. They are cleanup in some ways, but I do not want to take the time to go through that amendment today and I do not think you want me to either. [Samuel McMullen submitted a proposed amendment (Exhibit K).]

Chairman Hansen:
We will be working on it. We are definitely interested in the amendments, and know that the Senators were encouraging us to look into it. It is not often that I see Mr. Sasser and the bankers on the same page.

Assemblyman Elliot T. Anderson:
You talked about the costs of collection being in the super-priority lien. If we are going to write the cost of collections into the super-priority lien, would it not be good to get a handle on those and have some certainty of what the cost collections are? I believe the bill would anticipate being referred to regulation from the Commission on Common-Interest Communities and Condominium Hotels. Why is extinguishment still needed for the HOAs? I feel there was a time when the world was rocked by the foreclosure crisis and this law that was first drafted in 1991 had really never been used. We had never really seen it being used. It was priority in proceeds for a long time. Do you think—speaking for the Nevada Bankers Association—that you have your act

together now and you have some clarity about mortgage finance and all the different foreclosure happenstances that have been going on in our market? Is this really an issue where the bank is not up there protecting its interests now? Do we need to extinguish your right if you miss one?

Samuel McMullen:
We started on this process of trying to find an alternative but we knew full well that somewhere in this session the issue of the federal loans and their extinguishment was going to have to be addressed. In our opinion, for you that issue is only addressed by a statement of such significant comfort that loans will still be issued, loans will still be packaged, and litigation will not occur on those loans. Unless you have that level of comfort—which does not exist today—you also have to solve this problem. One of the things I want to say is that this really was a function of the depressed economic circumstances that we had over the last few years. Homeowners' association foreclosures are a relatively new phenomenon and the utilization of the super priority for a $6,000 sale to void $800,000 worth of loans is a business and commercial anomaly. Almost every legislator I have talked to thinks that is very unfair.

I believe that after the Assembly Committee on Government Affairs hearing tomorrow afternoon, we will probably agree to support Mr. Sasser's amendment (Exhibit H). What will still happen under NRS 116.3116 is that the level of priority for the HOA amounts that are due will still be higher than a second on the property, although Mr. Sasser's amendment would also change it. They would still have the right to foreclose; they just would not have the right to foreclose in a super-priority way with the extinguished measure loans on the property. They would have a definite super priority as to payment under Mr. Sasser's amendment, so they would be the first to get their money.

Chairman Hansen:
Mr. McMullen, we are way beyond Mr. Anderson's question. Mr. Anderson, if that did not fully satisfy your question, please meet with Mr. McMullen or Mr. Sasser afterwards.

Assemblyman Nelson:
It seems to me that what we are going to have to do is take what Assemblyman Gardner has proposed in Assembly Bill 359 (R1) and possibly find a way to compromise or to incorporate it into S.B. 306 (R1). The concern I have is that number 20 on your proposed amendment (Exhibit K), you want to put back into the bill "commercially reasonable transactions." The problem I have with that is that it eviscerates any possibility of finality, and we are

trying to get finality. If you put that back in there, it is just rife for litigation, is it not? If the banks are getting their right of redemption, do you really need that commercially reasonable transactions part in there?

Samuel McMullen:
It is an important piece, not just to us but to the mortgage lenders. I understand your point. I think finality is a very important point. The issue is driven by the fact—which is not necessarily totally correct if it were up to market value prices on these sales. I know that was testified to, but we are still at a different market level. I think the issue is trying to make sure that people get their money. One of the things I think is very important and is being missed—even by the HOAs, who are telling us that they do not really care what happens to the unit owner or the unit owner's loans and they are maximizing those payments. They just want their payments. Basically, what we are trying to do, "commercially reasonable," in one of its greatest parts, is about process, but the more important part is about price and making sure that the value is there. That value actually protects the unit owner by maximizing the money coming towards paying off their debts. If we extinguish them all, wonderful. But if we do not, they are still on the hook for a number—that is a very important point for unit owners. We will be happy to work with you, but we dumbed it down, so to speak, to just make the law "commercially reasonable transactions," which should govern anyway.

Assemblyman Nelson:
Who is going to determine that? The court?

Chairman Hansen:
You will need to take that one up after the hearing as we are up against the clock right now. We are going to go to the neutral position at this time.

George E. Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry:
I am here in the neutral position to state that although we are generally neutral with regard to S.B. 306 (R1), we have some questions and concerns regarding Amendment 442's addition of section 8.5 that prescribes an unfunded mandate for the Financial Institutions Division to establish, maintain, and publish on its website a listing of all financial institutions that are the mortgagee or beneficiary of the deed of trust under certain residential mortgage loans. Our questions are regarding the definitional intent of section 8.5 as it amends NRS Chapter 657, which is the Division of Financial Institution's general provision statute. We understand the intent of this section is to provide borrowers and unit owners in associations with a single point of contact. However, the problem

we run into is that the statutory definition of a financial institution under NRS Chapter 657 is that it is a depository institution, which only includes those institutions that accept deposits, such as banks, credit unions, and thrifts. There are approximately 61 state and federal depository institutions that operate in Nevada. There are approximately 450,000 residential real estate mortgage loans in Nevada, according to the Mortgage Bankers Association's National Delinquency Survey 2014 fourth quarter report. There is not going to be an easy way to determine what percentage of those 450,000 loans are held by depository institutions, what percentage of them are held by the expanding nondepository mortgage industries and their companies such as Quicken Loans or LendingTree, or what percentage of mortgage loans are held by the federal agencies such as Fannie Mae, Freddie Mac, FHA, and the U.S. Department of Housing and Urban Development. If the definitional intent of section 8.5 is to provide borrowers and HOAs with a point of contact for entities that may hold a Nevada residential real estate loan, then perhaps the use of a term other than financial institution is necessary to accomplish that intent.

Our concerns are regarding the regulatory authority to administer the process of gathering the information required by section 8.5 and updating that information over time, posting it to the Division website, et cetera. We respectfully request—and I have been in contact with the sponsors of the bill—in order to accomplish these technical logistics, that section 8.5 contain language similar to that in other statutes the Division is responsible for, such as information required by this section to be submitted shall be done in a manner of forms prescribed by the Commissioner of the Division of Financial Institutions.

I thank you for your time and consideration of our questions and concerns. I know they tend to be small and technical with regard to all the other issues that you are contending with in this bill; however, it will have a major impact on the Financial Institutions Division, depending on how massive this list ends up being.

Chairman Hansen:
If you would like to submit those to anyone who is on this Committee, I would definitely be interested in looking at those for purposes of an amendment.

Marilyn Brainard, Private Citizen, Sparks, Nevada:
As Senator Ford and Senator Hammond have shared, we have heard that S.B. 306 (R1) is the product of a protracted study group that came together with the understanding that no one person's interest was going to rise above another's. From my viewpoint as a homeowner, we do not hear as much from that aspect of this problem. Some detractors are concerned that permitting an association to preserve its interests by taking the extreme step of foreclosing

when all other remedies have not achieved the goal of collecting assessments owing it will create havoc in the housing market. In particular, input from one federal agency which has been mentioned today—the Federal Housing Finance Agency, which oversees Fannie Mae, Freddie Mac, and the Federal Home Loan Bank system, which does not oversee FHA, by the way—to stop securing mortgage loans in our state or, as it threatened in some other states, to raise mortgage fees. However, very recent history belies the claim made during testimony in this session by Mr. Pollard.

In April of this year, FHFA completed a year-long review of pricing for the government-sponsored enterprises (GSE) mortgage guarantee fee structure, and FHFA refused to allow the GSEs to charge higher fees in states with statutes that delay foreclosure. Fannie Mae and Freddie Mac, the enterprises or GSEs, mortgage servicers have ignored contractual obligations to preserve GSE collateral in community associations. Mr. Pollard's statement in its entirety was not vetted by the Office of Management and Budget or the Obama Administration. Accordingly, the statement does not represent the view of the federal government or the Obama Administration. The Legislature here must consider the long-term impact on homeowners and associations if the only effective remedy to correct servicer negligence is weakened or otherwise impaired. [Read from written testimony (Exhibit L).]

In 2014, Fannie Mae reported acquiring 19,094 mortgages in Nevada. While this volume does not represent a considerable percentage of Fannie's total book of business, it is unlikely the enterprise will exit the state and cease to purchase or guarantee mortgages for up to 19,000 homeowners. The FHFA's outsized influence—which we certainly heard about today—in housing policy is temporary, and much of its extraordinary authorities will expire when its conservatorship of Fannie Mae and Freddie Mac ends. Nevada lawmakers should resist sweeping, long-term changes to Nevada statutes under threat from an agency that is exercising temporary authorities.

Please be sure when you are looking at all the amendments being presented today to remember we need to achieve the goal of fairness to all affected parties, not just to one. Please do not forget the more than 3,000 common-interest associations in this state and, in particular, their one million residents, who deserve no less. Thank you for the opportunity to make a statement. [Marilyn Brainard submitted prepared testimony (Exhibit L).]

Garrett Gordon, representing Community Associations Institute and Southern Highlands Community Association:
We are in the neutral position, respecting the process that has occurred since September. I will make five points, and I look forward to working through these amendments with any subcommittee.

Regarding the amendments by the Nevada Bankers Association, I appreciate they included many of the Community Associations Institute's suggestions with little clarifications like business days and calendar days. I object strenuously to "commercially reasonable transactions." Assemblyman Nelson hit it on the head. We are going to be in litigation determining whether or not our sales are commercially reasonable. On confirmation of receipt, as Senator Becky Harris confirmed about her practice as did Senator Segerblom on the record, they are in litigation with banks all the time and never get any confirmation of receipt with anything they send, so we would object to amendments 5, 6, 17, and 20.

We strenuously object to Mr. Sasser's proposed amendment. I would say that is new. We all came to the table with our respective clients and our respective issues. I would also say that all substantive issues have been resolved including collection costs coming in at a discounted rate in exchange for redemption, in exchange for more notice. It is a huge collaboration, so I respectfully ask you to reject any big substantive amendment like Mr. Sasser's or the bankers' that changes the hard work that we have done with the sponsors over the last six months but maybe for some additional clarifications in the amendment.

Chairman Hansen:
Is there anyone else who would like to testify in the neutral position on this bill? [There was no one.]

Senator Hammond:
I understand, and I want the Committee to understand, there has been a lot of work on this. Those who came up in support, opposition, and neutral all have had a say in what the process was. Having heard Mr. McMullen, in submitting several amendments, one would get the impression that he was not part of the process at some point, and that is far from the truth. We had consensus from a lot of different stakeholders and Senator Ford listed those stakeholders. What you have before you is a consensus of what most of them brought to the table. We had agreements on major items.

I would also submit for the record that Mr. Pollard came all the way from Washington, D.C., to testify at the hearing. I would submit that what the Senator said as his understanding of support is true, and the way I understand it as well. If you were to say that this bill is not necessary, I think nothing would

be further from the truth. I think this bill is necessary. It does move the law forward, it clarifies a lot of things, and he was very satisfied with the process as far as the way lending would go. I cannot speak for the FHFA, but I am telling you that is the impression we all received when he came out here and spoke to us. He was also there when several of these amendments were brought to the table and he objected to several of them. During the testimony, he would lean over and tell us that he thought that it might muddle the issue.

As to Assemblyman Nelson's question, we thought that when you talk about commercial reasonableness, the idea of a process being put into place that allowed for a light to be shone on that process was more important than anything else—to make sure that everyone was noticed, and told where the next sale would take place. We put all those provisions into S.B. 306 (R1) to help raise the commercial reasonableness price up to what it should be, as long as you have enough participation in it. It is not necessarily what the outcome should be, and I think that will take care of the litigation. I do not want to go into litigation either, so I think that process is really important.

Sometimes in listening to Mr. McMullen, I am confused. He was at the table more often than anyone else. He was there, participated, and accepted a lot of what was going on. I am glad he was not there when I was deciding whether or not to get married because one day he would have said yes, get married, and then the next day there would have been 15 amendments on why I should not get married. That would have been very confusing to me.

Senator Ford:
In law school I took a class called Legislation, and one of the things the professor taught us was that you do not have to try to solve every single problem with one piece of legislation. What we are trying to solve is a notice of specificity issue and we have done that. We have ensured that notice is given to people who are interest holders on a home that is about to be foreclosed on and the super-priority lien process. We have provided the specificity in that notice, which was lacking according to the people who were complaining about it.

We have provided something that I was adamantly opposed to—redemption opportunities. If the notion is to try to avoid foreclosure, you should not have redemption opportunities on the back side to where all you have to do is wait anyway, but you have that opportunity as well. What you have here is an opportunity for us to move the ball forward on an issue that is important. There are other issues that are outstanding. Everyone always wants more. You have seen amendment after amendment after amendment from people who want more. This bill is limited in the sense that it wants to address the notice of

specificity requirements that must be undertaken when you deal with a super-priority lien issue. I think what you have seen is a quintessential example of compromise legislation. I am satisfied with the bill as it currently exists. I will have to leave the questions related to section 3.5 to Senator Harris. The ones as they relate to what the Commissioner indicated, we will be happy to work with him in that regard.

The final point that I will make is something that Senator Hammond has already stated. The FHFA has their position. There is no question about it. They are going to litigate and argue as they have their right to do. I cannot operate on a contingency that they will or will not. Mr. Pollard, by the way, has the authority to come up and say whether they would or would not continue to give loans if this bill would have passed. He was here to say that this bill provided the notice, the specificity, and the redemption provisions that would be satisfactory to them and, therefore, he could approve it. Ultimately, what we are asking for is approval of this particular bill. If they want to address other issues that are not addressed here, they have other vehicles that they have referenced—Assemblyman Gardner's bill, for example—and other vehicles that they can look at in that regard.

Chairman Hansen:
We will close the hearing on S.B. 306 (R1) and open it up for public comment.

Lorne Malkiewich, representing Expedia:
I learned that a bill I discussed with you—and I think I told many of you—had no fiscal impacts. We have since heard that the Office of the State Treasurer has reconsidered this and now believes there is a fiscal note. I want to assure the members of the Committee that the amendment would not have been put into the bill in the Senate had we not been assured there was no fiscal note. As of the minute I walked up to the witness stand, that was my belief. We will work with the Treasurer to try to resolve this issue. I still do not understand how an amount owing between two businesses with an ongoing relationship is subject to unclaimed property laws, but we will work with the Treasurer and try to resolve that issue.

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
I would like to clarify some points that Chairman Hansen made in regard to Assembly Bill 233 (1st Reprint) when he introduced it and some items he admitted he knew nothing about. The Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels cannot help owners if it is a dispute concerning their covenants, conditions, and restrictions (CC&R).

The Ombudsman can only deal with violations of Chapter 116 of the *Nevada Revised Statutes* (NRS). That is what the law says. The wait time for resolution by or help from the Ombudsman can be months or years, if ever. If you want the Legislature to be relieved of dealing with homeowners' association (HOA) bills, then untie the hands of the Ombudsman. Let her deal with owner-board disputes which currently make up the bulk of the bills before you. The Ombudsman can only deal with NRS Chapter 116 issues. That is what the Legislature put into NRS Chapter 116. The Office of the Ombudsman needs to be fixed by the Legislature.

As regarding the Commission for Common-Interest Communities and Condominium Hotels, it is made up of a majority of HOA industry people who do what is best for their industry. It does not deal with owner-board disputes. In my opinion, this Commission is corrupt by having violated state law. All the Commissioners were told was that adopting an advisory opinion was prohibited by state law. *Nevada Revised Statutes* 116.623 does not allow the Commission to do this. This can be found in the minutes of the Commission meeting in May and again in December 2010.

When I was a Commissioner, in December 2013, I asked the Attorney General for a decision on this matter. In a letter dated February 14, 2014, Chief Deputy Attorney General Gina Session stated that the Commission exceeded its authority and violated NRS 116.623. What the Commission did here was cost taxpayers millions of dollars. The Commission has limited authority. It can only adjudicate violations of NRS Chapter 116, write regulations, and approve educational courses. That is it.

Tyrannical boards can make up any oppressive rules they want in addition to the CC&Rs. If you violate them, you get fined. When owners seek relief, they can only find it here with you. That is why you wind up with trashcan statutes, political signage regulations, flag regulations, and anti-retaliation laws just to name a few of what Chairman Hansen spoke about on April 2, 2015. These are not frivolous matters when fines are involved. People want to live their lives without interference from overzealous and petty board members. That is why you get all these bills in the Legislature. You must understand that HOA boards have powers over owners including fining them, and fine them $100 a week they do. The Legislature can prevent this by giving the homeowners the protection they need.

Chairman Hansen:
If you have any amendments on Assembly Bill 233 (1st Reprint), I am ready to listen. You know where I want to go with it.

Jonathan Friedrich:
Actually, if you leave that bill alone, I would love it; just get the Attorney General to take care of the Office of the Ombudsman.

Chairman Hansen:
All you have to do is talk to them and get them on board.

Jonathan Friedrich:
I am in the process of doing that.

Chairman Hansen:
Is there any further business for the Committee at this time? [There was none.] This meeting is adjourned [at 11:25 a.m.].

RESPECTFULLY SUBMITTED:

_____
Linda Whimple
Committee Secretary

APPROVED BY:

_____
Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Judiciary

Date: April 28, 2015 **Time of Meeting: 7:59 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 389	C	Mandy S. Shavinsky, representing the Common Interest Community Committee, Real Property Section, State Bar of Nevada	Memorandum
S.B. 260 (R1)	D	Senator Becky Harris	Document
S.B. 260 (R1)	E	Jennifer Gaynor, representing Nevada Credit Union League	Memorandum
S.B. 174 (R1)	F	Senator Scott Hammond	Memorandum from Common Interest Community Committee, Real Property Section, State Bar of Nevada
S.B. 306 (R1)	G	Jennifer Gaynor, representing Nevada Credit Union League	Testimony
S.B. 306 (R1)	H	Jon Sasser, representing Legal Aid Center of Southern Nevada	Proposed Amendment
S.B. 306 (R1)	I	Samuel P. McMullen, representing Nevada Bankers Association	"Statement on HOA Super-Priority Lien Foreclosures, 4/21/15"
S.B. 306 (R1)	J	Samuel P. McMullen, representing Nevada Bankers Association	"Statement of the Federal Housing Finance Agency on Super-Priority Liens, 12/22/14"
S.B. 306 (R1)	K	Samuel P. McMullen, representing Nevada Bankers Association	Proposed Amendment
S.B. 306 (R1)	L	Marilyn Brainard, Private Citizen, Sparks, Nevada	Testimony

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Eighth Session
April 2, 2015

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Thursday, April 2, 2015, in Room 3138 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/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman David M. Gardner
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Glenn Trowbridge

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Lynn D. Stewart, Assembly District No. 22

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Lenore Carfora-Nye, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

A.J. Delap, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
John T. Jones, Jr., representing Nevada District Attorneys Association
Cindy Brown, Private Citizen, Las Vegas, Nevada
Mona Lisa Samuelson, Private Citizen, Las Vegas, Nevada
Vicki Higgins, Private Citizen, Las Vegas, Nevada
Tracy Birch, Executive Director, Criminalistics Bureau, Las Vegas Metropolitan Police Department
Steve Yeager, representing Clark County Public Defender's Office
Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office
Robert Robey, Private Citizen, Las Vegas, Nevada
Michael E. Buckley, Real Property Law Section, State Bar of Nevada
Garrett Gordon, representing Community Associations Institute
Gayle Kern, representing Community Associations Institute
Jonathan Friedrich, representing Nevada Homeowner Alliance
Adrina Ramos-King, representing City of Las Vegas
Mark Leon, Private Citizen, Las Vegas, Nevada

Chairman Hansen:
[The roll was called and committee protocol was explained.] We only have three bills on the agenda, but Assembly Bill 397 was pulled on the request of the sponsor. We are very close to the deadline. Therefore, anyone who pulls bills and expects to have a future hearing runs a high risk of not having a hearing on that bill at all. The deadline is next Friday, and we are trying to accommodate as many people as possible. We have two bills to hear, and we are going to start with Assembly Bill 371.

Assembly Bill 371: Revises provisions governing the destruction of certain physical evidence. (BDR 4-734)

Assemblyman Lynn D. Stewart, representing Assembly District No. 22:
I am here before the Judiciary Committee to present Assembly Bill 371. I come with a problem, but I also come with a solution. The Las Vegas Metropolitan

Police Department (LVMPD) is suffering from large amounts of stored marijuana which is currently being held in their evidence vaults. The vast majority of the marijuana serves no evidentiary purpose. The bill provides a remedy to this problem, which is that it provides for the proper documentation of evidence as well as the lawful avenue for the safe destruction of the marijuana. A.J. Delap from the LVMPD is here with me today. He will go over the details of the bill.

A.J. Delap, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:

Also in attendance in Las Vegas is our Executive Director for the Criminalistics Bureau, Tracy Birch. She will provide technical support. She is the one that oversees this type of evidence. Essentially, the mechanisms for the destruction of marijuana are languorous. It involves having a defense attorney, the prosecutor, and court hearings involved in order to destroy evidence. There is a huge amount of marijuana being impounded which is usually through grows. A grow is where the suspect is cultivating large amounts of marijuana plants, often indoors. It could incorporate as many as 500 plants. That is far and above what is required to prosecute. As a consequence, our detectives are impounding these large amounts of marijuana which are often in the grow stages. It is very wet and will need to dry out. That causes problems for our evidence vault. The detectives conduct their investigation, serve search warrants, impound the marijuana, and box it up into what could potentially be hundreds of boxes. They take it down to the evidence vault where it has to be stored properly. The reason why it has to be stored properly is because if you do not store it properly and allow it to dry out, there is a potential for hazardous mold spores to begin to permeate the material.

In order for us to combat the permeation, we have quite a large amount of equipment and space dedicated to this process in our evidence vault. We have what is called a high density storage unit. We have provided some pictures of the vault and equipment (Exhibit C). It is a big machine and stands about 23 feet high. It holds around 250 boxes and costs about $100,000. The marijuana is processed through it and it expedites the drying process. Unfortunately, this machine can be filled up with one grow house. That is a problem because in the last four or five years, our agency is averaging about 100 grows per year. Some of those grows are quite substantial in size. As many as 150 to 200 boxes can come out of one grow. I think I have described the problem, but I would like to say something about the odor. If you have ever had the opportunity to go into our evidence vault to recover property for which you were a victim of loss, you can smell the marijuana before you even get in the front doors. It is an issue, and it is a safety hazard.

This measure will remove the processes that delay the destruction of the marijuana beyond the amount necessary to prosecute. If you look at section 1, subsection 1 of the bill, we have added language that addresses the destruction of the marijuana. We will agree to keep ten pounds of it, which is about two boxes. The boxes are the same ones as reflected in the pictures that we provided (Exhibit C). You will also notice that each box has to be perforated in order to facilitate the drying process. The marijuana will be sampled five different times throughout the total impound. That sample will be documented through pictures and other methods of displaying the amount. We will submit that information to the court to make it part of the criminal complaint process. We will then be able to dispose of the excess marijuana, while retaining only ten pounds.

We have had conversations with the Clark County Public Defender's Office. We are suggesting an amendment in the spirit of compromise. We are only addressing marijuana here. We are not addressing any other controlled substances such as methamphetamines, heroine, or cocaine. Our issue is only with the marijuana. I think we have a verbal agreement, and we will write up the amendment. I think I have painted a picture of what the problem is and the remedy that we are suggesting. I would be happy to answer any questions.

Assemblyman Elliot T. Anderson:
In this bill, there is some crossed out language which talks about weighing the marijuana before it is destroyed. Is there any way that can be retained in the language to ensure they will have a chance to inspect it before it is destroyed?

A.J. Delap:
I appreciate the question but, honestly, that is one of the big holdups. That was part of the conversations that we have had with the Public Defender's Office because they have expressed similar concerns. It is my understanding that what this bill presents is acceptable to them. They are at peace with how we are going to document the evidence.

Assemblywoman Fiore:
Thank you for bringing this bill forth. Is there anything you can use the product for instead of just destroying it? Is there any secondary use for the marijuana plants?

A.J. Delap:
That question was posed to us and one that we contemplated. We can prove it is marijuana but there are many different ways of growing this type of material. There are genetic changes or soil changes that could have occurred. Therefore, we do not have a way of vetting out what this material has been exposed to,

how it has been grown, or what its potential side effects are. As far as our agency is concerned, we would not feel comfortable doing anything other than destroying it through incineration. At this point, we would not be comfortable trying to divert the marijuana for any other use.

Chairman Hansen:
Is there anyone who would like to testify in favor of A.B. 371 at this time?

John T. Jones, Jr., representing Nevada District Attorneys Association:
We are here in support of A.B. 371 for the same reasons articulated by Assemblyman Stewart and LVMPD. We have no objections as long as it is limited to just marijuana.

Chairman Hansen:
We will move to the opposition testimony. Is there anyone who would like to testify in opposition to A.B. 371?

Cindy Brown, Private Citizen, Las Vegas, Nevada:
I am a patient advocate. With reference to section 1, subsection 1, I am wondering how you think that allowing someone to destroy marijuana over ten pounds, without prior approval of the District Court, is even close to justice. The section goes on to say that the person may not even be charged or convicted, but allows for the owner to file a claim for reimbursement. What is happening to our justice system? This is not right nor is it justice. If you are going to take the marijuana, at least hold it until the person is convicted. If convicted, give it to the legal dispensaries to use for medicine for the poor. It can be used; it is not poison. If the smell of storing it bothers you, get some smell-proof bags which will solve your problem.

Mona Lisa Samuelson, Private Citizen, Las Vegas, Nevada:
I am a 25-year resident of Nevada with 15 years here in Las Vegas and 10 years in Reno. I am here as a proud medical marijuana patient to voice my opinion that this is a scary situation for us. It becomes easy for law enforcement to have their way with us and hurt us. If they get rid of everything but ten pounds, that is still not enough product for someone for even a year. You can be hurting a lot of people who are not physically able to grow.

Secondly, I would like to respectfully remind you that you have enforced laboratories to test a product. That makes it viable to take your confiscated marijuana and have it tested. It can then be given to the community, and used by those who cannot afford the dispensary prices. Please keep in mind that we do have laboratories.

Vicki Higgins, Private Citizen, Las Vegas, Nevada:
I am a medical cannabis advocate and a business owner. We own a cultivation center. In section 1, subsection 7, you talk about a dangerous drug or hazardous waste. I think we have established that this is not a dangerous drug. The controlled substance definition in here is unclear. The state of Nevada, and the patients of Nevada, have indicated that this is a medicine. We are working on changing this from being a terrible thing like plutonium. As a cultivation center, we may produce a lot more.

Until the proceeding is complete and the charges are filed, I believe this is a terrible thing and it goes against our rights. We plan on producing more than ten pounds at a time. Should we run into conflict, or a police officer who is not trained about the situation, mass amounts of our profit could be destroyed and that would set us back terribly. Regarding the home growers, there are growers that grow once or twice a year, so they have large amounts on hand. I do not see ten pounds being an issue for the home grower. I see this from a business point of view.

I agree with Cindy, Mona, and Assemblywoman Fiore. If you decide to take our profits before the court decides that we have violated the law, this extra medicine can be tested and sent to our poor. The state has made it very difficult for us to donate, as a business community, to the poor of this state. As advocates, we helped to create this law. We helped to create the regulations. The biggest point in doing this was to help out the patients in some way, shape, or form. I see this as a possibility to help the patients, but I also see this as a bad thing against our business community. I thank you for your time and consideration. Please do the research. It is not hazardous or a controlled substance. It can be tested and it is very safe.

Assemblywoman Fiore:
Thank you, ladies. I want to make sure that I understand correctly. I am not sure that the product would be destroyed until there is a conviction. In this legislative session, we are working on several forfeiture bills. Are you under the impression that the product that had been confiscated would be destroyed prior to conviction?

Vicki Higgins:
In section, 1 subsection 1, it says "...without the prior approval of the district court in the county in which the defendant is charged...." I am a layman so bear with me, but the way I understand it is that the police department or the arresting group would be in charge of that individual decision. The way I understand it, they do not want to store more than ten pounds for any length of time. We object to this. It should all be held and taken care of. It is bad

enough that the law does not require them to maintain our plants. Should we get arrested or have problems in our cultivation center, all of our plants are uncared for.

Assemblywoman Fiore:
I do understand that point. I do have one more question because I consider you ladies the product experts. Let us say language gets strong enough to where the product could either get destroyed or dispensed after conviction. Is there a secondary use for the product that is confiscated? Can you give me a few examples of what could happen?

Cindy Brown:
There are numerous uses. The state implemented lab testing. Anything that would pass the testing could be used for a number of things such as oils to cure cancers, oils to cure arthritis, lotions, or pain relief. There are a myriad of uses. Just because it was obtained by an illegal grower does not mean it is bad. To clarify, the bill clearly says the person may not even be charged or convicted before they will destroy it. They will destroy it right then and there, if they want to. Generally, they will take it down to the storage unit and then destroy it. According to what this bill says, they can destroy it immediately. I posted it on Facebook last night. The lawyers on my Facebook feed all agree.

Assemblywoman Seaman:
First of all, I do not know if I would want LVMPD to be in the marijuana business. Do you think this may put an unwarranted liability on LVMPD if they have the responsibility of who it goes to and where it goes?

Vicki Higgins:
I feel that this medicine would be lab tested. If you need to maintain ten pounds on site for the case, this could be a state agency, or a specific lab, or a dispensary doing the testing. There have been many committees set up. I agree that the LVMPD should not have that responsibility, but we could put something in place for after the proceedings. If there is excess for medicine, it can be distributed in some formal way.

Assemblywoman Seaman:
I think you are asking LVMPD to now be in the marijuana business.

Vicki Higgins:
No, we only ask that they provide the additional amount to a qualified distributor to be distributed to people financially in need.

Assemblyman Ohrenschall:
What if the bill was amended so that the person whose plants were confiscated had a legal right to have them returned, regardless of the weight. Would that address your concerns?

Tracy Birch, Executive Director, Criminalistics Bureau, Las Vegas Metropolitan Police Department:
I would like to address some of the concerns that have been discussed here today. I oversee the evidence vault for LVMPD. The vault is not temperature controlled. We do have issues with storing the large amounts of marijuana we have impounded from grow operations. At the time of confiscation, the material is damp. We take all kinds of precautions to ensure the material is dried out by using ventilation in the boxes. However, we cannot guarantee that there is no possibility of mold growing on the marijuana over time because we do not have a temperature-controlled environment. There is a class of mold called aspergillus which can have some health hazards related to pulmonary or asthma-like conditions. That is one of the reasons why we do not want to store it long term. This bill would decrease the amount of marijuana that is stored in our facility. It is not intended for legal growers but is intended for illegal growers of marijuana. I do not believe that there is any quality control over those illegal growers and what they use to grow their product. This would substantially decrease the amount of marijuana that is stored at the evidence vault. Therefore, returning the marijuana or donating it for medical marijuana use is very problematic for my department.

Assemblyman Trowbridge:
My comments are probably more for the sponsor of the bill. I think we have conflicted thinking going on here. I say conflicted thinking because it is a little bit like the situation where you have a legal Jack Daniels distillery and an illegal moonshiner. The one has a product that is illegal, like what this bill is addressing, and we are destroying the illegal product. In the case of the Jack Daniels distillery, if they are in violation of some law such as not paying taxes, can you imagine what would happen if the local law enforcement agencies destroyed all of the product? The charge is totally unrelated to the legality of the product. I think maybe the bill can be amended with just a couple of words to address the Public Defender's concerns. Maybe it can say a product of a legal grow house would be treated differently than one confiscated from an illegal operation.

My second thought is regarding the aromas associated with the marijuana. The reason it starts to smell is because it is decaying. It is like a compost pile. Compost piles can catch on fire or grow mold, et cetera. The necessity to get rid of the product that has roots, stems, bugs, and more is justified.

The oddball circumstance is where it might involve the illegal grower versus the legal grower and probably needs to be thought through.

Assemblyman Nelson:
Reading through the bill, the strikeouts show what the state of the law currently is and the current process. Other than that, is there any law against destroying evidence or culling evidence? Is there a general policy, aside from *Nevada Revised Statutes* (NRS) 52.395, which would preclude LVMPD from getting rid of evidence?

Tracy Birch:
Our department follows all of the statutes that require procedures for destroying evidence. There are no other statutes that apply to drug evidence except for this one. There are statutes that apply to other property that we store. There is a statute that applies to stolen and embezzled property. There is a procedure in place for destroying or disposing of that property. Otherwise, we follow in-house procedures through the police department.

Assemblyman Nelson:
Without this bill, you just keep the evidence until a case has been decided?

Tracy Birch:
Yes, that is true.

Assemblywoman Fiore:
My biggest concern is as we look at legislation like this, we are looking at a very slippery slope. Once we start setting precedence that we can destroy evidence before a conviction, who is to say we will not do it for other reasons. How much are you currently storing that is becoming an issue?

Tracy Birch:
Within the last seven years, we have stored 3,939 pounds of marijuana.

Assemblywoman Fiore:
How much do you have today in storage?

Tracy Birch:
I do not have those figures, but we have impounded 216 boxes in the last three months. It totals about 1,000 pounds. It has been a very busy quarter for us in the evidence vault. Currently, we keep the evidence over a period of time until there is a conviction. This law would change that. We have so much of it, and our storage capability is not adequate. As you can see in the pictures provided of the high density storage (Exhibit C), it can be filled with one illegal

grow. The storage unit only stores about 225 to 250 boxes. Because of Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA) standards, it has to be separate from all other property and has to be secured in a cage. We are running out of space to do that. We also have safety concerns for our employees and visitors to the vault.

Chairman Hansen:
I see no further questions. I would like to thank all of you for your testimonies. Ms. Birch, are you a detective there at LVMPD?

Tracy Birch:
I am actually the Executive Director of the Criminalistics Bureau. I oversee the evidence vault, the forensic lab, and the crime scene investigation unit. I have 31 years of experience in the department and started out as a forensic chemist in the lab.

Chairman Hansen:
Thank you very much for your testimony this morning. Is there anyone else who would like to testify in opposition to this bill?

Vicki Higgins:
I just wanted to point out that I understand the police department's complications. I agree that if we define this for business and legal establishments, separate from the illegal users, it would help.

Chairman Hansen:
Is there anyone who would like to testify in the neutral position?

Steve Yeager, representing Clark County Public Defender's Office:
We are officially neutral on the bill. We had some concerns about how the bill was initially drafted, particularly in regard to controlled substances other than marijuana. I want to thank the bill's sponsor and LVMPD for working with us on our concerns. It is our understanding the amendment will only apply to more than ten pounds of marijuana. We certainly understand the space issue and the health issue.

To raise one point that may alleviate some concerns, section 1, subsection 4 says, if it is determined that it is not a controlled substance, the claimant can bring a civil suit. We are in a little bit of a gray area with marijuana because under state and federal law, marijuana is a controlled substance. There is some wiggle room there because how do we classify medical marijuana? Medical marijuana is really just marijuana. The difference is you have authorization to use it. In the scenario where marijuana is seized from someone and it is later

determined that they were lawfully in possession of it, perhaps this provision would come into play. Although, realistically, an individual should never have more than ten pounds of marijuana. We would really be talking about grow houses, if and when dispensaries are up and running in Nevada.

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:
We are officially neutral on this bill. We appreciate working with LVMPD, specifically A.J. Delap, for removing the language referring to one pound of other substances. When you talk about destruction of evidence, in any form, it raises the public defender's hackles. We are willing to work with LVMPD because I understand the biohazard argument and the need to destroy this material for a number of reasons. I also understand the difference between lawful, medicinal marijuana versus an illicit substance. I am still willing to work with LVMPD to craft some language to distinguish lawful medicinal types of marijuana versus the illicit type. I am happy to answer any questions.

Chairman Hansen:
It seems to me that this is more of a storage argument. I do not see them intentionally destroying evidence in order to prosecute someone. The absence of the evidence would actually hurt their cause rather than help it. If someone gets accused of rustling a herd of cattle, they do not have to keep all of the cows. When you have 250 boxes of this stuff sitting there, it seems a little excessive.

Sean B. Sullivan:
When I originally reviewed this bill, I thought about other cases. Ms. Birch discussed earlier storage of other types of property, such as a store that is basically allowed to put the recovered, stolen property back on the shelf and sell it despite the fact that adjudication has not been fully conducted. They do have to go through steps and procedures pursuant to statutes to ensure that it was photographed, properly examined, and the amount in question was properly documented. If it was a perishable item, obviously it would have to be destroyed. There are measures and procedures in place to ensure that the police are not just destroying the evidence pending adjudication of a case. The spirit and intent of this bill is accomplishing that, specifically section 1, subsections 2 and 3. I think that LVMPD is going to great lengths to ensure it is properly weighed, measured, photographed, and the affidavit filed with the court.

Chairman Hansen:
I am sure the bill's sponsor will be happy to work with you for any last minute amendments, if necessary. Is there anyone else who would like to testify in the

neutral position? Seeing no one, Mr. Stewart, would you like to come back up to tie up any loose ends?

Assemblyman Stewart:
With your permission, perhaps Mr. Delap can satisfy some of the questions that have been asked.

A.J. Delap:
I think you summed it up well, Chairman Hansen. This is not anything more than a storage issue. The issue is it is organic material that will decompose. It can take an average of one to two years for adjudication. It is not stored in a manner that would render it usable. If it was found to be usable, we just cannot do that with the amounts coming in currently. As we do with many other forms of evidence, we are trying to document the material. It is fully photographed and all the procedures are in place similar to evidence of a homicide. It is very well documented. The information is conveyed to the defendant and is part of the arrest package. Unfortunately, we just cannot continue to impound these quantities of marijuana and do it in a safe manner. It is far beyond what is necessary to prove the charges. Hundreds of pounds of marijuana is just far and above what is necessary to prosecute a case. Ten pounds of marijuana is significant.

The other thing I wanted to address is more for the legislative intent. This destruction will occur before a full adjudication because it is going to be decaying in our evidence vault as the case is working through the courts. However, what we will have destroyed is documented. We have come to an accord between the interested parties that the method that we propose is acceptable and still allows for a proper judicial process.

Chairman Hansen:
We will now close the hearing on Assembly Bill 371. We will open the hearing on Assembly Bill 233. Since I will be presenting this bill, I will turn it over to Vice Chairman Nelson.

[Assemblyman Nelson assumed the Chair.]

Assembly Bill 233: Repeals provisions governing common-interest communities. (BDR 10-1025)

Assemblyman Ira Hansen, Assembly District No. 32:
Thank you for the opportunity to discuss the concepts of Assembly Bill 233, a rare skeleton bill designed to promote some fresh thinking regarding common-interest communities and ways to deal with the aggravation and time

they have caused the Legislature throughout the years. Admittedly, the majority of states regulate homeowner associations (HOA). There are 21 states without any state statutes. Five of those states are our western neighbors: Idaho, Montana, North Dakota, South Dakota, and Wyoming. By contrast, we have two chapters in the *Nevada Revised Statutes* (NRS) to take care of HOAs. We have a full-time ombudsman and the Commission for Common-Interest Communities and Condominium Hotels.

Each session, the Judiciary Committee hears dozens of HOA bills and listens to hours and hours of testimony. These bills often deal with excruciating minutia that should not require legislation, but should be common sense. Some examples are: allowing the display of political signs, giving notice before towing cars, providing equal space in newsletters for opposition viewpoints, protecting owners from retaliation by an association, allowing utility trucks and law enforcement vehicles to park, allowing owners to install drought-tolerant landscaping, preventing associations from fining owners for violations of delivery persons, allowing installation of shutters and window coverings for security and energy efficiency, preventing associations from prohibiting access by parents or children of owners, and allowing storage of recycling containers.

My personal favorite was the bill in 2003 that was needed to give owners the ability to fly the American flag. This session we have a bill requiring associations to allow owners to display the Nevada state flag. Actually, I think one of the most interesting ones we heard was about garbage cans. Believe it or not, we had a bill in front of this Committee about where someone can or cannot place their trash containers. It was a highly controversial bill. This place was packed with people, and I was amazed. That was also one of the things that made me think about why we are discussing such things at the state level.

I met with the Legislative Counsel Bureau (LCB), and we came up with some different ideas. We discovered that many states do not have any state regulation on HOAs. In many states, they are normally a private contract between the HOA and the individual homeowners. That is how many states handle it. In Nevada, we have a commission set up where many of these issues are supposed to be vetted. Section 1 of the bill lists all the chapters of NRS that we are proposing to be repealed. We are basically eliminating all of the HOA issues from the state level of control. My initial thoughts were to kick it down to the counties. The counties do not want it for the same reason that we do not want it. This is just a nightmare for anyone who is an elected official.

My next thought was to go entirely to a private contractor arrangement. If you are in an HOA, and you have your Covenants, Conditions, and Restrictions (CC&Rs), and there are issues, you would do like anyone else in any other

situation. You would go to the board of the HOA. If you are unhappy with that, you would go to small claims court or some other means for adjudication. However, when the bill came out, there were some proposals from people who thought it may be a little bit extreme. My thinking was about the Hydra of Greek mythology. You chop off one head and another one keeps popping up. It never ended. I believe we have about 25 HOA bills this session. It is growing every session, and there is an absolute need to get this out of our realm. These are not state issues. Whether or not you want to put up shades on your windows, where you put your trash cans, or where you park a utility vehicle is not something that we, as a legislative body, should be determining. It wastes a lot of very valuable state time.

The funny part is when I came up with the idea for this bill, the most delighted people that I have ever seen were our own bill drafters. One staff member said it was the best bill they had ever seen because they spend so much time on these issues. Behind the scenes, there are many people who would like to see this removed from the state level. However, rather than my idea to remove it entirely, there were some suggestions that we increase the authority of the Commission. There is an amendment (Exhibit D) on the Nevada Electronic Legislative Information System (NELIS). This amendment came together with the efforts of several people, some of whom will testify. I would like to leave it open to this Committee. My method was to do like Alexander the Great chopping the Gordian Knot. The Gordian Knot was a big mess that no one could untie. Nobody could figure out how to untie it, so Alexander the Great looked at it, took his sword out, chopped it, and ended the problem. However, if you do not want to kick it all back to private contract, the next option would be to go to the Commission.

There is a Commission that, in theory, was supposed to be dealing with most of the problems that we deal with at a legislative level. I do not know where the split came where we ended up getting all of these bills at the state level. They really should have been handled at the county levels or at the Commission level. If there is a dispute about whether or not you want coyote rollers on your fences or blinds on your windows, you would see the ombudsman who would act as the go-between for you and the Commission. Instead, for whatever reason, that system has not worked, and these issues wound up being brought to the Legislature. My goal here is simply to get this out of the state legislative level. As you know, today is the halfway mark. We have a very limited window of time for us to take care of some very serious issues. Frankly, I do not think where you put your garbage cans is a serious issue.

The proposed amendment modifies my idea so instead of just repealing the statutes, it gives more authority to the Commission and the ombudsman who

are designed to handle these sorts of things. There will be some folks testifying who will be able to answer some of the questions you may have. At least you have an understanding of what this bill is attempting to do. I really do think it is important for us to get this resolved because we have very limited time with only 120 days once every two years to process the bills. It has to be very frustrating for a member of an HOA to wait two years to try to get an issue resolved. We put those issues into a subcommittee because there are so many of them, and they are time consuming. I thank all of you who have served on the subcommittee, especially the chairman, Assemblywoman Seaman. It is not easy, and there are many surprisingly controversial issues that come to the subcommittee. If I have my way, next session none of this will happen. It does not belong at this level. With that, I will conclude my testimony and will be happy to answer any questions.

Vice Chairman Nelson:
I enjoyed your reference to the Gordian Knot. It reminded me of another one of the feats of Hercules where he had to clean out the stables, which were a total mess. He diverted a river to do it. Apparently, that is what you are trying to do here.

Assemblyman Elliot T. Anderson:
I have to acknowledge you as the bravest person in the Legislature for bringing forward this bill. I was amused when I first read it. I think what happens is that people come to the Legislature because they are looking for a recourse in any way, shape, form, or fashion. I find that people get very passionate about these issues. It reminds me of Patrick Henry saying give me my garbage can or give me death. I wonder if we would actually still keep some bills because legislators, especially new ones, would hear complaints from their constituents and would bring forth bills. Therefore, we would still end up having to deal with them. Are legislators the problem? Is it because we are bringing these bills forward or are they coming from somewhere else?

Assemblyman Hansen:
There are legitimate problems in HOAs. If you are a member of an HOA and you are unhappy, you will go wherever you can go to resolve the issue. The very fact that we have NRS Chapter 116 encourages people to come to our level to try to resolve things that do not belong here. Thus, that is the whole idea of getting rid of NRS Chapter 116. I would not say it is our fault. Our job is to represent our constituents. When our constituents have legitimate problems with their HOAs and they look to the NRS, where do they go? They go to their Assemblyman or Senator. In the future, instead of coming to us, they will go to the ombudsman or the Commission. We will give those groups the authority necessary to handle the decision-making process. We can

certainly do that with plenty of consumer protection built in. Currently, if there is a problem on a public street, it is not brought to us, it is brought to the county commission or city council. That is the legitimate place for it to go. There are divisions of authority in the state, and for good reason. Somewhere along the line, the HOAs got bumped all the way to the state level. What I am trying to do is to basically remove that. They do not belong at this level.

Assemblyman Elliot T. Anderson:
I totally agree and understand that we should have those divisions. What I found is that most people do not appreciate the distinction. What I tend to do for my constituents is to intercede on their behalf and direct them to the right person. They just want a government that works; they do not care who does it. I certainly appreciate what you are trying to do with bringing these down to a lower level because I have spent hours at the HOA Subcommittee meetings.

Assemblyman Hansen:
This is my third session, and I did not even know there was an ombudsman who had anything to do with this issue. I did not know there was a commission. In all of the discussions we had in the last two sessions, I do not remember that even being brought up as a possible resolution mechanism. Yet, it is in state law already. The problem is either we did not give them enough teeth, or in the absence of our own knowledge, we took on the issues. Frankly, if someone came to talk to me about coyote rollers on their fences, I would give them the phone number for the ombudsman who is designed to handle that. It would then go to the Commission to try to work those types of things out. By the way, the Commission is appointed by the Governor. There is still a political angle to it. If the Commission is unresponsive, someone could take it all the way to the Governor, if necessary. There are some folks who would gladly take it up to the Governor, and that would bypass us.

Vice Chairman Nelson:
I do notice there is no fiscal note on this even though you are shifting things.

Assemblyman Hansen:
It is my understanding that there is no fiscal note because this already exists. All we are doing is giving them more authority. They may need more staff at some point, but at the moment, we do not see any need for fiscal increases because everything is already in place.

Assemblywoman Seaman:
What you want to do with this bill is to repeal all of NRS Chapter 116. Right now we are working on important issues such as the super priority lien. Everything would be repealed if this passes as is. Is that correct?

Assemblyman Hansen:
That is a good question. Maybe we should ask Legal. Would that eliminate all of the work currently being done on super priority liens?

Brad Wilkinson:
Yes.

Assemblyman Hansen:
Okay, there is a little glitch we will have to work on. Regardless, you see where I am going with this, and I think you understand why. That issue was created by us getting involved in that process. I do not think it is something the Commission can handle exclusively.

Assemblywoman Seaman:
What if that is created again?

Assemblyman Hansen:
It could be. One thing you learn in the Legislature is that we fix a lot of problems caused previously because there is very little perfect legislation.

Assemblywoman Seaman:
I think the intent is good, and I like it. I do think there will be some unintended consequences.

Assemblyman Hansen:
Indeed, but keep in mind, the purpose of the bill is to try to address some previous unintended consequences that are tying up immense amounts of legislative and staff time. I remember talking to Assemblywoman Carlton during my freshman year. I was nitpicking a bill and she said not to let the perfect stand in the way of the good. You need to get to a reasonable compromise, and there will be future efforts to try to clean up some of it. I think that anyone who studies these HOA issues, and looks at its history here, has to notice the constant escalation of bills that are very minor in scope. You do not need the entire state of Nevada making decisions on an HOA in Clark County.

Mr. Vice Chairman, I stand corrected. With the amendment, the bill would not impact the super priority lien sections. That could still fall under our jurisdiction here.

Vice Chairman Nelson:
Let us turn to people who are in support of the bill.

Robert Robey, Private Citizen, Las Vegas, Nevada:
My good friend, Jonathan Friedrich, and I met after he won a case in arbitration and made the front page of the *Las Vegas Review-Journal*. It cost him a lot of money, but it was a milestone. When former Assemblyman Bernie Anderson was chairman of this Committee, he called me on the phone to ask me to testify, and I became involved here. He called me from his home and spent two hours telling me how important it was to have people testify on HOA bills. At the time, former Senator Schneider testified that he was concerned about violence in the HOAs. That is why in my essay I talked about mayhem and chaos. This is the basic reason for NRS Chapter 116. People were getting violent. You must remember that. The NRS has taken away the violence, and now we are down to the minutia. My favorite story was about the delivery man. The pizza guy speeds, but the tenant who ordered the pizza and the owner of the unit gets fined.

The problem with an HOA is that they have too much power. You cannot allow a group of people to fine a person for stupid things like three pieces of grass on the lawn. They have overstepped their authority and have totally gone berserk. There is no reason for NRS Chapter 116 because nothing gets resolved anyway. The ombudsman's office has been a disaster. The Commission protects the industry, and that is the problem. It comes down to the basic *Constitution of the United States*. Somehow, those of us who were dumb enough to buy into an HOA did not realize we were leaving the United States of America and not having the right to live in our own home as we wanted to. An HOA has control of the common elements such as the roads or streets. They do not have the right to tell me what I should wear or whether I can put a roller on my fence to save my dog's life. They do not have the right to say that my garbage can has been out an hour, when the city allows me to leave it out for ten hours. We have gone berserk. That was the reason for the garbage bill because there were problems with garbage cans and people were getting fined. Old people were having to drag their garbage cans. Please consider what we are doing.

I have not been able to read the amendment that has been proposed, but you must remember that there is violence. A man in Florida took a machine gun and killed the president of the association because the president said his hedge was two inches too tall. My goodness, what have we become? We have allowed untrained persons to be on a board of directors that has control beyond belief over a person's life. Repeal NRS Chapter 116. However, something does have to replace it. Mr. Hansen, I cannot thank you enough for what you have done. [Robert Robey also submitted written testimony (Exhibit E).]

Assemblyman Ohrenschall:
I wanted to compliment you. You have been such a steadfast activist by showing up at many late night meetings. You have contributed so much testimony. Whether we agree or disagree, I think we all appreciate your contribution. Thank you, Mr. Robey.

Vice Chairman Nelson:
Is there anyone else to testify in support of the bill? [There was no one.] Is there anyone in the neutral position?

Michael E. Buckley, Real Property Law Section, State Bar of Nevada:
I am an attorney in Las Vegas. I am also a member of the Executive Committee, Real Property Law Section of the State Bar of Nevada. I have served on the Commission for Common-Interest Communities and Condominium Hotels when it was formed. For a little background, I was involved in the enactment of NRS Chapter 116 back in 1991. It was actually in front of the Judiciary Committee. At that time, the Chair was former Assemblyman Robert Sader. He believed that one of the positive things about NRS Chapter 116 was that it was a consumer protection statute. There are certainly a number of reasons why there needs to be a law that deals with common-interest communities, particularly condominiums. The motivation for having a law dealing with common-interest communities really goes to condominiums. The people own airspace as well as undivided interest in the roof, and the hallways, et cetera. The law needs to specify how that is taken care of. The law also deals with the protection of lenders which includes the super priority lien issue that the Legislature is dealing with now. That actually was part of the Uniform Common-Interest Ownership Interest Act of 1991.

The other thing that NRS Chapter 116 does is deal with disclosures to purchasers whether it is a new unit or a resale. It creates basic rules for meetings of owners and board members. It deals with finances. Associations own roads, buildings, and common-owned property. The law provides a way to be able to finance that. In 2003, when the Commission was created, the idea was that you would have a responsive body to address some of the issues that often come up when dealing with common-interest communities. The Commission has seven members, each representing a different interest. At one time it consisted of five members, but two additional homeowner member positions were added. When I was on the Commission, my thought was that if the Commission adopted a position, it came about as a result of debate and discussion of different interests from within the common-interest community.

Chairman Hansen mentioned a point that I also found while dealing with common-interest communities. Oftentimes, legislators need to be educated on all the different issues that relate to common-interest communities. There are people on the Commission who are familiar with the workings of the different kinds of common-interest communities. The one thing that I always made a point to mention when I testified is that one size does not fit all. There are different kinds of common-interest communities throughout the state, such as rentals up in Lake Tahoe, big rural areas, high-rise condos in Las Vegas, and master-plan subdivisions. That is why there are statutes to deal with all of these issues when there are so many different kinds of communities.

The Commission is self-funded, and every unit owner in Nevada pays a fee to the Nevada Real Estate Division (NRED) which it uses to administer the cost of the Commission. The Commission operates through public hearings. There are regulations and two existing areas where the Commission has adopted regulations by authority of the statutes. In the early area, there was some concern that certain kinds of associations which do not regulate conduct, or small associations, should be exempt. The authority was given to the Commission to create the descriptions and definitions of how one defines an exempt association. Those hearings were held, and those regulations were put into effect. The Commission also was directed to come up with reasonable collection costs.

The idea behind the amendment is that the Commission be given the express authority to make regulations in particular areas dealing mostly with conduct. There is a list of statutes dealing more with the areas that Chairman Hansen mentioned. For these, the Commission would be given express authority to make the regulations. The position of the Real Property Law Section was to educate and help this Committee reach a decision and help with any questions you may have regarding NRS Chapter 116. If you have any questions, I would be happy to answer them.

Vice Chairman Nelson:
Thank you, Mr. Buckley. We greatly appreciate all of the work you have done through the years in this area. I have known you for over 30 years, and I have the highest respect for you. If the bill is passed, either with or without the amendment, do you have an opinion as to what will happen? Will it create a vacuum or will everything be picked up properly by NRED?

Michael Buckley:
If the bill passes in its original form, there would be chaos. One of the things that has happened during the recession is we now have court cases that interpret NRS Chapter 116, particularly in the area of the homeowner

association liens and the issues dealing with mortgage foreclosures. Supreme Court decisions are made on those issues. Associations are governed by a declaration which is recorded. Without the backbone of the statutory structure, I think there would be a lot of uncertainty. There would be time and expense of litigation, particularly with a condominium, to show who owns what and how that would work. You need something that governs that. My opinion is that it would be a mistake to completely repeal NRS Chapter 116.

If the bill is passed with the amendment, it gives people the ability to go to the Commission which meets regularly. They do not have to wait every two years. There is a body that considers what is going on. One of the things that I was always troubled about regarding statutory responses was you are never quite sure if the problem is something that happened because there were bad people involved or because it is a serious problem in the whole area. If you have something going to the Commission, NRED hears the complaints through the Ombudsman's Office. While I was on the Commission, when we would consider taking a position on legislation, we would ask NRED if this was a serious problem or whether it was something else. The expertise that the Commission has available via NRED would be better than having to go to the Legislature where you never really know if it is a serious problem or bad actors.

Assemblyman Elliot T. Anderson:
We have heard about chaos. I wonder exactly what that chaos might look like. Before HOAs, a long standing part of old-school property law was about covenants and easements. When it comes down to it, an HOA operates through a covenant, right? The true effect of a straight repeal of NRS Chapter 116 would be a lot of work for lawyers to draw up covenants and easements when you have shared services and you do not have individual metered units in a multifamily complex. Would that be the true effect of what a repeal would do?

Michael Buckley:
One of the things the Legislature passed was the arbitration process through NRS Chapter 38. I am not a litigator, but I was told at the time that the judges did not like hearing these. It would be better going through an arbitration or mediation process. Certainly, there are covenants which are subject to interpretation. It definitely would create work for lawyers. I guess the question is whether you want to create an area where you go to dispute resolution through the judiciary. It seems like it is better to have the framework rather than just have people dealing with private contracts set out in the declarations. Chapter 116 of NRS tells you what has to be in the declaration. It explains what the powers of the association are. If those statutes are eliminated, there may be gaping holes in new common-interest communities that are created.

There may be issues about what kind of power associations have. You just would create a lot of uncertainty.

Assemblyman Ohrenschall:
You have been practicing quite a while here in Nevada, even before the Uniform Common-Interest Ownership Interest Act of 1991. I wonder how things worked with HOAs and disputes at that time. Can you describe that for us?

Michael Buckley:
We had statutes before 1991. We had NRS Chapter 117 which came from the Federal Housing Administration (FHA). The reason it was adopted in Nevada was when you have condominiums, lenders need to have some framework on how their liens work. We also had NRS Chapter 278A, which deals with planned unit developments allowing the county to create and approve what we now call a planned community, which is a subdivision with private streets. We did have a structure there. Before 1992, the world of common-interest communities was much smaller. The whole industry exploded after 1992 because the local governments started requiring associations. The reason for this was to pass off some of the maintenance obligations to the associations. One of the questions might be, if NRS Chapter 116 is repealed, what responsibilities would fall back to local governments if private streets are not maintained? I do not think it was not chaotic, people just lived with it. I heard about this Uniform Act at a conference in San Diego. Here was a law that was vetted throughout the country, and that had the approval of experts from many different fields.

One of the good things in Nevada is that we have very few court decisions because the Supreme Court is so busy, and it does not have the time to issue all of the guidance in dealing with this area. We thought that having a uniform law, where we could look at the comments and look at other states that have adopted the same law, would help people of Nevada interpret the law. Before 1992, if you had a question, you really did not know how to address it. As Assemblyman Elliot Anderson previously noted, it deals with real estate, and it deals with covenants. That affects title insurance. You need to get the title companies involved. Can you get an owner's title policy if you have concerns about whether the covenants work or whether they create something that works? There were a lot of open questions that NRS Chapter 116 was intended to solve. We did not have the volume of issues for the hundreds of thousands of units that have been created since then, and it was really a different world.

Assemblyman Ohrenschall:
The way I read the amendment, it seems to me that we are delegating a lot of authority from the Legislative Branch to the Executive Branch of government.

In the other jurisdictions that have adopted the Uniform Common-Interest Ownership Interest Act, have any of them moved in this direction to try to pass on the authority? I do not think the Commission has promulgated any amendments in this vein. With the amendment, I wonder if we are treading on new and potentially dangerous ground by giving one branch perhaps a little too much authority.

Michael Buckley:
The statutes are already very explicit. They cover many topics. The point of the amendment is not to go into new areas but to deal with new questions involving the interpretation, further definition, or clarification of what is already in the statutes. I certainly believe that the Commission needs to operate within the parameters dictated by the Legislature. The Legislature will say you can do this or you cannot do that, and if you have questions, go to the Commission who will interpret that. It is not as broad of a delegation as you may think.

I am not aware of how it is affecting other states. California has the same type of common-interest communities that we do. I am sure they have hundreds of thousands. There is a whole judicial system that deals with that. They have courts of appeals. Therefore, I suspect in California it is mostly dealt with through the court system. I am not aware of any other state where it is done through a delegation to a Commission. I do not think there are any commissions. There may be one in Maryland or Virginia. Senator Schneider and I talked to the California Legislature at one time, and they were considering it. I am not sure whether that actually went into effect. Once again, I do not think the delegation is as broad as you think. Certainly, it can be tailored to whatever the Legislature believes should go to the Commission.

Assemblyman Ohrenschall:
Has California adopted the Uniform Common-Interest Ownership Interest Act?

Michael Buckley:
No, they have a different act.

Vice Chairman Nelson:
Is there anyone else in the neutral position? Seeing no one, is there anyone in opposition to A.B. 233?

Garrett Gordon, representing Community Associations Institute:
The Nevada Legislative Action Committee of the Community Association Institute is made up of homeowners, associations, community association professionals, as well as Southern Highlands Homeowners Association, and the Olympia Companies. To my right is Gayle Kern, who is an HOA attorney. She

is part of our Association and has been practicing for many years. She can answer any specific questions as they relate to NRS Chapter 116 and how it is handled in private practice.

First, I will say that we certainly appreciate the Chairman's intent. I have been working on HOA issues for the last four or five sessions and can understand the minutia of garbage cans, or what color solar panels should be. We are opposed to repealing all of NRS Chapter 116 for many of the reasons described by Mr. Buckley. There are 3,000 associations and most of them, if not all of them, own common area. Repealing NRS Chapter 116 leaves the question as to who would maintain the common area, and what the enforcement mechanisms are to maintain it. Would the cities or counties have to take over? Another example that Mr. Buckley did not mention is that most, if not all, CC&Rs refer to NRS Chapter 116. There is a provision in the CC&Rs that says "shall be implemented and enforced with accordance of NRS Chapter 116." Therefore, if NRS Chapter 116 was fully repealed, it leaves a lot of open holes and interpretation issues. For those reasons, we are currently opposed to the full repeal.

With the amendment, our position is neutral. We believe that there is current language in statute that delegates a lot of this to the Commission. We certainly appreciate Chairman Hansen's reinforcement of those statutes that delegate this to the Commission. We still share in Assemblyman Elliot Anderson's concerns that this does not prohibit additional HOA bills to be introduced, passed, or discussed at the legislative level. It may provide a tool for a legislator or chairman of a committee to delegate an issue to the Commission for discussion and interpretation. What also gives us confidence about delegating to the Commission and NRED is the new leadership at NRED. In our opinion, Mr. Decker has been phenomenal. He has been approachable—we have his cell phone number and his email address. He, as well as Director Breslow, have been very helpful, approachable, and problem solvers not only on behalf of the industry, but for homeowners. We have seen a dramatic change on how complaints are handled and how associations are dealt with given that new leadership. We certainly have a lot of confidence in delegating more to that level.

If we are going to delegate to the Commission, I believe we should live with their decisions or at least give them time. For example, with regard to the hot-button issue of collection costs, the Commission has had numerous hearings and workshops. They came up with a collection cost schedule that was based on input received from homeowners, professionals, lawyers, accountants, board members, and unit owners. Frankly, we all believe it has been working pretty well in putting a cap on some of the collection costs. Every session we still

deal with bills that try to undo or unwind what the Commission did. Therefore, we would ask if we are going to delegate to the Commission, we should give it a little time to work rather than attempting to undo the decisions that they make.

Finally, I spoke to Chairman Hansen about a possible conceptual amendment to his amendment. Currently, the Governor appoints Commission members. In statute, there are a number of specific seats on the Commission which would include an accountant, a lawyer, a homeowner, et cetera. This makes for a very diverse group of people. The Governor appoints those folks. Unlike other commissions and boards, there is no specific authority for the Governor to remove a commissioner. We would say if we are going to delegate more authority to the Commission, the Governor should also have the right to remove members. Assemblyman Hansen agrees with this amendment, and I am happy to work on putting it together.

Assemblyman Elliot T. Anderson:
If we take out NRS Chapter 116, a lot of people think that this will dissolve their HOAs. I do not think that will happen, right? HOAs are maintained through covenants which are a contract, and we would be prohibited constitutionally from doing that. If I understand it right, this just gets rid of the parameters.

Garrett Gordon:
I would say yes and no. I think you are correct with respect to the CC&Rs and the contracts. By repealing NRS Chapter 116, it certainly does not repeal 3,000 plus associations with 3,000 plus sets of CC&Rs which are all different. If it was repealed, it would delegate the interpretation of those to NRED or to the court system. Many of those CC&Rs refer to NRS Chapter 116 which provides the uniformity as to how board members are elected, how elections should occur, costs and fees related to printing materials and requesting agendas, or how much public comment should be provided. If it was repealed, it would go on a case-by-case basis. Some associations may decide not to open it up to public comment, or they may handle their elections completely different than the statute requires. I would argue there is a framework in NRS Chapter 116, and you get into some of the minutia like garbage cans that should be in the CC&Rs and handled more on an association level.

Gayle Kern, representing Community Associations Institute:
I have been practicing law for a little over 30 years, and the majority of that has been representing associations. I have represented associations both before and after NRS Chapter 116. What NRS Chapter 116 did was fill in the holes and normalize some of the practices that were going on within associations. One of

the major provisions that we struggled with is the associations never reserved any money to pay for anything. Chapter 116 of NRS imposed fiscal responsibility on those associations, and it has worked. We no longer have huge assessments. Before 1991, I can remember one association that had to pass on to the homeowners a $20,000 assessment for repairs needed for the roof because they had not saved any money to pay for it. It was devastating to the homeowners within the association.

If you repeal NRS Chapter 116, all associations will remain intact. However, they will be governed solely by CC&Rs, some of which are woefully inadequate. Not only do you have those that came after NRS Chapter 116 that actually incorporate and reference the chapter, you also have those pre-1991 associations that never addressed those very important things such as noticing of meetings, election by secret ballot, reserve studies, and financial responsibility. We used to have board meetings in someone's living room over a bottle of wine, and nobody knew what we were doing. They would simply receive the invoice for what they should be paying. We do not do that anymore. Everything is out in the open. Budget ratifications are done by association members. Whether or not an association would agree to comply is going to be on a case-by-case basis.

The real problem is for those associations that have been operating under NRS Chapter 116 and would like to continue to do so, but they are not able to get their amendment completed. Amendments of CC&Rs are generally by a super majority vote. While we have a provision in NRS Chapter 116 which allows us to petition the court if we have a majority in favor, we will no longer have that option. I think it would result in large gaping holes for the things that are actually really good for associations. That is why we are officially opposed to throwing it out. I do have to say that I found myself completely shaking my head in agreement to everything that Chairman Hansen said. He is absolutely correct that there has been a micromanagement in looking at the minutia of associations.

One of the reasons that we are neutral on the amendment is we were concerned that it would not really address certain issues. Like Assemblyman Elliot T. Anderson pointed out, what do we do with the new issues? Those are not things that can go to the Commission. Under this amendment, it would not be allowed. I apologize because I am part of the Real Estate Law Section of the Nevada State Bar, and I could have waited. However, it did not dawn on me until I heard Assemblyman Elliot T. Anderson ask the question.

As to another portion of this amendment, can we provide the ability for a level to address some of these concerns before they come to the Legislature? As Mr. Buckley also addressed, we can try to find another way for there to be a vetting to determine if there is actually a big problem or a minor issue that does not require legislation. What if there was a provision that allowed for new issues to go to the Commission? They would not be able to adopt regulations because that may be too big of a delegation; however, they would be able to vet it. If, in fact, they find that there is a widespread issue, they can then be the conduit to bring it to the attention of the legislators. Therefore, if a legislator had a constituent who was raising an issue, instead of drafting a bill, the constituent can be diverted to bring it to the Commission. The Commission could examine the issue and they would determine if it is something appropriate to bring to the Legislature in the next session. I am just throwing that out as a possible solution to the issue of addressing problems of minutia of associations.

Garrett Gordon:
Over the last three or four sessions, there have been HOA-related bills that have been brought to an interim committee. Certainly there is a funding and time issue and that may be what Ms. Kern was referring to. Perhaps there would be the ability to vet the issues. Maybe the Commission will have a bill or two to bring which would be a big issue such as a super priority lien. Chairman Hansen was agreeable to something else I would like to note. There should be a one-word revision to the amendment. In section 1.5, subsection 3, of the amendment, it reads "In addition to any regulations required to be adopted pursuant to specific statute, the Commission, or the Administrator with the approval of the Commission, may adopt such regulations as are necessary..." The following language currently reads "and appropriate." We would recommend to change it to "or appropriate." This would make it less restrictive and narrowed. The intent would then be giving the Commission more authority, and provide the ability for them to work with either of those conditions.

Assemblyman Gardner:
I would disagree to allowing HOA members to approve the budget. Currently, unless 51 percent vote no, it is automatically put in place. I actually kind of like the idea of giving homeowners the chance to fill in some of these holes. Is that the issue with the possibility of taking this away? Or, is it the fact that it is hard to change those situations?

Gayle Kern:
I think it is both. For example, regarding associations where the CC&Rs do not provide for notice of board meetings, I do not think I would want an association to not be required to give notice of their board meetings. However, the bylaws, as they currently read, do not require it. The amendment process would be very

difficult. Therefore, without the overlay of NRS Chapter 116, associations would not comply with some fundamental requirements, and homeowners would not know what is going on. I would be worried about that.

Vice Chairman Nelson:
Is there anyone else in opposition?

Jonathan Friedrich, representing Nevada Homeowner Alliance PAC:
I am a former commissioner on the Commission for Common-Interest Communities and Condominium Hotels. Repealing NRS Chapter 116 is a wonderful idea. I would like to address a couple of items that Chairman Hansen raised. Why do we need all of the minutia dealt with at the Legislature? I will give you two words—fines and bullying. Homeowner association boards are made up of volunteers who have little or no expertise in many areas. Interestingly enough, the other night, a bill was presented that would require education of board members. In theory, it sounds great and I am for it. However, the opposition and problems brought out were almost insurmountable. As far as taking the problems to other agencies such as the police and the district attorneys, they do not want to deal with HOAs. Assemblywoman Fiore brought forward a great bill two years ago with Assembly Bill No. 395 of the 77th Session. I know of three people, including myself, who have brought a complaint to the Las Vegas Metropolitan Police Department (LVMPD). They will not deal with it. The office of the ombudsman is overwhelmed, underfunded, and they do not have a well-educated staff to deal with these problems. When Mr. Decker took over, he inherited 440 complaints that were sitting at the ombudsman's office for as long as four years. After reviewing them, he made the decision to dump about 200 of those complaints. Those people never got any due process or justice because their complaints were never heard.

With the elimination of NRS Chapter 116, HOAs are no longer defined. We no longer have to be concerned with elections or even honest elections. Without the requirements of audits, it makes it easy for boards and managers to embezzle funds from the associations. Boards can now charge owners thousands of dollars in fines. I was asked to represent someone who was hit with an $11,200 fine for some weeds and other minor issues. Eventually, it was reduced substantially. It would prohibit owners from speaking at meetings. Secret meetings would take place, and there would be no agendas. It would allow boards to foreclose if you are one month in arrears on your assessments. It will completely ignore the little due process that currently exists. The boards will refuse to turn over financial records, or deny the holding of hearings for alleged violations of the governing documents. We will not be able to remove dishonest members. It would get rid of the incompetent investigators at NRED, and simply do away with both NRED and the Commission. That only works for

the betterment of the HOA industry. It would allow for management companies to give large gifts to board members. It would eliminate the Alternative Dispute Resolution (ADR) program, and the so-called caps on the collections companies. There would be no requirement to get bids for services to the community, or to prohibit retaliation against homeowners. There would be no adequate reserves funded. What will happen to NRS Chapter 116A, which is the statute that deals with managers and is dependent on NRS Chapter 116? The best part of eliminating NRS Chapter 116 is that both you and I will no longer have to sit in their hearing rooms late into the night. Another plus is that I will no longer have to hear Barbara Holland drumming on about me and how I want to protect the one million people living in associations.

Vice Chairman Nelson:
Let us not get into any ad hominem attacks. Please just focus on the bill and wrap up your testimony.

Jonathan Friedrich:
The new solution will be to simply have a shootout on Main Street at noon when there is a dispute between board members and owners once NRS Chapter 116 is repealed. I hope you realize I am being facetious. If NRS Chapter 116 is repealed, who will owners turn to for help as ADR will no longer be available or administered by NRED? Owners can then turn to the courts, which might be a better solution. The Commission meets every three months. Being a former commissioner, I know there are 2.5 homeowner representatives on the Commission or perhaps, theoretically, there are three. The Commission was top heavy with industry officials. I tried for a year and a half to get a due process regulation passed as it is called for in NRS Chapter 116. The other commissioners felt it was too burdensome and it died. As I have said before, the basis of our legal system in this country is based upon due process. Homeowners are being denied that. People are coming to Mr. Robey and me for help because they are desperate. They are being fined. Do not do away with NRS Chapter 116 because there will be mayhem and chaos. This is the only form of limited protection that we currently have. Without it, there are over one million people at the mercy of a few people that are running over 3,000 associations.

Adrina Ramos-King, representing City of Las Vegas:
The City of Las Vegas understands the intent of the bill. However, the Alexander the Great method proposed by Chairman Hansen would repeal almost all of NRS Chapter 116. Not only does that chapter govern HOA operations and authorities, it assigns major responsibilities such as common element maintenance.

According to neighborhood planning, there are 639 operating HOAs in the City of Las Vegas. The city has a symbiotic relationship with our HOAs, even more so since we are a newer community and around 20 to 30 percent of our subdivisions are common-interest communities. [Continued reading from prepared statement (Exhibit F).]

Mark Leon, Private Citizen, Las Vegas, Nevada:
I am a homeowner and volunteer board member in the Mountain's Edge Master Association which is a community of about 10,500 homes. With regard to Assemblyman Elliot Anderson's question of what chaos would ensue if the chapter was repealed, I discovered while looking through our governing documents that I would remain a board member for life. This would give board members far more power, and it would cause our legal expenses and insurance to skyrocket because any remedy would involve the courts and would be extremely expensive. The sponsor talked about bills that were kind of silly and involved a lot of minutia. However, as I understand it, these bills must be sponsored, so is it not the legislators' fault that these bills are coming up?

Assemblyman Jones:
It is good to see you, Mr. Leon. I would like to acknowledge that Mr. Leon represents an HOA in my district. Did you look at the amendment or were you looking at the bill?

Mark Leon:
I have not seen the amendment.

Assemblyman Jones:
I think the amendment might address a number of your concerns.

Mark Leon:
That is excellent. Thank you.

Vice Chairman Nelson:
Are there any others in opposition? Assemblyman Hansen, would you like to come forward?

Assemblyman Hansen:
I enjoyed hearing testimony because on one hand we have a bill that will destroy the state of Nevada but, on the other hand, we have a million homeowners that are being denied their due process under NRS Chapter 116. We have some interesting disputes. I almost feel sorry for HOAs because nobody wants them. The Judicial Branch does not want them, the cities do not want them, the counties do not want them, and the Nevada Legislature does

not want them. However, somebody has to deal with them. It is a big problem, and what we are trying to do here is to find a solution. Obviously, eliminating NRS Chapter 116 is not going to be the solution. I do think that giving the Commission more authority and following the amendments will. I also want to thank Karen Dennison. She did not testify, but she worked diligently on this bill, as well as Michael Buckley. People have really been involved to try to resolve some of these things. I think you have an idea of what the problem is. My initial solution may be too draconian. However, a solution does need to be found. The best solution, so far, is the amendment along with some of the suggestions that came out of the testimony. We will be working on it. Thank you for allowing me to present the bill today.

Assemblyman Elliot T. Anderson:
I just wanted to acknowledge that this was probably the most interesting academic discussion that I have been involved in here at the Legislature. I enjoyed talking about this.

Assemblyman Ohrenschall:
Thank you for bringing this bill. When you were going through the different stories about the American flag and the Nevada flag, it reminded me of a bill that I sponsored a few sessions ago. I had a constituent who was very green and wanted to save energy by hanging her wet laundry out on the clothesline. Her HOA forbade it and fined her. She had asked me to create a bill to allow anyone who wants to dry their laundry on a clothesline to be able to do so. I did create the bill and, unfortunately, I was unsuccessful. You still cannot dry your laundry on a clothesline in most HOAs. I think that was another good example of what you are trying to fix with this, and I appreciate your hard work.

Vice Chairman Nelson:
We will end the hearing on A.B. 233. Is there any public comment?

Robert Robey, Private Citizen, Las Vegas, Nevada:
I have a question. I was stunned when the lady from the City of Las Vegas talked about a symbiotic relationship and how she would incur this debt of a quarter of a million dollars for one little association. After that, there was a comment that Chairman Hansen made about due process on the rise. People are being denied due process. There seems to be a dichotomy here where I am opposed to due process. I am not opposed to the common interest. I do not know anything about the amendment, and I hope the Commission can deal with it. The city does not want to touch the common elements, but the police will not come in and do their job.

Vice Chairman Nelson:
Actually, the hearing on this bill is over. I would suggest you get with the stakeholders to follow up on your comments. With that, I will turn the hearing back over to Chairman Hansen.

[Assemblyman Hansen reassumed the Chair.]

Chairman Hansen:
We will try to do our best, Mr. Robey. You and Mr. Friedrich have been involved for many years. I really do respect the time and effort you put into it. We are trying to make it better for you.

Is there any other public comment at this time? Seeing none, we have some Committee business. If you want your bill on a work session, you must get your amendment to Diane Thornton as soon as possible. We will have work sessions nearly every day next week in order to try and get as many bills processed as we can. Today is a little bit unusual because we had one bill that dropped. Going forward, if you drop any bills scheduled for a hearing, it is very likely they will not be heard at all. We have until next Friday to get everything done. With no other Committee business, this meeting is adjourned [at 10:06 a.m.].

RESPECTFULLY SUBMITTED:

_____
Lenore Carfora-Nye
Committee Secretary

APPROVED BY:

_____
Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 2, 2015 **Time of Meeting: 8 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 371	C	A.J. Delap, Las Vegas Metropolitan Police Department	Pictures of storage vault and equipment
A.B. 233	D	Assemblyman Hansen	Proposed Amendment to A.B. 233
A.B. 233	E	Robert Robey, Private Citizen	Written Testimony
A.B. 233	F	Adrina Ramos-King, City of Las Vegas	Written Testimony

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Eighth Session
February 25, 2015

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Wednesday, February 25, 2015, in Room 3138 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/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman David M. Gardner
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman John Ellison, Assembly District No. 33
Assemblywoman Irene Bustamante Adams, Assembly District No. 42

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Nancy Davis, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Gerald Antinoro, Sheriff, Storey County Sheriff's Office, and President, Nevada Sheriffs' and Chiefs' Association
Ron Pierini, Sheriff, Douglas County
Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office
Derek Clark, Private Citizen, Minden, Nevada
Carol Howell, President, Northern Sierra Ladies Gun Club
Vernon Brooks, Private Citizen, Las Vegas, Nevada
Juanita Clark, Member, Charleston Neighborhood Preservation
Julie Butler, Administrator, General Services Division, Department of Public Safety
Daniel S. Reid, State Liaison, National Rifle Association of America
John Wagner, State Chairman, Independent American Party
Paul Grace, Private Citizen, Reno, Nevada
Janine Hansen, State President, Nevada Families for Freedom
Megan Bedera, representing Nevada Firearms Coalition
Richard Brengman, Private Citizen, Gardnerville, Nevada
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Bradley W. Beal, President, One Nevada Credit Union
Michael Randolph, Manager, Homeowner Association Services, Inc.
Bruce H. Breslow, Director, Department of Business and Industry
Joseph Decker, Administrator, Real Estate Division, Department of Business and Industry
Garrett Gordon, representing Community Associations Institute
Angela Rock, representing Olympia Companies and Southern Highlands Homeowners Association

Norman Rosensteel, Member, Community Associations Institute's Legislative Action Committee
Samuel P. McMullen, representing Nevada Bankers Association and Bank of America

Chairman Hansen:
[Roll was called. Rules and protocol of the Committee were reviewed.] I will open the hearing on Assembly Bill 139. Assemblyman Wheeler is going to present this bill.

Assembly Bill 139: Revises provisions governing the issuance of permits to carry concealed firearms. (BDR 15-522)

Assemblyman Jim Wheeler, Assembly District No. 39:
Assembly Bill 139 has its roots with the Nevada Sheriffs' and Chiefs' Association. I was asked to sponsor this to make all states with permits for concealed carry weapons (CCW) reciprocal to Nevada. I did not see a problem with it since we currently have reciprocity with 14 states. That basically is all the bill is. It is to accept CCW permits from any other state. There is an amendment to the bill (Exhibit C) from the Department of Public Safety (DPS), which changes the effective date to upon passage instead of October 1, 2015. I would like to turn it over to Sheriff Antinoro.

Gerald Antinoro, Sheriff, Storey County Sheriff's Office, and President, Nevada Sheriffs' and Chiefs' Association:
We are in favor of this bill because it does a lot of things for us, the biggest being the removal of the list that the DPS has to prepare every year. There have been a number of issues back and forth: seeing some of the language that other states have, the time, energy, and staff hours that the state has to put forth to go through all of that. Through discussion among the membership of Nevada Sheriffs' and Chiefs' Association, we decided that we do not need to place standards on other states. This makes it cleaner and easier for everyone; if you have a valid CCW permit from your state, we will recognize it. Basically the same as with a driver's license, we do not mandate other states' standards, yet we recognize their driver's licenses.

Chairman Hansen:
Regarding the uniformity of the requirements in most states, you mentioned driver's licenses, and I assume most states have fairly uniform requirements across the nation. Is that true also with the CCW process?

Gerald Antinoro:
I do not know how aligned the standards are for the CCW process. There is a pretty significant variance. There are other people in the room who are planning to testify who may be better suited to answer that question. Using the analogy of the driver's license, it has only been in recent years that there may be some standard of uniformity. There was a great amount of disparity up until recent years.

Ron Pierini, Sheriff, Douglas County:
The undersheriff who works for me is also the chairman of the CCW Committee for the Nevada Sheriffs' and Chiefs' Association. We have always talked about the fact that we should have this bill passed because it makes sense. When this originally started, we were very concerned about the standards of different states; are they the same, or are they less or more stringent than ours? That is why we drew up a policy with Nevada Sheriff's and Chiefs' to ensure that the CCW is valid, that the holder of the CCW has proper training, and he is educated. We are finding out that it is pretty much the same throughout the country. It just makes sense for us that this bill be passed because it gives us the opportunity to not have to deal with all the different states or have DPS do all the research to see if the standards are the same as ours. Across this country, there is a big push to having that. It makes things much easier, it saves our time, and I think people across the country want it.

Assemblyman Araujo:
How would we vet the different policies and regulations that other states have? It brings up a question of equity. If we are looking at standardizing the process, it does not appear that every state has an agreement to sharing the same policy.

Assemblyman Wheeler:
In 2007, the reciprocity was a pilot program. There were some concerns about different levels of training and vetting that were given, which is why we came up with the 14 states that we felt had standards equal to or more stringent than ours. Since then, there has not been a problem. The pilot program is over and we just need to move on, much like we did with the driver's license. We can accept CCWs from other states, the same as we do with other licenses. I think you will hear about traffic stops and safety of officers. I happen to know that all officers treat all traffic stops the same: with 30 seconds of blandness punctuated by 10 seconds of sheer terror. The officer makes sure he is safe at all times. He does not know whether a person has a permit or not or has a gun or not. As far as the safety of officers, I think that is moot.

Assemblyman Thompson:
Is there an information system where you can validate that the person from Colorado who has now moved here has a valid CCW? Just like a driver's license, there are so many fake driver's licenses, so how can you verify that the CCW is authentic?

Ron Pierini:
That is a very good point and one of the concerns that we have. Technology has gotten to such a level that almost every state has the ability to get that information. For example, if while making a traffic stop, the driver hands over his CCW permit, how do we know it is valid? Did he ever turn it in after it was revoked? I am a little concerned about the fact that there is not that kind of information for a law enforcement officer. I believe the technology throughout the country is the same as what we have.

Assemblyman Wheeler:
If the person moves here, there is nothing in this law that says he does not have to get a Nevada CCW. He still has to get a Nevada CCW within 60 days.

Assemblyman Elliot T. Anderson:
When I hear about a CCW, I usually have good thoughts about that individual, that he is a law-abiding gun owner, that he has training, if he were to fire a weapon it is not going to ricochet, and that he is not going to be aiming poorly. I know he has training. I wonder about the 36 states and territories that have not been given reciprocity under the current program. Can you explain what it is about those other states' training and qualifications that has led them to not be on this list?

Gerald Antinoro:
It can be as simple as their permit does not run the same length as ours. The current law says that the certification program has to be similar to Nevada. We have a five-year permit, and another state has a seven-year permit; that state would not meet the requirement. The other state may have two hours less training than we do. That is part of what goes into the preparation of the list each year.

Assemblyman Elliot T. Anderson:
Do you have a report of all the states, whether they have reciprocity under the pilot program and if not, why?

Gerald Antinoro:
I do not have a report with me, but I think we can get one from DPS.

Assemblywoman Diaz:
If we have reciprocity with other states' CCWs, would there not be a need to create a state registry of CCWs to ensure that we know who is allowed to carry guns? I think every state has different requirements for CCWs. Also, I was looking at other state requirements. What is the minimum age that Nevada requires for CCW holders? I think other states may have different age requirements.

Gerald Antinoro:
The minimum age for a CCW in Nevada is 21. There are a few states that are under the age of 21, but that would not be affected by this bill. The language in this bill says meets all other requirements. An 18-year-old from Georgia with a CCW would not be valid in Nevada, because he does not meet the minimum age requirement for Nevada.

Assemblyman Wheeler:
Section 1, subsection 1 of the bill references *Nevada Revised Statutes* (NRS) 202.3653 to 202.369, which states that a CCW permit holder must be 21 years old.

Assemblywoman Diaz:
Will we need to create a registry of CCW holders? Every state has a different CCW process and allows you to carry different guns. How will we know who is entitled to carry what gun in our state without that registry?

Gerald Antinoro:
Currently, we do not have that. If Minnesota allows you to carry a machete as a concealed weapon, we do not know that. We just know that you have a CCW permit. This is similar to Nevada because we do not list that you can carry a certain type of weapon; it just states you can carry one. It does not matter what your state allows, if it is not allowed in Nevada, the CCW is not valid. We would not allow someone to carry a machine gun as a concealed weapon. That is illegal here even if another state does allow it.

Assemblyman Wheeler:
Also, last session we passed what was called "one gun, all gun," so if the other requirements were met in NRS Chapter 202, they could carry either a revolver or a semiautomatic.

Assemblyman Ohrenschall:
Assuming this bill passes, let us say that someone has a CCW from Delaware and he comes here to work; while working here, he has a case pending in the Delaware criminal courts for battery or domestic violence. Eventually, there is

a conviction. How quickly will you find out that this happened? What happens now with the other 14 states when something like that happens?

Ron Pierini:
That is one of the things we mentioned earlier, the technology we have today. If you looked at the CCW from Delaware, dispatch could check and determine that the permit is not valid and the reasons why. Even with driver's licenses, within 15 seconds, we can get all the information for that person from different states.

Assemblyman Ohrenschall:
In your experience, has something like that happened with the 14 states?

Ron Pierini:
We do not have that problem. I can tell you that in Douglas County we have never had anyone who had a revoked CCW and still carried the card. The reality is that I have not had the experience.

Assemblywoman Fiore:
When you have a CCW permit, there is a diligent background check done. The question that we should be asking is, what about the people with guns without a CCW who are concealing them. This is a very simple bill and I support it wholeheartedly.

Assemblyman John Ellison, Assembly District No. 33:
I am in strong support of A.B. 139. I have had a CCW for many years for not only Nevada but Utah, which covers about 15 states, and I have applied for a CCW in Florida because it covers another 20 to 30 states. The reason is that I do not know where I will travel, and this makes those states available. I am receiving a lot of calls from all over the United States asking if they will be legal coming to Nevada and how long they can be here before reporting to the sheriff. I think it is because we are strong supporters of the Second Amendment. The only place where we are running into problems is the no-carry zone in Las Vegas. Other than that, if a CCW tells the sheriff he is going to be here for so many days, he is usually fine. I think this will strengthen the requirements, it will take the load off of the different departments, and I support this bill.

Assemblyman Araujo:
I want to ensure that we are addressing potential loopholes should this pass. Hypothetically, someone is denied a CCW in Nevada and finds another state with more lax policies. He goes to the other state, obtains a permit and he comes back to Nevada. Is he now recognized as being able to have a CCW?

Gerald Antinoro:
No. If he is a resident of the state of Nevada, he is required to have a Nevada CCW. He can obtain a CCW in other states as a nonresident.

Assemblyman Ohrenschall:
I grew up in Las Vegas and there were lots of ads stating, come to St. George, Utah, to buy your car and you will save so much money. I am wondering, with this bill, will we get a lot of applicants who go on a trip to the cheapest state, come back here with their permit from the other state, and we lose all that revenue?

Assemblyman Wheeler:
I am not sure I understand your question. You are stating that a Nevada resident would go outside the state for his CCW, where the law clearly states that he has to have his CCW changed over to Nevada within 60 days of moving here, so basically that would be an illegal activity on its own.

Assemblyman Ohrenschall:
So you do not think it could happen where someone has another residence or relative in another state where he might try to shop for the cheapest permit?

Assemblyman Wheeler:
Anything is possible, but the fact is, if his driver's license is in Nevada, he is a Nevada resident, and he should have a Nevada CCW. Under the reciprocity, he would be breaking the law if he did not get a CCW in Nevada.

Assemblyman Gardner:
Would this make it easier and less costly? Also, I am researching CCW permits around the country right now, and I am looking at a huge chunk of states who already do this, and we are just joining in. Is that correct?

Gerald Antinoro:
There are a number of states that do this. It would be a cost savings because of the time and effort of the DPS compiling the list every year while researching the gun laws of all 50 states.

Chairman Hansen:
Is there anyone else who would like to testify in favor of A.B. 139?

Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office:
I am here in support of A.B. 139. I want to thank Assemblyman Wheeler and the other sponsors for bringing this bill forward.

Derek Clark, Private Citizen, Minden, Nevada:
I am speaking as a citizen and voter of the state in favor of A.B. 139. I am also a retired law enforcement officer. I retired as a lieutenant after 33 years. I think this bill clears up a lot of ambiguity. It makes the process much simpler for the folks in the field to deal with someone who has a CCW. Anything we can do to expedite things in the field for law enforcement officers is significant. I also feel that overall this bill, as written, is making everything much simpler.

Carol Howell, President, Northern Sierra Ladies Gun Club:
I also want to thank Assemblyman Wheeler for this bill and this Committee for hearing it. I am very much in favor of A.B. 139. I also have a CCW. Do not forget, we live in an open carry state, which means anyone in the state can strap a gun to his side and openly carry it, trained or not. The CCW means that the person has taken the initiative to get the training and licensing they need to carry a concealed gun for whatever reason. I do not want to strap my gun to my side and draw attention to it. The fact that I carry it is for protection. My son lives in Florida. For me to be able to carry my weapon to Florida, I have to go to Utah, get their CCW permit, and then get a permit in Florida to cover the states that neither Utah nor Nevada cover. This is, besides being burdensome, expensive and a pain in the neck. I think this is very much justified. We are a travel state. We are an entertainment state. We have people driving here from all over the country. They run into the same problem, yet someone without a CCW can strap a gun to his side and walk our streets. That just does not make sense.

Assemblyman Elliot T. Anderson:
A Nevada resident still has to have a Nevada permit. If this bill is passed, does that automatically trigger reciprocity provisions in other states? We are not mandating Florida to accept our permit, but we will accept other states' permits here. If that is not the case, what benefit do Nevada citizens get out of this?

Carol Howell:
Some of the states do not honor our CCW because we do not honor theirs. I anticipate that if we extend our reciprocity, so will they.

Assemblywoman Diaz:
Are you comfortable with the way Nevada vets and trains CCWs?

Eric Spratley:
Yes, I am.

Assemblywoman Diaz:
What is required in Nevada in order to get a CCW?

Eric Spratley:
The application for permit is under NRS 202.3657.

Assemblywoman Diaz:
How do we ensure there is quality training before individuals receive their CCWs? As an educator, I have to be retrained in order to be relicensed. It seems that my teacher licensure is not reciprocal in any other state. I would have to apply for a license in another state in order to teach there. Why would we not want people to get their CCWs in Nevada?

Eric Spratley:
Standardization would be fantastic. There is currently a bill working through the U.S. Congress for reciprocity everywhere across the United States. Certainly we hope there would be standardization, not only in the training but also being able to validate that the permits are true and valid. I am very comfortable in our state in that it requires eight hours of training and a live fire portion. Someone has to show he can hit the target. This is not just an online training. I am very comfortable with the way this legislative body has set that up. We trust your expertise in that regard. Our officers on the street do the best they can to validate an out-of-state CCW, through dispatch, making calls, and checking records. They check to ensure someone is not a prohibited person, not addicted to drugs, not a wanted person, et cetera. If it comes down to being unable to validate a CCW, it is not something we would go haywire on in the context of the stop.

Carol Howell:
Most of us have ongoing training. We are required to renew our CCW every five years, going back through the training and being retested each time.

Derek Clark:
In addition to the ongoing training, the background check is also done each time you renew your CCW. If there have been any issues that have occurred, they would show up.

Assemblyman Gardner:
I just looked up the Nevada teachers' reciprocity agreements, and there is an agreement with 42 states. My understanding is that the CCW would basically be the same thing; we will allow out-of-state CCWs to come to visit in our state, correct?

Derek Clark:
I think the people we are talking about are a short-term presence here in Nevada. They come in with a CCW, they are here for a few weeks, and they

leave. We are not transplanting them. If someone does seek residence, then he must go through all of the State of Nevada requirements for a local CCW.

Assemblywoman Seaman:
I want to be clear on something. Open carry is currently legal in Nevada and there is no training required. Is that correct?

Eric Spratley:
That is correct.

Assemblyman Elliot T. Anderson:
I feel relatively comfortable with Nevada's requirements, because of the live fire component and because CCW people are going to be relatively safer. I am concerned with the 36 states that do not have reciprocity now because their requirements are not like ours. Do you know why these states are not on the list? What is it about their training requirements and their processes in general? Do all of those 36 states have the same live fire requirement to ensure people know how to hit a target?

Chairman Hansen:
We will have someone else come up who is better equipped to answer that later. We will now go to Las Vegas for more comments.

Vernon Brooks, Private Citizen, Las Vegas, Nevada:
I am in favor of this bill. This is a logical quality of life improvement for anyone who has a CCW in another state. I would like to point out something that I have not heard yet: I think among CCW holders this is common knowledge, that when making choices to travel to other states, either for recreation or vacation, we actively choose places where our CCWs are recognized for the sake of uniformity in our daily lives. I for one avoid going to states that do not recognize my permit, like California. I will choose Utah instead. I think many people do that.

Also, we are willing to accept driver's licenses from all 50 states without knowing whether the person holding the license is at all familiar with school zones, or how far behind an ambulance to follow, et cetera. Yet we still allow them to come into our state and operate a several-thousand-pound weapon on our public streets. I think it is reasonable enough for us to allow minor variances in the training that was decided upon in another person's home state and give some credibility to the full faith and credit of our fellow states in this country.

Juanita Clark, Member, Charleston Neighborhood Preservation:
We thank each one of you for serving in the Legislature and your families for supporting you. We ask that you vote yes on A.B. 139. Allowing a person possessing a CCW in a state other than Nevada to carry a concealed firearm in Nevada is wise. Please vote yes on Assembly Bill 139. [Also provided written testimony (Exhibit D).]

Julie Butler, Administrator, General Services Division, Department of Public Safety:
The statutory comparison component for determining reciprocity has fallen to the DPS. That duty has been delegated to the General Services Division's Brady Unit. To give you some understanding of what that entails, my office starts in January of every year to research the laws of all 50 states and determine whether they meet the criteria of substantially similar to or more stringent than Nevada's requirements. The first thing that we look at is the age requirement. Nevada's age requirement is 21 years. Some of the other states have a component in which if you are 18 and a member of the armed forces or you need a concealed weapon for your job, you are allowed to carry concealed. That is a component where we would not recommend recognizing that state's permit.

We look at the training component. In Nevada, it is an eight-hour classroom training followed by a live fire component. We look to see if other states have a training component with live fire. There are nine states that do not have a training component. One of the reasons we do not recognize Arizona is that they have an online certificate that does not have a live fire component.

We also look at electronic verification capabilities. There has to be the ability for the law enforcement officer to look up the permit to ensure that the permit is valid. We have some states that we do not recognize because they only have an in-state verification capability. We also look at the length of the permit. In Nevada, the permit is good for five years. In some states, like Florida, the permit is good for seven years. There is a variety of reasons why those 36 states may not make the recommended list.

Daniel S. Reid, State Liaison, National Rifle Association of America:
This is a great bill and would respect the rights of individuals who possess a valid permit in their home state. The right to self-defense should not leave once you cross a state line. This is a great improvement over our current system. This is a list that can get narrowly construed. For example, we lost two states from the list this year, one of them is West Virginia. The reason West Virginia was removed from the list is that there is a minor exemption where if you are under 21 years old and it is required for your job to carry

concealed, you can possess a permit. Nevada dropped the entire state, including everyone over 21. We are talking about a very small subset of people for a permit that was long recognized by Nevada. Those are some of the examples of where states have been recognized before and are being dropped because of minor exemptions. This is a great improvement supported by law enforcement.

Chairman Hansen:
That is something we may want to consider as an amendment—if there are minor exemptions that are frustrating the possibility of reciprocity, like a law enforcement person who carries firearms, and who is under the age of 21, and because of that all of West Virginia is eliminated.

Assemblyman Elliot T. Anderson:
If some states extend their renewal by two years, that may be something that is not really going to affect someone's safety. What I worry about is when you bring a weapon on campus. If people are going to have a weapon on campus, I want to make sure they can shoot well. We are going to be talking about allowing those individuals to carry on campus. I am not so concerned if that person's state permit goes two years over, but I am concerned if he does not know how to shoot. I want someone who can defend himself without indiscriminately hurting someone else. I want the criminal to be taken care of and not have anyone accidentally get hit. Is there room to say that we can have reciprocity for anyone who has a substantially similar live fire requirement rather than just all requirements?

Daniel Reid:
I think CCWs across the nation have proven to be, regardless of the training required, law-abiding citizens. We do not have instances now in those states, like Washington, that do not require any training.

Chairman Hansen:
I heard earlier that some states allow 18-year-olds who are currently or have served in the military. The last time I checked, most people in the military learn how to shoot. That would be an example of a young man who is 19 years old and has served in Afghanistan, yet in Nevada he cannot have a CCW. That seems to be a reasonable amendment to this bill.

John Wagner, State Chairman, Independent American Party:
I have a CCW in Florida as well as in Nevada. When I applied for it, they knew that I also had a Nevada CCW. I went to a website called <packing.org> where I clicked on a state and found the laws of each state. Before I went to Colorado, I checked their requirements. I found that Colorado does not accept

Nevada's CCW, but it does accept Florida's, but only if you reside in Florida. Since I was travelling to Florida, when I got to the Colorado state line, I ejected the clip and got rid of the bullet in the chamber. The bullets came up front and the gun went in the back. When I left Colorado, I did the reverse. I know there are some states that do not honor our CCWs because we do not honor theirs. I think this is a good bill.

Paul Grace, Private Citizen, Reno, Nevada:
I have been lobbying for gun owners for 18 years. I am now fully retired from the Nevada State Rifle and Pistol Association. The problem that I have is that a lot of people in northern Nevada know who I used to be, a real lobbyist, so they call me and complain, usually blaming me for it. Two years ago I managed to get the revolver and semiautomatic issue taken care of, which was a problem for a number of people.

I have a personal problem: now that I am retired, I wander around pulling a fifth wheel trailer with my pickup. I travel through a lot of states. I go through a lot of fairly deserted areas in some of those states where I would like to have a firearm. I have had a CCW for almost 20 years. I never point a firearm at anything I do not intend to shoot.

This bill is absolutely wonderful for retired people like me because, if I could just get the 11 western states on board, which is where I am most of the time, I would not have to unload the firearm, clear the chamber, put the gun in a locked box in my trunk, and put the ammunition somewhere in the fifth wheel. It is pretty silly having to do that through alternating states, considering that CCW holders are usually pretty damn law-abiding citizens, unlike the average gang member who would be carrying a gun anyway and not give a damn about what our laws are. We go by the law. I ask all of you to please pass this bill to help all the other retired folk who would like to carry. I went to Alaska twice. They do not let you bring firearms in unless you have a long gun, and you pay $50 for a permit to carry a 12-gauge shotgun. Then they spend an hour going through my trailer and automobile because they think I have a pistol hidden somewhere. They delay me an hour every time I go there, so I do not go there anymore.

Janine Hansen, State President, Nevada Families for Freedom:
This is really an anti-crime bill. I have a bumper sticker that says "Criminals prefer unarmed victims." I think that is the truth. I do a lot of travelling by myself. I hope you all have a copy of the book *More Guns, Less Crime: Understanding Crime and Gun Control Laws* by John R. Lott, Jr. This book talks about the studies John Lott did. He started out being in favor of gun control and after doing the studies, he found that in states that allowed CCW

and more open carry of guns, there was far less crime. He has done the statistics on 39 states, research from 1977 to 2005. This is a self-defense issue. This is a Second Amendment issue. I think it is very important for the protection of law-abiding citizens.

I have had a CCW for about 17 years, and I appreciate the training. I have been ever so thankful, as I travel so much by myself, to be able to have a CCW. It is law-abiding citizens going through their own state to get a CCW that are the ones who help to reduce crimes. It is those who do not follow the law and have guns who cause the crimes. It is those of us who are prepared to protect ourselves and others that can help to reduce that. The statistics show that if you just happen to brandish a gun, there is no more problem with the crime. I think this is a very reasonable bill that will help to reduce crime and help protect law-abiding citizens in our community.

Megan Bedera, representing Nevada Firearms Coalition:
I want to echo the sentiments from Daniel Reid as well as our sheriffs who were presenting the bill. I would ask you to consider that we always ask, how does the law enforcement feel? Do they feel this is enforceable? Do they feel that this is protecting the citizens? We have had two sheriffs and a representative from a sheriff's department say yes. So the Nevada Firearms Coalition would ask that you please support this bill.

Richard Brengman, Private Citizen, Gardnerville, Nevada:
I am happy to see this bill, at last. It has been many years in the coming. I have been following CCW in Nevada for nearly 30 years. People are concerned about accuracy. The fact is that in most cases of CCW use, no shots are fired. Generally, when the offending party realizes you are armed, they are done. Basically the CCW is universal in all states, because they are based on physical reality. It is general knowledge that you do not shoot a fleeing suspect. A CCW does not mean you can brandish to win an argument; a CCW does not prevent you from being prosecuted for that kind of abuse of your right to carry.

Permits are slow to be issued, 90 to 120 days. So if a visitor wants to get a Nevada CCW, because he is going to be here for six months for a job, he will be here for half the time before he gets his permit. We need this bill so people can come here with their CCW and not be waiting, paying fees, et cetera. We are discouraging people from coming here. Snowbirds are going to Arizona because Nevada is hard. Current federal law already allows retired police officers from all states to have CCWs, and those permits, per federal law, are required to be recognized in Nevada. Are the citizens less able to exercise their Second Amendment rights than retired law enforcement? I also believe that

prior to "Shall Issue" in Nevada, we did have CCW permits if you were a friend of the sheriff, and no training was required.

Chairman Hansen:
Is there anyone else here who would like to testify in favor of A.B. 139? Seeing no one, I will move to the opposition.

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
The Las Vegas Metropolitan Police Department (LVMPD) opposes A.B. 139. I appreciate the comments made by the sheriffs and other law enforcement individuals. The fact of the matter is that our jurisdiction, Clark County, houses 70 percent of the population of the state. It houses the majority of the CCW permit holders in the state. If this bill passes, the impact will be on us in our jurisdiction, more so than the other jurisdictions. Our main opposition to the bill is the fact that Nevada currently has a high level of standards for obtaining a CCW. Some of the key components of that are the training and live fire components that our residents must go through. That same criteria is not in effect in other states. As stated, there are 36 states that we currently do not recognize because they do not have the same level of training that Nevada residents are required to have. In some states, you can pay your money and get your permit. In other states you have to go through a background check, and sometimes the background checks vary. Sometimes they are more in-depth; sometimes they are less in-depth. There are examples from other states where a person made it through a background check where in fact he had a criminal record, yet he obtained a CCW in that state. Those same individuals, under this blanket reciprocity, could then come to Nevada and carry in our state.

The second critical component is that when our law enforcement officers in the field encounter someone at 2 a.m. who is carrying a concealed weapon and the individual says he has a permit out of Colorado, the officer in the field needs to be able to verify that. Someone could have a card that he printed up and laminated. People fake driver's licenses. If we do not have a 24/7 database in effect, the officer cannot verify if that permit is valid or not.

We talk about the criminal element; they are going to carry concealed anyway; that is true and this gives those folks an out. They can claim they have a permit from another state and the officer cannot verify it if that state does not have a database. In addition, the analogy of a driver's license has been used, that we acknowledge driver's licenses from other states. If someone comes here with a license from another state, he can drive here. The fact of the matter is, every state that I am aware of has pretty much the same criteria for

a driver's license. You have to take a test and show proficiency driving a motor vehicle. A CCW is vastly different than an automobile when it comes to the standards that are in place between states. This would not be an issue if there were a set of standards across the country that were equal.

Finally, I have total confidence in the CCW holders in our state. My concern is the people from other states who do not have the same level of training or standards who would come here. I do not see a benefit for Nevada citizens from this proposal, other than the fact that some other state may allow us to have reciprocity with them if we go to blanket reciprocity. We cannot guarantee that will be the case.

I gathered a few statistics this morning: In North Carolina, over a five-year period, 2400 CCW permit holders were convicted of crimes and authorities failed to revoke or suspend the permits of roughly one half of those folks; this included felons, murderers, rapists, and kidnappers. In Florida, more than 1400 permits were issued to offenders who had pled guilty or no contest to felony crimes such as sexual assault, child molestation, and burglary. Those states do not have a revocation process that is accurate. Now those individuals can come to Nevada and carry in our state. Again, without a database, we have to accept their CCWs.

Assemblyman Gardner:
We are not checking every car or everybody that comes to Nevada. This would only come before the officers if they were doing something else. Are you saying you want this as an add-on?

Chuck Callaway:
All we want is the standards that are currently in place to continue. I believe that Nevada has a very good process. I understand the resource issue on the state, that once a year they have to research what other states are doing and determine if they meet our criteria. I am certainly open to looking at that criteria, as mentioned, if we need to have an exemption where an 18-year-old has a CCW. I do not think that someone from another state should have the privilege in Nevada that Nevada citizens do not have. If you are required to be 21 in Nevada, I do not think an 18-year-old from another state should be able to come here and carry when Nevada citizens cannot. All I am asking for is that the current standards remain. I think they are sufficient and they work. I understand the resource issue the state has and I respect that.

Assemblyman Gardner:
We have lots of people coming into Las Vegas. Right now LVMPD is not checking those people, so there is no verifying whether people are following this

law or not. If that is a concern, why are we not seeing the crime from that right now?

Chuck Callaway:
We get 3 million 911 calls a year. Some of those cases involve people who are carrying concealed weapons, legally or illegally. If the officer encounters someone, and he claims he has a permit from another state, if it is one of the states we recognize under the current law, we have the ability to verify 24/7 that he has a valid permit. If this bill passes, we will no longer have that ability. If we were to encounter someone currently, and he was carrying concealed from a state that we do not recognize, he would be breaking the law in this state. Obviously if he did not have a permit at all, he would be also breaking the law.

Assemblyman Gardner:
Currently, we are not able to tell if someone has a CCW. If we expand this and we let other people come into our state with CCWs, I am wondering how that would cause any extra problems for LVMPD.

Chuck Callaway:
Under the current system, there is a mechanism to verify if out-of-state folks' permits are valid or not. We are not setting up checkpoints to see if people have CCWs, but if an officer in the field responds to a call and encounters someone with a concealed weapon, we have a mechanism in place to verify if that permit is valid through another state. If this bill passes, we will no longer have that ability.

Assemblywoman Fiore:
I am a resident of Clark County. I am not seeing an issue with people faking CCWs. Can you tell me differently?

Chuck Callaway:
I think you are correct, because under the current standards it is difficult to fake a CCW. We can verify those through the database that is currently in place. If we do not have the database, it will be very easy to fake a permit.

Assemblywoman Fiore:
So, at the moment we do not have a problem, we are not creating a problem, and that "woulda, coulda, and ifs" that may happen is not happening. So currently we do not have a problem in Clark County, nor do I see us having one.

Chuck Callaway:
With a database in place, it is difficult to fake a CCW permit. With no database in place, it will be much easier to fake a CCW.

Assemblywoman Fiore:
But we do not have anyone faking it today. Why would they fake it tomorrow?

Chuck Callaway:
I do not know if it is accurate to say we do or we do not have people faking it today. I am not aware of a situation, but I am not going to tell you, in a city of 2 million people, that it has not occurred.

Assemblywoman Diaz:
Las Vegas is a very transient city. I know that LVMPD deals with a lot of individuals coming in and out constantly. I appreciate the fact that you came back to my point about the missing database piece in this bill. If there was a registry where everyone's CCW is going to be validated from state to state, then you know it is a legitimate CCW. I have no problems, if the state is going to go down that road, that you, a law enforcement official, have that protection. Are there ever any instances where CCWs are involved with law enforcement?

Chuck Callaway:
Through the course of our duties as police officers, when we respond out in the field we often encounter CCWs; 99 percent of the time they are law-abiding citizens, and they tell us they are carrying. We have very little problem with them. However, like I said, I have confidence in Nevada's CCWs because we have standards in place. My confidence level is not as high for some of the CCWs from other states where adequate background checks, adequate standards, and adequate criteria are not in place. On the other side of the coin, we average about 100 CCWs each year that we revoke or suspend because those holders have committed some type of crime and we are notified by the courts that their permit has been revoked. To say that every CCW out there never commits a crime would not be the case.

Chairman Hansen:
Julie Butler testified earlier about the criteria that her department uses to see how closely we align with other states. Do you feel that is inadequate?

Chuck Callaway:
I have confidence in the system that is in place. I understand there is a strain on the state. We would be open to looking at the criteria and potentially expanding it, if it could bring more states in. For example, seven years versus

five years is not seen as a public safety issue, and certainly those states could be included. I do see an issue with states that have no background checks, have no standards for competency with a firearm, or have no live fire component. Those are the areas that I have concerns with—those people coming here and having a privilege that the citizens of Nevada do not have.

Chairman Hansen:
I think Julie Butler has taken those things into account to come up with the lists of states; 36 states are still excluded because they failed to meet the criteria. I would like for you to get together with Ms. Butler to see if there are some areas that we need to amend into this law. I would love to see an expansion of the states that we can add to the list. Also, if there are inadequacies in the procedures, we would like to see those as well, because public safety is a huge issue for us.

Assemblyman Ohrenschall:
Officer Callaway, you are representing the largest law enforcement agency for our most populous county, so you have a unique perspective. You mentioned the 100 CCWs that have been revoked out of Clark County in the previous year. Has it been your experience that there have been many CCWs from the states that we do have reciprocity with who have been revoked in their home state but are still carrying here?

Chuck Callaway:
I do not have any information to relate to that. I think that could be a potential problem. Currently, with the states that we have reciprocity with, we are trusting those states because they have very similar criteria, they are doing the right thing, and if someone commits a crime they are revoking or suspending their permits. I would believe that in the database, that would be reflected. If someone came here from a state that we have reciprocity with and an officer used the database to verify, it would show that the permit has been revoked or suspended.

Assemblyman Ohrenschall:
That would only occur if the CCW had contact with the enforcement officer?

Chuck Callaway:
Yes, we are talking about when our officer encounters someone on a call. Obviously it can be stated that people come here and carry concealed and never encounter a law enforcement officer.

Assemblyman O'Neill:
This may be a difficult question, but what would the LVMPD position be if all of our visitors decided to open carry down the Strip? Would that be less intrusive and less upsetting to the community as a whole than if those weapons were covered?

Chuck Callaway:
I am not here to debate or discuss open carry. I think we are talking about apples and oranges. As previously mentioned by a testifier, she can open carry but prefers to have a CCW. She stated she goes through a high level of training to have that permit. Tomorrow, 40 million tourists could strap on guns and walk up and down the Strip. That may or may not have an impact on Nevada's economy. I do not know. Some people who do not feel comfortable with that may decide not to come back.

Assemblywoman Seaman:
Do you know how many states do not have a background check?

Chuck Callaway:
I do not know how many states do not have a background check, but I do know there are 36 states which we do not have reciprocity with because they do not meet our standards. I am assuming that some of that could be because of their background process.

Assemblywoman Seaman:
You are assuming, but you have no facts.

Assemblywoman Fiore:
How many CCWs who are nonresidents has LVMPD arrested?

Chuck Callaway:
I do not have that data, but can find out for you.

Assemblywoman Fiore:
So, just from your testimony today, it is "if bad things happen." You have no data, you are just up here working for your boss, who was pro-gun when he campaigned.

Chuck Callaway:
I do not think I am basing my testimony on no data. I am basing my testimony on the fact that we currently have a system in place which has a set of standards, and this bill will throw out that set of standards.

Assemblyman Elliot T. Anderson:
Do you have confidence that every person from another state who has a CCW has the training on weapon safety rules to ensure they are handling the weapon well and are being safe?

Chuck Callaway:
I have confidence in Nevada CCWs because of the standards we have in place. I have confidence in the out-of-state folks that we have reciprocity with because they have to meet similar or more stringent requirements. I do not have confidence in the CCWs in states that we do not have reciprocity with, because I do not know what level of training they are going through, but it is not equal to or more stringent than ours.

Chairman Hansen:
That is why out of 50 states only 14 are going to meet the current criteria. They are equal to or greater than prior to this bill being passed. Ms. Butler has obviously been doing a great deal of homework to ensure the citizens in Nevada are protected along these lines.

Assemblyman Gardner:
Do you know the CCW requirements in those 36 states, or are you basing this on the 14 states that are equal to Nevada?

Chuck Callaway:
I am basing my testimony on the simple fact that Nevada has a set of standards that require all of those things mentioned earlier: a resident 21 years of age, the person's background check has proven that they are not a prohibited person, they complete a course with an instructor, and they show competency with a firearm with a live fire component. The states we have reciprocity with have similar or more stringent criteria. I did not come in here with research from the 36 states that do not meet our criteria. I am coming here today strictly with the position that we currently have a good system in place with a good set of standards, and if we throw that out, then we allow folks from other states to come to our state and carry without meeting the same requirements as we require our own citizens to meet.

Chairman Hansen:
Thank you. Is there anyone else who would like to testify in opposition? Seeing none, is there anyone neutral on A.B. 139?

Julie Butler:
I would like to offer a friendly amendment to A.B. 139 (Exhibit C). In section 2 the default date is October 1. We would like to amend that to make it effective

upon passage and approval. The reason for this is that under current law, our department is required to provide the annual list of recommended states to the Sheriffs' and Chiefs' Association on or before July 1. It takes a substantial amount of research from my staff to conduct this annual comparison. In fact they start in January every year, and it takes a good five months to get the list together. Meanwhile, they are not doing their other primary duties, which are the Brady background checks, because they are diverted to doing this task. If this bill were to pass with the default date of October 1, my staff would have to continue this effort to provide that list by July 1, only to have it all undone in October.

Chairman Hansen:
We have already discussed that amendment with Assemblyman Wheeler, and we are comfortable with that.

Assemblyman O'Neill:
What do you think it costs your staff to do this task as it is currently assigned?

Julie Butler:
We could probably estimate that; I have an administrative assistant IV who devotes a one-half-person year doing this research. We started a process last year of getting our deputy attorney general involved to do a legal review as a double check of our review.

Assemblyman O'Neill:
I was just looking for approximate numbers. Do you think we will save at least $60,000 to $70,000?

Julie Butler:
Probably.

Chairman Hansen:
If there are areas that Mr. Callaway brought up that you think are valid points, we are relying on you and your department to ensure we do not do something where we could jeopardize the well-being of the citizens of the state of Nevada.

Assemblyman Elliot T. Anderson:
Could we find out why each state is not on the list of reciprocity? I do not think that if a state allows an 18-year-old in the military to have a CCW or a permit expires two years later than ours those are good reasons to deny reciprocity, but I start to change my mind when you have people who do not know the weapon safety rules. People who go through the live fire training have to learn weapon safety rules on the range. We are probably going to end

up with weapons on campus this session. I do not want people who are irresponsible with weapons in these environments. If you could provide the requirements of the other states, that would be very helpful.

Julie Butler:
We can certainly get the list that we provided last year with what and why we made the recommendations for those states (Exhibit E). I will say one of the difficulties that we have is when you put certain criteria in statute, such as a minimum age limit, it gets to be a slippery slope. If you are going to set boundaries, it is difficult to know when to make exceptions. It is easiest for us to say the law is the law.

Chairman Hansen:
You do not really have the option of ignoring what the statutes require. The fact is, of the 14 states that you have agreed to, they at least meet or exceed our standards, correct?

Julie Butler:
That is correct.

Chairman Hansen:
Is there anyone else here in the neutral position to A.B. 139? Seeing no one, I will ask Assemblyman Wheeler to come back for closing comments.

Assemblyman Wheeler:
One of the things that was discussed is safety concerns of people carrying concealed from other states. Mr. Callaway said he is afraid of someone coming in without a background check. I know of no state that does not at least conduct a background check. When you look at the safety issue, I guess the safety is different when you have a gun on your hip or you have a gun on your hip with a windbreaker over it.

Chairman Hansen:
I will now close the hearing on Assembly Bill 139. [Other letters of support not mentioned include (Exhibit F) and (Exhibit G).] I will open the hearing on Assembly Bill 141.

Assembly Bill 141: Revises provisions relating to the foreclosure of liens by a homeowners' association. (BDR 10-751)

Assemblywoman Irene Bustamante Adams, Assembly District No. 42:
The topic today is regarding homeowners' associations (HOA). I know that a lot of you know this is a very complex issue. There are several bills on HOAs

between both houses, and I recently learned that there is a bipartisan group that Senator Hammond and Senator Ford have been working with to deal with the broader issues. This bill is very specific, very targeted. This bill ensures that everyone with a security interest in a property receives fair notice and an opportunity to participate in a foreclosure proceeding impacting that interest. It is similar to the basic premise of due process and a concept invented within the American property law. Consequently, it is imperative that whatever may occur with legislation addressing broader HOA priority lien issues, this legislation proceed independently to ensure that, at minimum, those with duly recorded security interests are given an opportunity to be heard. Last year, the Supreme Court of Nevada issued an opinion, *SFR Investments Pool 1, LLC. v. U.S. Bank, N.A.*, 130 Nev. Adv. Op. 75 (2014), wherein the court held that an HOA lien holds a position superior to that of a first deed of trust. [Continued to read from prepared testimony (Exhibit H).]

As mentioned earlier, it is very straightforward; that is the intent. I did have some people stop by my office late yesterday who wanted to add an amendment. I asked if they were working with the larger group in the Senate, and they said they were. I told them that it would be my preference that they stay with that group. It is dealing with larger, more complex issues, and I do not want to muddy the waters with this bill. I know that when you have this chapter open, there is a tendency to want to make it a Christmas tree and add all kinds of ornaments. I ask people to work with the larger group and let this bill stand on its own. At this time I would like to introduce Bradley Beal.

Bradley W. Beal, President, One Nevada Credit Union:
I am president of One Nevada Credit Union, which is the state's largest credit union. If you have not heard of us, we serve 75,000 Nevadans in Clark County, Washoe County, and Nye County. I have had the good fortune to be president for 25 years and have seen a lot of mortgage lending over that time. Earlier this month One Nevada Credit Union celebrated its sixty-fifth birthday. We have been involved in mortgage lending for over 30 years. Last year our credit union originated just shy of $200 million in first mortgage loans, most of which we sold to Fannie Mae so we could recycle those dollars and make more loans. We also maintain our own portfolio, which contains about 600 loans totaling about $86 million. We also service another 1000 loans for Fannie Mae, totaling about $175 million.

As mentioned, Assembly Bill 141 will simplify the notice process for these HOA lien foreclosures so that anyone else with a recorded interest can receive notice and can participate in the foreclosure. This is a matter of simple fairness of due process and it is good public policy, and it happens in every other form of foreclosure proceeding when the other interested parties receive notice and are

able to participate. This legislation is critical for ensuring that we are able to protect the interests of our credit union and our 75,000 member/owners. We appreciate that Assemblywoman Bustamante Adams is sponsoring this bill. I am here to provide my perspective on any questions.

Chairman Hansen:
The problem is that you have mortgages and you are not being notified prior to the sales, and because of the way it is currently set up, whoever has the first lien on the HOA can sell the property without you getting a nickel, potentially, after the sale. That is really the root problem, correct?

Bradley Beal:
That is correct.

Assemblyman Elliot T. Anderson:
This is as simple as it gets. This is an incredibly necessary step to have notice. The Fifth Amendment of the *Constitution* prohibits the deprivation of property without due process. At its basic level, due process is notice and opportunity to be heard. Currently we do not require a full-on judicial foreclosure, but that is what the Fifth Amendment contemplates. We are already giving quite a break to the non-judicial foreclosure process. We are waiving all of the court rules to make it easier on your behalf when you are exercising your rights under *Nevada Revised Statutes* (NRS) Chapter 107, but also the superpriority rights under NRS Chapter 116. I think at a very basic level, notice cannot be negotiable if we are going to take someone's property—especially when you are talking about a potentially $10,000 sale wiping out a $200,000 deed of trust. It cannot be negotiable, and we have to have notice and cannot live in a state that allows property to be taken without notice.

Assemblyman Nelson:
I agree with the import of the bill. The only question I have is for the HOA. How are they going to know exactly where to send the notice? I have seen many deeds of trust that are recorded that have printed in the top left-hand corner, recorded at the request of a law firm or a title company or someone else. If I represent an HOA and now I have to comply with this, which is a fundamental part of due process, do I send notice to the law firm if that is all that is noted on the recorded deed of trust?

Bradley Beal:
I posed that very question to our foreclosure attorneys yesterday. They tell me that they rely upon the address on the deed of trust.

Assemblywoman Bustamante Adams:
This is one of the questions that was brought up late yesterday and is being discussed over in the larger group. That is why I asked those individuals to stay in their lane and work it out with the title companies and the realtors and the banks who are working as a group together. The intent, if this passes, is to work with the larger group. The tendency is when you have a very complex issue, sometimes it dies. But at minimum, we would at least have this due process in place. My goal is that they will work it out because there are other interests involved and then marry these two together.

Assemblyman Nelson:
Do you think it would be prudent to put that in as an amendment to A.B. 141, if the other legislation does not pass? That is my concern. I have handled many of these issues in my law practice.

Assemblywoman Bustamante Adams:
We could work through that if it becomes an issue. With that large a group and that many interested parties, in the event that they cannot pass that bill, this would be a vehicle that stays alive. We could then look at amending it.

Assemblyman Ohrenschall:
If this were to not pass, what do you envision the future being for underwriting these kinds of loans on real property? What kind of messages are you getting from the federal lenders?

Bradley Beal:
I hesitate to speculate on where we would go if we had to contend with this. I think it would be very messy indeed, and it would make lending much more difficult. I am reluctant to be more specific than that.

Michael Randolph, Manager, Homeowner Association Services, Inc.:
I have operated Homeowner Association Services, Inc. for the last 15 years. We are a collection agency that specializes in recovery for HOAs. I am in favor of this bill. I thank the Assemblywoman for cleaning up this one piece of legislation as a stand-alone bill. I would ask for a minor amendment. I would like to see the words "by certified or registered mail, return receipt requested" added to the bill. That same wording appears in NRS 116.31162, subsection 1, paragraph (a), and subsection 3, paragraph (b). We get our addresses and our ten-day mailing when we file the notice of default through the title report that we purchase from our title plant. My firm has mailed to all holders for the last 15 years. Under this amendment to NRS 116.31163, we could add the requirement to mail by certified or registered mail, return receipt requested. We mail first class so the homeowner gets the notice; we mail certified to prove

we mailed it because most of my certified homeowners mail comes back to me. For the banks and for the courts in the future, this would give them the proof that you mailed to the lender, and only certified mail would do that. I think this would reduce the amount of potential litigation in the future if the standard was you had to mail to the lender of record by not only first class mail, but certified or registered mail, return receipt requested. That would clean this bill up.

Bruce H. Breslow, Director, Department of Business and Industry:
Our agencies are the ones that deal with HOAs. I have never seen anyone cringe more often than they do at the word HOA, whether it be the Legislature, the attorneys, the Supreme Court, and everyone else. I am not hopeful because of the piranha effect that any large fix will solve everyone's issues with HOA laws in our state. This is a very small fix that is about fairness and notice. I am hopeful that this will not be bogged down by all the other parts. I am still waiting for someone to talk to the Real Estate Division about the real life issues they have with HOAs. I am starting a series of meetings to insert ourselves into some of the discussions. This is small, but it is important. It is about fairness, and I want to go on record by saying I support what Mr. Beal is trying to do.

Assemblyman Jones:
Do we have any statistics on how many superpriority liens actually go through where people pay $7,000 for a $500,000 house?

Bruce Breslow:
I do not have statistics in front of me, but there were hundreds of contested lawsuits bundled into a combined action. The Supreme Court chose a few, and they opined that under Nevada law you could foreclose and wipe out the first. While it may be a perfect interpretation of current Nevada law, that is also what is wrong with everything about current Nevada law. I know that the U.S. Department of Justice in Washington, D.C. had talked to us about coming here because of the problems they saw with HOA foreclosures. There are so many different interested parties here. Everyone has a piece of the action, and I am hopeful there is a solution, especially for the people who do not have a piece of the action; but I cannot give you any statistics. I can tell you that it is just not a fair situation.

Joseph Decker, Administrator, Real Estate Division, Department of Business and Industry:
I would like to express that the Real Estate Division is interested in the financial well-being of HOAs and often the lender is in the best position to quickly cure an HOA default. They can also serve to stabilize property values through managing their security interests if they are notified. The Division supports removing this exclusion in the interest of ensuring throughout the HOA lien

process that the lender and other lienholders have every opportunity to address their interests in light of the HOA's action.

Chairman Hansen:
Is there anyone else who would like to testify in favor? Seeing no one, I will move to the opposition.

Garrett Gordon, representing Community Association Institute:
The Community Association Institute (CAI) is made up of thousands of members, hundreds of HOAs, community managers, et cetera. Many of these folks are technical experts in this process. As was mentioned, it is a very complex process. First, we are 100 percent in support of the intent of the bill. What this bill does is shift the burden from notifying the bank with respect to the notice of default. Current law says the bank has to tell the HOA who to send the notice to. If changed, the HOA will now have to go on its own dollar, possibly hire counsel, also spend money on title companies, which of course is borne by the homeowners, to figure out who to send the notice to. We are in support, but the devil is in the details. We have been working on a bill with Senator Ford and Senator Hammond in response to the superpriority liens. As Assemblyman Elliot Anderson knows, we were in a working group meeting for about 4 1/2 hours. We discussed this same issue for approximately 45 minutes. As mentioned, we have to presume that this bill will not pass. We need to look at this piece of legislation on its own. We have only a few technical amendments with respect to who we send the notice to. It should only be the current lienholder. As you know, these loans are reassigned many times. It can go to a servicer, a bank in Florida, or a bank in New York; just let us respond to the title report and send it to the most current lienholder.

Secondly, the address was mentioned. We respectfully ask that the notice be sent to the last known address on the title report that we order and rely upon with respect to who we send this out to.

I appreciate the sponsor's meeting with us yesterday afternoon; I appreciate her keeping an open mind on the few technical amendments and letting this bill go forward with respect to standing alone. I will continue working with the larger bill. Hopefully it will come out of the Senate and on to you, and we can deal with this issue in a comprehensive manner. If not, I think a few tweaks to this bill will make it even better.

Assemblyman Elliot T. Anderson:
What exactly are the concerns in how to show notice? The way I understand the recording system is that is the title system. If I am going to court, I would file an affidavit and I would go to the recorder's website and look at all the

recorded documents on the piece of property. These are the addresses I would certify on that affidavit that I sent notice to; all the addresses listed on those recorded documents. I would put that in the affidavit and that would be my evidence to the court to show that I have satisfied notice. I cannot tell you how many cases I have seen where that is how notice is shown, just by an affidavit. To a court you have shown good faith in providing notice. I do not think they would slap you out of court if it was not the right address; that is on the person who recorded their security interest to provide the right address. If you show you provided the notice to the address they listed on the deed of trust, would that not satisfy notices for the court?

Garrett Gordon:
I think you are absolutely right; however, there is some ambiguity, and why not fix it now rather than have the HOA hire a lawyer at the expense of all the unit owners and go argue in court whether it was done right or not. If we can tighten it up, it would be best for everyone.

Angela Rock, representing Olympia Companies and Southern Highlands Homeowners Association:
The key is evidence in court, go to court, file in court. If there is anything anyone in the HOA industry knows right now, we are road weary of litigation. There have been millions of dollars spent in litigation going over statutes that at some point we all thought were clear. What we are asking is to avoid having to file that affidavit in court. Let us make it clear now, we are not trying to turn it into a Christmas tree, per se, but we have asked the sponsor to consider three things: the who, the where, and the when. The who is the current lien holders. The where is the address listed on the deed. If they have moved their offices, we can rely on what is coming through on the trustee sale guarantee. The when is that we are allowed to rely on the trustee sale guarantee because the way this statute is written, it is a little amorphous. This could be real time. If someone is in line in front of me filing something with the county recorders and I am the next person in line with my notice of default, I am not going to have real time notification of that. That is what is called a lag time or a blind spot. The association and the homeowners pay $400 to get the trustee sale guarantee; we need to be able to rely on that information. All we are asking for are those simple tweaks of the who, the where, and the when that will allow us to properly capture the interest holders who deserve notice so that we can avoid future litigation.

Assemblyman Nelson:
What you are asking for helps the intention of the bill, does it not? The intention of the bill is to ensure the lender gets notice. You want to make

sure the correct lender gets notice at the correct address. The amendment you are proffering will serve that function, correct?

Angela Rock:
Absolutely, that is why we spoke with the sponsor yesterday and would like to continue to work with the sponsor.

Norman Rosensteel, Member, Community Associations Institute's Legislative Action Committee:
I echo the previous comments; our main goal is to stay out of court. We do notify everyone of record, and we do keep a record of who we have notified. We just want to clarify this as much as possible so we do not wind up in court.

Assemblyman Elliot T. Anderson:
I am not looking for litigation, but the idea is how to prove notice if it were contested, because if it were not contested the sale would go on through non-judicial means and everyone, in theory, would be happy. If the sale was done properly, there would not be any grounds. I do not understand why the ten-day window is needed because as long as you can show that you, in good faith, provided that notice, that you did a recorder's search on that date, and you documented it, that would be enough. The idea of notice is not to make you crawl over every rock, and I understand why you get the title report because that gives you more certainty. I am having problems understanding why you cannot just say, we looked at the recorder's website this day, this is what was on there, this is where we sent it, and that shows the court that in good faith you tried to notice everyone.

Angela Rock:
I think you are making sense here in the room, but it has been all of our experience over the last two years that the best of intentions do not always end up that way when property rights are in dispute and homes do go for pennies on the dollar. It has been my experience that those do end up in court and you start going through everything with a fine-toothed comb. We would like to avoid some of that because what I have seen more than the associations recovering assessments through HOA foreclosure sales has been the hundreds of thousands of dollars that have been spent on legal fees over the last four or five years that the homeowners bear. If we can fix that with a few words, we respectively ask that it be done.

Chairman Hansen:
Is there anyone else who would like to testify in opposition at this time? Seeing no one, is there anyone who would like to testify in the neutral position?

Samuel P. McMullen, representing Nevada Bankers Association and Bank of America:
I want to make it clear that I support the concept of this bill, but I thought it would be good to give some additional input about the process you are hearing about. This relates to notice of sale. For those of you who are not foreclosure experts, there are all sorts of documents that happen; this is one of the last in a chain of foreclosure documents that an HOA completes. The Nevada Bankers Association looked at how the game has changed by the *SFR* decision. What the Supreme Court of Nevada did in that case was to lead to certain implications and certain actions you have to take. What that said was that by giving the HOA a superpriority, for their nine months of assessments, it takes precedence over every other priority. Then someone can buy a house by paying off the superpriority lien amount, which could be $5,000. We have many cases at this point where there is a multi-hundred-thousand-dollar loan for a multi-hundred-thousand-dollar house that is going through an HOA foreclosure sale for only $5,000 or $10,000. The lenders' loans are basically extinguished through NRS 116.3116.

What we did is try to grapple with that and what it meant to us. We have not actually come out and said, why do we not just extinguish the right of extinguishment? We looked at that, and it may have to happen because of other features, particularly the position of the federal lenders, and whether they will even write loans under this circumstance. That is an issue that needs to be addressed. Other issues are: what is the most appropriate way for the banks to protect their security? For the HOAs to get funded? How can we expedite that? How can we make that happen faster? How can we make that whole process work? You have constituents who are severely impacted by this.

What we have done, prior to notice of sale, is talk about a document that would be a very clear notice dealing with the same issues here: how do you get it, who do you send it to, how do you make sure it is reliable? There are a lot of dollars at issue. If an HOA processes the notice and leaves out a lender because it did not pay $400 for a trustee sale guarantee, the import of that to the HOA is that they do not want to have a lawsuit because they did not notify everyone. At this point there are huge rights and lots of dollars at issue.

We are trying to knock down the probability or possibility of lawsuits in favor of some other smarter exercises. The first one is giving the lenders notice of what the nine-month lien is, or the amount of that and the collection amounts allowed by statute, and allowing an opportunity to pay those off. In effect, what the banks need to do now, beyond all else, is protect their security. If they have a $500,000 loan, the homeowner may be current on his loan but is not paying his HOA assessments; then he has created a situation where a foreclosure sale

can happen for the smallest amount, not the largest amount. All the other lenders dance to the tune of the HOA foreclosure and the implication of that. Give us an opportunity to craft something that will take away the issue for the HOA completely because they will get the maximum amount allowed by statute. They do not lose the rest of the non-superpriority amount; they can try to collect that in other ways. Secondly, we are trying to ensure that we reduce most of the similar provisions that are utilized for other real estate transactions that could be included in this, all of which are about going to a court of competent jurisdiction. Again, your constituents as HOA members pay for all of that. There has to be a smarter, better way. The point is, before notice of sale, we are creating a product with the right for people to get accurate information, HOAs to be compensated for the collection and production costs of that notice and pay off the nine months, and trying to get the lending business in Nevada back in order. It is pretty torqued up, and real people's lives are affected.

Assemblyman Thompson:
If the HOA is trying to foreclose, when it goes over to the credit union, does the credit union do a last minute attempt to reach out to the homeowner, try to work out some terms, and try to keep the homeowner in his home? I represent the North Las Vegas area, and I have a lot of homeowners that this would affect, and we want to keep neighborhoods whole.

Bradley Beal:
The last thing we want is the house back. We want to keep the people in their homes, and we will go to whatever reasonable lengths to keep them there. If we received a notice of lien sale, we would go to the HOA and pay the lien off and not let it go to sale. We would go to the homeowner and see what the problem is and what we can do to help resolve it. Can we reduce the rate or put the loan on interest only for a while? If we can understand the difficulty they are having and what they are doing to resolve it, we will definitely work with them. We modified a couple hundred homes during the recession. We had about a 90 percent success rate on our modifications. Our objective is to keep them in the home.

Assemblyman Thompson:
I would love to discuss how the modification process works because that has really been a major difficulty, because people have been getting balloon rates on the back end. A true modification and reducing it down to the value of the home—I would love to discuss that.

Garrett Gordon:
Part of the legislation in the Senate would add a redemption period. So after the foreclosure happened, there is a period of time where the bank or the

homeowner could redeem. Again, it is adding another period of time to allow protections for the homeowner, for the lenders to give them a last chance effort.

Assemblyman Jones:
You mentioned that you get a title policy for $400 and you are secure in your notice because the title company will take it over if they made mistakes on who to give notice to. So why is there a problem? You have the policy, there should never be any issues, and the title insurance company would have to take care of it.

Samuel McMullen:
We are focusing on a micro part of the whole process, the notice of sale, and ensuring that it gets to the right people. Generally, the HOAs have a trustee sale guarantee policy that guarantees and protects the HOA and the trustee if for some reason they do not comply with the sale. This is not just the notice of sale; it is everything that happens up to that point, and it has to be done sooner rather than later. There are a number of notifications. We are trying to ensure that not only can they use the trustee sale guarantee, but also get the money reimbursed when the creditor steps in. We are trying to create a system that will be as close as we can to being flawless and make sure it is workable. This is a sense of how complicated this issue truly is.

Assemblyman Jones:
Do you have a better knowledge on how much this has really happened, with the superpriority lien taking over and wiping out the first and second trust deeds?

Samuel McMullen:
It is dozens. One finally went all the way to the Supreme Court and got the resolution of the interpretation issue in NRS 116.3116. I do not have the exact numbers, but there are several more now due to that case. That is a disruption in the lending industry. It cannot settle a half-million-dollar asset for ten thousand dollars and not have that loan to the bank paid off.

Chairman Hansen:
Is there anyone else who would like to testify in the neutral position? Seeing no one, I will invite Assemblywoman Bustamante Adams back up for closing remarks.

Assemblywoman Bustamante Adams:
As mentioned earlier, this is very complex and there is a lot of work that needs to be done. That is why the working group in the other house is working on

a bipartisan effort. That is why I asked Mr. Gordon to stay in that lane. Let me have this as a clean, stand-alone issue. If we do get this bill out of this house, my desire is to ensure that this portion is consistent for the homeowners and the other interested parties as well.

Chairman Hansen:
I will now close the hearing on A.B. 141 and open up for public comment. Seeing no one, I have some Committee business. I have a bill draft request introduction.

BDR 14-911—Makes various changes relating to criminal procedure. (Later introduced as Assembly Bill 193.)

ASSEMBLYWOMAN DIAZ MADE A MOTION TO INTRODUCE BILL DRAFT REQUEST 14-911.

ASSEMBLYMAN GARDNER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I am going to reschedule the work session scheduled for February 27, 2015, to March 2, 2015. I have set up an HOA subcommittee that I will announce at a later date. This meeting is adjourned [at 10:26 a.m.].

RESPECTFULLY SUBMITTED:

Nancy Davis
Committee Secretary

APPROVED BY:

Assemblyman Ira Hansen, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 25, 2015 **Time of Meeting: 8 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 139	C	Assemblyman Wheeler	Proposed Amendment from Julie Butler, General Services Division, Department of Public Safety
A.B. 139	D	Juanita Clark, Las Vegas, Nevada	Written Testimony
A.B. 139	E	Julie Butler, General Services Division, Department of Public Safety	CCW Reciprocity Report
A.B. 139	F	NV Firearms Coalition	Letter of Support
A.B. 139	G	Stillwater Firearms Association	Letter of Support
A.B. 141	H	Assemblywoman Bustamante Adams	Prepared Testimony

SENATE BILL NO. 355–SENATOR HAMMOND

MARCH 16, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to real property. (BDR 10-680)

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

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

AN ACT relating to real property; revising provisions relating to amendments to the declaration of a common-interest community; revising provisions relating to the filling of vacancies on an executive board of a unit-owner's association; revising provisions governing the election of the members of an executive board; revising provisions governing meetings of an executive board; revising provisions governing the transfer of certain rights of the declarant of a common-interest community; revising provisions governing meetings of the units' owners of a unit-owners' association; revising provisions governing proxy voting by units' owners; revising provisions governing the foreclosure of an association's lien on a unit; revising provisions relating to the program for foreclosure mediation; revising provisions relating to the reconveyance of certain property held in trust by a county treasurer; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes a unit-owners' association to waive a default and withdraw a notice of default and election to sell or any proceeding to foreclose its lien. (NRS 116.31168) **Section 1** of this bill reenacts this provision as a separate section of the statutes.

Section 3 of this bill removes the provision of existing law that requires the unanimous approval of the units' owners for amendment to the declaration of a common-interest community that changes in the use of a unit.

Existing law authorizes the governing documents of a unit-owners' association to require that vacancies on the executive board be filled by a vote of the membership of the association. (NRS 116.3103) **Section 4** of this bill removes this provision and, instead, authorizes the executive board to fill any vacancy in its membership until the earlier of the unexpired portion of any term and the next regularly scheduled election of executive board members, notwithstanding any provision of the governing documents to the contrary.

Existing law establishes a period during which nominations for membership on the executive board of a unit-owners' association may be made. Not less than 30 days before the preparation of a ballot for such an election, the designated officer of the association must cause notice to be given to each unit's owner of his or her eligibility to serve as a member of the executive board. Before this notice is provided, the executive board may determine that if the number of candidates nominated for membership on the executive board is less than or equal to the number of open positions on the executive board: (1) another nomination period will be provided; and (2) if, at the end of that additional nomination period, the number of candidates nominated for membership on the executive board continues to be less than or equal to the number of open positions on the executive board, then the nominees shall be deemed to be duly elected to the executive board. (NRS 116.31034)

Section 6 of this bill removes the requirement for another nomination period and instead: (1) authorizes the executive board to determine that if, at the end of the single nomination period, the number of candidates nominated for membership on the executive board is less than or equal to the number of open positions on the executive board, then the nominees shall be deemed to be duly elected to the executive board; and (2) requires the designated officer of the association to include notice concerning this procedure in the notice given to units' owners at the beginning of the nomination period. **Section 6** further provides that if, at the end of the nomination period, the number of candidates nominated for membership on the executive board is less than the number of members of the board to be elected: (1) the executive board may appoint persons to fill any vacancies until the next regularly scheduled election for board members; and (2) a person elected at the next regularly scheduled election serves only for the remainder of the term for that position on the executive board.

Existing law provides for the transfer of certain rights reserved for the benefit of the declarant of a common-interest community. (NRS 116.089, 116.3104) **Section 7** of this bill revises provisions governing the transfer of such a right when the right is related to property that has been involuntarily transferred from the declarant to another person.

Existing law requires a meeting of the units' owners to be held once each year at a time and place stated or fixed in accordance with the bylaws of the unit-owners' association. (NRS 116.3108) **Section 8** of this bill requires an annual meeting of the units' owners to be held not less than 180 days or more than 210 days before the beginning of the association's fiscal year. If the annual meeting is not held within that period, the annual meeting must be held as soon as practicable after that period. **Section 8** further specifies that at the annual meeting of the units' owners, the ballots for the election of members of the executive board must be opened and counted. Finally, **section 8** also specifies that the requirement for the annual meeting does not limit the number of meetings of the units' owners that may be held each year.

Existing law requires the designated officer of a unit-owners' association to cause notice of each meeting of the executive board to be given to the units' owners. (NRS 116.31083) Existing law also authorizes a unit's owner to attend a meeting of the executive board and speak at such a meeting, unless the executive board is meeting in executive session for certain authorized purposes.

(NRS 116.31085) **Sections 9 and 10** of this bill provide that if the executive board holds a meeting limited exclusively to items for which an executive session of the board is authorized: (1) notice of the meeting is required to be sent only to a person who may be subject to a hearing scheduled for that meeting; and (2) at the next regularly scheduled meeting of the executive board, the executive board must disclose the date of the meeting and generally the matters discussed at the meeting, and include such disclosures in the minutes of the meeting at which the disclosures were made.

Existing law authorizes a vote allocated to a unit in a common-interest community to be cast pursuant to a proxy executed by a unit's owner. (NRS 116.311) **Section 11** of this bill authorizes a unit's owner to give his or her proxy to a holder of a security interest on the unit or a receiver for a unit appointed under certain circumstances.

Under existing law, a unit-owners' association has a lien on a unit for certain amounts due to the association. (NRS 116.3116) Existing law also authorizes the association to foreclose its lien by sale through a nonjudicial foreclosure process. **Section 12** of this bill provides that the foreclosure of the association's lien does not terminate any subordinate interest unless the association has provided notice of the foreclosure to each person that is a record holder of the subordinate interest as of certain dates.

Under existing law, a trustee under a deed of trust securing owner-occupied housing may not exercise the power to sell the property unless the trustee causes to be recorded a certificate indicating that mediation under the Foreclosure Mediation Program is not required or has been completed. (NRS 107.086) Existing law further provides if a unit is subject to the Foreclosure Mediation Program, a unit-owners' association may not foreclose its lien on the unit until the trustee has recorded the required certificate. (NRS 116.31162) **Section 13** of this bill revises the language of existing law and specifies that the association may foreclose its lien on a unit that is subject to the Foreclosure Mediation Program if the unit's owner has failed to pay amounts that became due to the association during the pendency of the mediation. **Section 18** of this bill requires the trustee under a deed of trust to notify the association that a unit is subject to the Foreclosure Mediation Program, and to notify the association that the trustee has received the required certificate from the Program.

Under existing law, a unit-owners' association or a person conducting a foreclosure sale of a unit to enforce the association's lien is required to mail a copy of the notice of default and election to sell and a copy of the notice of sale to a holder of security interest who has notified the association of the existence of the security interest. (NRS 116.31163) **Sections 14 and 15** of this bill remove the requirement that the holder of the security interest notify the association of its interest and, instead, requires a copy of the notice of default and election to sell and a copy of the notice of sale to be mailed to each holder of a security interest. **Section 15** further removes the provision of existing law which requires the association to give notice of a foreclosure sale in the same manner as such a notice would be given for the execution of a judgment and, instead, requires the association to provide notice in a manner similar to the notice required for a nonjudicial foreclosure sale.

Section 16 of this bill amends provisions of existing law relating to the sale of a unit to enforce a lien of a unit-owners' association to include certain provisions that govern other nonjudicial foreclosure sales. Specifically, **section 16** provides that: (1) if a sale is postponed by oral proclamation, the sale must be postponed to a later date at the same time and location; and (2) if the sale has been postponed by oral proclamation three times, any new sale information must be provided by giving the notice of sale required by existing law. **Section 16** also provides that if the amounts

included in the association's lien are made good by payment before the date of sale, the sale may not occur.

Under existing law, an association must give notice of the foreclosure of its lien to certain persons with an interest in the unit, in the same manner as if a deed of trust were being foreclosed. (NRS 116.31168) **Section 17** of this bill incorporates the language governing a foreclosure under a deed of trust into the statute.

Existing law requires a county tax receiver to execute and deliver a deed to the county treasurer under certain circumstances when the taxes on the property are delinquent. After the deed has been delivered to the county treasurer, certain persons are entitled to a reconveyance of the property upon payment of the amount of property taxes due, plus any costs, penalties and interest. (NRS 361.585) **Sections 19 and 20** of this bill provide this right of reconveyance to a unit-owners' association which has caused to be recorded a notice of default and election to sell against the property.

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

Section 1. Chapter 116 of NRS is hereby amended by adding thereto a new section to read as follows:

An association may, after recording a notice of default and election to sell pursuant to paragraph (b) of subsection 1 of NRS 116.31162, waive the default and withdraw the notice or any proceeding to foreclose. The association is thereupon restored to its former position and has the same rights as though the notice had not been recorded.

Sec. 2. NRS 116.12075 is hereby amended to read as follows:

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

(a) This entire chapter applies to the condominium;

(b) Only the provisions of NRS 116.001 to 116.2122, inclusive, and 116.3116 to 116.31168, inclusive, ***and section 1 of this act*** apply to the condominium; or

(c) Only the provisions of NRS 116.3116 to 116.31168, inclusive, ***and section 1 of this act*** apply to the condominium.

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

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

(b) Notwithstanding NRS 116.1104 and subsection 3 of NRS 116.311, purchasers of units must execute proxies, powers of

attorney or similar devices in favor of the declarant regarding particular matters enumerated in those instruments.

Sec. 3. NRS 116.2117 is hereby amended to read as follows:

116.2117 1. Except as otherwise provided in NRS 116.21175, and except in cases of amendments that may be executed by a declarant under subsection 5 of NRS 116.2109 or NRS 116.211, or by the association under NRS 116.1107, 116.2106, subsection 3 of NRS 116.2108, subsection 1 of NRS 116.2112 or NRS 116.2113, or by certain units' owners under subsection 2 of NRS 116.2108, subsection 1 of NRS 116.2112, subsection 2 of NRS 116.2113 or subsection 2 of NRS 116.2118, and except as otherwise limited by subsections 4, 7 and 8, the declaration, including any plats, may be amended only by vote or agreement of units' owners of units to which at least a majority of the votes in the association are allocated, unless the declaration specifies a different percentage for all amendments or for specified subjects of amendment. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval.

2. No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than 1 year after the amendment is recorded.

3. Every amendment to the declaration must be recorded in every county in which any portion of the common-interest community is located and is effective only upon recordation. An amendment, except an amendment pursuant to NRS 116.2112, must be indexed in the grantee's index in the name of the common-interest community and the association and in the grantor's index in the name of the parties executing the amendment.

4. Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may change the boundaries of any unit ~~[,]~~ ***or*** change the allocated interests of a unit **,** ~~[or change the uses to which any unit is restricted,]~~ in the absence of unanimous consent of only those units' owners whose units are affected and the consent of a majority of the owners of the remaining units.

5. Amendments to the declaration required by this chapter to be recorded by the association must be prepared, executed, recorded and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

6. An amendment to the declaration which prohibits or materially restricts the permitted uses of a unit or the number or other qualifications of persons who may occupy units may not be enforced against a unit's owner who was the owner of the unit on

the date of the recordation of the amendment as long as the unit's owner remains the owner of that unit.

7. A provision in the declaration creating special declarant's rights that have not expired may not be amended without the consent of the declarant.

8. If any provision of this chapter or of the declaration requires the consent of a holder of a security interest in a unit, or an insurer or guarantor of such interest, as a condition to the effectiveness of an amendment to the declaration, that consent is deemed granted if:

(a) The holder, insurer or guarantor has not requested, in writing, notice of any proposed amendment; or

(b) Notice of any proposed amendment is required or has been requested and a written refusal to consent is not received by the association within 60 days after the association delivers notice of the proposed amendment to the holder, insurer or guarantor, by certified mail, return receipt requested, to the address for notice provided by the holder, insurer or guarantor in a prior written request for notice.

Sec. 4. NRS 116.3103 is hereby amended to read as follows:

116.3103 1. Except as otherwise provided in the declaration, the bylaws, this section or other provisions of this chapter, the executive board acts on behalf of the association. In the performance of their duties, the officers and members of the executive board are fiduciaries and shall act on an informed basis, in good faith and in the honest belief that their actions are in the best interest of the association. Officers and members of the executive board:

(a) Are required to exercise the ordinary and reasonable care of officers and directors of a nonprofit corporation, subject to the business-judgment rule; and

(b) Are subject to conflict of interest rules governing the officers and directors of a nonprofit corporation organized under the law of this State.

2. The executive board may not act to:

(a) Amend the declaration.

(b) Terminate the common-interest community.

(c) Elect members of the executive board, but ~~[unless the governing documents provide that a vacancy on the executive board must be filled by a vote of the membership of the association,]~~ ***, notwithstanding any provision of the governing documents to the contrary,*** the executive board may fill vacancies in its membership for the unexpired portion of any term or until the next regularly scheduled election of executive board members, whichever is earlier. Any executive board member elected to a previously vacant position which was temporarily filled by board appointment may only be elected to fulfill the remainder of the unexpired portion of the term.

(d) Determine the qualifications, powers, duties or terms of office of members of the executive board.

3. The executive board shall adopt budgets as provided in NRS 116.31151.

Sec. 5. NRS 116.310312 is hereby amended to read as follows:

116.310312 1. A person who holds a security interest in a unit must provide the association with the person's contact information as soon as reasonably practicable, but not later than 30 days after the person:

(a) Files an action for recovery of a debt or enforcement of any right secured by the unit pursuant to NRS 40.430; or

(b) Records or has recorded on his or her behalf a notice of a breach of obligation secured by the unit and the election to sell or have the unit sold pursuant to NRS 107.080.

2. If an action or notice described in subsection 1 has been filed or recorded regarding a unit and the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in NRS 116.31031, the association, including its employees, agents and community manager, may, but is not required to, enter the grounds of the unit, whether or not the unit is vacant, to take any of the following actions if the unit's owner refuses or fails to take any action or comply with any requirement imposed on the unit's owner within the time specified by the association as a result of the hearing:

(a) Maintain the exterior of the unit in accordance with the standards set forth in the governing documents, including, without limitation, any provisions governing maintenance, standing water or snow removal.

(b) Remove or abate a public nuisance on the exterior of the unit which:

(1) Is visible from any common area of the community or public streets;

(2) Threatens the health or safety of the residents of the common-interest community;

(3) Results in blighting or deterioration of the unit or surrounding area; and

(4) Adversely affects the use and enjoyment of nearby units.

3. If a unit is vacant and the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in NRS 116.31031, the association, including its employees, agents and community manager, may enter the grounds of the unit to maintain the exterior of the unit or abate a public nuisance as described in subsection 2 if the unit's owner refuses or fails to do so.

4. The association may order that the costs of any maintenance or abatement conducted pursuant to subsection 2 or 3, including, without limitation, reasonable inspection fees, notification and collection costs and interest, be charged against the unit. The association shall keep a record of such costs and interest charged against the unit and has a lien on the unit for any unpaid amount of the charges. The lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive ~~.~~ ***, and section 1 of this act.***

5. A lien described in subsection 4 bears interest from the date that the charges become due at a rate determined pursuant to NRS 17.130 until the charges, including all interest due, are paid.

6. Except as otherwise provided in this subsection, a lien described in subsection 4 is prior and superior to all liens, claims, encumbrances and titles other than the liens described in paragraphs (a) and (c) of subsection 2 of NRS 116.3116. If the federal regulations of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior and superior to other security interests shall be determined in accordance with those federal regulations. Notwithstanding the federal regulations, the period of priority of the lien must not be less than the 6 months immediately preceding the institution of an action to enforce the lien.

7. A person who purchases or acquires a unit at a foreclosure sale pursuant to NRS 40.430 or a trustee's sale pursuant to NRS 107.080 is bound by the governing documents of the association and shall maintain the exterior of the unit in accordance with the governing documents of the association. Such a unit may only be removed from a common-interest community in accordance with the governing documents pursuant to this chapter.

8. Notwithstanding any other provision of law, an association, its directors or members of the executive board, employees, agents or community manager who enter the grounds of a unit pursuant to this section are not liable for trespass.

9. As used in this section:

(a) "Exterior of the unit" includes, without limitation, all landscaping outside of a unit and the exterior of all property exclusively owned by the unit owner.

(b) "Vacant" means a unit:

(1) Which reasonably appears to be unoccupied;

(2) On which the owner has failed to maintain the exterior to the standards set forth in the governing documents the association; and

(3) On which the owner has failed to pay assessments for more than 60 days.

Sec. 6. NRS 116.31034 is hereby amended to read as follows:

116.31034 1. Except as otherwise provided in subsection 5 of NRS 116.212, not later than the termination of any period of declarant's control, the units' owners shall elect an executive board of at least three members, all of whom must be units' owners. The executive board shall elect the officers of the association. Unless the governing documents provide otherwise, the officers of the association are not required to be units' owners. The members of the executive board and the officers of the association shall take office upon election.

2. The term of office of a member of the executive board may not exceed 3 years, except for members who are appointed by the declarant. Unless the governing documents provide otherwise, there is no limitation on the number of terms that a person may serve as a member of the executive board.

3. The governing documents of the association must provide for terms of office that are staggered in such a manner that, to the extent possible, an equal number of members of the executive board are elected at each election. The provisions of this subsection do not apply to:

(a) Members of the executive board who are appointed by the declarant; and

(b) Members of the executive board who serve a term of 1 year or less.

4. Not less than 30 days before the preparation of a ballot for the election of members of the executive board, the secretary or other officer specified in the bylaws of the association shall cause notice to be given to each unit's owner of the unit's owner's eligibility to serve as a member of the executive board. Each unit's owner who is qualified to serve as a member of the executive board may have his or her name placed on the ballot along with the names of the nominees selected by the members of the executive board or a nominating committee established by the association.

5. Before the secretary or other officer specified in the bylaws of the association causes notice to be given to each unit's owner of his or her eligibility to serve as a member of the executive board pursuant to subsection 4, the executive board may determine that if, at the closing of the prescribed period for nominations for membership on the executive board, the number of candidates nominated for membership on the executive board is equal to or less than the number of members to be elected to the executive board at the election ***:*** ~~[, then the secretary or other officer specified in the bylaws of the association will cause notice to be given to each unit's owner informing each unit's owner that:~~

~~(a) The association will not prepare or mail any ballots to units' owners pursuant to this section and the nominated candidates shall be deemed to be duly elected to the executive board unless:~~

~~(1) A unit's owner who is qualified to serve on the executive board nominates himself or herself for membership on the executive board by submitting a nomination to the executive board within 30 days after the notice provided by this subsection; and~~

~~(2) The number of units' owners who submit such a nomination causes the number of candidates nominated for membership on the executive board to be greater than the number of members to be elected to the executive board.~~

~~(b) Each unit's owner who is qualified to serve as a member of the executive board may nominate himself or herself for membership on the executive board by submitting a nomination to the executive board within 30 days after the notice provided by this subsection.~~

~~6. If the notice described in subsection 5 is given and if, at the closing of the prescribed period for nominations for membership on the executive board described in subsection 5, the number of candidates nominated for membership on the executive board is equal to or less than the number of members to be elected to the executive board, then:~~

(a) The association will not prepare or mail any ballots to units' owners pursuant to this section; ***and***

(b) The nominated candidates shall be deemed to be duly elected to the executive board ~~[not later than 30 days after the date of the closing of the period for nominations described in subsection 5; and~~

~~(c) The association shall send to each unit's owner notification that the candidates nominated have been elected to the executive board.]~~ ***at the meeting at which ballots would otherwise have been counted pursuant to paragraph (e) of subsection 11.***

➥ If the executive board makes the determination authorized by this subsection, the notice given to each unit's owner pursuant to subsection 4 must disclose the information contained in paragraphs (a) and (b).

6. If, at the closing of the prescribed period for nominations for membership on the executive board, the number of candidates nominated for membership on the executive board is less than the number of members to be elected to the executive board at the election, then the executive board may fill the remaining vacancies on the executive board by appointment of the executive board at a meeting of the executive board held after the candidates are elected pursuant to subsection 5, and any such person appointed to the executive board shall serve as a member of the executive board until the next regularly scheduled election of members of

the executive board. An executive board member elected to a previously appointed position which was temporarily filled by board appointment pursuant to this subsection may only be elected to fulfill the remainder of that term.

7. If **,** ~~[the notice described in subsection 5 is given and if,]~~ at the closing of the prescribed period for nominations for membership on the executive board described in subsection ~~[5,]~~ ***4,*** the number of candidates nominated for membership on the executive board is greater than the number of members to be elected to the executive board, then the association shall:

(a) Prepare and mail ballots to the units' owners pursuant to this section; and

(b) Conduct an election for membership on the executive board pursuant to this section.

8. Each person who is nominated as a candidate for membership on the executive board pursuant to subsection 4 ~~[or 5]~~ must:

(a) Make a good faith effort to disclose any financial, business, professional or personal relationship or interest that would result or would appear to a reasonable person to result in a potential conflict of interest for the candidate if the candidate were to be elected to serve as a member of the executive board; and

(b) Disclose whether the candidate is a member in good standing. For the purposes of this paragraph, a candidate shall not be deemed to be in "good standing" if the candidate has any unpaid and past due assessments or construction penalties that are required to be paid to the association.

➥ The candidate must make all disclosures required pursuant to this subsection in writing to the association with his or her candidacy information. Except as otherwise provided in this subsection, the association shall distribute the disclosures, on behalf of the candidate, to each member of the association with the ballot or, in the event ballots are not prepared and mailed pursuant to subsection ~~[6,]~~ ***5,*** in the next regular mailing of the association. The association is not obligated to distribute any disclosure pursuant to this subsection if the disclosure contains information that is believed to be defamatory, libelous or profane.

9. Unless a person is appointed by the declarant:

(a) A person may not be a member of the executive board or an officer of the association if the person, the person's spouse or the person's parent or child, by blood, marriage or adoption, performs the duties of a community manager for that association.

(b) A person may not be a member of the executive board of a master association or an officer of that master association if the person, the person's spouse or the person's parent or child, by

blood, marriage or adoption, performs the duties of a community manager for:

(1) That master association; or

(2) Any association that is subject to the governing documents of that master association.

10. An officer, employee, agent or director of a corporate owner of a unit, a trustee or designated beneficiary of a trust that owns a unit, a partner of a partnership that owns a unit, a member or manager of a limited-liability company that owns a unit, and a fiduciary of an estate that owns a unit may be an officer of the association or a member of the executive board. In all events where the person serving or offering to serve as an officer of the association or a member of the executive board is not the record owner, the person shall file proof in the records of the association that:

(a) The person is associated with the corporate owner, trust, partnership, limited-liability company or estate as required by this subsection; and

(b) Identifies the unit or units owned by the corporate owner, trust, partnership, limited-liability company or estate.

11. Except as otherwise provided in subsection ~~[6]~~ ***5*** or NRS 116.31105, the election of any member of the executive board must be conducted by secret written ballot in the following manner:

(a) The secretary or other officer specified in the bylaws of the association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner.

(b) Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to the unit's owner to return the secret written ballot to the association.

(c) A quorum is not required for the election of any member of the executive board.

(d) Only the secret written ballots that are returned to the association may be counted to determine the outcome of the election.

(e) The secret written ballots must be opened and counted at ~~[a]~~ ***the*** meeting of the ~~[association.]~~ ***units' owners held pursuant to subsection 1 of NRS 116.3108.*** A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(f) The incumbent members of the executive board and each person whose name is placed on the ballot as a candidate for membership on the executive board may not possess, be given access to or participate in the opening or counting of the secret

written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

12. An association shall not adopt any rule or regulation that has the effect of prohibiting or unreasonably interfering with a candidate in the candidate's campaign for election as a member of the executive board, except that the candidate's campaign may be limited to 90 days before the date that ballots are required to be returned to the association.

13. A candidate who has submitted a nomination form for election as a member of the executive board may request that the association or its agent either:

(a) Send before the date of the election and at the association's expense, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner a candidate informational statement. The candidate informational statement:

(1) Must be no longer than a single, typed page;

(2) Must not contain any defamatory, libelous or profane information; and

(3) May be sent with the secret ballot mailed pursuant to subsection 11 or in a separate mailing; or

(b) To allow the candidate to communicate campaign material directly to the units' owners, provide to the candidate, in paper format at a cost not to exceed 25 cents per page for the first 10 pages and 10 cents per page thereafter, in the format of a compact disc at a cost of not more than $5 or by electronic mail at no cost:

(1) A list of the mailing address of each unit, which must not include the names of the units' owners or the name of any tenant of a unit's owner; or

(2) If the members of the association are owners of time shares within a time share plan created pursuant to chapter 119A of NRS and:

(I) The voting rights of those owners are exercised by delegates or representatives pursuant to NRS 116.31105, the mailing address of the delegates or representatives.

(II) The voting rights of those owners are not exercised by delegates or representatives, the mailing address of the association established pursuant to NRS 119A.520. If the mailing address of the association is provided to the candidate pursuant to this sub-subparagraph, the association must send to each owner of a time share within the time share plan the campaign material provided by the candidate. If the campaign material will be sent by mail, the candidate who provides the campaign material must provide to the association a separate copy of the campaign material for each owner

and must pay the actual costs of mailing before the campaign material is mailed. If the campaign material will be sent by electronic transmission, the candidate must provide to the association one copy of the campaign material in an electronic format.

➥ The information provided pursuant to this paragraph must not include the name of any unit's owner or any tenant of a unit's owner. If a candidate who makes a request for the information described in this paragraph fails or refuses to provide a written statement signed by the candidate which states that the candidate is making the request to allow the candidate to communicate campaign material directly to units' owners and that the candidate will not use the information for any other purpose, the association or its agent may refuse the request.

14. An association and its directors, officers, employees and agents are immune from criminal or civil liability for any act or omission which arises out of the publication or disclosure of any information related to any person and which occurs in the course of carrying out any duties required pursuant to subsection 13.

15. Each member of the executive board shall, within 90 days after his or her appointment or election, certify in writing to the association, on a form prescribed by the Administrator, that the member has read and understands the governing documents of the association and the provisions of this chapter to the best of his or her ability. The Administrator may require the association to submit a copy of the certification of each member of the executive board of that association at the time the association registers with the Ombudsman pursuant to NRS 116.31158.

Sec. 7. NRS 116.3104 is hereby amended to read as follows:

116.3104 1. A special declarant's right created or reserved under this chapter may be transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the common-interest community is located. ~~[The]~~ ***Except as otherwise provided in subsection 3, the*** instrument is not effective unless executed by the transferee.

2. Upon transfer of any special declarant's right, the liability of a transferor declarant is as follows:

(a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranties imposed upon the transferor by this chapter. Lack of privity does not deprive any unit's owner of standing to maintain an action to enforce any obligation of the transferor.

(b) If a successor to any special declarant's right is an affiliate of a declarant, the transferor is jointly and severally liable with the

successor for any obligations or liabilities of the successor relating to the common-interest community.

(c) If a transferor retains any special declarant's rights, but transfers other special declarant's rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant's rights and arising after the transfer.

(d) A transferor has no liability for any act or omission or any breach of a contractual obligation or warranty arising from the exercise of a special declarant's right by a successor declarant who is not an affiliate of the transferor.

3. Unless otherwise provided in a mortgage, deed of trust or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale or sale under the Bankruptcy Code or a receivership, of any units owned by a declarant or real estate in a common-interest community subject to developmental rights, a person acquiring title to all the property being foreclosed or sold ~~[, but only upon the person's request,]~~ succeeds to all special declarant's rights related to that property held by that declarant, ~~[or only to any rights reserved in the declaration pursuant to NRS 116.2115 and held by that declarant to maintain models, offices for sales and signs. The]~~ ***and the instrument conveying title need not be executed by the transferee to be effective. If the person acquiring title to the property being foreclosed or sold pursuant to this section wants to succeed to some but not all of the special declarant's rights or none of the special declarant's rights, then the*** judgment or instrument conveying title ~~[must]~~ ***may*** provide for transfer of only the special declarant's rights requested ~~[.]~~ ***, in which case the transferee shall succeed only to any special declarant's rights requested and such judgment or instrument must be executed by the transferee to be effective.***

4. Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale or sale under the Bankruptcy Code or a receivership of all interests in a common-interest community owned by a declarant:

(a) The declarant ceases to have any special declarant's rights; and

(b) The period of declarant's control (NRS 116.31032) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant's rights held by that declarant to a successor declarant.

Sec. 8. NRS 116.3108 is hereby amended to read as follows:

116.3108 1. ~~[~~A~~]~~ ***Notwithstanding any provision of the governing documents to the contrary, an annual*** meeting of the units' owners must be held ~~[at least once each year at a time and place stated in or fixed in accordance with the bylaws. If the governing documents do not designate an annual meeting date of the units' owners, a meeting of the units' owners must be held 1 year after the date of the last meeting of the units' owners.]~~ ***not less than 180 days or more than 210 days before the beginning of the association's fiscal year.*** If ***, for any reason in any year,*** the units' owners have not held ~~[a]~~ ***the annual*** meeting ~~[for 1 year, a]~~ ***for that year within the period prescribed by this subsection, the annual*** meeting of the units' owners must be held ~~[on the following March 1.]~~ ***as soon as practicable after the expiration of the period prescribed by this subsection. At the annual meeting of the units' owners held pursuant to this subsection, the ballots for the election of members of the executive board must be opened and counted. The provisions of this subsection do not limit the number of meetings of the units' owners that may be held each year.***

2. An association shall hold a special meeting of the units' owners to address any matter affecting the common-interest community or the association if its president, a majority of the executive board or units' owners constituting at least 10 percent, or any lower percentage specified in the bylaws, of the total number of votes in the association request that the secretary call such a meeting. To call a special meeting, the units' owners must submit a written petition which is signed by the required percentage of the total number of voting members of the association pursuant to this subsection and which is mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association. If the petition calls for a special meeting, the executive board shall set the date for the special meeting so that the special meeting is held not less than 15 days or more than 60 days after the date on which the petition is received. The association shall not adopt any rule or regulation which prevents or unreasonably interferes with the collection of the required percentage of signatures for a petition pursuant to this subsection.

3. Not less than 15 days or more than 60 days in advance of any meeting of the units' owners, the secretary or other officer specified in the bylaws shall cause notice of the meeting to be given to the units' owners in the manner set forth in NRS 116.31068. The notice of the meeting must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request, in electronic format at no charge to the unit's owner or, if the association is unable to provide the copy or summary in electronic format, in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

4. The agenda for a meeting of the units' owners must consist of:

(a) A clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to the declaration or bylaws, any fees or assessments to be imposed or increased by the association, any budgetary changes and any proposal to remove an officer of the association or member of the executive board.

(b) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items. In an emergency, the units' owners may take action on an item which is not listed on the agenda as an item on which action may be taken.

(c) A period devoted to comments by units' owners regarding any matter affecting the common-interest community or the association and discussion of those comments. Except in emergencies, no action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to paragraph (b).

5. The secretary or other officer specified in the bylaws shall cause minutes to be recorded or otherwise taken at each meeting of the units' owners. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meeting to be made available to the units' owners. Except as otherwise provided in this subsection, a copy of the minutes or a summary of the minutes must be provided to any unit's owner upon request, in electronic format at no charge to the unit's owner or, if the association is unable to provide the copy or summary in electronic format, in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

6. Except as otherwise provided in subsection 7, the minutes of each meeting of the units' owners must include:

(a) The date, time and place of the meeting;

(b) The substance of all matters proposed, discussed or decided at the meeting; and

(c) The substance of remarks made by any unit's owner at the meeting if the unit's owner requests that the minutes reflect his or her remarks or, if the unit's owner has prepared written remarks, a copy of his or her prepared remarks if the unit's owner submits a copy for inclusion.

7. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of a meeting of the units' owners.

8. The association shall maintain the minutes of each meeting of the units' owners until the common-interest community is terminated.

9. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the units' owners if the unit's owner, before recording the meeting, provides notice of his or her intent to record the meeting to the other units' owners who are in attendance at the meeting.

10. The units' owners may approve, at the annual meeting of the units' owners, the minutes of the prior annual meeting of the units' owners and the minutes of any prior special meetings of the units' owners. A quorum is not required to be present when the units' owners approve the minutes.

11. As used in this section, "emergency" means any occurrence or combination of occurrences that:

(a) Could not have been reasonably foreseen;

(b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;

(c) Requires the immediate attention of, and possible action by, the executive board; and

(d) Makes it impracticable to comply with the provisions of subsection 3 or 4.

Sec. 9. NRS 116.31083 is hereby amended to read as follows:

116.31083 1. A meeting of the executive board must be held at least once every quarter, and not less than once every 100 days and must be held at a time other than during standard business hours at least twice annually.

2. Except ***as otherwise provided in this section or*** in an emergency or unless the bylaws of an association require a longer period of notice, the secretary or other officer specified in the bylaws of the association shall, not less than 10 days before the date of a meeting of the executive board, cause notice of the meeting to be given to the units' owners. Such notice must be:

(a) Given to the units' owners in the manner set forth in NRS 116.31068; or

(b) Published in a newsletter or other similar publication that is circulated to each unit's owner.

3. ***Notwithstanding any other provision of law or the governing documents of the association to the contrary, if the executive board holds a meeting limited exclusively to items for which the executive board may meet in executive session pursuant to NRS 116.31085, the secretary or other officer specified in the bylaws of the association is required to give notice of the meeting only to a person who may be subject to a hearing scheduled for that meeting.***

4. In an emergency, the secretary or other officer specified in the bylaws of the association shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each unit within the common-interest community. If delivery of the notice in this manner is impracticable, the notice must be hand-delivered to each unit within the common-interest community or posted in a prominent place or places within the common elements of the association.

~~[4.]~~ ***5.*** The notice of a meeting of the executive board must state the time and place of the meeting and include a copy of the agenda for the meeting or the date on which and the locations where copies of the agenda may be conveniently obtained by the units' owners. The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the audio recording, the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request, in electronic format at no charge to the unit's owner or, if the association is unable to provide the copy or summary in electronic format, in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

~~[5.]~~ ***6.*** The agenda of the meeting of the executive board must comply with the provisions of subsection 4 of NRS 116.3108. A period required to be devoted to comments by the units' owners and discussion of those comments must be scheduled for both the beginning and the end of each meeting. During the period devoted to comments by the units' owners and discussion of those comments at the beginning of each meeting, comments by the units' owners and discussion of those comments must be limited to items listed on the agenda. In an emergency, the executive board may take action on an item which is not listed on the agenda as an item on which action may be taken.

~~[6.]~~ ***7.*** At least once every quarter, and not less than once every 100 days, unless the declaration or bylaws of the association impose more stringent standards, the executive board shall review,

at a minimum, the following financial information at one of its meetings:

(a) A current year-to-date financial statement of the association;

(b) A current year-to-date schedule of revenues and expenses for the operating account and the reserve account, compared to the budget for those accounts;

(c) A current reconciliation of the operating account of the association;

(d) A current reconciliation of the reserve account of the association;

(e) The latest account statements prepared by the financial institutions in which the accounts of the association are maintained; and

(f) The current status of any civil action or claim submitted to arbitration or mediation in which the association is a party.

~~[7.]~~ ***8.*** The secretary or other officer specified in the bylaws shall cause each meeting of the executive board to be audio recorded and the minutes to be recorded or otherwise taken at each meeting of the executive board, but if the executive board is meeting in executive session, the meeting must not be audio recorded. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the audio recording of the meeting, the minutes of the meeting and a summary of the minutes of the meeting to be made available to the units' owners. Except as otherwise provided in this subsection, a copy of the audio recording, the minutes or a summary of the minutes must be provided to any unit's owner upon request, in electronic format at no charge to the unit's owner or, if the association is unable to provide the copy or summary in electronic format, in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

~~[8.]~~ ***9.*** Except as otherwise provided in subsection ~~[9]~~ ***10*** and NRS 116.31085, the minutes of each meeting of the executive board must include:

(a) The date, time and place of the meeting;

(b) Those members of the executive board who were present and those members who were absent at the meeting;

(c) The substance of all matters proposed, discussed or decided at the meeting;

(d) A record of each member's vote on any matter decided by vote at the meeting; and

(e) The substance of remarks made by any unit's owner who addresses the executive board at the meeting if the unit's owner requests that the minutes reflect his or her remarks or, if the unit's

owner has prepared written remarks, a copy of his or her prepared remarks if the unit's owner submits a copy for inclusion.

~~[9.]~~ ***10.*** The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of its meetings.

~~[10.]~~ ***11.*** The association shall maintain the minutes of each meeting of the executive board until the common-interest community is terminated.

~~[11.]~~ ***12.*** A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the executive board, unless the executive board is meeting in executive session, if the unit's owner, before recording the meeting, provides notice of his or her intent to record the meeting to the members of the executive board and the other units' owners who are in attendance at the meeting.

~~[12.]~~ ***13.*** As used in this section, "emergency" means any occurrence or combination of occurrences that:

(a) Could not have been reasonably foreseen;

(b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;

(c) Requires the immediate attention of, and possible action by, the executive board; and

(d) Makes it impracticable to comply with the provisions of subsection 2 ***, 3*** or ~~[5.]~~ ***6.***

Sec. 10. NRS 116.31085 is hereby amended to read as follows:

116.31085 1. Except as otherwise provided in this section, a unit's owner may attend any meeting of the units' owners or of the executive board and speak at any such meeting. The executive board may establish reasonable limitations on the time a unit's owner may speak at such a meeting.

2. An executive board may not meet in executive session to open or consider bids for an association project as defined in NRS 116.31086, or to enter into, renew, modify, terminate or take any other action regarding a contract.

3. An executive board may meet in executive session only to:

(a) Consult with the attorney for the association on matters relating to proposed or pending litigation if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115, inclusive.

(b) Discuss the character, alleged misconduct, professional competence, or physical or mental health of a community manager or an employee of the association.

(c) Except as otherwise provided in subsection 4, discuss a violation of the governing documents, including, without limitation, the failure to pay an assessment.

(d) Discuss the alleged failure of a unit's owner to adhere to a schedule required pursuant to NRS 116.310305 if the alleged failure may subject the unit's owner to a construction penalty.

4. An executive board shall meet in executive session to hold a hearing on an alleged violation of the governing documents unless the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted by the executive board. If the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted, the person:

(a) Is entitled to attend all portions of the hearing related to the alleged violation, including, without limitation, the presentation of evidence and the testimony of witnesses;

(b) Is entitled to due process, as set forth in the standards adopted by regulation by the Commission, which must include, without limitation, the right to counsel, the right to present witnesses and the right to present information relating to any conflict of interest of any member of the hearing panel; and

(c) Is not entitled to attend the deliberations of the executive board.

5. The provisions of subsection 4 establish the minimum protections that the executive board must provide before it may make a decision. The provisions of subsection 4 do not preempt any provisions of the governing documents that provide greater protections.

6. Except as otherwise provided in this subsection, any matter discussed by the executive board when it meets in executive session must be generally noted in the minutes of the meeting of the executive board. ***If the executive board holds a meeting limited exclusively to an executive session, at the next regularly scheduled meeting of the executive board, the executive board must disclose the date and generally the matters discussed at the meeting held exclusively in executive session, and include such disclosures in the minutes of the meeting at which the disclosures were made.*** The executive board shall maintain minutes of any decision made pursuant to subsection 4 concerning an alleged violation and, upon request, provide a copy of the decision to the person who was subject to being sanctioned at the hearing or to the person's designated representative.

7. Except as otherwise provided in subsection 4, a unit's owner is not entitled to attend or speak at a meeting of the executive board held in executive session.

Sec. 11. NRS 116.311 is hereby amended to read as follows:

116.311 1. Unless prohibited or limited by the declaration or bylaws and except as otherwise provided in this section, units' owners may vote at a meeting in person, by absentee ballot pursuant to paragraph (d) of subsection 2, by a proxy pursuant to subsections 3 to 8, inclusive, or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection 9.

2. At a meeting of units' owners, the following requirements apply:

(a) Units' owners who are present in person may vote by voice vote, show of hands, standing or any other method for determining the votes of units' owners, as designated by the person presiding at the meeting.

(b) If only one of several owners of a unit is present, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners cast the votes allocated to the unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(c) Unless a greater number or fraction of the votes in the association is required by this chapter or the declaration, a majority of the votes cast determines the outcome of any action of the association.

(d) Subject to subsection 1, a unit's owner may vote by absentee ballot without being present at the meeting. The association promptly shall deliver an absentee ballot to an owner who requests it if the request is made at least 3 days before the scheduled meeting. Votes cast by absentee ballot must be included in the tally of a vote taken at that meeting.

(e) When a unit's owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the unit's owner having the right to do so.

3. Except as otherwise provided in this section, votes allocated to a unit may be cast pursuant to a proxy executed by a unit's owner. A unit's owner may give a proxy only to a member of his or her immediate family, a tenant of the unit's owner who resides in the common-interest community, another unit's owner who resides in the common-interest community, ***the holder of a security interest in the unit, a receiver for a unit appointed pursuant to NRS 107A.260*** or a delegate or representative when authorized pursuant to NRS 116.31105. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes

by the other owners of the unit through an executed proxy. A unit's owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association.

4. Before a vote may be cast pursuant to a proxy:

(a) The proxy must be dated.

(b) The proxy must not purport to be revocable without notice.

(c) The proxy must designate the meeting for which it is executed, and such a designation includes any recessed session of that meeting.

(d) The proxy must designate each specific item on the agenda of the meeting for which the unit's owner has executed the proxy, except that the unit's owner may execute the proxy without designating any specific items on the agenda of the meeting if the proxy is to be used solely for determining whether a quorum is present for the meeting. If the proxy designates one or more specific items on the agenda of the meeting for which the unit's owner has executed the proxy, the proxy must indicate, for each specific item designated in the proxy, whether the holder of the proxy must cast a vote in the affirmative or the negative on behalf of the unit's owner. If the proxy does not indicate whether the holder of the proxy must cast a vote in the affirmative or the negative for a particular item on the agenda of the meeting, the proxy must be treated, with regard to that particular item, as if the unit's owner were present but not voting on that particular item.

(e) The holder of the proxy must disclose at the beginning of the meeting for which the proxy is executed and any recessed session of that meeting the number of proxies pursuant to which the holder will be casting votes.

5. A proxy terminates immediately after the conclusion of the meeting, and any recessed sessions of the meeting, for which it is executed.

6. Except as otherwise provided in this subsection, a vote may not be cast pursuant to a proxy for the election or removal of a member of the executive board of an association. A vote may be cast pursuant to a proxy for the election or removal of a member of the executive board of a master association which governs a time-share plan created pursuant to chapter 119A of NRS if the proxy is exercised through a delegate or representative authorized pursuant to NRS 116.31105.

7. The holder of a proxy may not cast a vote on behalf of the unit's owner who executed the proxy in a manner that is contrary to the proxy.

8. A proxy is void if the proxy or the holder of the proxy violates any provision of subsections 3 to 7, inclusive.

9. Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. Except as otherwise provided in NRS 116.31034 and 116.31036, if an association conducts a vote without a meeting, the following requirements apply:

(a) The association shall notify the units' owners that the vote will be taken by ballot.

(b) The association shall deliver a paper or electronic ballot to every unit's owner entitled to vote on the matter.

(c) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.

(d) When the association delivers the ballots, it shall also:

(1) Indicate the number of responses needed to meet the quorum requirements;

(2) State the percentage of votes necessary to approve each matter other than election of directors;

(3) Specify the time and date by which a ballot must be delivered to the association to be counted, which time and date may not be fewer than 3 days after the date the association delivers the ballot; and

(4) Describe the time, date and manner by which units' owners wishing to deliver information to all units' owners regarding the subject of the vote may do so.

(e) Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death or disability of or attempted revocation by the person who cast that vote.

(f) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

10. If the declaration requires that votes on specified matters affecting the common-interest community must be cast by the lessees of leased units rather than the units' owners who have leased the units:

(a) This section applies to the lessees as if they were the units' owners;

(b) The units' owners who have leased their units to the lessees may not cast votes on those specified matters;

(c) The lessees are entitled to notice of meetings, access to records and other rights respecting those matters as if they were the units' owners; and

(d) The units' owners must be given notice, in the manner provided in NRS 116.3108, of all meetings at which the lessees are entitled to vote.

11. If any votes are allocated to a unit that is owned by the association, those votes may not be cast, by proxy or otherwise, for any purpose.

Sec. 12. NRS 116.3116 is hereby amended to read as follows:

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

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

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

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

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

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

This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

3. The holder of the security interest described in paragraph (b) of subsection 2 or the holder's authorized agent may establish an escrow account, loan trust account or other impound account for advance contributions for the payment of assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 if the unit's owner and the holder of that security interest consent to the establishment of such an account. If such an account is established, payments from the account for assessments for common expenses must be made in accordance with the same due dates as apply to payments of such assessments by a unit's owner.

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

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

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

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

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

9. The association, upon written request, shall furnish to a unit's owner a statement setting forth the amount of unpaid assessments against the unit. If the interest of the unit's owner is real estate or if a lien for the unpaid assessments may be foreclosed under NRS 116.31162 to 116.31168, inclusive, ***and section 1 of this act,*** the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board and every unit's owner.

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

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

under NRS 116.31162 to 116.31168, inclusive ~~[.]~~ ***, and section 1 of this act.***

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

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

(2) If the declaration so provides, may be foreclosed under NRS 116.31162 to 116.31168, inclusive ~~[.]~~ ***, and section 1 of this act.***

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

12. Foreclosure of the lien under this section does not terminate an interest that is subordinate to the lien to any extent unless the association provides notice of the foreclosure to each person that is the record holder of the subordinate interest as of the date the notice of default and election to sell is recorded pursuant to paragraph (b) of subsection 1 of NRS 116.31162 and the notice of sale is mailed pursuant to NRS 116.311635.

Sec. 13. NRS 116.31162 is hereby amended to read as follows:

116.31162 1. Except as otherwise provided in subsection 5 or 6, in a condominium, in a planned community, in a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's interest in a unit is personal property under NRS 116.1105 and the declaration provides that a lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive, ***and section 1 of this act*** the association may foreclose its lien by sale after all of the following occur:

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

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

(1) Describe the deficiency in payment.

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

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

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

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

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

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

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

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

➥ whichever date occurs later.

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

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

(b) A proposed repayment plan; and

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

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

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

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

6. The association may not foreclose a lien by sale if ~~[:~~

~~(a) The unit is owner-occupied housing encumbered by a deed of trust;~~

~~(b) The beneficiary under the deed of trust, the successor in interest of the beneficiary or the trustee has recorded a notice of default and election to sell with respect to the unit pursuant to subsection 2 of NRS 107.080; and~~

~~(c) The trustee of record has not recorded the certificate provided to the trustee pursuant to subparagraph (1) or (2) of paragraph (d) of subsection 2 of NRS 107.086.~~

~~➥ As used in this subsection, "owner-occupied housing" has the meaning ascribed to it in NRS 107.086.]~~ ***the association has received notice pursuant to NRS 107.086 that the unit is subject to foreclosure mediation pursuant to that section, unless:***

(a) The trustee of record has recorded the certificate provided to the trustee pursuant to subparagraph (1) or (2) of paragraph (e) of subsection 2 of NRS 107.086; or

(b) The unit's owner has failed to pay the association any amount of the type described in subsection 1 of NRS 116.3116 that became due during the pendency of foreclosure mediation pursuant to NRS 107.086, other than past due obligations as described in subsection 10 of NRS 107.086.

Sec. 14. NRS 116.31163 is hereby amended to read as follows:

116.31163 The association or other person conducting the sale shall also mail, within 10 days after the notice of default and election to sell is recorded, a copy of the notice by first-class mail to:

1. Each person who has requested notice pursuant to NRS ~~[107.090 or]~~ 116.31168;

2. Any holder of a ~~[recorded]~~ security interest encumbering the unit's owner's interest ~~[who has notified the association, 30 days]~~ ***recorded*** before the recordation of the notice of default ~~[, of the existence of the security interest;]~~ ***and election to sell;*** and

3. A purchaser of the unit ~~[, if the unit's owner has notified the association, 30 days before the recordation of the notice, that the unit is the subject of a contract of sale and]~~ ***to whom*** the association has been requested ***, before the recordation of the notice of default and election to sell,*** to furnish the certificate required by ***subsection 3 of*** NRS 116.4109.

Sec. 15. NRS 116.311635 is hereby amended to read as follows:

116.311635 1. The association or other person conducting the sale shall also, after the expiration of the ~~[90 days]~~ ***90-day period described in paragraph (c) of subsection 1 of NRS 116.31162*** and before selling the unit ~~[:~~

~~(a) Give]~~ ***, give*** notice of the time and place of the sale ~~[in the manner and for a time not less than that required by law for the sale of real property upon execution, except that in lieu of following the procedure for service on a judgment debtor pursuant to NRS 21.130, service must be made on]~~ ***by recording the notice of sale and by:***

(a) Posting a similar notice particularly describing the unit, for 20 days consecutively, in a public place in the county where the unit is situated;

(b) Publishing a copy of the notice three times, once each week for 3 consecutive weeks, in a newspaper of general circulation in the county where the unit is situated;

(c) Notifying the unit's owner ***or his or her successor in interest*** as follows:

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

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

~~[(b) Mail,]~~

(d) Mailing, on or before the date of first publication or posting, a copy of the notice by certified or registered mail, return receipt requested, to:

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

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

(3) ***A purchaser of the unit to whom the association has been requested, before the mailing of the notice of sale, to furnish the certificate required by subsection 3 of NRS 116.4109;***

(4) The occupant of the unit at the physical address of the unit; and

(5) The Ombudsman.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 16. NRS 116.31164 is hereby amended to read as follows:

116.31164 1. The sale must be conducted in the county in which the common-interest community or part of it is situated, and may be conducted by the association, its agent or attorney, or a title insurance company or escrow agent licensed to do business in this State, except that the sale may be made at the office of the association if the notice of the sale so provided **.** ~~[, whether the unit is located within the same county as the office of the association or not.]~~

2. The association or other person conducting the sale may from time to time postpone the sale by such advertisement and notice as it considers reasonable or, without further advertisement or notice, by proclamation made to the persons assembled at the time and place previously set and advertised for the sale ~~[.~~

~~2.]~~ ***, except that:***

(a) If the sale is postponed by oral proclamation, the sale must be postponed to a later date at the same time and location; and

(b) If such a date has been postponed by oral proclamation three times, any new sale information must be provided by notice as provided in NRS 116.311635.

3. At any time before the date of sale, the amounts constituting the amount of the association's lien being foreclosed may be made good by payment of such amounts, in which case, the sale may not occur.

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

~~[3.]~~ ***5.*** After the sale, the person conducting the sale shall:

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

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

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

(1) The reasonable expenses of sale;

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

(3) Satisfaction of the association's lien;

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

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

Sec. 17. NRS 116.31168 is hereby amended to read as follows:

116.31168 1. ~~[The provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed. The request must identify the lien by stating the names of the unit's owner and the common-interest community.~~

~~2. An association may, after recording a notice of default and election to sell, waive the default and withdraw the notice or any proceeding to foreclose. The association is thereupon restored to its former position and has the same rights as though the notice had not been recorded.]~~ ***A person with an interest or any other person who is or may be held liable for any amounts which are the subject of the association's lien pursuant to NRS 116.3116 or the servicer of a loan secured by a deed of trust or mortgage on real property which is subject to such lien desiring a copy of a notice of default and election to sell or notice of sale of the association's lien may record in the office of the county recorder of the county in which any part of the real property is situated an acknowledged request for a copy of the notice of default and election to sell or notice of sale. The request must:***

(a) State the name and address of the person requesting copies of the notices;

(b) Identify the declaration by stating the names of the parties thereto, the date of recordation and the recording information where it is recorded; and

(c) The names of the unit's owner and the common-interest community.

2. The association or person authorized to record the notice of default and election to sell or notice of sale shall, within 10 days after the notice of default and election to sell or notice of sale is recorded and mailed pursuant to NRS 116.31162, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice, addressed to each person who has recorded a request for a copy of the notice.

3. The association or other person authorized to make the sale shall, at least 20 days before the date of sale, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice of the time and place of sale, addressed to each person described in subsection 2.

4. As used in this section:

(a) "Person with an interest" means any person who has or claims any right, title or interest in, or lien or charge upon, a unit being foreclosed pursuant to NRS 116.31162 to 116.31168, inclusive, and section 1 of this act.

(b) "Recorded instrument" means:

(1) A mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association and any other consensual lien or contract for retention of title intended as security for an obligation or otherwise constituting a security interest on a unit;

(2) A lease or other agreement providing for the occupancy of a unit,

➥ which instrument or some memorandum thereof has been recorded in the office of the county recorder of the county in which any part of the unit is situated.

Sec. 18. NRS 107.086 is hereby amended to read as follows:

107.086 1. Except as otherwise provided in this subsection, in addition to the requirements of NRS 107.085, the exercise of the power of sale pursuant to NRS 107.080 with respect to any trust agreement which concerns owner-occupied housing is subject to the provisions of this section. The provisions of this section do not apply to the exercise of the power of sale if the notice of default and election to sell recorded pursuant to subsection 2 of NRS 107.080 includes an affidavit and a certification indicating that, pursuant to NRS 107.130, an election has been made to use the expedited procedure for the exercise of the power of sale with respect to abandoned residential property.

2. The trustee shall not exercise a power of sale pursuant to NRS 107.080 unless the trustee:

(a) Includes with the notice of default and election to sell which is mailed to the grantor or the person who holds the title of record as required by subsection 3 of NRS 107.080:

(1) Contact information which the grantor or the person who holds the title of record may use to reach a person with authority to negotiate a loan modification on behalf of the beneficiary of the deed of trust;

(2) Contact information for at least one local housing counseling agency approved by the United States Department of Housing and Urban Development;

(3) A notice provided by the Mediation Administrator indicating that the grantor or the person who holds the title of record will be enrolled to participate in mediation pursuant to this section if he or she pays to the Mediation Administrator his or her share of the fee established pursuant to subsection 11; and

(4) A form upon which the grantor or the person who holds the title of record may indicate an election to waive mediation pursuant to this section and one envelope addressed to the trustee and one envelope addressed to the Mediation Administrator, which the grantor or the person who holds the title of record may use to comply with the provisions of subsection 3;

(b) In addition to including the information described in paragraph (a) with the notice of default and election to sell which is mailed to the grantor or the person who holds the title of record as required by subsection 3 of NRS 107.080, provides to the grantor or the person who holds the title of record the information described in paragraph (a) concurrently with, but separately from, the notice of default and election to sell which is mailed to the grantor or the person who holds the title of record as required by subsection 3 of NRS 107.080;

(c) Serves a copy of the notice upon the Mediation Administrator; ~~[and]~~

(d) ***If the owner-occupied housing is located within a common-interest community, notifies the unit-owners' association of such community, within 10 days after the mailing of the notice of default and election to sell required by subsection 2 of NRS 107.080, that the exercise of the power of sale is subject to the provisions of this section; and***

(e) Causes to be recorded in the office of the recorder of the county in which the trust property, or some part thereof, is situated:

(1) The certificate provided to the trustee by the Mediation Administrator pursuant to subsection 4 or 7 which provides that no mediation is required in the matter; or

(2) The certificate provided to the trustee by the Mediation Administrator pursuant to subsection 8 which provides that mediation has been completed in the matter.

3. If the grantor or the person who holds the title of record elects to waive mediation, he or she shall, not later than 30 days after service of the notice in the manner required by NRS 107.080, complete the form required by subparagraph (4) of paragraph (a) of subsection 2 and return the form to the trustee and the Mediation Administrator by certified mail, return receipt requested. If the

grantor or the person who holds the title of record does not elect to waive mediation, he or she shall, not later than 30 days after the service of the notice in the manner required by NRS 107.080, pay to the Mediation Administrator his or her share of the fee established pursuant to subsection 11. Upon receipt of the share of the fee established pursuant to subsection 11 owed by the grantor or the person who holds title of record, the Mediation Administrator shall notify the trustee, by certified mail, return receipt requested, of the enrollment of the grantor or person who holds the title of record to participate in mediation pursuant to this section and shall assign the matter to a senior justice, judge, hearing master or other designee and schedule the matter for mediation. The trustee shall notify the beneficiary of the deed of trust and every other person with an interest as defined in NRS 107.090, by certified mail, return receipt requested, of the enrollment of the grantor or the person who holds the title of record to participate in mediation. If the grantor or person who holds the title of record is enrolled to participate in mediation pursuant to this section, no further action may be taken to exercise the power of sale until the completion of the mediation.

4. If the grantor or the person who holds the title of record indicates on the form described in subparagraph (4) of paragraph (a) of subsection 2 an election to waive mediation or fails to pay to the Mediation Administrator his or her share of the fee established pursuant to subsection 11, as required by subsection 3, the Mediation Administrator shall, not later than 60 days after the Mediation Administrator receives the form indicating an election to waive mediation or 90 days after the service of the notice in the manner required by NRS 107.080, whichever is earlier, provide to the trustee a certificate which provides that no mediation is required in the matter.

5. Each mediation required by this section must be conducted by a senior justice, judge, hearing master or other designee pursuant to the rules adopted pursuant to subsection 11. The beneficiary of the deed of trust or a representative shall attend the mediation. The grantor or his or her representative, or the person who holds the title of record or his or her representative, shall attend the mediation. The beneficiary of the deed of trust shall bring to the mediation the original or a certified copy of the deed of trust, the mortgage note and each assignment of the deed of trust or mortgage note. If the beneficiary of the deed of trust is represented at the mediation by another person, that person must have authority to negotiate a loan modification on behalf of the beneficiary of the deed of trust or have access at all times during the mediation to a person with such authority.

6. If the beneficiary of the deed of trust or the representative fails to attend the mediation, fails to participate in the mediation in good faith or does not bring to the mediation each document required by subsection 5 or does not have the authority or access to a person with the authority required by subsection 5, the mediator shall prepare and submit to the Mediation Administrator a petition and recommendation concerning the imposition of sanctions against the beneficiary of the deed of trust or the representative. The court may issue an order imposing such sanctions against the beneficiary of the deed of trust or the representative as the court determines appropriate, including, without limitation, requiring a loan modification in the manner determined proper by the court.

7. If the grantor or the person who holds the title of record is enrolled to participate in mediation pursuant to this section but fails to attend the mediation, the Mediation Administrator shall, not later than 30 days after the scheduled mediation, provide to the trustee a certificate which states that no mediation is required in the matter.

8. If the mediator determines that the parties, while acting in good faith, are not able to agree to a loan modification, the mediator shall prepare and submit to the Mediation Administrator a recommendation that the matter be terminated. The Mediation Administrator shall, not later than 30 days after submittal of the mediator's recommendation that the matter be terminated, provide to the trustee a certificate which provides that the mediation required by this section has been completed in the matter.

9. Upon receipt of the certificate provided to the trustee by the Mediation Administrator pursuant to subsection 4, 7 or 8, if the property is located within a common-interest community, the trustee shall ***, within 10 days after its receipt of the certificate,*** notify the unit-owner's association organized under NRS 116.3101 of the existence of the certificate.

10. During the pendency of any mediation pursuant to this section, a unit's owner must continue to pay any obligation, other than any past due obligation.

11. The Supreme Court shall adopt rules necessary to carry out the provisions of this section. The rules must, without limitation, include provisions:

(a) Designating an entity to serve as the Mediation Administrator pursuant to this section. The entities that may be so designated include, without limitation, the Administrative Office of the Courts, the district court of the county in which the property is situated or any other judicial entity.

(b) Ensuring that mediations occur in an orderly and timely manner.

(c) Requiring each party to a mediation to provide such information as the mediator determines necessary.

(d) Establishing procedures to protect the mediation process from abuse and to ensure that each party to the mediation acts in good faith.

(e) Establishing a total fee of not more than $400 that may be charged and collected by the Mediation Administrator for mediation services pursuant to this section and providing that the responsibility for payment of the fee must be shared equally by the parties to the mediation.

12. Except as otherwise provided in subsection 14, the provisions of this section do not apply if:

(a) The grantor or the person who holds the title of record has surrendered the property, as evidenced by a letter confirming the surrender or delivery of the keys to the property to the trustee, the beneficiary of the deed of trust or the mortgagee, or an authorized agent thereof; or

(b) A petition in bankruptcy has been filed with respect to the grantor or the person who holds the title of record under chapter 7, 11, 12 or 13 of Title 11 of the United States Code and the bankruptcy court has not entered an order closing or dismissing the case or granting relief from a stay of foreclosure.

13. A noncommercial lender is not excluded from the application of this section.

14. The Mediation Administrator and each mediator who acts pursuant to this section in good faith and without gross negligence are immune from civil liability for those acts.

15. As used in this section:

(a) "Common-interest community" has the meaning ascribed to it in NRS 116.021.

(b) "Mediation Administrator" means the entity so designated pursuant to subsection 11.

(c) "Noncommercial lender" means a lender which makes a loan secured by a deed of trust on owner-occupied housing and which is not a bank, financial institution or other entity regulated pursuant to title 55 or 56 of NRS.

(d) "Obligation" has the meaning ascribed to it in NRS 116.310313.

(e) "Owner-occupied housing" means housing that is occupied by an owner as the owner's primary residence. The term does not include vacant land or any time share or other property regulated under chapter 119A of NRS.

(f) ***"Unit-owners' association" has the meaning ascribed to it in NRS 116.011.***

(g) "Unit's owner" has the meaning ascribed to it in NRS 116.095.

Sec. 19. NRS 361.585 is hereby amended to read as follows:

361.585 1. When the time allowed by law for the redemption of a property described in a certificate has expired and no redemption has been made, the tax receiver who issued the certificate, or his or her successor in office, shall execute and deliver to the county treasurer a deed of the property in trust for the use and benefit of the State and county and any officers having fees due them.

2. The county treasurer and his or her successors in office, upon obtaining a deed of any property in trust under the provisions of this chapter, shall hold that property in trust until it is sold or otherwise disposed of pursuant to the provisions of this chapter.

3. Notwithstanding the provisions of NRS 361.595 or 361.603, at any time during the 90-day period specified in NRS 361.603, or not later than 5 p.m. on the third business day before the day of the sale by a county treasurer, as specified in the notice required by NRS 361.595, of any property held in trust by him or her by virtue of any deed made pursuant to the provisions of this chapter, any person specified in subsection 4 is entitled to have the property reconveyed upon the receipt by the county treasurer of payment by or on behalf of that person of an amount equal to the taxes accrued, together with any costs, penalties and interest legally chargeable against the property. A reconveyance may not be made after expiration of the 90-day period specified in NRS 361.603.

4. Property may be reconveyed pursuant to subsection 3 to one or more of the persons specified in the following categories, or to one or more persons within a particular category, as their interests may appear of record:

(a) The owner.

(b) The beneficiary under a note and deed of trust.

(c) The mortgagee under a mortgage.

(d) The creditor under a judgment.

(e) The person to whom the property was assessed.

(f) The person holding a contract to purchase the property before its conveyance to the county treasurer.

(g) The Director of the Department of Health and Human Services if the owner has received or is receiving any benefits from Medicaid.

(h) ***An association, as defined in NRS 116.011, which has caused to be recorded pursuant to paragraph (b) of subsection 2 of NRS 116.31162 a notice of default and election to sell which has not been rescinded.***

(i) An association, as defined in NRS 116B.030, or a hotel unit owner, as defined in NRS 116B.125, which has caused to be recorded pursuant to paragraph (b) of subsection 1 of NRS 116B.635 a notice of default and election to sell which has not been rescinded.

(j) The successor in interest of any person specified in this subsection.

5. The provisions of this section apply to land held in trust by a county treasurer on or after April 17, 1971.

Sec. 20. NRS 361.610 is hereby amended to read as follows:

361.610 1. Out of the sale price or rents of any property of which he or she is trustee, the county treasurer shall pay the costs due any officer for the enforcement of the tax upon the parcel of property and all taxes owing thereon, and upon the redemption of any property from the county treasurer as trustee, he or she shall pay the redemption money over to any officers having fees due them from the parcels of property and pay the tax for which it was sold and pay the redemption percentage according to the proportion those fees respectively bear to the tax.

2. In no case may:

(a) Any service rendered by any officer under this chapter become or be allowed as a charge against the county; or

(b) The sale price or rent or redemption money of any one parcel of property be appropriated to pay any cost or tax upon any other parcel of property than that so sold, rented or redeemed.

3. After paying all the tax and costs upon any one parcel of property, the county treasurer shall pay into the general fund of the county, from the excess proceeds of the sale:

(a) The first $300 of the excess proceeds; and

(b) Ten percent of the next $10,000 of the excess proceeds.

4. The amount remaining after the county treasurer has paid the amounts required by subsection 3 must be deposited in an interest-bearing account maintained for the purpose of holding excess proceeds separate from other money of the county. If no claim is made for the excess proceeds within 1 year after the deed given by the county treasurer is recorded, the county treasurer shall pay the money into the general fund of the county, and it must not thereafter be refunded to the former property owner or his or her successors in interest. All interest paid on money deposited in the account required by this subsection is the property of the county.

5. If a person who would have been entitled to receive reconveyance of the property pursuant to NRS 361.585 makes a claim in writing for the excess proceeds within 1 year after the deed is recorded, the county treasurer shall pay the claim or the proper

portion of the claim over to the person if the county treasurer is satisfied that the person is entitled to it.

6. A claim for excess proceeds must be paid out in the following order of priority to:

(a) The persons specified in paragraphs (b), (c), (d), (g) and ~~[(h)]~~ ***(j)*** of subsection 4 of NRS 361.585 in the order of priority of the recorded liens; and

(b) Any person specified in paragraphs (a), (e) and (f) of subsection 4 of NRS 361.585.

7. The county treasurer shall approve or deny a claim within 30 days after the period described in subsection 4 for filing a claim has expired. Any records or other documents concerning a claim shall be deemed the working papers of the county treasurer and are confidential. If more than one person files a claim, and the county treasurer is not able to determine who is entitled to the excess proceeds, the matter must be submitted to mediation.

8. If the mediation is not successful, the county treasurer shall:

(a) Conduct a hearing to determine who is entitled to the excess proceeds; or

(b) File an action for interpleader.

9. A person who is aggrieved by a determination of the county treasurer pursuant to this section may, within 90 days after the person receives notice of the determination, commence an action for judicial review of the determination in district court.

10. Any agreement to locate, deliver, recover or assist in the recovery of remaining excess proceeds of a sale which is entered into by a person who would have been entitled to receive reconveyance of the property pursuant to subsection 4 of NRS 361.585 must:

(a) Be in writing.

(b) Be signed by the person who would have been entitled to receive reconveyance.

(c) Not provide for a fee of more than 10 percent of the total remaining excess proceeds of the sale due that person.

11. In addition to authorizing a person pursuant to an agreement described in subsection 10 to file a claim and collect from the county treasurer any property owed to the person, a person described in subsection 4 of NRS 361.585 may authorize a person pursuant to a power of attorney, assignment or any other legal instrument to file a claim and collect from the county treasurer any property owed to him or her. The county is not liable for any losses resulting from the approval of the claim if the claim is paid by the county treasurer in accordance with the provisions of the legal instrument.

Sec. 21. NRS 649.020 is hereby amended to read as follows:

649.020 1. "Collection agency" means all persons engaging, directly or indirectly, and as a primary or a secondary object, business or pursuit, in the collection of or in soliciting or obtaining in any manner the payment of a claim owed or due or asserted to be owed or due to another.

2. "Collection agency" does not include any of the following unless they are conducting collection agencies:

(a) Individuals regularly employed on a regular wage or salary, in the capacity of credit men or in other similar capacity upon the staff of employees of any person not engaged in the business of a collection agency or making or attempting to make collections as an incident to the usual practices of their primary business or profession.

(b) Banks.

(c) Nonprofit cooperative associations.

(d) Unit-owners' associations and the board members, officers, employees and units' owners of those associations when acting under the authority of and in accordance with chapter 116 or 116B of NRS and the governing documents of the association, except for those community managers included within the term "collection agency" pursuant to subsection 3.

(e) Abstract companies doing an escrow business.

(f) Duly licensed real estate brokers, except for those real estate brokers who are community managers included within the term "collection agency" pursuant to subsection 3.

(g) Attorneys and counselors at law licensed to practice in this State, so long as they are retained by their clients to collect or to solicit or obtain payment of such clients' claims in the usual course of the practice of their profession.

3. "Collection agency":

(a) Includes a community manager while engaged in the management of a common-interest community or the management of an association of a condominium hotel if the community manager, or any employee, agent or affiliate of the community manager, performs or offers to perform any act associated with the foreclosure of a lien pursuant to NRS 116.31162 to 116.31168, inclusive, ***and section 1 of this act*** or 116B.635 to 116B.660, inclusive; and

(b) Does not include any other community manager while engaged in the management of a common-interest community or the management of an association of a condominium hotel.

4. As used in this section:

(a) "Community manager" has the meaning ascribed to it in NRS 116.023 or 116B.050.

(b) "Unit-owners' association" has the meaning ascribed to it in NRS 116.011 or 116B.030.

Sec. 22. 1. The amendatory provisions of section 12 of this act apply to the foreclosure of a unit-owners' association's lien by sale if the sale occurs on or after October 1, 2015.

2. The amendatory provisions of sections 13 and 18 of this act apply if a notice of default and election to sell is recorded pursuant to NRS 107.080, on or after October 1, 2015.

3. The amendatory provisions of section 14 of this act apply only to a notice of default and election to sell that is recorded pursuant to paragraph (b) of subsection 1 of NRS 116.31162, as amended by section 13 of this act, on or after October 1, 2015.

4. The amendatory provisions of section 15 of this act apply only if a notice of sale is recorded pursuant to NRS 116.311635, as amended by section 15 of this act, on or after October 1, 2015.

5. The amendatory provisions of section 16 of this act apply only to a sale conducted pursuant to NRS 116.31164, as amended by section 16 of this act, on or after October 1, 2015.

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MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON WAYS AND MEANS

Seventy-Eighth Session
June 1, 2015

The Committee on Ways and Means was called to order by Chair Paul Anderson at 11:01 a.m. on Monday, June 1, 2015, in Room 3137 of the Legislative Building, 401 South Carson Street, Carson City, 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/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Paul Anderson, Chair
Assemblyman John Hambrick, Vice Chair
Assemblyman Derek Armstrong
Assemblywoman Teresa Benitez-Thompson
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblywoman Jill Dickman
Assemblyman Chris Edwards
Assemblyman Pat Hickey
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Randy Kirner
Assemblyman James Oscarson
Assemblyman Michael C. Sprinkle
Assemblywoman Heidi Swank
Assemblywoman Robin L. Titus

GUEST LEGISLATORS PRESENT:

Assemblyman David M. Gardner, Assembly District No. 9
Senator Aaron D. Ford, Senate District No. 11
Senator Scott T. Hammond, Senate District No. 18
Assemblywoman Ellen B. Spiegel, Assembly District No. 20
Assemblyman Erven T. Nelson, Assembly District No. 5
Senator Becky Harris, Senate District No. 9
Assemblyman Glenn E. Trowbridge, Assembly District No. 37

STAFF MEMBERS PRESENT:

Cindy Jones, Assembly Fiscal Analyst
Stephanie Day, Principal Deputy Fiscal Analyst
Alex Haartz, Principal Deputy Fiscal Analyst
Carol Thomsen, Committee Secretary
Cynthia Wyett, Committee Assistant

After call of the roll, Chair Anderson opened public comment, and there was no public comment to come before the Committee. The Chair adjourned the meeting of May 31, 2015, and opened the hearing on Senate Bill 213 (1st Reprint).

Senate Bill 213 (1st Reprint): Revises provisions relating to federal assistance received by agencies of the Executive Department of State Government. (BDR 31-838)

Miles Dickson, representing the Nevada Community Foundation, indicated that Senate Bill (S.B.) 213 (1st Reprint) was a companion to Senate Bill (S.B.) 214 (1st Reprint). Mr. Dickson referred to Exhibit C entitled, "SB 213, Increasing Tracking and Reporting of Federal Grant Funds in Nevada," which was available on the Nevada Electronic Legislative Information System (NELIS). The exhibit was a comprehensive presentation and provided a summary of the issues, highlighted Nevada's history regarding federal grants, explained the legislation, and addressed past amendments based on input from the Office of Grant Procurement, Coordination and Management; Department of Administration, (Nevada State Grant Office).

Mr. Dickson stated that for nearly four decades, Nevada had been "dead last" or very near last in the per-capita amount of federal grant funding received. Fortunately, said Mr. Dickson, through creation of the Nevada State Grant Office in 2011, and with leadership from the Governor and others, Nevada had made progress.

Mr. Dickson said the two bills heard today would build and accelerate that progress by first improving reporting and tracking in S.B. 213 (R1) and increasing coordination, solution finding, and alignment between state agencies, local governments, and nonprofit organizations in S.B. 214 (R1). The bills received unanimous support in the Senate and had been broadly supported by local governments, philanthropic interests, existing nonprofits, and the statewide business community.

Mr. Dickson asked others present in support of S.B. 213 (R1) and S.B. 214 (R1) to submit their written remarks to the Committee. He respectfully urged the Committee to support both bills.

Chair Anderson asked Mr. Dickson to review the changes to the fiscal note attached to S.B. 213 (R1).

Mr. Dickson explained that the fiscal notes for S.B. 213 (R1) and S.B. 214 (R1) had been combined into one fiscal note that would provide funding for one full-time program officer with total personnel costs of approximately $74,000, plus $15,000 per year for other operating costs, including travel and per diem reimbursement for associated volunteers. The total had been greatly reduced from the original fiscal note of $1.1 million.

Chair Anderson asked for additional information regarding the combination of bills that addressed grant funding.

Mr. Dickson said his interest in federal grant funding began several years ago when he worked for a food bank in Las Vegas. On many occasions, he saw how the low rates of federal grant funding could cripple programs and services, as well as reduce the value and the effect of taxpayer dollars. Mr. Dickson said while attending law school he had extensively researched the flow of federal funds and the ability of the federal government to condition state's actions. The federal government distributed hundreds of billions of dollars each year through federal grant programs. Mr. Dickson said in fiscal year (FY) 2011, which was one of the most recent data sets available, the federal government distributed $514.6 billion in grants through 26 different agencies, using approximately 1,700 different programs.

Mr. Dickson stated that for decades Nevada had been lagging behind the other 49 states and the territories in receiving its fair share of federal grant dollars returned to the state. Therefore, the Nevada Community Foundation, which was one of the state's largest philanthropic grant-making organizations, as well as partners throughout the business community, put forward a package of bills that aimed to move the state's grant infrastructure and processes significantly

forward. The Foundation and the business community was most interested in putting some "scaffolding" into the process so that everyone understood what needed to be solved.

For example, said Mr. Dickson, S.B. 213 (R1) would increase reporting and tracking in the form of a biannual statement. That would increase accountability and transparency, but more importantly, it would become clear what needed to be solved. The report would contain every grant the state applied for, received, and used from the federal grant programs every year. That information would be instructive and tremendously valuable as the state continued to look at how to make progress in securing grant funding.

Mr. Dickson stated that S.B. 214 (R1) would create a permanent advisory council, the Nevada Advisory Council on Federal Assistance that would assist and advise the state in grant procurement and management. The idea was to provide a permanent leadership voice for grant funding. Mr. Dickson said another important consideration was that the way the federal government distributed dollars had shifted significantly in the past 10 to 15 years, and it became more important that local governments and grant-making philanthropy organizations coordinated efforts. The proposed advisory council would include appointments from local governments, the private business community, and from nonprofits.

Mr. Dickson said he would like to incorporate the following written testimony into the record:

- Exhibit D: Testimony in support of S.B. 213 (R1) and S.B. 214 (R1) from Maureen Schafer, Executive Director, Council for a Better Nevada; and Board Chairperson, Nevada Community Foundation.

- Exhibit E: Legislative testimony regarding S.B. 213 (R1) dated June 1, 2015, prepared by the Kenny C. Guinn Center for Policy Priorities.

- Exhibit F: Legislative testimony regarding S.B. 214 (R1) dated June 1, 2015, prepared by the Kenny C. Guinn Center for Policy Priorities.

Chair Anderson asked whether there was testimony to come before the Committee in support of, in opposition to, or neutral regarding S.B. 213 (R1), and there being no further testimony, the Chair closed the hearing. The Chair opened the hearing on Senate Bill (S.B.) 214 (1st Reprint).

Senate Bill 214 (1st Reprint): Creates the Nevada Advisory Council on Federal Assistance. (BDR 31-837)

Miles Dickson, representing the Nevada Community Foundation, indicated that Senate Bill (S.B.) 214 (1st Reprint) was a companion to Senate Bill 213 (R1) as previously discussed. A packet of material entitled, "SB 214, Creating the Nevada Advisory Council on Federal Assistance," (Exhibit G), was available on the Nevada Electronic Legislative Information System (NELIS). He indicated that S.B. 214 (R1) would create the Nevada Advisory Council on Federal Assistance, which the Nevada Community Foundation believed would be instrumental in assisting with coordination and alignment of resources and in adding resources that were aided through philanthropy.

Chair Anderson said it appeared the two bills would work together to determine the grant funding needs of state agencies; he asked about coordination of state agencies and administrative tasks that might be required.

Mr. Dickson indicated that S.B. 214 (R1) called for a seven-member council, with one member being the Director of the Office of Grant Procurement, Coordination and Management; Department of Administration (Nevada State Grant Office). The other members included the Chief of the Budget Division, Department of Administration, two appointees from the Legislature (one from each house), and three appointees selected by the Governor. The council would meet at the call of the chair, and members would be asked to identify barriers and challenges within the state system. Mr. Dickson noted there had never been a comprehensive study regarding those barriers.

Mr. Dickson said following the identification of the barriers, it would become important for the council to identify solutions for those barriers through nonprofit organizations, local governments, and philanthropy. Ideally, the council would not only give advice and assistance, but would become a network through which the state could begin accessing more partnerships and increase resources through such mechanisms as matching funds.

Chair Anderson asked whether there would be additional reporting requirements for state agencies.

Mr. Dickson said the additional reporting requirements were covered under S.B. 213 (R1). The initial legislation recommended a large committee, representative of many different agencies, but that concept had been streamlined because of process and budget issues. It was hoped that the Chief of the Budget Division and the Director of the Nevada State Grant Office could speak on behalf of their colleagues.

Chair Anderson asked how the bills would align with the duties of the Nevada State Grant Office.

Mr. Dickson explained that the Nevada State Grant Office was created by the 2011 Legislature and had been quite successful to date. The Nevada State Grant Office was reporting approximately $60 million in grant funds secured for the current year, which was a return of almost $75 for every $1 invested in salaries for that office. Mr. Dickson said the proposed advisory council and the Nevada State Grant Office would work together because the grant infrastructure of the state was much larger than just that one department. The most successful states had begun consolidating their grant activities, which commenced in Nevada in 2011. One member of the advisory council, the Director of the Nevada State Grant Office, would coordinate the activities.

Chair Anderson asked whether there was testimony to come before the Committee in support of, in opposition to, or neutral regarding S.B. 214 (R1), and there being no further testimony, the Chair closed the hearing. The Chair opened the hearing on Senate Bill 502 (2nd Reprint).

Senate Bill 502 (2nd Reprint): Temporarily authorizes the Department of Motor Vehicles to collect a technology fee. (BDR 43-1177)

Terri L. Albertson, Administrator, Division of Management Services and Programs, Department of Motor Vehicles, stated that Senate Bill (S.B.) 502 (2nd Reprint) was a budget bill for the Department of Motor Vehicles (DMV) system modification effort. Ms. Albertson indicated that the bill was quite simple, and as amended in section 3, would give DMV the authority to collect a $1 technology fee for any transaction currently performed by DMV for which a fee was charged. Ms. Albertson said section 7 of the bill would sunset the technology fee on June 30, 2020, which was expected to coincide with the system's completion.

Assemblyman Armstrong indicated that the budget for DMV included significant funding for information technology, and he wondered how the $1 fee would interact with the budgeted funding.

Amy McKinney, Administrator, Administrative Services Division, Department of Motor Vehicles, stated that when the system modernization budget was compiled, the new revenue from the technology fee had been included. Because of that new revenue, the State Highway Fund appropriation had been decreased.

Chair Anderson asked whether there was testimony to come before the Committee in support of, in opposition to, or neutral regarding S.B. 502 (R2), and there being no further testimony, the Chair closed the hearing on S.B. 502 (R2). The Chair opened the hearing on Senate Bill 515.

Senate Bill 515: Ensures sufficient funding for K-12 public education for the 2015-2017 biennium. (BDR 34-1284)

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, explained that Senate Bill (S.B.) 515 was one of the five major budget bills. The bill was introduced and passed by the Senate and was then moved to the Assembly for review and approval. Ms. Jones said S.B. 515 assured the funding for K-12 education for the upcoming biennium. The bill apportioned the State Distributive School Account (DSA) in the State General Fund for the 2015-2017 biennium, authorizing certain expenditures and making appropriations for purposes relating to basic support, class-size reduction, and other educational purposes.

Ms. Jones said the bill also made appropriations for certain educational programs and services contingent upon passage of certain bills. The DSA was used for funding the operating costs and other expenditures of school districts. The bill included the per-pupil support to the various school districts; included local revenue that was also part of the guaranteed support; and contained the allocation of special education units. In the second year of the biennium, an additional $25 million was appropriated to the education system to transition from an education unit structure for special education to a weighted student funding mechanism.

Ms. Jones indicated that throughout S.B. 515 were costs for various programs and back language. The five budget bills had been discussed thoroughly in the bill draft request (BDR) format, and today was the official hearing when members could ask questions before passing the bill out of Committee. Ms. Jones noted that S.B. 515 was the K-12 education funding bill that had to be passed by both the Senate and the Assembly before any other budget bills containing General Fund Appropriations for the 2015-2017 biennium could be approved by the second house.

Assemblywoman Carlton noted that section 19, subsection 5, paragraph (g) of the bill included the funding for the Jobs for America's Graduates Program, and she wondered whether the funding for the Teach for America program was also included in the bill. She asked whether teachers could receive money from both programs.

Ms. Jones indicated that she was not aware of funding for the Teach for America program within the budget bills. Teach for America teachers were eligible to apply for funds through the Great Teaching and Leading Fund. There was also a bill that provided teacher pipeline funding, which would be in addition to the funding included in the bill. Ms. Jones stated the teacher pipeline funding provided scholarships to students enrolled in the Nevada System of Higher Education (NSHE) and through alternative teacher licensure mechanisms.

Ms. Jones reiterated that no funding was directly appropriated in the budget for the Teach for America program, and teachers could apply for funds through the Great Teaching and Leading Fund. Those funds were available to regional professional development programs and any other organizations eligible to provide professional development for school districts.

Chair Anderson asked whether there was further testimony to come before the Committee in support of, in opposition to, or neutral regarding S.B. 515, and there being no further testimony, the Chair closed the hearing. The Chair opened the hearing on Senate Bill 513.

Senate Bill 513: Makes various changes relating to the subsidies paid to the Public Employees' Benefits Program for insurance for certain active and retired public officers and employees. (BDR 23-1276)

Alex Haartz, Principal Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, stated that Senate Bill 513 was commonly referred to as the "PEBP" benefit bill. The bill established the rates for the state's contribution to the Public Employees' Benefits Program (PEBP) that would be provided for both active employees and retirees for the upcoming biennium. Mr. Haartz stated that section 2 of the bill included the Active Employee Group Insurance Subsidy (AEGIS) state monthly contribution of $701.73 per month for fiscal year (FY) 2016 and $699.25 per month for FY 2017.

Mr. Haartz indicated that section 3, subsection 1, paragraphs (a) and (b) included the state's monthly contribution on behalf of non-Medicare-eligible state retirees. The contribution for FY 2016 was $425.57 per month, and for FY 2017, the contribution was $451.15 per month. Section 3, subsection 2 pertained to Medicare-eligible state retirees and was divided into two groups. For state employees who retired prior to January 1, 1994, the state's contribution per month for FY 2016 was $165, and the contribution for FY 2017 was $180. For state employees who retired on or after January 1, 1994, the state's contribution for FY 2016 was a maximum of $220, and the maximum contribution for FY 2017 was $240.

Mr. Haartz said those amounts were approved by the Assembly Committee on Ways and Means and the Senate Committee on Finance when the PEBP budget was closed. Mr. Haartz advised that there was clarifying language in section 1, subsection 7 of the bill. He explained that *Nevada Revised Statutes* (NRS) contained some exclusions or prohibitions for certain individuals who were employed on or after January 1, 2012, from being excluded from receiving the Retired Employee Group Insurance (REGI) contribution.

According to Mr. Haartz, in section 1, subsection 8, the Legislative Counsel Bureau proposed an exemption to the prohibition to provide that the exclusion from receiving the state retiree contribution benefit would not apply to a person who was employed by the state on or before January 1, 2012, who had a break in service and returned to work for the state at the same or another participating state agency after that date, regardless of the length of the break in service, as long as the person had not withdrawn from and was eligible to participate in the Public Employees' Retirement System (PERS) before or during the break in service.

Mr. Haartz said the intent of the exemption was narrowly limited and applied to an employee who had worked for the state, left public service, and then decided to return to public service. That employee would not lose eligibility for the REGI contribution upon retirement from the state. The language removed the disincentive to return to state service. The Legislative Counsel Bureau was proposing the limited exception that would apply not only to the Legislative Counsel Bureau, but to all state agencies. Section 4, said Mr. Haartz, indicated that the provisions of section 1 applied to an employee who was reemployed by the state before, on, or after July 1, 2015. The intent was to restore eligibility to receive the REGI contribution provided by the state once the employee retired.

Assemblywoman Carlton said the proposed language had been discussed when the Committee discussed the PEBP benefits earlier in the session. She believed the proposed language would help former employees make the decision to return to state service.

Chair Anderson asked whether there was further testimony to come before the Committee in support of, in opposition to, or neutral regarding S.B. 513, and there being none, the Chair closed the hearing. The Chair opened the hearing on Senate Bill 92 (1st Reprint).

Senate Bill 92 (1st Reprint): Revises provisions relating to education. (BDR 34-485)

Mark A. Hutchison, Lieutenant Governor, Office of the Lieutenant Governor, stated that Senate Bill (S.B.) 92 (1st Reprint) was aimed at improving education in Nevada by adopting important reforms resulting from the *Vergara v. California,* No. BC484642 (Cal. Super. Ct. Aug. 27, 2014) decision. Those reforms included ending the "last in, first out" (LIFO) provision in collective bargaining agreements and developing guidance for future reductions in force, as well as establishing a mutual consent placement procedure. Lt. Governor Hutchison said S.B. 92 (R1) would also authorize the statewide turnaround school designation system and establish a protocol related to its use.

Lt. Governor Hutchison said the reforms were important to improve education in Nevada. The *Vergara v. California* court decision raised important constitutional issues concerning rightful provisions in collective bargaining agreements. The decision determined that seniority-based layoffs disproportionately affected the most at-risk student populations, specifically minority and poor students.

Lt. Governor Hutchison said he recognized that the state of California was challenging the *Vergara* decision, and that the 2011 Legislature limited consideration of seniority for collective bargaining agreements and ensured that it was not the sole factor in determining future reductions in force. However, he believed the state continued a disservice to the students of Nevada by allowing seniority to remain anything but the final criterion in the collective bargaining process. Because of that, said Lt. Governor Hutchison, the bill proposed that future reductions in force be based on the overall performance of the teacher or administrator, and that seniority only be considered should teachers or administrators remain evenly matched after applying all of the factors.

Lt. Governor Hutchison stated that S.B. 92 (R1) detailed a protocol for future reductions in force. Most school districts throughout Nevada would not be considering a reduction in force anytime soon, but putting a process into place that protected the most effective teachers and administrators was an important step in guaranteeing quality education in Nevada when reductions in force occurred in the future.

The protocol detailed in S.B. 92 (R1), said Lt. Governor Hutchison, would require that in a situation that required layoffs, ineffective and minimally effective administrators and teachers would be considered first in the reduction of force. The school district would then be required to consider administrators and teachers who had received disciplinary action, in order from the most to the

least severe, with an exception for those administrators and teachers who were in the process of adjudicating disciplinary action taken against them.

Lt. Governor Hutchison said should further reductions be required, the district would apply existing factors currently established under *Nevada Revised Statutes* (NRS). While considering the phases in a reduction in force situation, the school districts would be allowed to consider the subject areas taught by a teacher to determine whether that reduction would result in a shortage of teachers for that subject. Lt. Governor Hutchison stated if that was the case, those teachers could be exempted from the specific reductions in force.

Lt. Governor Hutchison indicated that S.B. 92 (R1) also established a mutual consent placement procedure. The bill required a school district to consult with and obtain the approval of the principal of a school to which the district was transferring a teacher or administrator who was rated ineffective or minimally effective. The superintendent of each school district would develop a plan that addressed the action that would be taken should the ineffective or minimally effective teacher deny reassignment under the mutual consent procedure, which must include professional development and appropriate training.

Continuing his presentation, Lt. Governor Hutchison stated that mutual consent placement procedures were important and assured that principals were empowered to hire teachers and administrators who best suited the needs of the school and the students by prohibiting the forced placement of an administrator or teacher. That reinforced the conclusion of the *Vergara* decision that competent teachers and administrators were a critical, if not the most important, component of a child's in-school educational experience.

Lt. Governor Hutchison explained that the mutual consent placement would not apply to teachers or administrators who were rated effective or highly effective. Those administrators and teachers could be placed in a school regardless of approval by the principal.

The final component of the bill, said Lt. Governor Hutchison, was the turnaround schools, which were included, designated, and implemented within S.B. 92 (R1). The bill required the State Board of Education to establish by regulation the criteria for designating a school as a turnaround school and empowered the Department of Education to designate a school as a turnaround school if that school met the established criteria. Should the Department of Education designate a school as underperforming, the board of trustees of the school district in which the school was located could review the

principal's performance and determine whether or not that principal should be retained at the school.

Lt. Governor Hutchison said that process had to commence immediately, and should the board of trustees determine that a principal needed to be replaced, and with the approval of the Department of Education, the incoming principal would be given ample time to prepare for the next school year. The reassigned principal also had to be transitioned to another school within the district. The responsibilities of a principal at a turnaround school would include all determinations for the school concerning hiring, curriculum, school schedule, structural design, and other elements of the educational experience.

Lt. Governor Hutchison indicated that the principal would have the authority to review every employee in the turnaround school and determine whether or not to retain or reassign each employee based on the needs of the school. The board of trustees for the school district would be responsible for the reassignment of any employees who were transferred because of the principal's review.

Continuing, Lt. Governor Hutchison said that after adoption of Amendment No. 7574 to the bill, the board of trustees for a school district would also be responsible for ensuring that the reassigned employees received assistance to help them meet standards for effective teaching, which could include, without limitation, peer assistance and review. He noted that S.B. 92 (R1) would also allow the board of trustees of a school district to provide financial and other incentives to teachers and paraprofessionals employed in a turnaround school to incentivize them to apply, participate, and continue to be employed at the turnaround school. Those incentives included, without limitation, salary increases, bonuses, flexible schedules, opportunities to receive training and professional development, as well as opportunities for promotion.

Lt. Governor Hutchison indicated that S.B. 92 (R1) also required that all costs resulting from determinations made by the principal of a turnaround school directly related to changes for that school to improve its performance had to be funded from a requested grant through the Department of Education or through a request to the board of trustees for the district in which the school was located, before any action was taken. Any cost savings resulting from a determination made by a principal of a turnaround school would be reallocated to other spending categories at that school for the principal's desired purposes.

Lt. Governor Hutchison thanked the Committee for hearing S.B. 92 (R1), and stated he believed the bill would be instrumental in the continuous efforts to strengthen Nevada's education system.

Assemblywoman Kirkpatrick asked how the mandates of the bill would work with the other turnaround school bills that had recently been passed. She wondered whether the bills should be coalesced to determine what the expectations were for turnaround schools.

Lt. Governor Hutchison indicated that he would refer that question to Mr. Canavero.

Steve Canavero, Ph.D., Deputy Superintendent for Student Achievement, Department of Education, asked whether Assemblywoman Kirkpatrick was referring to achievement school districts.

Assemblywoman Kirkpatrick said she was referring to other bills that addressed turnaround schools.

Mr. Canavero said to his knowledge there had not yet been discussions regarding turnaround schools, but there had been discussions about achievement schools.

Assemblywoman Kirkpatrick wondered how the various achievement schools and turnaround schools would align because it appeared those schools were targeting the same student population.

Mr. Canavero explained that S.B. 92 (R1) provided a strategy that the Department of Education could use to support the improvement of schools and to effectively keep those schools out of the achievement school district.

Assemblywoman Kirkpatrick asked what would occur with existing turnaround schools. She commented that she did not want to drive around to the schools in her district and wonder what the label was for each school, and she also wondered how schools would eventually become equal.

Mr. Canavero explained there were existing turnaround schools in both Clark and Washoe Counties. With the provisions of S.B. 92 (R1), the state would work in conjunction with the school districts to identify and designate schools as turnaround schools or schools in need of improvement and provide support for those schools. Additional schools could be labeled as turnaround schools in districts that had not yet identified such schools.

Assemblywoman Carlton said her concern was with teacher seniority. The provisions in the bill that would be used to judge performance were very subjective whereas seniority was fact-based and was allowed for the final determination. Without seniority, the Department of Education and the school districts could open the door to discrimination because of age, disability, race, religion, national origin, and the other issues that could be used to file a grievance against the Department and the school districts. Assemblywoman Carlton said the reason that unions, businesses, and school districts liked seniority was because it was a cut-and-dried issue, and there was no argument that could be used against seniority.

Assemblywoman Carlton said the problem with adding the disciplinary component to judging teacher performance was that it would create a double penalty. She opined that once an administrator or teacher had complied with the disciplinary action, it would again become a judgmental argument should there be a reduction in force. That meant the administrator or teacher would be penalized twice for the same deficiency. Assemblywoman Carlton said she had real concerns when the value of seniority was reduced because it would create grievances that could be won by employees. She believed that everyone should stop looking at seniority as being bad because it could be good for both employers and employees. Once employees reached a high level of seniority, there was less turnover and fewer problems.

Ryan Cherry, Chief of Staff, Office of the Lieutenant Governor, said the bill would not remove seniority, but would make seniority the final factor in judging teacher performance. The larger school districts already included seniority in their collective bargaining agreements as the final criteria for judging teacher performance. Mr. Cherry said the collective bargaining agreements for the larger school districts included disciplinary action before the evaluation was processed, which would have a greater effect on those administrators and teachers. The bill would not consider disciplinary action after the evaluation was processed, and if a grievance had been filed, administrators and teachers would not be considered for removal until the grievance had been fully adjudicated.

Assemblywoman Carlton said she was not concerned about the adjudication, but rather the idea that the administrator or teacher was being penalized twice for the same deficiency, even when that deficiency might have occurred several years earlier.

Assemblyman Sprinkle stated that section 30, subsection 1 of S.B. 92 (R1) set the various parameters for a reduction in force and discussed the overall performance of administrators and teachers. He wondered about the time frame used for the performance evaluation and whether there was a set number of years for administrators or teachers to improve their performance.

Lt. Governor Hutchison stated that performance reviews for administrators and teachers would be conducted annually, and the order of reduction-in-force layoffs would be based on the latest performance evaluation and the performance leading up to the reduction in force.

Assemblyman Sprinkle said it appeared that the annual evaluation to determine whether an administrator or teacher would be laid off could be based on a one-year period.

Lt. Governor Hutchison said it would be based on the prior annual performance and the performance in the months leading up to the reduction in force.

Assemblyman Sprinkle reiterated that there had been many discussions during the 2015 Legislature about the difficulty in hiring teachers, and there was a massive teacher shortage in Clark County. The mandates of S.B. 92 (R1) appeared to be very subjective and would give school districts and principals significant opportunity to eliminate teachers that were considered less than par. Assemblyman Sprinkle said the language of the bill did not appear to enhance teacher growth in the state, but rather would make it more difficult to hire teachers in the future, which could lead to overcrowding in the schools.

Lt. Governor Hutchison stated that S.B. 92 (R1) did not address incentives for teachers or deal with the substitute teacher concerns in Clark County. The bill would prioritize the method used by school districts when a reduction in force was necessary. Lt. Governor Hutchison said that would prevent the best teachers who were hired last from being automatically laid off before a teacher that was ineffective or minimally effective who had 20 years seniority. The bill reflected policy and also reflected what some courts had termed a serious constitutional issue, which was when a school district laid off teachers based on seniority, those ineffective teachers who remained in the system tended to pool disproportionately with those students who were most at risk. That raised the constitutional question about equal protection and the right to an equal educational experience.

Lt. Governor Hutchison advised Assemblyman Sprinkle that as the father of six children who attended the Clark County School District (CCSD), and having attended school there himself, he was very aware of the problems CCSD was experiencing. However, there were other bills that addressed those issues, while S.B. 92 (R1) dealt only with turnaround schools and reductions in force.

Assemblyman Sprinkle noted the fiscal notes attached to the bill by local jurisdictions, and he wondered whether those fiscal notes had been reduced.

Mr. Cherry indicated that the fiscal notes applied to the original version of S.B. 92 (R1), and the amendment had addressed those amounts.

Assemblywoman Swank wondered about using only one year for evaluation when judging teacher performance. She noted there had been bills that changed the student count day because considering a broader range of data would provide a more representative picture of what was happening in the schools.

Assemblywoman Swank said when she was teaching at the University of Nevada, Las Vegas, there had been much discussion about professor evaluations and how many years should be reviewed for merit increases. The time frame originally covered only one year for professor evaluations to determine the merit increase. However, a professor could have a great year during the core year, or a situation could develop that affected the professor's performance during the core year that was not indicative of the professor's actual overall performance.

Assemblywoman Swank believed that the Nevada System of Higher Education (NSHE) currently used three years, which provided a more stable picture of the teacher or professor's abilities in the classroom. She suggested that using only one data point would not provide a sufficient amount of information.

Mr. Cherry said the intent was to align the bill with Assembly Bill 447 (1st Reprint), which stated if an administrator or teacher had one ineffective or minimally effective evaluation, that person would go through three observation periods in the second year that would provide a comprehensive evaluation. The intent was to ensure that S.B. 92 (R1) followed the same process; he assured the Committee that multiple data points would be considered in developing the evaluations. Mr. Cherry said the evaluation process would begin upon passage and approval of the bill.

Assemblyman Edwards commented that with the current teacher vacancies in Nevada, the mandates of S.B. 92 (R1) would probably not be reached within the next two years because there would be no need for reductions in force. However, if use of the mandates was required, the bill would have provided ineffective teachers with much needed remediation. He said it appeared the thrust of the bill was to ensure that the students were taught by the best teachers and were offered the best opportunities to succeed.

Lt. Governor Hutchison said Assemblyman Edwards was correct; the purpose of the bill was when a reduction in force became necessary, school districts could prioritize those who were laid off so the most effective teachers would continue to teach the students. The bill also provided a way for those teachers who were less effective to receive professional development opportunities and peer review, and they would not be forgotten. However, when school districts were forced to select those teachers that would be laid off because of a reduction in force, the bill would guarantee that the best and most effective teachers remained in the classrooms.

Assemblyman Edwards said it was not simply a matter of "kicking teachers out the door," it was a matter of giving underperforming teachers an opportunity to become better teachers so they could remain in the classrooms. The bill apparently looked at the welfare of underperforming teachers, but not at the expense of the students who deserved the best teachers.

Lt. Governor Hutchison agreed, and noted that S.B. 92 (R1) also gave the school districts and superintendents the tools to help underperforming teachers who were displaced.

Assemblyman Hickey asked about the role the principals would play if a reduction in force was necessary. The bill established the criteria for principals to decide whether minimally effective teachers could be transferred. That was important because highly effective schools were frequently led by highly effective principals.

Lt. Governor Hutchison said the intent was to ensure that principals in turnaround schools were empowered to select the staff for the school and determine scheduling, curriculum, and the pace of education. Rather than allowing an underperforming school to become chronically underperforming, the bill would allow the current principal or an incoming principal to bring in a new team and start over. The bill gave a significant amount of authority to the principal, said Lt. Governor Hutchison, and those principals would be held accountable by the school districts and the boards of trustees.

Lt. Governor Hutchison said in the event that a reduction of force became necessary, the principals would help select the teachers who would be laid off or transferred. An ineffective or minimally effective teacher could be displaced because of a reduction in force, and with the consent of the principal, that teacher could be added to the workforce of another school, or the board of trustees would determine how to help the teacher become more effective.

Assemblywoman Benitez-Thompson stated that section 4.2 of S.B. 92 (R1) indicated that the principal of the school could make all decisions determining the school's curriculum, and she wondered whether that language would empower the principal to make determinations that could not be made in the past.

Mr. Canavero said the bill did not depart from the standards, and the additional empowerment for principals related to the curriculum that was used for instructional designs. The bill included some latitude for principals in that area.

Assemblywoman Benitez-Thompson noted that the bill indicated the principal would make all determinations for the school concerning hiring and the school's curriculum, schedule, and instructional design, and she asked for clarification.

Mr. Canavero said the language in S.B. 92 (R1) related to empowerment. He noted that decisions made by principals were also connected to potential funding to help support teachers at the schools. Funding of $2.5 million in each year of the biennium was included in the budget for the Department of Education, which was associated with the language of Senate Bill 77, which was a more robust turnaround school bill that had not been passed.

Mr. Canavero said a principal could conduct a comprehensive review of programs within the school and determine that some "boxed" programs could be eliminated and new programs introduced. Mr. Canavero said the school day could also be restructured by the principal. For example, a determination could be made by the principal not to adjust transportation schedules, but to adjust the scheduling to accommodate a reading block at a certain time.

Assemblywoman Carlton wondered, if there were supposed ineffective teachers within school districts, why that situation was only addressed when a reduction in force was necessary. She believed the school districts had a responsibility to deal with ineffective teachers on a daily basis, and those teachers should not be allowed to remain on staff. Assemblywoman Carlton noted that there was a process in place to address ineffective teachers. Should a teacher remain on staff until there was a need for a reduction in force, she believed the school

district had not done its job in making sure that there was an effective teacher in every classroom. It appeared that the issue of ineffective teachers would be addressed too late in the process, and the bill assumed that because a teacher worked in an at-risk school, the teacher was ineffective.

Assemblywoman Carlton opined that there were many young teachers who would teach in at-risk schools because they wanted to make a difference, and she did not want to categorize the teachers in at-risk schools as less effective.

Mr. Canavero noted that several educational programs had been approved throughout the 2015 Legislature, and many of those were directly related to developing teacher talents. The bill would address teachers through the evaluation system that were identified as needing development, and ensure that the development would be provided to "grow" those teachers. Mr. Canavero said the determinations related to reductions in force or reductions of human capital at specific designated underperforming schools would be made at the end of the process. The bill would not allow or perpetuate minimally effective educators in the classrooms.

Assemblywoman Dickman asked whether the bill was protecting the school districts by defining the criteria under which teachers could be dismissed, because teachers could not claim they were unaware of the criteria.

Ryan Cherry, Chief of Staff, Office of the Lieutenant Governor, said the bill clarified in *Nevada Revised Statutes* the action that would be taken should there be a reduction in force, which all districts should be aware because of collective bargaining agreements; however, those agreements differed from school district to school district. Therefore, the bill would establish a fair and reasonable process that could be used by all school districts.

Mr. Cherry stated that young teachers electing to work in designated turnaround schools would be exempt from the pupil achievement data portion of the evaluation criteria for two years after the designation to give those teachers added incentive to teach at those schools without suffering a negative evaluation.

Chair Anderson asked whether there was further testimony to come before the Committee in support of S.B. 92 (R1).

Joyce Haldeman, Associate Superintendent, Community and Government Relations, Clark County School District, stated that the Clark County School District (CCSD) supported S.B. 92 (R1). Ms. Haldeman thanked Lieutenant Governor Hutchison and his staff for the many opportunities offered

to CCSD to provide input in the language of the bill. There were three main components to the bill that were helpful to CCSD. She referred to the Governor's education reform package that was introduced during the 2011 Legislature that included ambitious mandates for dealing with classroom issues; however, only portions of that package passed. The language regarding postprobationary teachers who were not performing and could be returned to probationary status for additional training was passed in 2011. She noted that the "last in, first out" (LIFO) provision and mutual consent language in S.B. 92 (R1) would help school districts prevent LIFO from occurring.

Ms. Haldeman emphasized that the bill did not address a large portion of CCDS's teaching staff; less than 2 percent of CCSD teachers would fall into the ineffective or minimally effective categories. It would take a very severe reduction in force before the mandates of the bill would come into play. Ms. Haldeman said there were currently approximately 600 vacancies in the CCSD, and she did not feel the mandates of the bill would be put into place for quite some time.

Ms. Haldeman said it was important for CCSD to ensure that the correct teachers were in the classrooms, and when it was time to make the very difficult choices about teacher layoffs, the criteria would be established to review effective, ineffective, or minimally effective teachers as the first qualification. She pointed out that CCSD worked closely with its teachers' association and had already bargained LIFO provisions, and the bill would not be dramatically different from the current collective bargaining agreement.

Ms. Haldeman said the language in S.B. 92 (R1) pertaining to turnaround schools was initially problematic because CCSD had a very robust and effective turnaround school program. There were approximately 15 schools currently participating in CCSD's turnaround program. Over the years, CCSD had regularly identified turnaround schools and provided assistance so the schools could emerge from the turnaround designation as the schools improved in their star ranking. However, said Ms. Haldeman, the bill presented an opportunity for CCSD to increase its turnaround programs because of the availability of funding that would help with incentives. The CCSD was confident that it could work closely with Mr. Canavero to identify the turnaround schools.

Assemblyman Edwards commented that he was glad to hear that CCSD did not believe there would be a dramatic loss of teachers because of a major reduction in force, and the bill would only apply to 2 percent of the teachers in Clark County who were deemed ineffective or minimally effective and required additional training. The bill was to protect the students, and he was glad CCSD recognized that aspect of the bill.

Stephen Augspurger, Executive Director, Clark County Association of School Administrators and Professional-Technical Employees, stated he was also speaking on behalf of the Washoe School Principals' Association, and both associations were in complete support of S.B. 92 (R1) because it would be great for the students. He noted that CCSD also worked closely with the Clark County Association of School Administrators and Professional-Technical Employees. Mr. Augspurger said the turnaround provisions in section 4.2 of the bill would appropriately incentivize the best principals and the best teachers to work in underachieving schools.

Mr. Augspurger said mutual consent placement was extremely important and would effectively stop LIFO, and he believed there was nothing more important than having an effective teacher in the classroom, and nothing more important than having an effective administrator who worked with the teachers. He believed S.B. 92 (R1) would cause both to occur.

Regarding reductions in force, Mr. Augspurger said the district would declare when a reduction in force was necessary and someone would lose his or her job. The question was which teachers should lose their positions—an effective new teacher or an ineffective or minimally effective teacher or administrator with significant seniority. The answer was simple—the school districts wanted the very best people working in their schools, and S.B. 92 (R1) would ensure that occurred.

Seth Rau, Policy Director, Nevada Succeeds, stated Nevada Succeeds strongly supported S.B. 92 (R1). The Lieutenant Governor and his staff had worked closely with all stakeholders to ensure the bill was strong, and as the state was making historic investments in education during the 2015 Legislature, it had to ensure that every student had access to quality teachers and administrators. Mr. Rau said Nevada Succeeds believed the bill was a major step in the right direction.

Lonnie Shields, representing the Nevada Association of School Administrators, echoed the comments made by his colleagues. He indicated that any time a school district had to choose between an effective teacher, an ineffective teacher, or a minimally effective teacher, the decision was easy. It was necessary for the Legislature to move forward with the bill so that qualified teachers could be placed in every classroom.

Mary Pierczynski, representing the Nevada Association of School Superintendents, thanked the bill's sponsors for spending a great deal of time with stakeholders to amend the original version of the bill that contained

language not supported by the Association. Ms. Pierczynski voiced support for the amended version of the bill.

Chair Anderson asked whether there was further testimony to come before the Committee from those who were neutral regarding S.B. 92 (R1).

Theo Small, Vice President, Clark County Education Association, said he had some concerns having been a classroom teacher for 25 years. Mr. Small said the Association wanted highly effective teachers in every classroom. Clark County School District (CCSD) had 19 turnaround schools, and three schools had recently exited the program. Mr. Small stated that the Association felt the current CCSD turnaround school program was of great help to teachers and administrators.

Mr. Small said that section 4.2 of the bill contained language regarding termination of the principal and the selection of a new principal who would make all determinations for the school concerning hiring and the school's curriculum, schedule, and instructional design. He stated that language allowed no voice for the collaboration of those who were actually teaching the curriculum and instructing the students. Mr. Small said he was very concerned about that language because it was opposite of current language regarding empowerment schools where everyone in the community, including students, their families, and all staff were part of the decision-making to improve the school. The language in the bill gave that decision-making solely to the principal.

Mr. Small noted there was a teacher shortage, and the bill would remove all collective bargaining agreements. The Clark County Education Association was currently working with CCSD to attract highly effective teachers in the suburban areas to teach in turnaround schools, and Mr. Small said he was concerned that passage of S.B. 92 (R1) would make it easier to remove teachers from turnaround schools. He wondered whether that would attract the right teachers and administrators to those schools.

The question, said Mr. Small, was whether new, inexperienced teachers should be sent into the highest need areas of the turnaround schools. He noted that Assembly Bill (A.B.) 447 (1st Reprint) had passed, and the language in that bill would ensure there would be multiple years for teachers to become highly effective and for school districts to develop better teachers.

Mr. Small stated that section 30 of S.B. 92 (R1) described the process for teachers who had received uncontested disciplinary action or where the action was adjudicated, but that language did not include the evaluation piece.

He noted that the Clark County Education Association spent a great deal of time working with new teachers who were struggling with the profession. Many of those teachers were considered minimally effective, and the Association was developing those teachers.

Chair Anderson asked whether there was further testimony to come before the Committee in opposition to S.B. 92 (R1), and there being none, the Chair closed the hearing.

Chair Anderson advised that the Committee would continue with a work session regarding bills heard today, commencing with Senate Bill 213 (R1).

Senate Bill 213 (1st Reprint): Revises provisions relating to federal assistance received by agencies of the Executive Department of State Government. (BDR 31-838)

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, said Senate Bill (S.B.) 213 (1st Reprint) would require the Chief of the Budget Division, Department of Administration, to maintain a database of certain information related to federal assistance received by agencies in the Executive Department of state government and require the Department of Administration to prepare an annual report that contained information relating to federal assistance programs.

Ms. Jones said the bill also required a report to be submitted to the Governor and the Legislature and authorized the Fiscal Analysis Division, Legislative Counsel Bureau, to prepare an advisory report containing information with respect to the federal assistance programs.

Ms. Jones indicated there was a fiscal impact created by both S.B. 213 (R1) and Senate Bill (S.B.) 214 (1st Reprint) that were recently heard in the amount of approximately $97,500 per fiscal year, which included $15,500 per year for travel and support of the board that would be created by S.B. 214 (R1). Those funds were not included in The Executive Budget or in the legislatively approved budget for the Budget Division, Department of Administration and could be added to S.B. 213 (R1) through an amendment to the bill. The funds to support the costs associated with the two bills could also be requested by the Budget Division, Department of Administration, from the Interim Finance Committee.

ASSEMBLYMAN EDWARDS MOVED TO AMEND AND DO PASS SENATE BILL 213 (1ST REPRINT) AS AMENDED WITH AN APPROPRIATION OF $97,500 IN EACH FISCAL YEAR, $15,500 OF WHICH WOULD SUPPORT THE NEVADA ADVISORY COUNCIL ON FEDERAL ASSISTANCE CREATED BY SENATE BILL 214 (1ST REPRINT).

ASSEMBLYWOMAN BUSTAMANTE ADAMS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Senate Bill 214 (1st Reprint): Creates the Nevada Advisory Council on Federal Assistance. (BDR 31-837)

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, said Senate Bill (S.B.) 214 (1st Reprint) was a companion bill to S.B. 213 (R1). The bill created the Nevada Advisory Council on Federal Assistance and provided for the membership, powers, and duties of the Council. Included in the funding added to S.B. 213 (R1) was $15,500 for costs associated with the Council.

ASSEMBLYMAN EDWARDS MOVED TO DO PASS SENATE BILL 214 (1ST REPRINT).

ASSEMBLYWOMAN BUSTAMANTE ADAMS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Senate Bill 502 (2nd Reprint): Temporarily authorizes the Department of Motor Vehicles to collect a technology fee. (BDR 43-1177)

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau said Senate Bill (S.B.) 502 (2nd Reprint) would authorize the Department of Motor Vehicles (DMV) to temporarily collect a technology fee and would temporarily increase the limitation on the percentage of the proceeds of certain fees and charges collected by the DMV that were authorized for the DMV's costs of administration associated with the collection of those fees and charges.

Ms. Jones said S.B. 502 (R2) was a budget bill and was associated with the information technology (IT) project approved by the Assembly Committee on Ways and Means and the Senate Committee on Finance to replace the current DMV information technology system. The bill would raise the cap of the percentage of the State Highway Fund receipts that were allowed to administer the DMV because the cost of the IT project was included in that cap.

ASSEMBLYMAN EDWARDS MOVED TO DO PASS SENATE BILL 502 (2ND REPRINT).

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED. (Assemblywomen Dickman and Titus voted no.)

Senate Bill 513: Makes various changes relating to the subsidies paid to the Public Employees' Benefits Program for insurance for certain active and retired public officers and employees. (BDR 23-1276)

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau said Senate Bill (S.B.) 513 was presented earlier by Fiscal Analysis Division staff. The bill made various changes related to the subsidies paid to the Public Employees' Benefits Program (PEBP) for insurance for certain active and retired public officers and employees for the upcoming biennium. Ms. Jones said S.B. 513 was a budget bill that placed in statute the state PEBP subsidies for the upcoming biennium.

As noted by Fiscal Analysis Division staff, said Ms. Jones, a new exception had been added to the language of the bill that allowed a person who had previously been employed but left state government to return to state service after taking a break from any Public Employees' Retirement System-related employment and retain their ability to access retiree health insurance.

ASSEMBLYMAN EDWARDS MOVED TO DO PASS SENATE BILL 513.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Senate Bill 515: Ensures sufficient funding for K-12 public education for the 2015-2017 biennium. (BDR 34-1284)

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau said Senate Bill (S.B.) 515 was one of the major budget bills that would implement K-12 funding for the upcoming biennium. The bill assured sufficient funding for K-12 public education for the 2015-2017 biennium and apportioned the State Distributive School Account (DSA) in the State General Fund for the 2015-2017 biennium. The bill authorized certain expenditures; made appropriations for purposes relating to basic support, class-size reduction, and other educational purposes; made contingent appropriations for certain educational programs and services; and temporarily diverted the money from the State Supplemental School Support Account to the DSA for use in funding operating costs and other expenditures of school districts.

Ms. Jones said S.B. 515 had to be passed by both houses of the Legislature prior to any other bills containing an appropriation [for the 2015-2017 biennium] being passed by the second house.

> ASSEMBLYMAN EDWARDS MOVED TO DO PASS SENATE BILL 515.
>
> ASSEMBLYWOMAN BUSTAMANTE ADAMS SECONDED THE MOTION.
>
> THE MOTION PASSED. (Assemblywomen Dickman and Titus voted no.)

Senate Bill 92 (1st Reprint): Revises provisions relating to education. (BDR 34-485)

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau said Senate Bill (S.B.) 92 (1st Reprint) was an act relating to education. The bill authorized the designation of certain underperforming schools as turnaround schools, allowed certain measures to be taken with respect to administration and personnel at such schools, and excluded the right of a school district to make reassignments of a principal or teacher from such a school from the scope of collective bargaining. The bill also provided for certain incentives to encourage employment at a school designated as a turnaround school, revised provisions relating to the reassignment of a teacher or administrator whose overall performance was designated as minimally effective or ineffective, required the board of trustees of a school district to

consider specified factors in carrying out a reduction in force, and directed the Legislative Counsel to reorganize certain statutory provisions relating to education. Ms. Jones noted that S.B. 92 (R1) related to section 24 of Senate Bill 515, which provided $2.5 million per fiscal year of the 2015-2017 biennium for costs associated with implementing the turnaround schools program.

Assemblywoman Benitez-Thompson stated the bill was difficult because there were so many aspects and components, but there absolutely had to be accountability for good teachers and good schools. She indicated that her daughter's school was stuck as a two-star school, and eventually the superintendent of the school district reassigned the principals from higher rated schools to the lower rated schools. She said the problems at schools had to be identified, whether it was ineffective teachers or ineffective leadership. She believed the time frames and methods for handling teachers described in the bill would not provide sufficient time for due consideration to determine the cause of the problems. Many of the decisions regarding effective teachers and staff would be made by the principal rather quickly, and Assemblywoman Benitez-Thompson believed there should be more time. Assemblywoman Benitez-Thompson said she did not want her vote to reflect that she was not supportive of the idea, but she believed there should be more time to determine the cause of the problems.

Assemblywoman Dickman believed the bill included the type of reforms and accountability that was needed.

Assemblyman Sprinkle said S.B. 92 (R1) was difficult for him because he did appreciate the necessity of having effective teachers and a process to address those ineffective or minimally effective teachers. He said he was hesitant about the bill because of the subjective nature of the teacher performance evaluation. Assemblyman Sprinkle said he did not know whether a one-year evaluation was appropriate, particularly for newer teachers who were still learning what was needed in the classroom and gaining the necessary experience. He explained that he had sufficient concerns about the bill that he would vote no, even though he understood the overall idea that was behind the bill.

Assemblywoman Titus thanked Lieutenant Governor Hutchison for bringing S.B. 92 (R1) forward. The Legislature had passed several tax increases that would be paid by citizens of the state to improve education. She indicated that she had asked that there be accountability of how that money was spent, and that had to start somewhere. Assemblywoman Titus said the taxpayers and business owners should hold the Legislature accountable for the money, which she believed would begin with S.B. 92 (R1).

Assemblyman Edwards said his constituents wanted the Legislature to have greater accountability, particularly with the large sum of money that would be invested in education during the upcoming biennium. Accountability was not always easy, but it had to be done. Assemblyman Edwards commented that the state would fail its students by not maintaining accountability, and it had to trust that those in charge of the process would be fair and equitable on all accounts. He stated he had faith in those who would handle the process and would vote in favor of S.B. 92 (R1).

Chair Anderson noted that Lieutenant Governor Hutchison had worked with all stakeholders involved to ensure that everyone agreed on the language of the bill, and he was ready to move forward; the Chair called for a motion.

> ASSEMBLYWOMAN DICKMAN MOVED TO DO PASS SENATE BILL 92 (1ST REPRINT).
>
> ASSEMBLYMAN EDWARDS SECONDED THE MOTION.
>
> THE MOTION PASSED. (Assemblymen Benitez-Thompson, Bustamante Adams, Carlton, Kirkpatrick, Sprinkle, and Swank voted no).

Senate Bill 492 (2nd Reprint): Revises provisions governing the financial administration of off-highway vehicle titling and registration. (BDR 43-1175)

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau said Senate Bill (S.B.) 492 (2nd Reprint) was heard by the Committee on May 30, 2015. The bill related to off-highway vehicles, revising provisions related to fees collected by the Department of Motor Vehicles for the titling and registration of off-highway vehicles.

Ms. Jones said the bill was associated with the decisions made by the Assembly Committee on Ways and Means and the Senate Committee on Finance to support the budget for the off-highway vehicle program.

Assemblywoman Bustamante Adams asked about the fiscal note.

Ms. Jones said she did not have that information available, but the amounts included in the budget had been approved.

ASSEMBLYMAN EDWARDS MOVED TO DO PASS SENATE BILL 492 (2ND REPRINT).

ASSEMBLYMAN ARMSTRONG SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Anderson declared the Committee in recess at 12:32 p.m. and reconvened the hearing at 1:40 p.m. The Chair said the work session would continue with Assembly Bill 147.

Assembly Bill 147: Revises provisions relating to transferable tax credits to attract film and other productions to Nevada. (BDR 32-503)

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau said Assembly Bill (A.B.) 147 was heard by the Committee on May 26, 2015. The bill was related to transferrable tax credits to attract filming and other productions to Nevada. The bill revised provisions governing the total amount of transferrable tax credits, which may be approved by the Office of Economic Development, Office of the Governor, pursuant to applications submitted to the Governor's Office of Economic Development by a producer that produced film, television, or other media productions in Nevada.

Ms. Jones said A.B. 147 related to Senate Bill No. 165 of the 77th Session (2013) that established the program. She noted that the 28th Special Session (2014) reduced the amount available in the program from $20 million to $10 million in any fiscal year. The original bill would restore the funding to $20 million, and the proposed conceptual amendment would again reduce the amount to $15 million in any fiscal year. Any tax credits that were not used for the program in the fiscal year in which the credits were available would balance forward to the immediately following two fiscal years.

Assemblywoman Carlton stated that the program funding had been repurposed by the 28th Special Session. The policy was also changed during the 28th Special Session, and the program had transitioned from a pilot project to a demonstration project. Additional money would be provided to the program via A.B. 147 to ensure that dollars could be leveraged to bring additional jobs to Nevada. Realizing the constraints currently facing the state, asking for restoration of the whole amount was not deemed appropriate, said Assemblywoman Carlton, but the amount should keep people working and keep the industry on an even keel.

Assemblywoman Titus opined that if Nevada had a fair tax plan there would be no need for abatements, and she would vote no on the bill.

Assemblywoman Carlton said it was not an abatement, but rather was a credit. Productions would come to Nevada and spend money, provide jobs, and then apply for a tax credit.

Assemblywoman Dickman said she understood the transferrable tax credits, but she believed those were direct subsidies, and she would also vote no on the bill.

> ASSEMBLYWOMAN BENITEZ-THOMPSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 147 AS AMENDED.
>
> ASSEMBLYMAN OSCARSON SECONDED THE MOTION.
>
> THE MOTION PASSED. (Assemblywomen Dickman and Titus voted no. Assemblywoman Swank was not present for the vote.)

Assembly Bill 394 (1st Reprint): Creates an advisory committee and a technical committee to develop a plan to reorganize the Clark County School District and revises certain provisions related to collective bargaining. (BDR 22-900)

Assemblyman David M. Gardner, Assembly District No. 9, stated that proposed Amendment No. 7799 (Exhibit H) to Assembly Bill (A.B.) 394 (1st Reprint) would require that after the plan to reconfigure the Clark County School District was finished, the Department of Education would promulgate regulations to implement the plan. Assemblyman Gardner said section 28, subsection 4 of the proposed amendment stated, "The State Board of Education shall adopt regulations necessary and appropriate to effectuate the implementation of the proposed plan not later than the 2018-2019 school year." Those regulations would then be reviewed by the Legislative Commission, which would have the final vote on whether or not to adopt the regulations.

Assemblywoman Kirkpatrick said that she had shared in the conversation with Assemblyman Gardner, along with Assemblywoman Benitez-Thompson, Assemblywoman Bustamante Adams, and Assemblywoman Olivia Diaz, regarding proposed Amendment No. 7799. The amendment attempted to provide a backstop for the study, and it was felt that the Legislative Commission could provide the backstop. The State Board of Education would submit regulations that would be approved by the Legislative Commission before implementation. Using the 2018-2019 school year pushed the date out to allow for further discussion going forward.

Assemblywoman Kirkpatrick stated she would support the legislation with the proposed amendment.

> ASSEMBLYWOMAN BENITEZ-THOMPSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 394 (1ST REPRINT) AS AMENDED WITH PROPOSED AMENDMENT NO. 7799.
>
> ASSEMBLYWOMAN BUSTAMANTE ADAMS SECONDED THE MOTION.

Assemblyman Gardner explained that proposed Amendment No. 7799 would provide a backstop to the reconfiguration plan for the Clark County School District. The proposed amendment would have the plan submitted to the State Board of Education, which would then develop regulations that would be reviewed by the Legislative Commission for approval.

Chair Anderson asked whether funding was required for the study by the proposed advisory committee. Assemblyman Gardner said the cost was not yet known because a third party would be hired to complete the research; the approximate cost would be in the vicinity of $500,000 to $1 million.

Assemblywoman Kirkpatrick said the study date had also been pushed out to the 2017-2018 school year, so the Legislative Commission could ensure that the study remained within the allowed time frame.

Chair Anderson stated that the funding source needed to be addressed before voting on the bill.

Rick S. Combs, Director, Legislative Counsel Bureau, said the latest version of A.B 394 (R1) that he had reviewed included a provision that allowed the advisory committee to request approval from the Interim Finance Committee (IFC) for an allocation of money to conduct the study. He said that language remained in the amended version of the bill, and the IFC's Contingency Account replenishment bill remained within the purview of the Committee, so it could determine whether to place additional funding in the Contingency Account for the advisory committee to complete the study.

Mr. Combs said it appeared the cost for the study itself was approximately $10,000 for staff costs and travel for members of the advisory committee. However, that amount would not cover the cost of a consultant. Mr. Combs believed the amount for the advisory committee could be funded with the current amount set aside for studies. Currently, only one study had passed both houses of the Legislature, and there was sufficient money for three or four

studies in the Legislative Commission's budget. Mr. Combs believed the costs for the advisory committee could be covered; however, the Committee would need to address the consultant costs.

Chairman Anderson noted there was a motion before the Committee to amend and do pass A.B. 394 (R1) as amended, and he called for a vote on the motion.

> THE MOTION PASSED. (Assemblyman Edwards was not present for the vote.)

Chair Anderson announced that the Committee would hear testimony regarding Senate Bill (S.B.) 111 (2nd Reprint).

Senate Bill 111 (2nd Reprint): Requires the use of portable event recording devices by certain peace officers employed by the Nevada Highway Patrol Division of the Department of Public Safety. (BDR 43-618)

Senator Aaron D. Ford, Senate District No. 11, said Senate Bill (S.B.) 111 (2nd Reprint) required all 481 Nevada Highway Patrol Division (NHP) officers, Department of Public Safety (DPS), to wear portable event recording devices, or body cameras. The bill contained an appropriation to effectuate the cost of the devices.

Assemblyman Armstrong asked how S.B. 111 (R2) would interact with Assembly Bill (A.B.) 162 (1st Reprint) that contained enabling language for body cameras. He wondered whether the bills would work together.

Senator Ford said A.B. 162 (R1) was entirely enabling and authorized not only NHP officers, but all law enforcement officers throughout the state to wear body cameras. He noted that S.B. 111 (R2) only required NHP officers to wear a camera.

Chair Anderson clarified that the funding mechanism included in the bill was the State Highway Fund rather than the State General Fund. Senator Ford stated that was correct.

Assemblyman Hickey asked whether the selection of NHP officers to initiate the body camera program was because the funding mechanism was more readily available from the State Highway Fund than funding from local municipalities.

Senator Ford acknowledged that was the only reason the bill was limited in scope, and only NHP officers would be required to wear the cameras. He said he would prefer that all officers who interacted with the public would wear the cameras, but a funding source was not available.

Assemblyman Hickey believed it was generally true that the type of problems that had been occurring in the news lately were not usually related to Highway Patrol-related arrests, but rather arrests by police and sheriff's department officers.

Senator Ford said there was an NHP office in his district, and those officers patrolled the streets in Las Vegas that were designated as state highways, and those NHP officers patrolled various neighborhoods. He stated he did not have any statistics to verify whether problems were with NHP officers or other officers.

Assemblywoman Carlton noted that the Department of Public Safety included several types of officers, and the bill would address only NHP officers.

Senator Ford stated Assemblywoman Carlton was correct.

Chair Anderson asked whether there was testimony to come before the Committee in support of S.B. 111 (R2).

James M. Wright, Director, Department of Public Safety, said the Department supported S.B. 111 (R2) on behalf of the Nevada Highway Patrol Division.

Robert Roshak, representing the Nevada Sheriffs' and Chiefs' Association, stated the Association also supported S.B. 111 (R2).

Chair Anderson asked whether there was further testimony to come before the Committee in opposition to or neutral regarding S.B. 111 (R2).

Ron Dreher, representing the Peace Officers Research Association of Nevada, said there were several law enforcement entity members of the Association, and the Association supported the body camera aspect of the bill. The only concern was the due process portion of the bill. Mr. Dreher said he wanted to go on record that the Association was concerned with that process and believed there would be problems going forward. He stated the Association believed it would be defending the officers and troopers who were disciplined.

There being no further testimony to come before the Committee regarding S.B. 111 (R2), the Chair closed the hearing. The Chair opened the hearing on Assembly Bill (A.B.) 359 (1st Reprint).

Assembly Bill 359 (1st Reprint): Revises provisions governing common-interest communities. (BDR 10-910)

Senator Scott T. Hammond, Senate District No. 18, stated he would present proposed Amendment No. 7669 (Exhibit I) to Assembly Bill (A.B.) 359 (1st Reprint). Under current law, if a homeowners' association (HOA) had a lien on a home for assessments and other amounts that were owed to the HOA, the HOA could foreclose its lien through a nonjudicial foreclosure process. Senator Hammond said existing law provided that a limited portion of an HOA lien had priority over the first security interest on the unit, and its portion was commonly referred to as the superpriority lien. The amount of the superpriority lien was limited to an amount equal to nine months of assessments, certain maintenance costs, and usage abatements of expenses paid by the HOA.

Senator Hammond stated that in *SFR Investments Pool 1, LLC v. U.S. Bank,* 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014), the Nevada Supreme Court held that foreclosure of the superpriority lien by an HOA extinguished the first mortgage lien on the home. Senator Hammond said the Legislature approved Senate Bill (S.B.) 306 (1st Reprint), and on May 27, 2015, the Governor signed the bill. Senator Hammond indicated that S.B. 306 (R1) did not affect the ruling of the Nevada Supreme Court; rather the bill maintained existing law that the foreclosure of the superpriority lien by an HOA extinguished the first mortgage lien on a home. However, S.B. 306 (R1) provided additional protections that enabled mortgage holders and homeowners to protect their interests when an HOA foreclosed on a superpriority lien.

Senator Hammond stated that S.B. 306 (R1) required enhanced notice to mortgage holders so that a mortgage holder could act to preserve its first mortgage lien. The bill also provided a redemption period during which the mortgage holder or homeowner could redeem the home from an HOA foreclosure.

The proposed amendment (Exhibit I) to A.B. 359 (R1) went one step further and would make improvements to the notice and redemption provisions included in S.B. 306 (R1). Senator Hammond stated the proposed amendment maintained existing law regarding an HOA lien on a home for certain amounts due to the HOA and maintained existing law that authorized the HOA to foreclose its lien through a nonjudicial foreclosure process. However, section 7.55, subsection 5

of the proposed amendment would overturn the holding of the Nevada Supreme Court in *SFR Investments Pool 1, LLC v. U.S. Bank* by providing that an HOA foreclosure did not extinguish either the first or second mortgage lien on a home.

Senator Hammond indicated that if an HOA foreclosed on a home, the foreclosure could not extinguish the first or second mortgage lien on the home, but under the language of section 7.75, subsection 6 of the proposed amendment, the HOA would be first in line to receive whatever proceeds that arose from the HOA's foreclosure sale. However, if a mortgage holder foreclosed on the home, the amount of the HOA's superpriority lien would have to be paid before the purchaser at the foreclosure sale could obtain clear title to the home.

Per Senator Hammond, the remaining provisions of the amendment made conforming changes and improvements to S.B. 306 (R1). Section 7.6 of the proposed amendment (Exhibit I) would delete language from section 2 of S.B. 306 (R1), which required certain notice of the potential extinguishment of a first mortgage holder's lien. That notice would not be necessary because that lien could no longer be extinguished by an HOA foreclosure sale.

Senator Hammond said section 7.65 of the proposed amendment authorized the notice of default and election to sell, which began the HOA foreclosure process. The notices would either be mailed or served upon the necessary parties. Sections 7.65 and 7.7 amended sections 3 and 4 of S.B. 306 (R1) respectively to specify that if a lienholder who was required to receive a notice did not have an address listed on the Internet website of the Division of Financial Institutions, Department of Business and Industry, pursuant to section 8.5 of S.B. 306 (R1), the notice may be sent to a registered agent of the holder or to some other address of the holder.

Senator Hammond indicated that section 7.75 of the proposed amendment (Exhibit I) amended section 5 of S.B. 306 (R1), which enhanced the procedures governing the conduct of an HOA foreclosure sale. That section would also remove language that was no longer needed because an HOA foreclosure sale would no longer extinguish the first or second mortgage lien. Section 7.8 of the amendment would amend section 6 of S.B. 306 (R1), which set forth the right of redemption for a homeowner or mortgage holder after an HOA foreclosure sale. The homeowner or lienholder may redeem a home from an HOA foreclosure by paying the purchase price plus interest and certain other amounts to the purchaser who purchased the home at the foreclosure sale. Senator Hammond stated that section 7.8 of the proposed amendment (Exhibit I) revised section 6 of S.B. 306 (R1) to remove language that was no

longer needed because the HOA foreclosure sale would not extinguish the first or second mortgage lien.

Chair Anderson noted that Senator Hammond had made several references to S.B. 306 (R1), which was not heard by the Committee, and he asked for a summary of that bill.

Senator Hammond said he was attempting to retain most of the provisions of S.B. 306 (R1) that was approved by the Legislature and signed by the Governor. The proposed amendment to A.B. 359 (R1) would remove the ability of an HOA foreclosure process to extinguish the first or second lienholder. The question was often asked whether the bill would force HOAs into a judicial foreclosure, and the answer was no it would not. The nonjudicial foreclosure process would remain available, preferably when all the mechanisms were in place from S.B. 306 (R1) to do such.

Senator Hammond said the reason he proposed Amendment No. 7669 to A.B. 359 (R1) was because in recent discussion with the stakeholders involved in finalizing S.B. 306 (R1), concerns were voiced by Alfred M. Pollard, General Counsel, Federal Housing Finance Agency (FHFA). Senator Hammond said FHFA supported S.B. 306 (R1), but believed the bill did not go far enough. The FHFA believed a crisis was looming in the mortgage lending industry in Nevada, and there would be significant future litigation with Fannie Mae [Federal National Mortgage Association] and Freddie Mac [Federal Home Loan Mortgage Corporation] regarding foreclosures. Senator Hammond said the FHFA would vigorously oppose any foreclosure process that included extinguishment of the first and second liens. That was the reason he proposed the amendment to A.B. 359 (R1).

Assemblywoman Carlton said she had been working on HOA concerns for many years. It appeared that with a superpriority lien, the HOA would be made whole, and the first and second mortgage liens would be extinguished, at which time the house could be placed on the market for sale. If the HOA took over the home through a nonjudicial foreclosure process, that home could be sold to satisfy the HOA's superpriority lien. Assemblywoman Carlton asked about the extra money received by the HOA upon the sale of the house. For example, if the amount owed the HOA was $20,000 in assessments and fines and the home was worth $120,000, she wondered whether the HOA would keep the extra money.

Assemblywoman Carlton said she had been contacted by a resident of Las Vegas who had declared bankruptcy so that her home would not be foreclosed because of delinquent HOA fines and assessments. Her concern was

that for the amount of $2,000 or $2,500 owed to the HOA, people were losing the money they had invested in their homes. Assemblywoman Carlton believed, however, that HOAs should not be left "holding the bag." Under the proposed amendment (Exhibit I), it appeared that the HOAs would be made whole, and the first mortgage lienholder would also receive a portion of money from the sale of the property.

Senator Hammond said that it was his understanding that uniform law allowed HOAs to foreclose and allowed the HOAs to extinguish the first mortgage lien, and the opinion issued by the Nevada Supreme Court regarding the *SFR Investments Pool 1, LLC v. U.S. Bank* case proved that to be the case. The question now was whether to retain that as policy in Nevada. There had been some very disturbing incidents that had occurred with HOA foreclosures of houses where the owners owed only a small assessment amount. Senator Hammond said that was the reason he had proposed Amendment No. 7669 to A.B. 359 (R1).

Assemblywoman Carlton said the proposed amendment would make sure the HOAs were made whole. Senator Hammond said that was his intent with S.B. 306 (R1) and remained his intent with the proposed amendment to A.B. 359 (R1). He wanted to ensure that HOAs were made whole, but the first mortgage lien should not be extinguished.

Assemblyman Kirner said that S.B. 306 (R1) had been passed by the Legislature and signed by the Governor, and he wondered why the language in the proposed amendment (Exhibit I) was not made a part of that bill.

Senator Hammond said there were groups that continued to believe that the compromise language of S.B. 306 (R1) did not address the complete problem. Senator Hammond said the 2011 Legislature passed Assembly Bill No. 284 of the 76th Session (2011), and at that time he learned that the industry was very fragile, and some issues could have a severe effect on the mortgage lending and real estate markets. He believed that taking the extra step by approving the proposed amendment would bring more surety to the industries. Senator Hammond noted that 70 to 80 percent of the housing loans in Nevada were federal loans.

Assemblyman Kirner asked whether the parties involved in negotiating the language of S.B. 306 (R1) were also involved in the language of the proposed amendment to A.B. 359 (R1).

Senator Hammond said not all parties were involved in the proposed amendment. The original negotiations for S.B. 306 (R1) included investors, collection agencies, HOAs, lenders, title companies, homeowners, and some federal involvement through the Federal Housing Finance Agency (FHFA). He indicated that some stakeholders were satisfied with the language of S.B. 306 (R1), and others believed that additional language was needed. That was the group he continued to work with regarding the proposed amendment.

Senator Hammond stated that Mr. Breslow was present at the hearing and would present neutral testimony regarding A.B. 359 (R1).

Bruce Breslow, Director, Department of Business and Industry, stated that he had not participated in the discussions regarding S.B. 306 (R1) or the proposed amendment to A.B. 359 (R1). The Department was neutral regarding the bills. He stated that he had met with representatives from Fannie Mae; Freddie Mac; the U.S. Department of Veterans Affairs; and the Federal Housing Administration (FHA), U.S. Department of Housing and Urban Development approximately one year ago while in Washington, D.C. Those representatives advised that there was a problem in Nevada because an HOA could foreclose on a home for nine months of missed payments, no matter what the amount, and that would extinguish an existing mortgage lien. The question was why those entities should continue to lend money for housing in Nevada or insure mortgages.

Chair Anderson asked whether there was further testimony to come before the Committee in favor of A.B. 359 (R1).

Kevin Sigstad, President, Nevada Association of Realtors, submitted written testimony, Exhibit J, in support of the bill for the Committee's review. Mr. Sigstad stated he was also the broker-owner of RE/MAX Premier Properties in Reno.

Mr. Sigstad said the Nevada Association of Realtors supported A.B. 359 (R1) and the proposed amendment to the bill (Exhibit I). He stated that he dealt with homeowners and first-time home buyers on a daily basis and was very concerned about the extinguishment of first deeds of trust through an HOA foreclosure. There had been over 8,000 foreclosures by HOAs since 2011, and while that number might have dropped recently because of the improved economy, it was nonetheless important to take action to provide balance of equity between HOAs, lenders, and homeowners.

Mr. Sigstad indicated that the Federal Housing Finance Agency (FHFA) had testified that it would not consent to the foreclosure or other extinguishment of a Fannie Mae or Freddie Mac lien or other property interest in connection with an HOA superpriority lien foreclosure. The FHFA played an intricate role in a large percentage of mortgage loans in Nevada, and if the extinguishment of Fannie Mae and Freddie Mac liens continued, those government sponsored enterprises would refuse to do business in Nevada. Mr. Sigstad said that would eliminate the ability of a large majority of Nevada home buyers from obtaining loans and home financing.

Mr. Sigstad said it was crucial to preserve lending in Nevada, and the proposed amendment would eliminate the extinguishment of the first deed of trust through an HOA foreclosure, but would still allow the HOA to protect its superpriority interest. The solution would protect home buyers in Nevada, Fannie Mae and Freddie Mac, the HOAs, and the homeowners who were suffering foreclosure.

Mr. Sigstad stated he was also a member of a number of HOA boards and had been on the board of one HOA for many years. That HOA was not high-end condominiums, but rather was in the range of $50,000 to $60,000 condominiums. Out of 300 units, the HOA had foreclosed on over 100 units over the last two years because they were entry-level units that were easy to walk away from.

Mr. Sigstad said it was not until one year ago that his HOA board realized that its foreclosure extinguished the first and second lien on those units. The HOA would foreclose, take control of the property, and rent the unit until the first lien holder foreclosed, and at that time, the HOA would recover the superpriority lien amount.

Chair Anderson said it appeared the proposed amendment would not allow the first mortgage lien to be extinguished, and he wondered how an HOA would recoup its costs when it could not sell the home. He asked whether it would be necessary for the foreclosure process to be finalized prior to the HOA receiving its fees.

Mr. Sigstad said that assuming the home was underwater, the HOA would recoup the HOA fees through the rental process during the lender foreclosure process. He explained that when the foreclosure was finalized, the association fees for the nine previous months would be paid to the HOA. It usually took about 12 months for a bank foreclosure, and the HOA would be made whole on every case because the properties were rented in the interim.

Brad Spires, Legislative Chair, Nevada Association of Realtors, presented written testimony (Exhibit K) in support of the proposed amendment to A.B. 359 (R1). Mr. Spires stated that the first 20 years he was in the business he had heard about foreclosures and deeds in lieu of foreclosure once every two years when he attended continuing education classes. The industry had become very challenging over the past several years, and there were many new terms that had not existed previously, such as underwater loans, loan modifications, short sales, the federal Home Affordable Refinance Program (HARP), and the federal Home Affordable Foreclosure Alternatives (HAFA) Program.

Mr. Spires said the industry responded to what was occurring in the housing market, and regulators at the federal level created HARP and the HAFA programs. The point of Realtors and lenders meeting with homeowners was to determine how the homeowner could remain in the home. Lenders trained realtors about how to assist homeowners with loan modifications and provided other resources to help persons retain ownership of their homes.

When a homeowner was unable to keep his or her property, said Mr. Spires, the second priority process was to ensure the lenders were paid and provide some debt relief to the property owner, which was through short sales. Most of the short sales occurred when the owners had no equity in the property. When the loan was approved for the new buyer, the paperwork from the lender indicated that the loan was paid in full for less than the agreed upon amount.

Mr. Spires said the homeowners were relieved of the amount owed to the lender. However, if an HOA foreclosed on the property, the homeowner no longer had a place to live and owed the complete loan amount to the lender that would receive nothing from the HOA foreclosure process. Mr. Spires opined that left a homeless person owing several hundred thousand dollars to a mortgage lender that would ultimately receive nothing. There would then be a comparable sale that reduced the value to the HOA because it was sold at a much reduced rate.

Rocky Finseth representing the Nevada Land Title Association, stated that the Association supported the proposed amendment to A.B. 359 (R1). The Association believed the amendment and bill would help bring clarity to the marketplace.

Jon Gedde, Chairman, Board of Governors, Nevada Mortgage Lenders Association, said he had worked with Senator Hammond at the outset in an attempt to solve the HOA problem without dealing with the issue of

extinguishment. However, since then the Federal Housing Finance Agency (FHFA) had made it abundantly clear that extinguishment was not acceptable, and FHFA had released several statements indicating that it would aggressively pursue legal action against any extinguished mortgage liens. Mr. Gedde indicated that if the proposed amendment was not adopted, there could be two possible outcomes, the first of which would occur if FHFA won its lawsuit. In that case, the HOA superpriority liens would only apply to nonfederally insured mortgages. That would leave the industry in a situation where it would be nearly impossible to secure a private or nonfederally insured loan if the property was within an HOA.

The second possible outcome, said Mr. Gedde, was if FHFA lost its lawsuit. In that case, FHFA would stop lending for properties in Nevada HOAs altogether, or at the very least, there would be much tighter underwriting guidelines and significant risk premiums assessed that would cause higher interest rates and closing costs for owners in HOAs and purchasers attempting to buy HOA properties. That would cause a reduced demand for HOA homes, which would push prices down. Neither of those options would be good for the housing industry in Nevada. Because of that, said Mr. Gedde, the Nevada Mortgage Lenders Association strongly supported the proposed amendment to A.B. 359 (R1).

Senator Aaron D. Ford, Senate District No. 11, stated he would like to provide some background regarding S.B. 306 (R1) and how the language interacted with the proposed amendment to A.B. 359 (R1). Senator Ford emphasized that it had never been a secret that the model law upon which Nevada based its law contemplated extinguishing the first mortgage lien. That extinguishment was in the notes in the uniform law that the state adopted.

Senator Ford said S.B. 306 (R1) attempted to address some issues, and the proposed amendment (Exhibit I) provided a remedy for the catastrophes that proponents of the bill said would befall the industry if S.B. 306 (R1) became law without the amendment. That remedy was for the bank to pay the amount owed to the HOA. The argument had been that the HOAs failed to notify the banks of the amount owned, but when HOAs gave the banks notice, and the bank attempted to pay that amount, the HOA would not accept the payment because additional costs had accrued.

Senator Ford stated that the HOAs complained that banks were not responding to the notices, and there was a continuing disconnect between the banks and the HOAs regarding specificity requirements. He explained that S.B. 306 (R1) fixed that problem on the front side of a foreclosure, and in his view, that bill would ensure that no foreclosures on HOA liens would take place going

forward. That was because the bank was now on notice that if it did not respond to a notice from the HOA declaring the amount due and owing, it would lose its first mortgage lien. That was the context of S.B. 306 (R1). Senator Ford opined that no bank would lose its first interest in the mortgage because a remedy had been provided.

Senator Ford said S.B. 306 (R1) went even further by adding language to help the homeowner and the bank again at the end of the foreclosure process. That language allowed redemption: after the foreclosure took place, there were a set amount of days that either the homeowner or the bank could redeem the home. Senator Ford said the stakeholder group for the bill included title companies, banks, HOAs, Realtors, and others, who had derived what he believed was the quintessential example of compromise legislation.

Chair Anderson said if, hypothetically, he loaned Senator Ford money for a house, and that house was encumbered by unpaid HOA fees, it appeared he could lose his investment in that house if the owner failed to pay the HOA fees.

Senator Ford said everyone had to remember why HOAs were founded in the first place. The state founded HOAs and gave HOAs quasigovernmental functions because those HOAs would take care of the neighborhoods. The superpriority lien was offered as a "hammer" to ensure that banks and others that financed homes in the neighborhood would make certain the neighborhoods were maintained. There was a tripartite scale that had to be weighed—the homeowner, the lender, and the HOAs.

Senator Ford said the Uniform Law Commission determined that allowing the foreclosure of a superpriority lien to extinguish the first mortgage lien was a sufficient "hammer" to induce and convince a bank or mortgage lender to pay the amount due and owing to the HOAs. The bank would ultimately get its money back, either from the homeowner or through the sale of the property.

Chair Anderson asked whether there was further testimony to come before the Committee in opposition to proposed Amendment No. 7669 to A.B. 359 (R1).

Assemblywoman Ellen B. Spiegel, Assembly District No. 20, stated she would offer some history regarding HOAs. In 2008 and 2009 the state's HOAs were in dire straits, and during the 2009 Legislature, Assemblywoman Spiegel sponsored Assembly Bill No. 204 of the 75th Session (2009). That bill was designed to increase the time of the superpriority lien from 6 months to 24 months because at that time it was taking banks 24 months on average to foreclose on homes when owners were delinquent in mortgage payments.

Those homeowners were also not paying their HOA assessments, which caused problems for the HOAs.

Assemblywoman Spiegel said as a compromise, the language of A.B. No. 204 was amended to provide that the superpriority lien would last nine months. Through the years, there had been a number of bills that attempted to fix the issues. She stated the bottom line was that as property taxes declined, the government pushed more and more responsibilities onto the HOAs.

Assemblywoman Spiegel commented that she owned homes in two HOAs. Representatives from the City of Henderson approached one of her HOAs and indicated that the City could no longer afford to maintain the sidewalks and they now belonged to the HOA, which would be required to continue the maintenance. The City of Henderson also laid off most of its code enforcement department for economic reasons and told the HOA to also take over code enforcement. Assemblywoman Spiegel said that was an example of the added responsibilities given to HOAs, and HOAs often had trouble collecting fees and assessments.

Earlier this session, said Assemblywoman Spiegel, a constituent came to her office and advised that she lived in a small HOA community that had $53,000 in delinquent assessments. That HOA contained fewer than 150 homes, and even though it was owed $53,000, the HOA still had to maintain the neighborhood.

To address the question asked earlier by Assemblywoman Carlton about whether proposed Amendment No. 7669 (Exhibit I) to A.B. 359 (R1) would make the HOAs whole, Assemblywoman Spiegel believed that it would not. As it existed today, the superpriority lien covered nine months of assessments, and in reality, homeowners could be in arrears for two or three years of assessments, but the HOA would only recover the amount for nine months.

Chair Anderson asked, when a foreclosure lasted for a period of two years or more, whether the HOA was only reimbursed for nine months of fees. Assemblywoman Spiegel stated that was correct. The issue was how HOAs could get homeowners to pay what was due and owing and how HOAs could get banks to accept some responsibility for reimbursement.

Chair Anderson said it appeared it was the homeowner's responsibility to pay the HOA fees, but that responsibility would be shifted to the banks once the HOA foreclosed.

Assemblywoman Spiegel believed it was somewhat of a shared responsibility, and that was part of the decision for banks when making a determination about whether or not to make a housing loan. When she and her husband purchased their second HOA home, they had to submit documents from their current HOA including the covenants, conditions, and restrictions (CC&Rs) and their financial statements.

Assemblyman Erven T. Nelson, Assembly District No. 5, stated he had litigated approximately 10 HOA foreclosure cases. Assemblyman Nelson stated that he had submitted emails dated June 1, 2015, to the Committee from John E. Leach, Leach Johnson Song & Gruchow, Las Vegas, Nevada (Exhibit L).

Assemblyman Nelson said adoption of the proposed amendment would break two grand bargains. The first grand bargain was made in the 1980s when the HOAs were given the equivalent of a tax lien because HOAs were performing quasigovernmental duties. The only leverage an HOA had to insure payment of past due fees and assessments was through the superpriority lien process.

Assemblyman Nelson said if proposed Amendment No. 7669 (Exhibit I) was passed, HOAs would still have the "guns," but the amendment would take away their "bullets," and they would have no leverage in securing past-due fees and assessments.

Assemblyman Nelson said he would focus on the foreclosure process. After two years of not being paid, the HOA would initiate a foreclosure. It would take four to six months to get the foreclosure process to the point of sale, which would be a publicly noticed sale and lenders were usually noticed. The sale of foreclosed property was done through a bidding process, and it was very rare for a purchaser to pay a few thousand dollars for a property, particularly after the Nevada Supreme Court decision in the *SFR Investments Pool 1, LLC v. U.S. Bank* case. Assemblyman Nelson said before the decision on that case, it was impossible to get title insurance for HOA foreclosure sales.

Assemblyman Nelson said if the proposed amendment was approved, the purchaser at an HOA foreclosure sale was purchasing subject to the first deed of trust, which in essence simply replaced one borrower with the new buyer who would become the borrower. The main problem was that the new buyer would not know the amount of the bank lien. If the borrower had the property appraised and it was worth $300,000 and the HOA lien was $20,000, the borrower still would not know the amount of the bank lien. Assemblyman Nelson said if the bank lien was $200,000, it would be impossible to calculate the profit, and he believed that would dry up the foreclosure market. If that

occurred, the HOAs would have no leverage and would be required to wait until the bank foreclosed to receive nine months in past-due fees and assessments.

Assemblyman Nelson said *Nevada Revised Statutes* (NRS) 116.31164, established the priorities of how the money was paid after an HOA foreclosure sale, and any remaining money was paid to the unit owner.

Senator Becky Harris, Senate District No. 9, stated that she opposed proposed Amendment No. 7669 (Exhibit I). She particularly opposed the notice provisions. Senator Harris had proffered the amendment that resulted in section 8.5 of S.B. 306 (R1), and that stemmed from her long experience in representing homeowners with regard to bank foreclosures. She stated she and her clients had experienced many difficulties in attempting to locate a meaningful individual to communicate with at most banks. She was aware that it was often the HOA notice of superpriority lien foreclosure that began the process, and she believed it was important for HOAs to put the lenders on notice.

Senator Harris said it was difficult for HOAs to determine where to serve the notice when a lender had several locations in the same area. National banks were also problematic because it was difficult to determine which unit of that bank's national affiliation would receive the notice. For that reason, she had worked with the Division of Financial Institutions, Department of Business and Industry, on an amendment that indicated lenders were required to put an address for notice purposes on file with the Division, so HOAs could send that notice to the lender by certified mail.

Sentor Harris said the proposed amendment, in addition to requiring certified mail, required in the alternative that HOAs serve a copy of the notice on the holder of the security interest, which was the lender. Her concern was that if for some reason the certified mail was sent to the wrong address, the lender would be able to default because of the service of notice, which became an expense for HOAs and was also problematic.

Senator Harris stated that another problem was language in the bill that stated in the event that an address was not provided, the HOA had to track down the lienholder. The amendment to S.B. 306 (R1) indicated that the lender must register an address so there would always be a current address on file for the HOA to serve notice. She believed the bill was a good compromise because it was not a black and white issue, and there was a third alternative.

Senator Harris stated that she had presented a letter dated May 31, 2015, from the U.S. Department of Housing and Urban Development (HUD), for the Committee's review (Exhibit M). That letter described impound accounts as a way to reach a middle ground between payment of HOA assessments versus the possibility of losing the first mortgage lien. Senator Harris said she had sponsored a bill that discussed impound accounts, but that bill had not passed.

Assemblyman Glenn E. Trowbridge, Assembly District No. 37, said his district included over 50 HOAs, some as large as Boulder City, and some as small as 50 units. Assemblyman Trowbridge respectfully requested that the Committee reject any last minute efforts to undermine the superpriority position of an HOA lien and simultaneously undo the significant work and compromise that resulted in the passage of S.B. 306 (R1).

Assemblyman Trowbridge indicated that the idea was first introduced as Assembly Bill 240, and a compromise was reached on that bill between the lenders and the HOAs. The bill was then sent to the Senate, where it morphed into S.B. 306 (R1), which was passed by both houses of the Legislature and signed by the Governor. Now the proposed amendment to A.B. 359 (R1) attempted to make changes to the language of S.B. 306 (R1). He noted there had been many meetings before and during session that included representatives from all interested stakeholders regarding the mandates of S.B. 306 (R1). For months, all parties worked on what could only be characterized as a compromise bill; each side compromised so that all industry professionals could support the bill.

Assemblyman Trowbridge said the HOA industry accepted several compromises including increased and improved foreclosure notice to lenders and allowing the lenders to retain the right of redemption, even after the HOA nonjudicial foreclosure process had been completed. The proposed amendment would eliminate two different bill compromises.

Garrett Gordon, representing Southern Highlands Homeowners Association, Olympia Companies, and the Community Associations Institute, stated that those entities were opposed to both A.B. 359 (R1) and proposed Amendment No. 7669 (Exhibit I).

Mr. Gordon said the Uniform Common Interest Ownership Act was codified in 1991 in Nevada. He stated he had submitted a map from the Community Associations Institute that showed the assessment priority lien statutes by state, Exhibit N, for review by the Committee. That map indicated that 22 other states had superpriority liens and in each of those states, the

superpriority lien had a reviser's note that indicated extinguishment occurred after an HOA superpriority foreclosure.

Mr. Gordon said the decision in the *SFR Investments Pool 1, LLC v. U.S. Bank* Nevada Supreme Court case upheld the reviser's note that an HOA foreclosure would extinguish the first mortgage lien. Since that decision had been reached, there had been no apocalyptic consideration or problems with lending in Nevada. There was also a decision from the United States District Court, District of Nevada, in the *Freedom Mortgage Corporation v. Las Vegas Development Group, LLC* case, Exhibit O, where lenders claimed there would be underwriter problems, lending problems, and many other concerns if the law was not upheld.

Mr. Gordon indicated since that case was adjudicated, the Southern Nevada Home Builders Association stated 5,000 new homes had been sold, and the Association expected a 15 percent increase going forward. He submitted that the evidence did not show there were problems in the lending industry, and the court decisions had also helped the HOA industry. Now HOAs had the ability to collect delinquent fees and assessments for a nine-month period, similar to real estate taxes. Mr. Gordon said when the lender loaned on the property, the lender was aware of the amount of the assessments and the amount of the property taxes. In the event the borrower failed to pay either of those superpriority liens, the lender was required to cure; lenders cured real estate taxes and HOA assessment liens so there would be no foreclosure on the property. That meant there was no extra burden on dues-paying homeowners in the entire community.

Mr. Gordon noted that he had been part of the working group regarding S.B. 306 (R1) since September 2014 on behalf of HOAs. That group worked on a number of provisions that had been mentioned today, including right of redemption, which had been signed into law by the Governor. That right of redemption was similar to the failsafe for real estate tax liens. There were compromises, and the proposed amendment (Exhibit I) did not include the Community Associations Institute or the approximately 500,000 unit owners in the Institute. He also submitted Exhibit P for the Committee's review, which was a letter signed by various HOA presidents asking that the Committee oppose the proposed amendment.

Kandis McClure, representing The Howard Hughes Corporation, stated the Corporation also opposed the proposed amendment to A.B. 359 (R1). Representatives from the Corporation had participated in the conversations regarding S.B. 306 (R1) and believed the proposed amendment was not

necessary; she noted representatives had not participated in conservations regarding the amendment.

K. Nina Laxalt said she represented the Nevada Association of Services, Inc., which was an HOA collections company. Ms. Laxalt said she found it interesting in today's discussions that the two main issues that were being discussed were those that the proposed amendment (Exhibit I) would address. One issue was extinguishment of the first mortgage lien and the second issue was the nonjudicial HOA foreclosure process. There was a large section in the amendment that applied to HOAs and collections that was not mentioned, and that was section 1 that removed any costs of collecting the past due obligations, which was a major part of the bill. Ms. Laxalt said S.B. 306 (R1) included language about costs of collection, and the proposed amendment to A.B. 359 (R1) would remove that language.

Ms. Laxalt stated that collection companies provided a service to the HOAs, and the collection had been limited to nine months. She said S.B. 306 (R1) definitely was compromise legislation, and the amounts that could be collected were listed specifically in statute. That bill also included language that stated collections could be made through other than licensed collection agencies. Ms. Laxalt pointed out that all stakeholders had agreed on the language included in S.B. 306 (R1) that had been signed by the Governor. Ms. Laxalt believed that the proposed amendment to A.B. 359 (R1) indicated that everyone was wrong, and the language of S.B. 306 (R1) needed to be changed.

Sara Partida, representing SFR Investments Pool 1, LLC, stated that during the 2013 Legislature, she had participated in the same conversation with legislators. At that time, Assemblywoman Kirkpatrick told everyone present to work together over the interim and return to the 2015 Legislature with a compromise. Ms. Partida said everyone had worked together, and the result was S.B. 306 (R1), which was passed unanimously by both houses of the Legislature and signed by the Governor.

Ms. Partida said A.B. 359 (R1) would change certain language of the compromise legislation and would add language that had not been fully vetted by all stakeholders. She pointed out that the bill was now before the Assembly Committee on Ways and Means, undergoing a very technical policy debate.

Ms. Partida commented that questions had arisen regarding order of payment, and A.B. 359 (R1) indicated that a first lien would not be extinguished, but the section that addressed the order in which payment of the proceeds of

a foreclosure sale would be distributed, was not amended. She believed that would create some legal issues.

Ms. Partida said it was interesting that section 7.55 of the proposed amendment (Exhibit I) amended section 1 of S.B. 306 (R1) and changed the language of Chapter 116 of *Nevada Revised Statutes* (NRS). That section would establish the order of payment and would give the second mortgage lien or deed of trust similar rights as the first lien.

According to Ms. Partida, the stakeholders working on S.B. 306 (R1) had received guidance letters from the federal government, and some of letters were issued after the Nevada Supreme Court decision regarding *SFR Investments Pool 1, LLC v. U.S. Bank*.

Ms. Partida indicated that the time frame for an HOA superpriority lien foreclosure remained nine months. The difference was that currently an HOA could control its timing, and if an HOA decided to wait before foreclosure because of the factors involved, that would be a business decision made by the HOA. However, A.B. 359 (R1) would put that control into the hands of the banks.

Norm Rosensteel, President, Nevada Chapter, Community Associations Institute, stated he owned the largest management company in northern Nevada until his retirement in 2012. His company managed associations with over $1 million in receivables, and of the 110 associations the company managed, 95 percent of those associations had to create a bad debt expense line to pay for the units when the owners failed to pay the HOA fees. That meant the residents who were paying their assessments would also pay for those who were not. Mr. Rosensteel said that had gone on for many years and still occurred today in some associations.

Mr. Rosensteel said he had talked with managers of some of the larger common-interest communities in northern Nevada, and since the *SFR Investments Pool 1, LLC v. U.S. Bank* court decision, HOA receivables had gone down, in one case from $200,000 to $70,000, because banks were now stepping up and paying the nine months in HOA assessments, which helped the delinquency problem for HOAs.

Mr. Rosensteel said the Community Associations Institute was definitely opposed to the proposed amendment to A.B. 359 (R1) and the bill itself. It appeared odd that the bill attempted to amend S.B. 306 (R1) that was agreed to by all stakeholders; he noted that Community Associations Institute was not

included in any discussions or negotiations regarding A.B. 359 (R1) or the proposed amendment.

Donna A. Zanetti, Attorney, Leach Johnson Song & Gruchow, Las Vegas, Nevada, and Cochair of the Legislative Action Committee, Nevada Chapter, Community Associations Institute, said HOAs were not made whole by the foreclosure process. Generally, it took between one and four years for a lender to proceed to foreclosure. An HOA could wait that time out or pursue its own foreclosure, but the nine months recovered in assessments was generally not sufficient to pay the costs of foreclosure, which transferred the burden to the owners who were paying their HOA fees.

Ms. Zanetti noted that the proposed amendment (Exhibit I) to A.B. 359 (R1) that would change the language of S.B. 306 (R1) would take away the only ground gained in the compromise legislation, which was supported by all stakeholders. That compromise was that HOAs would be able to recoup some of the costs of collections that were incurred in foreclosing or pursuing delinquent homeowner fees. Ms. Zanetti stated that A.B. 359 (R1) would eliminate the ability of HOAs to recoup any of the collection costs that were provided for in S.B. 306 (R1). That would shift the burden completely to those owners who were paying their HOA assessments.

Ms. Zanetti stated that Fannie Mae, Freddie Mac, and the U.S. Department of Housing and Urban Development (HUD) already required mortgagees to protect the mortgage loan by paying HOA assessments in states with superpriority lien legislation. That was not aspirational, but rather was a requirement discussed in the aforementioned *Freedom Mortgage Corp. v. Las Vegas Dev. Grp., LLC*, No. 2:14-CV-01928-JAD-NJ, 2015 WL 2398402 (D. Nev. May 19, 2015) (Exhibit O). Ms. Zanetti believed it was important to understand that the solution was within the lender's control, and the threat of extinguishment seemed to garner the lender's attention to step up and pay and follow the regulations already in place. Without the superpriority lien, lenders ignored the HOAs, the assessments continued to rack up, and HOAs had no recourse.

Ms. Zanetti said the Committee had heard about lenders who would suffer if the first mortgage lien was extinguished, and the homeowners who might find it more difficult to borrow because they were unable to pay their HOA assessments and were foreclosed upon. She asked the Committee to focus on the owners who did pay their HOA assessments and the difficulty that ensued when the burden of covering the cost for others was shifted to them.

Marilyn Brainard, Legislative Action Committee, Nevada Chapter, Community Associations Institute, stated she lived in Wingfield Springs,

Reno, Nevada, and was the first homeowner testifying today to ask for the Committee's help. She explained that Wingfield Springs had a master community HOA, and she was the current secretary of that HOA board. Ms. Brainard said she had lived happily in Wingfield Springs for 17 years.

Ms. Brainard stated she had emailed members of the Committee and explained why she valued the Committee's role in helping to protect many Nevada citizens. She commented that the saying, "timing is everything" applied to the proposed amendment (Exhibit I) to A.B. 359 (R1), which was a complete reversal of the compromises by the stakeholder group that worked for several months to create S.B. 306 (R1). She wondered what duress prompted the proposed amendment that would almost completely destroy the language in S.B. 306 (R1). It was blatantly obvious that some of the former working group members were now desperate to convince the Committee they had it wrong the first time. Ms. Brainard said one of the representatives present at the meeting today had come to the table when the Senate Committee on Judiciary was discussing S.B. 306 (R1), and she assumed feigned agreement at that time.

Ms. Brainard commented that the timing of the "late to the party" amendment was underhanded at the minimum, and she asked the Committee to reject that attempt because the one million homeowners living in common-interest communities deserved the Committee's attention. Ms. Brainard noted that the Real Estate Division's [Department of Business and Industry] bill that increased the per-door fee for every owner in a common-interest community from $3 to $5 per year recently passed out of the Senate Committee on Finance.

Eric Theros, Vice Chair, Nevada Association of Community Managers, stated the Association represented licensed community managers in Nevada and was on the front line with all parties and all issues that governed HOAs. Mr. Theros said the goal of common-interest communities was not to take homes away from owners or lenders. The only goal was to guarantee that assessments would be paid so the HOAs could operate. Mr. Theros said when an owner failed to pay the HOA could foreclose for the unpaid assessments. He explained that before the great recession, what usually occurred was that at the 11th hour on the courthouse steps, lenders would pay the HOA lien and then seek payment from the homeowner, which was common sense securing of the lender's investments because of its large vested interest in the property.

However, said Mr. Theros, since the recession, lenders had ceased paying the delinquent HOA fees for homeowners. Since the *SFR Investments Pool 1, LLC v. U.S. Bank* decision, lenders again had stepped up to the plate and a number of foreclosures had not been processed because the lender had paid the fee to secure its interest. That meant the HOAs were receiving the money

budgeted for, so the burden of bad debt did not fall on current owners. Mr. Theros said based on the way the HOAs and lenders had handled foreclosures since that verdict, there were a number of HOAs that would not need to increase assessments over the next year because the HOAs were being paid the amount budgeted for.

Mr. Theros surmised that lenders wanted to ensure that the common-interest communities were well maintained through landscaping, road repairs, and building maintenance. The lenders also required the HOAs to have adequate reserves in bank accounts to secure a loan in that common-interest community. The lenders had many requirements, but might not realize that the proposed amendment (Exhibit I) to A.B. 359 (R1) would lessen the ability of common-interest communities to maintain their neighborhoods. If owners did not pay and the HOA had no leverage in a foreclosure sale, the foreclosed properties would not sell and the debts would not be paid.

Mr. Theros asked the Committee to remember that even at a current successful HOA foreclosure sale, the lenders were not being wiped out, and homes were not being purchased for sums such as $3,000. The foreclosures today were sold at near market value. For example, a $3,000 HOA lien was only the starting bid on a $100,000 home, and investors and bidders were now bidding the amount up at auction to near market value.

Mr. Theros indicated that the only amount paid to HOAs was the $3,000 that was owed in delinquent assessments, and the remaining funds were placed in an excess proceeds account, which was dispersed to the invested interests that sought payment, which meant that banks were receiving payment through those excess proceeds.

Mr. Theros stated that the Nevada Association of Community Managers supported S.B. 306 (R1), which at one point discussed impounding of assessments into loans the same as taxes to secure the lender's interest. That bill also gave lenders an additional 60 days after successful foreclosure to redeem the property. Not only did A.B. 359 (R1) undermine the *SFR Investments Pool 1, LLC v. U.S. Bank* verdict, but placed the HOAs behind the second mortgage as well: the bill would actually demote the HOA lien status.

Charles Niggemeyer, private citizen, Las Vegas, Nevada, stated he was an HOA owner who served on the board of his association. He agreed with the previous comments in opposition to the proposed amendment to A.B. 359 (R1). There were comments made earlier in the meeting that federal loans would not be made in Nevada. Mr. Niggemeyer said building of new homes in his

neighborhood continued, and most of the owners of the new homes were not cash buyers. He said he could see no evidence that lenders were no longer offering federal loans. He believed that accusation was not founded and was not germane to the problem. Mr. Niggemeyer said that if A.B. 359 (R1), as amended, passed, it would make the situation worse for HOAs because unless the delinquent assessments were paid, it would be difficult for HOAs to maintain the streets, the landscaping, or the homes. He asked that the Committee not allow the bill to pass.

In closing, Senator Hammond said the question facing the policy group was to determine how much leverage HOAs should have. He believed the proposed amendment (Exhibit I) to A.B. 359 (R1) would retain the tool to get banks and lenders to the table when there was an HOA property foreclosure. Banks and lenders did not want the HOAs to have control of the foreclosure process and would step up to the plate to initiate proceedings. Senator Hammond said after the HOA foreclosure process was initiated, the property was often rented, which financially benefitted the HOAs; he noted there were many remedies to ensure that HOAs were made whole. The intent of the bill was still to make HOAs whole.

Senator Hammond explained that after S.B. 306 (R1) was heard in the Senate, there were several proposed amendments to the bill, even though it was a compromise bill. When the bill was heard in the Assembly, approximately 22 amendments were proposed. His cosponsor believed the language of the bill was complete, but Senator Hammond believed some questions still needed to be addressed. Therefore, he had approached Alfred M. Pollard, General Counsel, Federal Housing Finance Agency (FHFA). Senator Hammond said Mr. Pollard indicated it was noted in testimony that with a superpriority lien, the first lienholder could experience losses regarding a unit in the form of unpaid mortgage obligations and would be asked to cover additional costs that were not its responsibility. That concept had limitations, and at some point too great a burden could be placed on lienholders who might find that altering their underwriting policies might be the appropriate course.

Senator Hammond said the proposed amendment (Exhibit I) to A.B. 359 (R1) was about fairness and the consequences of changes in the mechanism that might occur, which would result in price increases for first-time home buyers and for all home buyers. He commented that FHFA had been active in Nevada in litigating issues surrounding the Supreme Court decision of last fall. An agency statement on December 22, 2014, indicated that "FHFA had an obligation to protect Fannie Mae and Freddie Mac's rights and will aggressively do so by bringing action to delay foreclosures that purported to extinguish enterprise property interest."

Senator Hammond said past testimony indicated that "extinguishing property rights was no inconsequential matter and FHFA, which operated under federal law in addressing such matters, must consider this as a Fannie Mae and Freddie Mac review, not only the legal issues involved, but as well, the underwriting standards of applying states that maintained such potential extraordinary remedies."

In closing, Assemblyman David M. Gardner, Assembly District No. 9, said many statements had been made about the terrible consequences of passing A.B. 359 (R1), but nine months ago that was the law of the land in Nevada.

Chair Anderson asked for clarification regarding the fiscal note attached to A.B. 359 (R1).

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, stated that the original bill had a fiscal note from the Real Estate Division, Department of Business and Industry, of $881,444 in the first year of the biennium and $750,901 in the second year. Fiscal Analysis Division staff spoke with Bruce Breslow, Director, Department of Business and Industry regarding the fiscal note, and he indicated that proposed Amendment No. 7669 (Exhibit I) to A.B. 359 (R1) would remove the fiscal note.

Chair Anderson asked whether there was further testimony to come before the Committee regarding A.B. 359 (R1), and there being none, the Chair closed the hearing.

Chair Anderson announced that the Committee would commence with work session beginning with A.B. 359 (R1).

Assembly Bill 359 (1st Reprint): Revises provisions governing common-interest communities. (BDR 10-910)

Chair Anderson stated that he lived in a common-interest community and had neighbors who had gone through the foreclosure process and struggled to pay their fees. He noted that he sat on the board of the homeowners' association (HOA) in his community and was aware that if his neighbors failed to pay HOA fees, the remaining homeowners had to carry part of that responsibility, which meant his fees could increase.

Chair Anderson said all homeowners residing in common-interest communities shared the costs for roads, landscaping, and maintenance; it was a shared responsibility within the HOA environment. He believed that the responsibility

regarding payment of fees and the distribution of the fees was the reason persons resided in common-interest communities. While he did not think it was fair that the lender or bank that had provided a loan to the homeowner should be put in second place in the foreclosure process, he did think HOAs needed to be made whole regarding delinquent fees.

Chair Anderson believed that Senator Hammond had made the point that Assembly Bill (A.B.) 359 (1st Reprint) would not eliminate the ability for HOAs to be made whole in the foreclosure process.

Chair Anderson said his preference would be that the Committee amend and do pass A.B. 359 (R1) as amended with proposed Amendment No. 7669 (Exhibit I).

> ASSEMBLYMAN HICKEY MOVED TO AMEND AND DO PASS ASSEMBLY BILL 359 (1ST REPRINT) AS AMENDED WITH PROPOSED AMENDMENT NO. 7669.
>
> ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

Assemblywoman Dickman stated that HOA issues were very complicated, which was the reason she intentionally did not live in a common-interest community; however, her district included many common-interest communities, and she had received an overwhelming number of emails in opposition to A.B. 359 (R1). Therefore, she would not support the bill.

Assemblywoman Carlton said she was willing to support the vote to move the bill out of Committee, but would reserve her right to change her vote on the floor of the Assembly, because she wanted to read the bill and proposed amendment more carefully.

Assemblyman Edwards said he would also support the bill to move it out of Committee, but would reserve his right to change his vote on the floor of the Assembly.

> THE MOTION PASSED. (Assemblywoman Dickman voted no. Assemblymen Armstrong and Kirner were not present for the vote.)

Senate Bill 111 (2nd Reprint): Requires the use of portable event recording devices by certain peace officers employed by the Nevada Highway Patrol Division of the Department of Public Safety. (BDR 43-618)

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, stated that Senate Bill (S.B.) 111 (2nd Reprint) was heard by the Committee earlier in the day. The bill related to the Nevada Highway Patrol (NHP) Division, Department of Public Safety, and required certain peace officers employed by NHP to wear portable event recording devices under certain circumstances.

Ms. Jones said the bill also required that NHP adopt policies and procedures governing the use of the portable event recording devices, provided that records made by those devices were public records and could be requested under certain circumstances, exempted the use of portable event recording devices from the provisions governing interception of certain communications, and exempted the use of portable event recording devices upon certain property. The bill required the Advisory Commission on the Administration of Justice to review the policies and procedures adopted by NHP governing the use of portable event recording devices.

Ms. Jones said the bill included an appropriation from the State Highway Fund of $785,002 in fiscal year (FY) 2016 and $475,104 in FY 2017 to support the costs of the bill.

Assemblywoman Titus said she was a strong supporter of S.B. 111 (R2), and she would vote in favor of the bill. She believed that body cameras would not only improve officer behavior, but would also improve citizen behavior.

ASSEMBLYWOMAN TITUS MOVED TO DO PASS SENATE BILL 111 (2ND REPRINT).

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION PASSED. (Assemblyman Kirner was not present for the vote).

Senate Bill 511: Establishes the Teach Nevada Scholarship Program and incentives for new teachers in certain schools. (BDR 34-1277)

Chair Anderson said he was a joint sponsor of Senate Bill (S.B.) 511, and the bill would provide grants to providers of alternative licensure programs in Nevada to award scholarships to students entering certain teaching programs. The intent was to grow and retain teachers in Nevada. Chair Anderson stated that section 11 of the bill outlined the spending, remediation, and innovation funding. Portions of the funding were included in the budget for the Department of Education, and S.B. 511 contained a separate appropriation.

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, stated that Senate Bill (S.B.) 511 was heard by the Committee on May 29, 2015, and established the Teach Nevada Scholarship Program and incentives for new teachers in certain schools. The bill appropriated $2.5 million from the State General Fund to the Teach Nevada Scholarship Program account in each year of the 2015-2017 biennium to provide grants to universities, colleges, and providers of alternative licensure programs to fund scholarships for students entering certain teacher preparation programs.

Ms. Jones said S.B. 511 further appropriated $5 million to the Account for Programs for Innovation and the Prevention of Remediation in each year of the upcoming biennium to provide incentive pay and professional development for newly hired teachers who were employed to teach at certain at-risk schools.

Assemblyman Oscarson said he would vote in favor of the bill to move it out of Committee, but he had concerns about the additional $10 million in funding to the Account for Programs for Innovation and the Prevention of Remediation.

> ASSEMBLYWOMAN KIRKPATRICK MOVED TO DO PASS SENATE BILL 511.
>
> ASSEMBLYMAN ARMSTRONG SECONDED THE MOTION.
>
> THE MOTION PASSED. (Assemblywomen Dickman and Titus voted no. Assemblyman Kirner was not present for the vote.)

Chair Anderson declared the Committee in recess at 3:33 p.m. and reconvened the meeting at 8:45 p.m. behind the bar of the Assembly; all members were present. The Chair advised the Committee that there were five bills for consideration, the first of which was Senate Bill 514.

Senate Bill 514: Makes various changes regarding state financial administration and makes appropriations for the support of the civil government of the State. (BDR S-1288)

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, stated that Senate Bill (S.B.) 514 was the Appropriations Act that was heard and passed by the Senate Committee on Finance on May 31, 2015. The bill was also reviewed May 31, 2015, as a bill draft request by the Assembly Committee on Ways and Means.

ASSEMBLYWOMAN CARLTON MOVED TO DO PASS SENATE BILL 514.

ASSEMBLYWOMAN BUSTAMANTE ADAMS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Senate Bill 428 (1st Reprint): Makes appropriations to the State Department of Conservation and Natural Resources for the replacement of emergency response, firefighting and other critical equipment and vehicles. (BDR S-1223)

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, stated that Senate Bill (S.B.) 428 (1st Reprint) was heard by the Committee on May 21, 2015. The appropriation amounts were included in the budget closing for the State Department of Conservation and Natural Resources.

ASSEMBLYMAN OSCARSON MOVED TO DO PASS SENATE BILL 428 (1ST REPRINT).

ASSEMBLYMAN SPRINKLE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Senate Bill 497 (1st Reprint): Makes appropriations to restore the balances in the Stale Claims Account, Emergency Account, Reserve for Statutory Contingency Account and Contingency Account. (BDR S-1152)

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, stated that Senate Bill (S.B.) 497 (1st Reprint) was heard by the Committee on May 29, 2015. The appropriations were included in The Executive Budget.

ASSEMBLYMAN SPRINKLE MOVED TO DO PASS SENATE BILL 497 (1ST REPRINT).

ASSEMBLYMAN KIRNER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Senate Bill 332 (1st Reprint): Makes an appropriation to the Clark County School District to carry out a program of peer assistance and review of teachers. (BDR S-763)

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, stated that Senate Bill (S.B.) 332 (1st Reprint) was heard by the Committee on May 29, 2015. The bill made an appropriation to the Clark County School District (CCSD) to carry out a program of peer assistance and review of teachers and required CCSD to use the money to provide assistance to teachers in meeting the standards of effective teaching.

ASSEMBLYWOMAN KIRKPATRICK MOVED TO DO PASS SENATE BILL 332 (1ST REPRINT).

ASSEMBLYWOMAN BUSTAMANTE ADAMS SECONDED THE MOTION.

THE MOTION PASSED. (Assemblywoman Titus voted no.)

Senate Bill 133 (1st Reprint): Authorizes the reimbursement of teachers for certain out-of-pocket expenses. (BDR 34-118)

Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, stated that Senate Bill (S.B.) 133 (1st Reprint) was heard by the Committee on May 29, 2015. The bill created the Teachers' School Supplies Reimbursement Account and provided for an annual allocation from the

Account to each school district and charter school for distribution to teachers for reimbursement for certain out-of-pocket expenses.

ASSEMBLYWOMAN CARLTON MOVED TO DO PASS SENATE BILL 133 (1ST REPRINT).

ASSEMBLYWOMAN SWANK SECONDED THE MOTION.

THE MOTION PASSED. (Assemblymen Dickman, Kirner, and Titus voted no.)

With no further business to come before the Committee, the meeting was adjourned at 8:56 p.m.

RESPECTFULLY SUBMITTED:

Carol Thomsen
Committee Secretary

APPROVED BY:

Assemblyman Paul Anderson, Chair

DATE:

EXHIBITS

Committee Name: Assembly Committee on Ways and Means

Date: June 1, 2015 **Time of Meeting: 11:01 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 213 (R1)	C	Miles Dickson, representing the Nevada Community Foundation	Packet entitled, "SB 213, Increasing Tracking and Reporting of Federal Grant Funds in Nevada"
S.B. 213 (R1) & S.B. 214 (R1)	D	Miles Dickson, representing the Nevada Community Foundation	Testimony in support of bills from Maureen Schafer, Council for a Better Nevada and Nevada Community Foundation
S.B. 213 (R1)	E	Miles Dickson, representing the Nevada Community Foundation	Legislative testimony dated June 1, 2015, in support of S.B. 213 (R1), prepared by the Kenny C. Guinn Center for Policy Priorities
S.B. 214 (R1)	F	Miles Dickson, representing the Nevada Community Foundation	Legislative testimony dated June 1, 2015, in support of S.B. 214 (R1), prepared by the Kenny C. Guinn Center for Policy Priorities
S.B. 214 (R1)	G	Miles Dickson, representing the Nevada Community Foundation	Packet entitled, "SB 214, Creating the Nevada Advisory Council on Federal Assistance"
A.B. 394 (R1)	H	Assemblyman David M. Gardner	Proposed Amendment No. 7799
A.B. 359 (R1)	I	Senator Scott Hammond	Proposed Amendment No. 7669
A.B. 359 (R1)	J	Kevin Sigstad, Nevada Association of Realtors	Testimony in support

A.B. 359 (R1)	K	Brad Spires, Nevada Association of Realtors	Testimony in support
A.B. 359 (R1)	L	Assemblyman Erven T. Nelson, Assembly District No. 5	Email letters from John Leach dated May 21, 2015, and June 1, 2015
A.B. 359 (R1)	M	Senator Becky Harris	Letter dated May 31, 2015 from HUD
A.B. 359 (R1)	N	Garrett Gordon	Map from Community Associations Institute
A.B. 359 (R1)	O	Garrett Gordon	U.S. District Court case decision, *Freedom Mortgage Corporation v. Las Vegas Development Group, LLC*
A.B. 359 (R1)	P	Garrett Gordon	Letter signed by various HOA presidents in opposition to the amendment

MOCK-UP

PROPOSED AMENDMENT 7669 TO ASSEMBLY BILL NO. 359 FIRST REPRINT

PREPARED FOR SENATOR HAMMOND
MAY 28, 2015

PREPARED BY THE LEGAL DIVISION

NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) variations of **green bold underlining** is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

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

Section 1. (Deleted by amendment.)
Sec. 2. (Deleted by amendment.)
Sec. 3. (Deleted by amendment.)
Sec. 4. (Deleted by amendment.)
Sec. 5. (Deleted by amendment.)
Sec. 6. (Deleted by amendment.)
Sec. 7. ~~[NRS 116.3116 is hereby amended to read as follows:~~

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

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

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

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

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

~~The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal~~

Assembly Committee: Ways and Means
Exhibit: I Page: 1 of 12 Date: 06/01/15
Submitted by: Senator Scott Hammond

CTADD2032

~~regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.~~

~~3. *Except as otherwise provided in this subsection, any priority accorded to the association's lien under this section is a priority in right and not merely a priority in payment from the proceeds of the sale of the unit by a competing lienholder or encumbrancer. The foreclosure by sale of the association's lien does not extinguish the rights of the holder of:*~~

~~*(a) A first security interest described in paragraph (b) of subsection 2; or*~~

~~*(b) A second mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced became delinquent.*~~

~~*4.* The holder of the security interest described in paragraph (b) of subsection 2 or the holder's authorized agent may establish an escrow account, loan trust account or other impound account for advance contributions for the payment of assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 if the unit's owner and the holder of that security interest consent to the establishment of such an account. If such an account is established, payments from the account for assessments for common expenses must be made in accordance with the same due dates as apply to payments of such assessments by a unit's owner.~~

~~[4.] *5.* Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.~~

~~[5.] *6.* Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.~~

~~[6.] *7.* A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.~~

~~[7.] *8.* This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.~~

~~[8.] *9.* A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.~~

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

~~[10.] *11.* In a cooperative, upon nonpayment of an assessment on a unit, the unit's owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and:~~

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

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

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

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

~~[11.] *12.* In an action by an association to collect assessments or to foreclose a lien created under this section, the court may appoint a receiver to collect all rents or other income from the unit alleged to be due and owing to a unit's owner before commencement or during pendency of the action. The receivership is governed by chapter 32 of NRS. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to NRS 116.3115.]~~

(Deleted by amendment.)

Sec. 7.5. ~~[NRS 116.31166 is hereby amended to read as follows:~~

~~116.31166 1. The recitals in a deed made pursuant to NRS 116.31164 of:~~

~~(a) Default, the mailing of the notice of delinquent assessment, and the recording of the notice of default and election to sell;~~

~~(b) The elapsing of the 90 days; and~~

~~(c) The giving of notice of sale,~~

~~" are conclusive proof of the matters recited.~~

~~2. Such a deed containing those recitals is conclusive against the unit's former owner, his or her heirs and assigns, and all other persons. The receipt for the purchase money contained in such a deed is~~

~~sufficient to discharge the purchaser from obligation to see to the proper application of the purchase money.~~

~~3. The sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit's owner without equity or right of redemption [.] *subject to any security interest described in paragraph (a) or (b) of subsection 3 of NRS 116.3116.]*~~ **(Deleted by amendment.)**

Sec. 7.55. Section 1 of Senate Bill No. 306 of this session is hereby amended to read as follows:

Section 1. NRS 116.3116 is hereby amended to read as follows:

116.3116 1. The association has a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due. Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 ~~*[and any costs of collecting a past due obligation charged pursuant to NRS 116.310313]*~~ are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

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

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

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent ~~[;]~~ ***, except that a lien under this section is prior to a security interest described in this paragraph to the extent set forth in subsection 3;*** ~~[and]~~

(c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative ~~[.~~ ~~The lien is also]~~ ***; and***

(d) Liens for any fee or charge levied pursuant to subsection 1 of NRS 444.520.

3. A lien under this section is prior to all security interests described in paragraph (b) ***of subsection 2*** to the extent of ~~[any]~~ ***:***

(a) Any charges incurred by the association on a unit pursuant to NRS 116.310312 ~~[and to the extent of the]~~ ***; and***

(b) The unpaid amount of ~~*[assessments, not to exceed an amount equal to]*~~ assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding ~~[institution of an action to enforce the lien,]~~ ***the date on which*** ~~*[the notice of default and election to sell is recorded pursuant to paragraph (b) of subsection 1 of NRS 116.31162; and*~~

~~*(c) The costs incurred by the association to enforce the lien in an amount not to exceed the amounts set forth in subsection 5,]*~~ ***payment of the assessments is tendered to the association,***

➥ unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) ***of subsection 2*** must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding ***the recording of a notice of default and election to sell pursuant to paragraph (b) of subsection 1 of NRS 116.31162 or the*** institution of ~~[an]~~ ***a judicial*** action to enforce the lien.

4. This ~~[subsection]~~ ***section*** does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

~~[3.]~~ ***5.*** ~~*[The amount of the costs of enforcing the association's lien that are prior to the security interest described in paragraph (b) of subsection 2 must not exceed the actual costs incurred by the association, must not include more than one trustee's sale guaranty and must not exceed:*~~

~~*(a) For a demand or intent to lien letter, $150.*~~

~~*(b) For a notice of delinquent assessment, $325.*~~

~~*(c) For an intent to record a notice of default letter, $90.*~~

~~*(d) For a notice of default, $400.*~~

~~*(e) For a trustee's sale guaranty, $400.*~~

~~*No costs of enforcing the association's lien, other than the costs described in this subsection, and no amount of attorney's fees may be included in the amount of the association's lien that is prior to the security interest described in paragraph (b) of subsection 2.]*~~ *Except as otherwise provided in this subsection, any priority accorded to the association's lien under this section is a priority in right and not merely a priority in payment from the proceeds of the sale of the unit by a competing lienholder or encumbrancer. The foreclosure by sale of the association's lien does not extinguish the rights of the holder of:*

(a) A first security interest described in paragraph (b) of subsection 2; or

(b) A second mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced became delinquent.

6. Notwithstanding any other provision of law, an association, or member of the executive board, officer, employee or unit's owner of the association, acting under the authority of this chapter or the governing documents of the association, or the community manager of the association, or any employee, agent or affiliate of the community manager, while engaged in the management of the common-interest community governed by the association, is not required to be licensed as a collection agency pursuant to chapter 649 of NRS or hire or contract with a collection agency licensed pursuant to chapter 649 to collect amounts due to the association in accordance with subsection 1 before the recording of a notice of default and election to sell pursuant to paragraph (b) of subsection 1 of NRS 116.31162.

7. The holder of the security interest described in paragraph (b) of subsection 2 or the holder's authorized agent may establish an escrow account, loan trust account or other impound account for advance contributions for the payment of assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 if the unit's owner and the holder of that security interest consent to the establishment of such an account. If such an account is established, payments from the account for assessments for common expenses must be made in accordance with the same due dates as apply to payments of such assessments by a unit's owner.

~~[4.]~~ ***8.*** Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

~~[5.]~~ ***9.*** Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

~~[6.]~~ ***10.*** A lien for unpaid assessments is extinguished unless ***a notice of default and election to sell is recorded as required by paragraph (b) of subsection 1 of NRS 116.31162, or judicial*** proceedings to enforce the lien are instituted ***,*** within 3 years after the full amount of the assessments becomes due.

~~[7.]~~ ***11.*** This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

~~[8.]~~ ***12.*** A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

~~[9.]~~ ***13.*** The association, upon written request, shall furnish to a unit's owner a statement setting forth the amount of unpaid assessments against the unit. If the interest of the unit's owner is real estate or if a lien for the unpaid assessments may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board and every unit's owner.

~~[10.]~~ ***14.*** In a cooperative, upon nonpayment of an assessment on a unit, the unit's owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and:

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

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

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

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

~~[11.]~~ ***15.*** In an action by an association to collect assessments or to foreclose a lien created under this section, the court may appoint a receiver to collect all rents or other income from the unit alleged to be due and owing to a unit's owner before commencement or during pendency of the action. The receivership is governed by chapter 32 of NRS. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to NRS 116.3115.

16. Notwithstanding any other provision of law, any payment of an amount due to an association in accordance with subsection 1 by the holder of any lien or encumbrance on a unit that is subordinate to the association's lien under this section becomes a debt due from the unit's owner to the holder of the lien or encumbrance.

Sec. 7.6. Section 2 of Senate Bill No. 306 of this session is hereby amended to read as follows:

Sec. 2. NRS 116.31162 is hereby amended to read as follows:

116.31162 1. Except as otherwise provided in subsection 5 ~~[or 6.]~~ ***, 6 or 7,*** in a condominium, in a planned community, in a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's interest in a unit is personal property under NRS 116.1105 and the declaration provides that a lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the association may foreclose its lien by sale after all of the following occur:

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

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

(1) Describe the deficiency in payment.

(2) ***State the total amount of the deficiency in payment, with a separate statement of:***

(I) The amount of the association's lien that is prior to the first security interest on the unit pursuant to subsection 3 of NRS 116.3116 as of the date of the notice;

(II) The amount of the lien described in sub-subparagraph (I) that is attributable to assessments based on the periodic budget adopted by the association pursuant to NRS 116.3115 as of the date of the notice;

(III) The amount of the lien described in sub-subparagraph (I) that is attributable to amounts described in NRS 116.310312 as of the date of the notice; and

(IV) The amount of the lien described in sub-subparagraph (I) that is attributable to the costs of enforcing the association's lien as of the date of the notice.

(3) ~~***[State that :***~~

~~***(I) If the holder of the first security interest on the unit does not satisfy the amount of the association's lien that is prior to that first security interest pursuant to subsection 3 of NRS 116.3116, the association may foreclose its lien by sale and that the sale may extinguish the first security interest as to the unit; and***~~

~~***(II) If, not later than 5 days before the date of the sale, the holder of the first security interest on the unit satisfies the amount of the association's lien that is prior to that first security interest pursuant to subsection 3 of NRS 116.3116 and, not later than 2 days before the date of the sale, a record of such satisfaction is recorded in the office of the recorder of the county in which the unit is located, the association may foreclose its lien by sale but the sale may not extinguish the first security interest as to the unit.***~~

~~***(4)]***~~ State the name and address of the person authorized by the association to enforce the lien by sale.

~~[(3)~~ ~~***(5)]***~~ ***(4)*** Contain, in 14-point bold type, the following warning:

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

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

(d) The unit's owner or his or her successor in interest, or the holder of a recorded security interest on the unit, has, for a period which commences in the manner and subject to the requirements described in subsection 3 and which expires 5 days before the date of sale, failed to pay the assessments and other sums that are due to the association in accordance with subsection 1 of NRS 116.3116.

(e) The association or other person conducting the sale has executed and caused to be recorded, with the county recorder of the county in which the common-interest community or any part of it is situated, an affidavit which states, based on the direct, personal knowledge of the affiant, the personal knowledge which the affiant acquired by a review of a trustee sale guarantee or a similar product or the personal knowledge which the affiant acquired by a review of the business records of the association or other person conducting the sale, which business records must meet the standards set forth in NRS 51.135, the following:

(1) The name of each holder of a security interest on the unit to which the notice of default and election to sell and the notice of sale was mailed, as required by subsection 2 of NRS 116.31163 and paragraph (d) of subsection 1 of NRS 116.311635; and

(2) The address at which the notices were mailed to each such holder of a security interest.

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

3. The period of 90 days ***described in paragraph (c) of subsection 1*** begins on the first day following:

(a) The date on which the notice of default ***and election to sell*** is recorded; or

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

➥ whichever date occurs later.

4. An association may not mail to a unit's owner or his or her successor in interest a letter of its intent to mail a notice of delinquent assessment pursuant to paragraph (a) of subsection 1, mail the notice of delinquent assessment or take any other action to collect a past due obligation from a unit's owner or his or her successor in interest unless ~~[, not]~~ ***:***

(a) Not earlier than 60 days after the obligation becomes past due, the association mails to the address on file for the unit's owner: ~~[(a)]~~ ***(1)*** A schedule of the fees that may be charged if the unit's owner fails to pay the past due obligation;

~~[(b)]~~ ***(2)*** A proposed repayment plan; and

~~[(c)]~~ ***(3)*** A notice of the right to contest the past due obligation at a hearing before the executive board and the procedures for requesting such a hearing ~~[.]~~ ***; and***

(b) Within 30 days after the date on which the information described in paragraph (a) is mailed, the past due obligation has not been paid in full or the unit's owner or his or her successor in interest has not entered into a repayment plan or requested a hearing before the executive board. If the unit's owner or his or her successor in interest requests a hearing or enters into a repayment plan within 30 days after the date on which the information described in paragraph (a) is mailed and is unsuccessful at the hearing or fails to make a payment under the repayment plan within 10 days after the due date, the association may take any lawful action pursuant to subsection 1 to enforce its lien.

5. ***The association may not foreclose a lien by sale if the association has not mailed a copy of the notice of default and election to sell and a copy of the notice of sale to each holder of a security interest on the unit in the manner and subject to the requirements set forth in subsection 2 of NRS 116.31163 and paragraph (d) of subsection 1 of 116.311635.***

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

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

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

~~[6.]~~ ***7.*** The association may not foreclose a lien by sale if ~~[:~~

~~(a) The unit is owner-occupied housing encumbered by a deed of trust;~~

~~(b) The beneficiary under the deed of trust, the successor in interest of the beneficiary or the trustee has recorded a notice of default and election to sell with respect to the unit pursuant to subsection 2 of NRS 107.080; and~~

~~(c) The]~~ ***the association has received notice pursuant to NRS 107.086 that the unit is subject to foreclosure mediation pursuant to that section, unless:***

(a) The trustee of record has ~~[not]~~ recorded the certificate provided to the trustee pursuant to subparagraph (1) or (2) of paragraph ~~[(d)]~~ ***(e)*** of subsection 2 of NRS 107.086 ~~[.~~

~~➥ As used in this subsection, "owner-occupied housing" has the meaning ascribed to it in NRS 107.086.]~~ ***; or***

(b) The unit's owner has failed to pay to the association any amounts enforceable as assessments pursuant to subsection 1 of NRS 116.3116 that become due during the pendency of foreclosure mediation pursuant to NRS 107.086, other than past due obligations as described in subsection 10 of NRS 107.086.

Sec. 7.65. Section 3 of Senate Bill No. 306 of this session is hereby amended to read as follows:

Sec. 3. NRS 116.31163 is hereby amended to read as follows:

116.31163 The association or other person conducting the sale shall also***,*** ~~[mail,]~~ within 10 days after the notice of default and election to sell is recorded, ***mail*** a copy of the notice by ~~[first-class]~~ ***certified*** mail to ~~[:]~~ ***or serve a copy of the notice on:***

1. Each person who has requested notice pursuant to NRS ~~[107.090 or]~~ 116.31168; ***and***

2. ~~[Any]~~ ***Each*** holder of a recorded security interest encumbering the unit's owner's interest ~~[who has notified the association, 30 days]~~ ***which was recorded*** before the recordation of the notice of default , ~~[of the existence of the security interest; and~~

~~3. A purchaser of the unit, if the unit's owner has notified the association, 30 days before the recordation of the notice, that the unit is the subject of a contract of sale and the association has been requested to furnish the certificate required by NRS 116.4109.]~~ ***at ~~[the]~~ :***

(a) The address of the holder that is provided pursuant to section 8.5 of this act on the Internet website maintained by the Division of Financial Institutions of the Department of Business and Industry ~~[,]~~ or

(b) If the address of the holder is not provided pursuant to section 8.5 of this act on the Internet website maintained by the Division of Financial Institutions of the Department of Business and Industry, the registered agent of the holder or, if the holder does not have a registered gent in this State, the address of the holder.

Sec. 7.7. Section 4 of Senate Bill No. 306 of this session is hereby amended to read as follows:

Sec. 4. NRS 116.311635 is hereby amended to read as follows:

116.311635 1. The association or other person conducting the sale shall also, after the expiration of the ~~[90 days]~~ ***90-day period described in paragraph (c) of subsection 1 of NRS 116.31162*** and before selling the unit ~~[:~~

~~(a) Give]~~ ***, give*** notice of the time and place of the sale ~~[in the manner and for a time not less than that required by law for the sale of real property upon execution, except that in lieu of following the procedure for service on a judgment debtor pursuant to NRS 21.130, service must be made on]~~ ***by recording the notice of sale and by:***

(a) Posting a similar notice particularly describing the unit, for 20 days consecutively, in a public place in the county where the unit is situated;

(b) Publishing a copy of the notice three times, once each week for 3 consecutive weeks, in a newspaper of general circulation in the county where the unit is situated;

(c) Notifying the unit's owner ***or his or her successor in interest*** as follows:

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

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

~~[(b) Mail,]~~

(d) Mailing, on or before the date of first publication or posting, a copy of the notice by certified ~~[or registered]~~ mail ~~[, return receipt requested,]~~ to:

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

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

(I) The address of the holder that is provided pursuant to section 8.5 of this act on the Internet website maintained by the Division of Financial Institutions of the Department of Business and Industry; or

(II) If the address of the holder is not provided pursuant to section 8.5 of this act on the Internet website maintained by the Division of Financial Institutions of the Department of Business and Industry, the registered agent of the holder or, if the holder does not have a registered agent in this State, the address of the holder; and

(3) The Ombudsman.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 7.75. Section 5 of Senate Bill No. 306 of this session is hereby amended to read as follows:

Sec. 5. NRS 116.31164 is hereby amended to read as follows:

116.31164 1. ***The sale must be conducted in accordance with the provisions of this section.***

2. ~~If the holder of the security interest described in paragraph (b) of subsection 2 of NRS 116.3116 satisfies the amount of the association's lien that is prior to its security interest not later than 5 days before the date of sale, the sale may not occur unless a record of such satisfaction is recorded in the office of the county recorder of the county in which the unit is located not later than 2 days before the date of sale.~~

~~3.~~ The sale must be ~~[conducted]~~ ***made between the hours of 9 a.m. and 5 p.m. and:***

(a) If the unit is located in a county whose population is less than 100,000, at the courthouse in the county in which the ~~[common-interest community]~~ ***unit*** ~~[or part of it]~~ is ~~[situated, and]~~ ***located.***

(b) If the unit is located in a county whose population is 100,000 or more, at the public location in the county designated by the governing body of the county to conduct a sale of real property pursuant to NRS 107.080.

~~***[4.]***~~ ***3.*** ***The sale*** may be conducted by the association, its agent or attorney, or a title insurance company or escrow agent licensed to do business in this State ***.*** ~~***[, except that the sale may be made at the office of the association if the notice of the sale so provided, whether the unit is located within the same county as the office of the association or not.***~~

~~***5.]***~~ ***4.*** The association or other person conducting the sale may from time to time postpone the sale by such advertisement and notice as it considers reasonable or, without further advertisement or notice, by proclamation made to the persons assembled at the time and place previously set and advertised for the sale ~~***[.***~~

~~***2.]***~~ ***, except that:***

(a) If the sale is postponed by oral proclamation, the sale must be postponed to a later date at the same time and location; and

(b) If such a date has been postponed by oral proclamation three times, any new sale information must be provided by notice as provided in NRS 116.311635.

~~***[6.]***~~ ***5.*** On the day of sale ***,*** ~~***[originally advertised or to which the sale is postponed,]***~~ at the time and place specified in the notice ***,*** ~~***[or postponement,]***~~ the person conducting the sale may ~~***[:***~~

~~***(a) Shall state to the persons assembled for the sale whether or not the holder of the security interest described in paragraph (b) of subsection 2 of NRS 116.3116 has satisfied the amount of the association's lien that is prior to that first security interest pursuant to subsection 3 of NRS 116.3116.***~~

~~***(b) May]***~~ sell the unit at public auction to the highest cash bidder. ***Except as otherwise provided in this subsection, the person conducting the sale or any entity in which that person holds an interest may not become a purchaser at the sale.*** Unless otherwise provided in the declaration or by agreement, the association may purchase the unit and hold, lease, mortgage or convey it. The association may purchase by a credit bid up to the amount of the unpaid assessments and any permitted costs, fees and expenses incident to the enforcement of its lien.

~~***[3. 7.]***~~ ***6.*** After the sale, the person conducting the sale shall ~~***[:***~~

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

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

(a) Comply with the provisions of subsection 2 of NRS 116.31166; and

~~***[(c)]***~~ ***(b)*** Apply the proceeds of the sale for the following purposes in the following order:

(1) The reasonable expenses of sale;

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

(3) Satisfaction of the association's lien;

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

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

Sec. 7.8. Section 6 of Senate Bill No. 306 of this session is hereby amended to read as follows:

Sec. 6. NRS 116.31166 is hereby amended to read as follows:

116.31166 1. ***Every sale of a unit pursuant to NRS 116.31162 to 116.31168, inclusive, vests in the purchaser the title of the unit's owner subject to the right of redemption provided by this section*** ~~***[. If the holder of the security interest described in paragraph (b) of subsection 2 of NRS 116.3116 satisfies the amount of the association's lien that is prior to its security interest not later than 5 days before the date of sale, the sale of the unit does not extinguish that security interest to any extent.]***~~ ***and subject to any security interest described in paragraph (a) or (b) of subsection 5 of NRS 116.3116.***

2. After the sale conducted pursuant to NRS 116.31164, the person conducting the sale shall:

(a) Give to the purchaser a certificate of the sale containing:

(1) A particular description of the unit sold;

(2) The price bid for the unit;

(3) The whole price paid; and

(4) A statement that the unit is subject to redemption; ~~[and]~~

(b) Mail a copy of the certificate of sale described in paragraph (a) by certified mail to, or serve a copy of the certificate of sale on:

(1) The unit's owner at the last known address of the unit's owner; and

(2) Any holder of a recorded security interest that is subordinate to the association's lien at:

(I) The address of the holder that is provided pursuant to section 8.5 of this act on the Internet website maintained by the Division of Financial Institutions of the Department of Business and Industry; or

(II) If the address of the holder is not provided pursuant to section 8.5 of this act on the Internet website maintained by the Division of Financial Institutions of the Department of Business and Industry, the registered agent of the holder or, if the holder does not have a registered agent in this State, the address of the holder; and

(c) Record a copy of the certificate in the office of the county recorder of the county in which the unit or part of it is located.

3. A unit sold pursuant to NRS 116.31162 to 116.31168, inclusive, may be redeemed by the unit's owner whose interest in the unit was extinguished by the sale, or his or her successor in interest, or any holder of a recorded security interest that is subordinate to the lien on which the unit was sold, or that holder's successor in interest. The unit's owner whose interest in the unit was extinguished, the holder of the recorded security interest on the unit or a successor in interest of those persons may redeem the property at any time within 60 days after the sale by paying :

(a) The purchaser the amount of his or her purchase price, with interest ~~[at the rate of 1 percent per month]~~ thereon in addition ~~[,]~~ at a daily periodic rate of 0.0329 percent, to the time of redemption, plus:

(1) The amount of any assessment paid to the association by the purchaser before the redemption;

(2) The amount of any assessment, taxes or payments toward liens which were created before the purchase and which the purchaser may have paid thereon after the purchase, and interest on such amount;

~~[(2)]~~ (3) If the purchaser is also a creditor having a prior lien to that of the redemptioner, other than the association's lien under which the purchase was made, the amount of such lien, and interest on such amount; and

~~[(3)]~~ (4) Any reasonable amount expended by the purchaser which is reasonably necessary to maintain and repair the unit in accordance with the standards set forth in the governing documents, including, without limitation, any provisions governing maintenance, standing water or snow removal; and

(b) The association the amount of any assessments not paid to the association after the purchase and before the redemption.

(c) If the redemptioner is the holder of a recorded security interest on the unit or the holder's successor in interest, the amount of any lien before his or her own lien, with interest, but the association's lien under which the unit was sold is not required to be so paid as a lien.

4. Notice of redemption must be served by the person redeeming the unit on the person who conducted the sale and on the person from whom the unit is redeemed, together with:

(a) If the person redeeming the unit is the unit's owner whose interest in the unit was extinguished by the sale or his or her successor in interest, a certified copy of the deed to the unit and, if the person redeeming the unit is the successor of that unit's owner, a copy of any document necessary to establish that the person is the successor of the unit's owner.

(b) If the person redeeming the unit is the holder of a recorded security interest on the unit or the holder's successor in interest:

(1) An original or certified copy of the deed of trust securing the unit or a certified copy of any other recorded security interest of the holder.

(2) A copy of any assignment necessary to establish the claim of the person redeeming the unit, verified by the affidavit of that person, or that person's agent, or of a subscribing witness thereto.

(3) An affidavit by the person redeeming the unit, or that person's agent, showing the amount then actually due on the lien.

5. If the unit's owner whose interest in the unit was extinguished by the sale redeems the property as provided in this section:

(a) The effect of the sale is terminated, and the unit's owner is restored to his or her interest in the unit, subject to any security interest on the unit that existed at the time of sale ~~***[.]***~~ ***and that has not been satisfied; and***

(b) The person to whom the redemption amount was paid must execute and deliver to the unit's owner a certificate of redemption, acknowledged or approved before a person authorized to take acknowledgements of conveyances of real property, and the certificate must be recorded in the office of the recorder of the county in which the unit or part of the unit is situated.

6. If the holder of a recorded security interest redeems the unit as provided in this section and the period for a redemption set forth in subsection 3 has expired, the person conducting the sale shall:

(a) Make, execute and, if the amount required to redeem the unit is paid to the person from whom the unit is redeemed, deliver to the person who redeemed the unit or his or her successor or assign, a deed without warranty which conveys to the person who redeemed the unit all title of the unit's owner to the unit; and

(b) Deliver a copy of the deed to the Ombudsman within 30 days after the deed is delivered to the person who redeemed the unit, or his or her successor or assign.

7. If no redemption is made within 60 days after the date of sale, the person conducting the sale shall:

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

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

8. The recitals in a deed made pursuant to ~~[NRS 116.31164]~~ ***subsection 6 or 7*** of:

(a) Default, the mailing of the notice of delinquent assessment, and the ***mailing and*** recording of the notice of default and election to sell;

(b) The elapsing of the ~~[90 days; and]~~ ***90-day period set forth in paragraph (c) of subsection 1 of NRS 116.31162;***

(c) The ~~[giving]~~ ***recording, mailing, publishing and posting*** of ***the*** notice of sale ~~[.]~~ ***;***

(d) The failure to pay the assessments and other sums which are due in accordance with subsection 1 of NRS 116.3116 before the expiration of the period described in paragraph (d) of subsection 1 of NRS 116.31162; and

(e) The recording of the affidavit required to be recorded pursuant to paragraph (e) of subsection 1 of NRS 116.31162,

➥ are conclusive proof of the matters recited.

~~[2. Such a]~~

9. A deed containing ~~[those]~~ ***the*** recitals ***set forth in subsection 8*** is conclusive against the unit's former owner, his or her heirs and assigns, and all other persons. The receipt for the purchase money contained in such a deed is sufficient to discharge the purchaser from obligation to see to the proper application of the purchase money.

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

10. Upon the expiration of the redemption period set forth in subsection 3, any failure to comply with the provisions of NRS 116.3116 to 116.31168, inclusive, does not affect the rights of a bona fide purchaser or bona fide encumbrancer for value.

Sec. 7.85. Section 8.5 of Senate Bill No. 306 of this session is hereby amended to read as follows:

Sec. 8.5. Chapter 657 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A bank, credit union, savings bank, savings and loan association, thrift company or other financial institution , or any other mortgage holder, which is licensed, registered or otherwise authorized to do business in this State and which is the mortgagee or beneficiary of a deed of trust under a residential mortgage loan shall provide to the Division of Financial Institutions the name, street address and any other contact information of a person to whom:

(a) A borrower or a representative of a borrower must send any document, record or notification necessary to facilitate a mediation conducted pursuant to NRS 40.437 or 107.086.

(b) A unit-owners' association must send any notice required to be given pursuant to NRS 116.3116 to 116.31168, inclusive.

2. The information required to be provided to the Division pursuant to subsection 1 must be submitted to the Division in the manner and on a form prescribed by the Commissioner.

3. The Division of Financial Institutions shall maintain on its Internet website the information provided to the Division pursuant to subsection 1 and provide a prominent display of, or a link to, the information described in subsection 1, on the home page of its Internet website.

~~*[3.]*~~ *4. The Commissioner may adopt regulations to carry out the provisions of this section.*

5. As used in this section:

(a) "Borrower" means a person who is a mortgagor or grantor of a deed of trust under a residential mortgage loan.

(b) "Residential mortgage loan" means a loan which is primarily for personal, family or household use and which is secured by a mortgage or deed of trust on owner-occupied housing as defined in NRS 107.086.

Sec. 7.9. Section 9 of Senate Bill No. 306 of this session is hereby amended to read as follows:

Sec. 9. 1. Subsections 1 to 6, inclusive, of NRS 116.31162 and NRS 116.31163, as amended by sections 2 and 3 of this act, respectively, apply only to a notice of default and election to sell that is recorded pursuant to paragraph (b) of subsection 1 of NRS 116.31162, as amended by section 2 of this act, on or after ~~[October]~~ **July** 1, 2015.

2. Subsection 7 of NRS 116.31162 and NRS 107.086, as amended by sections 2 and 8 of this act, respectively, apply if a notice of default and election to sell is recorded pursuant to NRS 107.080, on or after ~~[October]~~ **July** 1, 2015.

3. NRS 116.311635 ~~[and 116.31164,]~~ **,** as amended by ~~[sections]~~ **section** 4 ~~[and 5]~~ of this act ~~[, respectively, apply]~~ **applies** only if a notice of sale is recorded pursuant to ~~[NRS 116.311635,]~~ **paragraph (b) of subsection 1 of NRS 116.31162,** as amended by section ~~[4]~~ **2** of this act, on or after ~~[October]~~ **July** 1, 2015.

~~[4. NRS 116.31166, as amended by section 6 of this act, applies only to a sale of a unit pursuant to NRS 116.31162 to 116.31168, inclusive, as amended by sections 2 to 7, inclusive, of this act, respectively, which occurs on or after October 1, 2015.]~~

Sec. 7.93. **Senate Bill No. 306 of this session is hereby amended by adding thereto a new section, to be designated as section 10, immediately following section 9, to read as follows:**

Sec. 10. This act becomes effective on July 1, 2015.

Sec. 7.95. **Subsection 3 of NRS 116.3116, as amended by sections 7 and 7.55 of this act, respectively, and NRS 116.31166, as amended by sections 7.5 and 7.8 of this act, respectively, apply only to a sale of a unit pursuant to NRS 116.31162 to 116.31168, inclusive, as amended by sections 7 to 7.95 of this bill, under a notice of default and election to sell that is recorded pursuant to paragraph (b) of subsection 1 of NRS 116.31162, as amended by section 7.6 of this act, on or after July 1, 2015.**

Sec. 7.97. **This act becomes effective on July 1, 2015.**

Sec. 8. (Deleted by amendment.)

Sec. 9. (Deleted by amendment.)

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

Sec. 12. (Deleted by amendment.)

Sec. 13. (Deleted by amendment.)

Sec. 14. (Deleted by amendment.)

Sec. 15. (Deleted by amendment.)

Sec. 16. (Deleted by amendment.)

Sec. 17. (Deleted by amendment.)

Sec. 18. (Deleted by amendment.)

Sec. 19. (Deleted by amendment.)

Sec. 20. (Deleted by amendment.)

Sec. 21. (Deleted by amendment.)

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY
SUBCOMMITTEE

Seventy-Eighth Session
March 19, 2015

The Assembly Committee on Judiciary Subcommittee was called to order by Chair Victoria Seaman at 6:02 p.m. on Thursday, March 19, 2015, in Room 3138 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/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Victoria Seaman, Chair
Assemblyman David M. Gardner, Vice Chair
Assemblyman Elliot T. Anderson
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman John Moore, Assembly District No. 8
Assemblyman Lynn D. Stewart, Assembly District No. 22
Assemblywoman Melissa Woodbury, Assembly District No. 23

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Linda Whimple, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Robert Frank, Private Citizen, Henderson, Nevada
Jonathan Friedrich, representing Nevada Homeowner Alliance
Bob Robey, Vice Chair, Nevada Homeowner Alliance
Robin Huhn, representing HOA Board Monitoring Services and Nevada Homeowner Alliance
Gary Solomon, representing HOA Board Monitoring Services
John Radocha, Private Citizen, Las Vegas, Nevada
Garrett Gordon, representing Nevada Chapter, Community Associations Institute; Southern Highlands Community Association; and Olympia Companies
Angela K. Rock, representing Olympia Companies
Gayle Kern, representing Nevada Chapter, Community Associations Institute
Keith Lund, Private Citizen, Las Vegas, Nevada
Kitty Michals, Private Citizen, Las Vegas, Nevada
Glen Proctor, Treasurer, Mountain's Edge Master Association
Norm Rosensteel, representing Nevada Chapter, Community Associations Institute
Diana Cline, representing SFR Investments Pool 1, LLC
Marilyn Brainard, Private Citizen, Sparks, Nevada
Scott Hedlind, Private Citizen, Las Vegas, Nevada
Lori Martin, representing Terra West Management Services
Samuel P. McMullen, representing Nevada Bankers Association
Jon Sasser, representing Legal Aid Center of Southern Nevada and Washoe Legal Services
Pamela Scott, representing the Howard Hughes Corporation
Mike Randolph, Manager, Homeowner Association Services, Inc., Las Vegas, Nevada
Jennifer Gaynor, representing Nevada Credit Union League
Marco Velotta, Private Citizen, Henderson, Nevada
Jennifer Lazovich, representing Olympia Companies

Chair Seaman:
[Roll was taken and standing rules reviewed.] I will now open the hearing on Assembly Bill 240. This measure revises provisions governing liens of a unit-owners' association. Assemblyman Moore, you may begin whenever you are ready.

Assembly Bill 240: Revises provisions governing liens of a unit-owners' association. (BDR 10-821)

Assemblyman John Moore, Assembly District No. 8:
Assembly Bill 240 addresses the problems that are caused by a homeowners' association (HOA) using a nonjudicial foreclosure to sell an owner's unit just to collect nine months of unpaid dues, along with any maintenance and nuisance abatement charges, fees, and interest, and to wipe out a first deed of trust in the process. As you can imagine, the amount of these unpaid dues and charges is much less than the balance owing on the mortgage, yet Nevada currently allows this to happen under the so-called super priority statutes in *Nevada Revised Statutes* (NRS) Chapter 116.

Assembly Bill 240 will remove the super priority liens for HOAs and will require HOAs to go through the courts to foreclose liens in the future. Section 2 on page 3 and section 4 on page 5 remove the provisions that provide for a super priority lien for unpaid dues and certain other charges.

Section 4 spells out the new procedure for perfecting an HOA lien: (1) the notice of lien cannot be recorded until payments are 90 days past due; (2) the notice of lien must be served on the unit owner within 30 days of recording the lien; and (3) an action to foreclose cannot be filed until 90 days after service of notice of the lien.

Section 4, subsection 7, provides that any money remaining after the sale and satisfaction of the HOA lien must be paid to the unit owner. Subsection 8 states in part that the HOA must record a notice of discharge or release within ten days after satisfaction of the debt or be subject to a civil suit for actual damages or $100, whichever is greater, along with attorney's fees and costs.

Section 4, subsection 9, shortens the statute of limitation on filing lien enforcement actions from three years to one year after the date of filing the notice of lien. Section 4, page 8, line 1, eliminates the requirement for costs and reasonable attorney's fees to be awarded in a judgment to recover an HOA lien.

Most of the remaining sections are conforming amendments, simply eliminating references to repealed sections and updating references. Section 8 clarifies that this bill applies to the enforcement of liens unless the HOA has foreclosed its lien by sale on or before June 30, 2015. Finally, section 9 repeals six sections of the NRS that set out the nonjudicial foreclosure procedures for HOA liens. That concludes my presentation. I would be happy to answer any questions.

Chair Seaman:
Are there any questions? [There were none.]

Assemblyman David M. Gardner, Assembly District No. 9:
We are already starting to talk to many of the stakeholders, so this bill will be changing from how it is now. The intent of the bill is basically that there are some scary things happening with HOA foreclosures. I have personally seen them myself in my job as an attorney, where I have reviewed some HOA foreclosures that have happened in Clark County, and this is to try and help fix some of those. We have talked with some of the HOA people and they believe this has gone too far. The point is that we need to fix it, and we will be working with some of the people who represent the HOAs. There will be amendments, so this is not the complete bill at this point.

Assemblyman Elliot T. Anderson:
Do you practice in this area?

Assemblyman Gardner:
Yes, to a certain extent. My firm does a lot of work on it, and I occasionally need to go to hearings, so I will write motions on this. I am not on point with this, but if another attorney cannot make a hearing, I will do the research. If they cannot write a motion on this, I will be the one doing the research and writing the motion. There are one or two cases that I am actually on point with some of these HOA foreclosure issues.

Assemblyman Elliot T. Anderson:
What have you seen out in the market?

Assemblyman Gardner:
One of the things that has been happening is a foreclosure notice can be put on a property, which usually happens about three months after an owner has stopped paying or has moved out of the house, and then it sits. Sometimes it is two years later and then they get a trustee deed. Many times all they will do is just post it on the door of the house. I have clients who never see the notice

because they have moved out of the house and they are trying to get the bank to be involved. I have talked to banks and they are not getting any notice either. They will call for a foreclosure hearing. Usually that is done by posting something on the door that says "Trustee Sale," which is usually in about 20 days. After that 20 days, they are supposed to have a hearing where they are going to sell the property. What has been happening is they will go and then decide they are going to continue it. The way our law is written right now, they can continue without letting anyone know except for the people who are at that hearing. If you missed it for whatever reason, you have no idea that it happened. For example, say the hearing happened last month and then you decide that you are going to move it three weeks forward. You can keep doing that as long as you want until you can eventually get the right people there to buy the loan or the house, and then you can sell it. There is no notice to the banks or to the homeowner between the first one that is notified and when it is actually sold. There is no connection, and that is where my concern for the due process issues are.

There is a bill on the Senate side where they are working to fix that with some procedurals. Due process is one of the procedural issues I have.

Assemblyman Ohrenschall:
I think the genesis of the super priority lien comes from the Uniform Common-Interest Ownership Act (UCIOA) that Nevada adopted in the early 1990s. There have been a lot of changes every session. My concern is if we go to the judicial foreclosure process, do you think it is going to be more of a burden to the HOA in terms of the resources they are going to have to spend to collect? A couple of sessions ago, there were a lot of issues with collection agencies and the fees that were being added on. Attempts were made—both through statute and regulation—to try to make sure that we cap those. I have heard different stories as to how successful that has been. Do you think this is going to be the right balance in terms of not forcing the HOA to have to spend more than it might recover as opposed to the current system which derives from the UCIOA?

Assemblyman Gardner:
I think a lot of these due process rights would not have had these issues if a judge was approving the sale. To answer your question whether it would cost more, yes, it usually costs a little more. There are about 20 states that require judicial foreclosures; some of them do not allow nonjudicial foreclosure. Technically, in the state of Nevada we allow both. It is typically chosen to be a judicial foreclosure. In most of the Midwestern states or the Northeastern states, I have been told it is done for about $1,500.

I worked in commercial real estate before I became an attorney, and we did some foreclosures in the Indiana and Ohio areas where the cost was about $1,500. It is a little more expensive, but it is still less than what the regulations are, which is $1,950. That is the amount of collection fees that is allowed right now in the regulations. It is not under the statute. It would cost a little more, and I think it does help with the balance, but that is also something that will be negotiated. It is something the HOAs really did not want to do and if we fix the due process issues, I have much less of a concern with requiring judicial foreclosures. That may be something we take out altogether if we can find a good balance. There are a lot of states that are doing this already, and they have vibrant HOAs in those states as well. I do not think it is going to be a crushing burden. We are trying to find that balance right now.

Assemblyman Ohrenschall:
In your practice, are you finding that the $1,950 cap is effective and actually working in terms of the clients you are representing?

Assemblyman Gardner:
I tend to do more defense on this. We are not even reaching that cap. Most of what we are having issues with is not so much the cap, but the super priority liens. The HOA is only given the nine months. You are getting that and your collection fees are not really getting to that $1,950. The problem is that we are losing all the HOA fees.

To go back to your earlier question, there are 16 states that have passed the UCIOA. There are about 20 states that have super priority liens—us being one of them—but there are 30 states that do not have any kind of super priority liens. Once again, I do not think it is going to be a killer. I apologize—I keep saying this because we were not able to have the meetings beforehand—but that is also one of the things we and the HOAs are dealing with. They had an issue with getting rid of the super priority lien, so we are trying to strike a balance. This is not trying to hurt HOAs, banks, or anyone. It is trying to make sure that due process rights are upheld and that everyone knows what is going to happen. As I stated previously, the Senate bill has already dealt with a lot of this, so the bill may become redundant, but we are still looking at it.

Assemblyman Ohrenschall:
I appreciate your working with all the stakeholders because that balance is important.

Assemblyman Elliot T. Anderson:
I am trying to get my head around all the changes in the measure. Would it be your intent for there to still be a priority of proceeds if there is a sale? Obviously, we are talking about balance, and we need to keep the associations whole in some way, form, or fashion. Would your intent be, if there is a sale, to still allow there to be a nine-month priority of proceeds, or does the bill get rid of priority proceeds?

Assemblyman Gardner:
I will defer to Assemblyman Moore with what he wants to do with his bill, but I actually would not mind seeing that cap raised a little. I think that is one of the issues we are having right now. These houses are not foreclosed on for four years, and the most you can get is nine months of unpaid dues. Even then, you might not get all of your collection fees. I think that is part of the balance we need to strike as well. I do not know if Assemblyman Moore wants to do that in his bill, but I would be okay with increasing the cap a little.

Assemblyman Moore:
I would be open to discussing it and hopefully finding a balance where all parties are represented in an equal fashion.

Chair Seaman:
Can you describe conceptually what you are thinking of as far as amending this bill?

Assemblyman Gardner:
Some of the ideas that we have discussed are possibly getting rid of the judicial foreclosure so that we can do some of the fixes that were done in the Senate bill. Regarding the super priority lien, once again we have not set an exact number, but it is to be kept in there. We may possibly remove the ability to foreclose or limit the ability to foreclose. It is about trying to protect both the HOA, which needs that money, but also protecting the homeowners for some of the notices.

Assemblyman Moore:
It is not so much that we are trying to diminish the HOAs' ability to recover their costs, do what they need to do to keep the neighborhoods looking good, and to do the services they are obligated to provide for their residents. What I am trying to accomplish here regarding the super priority lien is that I do not feel anyone should be in a position above the first mortgage holder to go to foreclosure. In other words, the bank is the one that has the real interest in the property besides the homeowner. The bank is the one that decided you were a good credit risk and lent you the money to purchase the home. Why should

they have to wait for others to be paid before they are? They need to be the first in line to recoup their money, and then everyone else comes after that. They have the most interest in that property, in my opinion.

Assemblyman Gardner:
It is actually a little bit worse than what Assemblyman Moore stated. Right now with a super priority lien, you can foreclose. The way the law works is that you get rid of all the liens below you. So you actually get rid of the first mortgage. This is an actual lawsuit that I am doing right now. My clients bought a $400,000 condominium for $12,000, and their case is currently in federal court. It has been going on for a year and will probably go on for several more years. That is the kind of thing we are trying to avoid. Only two states, Nevada and Washington, allow you to get rid of the first mortgage and the subsequent liens. All the other states that have the super priority liens—about 20 total—allow it to be up there on the list so when the bank forecloses, the lien does not go away. Only Nevada and Washington allow you to get rid of the first mortgage. It was about six months ago when the Nevada Supreme Court said that was their interpretation of the UCIOA which Assemblyman Ohrenschall was talking about.

Assemblyman Moore:
There was a case in the Southern Highlands Community Association where a home valued at $885,000 was sold for $6,000 because of a super priority lien. The bank took it to court in the case of *SFR Investments Pool 1 v. U.S. Bank* [130 Nev. Adv. Op. 75, 334 P.3d 408 (2014)]. It was ultimately decided by the Nevada Supreme Court. I do not see the fairness there. Where is there equitable fairness for the bank in that they took the risk, lent the money, and because the homeowner for whatever reason did not pay their HOA dues to now lose $885,000 on a house. It is bizarre to me.

Chair Seaman:
Are there any other questions for Assemblyman Moore? [There were none.] We will now go to those in support of A.B. 240. To be fair and in consideration of time, I will allow 30 minutes in support and 30 minutes in opposition followed by neutral testimony.

Robert Frank, Private Citizen, Henderson, Nevada:
I have been on one of the largest HOA boards. I am also a member of the Commission for Common-Interest Communities and Condominium Hotels, but I am testifying today on my own behalf. I am not representing the Commission.

I really enjoyed the discussion I just heard from the various members of the Assembly because it helped fill in some gaps that I actually have not heard before. I am grateful for what Assemblyman Moore and Assemblyman Gardner filled us in on.

I am not a lawyer but I am a very strong constitutional citizen, and I feel very strongly that judicial process ought to be involved in taking the property of any homeowner. I believe the government's right to take should be preserved. I do not think HOAs should be granted the right to take property regardless of the circumstances. I hope that at the end of the day, after all the negotiations and amendments, that the bottom line still comes down to only the government can take property from a property owner in this country. I believe that is a very fundamental right. I think it is unfortunate if it might cost a little more money. In the long run, I am not sure it is worth arguing about, but I think the principle of taking property is a very important principle and should be preserved under the Judicial Branch of government.

Finally, there has been continuing debate in regard to whether HOAs are quasi-governmental or whether they are pure contracts. This discussion really brings it to the table again by those who would argue to go ahead and keep nonjudicial foreclosures. If you do, in my opinion, it will further support the argument that it is a quasi-governmental organization and should be managed more along those lines.

Jonathan Friedrich, representing Nevada Homeowner Alliance:
I am a former commissioner on the Commission for Common-Interest Communities and Condominium Hotels. About 40 years ago, before I was on the Commission, it was asked to set fees in NRS Chapter 115 for the super priority liens. That, to me, was a disgrace. The Commission asked a number of collection companies to come and speak to them and tell them what they wanted. Well, if you take a kid into a toy store, they are going to want everything. The collection companies wanted the moon and the stars. They finally came to an agreement of sorts of $1,950 for fees, but that was not the real number. If you read the regulation carefully, it allows for all kinds of attorney's fees. I believe it was four years ago that I submitted several collection companies' bills, which should be in the record. They are anywhere from $3,000 to $5,000; they are not $1,950. If you go through the records, or if you need me to send them to you, I can.

Another item deals with the management companies. After the collection companies got their pot of gold, the management companies wanted their share. It was decided that they should get $200, so now $200 is added into the pot. I feel this bill is long overdue. These auctions do not belong in the

back room of an attorney's office or in the parking lot of a company in downtown Las Vegas. They belong in the courtroom. Mr. Frank was very accurate in what he said.

On page 6 of the bill, starting with line 22, the new language in section 4 simplifies the process greatly, and I am in favor of that.

Chair Seaman:
I just want to remind you that amendments are still being worked on.

Jonathan Friedrich:
I realize that, but I do not know what is going to be amended and I wanted to get the testimony in. On page 7, the word "court" is stated in no less than four places. I am very much in favor of it.

Bob Robey, Vice Chair, Nevada Homeowner Alliance:
I was very happy to see that the idea of due process might come in. Something needs to be done about due process. I have a question regarding the bill that was just raised when you were talking with Mr. Friedrich. There is going to be a work session after the open hearings, and there will also be amendments. Can people like us—who do care and who do show up—ever have another chance?

Chair Seaman:
You can contact Assemblyman Moore directly for more information on the amendments as he goes through them.

Bob Robey:
As I found on the Internet, there are five states leading the nation in foreclosures, and I sent that information to the Nevada Electronic Legislative Information System (NELIS) (Exhibit C). Of the top five states, four are judicial and one is nonjudicial. I do not think it makes a difference if it is judicial or not.

If I contact Assemblyman Moore directly at his Assembly mailbox, may I expect an answer?

Chair Seaman:
I will let Assemblyman Moore answer that.

Assemblyman Moore:
Yes, I respond to any email that comes to me. Please feel free to email me at the address at the Legislature.

Bob Robey:
Thank you very much, Assemblyman Moore.

Robin Huhn, representing HOA Board Monitoring Services and Nevada Homeowner Alliance:
We need more bills that are in support of homeowners and not the companies that are getting the profits—management companies, collection companies, and especially HOA attorneys. I am in support of A.B. 240.

Gary Solomon, representing HOA Board Monitoring Services:
I am going to give you another take on this that you probably have not heard or considered. I am an academic; I have studied homeowners' associations for the past six years. I have published books on the subject. What I am not hearing talked about are the families and what the effect is on families as a result of what is taking place. The judicial foreclosure creates a very transparent way of going about this, but the backroom dealings are destroying families. I doubt there is anyone I am looking at through the screen who is not part of a family; a husband, wife, and children. Now those families are being abused as a result of these backroom dealings. We have a term for it, which is child abuse by proxy. It means that as these activities are taking place, the children in the homes are being abused by proxy from what happened. What might we expect from those children? Research shows that when those kids grow up, they are going to come after people. They are going to attack because they are angry. They are going to hurt others because of what happened to them.

Chair Seaman:
Please stick to the topic for A.B. 240.

Gary Solomon:
It is important to have A.B. 240 so that people do not retaliate against others who took action against them. Does that stay on track? I have a little bit more to say.

Chair Seaman:
Okay, but please stay on the subject of A.B. 240.

Gary Solomon:
The other area of abuse as a result of this, if it does not pass, is elder abuse. It is important to understand that this is in the best interest of the people. This should not be in the best interest of the investor. We must look at the effect on the family.

Chair Seaman:
Are there any questions? [There were none.]

John Radocha, Private Citizen, Las Vegas, Nevada:
I am a homeowner, and I believe it is time for these foreclosures to get into the courts where they belong. You cannot have a conglomerate of industry people all in a nice big boat, trying to rip us off all the time. I am from Pennsylvania, and years ago I belonged to an organization, and I believe you have to get out of these smoke-filled rooms. Too much of this is going on.

I have a question for Assemblyman Moore. Do you accept snail mail? I do not have email and I would like to know that if I wrote to you, would you accept it?

Assemblyman Moore:
Yes. Any kind of mail or correspondence is perfectly okay.

John Radocha:
Thank you, I really appreciate that.

Chair Seaman:
Is there anyone else in support of A.B. 240? [There was no one.] Those who are in opposition, please come forward.

Garrett Gordon, representing Nevada Chapter, Community Associations Institute; Southern Highlands Community Association; and Olympia Companies:
Today I am speaking on behalf of the Legislative Action Committee of the Community Associations Institute, Southern Highlands Community Association, and Olympia Companies. As the bill is written, we are opposed. There are some experts here who can address the reasons why. Given our time constraint, I will keep my testimony short. I would like to thank the sponsor and Assemblyman Gardner for meeting with us to discuss the problem and for thinking outside the box about possible solutions. I appreciate their time and commit to you, Madam Chair, that we will continue to work with them in the meantime.

Angela K. Rock, representing Olympia Companies:
As Mr. Gordon stated, I was originally in opposition to the bill as it is written; however, from testimony that I just heard moments ago, it sounds like there is work to be done and I was encouraged by some of the things I heard. I am not going to go through the technical portions of the bill, but only to state and pull out some of the things I recently heard that we need more bills in support of homeowners. I want everyone here to consider that the money that is being

collected by the HOA is, in fact, for the homeowners. It is to ensure that the dues are not raised for those members who are currently paying their HOA assessments.

The second thing I heard is there seems to be an understanding from one of the individuals who testified that the government, or certain entities, need to be able to collect their money because they are providing certain key services. The association is providing key services. Please do not forget that it is not a for-profit corporation. It is a nonprofit corporation that is providing utilities, streets, gates, lights, and I could go on down the line. I agree with some of the testimony that was given by Assemblyman Gardner about protecting due process. Having heard that—as I mentioned, we are not as opposed as we originally were—I would like us all to think long and hard before we eliminate the payment and before we eliminate the incentive to pay at the point that the bank forecloses. Assemblyman Anderson asked an excellent question about ensuring that the association still gets something. I would like to thank you for that comment and make sure that we do not pass a bill that discourages homeowners from paying.

Gayle Kern, representing Nevada Chapter, Community Associations Institute:
I am testifying on behalf of the Legislative Action Committee of the Community Associations Institute. I am an attorney and represent about 300 HOAs, and I consider my representation to be for those assessment-paying members. It is not a club. They do not pay dues, and they do not get to choose whether they pay dues. There are assessments that need to be paid because we are taking care of all of the infrastructure. In a condominium, we are taking care of everything but the air space, so we are actually protecting the collateral that is secured by the deed of trust.

On the issue of a judicial foreclosure versus a nonjudicial foreclosure, if I were here testifying on my own behalf, a judicial foreclosure means that I just quadrupled my business because you have to have an attorney for that. However, that is not in the best interest of the association nor, would I submit, in the best interest of our judicial system. You will also have to be employing a lot more judges, because just one entity in Nevada commenced about 1,500 collection matters that would now be a lawsuit each month. That does not mean that all of those go to foreclosure. We resolve the majority of them. For the majority of them, the homeowner either pays or the lender forecloses and we stop our action. Those do not all go to foreclosure. If we have to commence a judicial foreclosure for all of the collection action, it will be at the commencement of that collection. You are going to have huge unintended consequences with the need for more courthouses and more judges to take care of this volume.

The nonjudicial foreclosure process is not something that is unique. It can be found in NRS Chapter 107. Lenders do it; they are not a governmental entity. The nonjudicial foreclosure process has a lot of protections. With all due respect to Assemblyman Gardner, I would like to identify what the process is. The process of NRS Chapter 116 requires a notice of delinquent assessment and claim of lien that is required to be mailed, certified and regular mail, to the homeowner. The next step is the notice of default and election to sell. It is exactly the same process as a lender uses when foreclosing on the deed of trust. It has to be recorded to everyone of interest on that property, both junior and senior, as well as the owner. If it is not done, it is not a proper nonjudicial foreclosure.

The next process, just as with a nonjudicial foreclosure by a lender, is the notice of sale. That is also required to be published in the newspaper, to be mailed, certified and regular, to all persons of interest. We get a trustee sale guarantee just like the banks do, and it is posted on the property as well as a courthouse or other area which is approved to have those notices posted. There is a lot of notice given that is not done. The only thing that happens is—he says there was a hearing, and I believe he was referring to when you cry the sale, which is a sale by auction—there is an allowance to postpone the sale, just as with the banks. Up here in the north, we cry the sales on the courthouse steps of the Second Judicial District Court.

I would assert that the protections are there. If you want to tweak some of them, or you want additional notices to be given, that is fine. But I think if you try to take away that process, you will have a lot of unintended consequences and it will hurt the assessment-paying members. Similarly, the lien has, quite frankly, saved our state, especially with respect to the last several years. If we had not been able to do that, the assessment-paying members of the association would have seen their assessments go up dramatically. With respect to the amendments, I am very anxious to talk with the sponsor and participate in the discussions, but as it stands now, we cannot support this bill. [Letter submitted (Exhibit D).]

Assemblyman Ohrenschall:
Have delinquencies and arrears gone down to the associations? You said that assessments have not gone up dramatically. Do you have any data on it?

Gayle Kern:
I can tell you anecdotally that in my own practice, prior to six or seven years ago, I had never ever completed a nonjudicial foreclosure. Then we had a period of time where there were some that were completed, and now we are going back to resolving cases at our initial communication with the borrower.

They are wanting to keep their homes. For my own practice, I have seen a dramatic decrease in going further down the process. That has been over about the last 10 or 11 months.

Assemblyman Ohrenschall:
Has there been an increased use in bank impound accounts, or anything like that, to avoid sending the arrears out to collection agencies and trying not to have it go down that road?

Angela Rock:
In my own practice, I have not seen banks come forward at the management company level with a concept of impound accounts. On a personal note, I just recently bought a home and during my closing, when I was signing the mound of papers, that did come up. They did, in fact, discuss that they may move to that. I was encouraged—they did not know what I did for a living—but that was not required at the time and I have not seen it in practice in my day-to-day operations. If that happens, and if a bank did pay through an impound account and even wanted to pay quarterly—let us say to prepay as they do insurance or taxes—then, of course, that would not only protect their asset, but would all but eliminate the need for most of us.

Assemblyman Elliot T. Anderson:
I think we have a problem that we have to fix. I am not sure what the solution is yet. It is a complicated issue. I would take a little bit of issue with the statement that there is not a notice problem. I think there has been. I do not know whose fault it is, but I think it is something we need to get ahold of. We have to ensure that people know they have a chance to respond and that there is some sort of way they can go back and fix it. I realize there were some things put in last session for the homeowner, but we do also have to consider the bank's interest. We have to find a way to get there, so I am really interested to see all of the proposals and to see what comes out of the Senate. I would like for you to talk more about how you think we could go about fixing this issue, whether it is this bill or another bill. What is it that you think would be a good idea to do?

Gayle Kern:
What do you perceive the problem to be? I wholeheartedly agree that if people are not following the requirements of the statute, then there is a problem. The statute requires certified and regular mailings of all notices to anyone with a recorded interest in the real property, and if that is being complied with, then the lenders should be getting notice. If they have recorded a deed of trust or if

there is an assignment recorded, you are obligated and required under the specific terms of the statute to send them the notice of default and election to sell and the notice of sale.

Assemblyman Elliot T. Anderson:
For whatever reason, it has not been happening. At a minimum, I think we need stronger notice provisions to ensure that people are aware their rights are potentially on the chopping block. Even though this is a nonjudicial process, the Takings Clause still applies when we use any government process, whether it is judicial foreclosure or nonjudicial foreclosure, and we have to ensure that people have the opportunity to be heard. For whatever reason, it is not happening all the time; sometimes it is. We just have to figure out what the solution is.

Assemblyman Jones:
A statement you made was concerning to me. Assemblyman Moore testified how in Southern Highlands $6,000 got a $695,000 house, and in your testimony you are saying that liens saved Nevada. That is a little over the top for me, and I would like you to explain it.

Gayle Kern:
Probably seven years ago, when lenders were foreclosing on a regular basis, we would make our demand on behalf of the association for the lien. The lender would pay it and we would write off the rest of the delinquency. Sometimes the entire lien is a year to three years worth of assessments. Then when the lender foreclosed—remember, the lien is only triggered when a lender forecloses or when the association gets down to the very end and forecloses—there is a portion of the lien that is a lien that can extinguish the deed of trust if it is foreclosed upon. But as the Nevada Supreme Court found in the *SFR Investments Pool 1* case, the lender has every ability to tender that amount and then if the association continues with its foreclosure, it does not extinguish the deed of trust. There is one lien that has a portion of it that is the lien. The ability to first collect those lien amounts, I believe, protected associations and did save those associations from having to increase their assessments.

If you look at the statistics—I apologize, I meant to print it out—up until a year ago, the total number of HOA foreclosures in the state of Nevada was less than 500 a year. One year it was 120 and another year there were 200. It jumped up to a little over 1,000 in 2013 or 2014, but it has been very recent. I would agree with you that my comment was not directed to the ability to extinguish the first deed of trust. It was to the ability to collect that lien from the lender so that we did not have to write off the entire amount of the lien. I hope that distinction addresses your concern.

Assemblyman Jones:
My concern is when you say, "It saved Nevada." To me that seems a little unjust when we are talking about such unjust enrichment and you are making the claim that it saved Nevada on behalf of homeowners' associations. Do you see how that could come across as a little bit offensive?

Gayle Kern:
I am concerned about the assessment-paying members. There is no question in my mind regarding those homeowners who are trying to stay in their homes, who need their community taken care of, and are paying their assessments, that they do not end up taking on the burden of those assessments that are not being paid. To me, protecting those assessment-paying homeowners who want to stay in their homes and are trying to be part of that community and paying their assessment is very important, and I believe those are the people who benefitted from not having to incur increased assessments to pay for what was not able to be collected.

Chair Seaman:
We will move on to testimony in Las Vegas, but please be sure to work with Assemblymen Moore and Gardner.

Keith Lund, Private Citizen, Las Vegas, Nevada:
I am a homeowner, and for the past eight years I have been on two HOA boards. I rise in strong opposition to A.B. 240 as it is written and I am absolutely pleased to hear that there are amendments yet to come. I am grateful for that.

Before Assemblyman Jones spoke asking for a recommendation or a comment, and based on what I heard from Assemblyman Gardner and Assemblyman Moore about their concerns, they have two major issues about notice and making sure these things were not happening without proper notice and that people knew what was going on and that the lender is not wiped out. I am not in the lending business, I have no vested stake, I am not an attorney, and I have no financial interest in this beyond being a homeowner. To me, the idea that the lender gets wiped out is silly. I think the lender should be protected, but it sounds like if we simply ensure that when the HOA forecloses, the lender is still maintained and can come in behind it and foreclose themselves, or take it back and simply make the HOA whole in the process, that all by itself protects the lender and maintains this process.

Having sat on the HOA board and having done this for eight years through the downturn and through the recovery without the tenets that A.B. 240 wipes out, the HOA would not have functioned at all. We derived upwards of 10 to 30 percent of what we brought in and we were running deficiencies; 10 to 30 percent during 2011, 2012, 2013 came in from collections; and the banks did not act until we began to post notice to foreclose. In all of that time—and I sit on the two HOAs representing more than 1,700 homes in your district, Madam Chair—we foreclosed once. We are not looking to foreclose and most HOAs do not want to foreclose. The banks would not act until we at least brought that action. We need someone to make things happen to protect our homeowners, and at least the HOAs, because they were close to the ground and heard it from the homeowners, were willing to act.

With regard to notice, I agree that the ability to delay multiple times without giving good notice does not allow us to know when the actual sale is going to happen. If we eliminate those, it cleans up the notice and the HOAs either have to act or not. To protect the lender and to make the notice cleaner, it sounds like some procedural changes would do it. I promise you that wiping out the lien, from my experience on both HOAs, would cripple HOAs and it would cost thousands of dollars and special assessments to the homeowners who are already trying to pay their dues.

Kitty Michals, Private Citizen, Las Vegas, Nevada:
I am a homeowner and I am on an HOA board. I am totally against the bill as it stands. If there are changes and adjustments, that is good news and it will be interesting to see what the final bill looks like. We would have suffered without the priority lien. I live in a very small community with only 46 homes, so if we had two homeowners who could not pay their bills and nothing was effective, we would be out. The fact is that if we had nothing firm to hold, why would anyone pay their assessments? Why would anyone pay their HOA dues? I think that would create another problem.

Glen Proctor, Treasurer, Mountain's Edge Master Association:
I am a board member for Mountain's Edge Master Association, a community in southwest Las Vegas of 10,500 homes and growing. I am here in the official board capacity to argue against A.B. 240. Since the housing crash of 2008, we have experienced a high rate of delinquency on assessments. As fiduciaries of our association, it is our duty to pursue these debts, and the tools we use are collection companies and the filing of liens. In normal circumstances, banks would foreclose on defaulted properties in a timely manner and, in such cases, NRS provides that the association is entitled to nine months of unpaid assessments. In practice, banks are sitting on defaulted mortgages and taking

no action for years on end. Meanwhile, the association's expenses continue unabated, so the responsible homeowners who pay their assessments have been stuck for years paying more than their share to make up for the shortfall.

The recent Nevada Supreme Court decision affirming the super priority liens wipe out first security interests in foreclosure was positive for HOAs because it has encouraged banks to bring delinquent properties current on assessments in order to avoid association foreclosures. The association in turn does its part by maintaining the appearance of the neighborhood that helps to increase property values, which is positive for banks when they do act.

Assembly Bill 240 seeks to make it harder for the HOAs to take action on unpaid assessments to the point that it will cost more to collect than the value of the unpaid balance. This bill does nothing to reduce the costs of the association, so the board has no choice but to raise assessments on the only remaining source of income left—the people who diligently pay their assessments every month. Assembly Bill 240 punishes these solid citizens who have made fiscally responsible choices in life, work hard to pay their mortgage, their taxes, and their assessment, while simultaneously rewarding those who have defaulted on their promises. We urge you to reject this measure. It is great for bankers and lawyers, but it is not so good for the solid citizens.

Norm Rosensteel, representing Nevada Chapter, Community Associations Institute:

I am here appearing on behalf of the Community Associations Institute and as a homeowner in a common-interest community. If you remove the super priority lien, as others have said, you make the people in the association who are paying their assessments to have to come up with the money for this. The reason we are in the situation we are in is because of the inactivity of the banks and their not taking any action at all, so the associations have had to take some kind of action. Millions of dollars will wind up being put on the backs of the owners who do pay their assessments on time.

Regarding the judicial foreclosure, it is much more expensive and will clog the court system unbelievably. As Ms. Kern said, there are 1,500 notices of default filed by one collection company. You can figure 8,000 to 10,000 of those a year, and in the court system today, it is just not going to be manageable.

Additionally, some information from the Foreclosure Mediation Program shows there were 13,040 bank foreclosure certificates filed in fiscal year (FY) 2014, and 1,245 HOA notices of sale for a total of possible foreclosures of 14,285.

Of those, 358 actually were foreclosed on by associations, so in the whole state for FY 2014, that is approximately 3 percent of the total. It is not a large number.

In closing, I think we all agree that no one wants to see the banks wiped out. The associations are not looking for a windfall or wiping out the first mortgage holder, but they do want what is owed to them.

Assemblyman Ohrenschall:
Is the 3 percent figure you had out of the total of 14,000?

Norm Rosensteel:
That is correct.

Assemblyman Ohrenschall:
Do you have any data as to how much of arrears, dues, and assessments are recovered by the board versus how much has been paid out to the collection agencies? If we are having a good balance and making the association whole, that is great. If there is unjust enrichment the way there was six or seven years ago, then I am worried. Do you have any data about that here in Nevada?

Norm Rosensteel:
I do not have any data at the current time, but we can certainly get you as much information as we can.

Assemblyman Ohrenschall:
I appreciate that. Would you be able to distribute it to all of the Subcommittee members?

Norm Rosensteel:
Certainly.

Diana Cline, representing SFR Investments Pool 1, LLC:
I am a homeowner and a purchaser at some of these association foreclosure sales. We oppose A.B. 240 as written, and we are very concerned that the HOAs and the homeowners, who are doing the right thing, will be left with the cost of unpaid assessments. We are definitely happy to work with the sponsors regarding the issues to keep the HOAs whole and to address any concerns.

It has been mentioned a few times that the *SFR Investments Pool 1* decision that came down from the Nevada Supreme Court seems unfair to a lot of people. Some of the facts in that case might be helpful in understanding

why my client was able to purchase a property for $6,000 and the deed of trust on the property was for $885,000. As previous testimony mentioned, the bank—not the HOA and not the neighbors who are paying their dues—is the one who can decide who moves into the community. They are the ones who decide if someone can afford it. In that particular case, the bank gave the buyer an $885,000 loan in 2007, and the borrowers defaulted in 2008. They abandoned the property in bankruptcy, and then it was four years before the association finally took action and foreclosed. The bank had done all the things that they needed to do to foreclose. They lifted the stay in the bankruptcy and obtained their certificate of mediation five full months before the association foreclosed.

So the bank had the ability to foreclose at that time, there was no holdup, and the association and the other members of the community were still left holding the bag. I think those facts are helpful in understanding when my clients purchase properties at these sales, over 60 percent of them are already abandoned. We are not looking at kicking homeowners out of their homes. We are looking at homeowners who have already moved on and the association is still not being able to collect dues.

As for the low prices at these foreclosure sales, those days are gone. The day after the *SFR Investments Pool 1* decision came out, prices at the foreclosure auction the next morning were at market rate.

Assemblyman Elliot T. Anderson:
I worry about the commercial reasonableness of these sales. I think it has a lot of unintended effects on the potential suitability of the renters that come in and rent from a lot of investors. I know my own community has gone through some issues like that. Are you telling me now that none of these "fire sale" prices are occurring anymore? Am I hearing that correctly?

Diana Cline:
That is correct. The prices went up to market value, or the foreclosure market value, the same as you would get at any NRS Chapter 107 sale. The day after, the prices have gone down because the banks are still litigating the issue of whether or not there will be clear title, so the prices have stabilized around 50 to 60 percent of market value at this point.

Assemblyman Elliot T. Anderson:
With the prices going up, why are people still buying? Does that make sense? With these prices, they are not bargains anymore. Is that slowing down the number of people who are bidding on these properties? Are your clients still purchasing a lot of properties?

Diana Cline:
My client is not purchasing a lot of properties because properties are not going to sale. The banks are taking care of it, and the homeowners—who now understand that an HOA can foreclose and they could lose their home—are actually paying. One of the comments that my client received when they talked to homeowners after the foreclosure sale was, "I got all the notices. I just did not know that the HOA could actually do it."

Marilyn Brainard, Private Citizen, Sparks, Nevada:
I live in Wingfield Springs Community Association. It is a master association in Sparks. I have been there 17 years—nearly since the very beginning of it.

I would like to follow up regarding what the previous speaker had mentioned, that delinquent assessments are down, and I think someone asked a question about it. I am happy to say that they are certainly down in my community. We do not have the outstanding balances that we have had in years past. I am very glad to hear that because assessments are our only source of income. It is our only revenue stream for our nonprofit corporation. We do not go out and do fundraising to help meet our expenses, and we do have a lot of expenses. Assessments are very important to us.

I look forward to what one of the speakers in Las Vegas mentioned, which is seeing what the amendments are going to be. I congratulate you for working positively with your colleagues on the Senate side of the Legislature to help come up with language that will help, and not hurt, close to over 3,000 associations in our state and close to one million unit owners. One million Nevada citizens live in associations, and we rely on that. We look forward to seeing what the final bill will be.

Scott Hedlind, Private Citizen, Las Vegas, Nevada:
I am a homeowner who lives in an HOA. I am also an owner of a small management company, and I have been managing communities for 13 years.

I have been down in the trenches every day. I wanted to make a couple of comments. First of all, I appreciate the fact that there are going to be amendments to this bill because there are some real issues on it. Secondly, there has been a lot of talk about the fairness of the nine-month super priority lien. I personally do not know why the banks get off with a break of only having to pay nine months, especially on properties that have been vacant for four or five years. Why are they not responsible for paying the entire amount? I doubt if I will get anywhere with that one.

If there is a question about banks getting notice, why can there not be a requirement that the banks give an address that they want their foreclosure notices to be on file with the Real Estate Division or the Commission so that every bank has a way of getting in contact with them? I do not know if you realize this, but the same bank can have 15 different addresses to go to and the person who receives a notice may not know what to do with it. By the time it goes through the different departments, who knows what could happen to it.

I am also in agreement that the HOAs should be on a level playing field with the banks and we should not wipe out their lien, and their lien should not wipe us out. There has been a lot of talk about the impact on the HOAs. I do not know if you are aware of this, but most associations use an outside collection agency that is no-fee, no-cost. We send the account to them after we have sent all the notices that we can send, and their costs are put on top of the actual assessment that is due and the assessments that come due. Under this law, it is going to be very risky for these collection companies to stay in business without being paid up front. For an HOA to go forward with a foreclosure process, they are going to have to pay their way through.

I manage communities with anywhere from 10 to 564 homes, with most of them being under 100 homes. They cannot afford to pay the cost of the liens and notices let alone the attorney's fees to bring a property to foreclosure. By the way, during that process when they are putting out this money, what happens if the bank comes in and forecloses and we cannot get any money back? It is going to be a huge burden to HOAs. The smaller the HOA is, the bigger the burden is going to be.

There is a concern about owner-occupied properties. I can understand that. The vast majority of properties I have seen—in fact, of all the communities in 13 years—not one of my HOAs has ever foreclosed on a property, mostly because of the risks that are still involved in it. Most of the properties I see that are vacant and not maintained are because the owner is long gone. How are you going to give notice to a homeowner who has left? Under the statute, they are still supposed to provide us with a mailing address, but they are long gone, and they are not going to get the notice. The bank should be getting the notice. I do not do the collection part, so I do not know if they are getting the notice. If they have a place on file where the collection agencies can get the right address, I think it would help alleviate that problem.

There was a question about unjust enrichment. We are all just trying to do a job. As a homeowner, I want it to be fair that I am paying my assessment, and that the next-door neighbor or the bank is paying their assessment.

Lori Martin, representing Terra West Management Services:
I am with Terra West Management Services and also a homeowner in Las Vegas. I provided the Committee with a document (Exhibit E), which was signed by several individuals regarding A.B. 240 and the opposition thereof. In listening to everyone's testimony, it is very valid to hear on the opposite side. I believe that the banks should definitely have a protection for their investment in Nevada's mortgage industry. One of the things I am concerned with is creating the requirement for something to go to court through the judicial process that ends up being a litigation matter. Then it ends up on the HOA's pending litigation statement, which is required in a resale package. I often get phone calls from underwriters asking about the items listed on the pending litigation for each HOA, and this actually triggers the underwriters to deny the loan. The whole creation of the judicial process will absolutely slow down or cease loans in the state of Nevada. That was primarily one of the concerns I had after listening to everyone.

I also wanted to thank Ms. Cline for explaining the background on the *SFR Investments Pool 1* ruling because it lets everyone know how much notice the bank had and that the $885,000 was not just snuck out in a parking lot and done. There was the ability for the bank to do several things, and the unjust enrichment was caused by the bank, and the HOA did not get the difference in the money. It went to the person who bought the property for $6,000. That is pretty much all I needed to say.

Chair Seaman:
Is there anyone in Las Vegas who is neutral on this bill? [There was no one.] Is there anyone in Carson City who is neutral on A.B. 240?

Samuel P. McMullen, representing Nevada Bankers Association:
I think there are a lot of great ideas and I understand that there will be more, but I do not like the fact that we have to sign in against something just because we might want to see it amended. I thought what would be important would be to take a few seconds and indicate for the audience and for the Subcommittee that, unfortunately, in this session, there are always two houses and two sets of bills that are coming through. We have been working on the Senate side on a bill, Senate Bill 306. The Nevada Bankers Association's position with respect to trying to involve themselves in that bill and then to actually help position it was based on the theory that the best thing for everyone would be to see if there was a way to accelerate the ability of the banks to pay off the loan of the super priority amounts, get the HOA the money as soon as possible, and make that not the only nine months they get—if that, in fact, is paid off, and another one starts growing before foreclosure that they could utilize the lien again for that.

Given the *SFR Investments Pool 1* opinion which was explained to you today, the banks could have tried to cancel the extinguishment, but that did not seem to be the best resolution of this. Based on a notice of default timing, we had asked for sooner than that, but it seemed like from the HOAs that that was a smart time to do it because it would be recorded and it would be done in a way that would give the 90 days or X period of time after the notice of default to allow the bank to come in and pay that off. If that was paid off then, in effect, what would happen would be that the HOA would get the money, sooner probably than some of the current time frames, and then the bank would again sort of, just to use my phrase, have the lending world and the foreclosure world come back into a more normal course.

Homeowners' association foreclosures have been interesting over the last few years, but what the banks want to do is to have the opportunity to continue to search for workouts or to ultimately foreclose if that is the only option. That bill is processing. I will be happy to explain it to anyone else. The point is that there is a lot of good work happening. I really commend Assemblyman Gardner and Assemblyman Moore and members of this Subcommittee for having their name on this bill and being interested in it and Assemblyman Jones for trying to figure out other things that would be helpful.

I think we will get a smart bill out of this session that will actually become a win-win for more people and try and take some of the issues away. I did not want to go off topic, but I wanted to let you know there are other options.

Chair Seaman:
Assemblyman Moore and Assemblyman Gardner, did you want to come and wrap it up?

Assemblyman Moore:
We have heard a lot of opposition, and it is interesting that the only opposition seemed to come from HOAs and not the homeowners themselves. It is true that HOA members are homeowners as well, but primary interest is the business of HOAs. I believe HOAs have other remedies to recover the amount in arrears that is owed to them, meaning that we have small claims courts and there are other options available rather than taking a hardworking Nevada family and forcing them out onto the street because they could not, or did not, pay a service fee to an HOA. It is the HOA's choice to put a family out on the street and if we put one family out on the street in Nevada, that is one too many. I would strongly urge your support of this bill.

Assemblyman Gardner:
I would like to ditto what Assemblyman Moore said. I believe that we got caught up a bit in extensive rhetoric on the opposition side. Many states do not have super priority liens, and yet they are not all bankrupt. Many states use judicial foreclosure, and yet they are not all bankrupt. We will continue to work with everyone and try to find a happy medium if we can. I think the opposition seemed a little exaggerated to me based on what the actual facts are throughout the country.

[A letter in opposition (Exhibit F) was submitted but not discussed.]

Chair Seaman:
I will now close the hearing on Assembly Bill 240 and open the hearing on Assembly Bill 259.

Assembly Bill 259: Revises provisions relating to real property. (BDR 9-181)

Assemblyman Elliot T. Anderson, Assembly District No. 15:
I am here today to present Assembly Bill 259. I would like to open my testimony by providing the members of the Subcommittee with information on the measure as well as highlighting the bill's key provisions.

As many of you may know, the Foreclosure Mediation Program was created by the Legislature in 2009 through Assembly Bill No. 149 of the 75th Session. This was created to help residential property owners stay in their homes during a very turbulent time in Nevada mortgage finance, a time when people did not know what was up, down, left, or right. The market was riddled with uncertainty. No one knew what was going on, and there were a lot of things that we had to get fixed.

The purpose of the Foreclosure Mediation Program was, and continues to be, to address the foreclosure crisis in Nevada by putting homeowners and lenders together to mediate an alternative to foreclosure. Assembly Bill 259 makes changes to the Foreclosure Mediation Program and adds homeowners' associations (HOA) to participate in the program as well. There are two key components of A.B. 259, which are two different and distinct sections.

Section 1 specifically requires the lender to send a representative to the foreclosure mediation session who has the authority to modify the economic value of the loan and to bring proof of that authority. This requirement will ensure that it is done faster and clearer than it has been. Right now we use outdated language—the beneficiary of the deed of trust—which really does not

do much for us in an economy that is based upon securitization. Oftentimes, the deed of trust is in the name of Mortgage Electronic Registration Systems (MERS) and only comes out to the servicer for foreclosure. It does not necessarily mean that you have the right to modify the note. When the Legislature said we want the owner of the loan to come and negotiate with the homeowner, sometimes that servicer, or the beneficiary of the deed of trust, is under contract to a different party and cannot always come to the mediation with that full authority.

The Permanent Editorial Board for Uniform Commercial Code (UCC) has spent some time clearing up the confusion with this. Article 9, specifically *Nevada Revised Statutes* (NRS) 104.9203, is the way to determine the rights for people when there are securitized loans after it is sold. Initially, the beneficiary of the deed of trust would be the person who has that right, but once they sell it and are under contract to someone else, you would need to look more towards NRS 104.9203. I have provided a memorandum (Exhibit G) that I created. I spent a lot of time researching and working on this issue because I used to work as a foreclosure clerk with the Legal Aid Center of Southern Nevada.

The way the bill operates is when you have a securitized loan, you can expect that the promissory note is going to be endorsed and blank because it has to be sold sometimes repeatedly. The idea is that when it is endorsed and blank, it is bearer paper under UCC Article 3; however, it does not mean that you necessarily have the right to modify it. Even though it is bearer paper and if you have possession of the note at mediation, it does not quite work when you are under contract to someone else that you do not exactly have the full rights to modify it. This bill tries to update all language to get something that is more useful for the courts and is clear to understand. I have cited in my memoranda the UCC Editorial Board, which is really an expert and the authority on rights relating to mortgage loans.

Section 2 requires a homeowners' association to give the owner or a holder of a security interest in the unit the option to engage in the Foreclosure Mediation Program prior to a foreclosure sale. Currently, HOAs can impose liens on a residential unit for certain amounts that are due, as we have just heard. Existing law authorizes the nonjudicial foreclosure process in that instance.

Section 2 provides that a homeowners' association cannot foreclose by sale its lien on a residential unit if the owner or each holder of a security interest on the residential unit chooses to enroll in the Foreclosure Mediation Program upon the homeowners' association recording a notice of default and its election to

enforce the lien by selling the residential unit. The manner in which the Foreclosure Mediation Program is carried out is similar to the mediation of a foreclosure of a deed of trust under the traditional program with the bank.

You have already heard about this issue, and I think this is another crack at figuring out how we can rectify this issue, get notice to everyone, and hopefully make the HOA whole, make the collection companies whole, and make sure we do not have a homeowner getting kicked out unnecessarily, and ensuring that the bank does not lose its interest. This is a problem that we have to get our heads around if we want to ensure that lending continues to go on. I want to emphasize before I end my testimony that it is not mandatory for the parties to engage in the process. It would be one step where they can say, "Oh my gosh, I could lose my interest here; I want a chance to get it." Hopefully, when people get notice of the mediation, the bank will come in and pay off the super priority amount. The bank could even potentially add that to the arrears of the homeowner and then the homeowner could enter into an agreement with the bank. I need to give credit to the banks behind me in terms of the traditional program, particularly some of the larger lenders, such as J.P. Morgan, Bank of America, and a few others, because it has become very effective. I will be happy to answer any questions.

Assemblyman Gardner:
I appreciate this bill. I, too, have dealt with some of these mediations and this seems to fix a lot of the issues we were having. We would have the bank on the phone but we could not get anywhere because there was no one who could actually do anything. That would happen a lot with the mortgage companies with the ones I saw.

Assemblyman Jones:
You mentioned that the mediation is not mandatory. Could you elaborate on that? If it is not mandatory, do you think that people are actually going to attend? As my colleague mentioned, they do not even participate by phone.

Assemblyman Elliot T. Anderson:
Let me clarify that a little. If the unit owner or the holder of a security interest wants to elect the mediation, then it is mandatory. There would have to be a certificate recorded before the HOA could proceed to do a sale. That would be required; however, if the unit owner said, "I am tired of this," then the unit owner would not have to do it and the same thing for the security interest holder. I would expect that if they have a security interest, they would want to either pay it off or try to get some resolution. Hopefully, they just get the notice and pay off the super priority amount. I think that would be the ideal and not even go to mediation; just have it taken care of without having to go

through the process. When it comes down to mediation, there is not a lot you can mediate with a super priority amount. It is not where you can reduce interest. The idea would be that this is a clean, clear policy choice and that we are going to ensure that everyone's rights and responsibilities are clear, that people get notice, and that we attempt to fix this issue that has been hanging over our state. I thought, why get into the super priority statutes if I can just get people to talk?

Assemblyman Jones:
Obviously, the turmoil and the problems came because of the recession that we had. Now we have come through that, and in the previous bill, the deeds are almost at full market, et cetera, on the full foreclosure, on the steps of the courthouse. Is this adding on to something? Do you feel it is still necessary when we have already transitioned through, or is it just more stuff that we are piling on because of the past when we are actually through that time period?

Assemblyman Elliot T. Anderson:
I think that what we have realized with the super priority and other issues is that our law was not equipped for what came at us. We were just not ready for it. I think that no one in this Legislature, contrary to the justices' opinion in *SFR Investments Pool 1 v. U.S. Bank* [130 Nev. Adv. Op. 75, 334 P.3d 408 (2014)], read the Uniform comments to the 1991 Uniform Common-Interest Ownership Act, and if they did, I am very impressed.

In some of the rationale that we knew what we were getting into with this law, I do not know if that is quite accurate. I think we need to try to get it right now that it is subsiding a little bit. I think we should leave it in there in case we have another calamity happen, because now that we have had experience with all of these issues, I think we have fully vetted these laws.

Section 1 is an attempt to try to clarify it and get the law to be even more efficient for all of the parties involved. Many times these mediations still get tripped up over wondering if a person has the authority or not. Should something happen again where we have a national crisis that we cannot control, which is a Wall Street-driven problem and not one that is driven in Nevada, I think we want to have the right processes in place so that we are capable of handling it and we have less stress with all of our constituents. Now that the lenders have experience with it, I think it is going to run a lot more smoothly and effectively.

Chair Seaman:
Is there anyone in Las Vegas or Carson City in support of A.B. 259?

Jon Sasser, representing Legal Aid Center of Southern Nevada and Washoe Legal Services:

I am here in support of the bill. There was a question about if this crisis is behind us. Things are a lot better, but I believe the last statistics I saw show that we are still number two in the United States in terms of foreclosures, and still number one in terms of our homes being underwater. We are making a lot of progress, but we are not out of the woods yet. I heard Justice Hardesty in his testimony to the Senate Committee on Finance express some concern that there may be another bubble of foreclosures coming. I do not know that we can say that everything is smooth and dandy.

The bill does two things which we think are very important. When you go to a mediation—and we do have attorneys in our offices that represent clients in these mediations—this bill would ensure that you actually have someone who you can negotiate with who has the authority to reach a deal if a deal can be made. That is hugely important. As to section 2, we think it is important, based on the testimony you heard in the last bill, that if you are going to lose your home, there should be a process by which someone other than the parties be involved. If it is the courts, then that is the most due process—probably the most expensive due process. With this, at least you will get a certificate from the Foreclosure Mediation Program that there has been an opportunity offered to mediate and that it has been unsuccessful or not taken advantage of, and then the state gives that certificate saying it is okay to go forward with the foreclosure. If you are going to lose your home to a bank, you have the opportunity to mediate. If you are going to lose your home to an HOA, we think the same right ought to be there.

We heard testimony on the last bill that very few of these cases actually go to the foreclosure sale, because one of two things happen beforehand. First would be that the homeowner comes up with the money, and the earlier that we can get their attention and get them to come up with the money, then the lower the collection costs are that they have to pay, so we think that is important. The other possibility is the bank, that they come up, so this gives them another bite at that apple as well, and will hopefully cut down even more on those situations where we do go to foreclosure sale and we do have those odd situations where someone picks up an expensive property for a small amount of money.

One of the things I would like to say generically about all of these bills is that I have been involved in the discussions that led to Senate Bill 306 as well. One thing that I am very concerned about is, if we continue with our law as it is, as interpreted by the Nevada Supreme Court, the federal government is

basically saying, "I am not sure we want to make loans to anybody under that anymore." They are filing lawsuits against the people who are buying these properties at the foreclosure sales. I do know that you are buying a lawsuit from the federal government if you are one of the 80 percent of folks who have the federal government involved in their loan. I think that elephant in the room needs to be recognized as we go through this whole process.

Samuel P. McMullen, representing Nevada Bankers Association:
I do not have a Nevada Bankers Association position, but when you are arm-twisted by Assemblyman Anderson and Mr. Jon Sasser to show up at the table at their elbow, you do it. Based on the conversations I have had with Assemblyman Anderson and with his testimony tonight, I think we are willing to work through the process and clarify a couple of issues. In regard to the things that I think are key to us, we do not really have an objection with respect to section 1, subsection 6 on page 4 regarding the person with authority. I think that has been the intent of the mediations from day one and besides some bumpy runway trying to get it going and trying to get people to understand and have them come prepared, I think it is working for the most part, but it only works if people come there with the ability to do a deal. That seems extremely important and I do not think my Association will have a problem with that.

In section 2, which starts on page 7 of the bill, there are some interesting circumstances—at least there are such a variety of circumstances that could be at issue at any moment. As I heard it said again tonight, if it is really basically to try and make sure that the HOA and the unit homeowner have a chance to sit down and mediate, that is great. That could be a situation where there is only a default on the HOA assessments and not on the lender. I know that that happens; I do not have any facts about the sort of arrangement and confluence of those two things.

Having the lender be a part of that, when there is no default on it, is sort of an interesting question mark. If it allows for people to elect in, as this does, then I think that makes some sense. If they want to, they can. If they decide not to, it seems to me that that should not take away the homeowner's right to do it if there is a later foreclosure brought by the lending institution or the lienholder as opposed to the HOA as a lienholder.

Trying to clarify those types of issues with Assemblyman Anderson were some of the things we talked about earlier today.

As far as we are concerned, any chance for someone to work out the ability to stay in their home and have it make sense and do it in a way that is fair, reasonable, and not too costly for everyone I think is probably what everyone's goal is. We will be happy to work with the sponsor to make sure that we can make this as acceptable as possible to us.

Assemblyman Ohrenschall:
I appreciate this bill and what you are trying to do. I think it is great trying to get both sides together. My question has to do with the track records. I have heard varying accounts about how successful the mediations can be. Are you optimistic that people are going to participate and that this is going to work and not just have a stalemate? I hope you are, but I would like to hear some comments.

Jon Sasser:
I think each party should have the opportunity. The way it works is you get the notice that you can be in the mediation program. You have 30 days to let the program know if you are going to do it and put up your $200 to be in the mediation program. If you do not, then the HOA can get a certificate to go ahead. When they sit down together and with the bank having notice—these are slightly different issues than getting a refinancing or qualifying for one of the federal programs that you are going to be dealing with at a regular foreclosure mediation—you have a certain amount of money that you are behind, and you have to work something out. I am hoping there are fewer of these coming along.

I would like to give a plug for Senate Bill No. 280 of the 77th Session, which said for the first time that before the ball is handed off to the collection agency and while these costs are not running up very rapidly, there has to be at least one letter after a 30-day delinquency to the homeowner saying you have a right to know what the charges will be, and if you do not pay, you have a right to enter into a repayment plan, and if you think the amount is wrong, you have a right to a hearing before the board.

I am hearing anecdotally tonight that within the last 11 months or so that homeowners are paying a lot better and we are seeing a lot fewer of these, so I would like to think that that legislation has had some success. I think the more bites of the apple that you give the homeowner, the more they are going to be successful. There are going to be some who cannot afford it and have walked away, so this will not help them. It will help those who elect it within the 30 days.

Assemblyman Ohrenschall:
I appreciate your hard work on this.

Bob Robey, Vice Chair, Nevada Homeowner Alliance:
I wish I were as eloquent as Mr. Sasser. He said something that caused me to just become elated. Someone will be taking a second look at why the delinquency exists. No one tonight has mentioned the fact that many times I have been called and people have said, "It is a bookkeeping error on the management company's books." We are aware that management companies change from one association to another to another, and they have to transfer their books and records, but that does not mean that those books and records are accurate. Thank you for this bill, Assemblyman Anderson, and thank you, Mr. Sasser, for your wonderful comments. Not to take anything away from Mr. McMullen—he was also eloquent.

Chair Seaman:
Is there anyone else in support of A.B. 259 in Las Vegas or Carson City? [There was no one.] Is there anyone in opposition of A.B. 259?

Norm Rosensteel, representing Nevada Chapter, Community Associations Institute:
One of the issues we see with the bill is that it drags the process out longer, but there are also a couple of procedural issues. Having a person there with the authority to negotiate is a problem because the board has to make decisions with the majority of the board, so one person does not have the authority to do that.

The second issue is that assessments are not negotiable. They are what they are. They can negotiate with late fees and interest, but the assessment is the assessment. If you can negotiate the assessment, no one is going to pay their assessment. That is the problem we see with it.

Gayle Kern, representing Nevada Chapter, Community Associations Institute:
We agree, and I would let Mr. Sasser know that the bill that was passed last session that allowed the payment agreement has been very effective and it is taking care of some of these. We do not fundamentally have any kind of problem with having more opportunities to see if we can get payments. We really do not want to foreclose. The way it is written, I think we would like to work with Assemblyman Anderson to see if we could do some amendments that would make it a little smoother or the procedure work better, but we do believe that it is important to try to get the homeowners to be able to pay their assessments. That is all we want.

Pamela Scott, representing the Howard Hughes Corporation:
I am here on behalf of the Howard Hughes Corporation, the developers of Summerlin, which is quite a large association. With regard to what Mr. Sasser said about the early notices, the 60-day letter, as it is being called these days, is basically a mediation. It gives the homeowner the opportunity to come in and sit down with the board and technically mediate when they are only 60 days delinquent, have accrued no collection costs, and maybe only have a few late charges. I think it has been successful. I think it will continue to be successful. I know it is being called "second bite of the apple" to go into a mediation before foreclosure, but my main concern there is the time it is going to add to this.

For the record, I will say that no Summerlin master association has ever foreclosed on a homeowner. They are carrying multimillion dollars in receivables as well. I should put it that the homeowners who pay every month are carrying. That is one of the fallacies. The association is the homeowners. There is no one else's pocket to take it out of. It does not come from the management company, the developer, or the lawyers—it is just the homeowners. They are the only ones who pay.

Currently, to get to a notice of default stage that triggers this mediation, it takes approximately six months, and that is a best-case scenario. It is usually much longer than that. This bill would add another four months minimum to the process, and it will add to the collection cost. I want to make sure that everyone understands that because if the bank steps in and starts their foreclosure, the associations will then lose the difference between the nine months and however long it takes. Very often these homes are empty homes, so those homes are not going to be in mediation as they did not come in on the 60-day letter. When a homeowner takes bankruptcy and abandons the home, that bankruptcy is in place for years. Everything is stayed for the association as well as the bank. Some of the banks do go to court and get a lift of the stay. Associations do not do that. It would be too expensive to do that, so they sit for years on these bankruptcies. Technically, they should get all of their money, but the homeowners who leave are supposed to be paying the post-due assessments, and they do not, and we cannot file new liens for the post until the bankruptcy is released. I think the associations will suffer from the time frames, and certainly from the additional cost to them.

Mike Randolph, Manager, Homeowner Association Services, Inc., Las Vegas, Nevada:
I am a licensed collection agency that represents homeowners' associations in the recovery of assessments. I am against the mediation program for HOAs. There are a lot of properties that never make it to foreclosure but by adding this to the program we already have, when we file the notice of default we will be

required to pay the additional $200 plus the additional mailing on every notice of default that is done on behalf of an association, whether the homeowner elects to go to mediation or whether their lender would like us to go to mediation.

The problem I have with lenders being brought into the mediation is that we really do not know who it is a lot of times because it is a MERS product. It is registered through MERS, someone else is servicing it, or someone else is the beneficiary of the note, so we do not know who it is that has the authority to come in and ask for this mediation on the HOA's side of the bill.

I think it would also extend the amount of time it takes, and every time we are waiting longer, it is another month of assessments that is going to get written off because the maximum collected, once the bank forecloses, is going to be nine months. If this program takes it up to 10 to 12 months, then we are just looking at every month that this extends it is another month that is going to be written off and that amount will have to be recovered by the homeowners who already pay.

As anecdotal information, throughout my client base, the 60-day letter has been exceedingly effective and because of market conditions, we are starting to see with homeowners' associations, like a lot of other businesses, that their new 90-day receivable numbers are considerably lower than they were in 2007 through 2012. We are seeing a lot of associations today that are looking at between 3 and 5 percent in new 90-day delinquencies as opposed to the 18 to 20 percent we were seeing a year ago.

Assemblyman Ohrenschall:
Is it not just as possible that if the homeowner elects the mediation, and mediation happens, that an alternative to forgiving arrears might work out, or maybe even arranging a payment plan? The HOA could still be made whole and the homeowner might still be able to save their home. There is another possibility as well, do you agree?

Mike Randolph:
Yes, I agree. There is mediation, arbitration, and another program available through the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels at the Real Estate Division, Department of Business and Industry. At any time during the process, from the day the initial 60-day notice goes out all the way to the day of sale, the homeowner is always capable of contacting the board of directors or calling me directly in my office. They can also go to the financial institution or the Real Estate Division to have someone else get on the phone to try to mediate a program.

We are always open to mediation. I always want to get paid; I do not want to foreclose.

Assemblyman Ohrenschall:
I hope I am understanding this correctly. This bill would be a supplement to the mediation already existing in NRS Chapter 38, not supplanting it?

Mike Randolph:
I do not know whether the sponsor intended this to supplant NRS Chapter 38 or be an addition to it.

Robert Frank, Private Citizen, Henderson, Nevada:
When I read this bill, I could not intellectually get into the combination of what seems to be intended with very complex additions. Speaking as a member of the Commission for Common-Interest Communities and Condominium Hotels but not representing the Commission, observing and then reporting many of the foreclosure problems we have seen the past few years, I have to say that my basic fundamental principle is that I oppose nonjudicial foreclosures.

Speaking as a former member of a large HOA board, I am quite familiar with renting to people who try to game the system and try to dodge their responsibilities of paying assessments. I have to agree with the previous comments. There are plenty of opportunities for people who have honest intent to have the opportunity to avoid foreclosure.

From personal experiences I ran into on my board, I sadly found that many times the communications in regard to the intent of the rules, with the intent of the correspondence, and what the actual purpose of where we were going to go on some of the communications that led to collection company involvement, were very fuzzy, and not always well intentioned, in my opinion. The bottom line is that while I was on the HOA board, we never foreclosed on anyone, but that was many years ago before the crisis we are talking about.

Quite frankly, my conclusion is that I cannot see, from reading the bill, where it would significantly help solve the problems. After all the testimonies we have heard on both of these bills, and some of the bills to come that have not been discussed yet, in terms of HOA statute changes, this is kind of a cloudy situation where it is hard to say there is a single solution in this bill or any other bill that can be done as written. It looks to me like we have a lot of work to do to pull them all together and make sense at the end of the day. Thank you for the opportunity to comment.

Chair Seaman:
Is there anyone in Las Vegas or Carson City who would like to testify in neutral regarding the bill?

Jennifer Gaynor, representing Nevada Credit Union League:
We understand that Assemblyman Anderson has spent a lot of time down in the trenches assisting homeowners with the Foreclosure Mediation Program. We appreciate his attempt to clean up what he sees as some technical issues with this program and to make it available to more homeowners. We have taken a look at the bill and we believe we will be able to comply with what it asks for without a problem.

Jonathan Friedrich, representing Nevada Homeowner Alliance:
There was something that was said a little while ago by Mr. Rosensteel. Either four or six years ago, the Legislature put into NRS Chapter 116 where it specifically says that the board can negotiate with the homeowner. Unfortunately, I do not have the statute with me, but I can send it to your office tomorrow morning by email.

Assemblyman Elliot T. Anderson:
Just to make it clear on where I am with this, I am willing to negotiate the total time frame. My intent is not to make this unnecessarily longer, but it is an attempt to let us tap the brakes a little bit and make sure we can get everyone in a room and have them talk.

I appreciate the fact that we have already done some changes with the 60-day letter that you have already heard about, and I want to ensure that this process works well for the homeowners, lenders, and the HOAs. I think we can get there.

The beauty of this is that it is a clearer policy choice than getting into the super priority statutes. I believe it is a lighter process than the judicial foreclosure. Although it would add some cost, it would not cost as much to employ. If you have an attorney who is in litigation, I think that is going to cost you a lot more. This is a way to get halfway between where we are at now and the judicial foreclosure.

Chair Seaman:
I will now close the hearing on Assembly Bill 259 and open the hearing on Assembly Bill 301.

Assembly Bill 301: Prohibits restrictions on the freedom to display the flag of the State of Nevada in certain places. (BDR 10-533)

Assemblyman Lynn D. Stewart, Assembly District No. 22:
Assembly Bill 301 is brought about by a constituent who flew the flag of the State of Nevada on his property in a homeowners association (HOA) during the 150th anniversary of Nevada. He was told he could not do this, and he was prohibited from flying the flag. We brought this bill forward so he could do so as long as it was not larger than the United States flag.

Chair Seaman:
Are there any questions from the Committee? [There were none.] Is there anyone in support of A.B. 301 in Las Vegas or Carson City?

Garrett Gordon, representing Nevada Chapter, Community Associations Institute; Southern Highlands Community Association; and Olympia Companies:
We are in full support of the bill and are here for any questions.

Marco Velotta, Private Citizen, Henderson, Nevada:
I am representing myself in support of A.B. 301. I am a proud Nevadan, and during our sesquicentennial year as a state, I celebrated the occasion at many events throughout the state, including the parade in Carson City. I also did so by flying the flag of the State of Nevada in front of my house at my residence until I received a cease and desist letter from the Champion Village HOA even after following the procedures outlined in our governing documents. When I presented my arguments to the board and to the community manager, they were not swayed and would not hear the matter except through a closed session. However, they had no problem approving me to fly a Denver Broncos flag. I attempted to come to a resolution but I was advised that nothing could be done and that I would have to contact my legislators for a change in the *Nevada Revised Statutes* (NRS). I did this through Assemblyman Stewart, for whom I am very grateful.

I am a city planner and I do not take any issue with reasonable covenants, conditions, and restrictions (CC&Rs) and I fully understand and agree with the standards for signage and support of community aesthetics. Throughout this experience over the past year, I have reviewed signage standards and zoning codes in many of the cities and counties across the state, and none contain prohibitions on flying state flags on residential or commercial properties. Some even explicitly allow for it, including the City of Henderson, the City of Las Vegas, and Carson City. However, if you live in an HOA, as many Nevadans do, where HOA governing documents apply, it depends.

Most HOAs tend to be restrictive. Some, such as ArrowCreek in Reno and the Sun City communities in southern Nevada, only allow the American flag. Some, including Caughlin Ranch in Reno, explicitly allow for the state flag to be flown and others, including my HOA, may leave it up to the boards' discretion to pick and choose how you can decorate your property.

In my case, this is our state government's flag and as a matter of state and civic pride, I hope that all Nevadans, whether they live in Laughlin, Jackpot, West Wendover, or Lake Tahoe, have the right to freely fly our state's emblem, regardless of whether we are celebrating a milestone or not. The American flag is protected under NRS, and I respectfully ask this Subcommittee and the Legislature to extend the same protection to our state flag as well. Thank you for the opportunity to testify before you today and for your efforts this session.

Chair Seaman:
Thank you for your patriotic testimony.

Assemblyman Ohrenschall:
Thank you for bringing this bill. You either love HOAs or you hate HOAs. A lot of us are wondering why we even need a bill like this and why should we have to amend the NRS for this. I understand why you are doing it, but I am sorry that your constituent had to go through that. I think it shocks the conscience.

Assemblyman Elliot T. Anderson:
I love Nevada and I love this bill. Home means Nevada.

Robert Frank, Private Citizen, Henderson, Nevada:
I represent homeowners on the Commission for Common-Interest Communities and Condominium Hotels but I am representing my own opinion tonight. I think this deals with one of the fundamental complaints that I hear so often against HOAs and it is the domineering bullying against people for no good reason whatsoever.

Homeowners' associations are supposed to be protecting the property rights, the lifestyle of people, and the ability to have the quiet enjoyment of their properties. It is so ridiculous across the country and in this state that we see so many boards—I admit it is always a minority—insulting us citizens by taking advantage of us and abusing their authority by wanting to change a statute for something as simple as this.

It gets me really stirred up as an American patriot to simply say you have to change the statute in order for everyone to be allowed to show their patriotism for their state and for the American flag. I am glad you are doing this, but I am saddened that we have to do this sort of thing from a statutory point of view. I am glad to endorse and encourage this kind of thinking.

Jonathan Friedrich:
Me, too. This is regarding the behavior of boards that most people find repulsive, and so do I.

John Radocha, Private Citizen, Las Vegas, Nevada:
This is an example of when you come into an HOA community, you read the CC&Rs and bylaws, and they are vague. Then when you decide to do something that you feel is highly personal, they beat and fine you to death.

I do not know why the CC&Rs cannot be held the way they are. You look at it and think you can live by that, but then they come with these other things that are not in the CC&Rs or bylaws. Who gave them the authority? They want me to abide by the CC&Rs and bylaws but they decide that maybe they do not like me or maybe I am anti-Nevada. Maybe I came from California and I do not like Nevada. This is what my gripe is.

Chair Seaman:
Are you in support of the bill?

John Radocha:
One hundred percent. I had put out a sign that said "Support our Troops" and you should have seen the hell I got for that.

Chair Seaman:
Is there anyone in opposition to A.B. 301? [There was no one.] Is there anyone in neutral for A.B. 301? [There was no one.]

Assemblyman Jones:
Assemblyman Stewart, do you want to amend and add the "Support the Troops" as well just so we do not have a hassle next year or later on in the session?

Assemblyman Stewart:
I do not want to complicate matters, but I do support our troops.

Chair Seaman:
I will close the hearing on A.B. 301 and open the hearing on Assembly Bill 192.

Assembly Bill 192: Makes various changes relating to common-interest communities. (BDR 10-661)

Assemblywoman Melissa Woodbury, Assembly District No. 23:
Assembly Bill 192 is a measure that pertains to the timing for the transition of a declarant-controlled homeowners' association (HOA) board in large scale master planned communities. *Nevada Revised Statutes* (NRS) defines such common-interest communities as having 1,000 units or more. Typically, master planned communities are built in accordance with a development agreement. The development agreement requires the construction of key infrastructure such as parks, trails, and police and fire stations at various phases of the project development. In southern Nevada, there are several master planned communities, which include Southern Highlands, Mountain's Edge, Summerlin South, The Village at Tule Springs, and Inspirada.

Assembly Bill 192 allows the developer within a master planned community to remain on the board until 90 percent of the units are conveyed. The additional time on the board allows the developer to continue completing its obligations under the development agreement, while working with the homeowners who have joined the board. Since the developer is ultimately responsible for the proper completion of the community infrastructure, allowing the developer to remain in control of the board for a longer period of time also ensures the financial stability of the master planned community once it is conveyed to the association for maintenance.

Jennifer Lazovich and Angela Rock of Olympia Companies are here to go into more depth regarding the bill.

Jennifer Lazovich, representing Olympia Companies:
I turned in an amendment that I would like to talk about (Exhibit H). I would probably consider it more of a technical clarification. When the bill was drafted, our intent was that if the developer was going to stay on the board for a longer period of time—that period rising from 75 to 90 percent—we felt it was also a good idea to bring a homeowner onto the board sooner. For those master planned communities of 1,000 units or more, we are suggesting that if the numbers increase to 90 percent, then a homeowner can come onto the board at 15 percent rather than 25 percent. My attempt at the technical amendment was to ensure that the reduction from 25 to 15 percent applied for those master planned communities of 1,000 or more units.

As Assemblywoman Woodbury indicated, Angela Rock and I represent Olympia Companies. They have been the developer of the Southern Highlands community and will be the developer of another master planned community in southern Nevada called Sky Canyon, which is in the northwest portion of Las Vegas. They have a lot of experience being the master developer, and as part of their obligations with Clark County in the case of Southern Highlands, they have to put in parks, fire stations, numerous trails, and obviously the infrastructure in the roads and spine streets. That takes a lot of development experience, but it also takes a lot of accounting experience. To give you an example, even though Southern Highlands has not completely built out its master planned community, their operating budget for their development as it sits today is $8 million. The master association has five seats on the board. When they created the board, the developer put three people on the board with expertise in the following areas: a certified public accountant for the accounting background; someone with an urban planning background to assist in the development of trails; and a construction manager, with the idea that there are substantial amounts of infrastructure we have to put in and complete before our obligations under the development agreement are finished. That is the background as to why we think it is important for us to stay on the board until 90 percent occupation.

Angela K. Rock, representing Olympia Companies:
I will keep it brief because I believe that Assemblywoman Woodbury and Ms. Lazovich basically covered the tenets of the bill. I will make myself available for questions as we move through it, but essentially I just want to make it clear to everyone that, as Ms. Lazovich stated, we are dealing with a budget of about $8.5 million in Southern Highlands. It is going to be the same and potentially more for Sky Canyon because there will be more community amenities. I think it is key to bring a homeowner onto the board early. Think about a community—for the ease of math—as having 10,000 units. If you have 2,500 units built in an association, think about how large that is, how many parks, how many sidewalks, and how much money you are dealing with at that point in time. It can be very daunting for a homeowner representative to come on the board and learn about the process and the budgeting. On top of all of that, everything we have learned tonight about NRS Chapter 116 and managing all of that process, as you continue to move through it, at 75 percent—from looking at that mythical association with 10,000 homes—you still have 2,500 homes left to build. You have parks, sidewalks, streets, lights, and intersections.

One of the important things to note is that when a developer transitions, they are required to turn over a funded reserve account. It is a reserve account so those homeowners can have a budget they can take and fiscally and responsibly

move through and keep the assessments at the same rate. If you are turning over a reserve account and thereafter building a great deal of infrastructure, you have a disconnect. You want to push that number so that as they are completing the infrastructure, they are then turning over the reserve accounts and control of the association to a group of individuals who have been there from the 15 to 90 percent and have had a great deal of time to learn all this.

Assemblyman Gardner:
What are your concerns regarding the developers', the declarants', ability to basically extend their control of these kinds of communities? For example, there are communities around my area where they have built it over a 10 to 15 year period and there is still a lot to be built. So for 10 to 15 years, it is basically a declarant's fiefdom. Do you think increasing the number is going to increase the number of people they will be able to basically, in my opinion, somewhat abuse in this time frame?

Jennifer Lazovich:
In a master planned community, you have the master association which I just described with the five board members and their expertise. As each community is built within that master association, it has its own homeowners' association board that transitions quicker than the master planned association would transition; therefore, you get homeowner input within their individual communities quicker. The master association is meant to oversee the bigger picture part of the master planned community, not so much the individual details of each subassociation.

Chair Seaman:
Are there any other questions from the Committee members? [There were none.] Is there anyone in support of A.B. 192?

Garrett Gordon, representing Nevada Chapter, Community Associations Institute:
Today I am here on behalf of the Legislative Action Committee of the Community Associations Institute, which is made up of over 1,000 associations and homeowners. We think this bill strikes a good balance between both of them. A homeowner gets on the board sooner and the developer is able to stay on longer to fulfill its obligations to these large communities. We think it strikes a balance with the amendment and we are in full support.

Pamela Scott, representing the Howard Hughes Corporation:
We are in support of this bill. Summerlin is a vast community; we have 30,000 developed homes in our three master associations right now. We have another 10,000 acres to develop and another 30,000 homes that will eventually be built. As Ms. Lazovich said, these are master associations.

Assemblyman Gardner had concerns about developers staying on the board and abusing it. I have to tell you that I have been managing at Summerlin for close to 20 years, and the developers who have served on the boards in the past have known which hat they are wearing when they are sitting on the board. They know that hat is the homeowners' hat, and I have always been very impressed with it.

Summerlin North Community Association, which is a master association of about 16,000 units, transitioned to a seven-member homeowner board in 2001. The Howard Hughes Corporation still manages that association by contract, not because we want to stay, but they do not want us to leave. We are under contract to give them two years' notice if we want to leave. I do not think abuse in these master associations is an issue, but we can be supportive of the bill.

Chair Seaman:
Is there anyone in opposition to A.B. 192?

Robert Frank, Private Citizen, Henderson, Nevada:
I am speaking from experience, serving for two years after a transition period on the board of a community with over 7,000 homes. I have also had experience for two years on the Commission for Common-Interest Communities and Condominium Hotels, but I am representing my personal opinion tonight. I am strongly opposed to this bill because I think that proper balance between homeowner interest and developer interest are already in the current legislation.

In my opinion, when a developer is trying to extend this period of time, it is all about the money control, the profit control, and it delays the amount of investment into the reserves. It delays a lot of the decisions. Go back to the basic question—is this a community association? Is the lifestyle and the quiet enjoyment of the environment under the control of the people who live there, or is it being dictated by the developer until the 90 percent completion? It makes no sense at all to me. During the period of time of transition between 75 percent and 100 percent sales—which I have experienced—there is a natural inclination of the developer and the homeowners to want to cooperate and work together as a team. The sales of final properties are just as important to the homeowners as they are to the developer. Everyone wants to sell out and

successfully complete but, unfortunately, depending on the circumstances of the personality of the developer, there is a tendency to want to maximize profits as you get toward the end. I think this kind of control and motivation for overcontrol is dangerous and destructive to the community lifestyle. I do not see any need for it whatsoever and, therefore, I strongly oppose it. I am going to be listening to some of the arguments as they come in, if there are more, about why this is necessary. As of now, the proponents that I heard tonight gave me no compelling evidence to recommend that you do this. I am still strongly opposed.

Jonathan Friedrich, representing Nevada Homeowner Alliance:
I am speaking on behalf of the Nevada Homeowner Alliance as a legislative affairs spokesperson. I am a former commissioner on the Commission for Common-Interest Communities and Condominium Hotels. Once again, the greedy HOA developers and industry officials are trying to fatten their bottom lines at the homeowners' expense. We need to stop them. When a developer decides to create a homeowners' association in Nevada, state law clearly says that when 75 percent of the community is built and sold, it then transitions to a homeowners' association. At that time, the developer is no longer in charge of the management of the community unless the new association run by the homeowners decides to hire them back. This has been the law forever and the developers know this. The HOA industry officials know this, yet they want it changed. Southern Highlands is close to being 75 percent built out, and holds very profitable management contracts for the community in addition to being the developer in that area of Las Vegas. Furthermore, when the developer turns the community over to the association, the amenities, such as parks and clubhouses, must be built and completed. Reserve funds must be in the bank and also turned over to the new board. This is a costly step in the transition process.

In the Southern Highlands case, it seems like they are not willing to give up their contracts and turn over control of the community. They are asking to rewrite the rule book in the middle of the game. The HOA industry is always telling the homeowner that they have to follow the rules. By increasing the percentage of community completion from 75 to 90 percent, they can hang on for many years longer or possibly forever. They tried to change this two years ago at the last legislative session and it failed. This is nothing short of pure greed at the expense of homeowners. This bill was introduced in the last session of the Legislature, was opposed by the Real Estate Division, Department of Business and Industry, and it did not pass. It deserves the same treatment in this session.

Just a couple of other comments on items I heard about completing the infrastructure. It is my belief that the county and/or the city requires bonds to safeguard that the developer or the declarant completes those projects. Mr. Robey will speak next and he has some information about the Uniform Common-Interest Ownership Act.

Bob Robey, Vice Chair, Nevada Homeowner Alliance:
I am a past board member for a very large Sun City Summerlin community association. I am also the past president of a very small association in California. I used to work at the National Security Agency for a short time during my military service, and I enjoy flying the flag.

I am going to read you something from the Uniform Planned Community Act. The Uniform Law Commission wrote the following: "A common problem in the development of condominium and planned community projects: the temptation on the part of the developer, while in control of the association, to enter into, on behalf of the association, long-term contracts and leases with himself or with an affiliated entity." [Mr. Robey submitted prepared testimony (Exhibit I).] This is in Article 3, Section 3-105, Termination of Contracts and Leases of Declarant, which is part and parcel of the Uniform Planned Community Act and NRS Chapter 116.

Chair Seaman:
Mr. Robey, we have your testimony on NELIS, so go ahead and summarize.

Bob Robey:
I looked at the Legislature's opinion poll, and in the last two days 194 people voted no. The industry opposes this bill. The homeowners desperately need it. If you read the opinion poll for this bill, you will see Southern Highlands people commenting about their association, but they are not here tonight. That is a very confusing thing to me. Why are they not here? They have called me on the phone, they have called Mr. Friedrich on the phone, but they are not here.

John Radocha, Private Citizen, Las Vegas, Nevada:
I am against this bill. To me as a homeowner, it is legalized theft. That is my opinion. I am not arguing with anyone or saying it is, but to me it is legalized theft. I am against it and I would appreciate it if you would say that we are going to keep things as they are because they have been working, and seeing that they are working, they do not need to be fixed.

[A memorandum from the Real Property Section of the State Bar of Nevada (Exhibit J) was submitted but not discussed.]

Chair Seaman:
Is anyone in Las Vegas or Carson City neutral on A.B. 192? [There was no one.] I will close the hearing on A.B. 192, and open it up for public comment. Is there any public comment? [There was none.] Are there any comments from the Committee members before we adjourn?

Assemblyman Ohrenschall:
I would like to thank all the presenters and the witnesses in Las Vegas for sticking around so late. I know everyone cares about the good running of the HOAs and protecting homeowners' rights.

I also want to congratulate you, Madam Chair. You did an excellent job for your first time in chairing a legislative committee.

[A list of bills related to common-interest communities (Exhibit K) was submitted but not discussed.]

Chair Seaman:
I will now adjourn the meeting [at 8:28 p.m.].

RESPECTFULLY SUBMITTED:

_____
Linda Whimple
Committee Secretary

APPROVED BY:

_____
Assemblywoman Victoria Seaman, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary Subcommittee

Date: March 19, 2015 **Time of Meeting: 6:02 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 240	C	Bob Robey, Nevada Homeowner Alliance	Testimony in Favor
A.B. 240	D	Gayle Kern, representing Nevada Chapter, Community Associations Institute	Letter in Opposition
A.B. 240	E	Lori Martin, representing Terra West Management Services	Letter in Opposition
A.B. 240	F	Barbara Holland, H & L Realty, Las Vegas, Nevada	Letter in Opposition
A.B. 259	G	Assemblyman Elliot T. Anderson	Written Testimony
A.B. 192	H	Jennifer Lazovich, representing Olympia Companies	Proposed Amendment
A.B. 192	I	Bob Robey, Nevada Homeowner Alliance	Testimony
A.B. 192	J	Real Property Section, State Bar of Nevada	Memorandum
	K	Assemblyman Ira Hansen	List of Common-Interest Community Bills

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY
SUBCOMMITTEE

Seventy-Eighth Session
March 19, 2015

The Assembly Committee on Judiciary Subcommittee was called to order by Chair Victoria Seaman at 6:02 p.m. on Thursday, March 19, 2015, in Room 3138 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/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Victoria Seaman, Chair
Assemblyman David M. Gardner, Vice Chair
Assemblyman Elliot T. Anderson
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman John Moore, Assembly District No. 8
Assemblyman Lynn D. Stewart, Assembly District No. 22
Assemblywoman Melissa Woodbury, Assembly District No. 23

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Linda Whimple, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Robert Frank, Private Citizen, Henderson, Nevada
Jonathan Friedrich, representing Nevada Homeowner Alliance
Bob Robey, Vice Chair, Nevada Homeowner Alliance
Robin Huhn, representing HOA Board Monitoring Services and Nevada Homeowner Alliance
Gary Solomon, representing HOA Board Monitoring Services
John Radocha, Private Citizen, Las Vegas, Nevada
Garrett Gordon, representing Nevada Chapter, Community Associations Institute; Southern Highlands Community Association; and Olympia Companies
Angela K. Rock, representing Olympia Companies
Gayle Kern, representing Nevada Chapter, Community Associations Institute
Keith Lund, Private Citizen, Las Vegas, Nevada
Kitty Michals, Private Citizen, Las Vegas, Nevada
Glen Proctor, Treasurer, Mountain's Edge Master Association
Norm Rosensteel, representing Nevada Chapter, Community Associations Institute
Diana Cline, representing SFR Investments Pool 1, LLC
Marilyn Brainard, Private Citizen, Sparks, Nevada
Scott Hedlind, Private Citizen, Las Vegas, Nevada
Lori Martin, representing Terra West Management Services
Samuel P. McMullen, representing Nevada Bankers Association
Jon Sasser, representing Legal Aid Center of Southern Nevada and Washoe Legal Services
Pamela Scott, representing the Howard Hughes Corporation
Mike Randolph, Manager, Homeowner Association Services, Inc., Las Vegas, Nevada
Jennifer Gaynor, representing Nevada Credit Union League
Marco Velotta, Private Citizen, Henderson, Nevada
Jennifer Lazovich, representing Olympia Companies

Chair Seaman:
[Roll was taken and standing rules reviewed.] I will now open the hearing on Assembly Bill 240. This measure revises provisions governing liens of a unit-owners' association. Assemblyman Moore, you may begin whenever you are ready.

Assembly Bill 240: Revises provisions governing liens of a unit-owners' association. (BDR 10-821)

Assemblyman John Moore, Assembly District No. 8:
Assembly Bill 240 addresses the problems that are caused by a homeowners' association (HOA) using a nonjudicial foreclosure to sell an owner's unit just to collect nine months of unpaid dues, along with any maintenance and nuisance abatement charges, fees, and interest, and to wipe out a first deed of trust in the process. As you can imagine, the amount of these unpaid dues and charges is much less than the balance owing on the mortgage, yet Nevada currently allows this to happen under the so-called super priority statutes in *Nevada Revised Statutes* (NRS) Chapter 116.

Assembly Bill 240 will remove the super priority liens for HOAs and will require HOAs to go through the courts to foreclose liens in the future. Section 2 on page 3 and section 4 on page 5 remove the provisions that provide for a super priority lien for unpaid dues and certain other charges.

Section 4 spells out the new procedure for perfecting an HOA lien: (1) the notice of lien cannot be recorded until payments are 90 days past due; (2) the notice of lien must be served on the unit owner within 30 days of recording the lien; and (3) an action to foreclose cannot be filed until 90 days after service of notice of the lien.

Section 4, subsection 7, provides that any money remaining after the sale and satisfaction of the HOA lien must be paid to the unit owner. Subsection 8 states in part that the HOA must record a notice of discharge or release within ten days after satisfaction of the debt or be subject to a civil suit for actual damages or $100, whichever is greater, along with attorney's fees and costs.

Section 4, subsection 9, shortens the statute of limitation on filing lien enforcement actions from three years to one year after the date of filing the notice of lien. Section 4, page 8, line 1, eliminates the requirement for costs and reasonable attorney's fees to be awarded in a judgment to recover an HOA lien.

Most of the remaining sections are conforming amendments, simply eliminating references to repealed sections and updating references. Section 8 clarifies that this bill applies to the enforcement of liens unless the HOA has foreclosed its lien by sale on or before June 30, 2015. Finally, section 9 repeals six sections of the NRS that set out the nonjudicial foreclosure procedures for HOA liens. That concludes my presentation. I would be happy to answer any questions.

Chair Seaman:
Are there any questions? [There were none.]

Assemblyman David M. Gardner, Assembly District No. 9:
We are already starting to talk to many of the stakeholders, so this bill will be changing from how it is now. The intent of the bill is basically that there are some scary things happening with HOA foreclosures. I have personally seen them myself in my job as an attorney, where I have reviewed some HOA foreclosures that have happened in Clark County, and this is to try and help fix some of those. We have talked with some of the HOA people and they believe this has gone too far. The point is that we need to fix it, and we will be working with some of the people who represent the HOAs. There will be amendments, so this is not the complete bill at this point.

Assemblyman Elliot T. Anderson:
Do you practice in this area?

Assemblyman Gardner:
Yes, to a certain extent. My firm does a lot of work on it, and I occasionally need to go to hearings, so I will write motions on this. I am not on point with this, but if another attorney cannot make a hearing, I will do the research. If they cannot write a motion on this, I will be the one doing the research and writing the motion. There are one or two cases that I am actually on point with some of these HOA foreclosure issues.

Assemblyman Elliot T. Anderson:
What have you seen out in the market?

Assemblyman Gardner:
One of the things that has been happening is a foreclosure notice can be put on a property, which usually happens about three months after an owner has stopped paying or has moved out of the house, and then it sits. Sometimes it is two years later and then they get a trustee deed. Many times all they will do is just post it on the door of the house. I have clients who never see the notice

because they have moved out of the house and they are trying to get the bank to be involved. I have talked to banks and they are not getting any notice either. They will call for a foreclosure hearing. Usually that is done by posting something on the door that says "Trustee Sale," which is usually in about 20 days. After that 20 days, they are supposed to have a hearing where they are going to sell the property. What has been happening is they will go and then decide they are going to continue it. The way our law is written right now, they can continue without letting anyone know except for the people who are at that hearing. If you missed it for whatever reason, you have no idea that it happened. For example, say the hearing happened last month and then you decide that you are going to move it three weeks forward. You can keep doing that as long as you want until you can eventually get the right people there to buy the loan or the house, and then you can sell it. There is no notice to the banks or to the homeowner between the first one that is notified and when it is actually sold. There is no connection, and that is where my concern for the due process issues are.

There is a bill on the Senate side where they are working to fix that with some procedurals. Due process is one of the procedural issues I have.

Assemblyman Ohrenschall:
I think the genesis of the super priority lien comes from the Uniform Common-Interest Ownership Act (UCIOA) that Nevada adopted in the early 1990s. There have been a lot of changes every session. My concern is if we go to the judicial foreclosure process, do you think it is going to be more of a burden to the HOA in terms of the resources they are going to have to spend to collect? A couple of sessions ago, there were a lot of issues with collection agencies and the fees that were being added on. Attempts were made—both through statute and regulation—to try to make sure that we cap those. I have heard different stories as to how successful that has been. Do you think this is going to be the right balance in terms of not forcing the HOA to have to spend more than it might recover as opposed to the current system which derives from the UCIOA?

Assemblyman Gardner:
I think a lot of these due process rights would not have had these issues if a judge was approving the sale. To answer your question whether it would cost more, yes, it usually costs a little more. There are about 20 states that require judicial foreclosures; some of them do not allow nonjudicial foreclosure. Technically, in the state of Nevada we allow both. It is typically chosen to be a judicial foreclosure. In most of the Midwestern states or the Northeastern states, I have been told it is done for about $1,500.

I worked in commercial real estate before I became an attorney, and we did some foreclosures in the Indiana and Ohio areas where the cost was about $1,500. It is a little more expensive, but it is still less than what the regulations are, which is $1,950. That is the amount of collection fees that is allowed right now in the regulations. It is not under the statute. It would cost a little more, and I think it does help with the balance, but that is also something that will be negotiated. It is something the HOAs really did not want to do and if we fix the due process issues, I have much less of a concern with requiring judicial foreclosures. That may be something we take out altogether if we can find a good balance. There are a lot of states that are doing this already, and they have vibrant HOAs in those states as well. I do not think it is going to be a crushing burden. We are trying to find that balance right now.

Assemblyman Ohrenschall:
In your practice, are you finding that the $1,950 cap is effective and actually working in terms of the clients you are representing?

Assemblyman Gardner:
I tend to do more defense on this. We are not even reaching that cap. Most of what we are having issues with is not so much the cap, but the super priority liens. The HOA is only given the nine months. You are getting that and your collection fees are not really getting to that $1,950. The problem is that we are losing all the HOA fees.

To go back to your earlier question, there are 16 states that have passed the UCIOA. There are about 20 states that have super priority liens—us being one of them—but there are 30 states that do not have any kind of super priority liens. Once again, I do not think it is going to be a killer. I apologize—I keep saying this because we were not able to have the meetings beforehand—but that is also one of the things we and the HOAs are dealing with. They had an issue with getting rid of the super priority lien, so we are trying to strike a balance. This is not trying to hurt HOAs, banks, or anyone. It is trying to make sure that due process rights are upheld and that everyone knows what is going to happen. As I stated previously, the Senate bill has already dealt with a lot of this, so the bill may become redundant, but we are still looking at it.

Assemblyman Ohrenschall:
I appreciate your working with all the stakeholders because that balance is important.

Assemblyman Elliot T. Anderson:
I am trying to get my head around all the changes in the measure. Would it be your intent for there to still be a priority of proceeds if there is a sale? Obviously, we are talking about balance, and we need to keep the associations whole in some way, form, or fashion. Would your intent be, if there is a sale, to still allow there to be a nine-month priority of proceeds, or does the bill get rid of priority proceeds?

Assemblyman Gardner:
I will defer to Assemblyman Moore with what he wants to do with his bill, but I actually would not mind seeing that cap raised a little. I think that is one of the issues we are having right now. These houses are not foreclosed on for four years, and the most you can get is nine months of unpaid dues. Even then, you might not get all of your collection fees. I think that is part of the balance we need to strike as well. I do not know if Assemblyman Moore wants to do that in his bill, but I would be okay with increasing the cap a little.

Assemblyman Moore:
I would be open to discussing it and hopefully finding a balance where all parties are represented in an equal fashion.

Chair Seaman:
Can you describe conceptually what you are thinking of as far as amending this bill?

Assemblyman Gardner:
Some of the ideas that we have discussed are possibly getting rid of the judicial foreclosure so that we can do some of the fixes that were done in the Senate bill. Regarding the super priority lien, once again we have not set an exact number, but it is to be kept in there. We may possibly remove the ability to foreclose or limit the ability to foreclose. It is about trying to protect both the HOA, which needs that money, but also protecting the homeowners for some of the notices.

Assemblyman Moore:
It is not so much that we are trying to diminish the HOAs' ability to recover their costs, do what they need to do to keep the neighborhoods looking good, and to do the services they are obligated to provide for their residents. What I am trying to accomplish here regarding the super priority lien is that I do not feel anyone should be in a position above the first mortgage holder to go to foreclosure. In other words, the bank is the one that has the real interest in the property besides the homeowner. The bank is the one that decided you were a good credit risk and lent you the money to purchase the home. Why should

they have to wait for others to be paid before they are? They need to be the first in line to recoup their money, and then everyone else comes after that. They have the most interest in that property, in my opinion.

Assemblyman Gardner:
It is actually a little bit worse than what Assemblyman Moore stated. Right now with a super priority lien, you can foreclose. The way the law works is that you get rid of all the liens below you. So you actually get rid of the first mortgage. This is an actual lawsuit that I am doing right now. My clients bought a $400,000 condominium for $12,000, and their case is currently in federal court. It has been going on for a year and will probably go on for several more years. That is the kind of thing we are trying to avoid. Only two states, Nevada and Washington, allow you to get rid of the first mortgage and the subsequent liens. All the other states that have the super priority liens—about 20 total—allow it to be up there on the list so when the bank forecloses, the lien does not go away. Only Nevada and Washington allow you to get rid of the first mortgage. It was about six months ago when the Nevada Supreme Court said that was their interpretation of the UCIOA which Assemblyman Ohrenschall was talking about.

Assemblyman Moore:
There was a case in the Southern Highlands Community Association where a home valued at $885,000 was sold for $6,000 because of a super priority lien. The bank took it to court in the case of *SFR Investments Pool 1 v. U.S. Bank* [130 Nev. Adv. Op. 75, 334 P.3d 408 (2014)]. It was ultimately decided by the Nevada Supreme Court. I do not see the fairness there. Where is there equitable fairness for the bank in that they took the risk, lent the money, and because the homeowner for whatever reason did not pay their HOA dues to now lose $885,000 on a house. It is bizarre to me.

Chair Seaman:
Are there any other questions for Assemblyman Moore? [There were none.] We will now go to those in support of A.B. 240. To be fair and in consideration of time, I will allow 30 minutes in support and 30 minutes in opposition followed by neutral testimony.

Robert Frank, Private Citizen, Henderson, Nevada:
I have been on one of the largest HOA boards. I am also a member of the Commission for Common-Interest Communities and Condominium Hotels, but I am testifying today on my own behalf. I am not representing the Commission.

I really enjoyed the discussion I just heard from the various members of the Assembly because it helped fill in some gaps that I actually have not heard before. I am grateful for what Assemblyman Moore and Assemblyman Gardner filled us in on.

I am not a lawyer but I am a very strong constitutional citizen, and I feel very strongly that judicial process ought to be involved in taking the property of any homeowner. I believe the government's right to take should be preserved. I do not think HOAs should be granted the right to take property regardless of the circumstances. I hope that at the end of the day, after all the negotiations and amendments, that the bottom line still comes down to only the government can take property from a property owner in this country. I believe that is a very fundamental right. I think it is unfortunate if it might cost a little more money. In the long run, I am not sure it is worth arguing about, but I think the principle of taking property is a very important principle and should be preserved under the Judicial Branch of government.

Finally, there has been continuing debate in regard to whether HOAs are quasi-governmental or whether they are pure contracts. This discussion really brings it to the table again by those who would argue to go ahead and keep nonjudicial foreclosures. If you do, in my opinion, it will further support the argument that it is a quasi-governmental organization and should be managed more along those lines.

Jonathan Friedrich, representing Nevada Homeowner Alliance:
I am a former commissioner on the Commission for Common-Interest Communities and Condominium Hotels. About 40 years ago, before I was on the Commission, it was asked to set fees in NRS Chapter 115 for the super priority liens. That, to me, was a disgrace. The Commission asked a number of collection companies to come and speak to them and tell them what they wanted. Well, if you take a kid into a toy store, they are going to want everything. The collection companies wanted the moon and the stars. They finally came to an agreement of sorts of $1,950 for fees, but that was not the real number. If you read the regulation carefully, it allows for all kinds of attorney's fees. I believe it was four years ago that I submitted several collection companies' bills, which should be in the record. They are anywhere from $3,000 to $5,000; they are not $1,950. If you go through the records, or if you need me to send them to you, I can.

Another item deals with the management companies. After the collection companies got their pot of gold, the management companies wanted their share. It was decided that they should get $200, so now $200 is added into the pot. I feel this bill is long overdue. These auctions do not belong in the

back room of an attorney's office or in the parking lot of a company in downtown Las Vegas. They belong in the courtroom. Mr. Frank was very accurate in what he said.

On page 6 of the bill, starting with line 22, the new language in section 4 simplifies the process greatly, and I am in favor of that.

Chair Seaman:
I just want to remind you that amendments are still being worked on.

Jonathan Friedrich:
I realize that, but I do not know what is going to be amended and I wanted to get the testimony in. On page 7, the word "court" is stated in no less than four places. I am very much in favor of it.

Bob Robey, Vice Chair, Nevada Homeowner Alliance:
I was very happy to see that the idea of due process might come in. Something needs to be done about due process. I have a question regarding the bill that was just raised when you were talking with Mr. Friedrich. There is going to be a work session after the open hearings, and there will also be amendments. Can people like us—who do care and who do show up—ever have another chance?

Chair Seaman:
You can contact Assemblyman Moore directly for more information on the amendments as he goes through them.

Bob Robey:
As I found on the Internet, there are five states leading the nation in foreclosures, and I sent that information to the Nevada Electronic Legislative Information System (NELIS) (Exhibit C). Of the top five states, four are judicial and one is nonjudicial. I do not think it makes a difference if it is judicial or not.

If I contact Assemblyman Moore directly at his Assembly mailbox, may I expect an answer?

Chair Seaman:
I will let Assemblyman Moore answer that.

Assemblyman Moore:
Yes, I respond to any email that comes to me. Please feel free to email me at the address at the Legislature.

Bob Robey:
Thank you very much, Assemblyman Moore.

Robin Huhn, representing HOA Board Monitoring Services and Nevada Homeowner Alliance:
We need more bills that are in support of homeowners and not the companies that are getting the profits—management companies, collection companies, and especially HOA attorneys. I am in support of A.B. 240.

Gary Solomon, representing HOA Board Monitoring Services:
I am going to give you another take on this that you probably have not heard or considered. I am an academic; I have studied homeowners' associations for the past six years. I have published books on the subject. What I am not hearing talked about are the families and what the effect is on families as a result of what is taking place. The judicial foreclosure creates a very transparent way of going about this, but the backroom dealings are destroying families. I doubt there is anyone I am looking at through the screen who is not part of a family; a husband, wife, and children. Now those families are being abused as a result of these backroom dealings. We have a term for it, which is child abuse by proxy. It means that as these activities are taking place, the children in the homes are being abused by proxy from what happened. What might we expect from those children? Research shows that when those kids grow up, they are going to come after people. They are going to attack because they are angry. They are going to hurt others because of what happened to them.

Chair Seaman:
Please stick to the topic for A.B. 240.

Gary Solomon:
It is important to have A.B. 240 so that people do not retaliate against others who took action against them. Does that stay on track? I have a little bit more to say.

Chair Seaman:
Okay, but please stay on the subject of A.B. 240.

Gary Solomon:
The other area of abuse as a result of this, if it does not pass, is elder abuse. It is important to understand that this is in the best interest of the people. This should not be in the best interest of the investor. We must look at the effect on the family.

Chair Seaman:
Are there any questions? [There were none.]

John Radocha, Private Citizen, Las Vegas, Nevada:
I am a homeowner, and I believe it is time for these foreclosures to get into the courts where they belong. You cannot have a conglomerate of industry people all in a nice big boat, trying to rip us off all the time. I am from Pennsylvania, and years ago I belonged to an organization, and I believe you have to get out of these smoke-filled rooms. Too much of this is going on.

I have a question for Assemblyman Moore. Do you accept snail mail? I do not have email and I would like to know that if I wrote to you, would you accept it?

Assemblyman Moore:
Yes. Any kind of mail or correspondence is perfectly okay.

John Radocha:
Thank you, I really appreciate that.

Chair Seaman:
Is there anyone else in support of A.B. 240? [There was no one.] Those who are in opposition, please come forward.

Garrett Gordon, representing Nevada Chapter, Community Associations Institute; Southern Highlands Community Association; and Olympia Companies:
Today I am speaking on behalf of the Legislative Action Committee of the Community Associations Institute, Southern Highlands Community Association, and Olympia Companies. As the bill is written, we are opposed. There are some experts here who can address the reasons why. Given our time constraint, I will keep my testimony short. I would like to thank the sponsor and Assemblyman Gardner for meeting with us to discuss the problem and for thinking outside the box about possible solutions. I appreciate their time and commit to you, Madam Chair, that we will continue to work with them in the meantime.

Angela K. Rock, representing Olympia Companies:
As Mr. Gordon stated, I was originally in opposition to the bill as it is written; however, from testimony that I just heard moments ago, it sounds like there is work to be done and I was encouraged by some of the things I heard. I am not going to go through the technical portions of the bill, but only to state and pull out some of the things I recently heard that we need more bills in support of homeowners. I want everyone here to consider that the money that is being

collected by the HOA is, in fact, for the homeowners. It is to ensure that the dues are not raised for those members who are currently paying their HOA assessments.

The second thing I heard is there seems to be an understanding from one of the individuals who testified that the government, or certain entities, need to be able to collect their money because they are providing certain key services. The association is providing key services. Please do not forget that it is not a for-profit corporation. It is a nonprofit corporation that is providing utilities, streets, gates, lights, and I could go on down the line. I agree with some of the testimony that was given by Assemblyman Gardner about protecting due process. Having heard that—as I mentioned, we are not as opposed as we originally were—I would like us all to think long and hard before we eliminate the payment and before we eliminate the incentive to pay at the point that the bank forecloses. Assemblyman Anderson asked an excellent question about ensuring that the association still gets something. I would like to thank you for that comment and make sure that we do not pass a bill that discourages homeowners from paying.

Gayle Kern, representing Nevada Chapter, Community Associations Institute:
I am testifying on behalf of the Legislative Action Committee of the Community Associations Institute. I am an attorney and represent about 300 HOAs, and I consider my representation to be for those assessment-paying members. It is not a club. They do not pay dues, and they do not get to choose whether they pay dues. There are assessments that need to be paid because we are taking care of all of the infrastructure. In a condominium, we are taking care of everything but the air space, so we are actually protecting the collateral that is secured by the deed of trust.

On the issue of a judicial foreclosure versus a nonjudicial foreclosure, if I were here testifying on my own behalf, a judicial foreclosure means that I just quadrupled my business because you have to have an attorney for that. However, that is not in the best interest of the association nor, would I submit, in the best interest of our judicial system. You will also have to be employing a lot more judges, because just one entity in Nevada commenced about 1,500 collection matters that would now be a lawsuit each month. That does not mean that all of those go to foreclosure. We resolve the majority of them. For the majority of them, the homeowner either pays or the lender forecloses and we stop our action. Those do not all go to foreclosure. If we have to commence a judicial foreclosure for all of the collection action, it will be at the commencement of that collection. You are going to have huge unintended consequences with the need for more courthouses and more judges to take care of this volume.

The nonjudicial foreclosure process is not something that is unique. It can be found in NRS Chapter 107. Lenders do it; they are not a governmental entity. The nonjudicial foreclosure process has a lot of protections. With all due respect to Assemblyman Gardner, I would like to identify what the process is. The process of NRS Chapter 116 requires a notice of delinquent assessment and claim of lien that is required to be mailed, certified and regular mail, to the homeowner. The next step is the notice of default and election to sell. It is exactly the same process as a lender uses when foreclosing on the deed of trust. It has to be recorded to everyone of interest on that property, both junior and senior, as well as the owner. If it is not done, it is not a proper nonjudicial foreclosure.

The next process, just as with a nonjudicial foreclosure by a lender, is the notice of sale. That is also required to be published in the newspaper, to be mailed, certified and regular, to all persons of interest. We get a trustee sale guarantee just like the banks do, and it is posted on the property as well as a courthouse or other area which is approved to have those notices posted. There is a lot of notice given that is not done. The only thing that happens is—he says there was a hearing, and I believe he was referring to when you cry the sale, which is a sale by auction—there is an allowance to postpone the sale, just as with the banks. Up here in the north, we cry the sales on the courthouse steps of the Second Judicial District Court.

I would assert that the protections are there. If you want to tweak some of them, or you want additional notices to be given, that is fine. But I think if you try to take away that process, you will have a lot of unintended consequences and it will hurt the assessment-paying members. Similarly, the lien has, quite frankly, saved our state, especially with respect to the last several years. If we had not been able to do that, the assessment-paying members of the association would have seen their assessments go up dramatically. With respect to the amendments, I am very anxious to talk with the sponsor and participate in the discussions, but as it stands now, we cannot support this bill. [Letter submitted (Exhibit D).]

Assemblyman Ohrenschall:
Have delinquencies and arrears gone down to the associations? You said that assessments have not gone up dramatically. Do you have any data on it?

Gayle Kern:
I can tell you anecdotally that in my own practice, prior to six or seven years ago, I had never ever completed a nonjudicial foreclosure. Then we had a period of time where there were some that were completed, and now we are going back to resolving cases at our initial communication with the borrower.

They are wanting to keep their homes. For my own practice, I have seen a dramatic decrease in going further down the process. That has been over about the last 10 or 11 months.

Assemblyman Ohrenschall:
Has there been an increased use in bank impound accounts, or anything like that, to avoid sending the arrears out to collection agencies and trying not to have it go down that road?

Angela Rock:
In my own practice, I have not seen banks come forward at the management company level with a concept of impound accounts. On a personal note, I just recently bought a home and during my closing, when I was signing the mound of papers, that did come up. They did, in fact, discuss that they may move to that. I was encouraged—they did not know what I did for a living—but that was not required at the time and I have not seen it in practice in my day-to-day operations. If that happens, and if a bank did pay through an impound account and even wanted to pay quarterly—let us say to prepay as they do insurance or taxes—then, of course, that would not only protect their asset, but would all but eliminate the need for most of us.

Assemblyman Elliot T. Anderson:
I think we have a problem that we have to fix. I am not sure what the solution is yet. It is a complicated issue. I would take a little bit of issue with the statement that there is not a notice problem. I think there has been. I do not know whose fault it is, but I think it is something we need to get ahold of. We have to ensure that people know they have a chance to respond and that there is some sort of way they can go back and fix it. I realize there were some things put in last session for the homeowner, but we do also have to consider the bank's interest. We have to find a way to get there, so I am really interested to see all of the proposals and to see what comes out of the Senate. I would like for you to talk more about how you think we could go about fixing this issue, whether it is this bill or another bill. What is it that you think would be a good idea to do?

Gayle Kern:
What do you perceive the problem to be? I wholeheartedly agree that if people are not following the requirements of the statute, then there is a problem. The statute requires certified and regular mailings of all notices to anyone with a recorded interest in the real property, and if that is being complied with, then the lenders should be getting notice. If they have recorded a deed of trust or if

there is an assignment recorded, you are obligated and required under the specific terms of the statute to send them the notice of default and election to sell and the notice of sale.

Assemblyman Elliot T. Anderson:
For whatever reason, it has not been happening. At a minimum, I think we need stronger notice provisions to ensure that people are aware their rights are potentially on the chopping block. Even though this is a nonjudicial process, the Takings Clause still applies when we use any government process, whether it is judicial foreclosure or nonjudicial foreclosure, and we have to ensure that people have the opportunity to be heard. For whatever reason, it is not happening all the time; sometimes it is. We just have to figure out what the solution is.

Assemblyman Jones:
A statement you made was concerning to me. Assemblyman Moore testified how in Southern Highlands $6,000 got a $695,000 house, and in your testimony you are saying that liens saved Nevada. That is a little over the top for me, and I would like you to explain it.

Gayle Kern:
Probably seven years ago, when lenders were foreclosing on a regular basis, we would make our demand on behalf of the association for the lien. The lender would pay it and we would write off the rest of the delinquency. Sometimes the entire lien is a year to three years worth of assessments. Then when the lender foreclosed—remember, the lien is only triggered when a lender forecloses or when the association gets down to the very end and forecloses—there is a portion of the lien that is a lien that can extinguish the deed of trust if it is foreclosed upon. But as the Nevada Supreme Court found in the *SFR Investments Pool 1* case, the lender has every ability to tender that amount and then if the association continues with its foreclosure, it does not extinguish the deed of trust. There is one lien that has a portion of it that is the lien. The ability to first collect those lien amounts, I believe, protected associations and did save those associations from having to increase their assessments.

If you look at the statistics—I apologize, I meant to print it out—up until a year ago, the total number of HOA foreclosures in the state of Nevada was less than 500 a year. One year it was 120 and another year there were 200. It jumped up to a little over 1,000 in 2013 or 2014, but it has been very recent. I would agree with you that my comment was not directed to the ability to extinguish the first deed of trust. It was to the ability to collect that lien from the lender so that we did not have to write off the entire amount of the lien. I hope that distinction addresses your concern.

Assemblyman Jones:
My concern is when you say, "It saved Nevada." To me that seems a little unjust when we are talking about such unjust enrichment and you are making the claim that it saved Nevada on behalf of homeowners' associations. Do you see how that could come across as a little bit offensive?

Gayle Kern:
I am concerned about the assessment-paying members. There is no question in my mind regarding those homeowners who are trying to stay in their homes, who need their community taken care of, and are paying their assessments, that they do not end up taking on the burden of those assessments that are not being paid. To me, protecting those assessment-paying homeowners who want to stay in their homes and are trying to be part of that community and paying their assessment is very important, and I believe those are the people who benefitted from not having to incur increased assessments to pay for what was not able to be collected.

Chair Seaman:
We will move on to testimony in Las Vegas, but please be sure to work with Assemblymen Moore and Gardner.

Keith Lund, Private Citizen, Las Vegas, Nevada:
I am a homeowner, and for the past eight years I have been on two HOA boards. I rise in strong opposition to A.B. 240 as it is written and I am absolutely pleased to hear that there are amendments yet to come. I am grateful for that.

Before Assemblyman Jones spoke asking for a recommendation or a comment, and based on what I heard from Assemblyman Gardner and Assemblyman Moore about their concerns, they have two major issues about notice and making sure these things were not happening without proper notice and that people knew what was going on and that the lender is not wiped out. I am not in the lending business, I have no vested stake, I am not an attorney, and I have no financial interest in this beyond being a homeowner. To me, the idea that the lender gets wiped out is silly. I think the lender should be protected, but it sounds like if we simply ensure that when the HOA forecloses, the lender is still maintained and can come in behind it and foreclose themselves, or take it back and simply make the HOA whole in the process, that all by itself protects the lender and maintains this process.

Having sat on the HOA board and having done this for eight years through the downturn and through the recovery without the tenets that A.B. 240 wipes out, the HOA would not have functioned at all. We derived upwards of 10 to 30 percent of what we brought in and we were running deficiencies; 10 to 30 percent during 2011, 2012, 2013 came in from collections; and the banks did not act until we began to post notice to foreclose. In all of that time—and I sit on the two HOAs representing more than 1,700 homes in your district, Madam Chair—we foreclosed once. We are not looking to foreclose and most HOAs do not want to foreclose. The banks would not act until we at least brought that action. We need someone to make things happen to protect our homeowners, and at least the HOAs, because they were close to the ground and heard it from the homeowners, were willing to act.

With regard to notice, I agree that the ability to delay multiple times without giving good notice does not allow us to know when the actual sale is going to happen. If we eliminate those, it cleans up the notice and the HOAs either have to act or not. To protect the lender and to make the notice cleaner, it sounds like some procedural changes would do it. I promise you that wiping out the lien, from my experience on both HOAs, would cripple HOAs and it would cost thousands of dollars and special assessments to the homeowners who are already trying to pay their dues.

Kitty Michals, Private Citizen, Las Vegas, Nevada:
I am a homeowner and I am on an HOA board. I am totally against the bill as it stands. If there are changes and adjustments, that is good news and it will be interesting to see what the final bill looks like. We would have suffered without the priority lien. I live in a very small community with only 46 homes, so if we had two homeowners who could not pay their bills and nothing was effective, we would be out. The fact is that if we had nothing firm to hold, why would anyone pay their assessments? Why would anyone pay their HOA dues? I think that would create another problem.

Glen Proctor, Treasurer, Mountain's Edge Master Association:
I am a board member for Mountain's Edge Master Association, a community in southwest Las Vegas of 10,500 homes and growing. I am here in the official board capacity to argue against A.B. 240. Since the housing crash of 2008, we have experienced a high rate of delinquency on assessments. As fiduciaries of our association, it is our duty to pursue these debts, and the tools we use are collection companies and the filing of liens. In normal circumstances, banks would foreclose on defaulted properties in a timely manner and, in such cases, NRS provides that the association is entitled to nine months of unpaid assessments. In practice, banks are sitting on defaulted mortgages and taking

no action for years on end. Meanwhile, the association's expenses continue unabated, so the responsible homeowners who pay their assessments have been stuck for years paying more than their share to make up for the shortfall.

The recent Nevada Supreme Court decision affirming the super priority liens wipe out first security interests in foreclosure was positive for HOAs because it has encouraged banks to bring delinquent properties current on assessments in order to avoid association foreclosures. The association in turn does its part by maintaining the appearance of the neighborhood that helps to increase property values, which is positive for banks when they do act.

Assembly Bill 240 seeks to make it harder for the HOAs to take action on unpaid assessments to the point that it will cost more to collect than the value of the unpaid balance. This bill does nothing to reduce the costs of the association, so the board has no choice but to raise assessments on the only remaining source of income left—the people who diligently pay their assessments every month. Assembly Bill 240 punishes these solid citizens who have made fiscally responsible choices in life, work hard to pay their mortgage, their taxes, and their assessment, while simultaneously rewarding those who have defaulted on their promises. We urge you to reject this measure. It is great for bankers and lawyers, but it is not so good for the solid citizens.

Norm Rosensteel, representing Nevada Chapter, Community Associations Institute:

I am here appearing on behalf of the Community Associations Institute and as a homeowner in a common-interest community. If you remove the super priority lien, as others have said, you make the people in the association who are paying their assessments to have to come up with the money for this. The reason we are in the situation we are in is because of the inactivity of the banks and their not taking any action at all, so the associations have had to take some kind of action. Millions of dollars will wind up being put on the backs of the owners who do pay their assessments on time.

Regarding the judicial foreclosure, it is much more expensive and will clog the court system unbelievably. As Ms. Kern said, there are 1,500 notices of default filed by one collection company. You can figure 8,000 to 10,000 of those a year, and in the court system today, it is just not going to be manageable.

Additionally, some information from the Foreclosure Mediation Program shows there were 13,040 bank foreclosure certificates filed in fiscal year (FY) 2014, and 1,245 HOA notices of sale for a total of possible foreclosures of 14,285.

Of those, 358 actually were foreclosed on by associations, so in the whole state for FY 2014, that is approximately 3 percent of the total. It is not a large number.

In closing, I think we all agree that no one wants to see the banks wiped out. The associations are not looking for a windfall or wiping out the first mortgage holder, but they do want what is owed to them.

Assemblyman Ohrenschall:
Is the 3 percent figure you had out of the total of 14,000?

Norm Rosensteel:
That is correct.

Assemblyman Ohrenschall:
Do you have any data as to how much of arrears, dues, and assessments are recovered by the board versus how much has been paid out to the collection agencies? If we are having a good balance and making the association whole, that is great. If there is unjust enrichment the way there was six or seven years ago, then I am worried. Do you have any data about that here in Nevada?

Norm Rosensteel:
I do not have any data at the current time, but we can certainly get you as much information as we can.

Assemblyman Ohrenschall:
I appreciate that. Would you be able to distribute it to all of the Subcommittee members?

Norm Rosensteel:
Certainly.

Diana Cline, representing SFR Investments Pool 1, LLC:
I am a homeowner and a purchaser at some of these association foreclosure sales. We oppose A.B. 240 as written, and we are very concerned that the HOAs and the homeowners, who are doing the right thing, will be left with the cost of unpaid assessments. We are definitely happy to work with the sponsors regarding the issues to keep the HOAs whole and to address any concerns.

It has been mentioned a few times that the *SFR Investments Pool 1* decision that came down from the Nevada Supreme Court seems unfair to a lot of people. Some of the facts in that case might be helpful in understanding

why my client was able to purchase a property for $6,000 and the deed of trust on the property was for $885,000. As previous testimony mentioned, the bank—not the HOA and not the neighbors who are paying their dues—is the one who can decide who moves into the community. They are the ones who decide if someone can afford it. In that particular case, the bank gave the buyer an $885,000 loan in 2007, and the borrowers defaulted in 2008. They abandoned the property in bankruptcy, and then it was four years before the association finally took action and foreclosed. The bank had done all the things that they needed to do to foreclose. They lifted the stay in the bankruptcy and obtained their certificate of mediation five full months before the association foreclosed.

So the bank had the ability to foreclose at that time, there was no holdup, and the association and the other members of the community were still left holding the bag. I think those facts are helpful in understanding when my clients purchase properties at these sales, over 60 percent of them are already abandoned. We are not looking at kicking homeowners out of their homes. We are looking at homeowners who have already moved on and the association is still not being able to collect dues.

As for the low prices at these foreclosure sales, those days are gone. The day after the *SFR Investments Pool 1* decision came out, prices at the foreclosure auction the next morning were at market rate.

Assemblyman Elliot T. Anderson:
I worry about the commercial reasonableness of these sales. I think it has a lot of unintended effects on the potential suitability of the renters that come in and rent from a lot of investors. I know my own community has gone through some issues like that. Are you telling me now that none of these "fire sale" prices are occurring anymore? Am I hearing that correctly?

Diana Cline:
That is correct. The prices went up to market value, or the foreclosure market value, the same as you would get at any NRS Chapter 107 sale. The day after, the prices have gone down because the banks are still litigating the issue of whether or not there will be clear title, so the prices have stabilized around 50 to 60 percent of market value at this point.

Assemblyman Elliot T. Anderson:
With the prices going up, why are people still buying? Does that make sense? With these prices, they are not bargains anymore. Is that slowing down the number of people who are bidding on these properties? Are your clients still purchasing a lot of properties?

Diana Cline:
My client is not purchasing a lot of properties because properties are not going to sale. The banks are taking care of it, and the homeowners—who now understand that an HOA can foreclose and they could lose their home—are actually paying. One of the comments that my client received when they talked to homeowners after the foreclosure sale was, "I got all the notices. I just did not know that the HOA could actually do it."

Marilyn Brainard, Private Citizen, Sparks, Nevada:
I live in Wingfield Springs Community Association. It is a master association in Sparks. I have been there 17 years—nearly since the very beginning of it.

I would like to follow up regarding what the previous speaker had mentioned, that delinquent assessments are down, and I think someone asked a question about it. I am happy to say that they are certainly down in my community. We do not have the outstanding balances that we have had in years past. I am very glad to hear that because assessments are our only source of income. It is our only revenue stream for our nonprofit corporation. We do not go out and do fundraising to help meet our expenses, and we do have a lot of expenses. Assessments are very important to us.

I look forward to what one of the speakers in Las Vegas mentioned, which is seeing what the amendments are going to be. I congratulate you for working positively with your colleagues on the Senate side of the Legislature to help come up with language that will help, and not hurt, close to over 3,000 associations in our state and close to one million unit owners. One million Nevada citizens live in associations, and we rely on that. We look forward to seeing what the final bill will be.

Scott Hedlind, Private Citizen, Las Vegas, Nevada:
I am a homeowner who lives in an HOA. I am also an owner of a small management company, and I have been managing communities for 13 years.

I have been down in the trenches every day. I wanted to make a couple of comments. First of all, I appreciate the fact that there are going to be amendments to this bill because there are some real issues on it. Secondly, there has been a lot of talk about the fairness of the nine-month super priority lien. I personally do not know why the banks get off with a break of only having to pay nine months, especially on properties that have been vacant for four or five years. Why are they not responsible for paying the entire amount? I doubt if I will get anywhere with that one.

If there is a question about banks getting notice, why can there not be a requirement that the banks give an address that they want their foreclosure notices to be on file with the Real Estate Division or the Commission so that every bank has a way of getting in contact with them? I do not know if you realize this, but the same bank can have 15 different addresses to go to and the person who receives a notice may not know what to do with it. By the time it goes through the different departments, who knows what could happen to it.

I am also in agreement that the HOAs should be on a level playing field with the banks and we should not wipe out their lien, and their lien should not wipe us out. There has been a lot of talk about the impact on the HOAs. I do not know if you are aware of this, but most associations use an outside collection agency that is no-fee, no-cost. We send the account to them after we have sent all the notices that we can send, and their costs are put on top of the actual assessment that is due and the assessments that come due. Under this law, it is going to be very risky for these collection companies to stay in business without being paid up front. For an HOA to go forward with a foreclosure process, they are going to have to pay their way through.

I manage communities with anywhere from 10 to 564 homes, with most of them being under 100 homes. They cannot afford to pay the cost of the liens and notices let alone the attorney's fees to bring a property to foreclosure. By the way, during that process when they are putting out this money, what happens if the bank comes in and forecloses and we cannot get any money back? It is going to be a huge burden to HOAs. The smaller the HOA is, the bigger the burden is going to be.

There is a concern about owner-occupied properties. I can understand that. The vast majority of properties I have seen—in fact, of all the communities in 13 years—not one of my HOAs has ever foreclosed on a property, mostly because of the risks that are still involved in it. Most of the properties I see that are vacant and not maintained are because the owner is long gone. How are you going to give notice to a homeowner who has left? Under the statute, they are still supposed to provide us with a mailing address, but they are long gone, and they are not going to get the notice. The bank should be getting the notice. I do not do the collection part, so I do not know if they are getting the notice. If they have a place on file where the collection agencies can get the right address, I think it would help alleviate that problem.

There was a question about unjust enrichment. We are all just trying to do a job. As a homeowner, I want it to be fair that I am paying my assessment, and that the next-door neighbor or the bank is paying their assessment.

Lori Martin, representing Terra West Management Services:
I am with Terra West Management Services and also a homeowner in Las Vegas. I provided the Committee with a document (Exhibit E), which was signed by several individuals regarding A.B. 240 and the opposition thereof. In listening to everyone's testimony, it is very valid to hear on the opposite side. I believe that the banks should definitely have a protection for their investment in Nevada's mortgage industry. One of the things I am concerned with is creating the requirement for something to go to court through the judicial process that ends up being a litigation matter. Then it ends up on the HOA's pending litigation statement, which is required in a resale package. I often get phone calls from underwriters asking about the items listed on the pending litigation for each HOA, and this actually triggers the underwriters to deny the loan. The whole creation of the judicial process will absolutely slow down or cease loans in the state of Nevada. That was primarily one of the concerns I had after listening to everyone.

I also wanted to thank Ms. Cline for explaining the background on the *SFR Investments Pool 1* ruling because it lets everyone know how much notice the bank had and that the $885,000 was not just snuck out in a parking lot and done. There was the ability for the bank to do several things, and the unjust enrichment was caused by the bank, and the HOA did not get the difference in the money. It went to the person who bought the property for $6,000. That is pretty much all I needed to say.

Chair Seaman:
Is there anyone in Las Vegas who is neutral on this bill? [There was no one.] Is there anyone in Carson City who is neutral on A.B. 240?

Samuel P. McMullen, representing Nevada Bankers Association:
I think there are a lot of great ideas and I understand that there will be more, but I do not like the fact that we have to sign in against something just because we might want to see it amended. I thought what would be important would be to take a few seconds and indicate for the audience and for the Subcommittee that, unfortunately, in this session, there are always two houses and two sets of bills that are coming through. We have been working on the Senate side on a bill, Senate Bill 306. The Nevada Bankers Association's position with respect to trying to involve themselves in that bill and then to actually help position it was based on the theory that the best thing for everyone would be to see if there was a way to accelerate the ability of the banks to pay off the loan of the super priority amounts, get the HOA the money as soon as possible, and make that not the only nine months they get—if that, in fact, is paid off, and another one starts growing before foreclosure that they could utilize the lien again for that.

Given the *SFR Investments Pool 1* opinion which was explained to you today, the banks could have tried to cancel the extinguishment, but that did not seem to be the best resolution of this. Based on a notice of default timing, we had asked for sooner than that, but it seemed like from the HOAs that that was a smart time to do it because it would be recorded and it would be done in a way that would give the 90 days or X period of time after the notice of default to allow the bank to come in and pay that off. If that was paid off then, in effect, what would happen would be that the HOA would get the money, sooner probably than some of the current time frames, and then the bank would again sort of, just to use my phrase, have the lending world and the foreclosure world come back into a more normal course.

Homeowners' association foreclosures have been interesting over the last few years, but what the banks want to do is to have the opportunity to continue to search for workouts or to ultimately foreclose if that is the only option. That bill is processing. I will be happy to explain it to anyone else. The point is that there is a lot of good work happening. I really commend Assemblyman Gardner and Assemblyman Moore and members of this Subcommittee for having their name on this bill and being interested in it and Assemblyman Jones for trying to figure out other things that would be helpful.

I think we will get a smart bill out of this session that will actually become a win-win for more people and try and take some of the issues away. I did not want to go off topic, but I wanted to let you know there are other options.

Chair Seaman:
Assemblyman Moore and Assemblyman Gardner, did you want to come and wrap it up?

Assemblyman Moore:
We have heard a lot of opposition, and it is interesting that the only opposition seemed to come from HOAs and not the homeowners themselves. It is true that HOA members are homeowners as well, but primary interest is the business of HOAs. I believe HOAs have other remedies to recover the amount in arrears that is owed to them, meaning that we have small claims courts and there are other options available rather than taking a hardworking Nevada family and forcing them out onto the street because they could not, or did not, pay a service fee to an HOA. It is the HOA's choice to put a family out on the street and if we put one family out on the street in Nevada, that is one too many. I would strongly urge your support of this bill.

Assemblyman Gardner:
I would like to ditto what Assemblyman Moore said. I believe that we got caught up a bit in extensive rhetoric on the opposition side. Many states do not have super priority liens, and yet they are not all bankrupt. Many states use judicial foreclosure, and yet they are not all bankrupt. We will continue to work with everyone and try to find a happy medium if we can. I think the opposition seemed a little exaggerated to me based on what the actual facts are throughout the country.

[A letter in opposition (Exhibit F) was submitted but not discussed.]

Chair Seaman:
I will now close the hearing on Assembly Bill 240 and open the hearing on Assembly Bill 259.

Assembly Bill 259: Revises provisions relating to real property. (BDR 9-181)

Assemblyman Elliot T. Anderson, Assembly District No. 15:
I am here today to present Assembly Bill 259. I would like to open my testimony by providing the members of the Subcommittee with information on the measure as well as highlighting the bill's key provisions.

As many of you may know, the Foreclosure Mediation Program was created by the Legislature in 2009 through Assembly Bill No. 149 of the 75th Session. This was created to help residential property owners stay in their homes during a very turbulent time in Nevada mortgage finance, a time when people did not know what was up, down, left, or right. The market was riddled with uncertainty. No one knew what was going on, and there were a lot of things that we had to get fixed.

The purpose of the Foreclosure Mediation Program was, and continues to be, to address the foreclosure crisis in Nevada by putting homeowners and lenders together to mediate an alternative to foreclosure. Assembly Bill 259 makes changes to the Foreclosure Mediation Program and adds homeowners' associations (HOA) to participate in the program as well. There are two key components of A.B. 259, which are two different and distinct sections.

Section 1 specifically requires the lender to send a representative to the foreclosure mediation session who has the authority to modify the economic value of the loan and to bring proof of that authority. This requirement will ensure that it is done faster and clearer than it has been. Right now we use outdated language—the beneficiary of the deed of trust—which really does not

do much for us in an economy that is based upon securitization. Oftentimes, the deed of trust is in the name of Mortgage Electronic Registration Systems (MERS) and only comes out to the servicer for foreclosure. It does not necessarily mean that you have the right to modify the note. When the Legislature said we want the owner of the loan to come and negotiate with the homeowner, sometimes that servicer, or the beneficiary of the deed of trust, is under contract to a different party and cannot always come to the mediation with that full authority.

The Permanent Editorial Board for Uniform Commercial Code (UCC) has spent some time clearing up the confusion with this. Article 9, specifically *Nevada Revised Statutes* (NRS) 104.9203, is the way to determine the rights for people when there are securitized loans after it is sold. Initially, the beneficiary of the deed of trust would be the person who has that right, but once they sell it and are under contract to someone else, you would need to look more towards NRS 104.9203. I have provided a memorandum (Exhibit G) that I created. I spent a lot of time researching and working on this issue because I used to work as a foreclosure clerk with the Legal Aid Center of Southern Nevada.

The way the bill operates is when you have a securitized loan, you can expect that the promissory note is going to be endorsed and blank because it has to be sold sometimes repeatedly. The idea is that when it is endorsed and blank, it is bearer paper under UCC Article 3; however, it does not mean that you necessarily have the right to modify it. Even though it is bearer paper and if you have possession of the note at mediation, it does not quite work when you are under contract to someone else that you do not exactly have the full rights to modify it. This bill tries to update all language to get something that is more useful for the courts and is clear to understand. I have cited in my memoranda the UCC Editorial Board, which is really an expert and the authority on rights relating to mortgage loans.

Section 2 requires a homeowners' association to give the owner or a holder of a security interest in the unit the option to engage in the Foreclosure Mediation Program prior to a foreclosure sale. Currently, HOAs can impose liens on a residential unit for certain amounts that are due, as we have just heard. Existing law authorizes the nonjudicial foreclosure process in that instance.

Section 2 provides that a homeowners' association cannot foreclose by sale its lien on a residential unit if the owner or each holder of a security interest on the residential unit chooses to enroll in the Foreclosure Mediation Program upon the homeowners' association recording a notice of default and its election to

enforce the lien by selling the residential unit. The manner in which the Foreclosure Mediation Program is carried out is similar to the mediation of a foreclosure of a deed of trust under the traditional program with the bank.

You have already heard about this issue, and I think this is another crack at figuring out how we can rectify this issue, get notice to everyone, and hopefully make the HOA whole, make the collection companies whole, and make sure we do not have a homeowner getting kicked out unnecessarily, and ensuring that the bank does not lose its interest. This is a problem that we have to get our heads around if we want to ensure that lending continues to go on. I want to emphasize before I end my testimony that it is not mandatory for the parties to engage in the process. It would be one step where they can say, "Oh my gosh, I could lose my interest here; I want a chance to get it." Hopefully, when people get notice of the mediation, the bank will come in and pay off the super priority amount. The bank could even potentially add that to the arrears of the homeowner and then the homeowner could enter into an agreement with the bank. I need to give credit to the banks behind me in terms of the traditional program, particularly some of the larger lenders, such as J.P. Morgan, Bank of America, and a few others, because it has become very effective. I will be happy to answer any questions.

Assemblyman Gardner:
I appreciate this bill. I, too, have dealt with some of these mediations and this seems to fix a lot of the issues we were having. We would have the bank on the phone but we could not get anywhere because there was no one who could actually do anything. That would happen a lot with the mortgage companies with the ones I saw.

Assemblyman Jones:
You mentioned that the mediation is not mandatory. Could you elaborate on that? If it is not mandatory, do you think that people are actually going to attend? As my colleague mentioned, they do not even participate by phone.

Assemblyman Elliot T. Anderson:
Let me clarify that a little. If the unit owner or the holder of a security interest wants to elect the mediation, then it is mandatory. There would have to be a certificate recorded before the HOA could proceed to do a sale. That would be required; however, if the unit owner said, "I am tired of this," then the unit owner would not have to do it and the same thing for the security interest holder. I would expect that if they have a security interest, they would want to either pay it off or try to get some resolution. Hopefully, they just get the notice and pay off the super priority amount. I think that would be the ideal and not even go to mediation; just have it taken care of without having to go

through the process. When it comes down to mediation, there is not a lot you can mediate with a super priority amount. It is not where you can reduce interest. The idea would be that this is a clean, clear policy choice and that we are going to ensure that everyone's rights and responsibilities are clear, that people get notice, and that we attempt to fix this issue that has been hanging over our state. I thought, why get into the super priority statutes if I can just get people to talk?

Assemblyman Jones:
Obviously, the turmoil and the problems came because of the recession that we had. Now we have come through that, and in the previous bill, the deeds are almost at full market, et cetera, on the full foreclosure, on the steps of the courthouse. Is this adding on to something? Do you feel it is still necessary when we have already transitioned through, or is it just more stuff that we are piling on because of the past when we are actually through that time period?

Assemblyman Elliot T. Anderson:
I think that what we have realized with the super priority and other issues is that our law was not equipped for what came at us. We were just not ready for it. I think that no one in this Legislature, contrary to the justices' opinion in *SFR Investments Pool 1 v. U.S. Bank* [130 Nev. Adv. Op. 75, 334 P.3d 408 (2014)], read the Uniform comments to the 1991 Uniform Common-Interest Ownership Act, and if they did, I am very impressed.

In some of the rationale that we knew what we were getting into with this law, I do not know if that is quite accurate. I think we need to try to get it right now that it is subsiding a little bit. I think we should leave it in there in case we have another calamity happen, because now that we have had experience with all of these issues, I think we have fully vetted these laws.

Section 1 is an attempt to try to clarify it and get the law to be even more efficient for all of the parties involved. Many times these mediations still get tripped up over wondering if a person has the authority or not. Should something happen again where we have a national crisis that we cannot control, which is a Wall Street-driven problem and not one that is driven in Nevada, I think we want to have the right processes in place so that we are capable of handling it and we have less stress with all of our constituents. Now that the lenders have experience with it, I think it is going to run a lot more smoothly and effectively.

Chair Seaman:
Is there anyone in Las Vegas or Carson City in support of A.B. 259?

Jon Sasser, representing Legal Aid Center of Southern Nevada and Washoe Legal Services:

I am here in support of the bill. There was a question about if this crisis is behind us. Things are a lot better, but I believe the last statistics I saw show that we are still number two in the United States in terms of foreclosures, and still number one in terms of our homes being underwater. We are making a lot of progress, but we are not out of the woods yet. I heard Justice Hardesty in his testimony to the Senate Committee on Finance express some concern that there may be another bubble of foreclosures coming. I do not know that we can say that everything is smooth and dandy.

The bill does two things which we think are very important. When you go to a mediation—and we do have attorneys in our offices that represent clients in these mediations—this bill would ensure that you actually have someone who you can negotiate with who has the authority to reach a deal if a deal can be made. That is hugely important. As to section 2, we think it is important, based on the testimony you heard in the last bill, that if you are going to lose your home, there should be a process by which someone other than the parties be involved. If it is the courts, then that is the most due process—probably the most expensive due process. With this, at least you will get a certificate from the Foreclosure Mediation Program that there has been an opportunity offered to mediate and that it has been unsuccessful or not taken advantage of, and then the state gives that certificate saying it is okay to go forward with the foreclosure. If you are going to lose your home to a bank, you have the opportunity to mediate. If you are going to lose your home to an HOA, we think the same right ought to be there.

We heard testimony on the last bill that very few of these cases actually go to the foreclosure sale, because one of two things happen beforehand. First would be that the homeowner comes up with the money, and the earlier that we can get their attention and get them to come up with the money, then the lower the collection costs are that they have to pay, so we think that is important. The other possibility is the bank, that they come up, so this gives them another bite at that apple as well, and will hopefully cut down even more on those situations where we do go to foreclosure sale and we do have those odd situations where someone picks up an expensive property for a small amount of money.

One of the things I would like to say generically about all of these bills is that I have been involved in the discussions that led to Senate Bill 306 as well. One thing that I am very concerned about is, if we continue with our law as it is, as interpreted by the Nevada Supreme Court, the federal government is

basically saying, "I am not sure we want to make loans to anybody under that anymore." They are filing lawsuits against the people who are buying these properties at the foreclosure sales. I do know that you are buying a lawsuit from the federal government if you are one of the 80 percent of folks who have the federal government involved in their loan. I think that elephant in the room needs to be recognized as we go through this whole process.

Samuel P. McMullen, representing Nevada Bankers Association:
I do not have a Nevada Bankers Association position, but when you are arm-twisted by Assemblyman Anderson and Mr. Jon Sasser to show up at the table at their elbow, you do it. Based on the conversations I have had with Assemblyman Anderson and with his testimony tonight, I think we are willing to work through the process and clarify a couple of issues. In regard to the things that I think are key to us, we do not really have an objection with respect to section 1, subsection 6 on page 4 regarding the person with authority. I think that has been the intent of the mediations from day one and besides some bumpy runway trying to get it going and trying to get people to understand and have them come prepared, I think it is working for the most part, but it only works if people come there with the ability to do a deal. That seems extremely important and I do not think my Association will have a problem with that.

In section 2, which starts on page 7 of the bill, there are some interesting circumstances—at least there are such a variety of circumstances that could be at issue at any moment. As I heard it said again tonight, if it is really basically to try and make sure that the HOA and the unit homeowner have a chance to sit down and mediate, that is great. That could be a situation where there is only a default on the HOA assessments and not on the lender. I know that that happens; I do not have any facts about the sort of arrangement and confluence of those two things.

Having the lender be a part of that, when there is no default on it, is sort of an interesting question mark. If it allows for people to elect in, as this does, then I think that makes some sense. If they want to, they can. If they decide not to, it seems to me that that should not take away the homeowner's right to do it if there is a later foreclosure brought by the lending institution or the lienholder as opposed to the HOA as a lienholder.

Trying to clarify those types of issues with Assemblyman Anderson were some of the things we talked about earlier today.

As far as we are concerned, any chance for someone to work out the ability to stay in their home and have it make sense and do it in a way that is fair, reasonable, and not too costly for everyone I think is probably what everyone's goal is. We will be happy to work with the sponsor to make sure that we can make this as acceptable as possible to us.

Assemblyman Ohrenschall:
I appreciate this bill and what you are trying to do. I think it is great trying to get both sides together. My question has to do with the track records. I have heard varying accounts about how successful the mediations can be. Are you optimistic that people are going to participate and that this is going to work and not just have a stalemate? I hope you are, but I would like to hear some comments.

Jon Sasser:
I think each party should have the opportunity. The way it works is you get the notice that you can be in the mediation program. You have 30 days to let the program know if you are going to do it and put up your $200 to be in the mediation program. If you do not, then the HOA can get a certificate to go ahead. When they sit down together and with the bank having notice—these are slightly different issues than getting a refinancing or qualifying for one of the federal programs that you are going to be dealing with at a regular foreclosure mediation—you have a certain amount of money that you are behind, and you have to work something out. I am hoping there are fewer of these coming along.

I would like to give a plug for Senate Bill No. 280 of the 77th Session, which said for the first time that before the ball is handed off to the collection agency and while these costs are not running up very rapidly, there has to be at least one letter after a 30-day delinquency to the homeowner saying you have a right to know what the charges will be, and if you do not pay, you have a right to enter into a repayment plan, and if you think the amount is wrong, you have a right to a hearing before the board.

I am hearing anecdotally tonight that within the last 11 months or so that homeowners are paying a lot better and we are seeing a lot fewer of these, so I would like to think that that legislation has had some success. I think the more bites of the apple that you give the homeowner, the more they are going to be successful. There are going to be some who cannot afford it and have walked away, so this will not help them. It will help those who elect it within the 30 days.

Assemblyman Ohrenschall:
I appreciate your hard work on this.

Bob Robey, Vice Chair, Nevada Homeowner Alliance:
I wish I were as eloquent as Mr. Sasser. He said something that caused me to just become elated. Someone will be taking a second look at why the delinquency exists. No one tonight has mentioned the fact that many times I have been called and people have said, "It is a bookkeeping error on the management company's books." We are aware that management companies change from one association to another to another, and they have to transfer their books and records, but that does not mean that those books and records are accurate. Thank you for this bill, Assemblyman Anderson, and thank you, Mr. Sasser, for your wonderful comments. Not to take anything away from Mr. McMullen—he was also eloquent.

Chair Seaman:
Is there anyone else in support of A.B. 259 in Las Vegas or Carson City? [There was no one.] Is there anyone in opposition of A.B. 259?

Norm Rosensteel, representing Nevada Chapter, Community Associations Institute:
One of the issues we see with the bill is that it drags the process out longer, but there are also a couple of procedural issues. Having a person there with the authority to negotiate is a problem because the board has to make decisions with the majority of the board, so one person does not have the authority to do that.

The second issue is that assessments are not negotiable. They are what they are. They can negotiate with late fees and interest, but the assessment is the assessment. If you can negotiate the assessment, no one is going to pay their assessment. That is the problem we see with it.

Gayle Kern, representing Nevada Chapter, Community Associations Institute:
We agree, and I would let Mr. Sasser know that the bill that was passed last session that allowed the payment agreement has been very effective and it is taking care of some of these. We do not fundamentally have any kind of problem with having more opportunities to see if we can get payments. We really do not want to foreclose. The way it is written, I think we would like to work with Assemblyman Anderson to see if we could do some amendments that would make it a little smoother or the procedure work better, but we do believe that it is important to try to get the homeowners to be able to pay their assessments. That is all we want.

Pamela Scott, representing the Howard Hughes Corporation:
I am here on behalf of the Howard Hughes Corporation, the developers of Summerlin, which is quite a large association. With regard to what Mr. Sasser said about the early notices, the 60-day letter, as it is being called these days, is basically a mediation. It gives the homeowner the opportunity to come in and sit down with the board and technically mediate when they are only 60 days delinquent, have accrued no collection costs, and maybe only have a few late charges. I think it has been successful. I think it will continue to be successful. I know it is being called "second bite of the apple" to go into a mediation before foreclosure, but my main concern there is the time it is going to add to this.

For the record, I will say that no Summerlin master association has ever foreclosed on a homeowner. They are carrying multimillion dollars in receivables as well. I should put it that the homeowners who pay every month are carrying. That is one of the fallacies. The association is the homeowners. There is no one else's pocket to take it out of. It does not come from the management company, the developer, or the lawyers—it is just the homeowners. They are the only ones who pay.

Currently, to get to a notice of default stage that triggers this mediation, it takes approximately six months, and that is a best-case scenario. It is usually much longer than that. This bill would add another four months minimum to the process, and it will add to the collection cost. I want to make sure that everyone understands that because if the bank steps in and starts their foreclosure, the associations will then lose the difference between the nine months and however long it takes. Very often these homes are empty homes, so those homes are not going to be in mediation as they did not come in on the 60-day letter. When a homeowner takes bankruptcy and abandons the home, that bankruptcy is in place for years. Everything is stayed for the association as well as the bank. Some of the banks do go to court and get a lift of the stay. Associations do not do that. It would be too expensive to do that, so they sit for years on these bankruptcies. Technically, they should get all of their money, but the homeowners who leave are supposed to be paying the post-due assessments, and they do not, and we cannot file new liens for the post until the bankruptcy is released. I think the associations will suffer from the time frames, and certainly from the additional cost to them.

Mike Randolph, Manager, Homeowner Association Services, Inc., Las Vegas, Nevada:
I am a licensed collection agency that represents homeowners' associations in the recovery of assessments. I am against the mediation program for HOAs. There are a lot of properties that never make it to foreclosure but by adding this to the program we already have, when we file the notice of default we will be

required to pay the additional $200 plus the additional mailing on every notice of default that is done on behalf of an association, whether the homeowner elects to go to mediation or whether their lender would like us to go to mediation.

The problem I have with lenders being brought into the mediation is that we really do not know who it is a lot of times because it is a MERS product. It is registered through MERS, someone else is servicing it, or someone else is the beneficiary of the note, so we do not know who it is that has the authority to come in and ask for this mediation on the HOA's side of the bill.

I think it would also extend the amount of time it takes, and every time we are waiting longer, it is another month of assessments that is going to get written off because the maximum collected, once the bank forecloses, is going to be nine months. If this program takes it up to 10 to 12 months, then we are just looking at every month that this extends it is another month that is going to be written off and that amount will have to be recovered by the homeowners who already pay.

As anecdotal information, throughout my client base, the 60-day letter has been exceedingly effective and because of market conditions, we are starting to see with homeowners' associations, like a lot of other businesses, that their new 90-day receivable numbers are considerably lower than they were in 2007 through 2012. We are seeing a lot of associations today that are looking at between 3 and 5 percent in new 90-day delinquencies as opposed to the 18 to 20 percent we were seeing a year ago.

Assemblyman Ohrenschall:
Is it not just as possible that if the homeowner elects the mediation, and mediation happens, that an alternative to forgiving arrears might work out, or maybe even arranging a payment plan? The HOA could still be made whole and the homeowner might still be able to save their home. There is another possibility as well, do you agree?

Mike Randolph:
Yes, I agree. There is mediation, arbitration, and another program available through the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels at the Real Estate Division, Department of Business and Industry. At any time during the process, from the day the initial 60-day notice goes out all the way to the day of sale, the homeowner is always capable of contacting the board of directors or calling me directly in my office. They can also go to the financial institution or the Real Estate Division to have someone else get on the phone to try to mediate a program.

We are always open to mediation. I always want to get paid; I do not want to foreclose.

Assemblyman Ohrenschall:
I hope I am understanding this correctly. This bill would be a supplement to the mediation already existing in NRS Chapter 38, not supplanting it?

Mike Randolph:
I do not know whether the sponsor intended this to supplant NRS Chapter 38 or be an addition to it.

Robert Frank, Private Citizen, Henderson, Nevada:
When I read this bill, I could not intellectually get into the combination of what seems to be intended with very complex additions. Speaking as a member of the Commission for Common-Interest Communities and Condominium Hotels but not representing the Commission, observing and then reporting many of the foreclosure problems we have seen the past few years, I have to say that my basic fundamental principle is that I oppose nonjudicial foreclosures.

Speaking as a former member of a large HOA board, I am quite familiar with renting to people who try to game the system and try to dodge their responsibilities of paying assessments. I have to agree with the previous comments. There are plenty of opportunities for people who have honest intent to have the opportunity to avoid foreclosure.

From personal experiences I ran into on my board, I sadly found that many times the communications in regard to the intent of the rules, with the intent of the correspondence, and what the actual purpose of where we were going to go on some of the communications that led to collection company involvement, were very fuzzy, and not always well intentioned, in my opinion. The bottom line is that while I was on the HOA board, we never foreclosed on anyone, but that was many years ago before the crisis we are talking about.

Quite frankly, my conclusion is that I cannot see, from reading the bill, where it would significantly help solve the problems. After all the testimonies we have heard on both of these bills, and some of the bills to come that have not been discussed yet, in terms of HOA statute changes, this is kind of a cloudy situation where it is hard to say there is a single solution in this bill or any other bill that can be done as written. It looks to me like we have a lot of work to do to pull them all together and make sense at the end of the day. Thank you for the opportunity to comment.

Chair Seaman:
Is there anyone in Las Vegas or Carson City who would like to testify in neutral regarding the bill?

Jennifer Gaynor, representing Nevada Credit Union League:
We understand that Assemblyman Anderson has spent a lot of time down in the trenches assisting homeowners with the Foreclosure Mediation Program. We appreciate his attempt to clean up what he sees as some technical issues with this program and to make it available to more homeowners. We have taken a look at the bill and we believe we will be able to comply with what it asks for without a problem.

Jonathan Friedrich, representing Nevada Homeowner Alliance:
There was something that was said a little while ago by Mr. Rosensteel. Either four or six years ago, the Legislature put into NRS Chapter 116 where it specifically says that the board can negotiate with the homeowner. Unfortunately, I do not have the statute with me, but I can send it to your office tomorrow morning by email.

Assemblyman Elliot T. Anderson:
Just to make it clear on where I am with this, I am willing to negotiate the total time frame. My intent is not to make this unnecessarily longer, but it is an attempt to let us tap the brakes a little bit and make sure we can get everyone in a room and have them talk.

I appreciate the fact that we have already done some changes with the 60-day letter that you have already heard about, and I want to ensure that this process works well for the homeowners, lenders, and the HOAs. I think we can get there.

The beauty of this is that it is a clearer policy choice than getting into the super priority statutes. I believe it is a lighter process than the judicial foreclosure. Although it would add some cost, it would not cost as much to employ. If you have an attorney who is in litigation, I think that is going to cost you a lot more. This is a way to get halfway between where we are at now and the judicial foreclosure.

Chair Seaman:
I will now close the hearing on Assembly Bill 259 and open the hearing on Assembly Bill 301.

Assembly Bill 301: Prohibits restrictions on the freedom to display the flag of the State of Nevada in certain places. (BDR 10-533)

Assemblyman Lynn D. Stewart, Assembly District No. 22:
Assembly Bill 301 is brought about by a constituent who flew the flag of the State of Nevada on his property in a homeowners association (HOA) during the 150th anniversary of Nevada. He was told he could not do this, and he was prohibited from flying the flag. We brought this bill forward so he could do so as long as it was not larger than the United States flag.

Chair Seaman:
Are there any questions from the Committee? [There were none.] Is there anyone in support of A.B. 301 in Las Vegas or Carson City?

Garrett Gordon, representing Nevada Chapter, Community Associations Institute; Southern Highlands Community Association; and Olympia Companies:
We are in full support of the bill and are here for any questions.

Marco Velotta, Private Citizen, Henderson, Nevada:
I am representing myself in support of A.B. 301. I am a proud Nevadan, and during our sesquicentennial year as a state, I celebrated the occasion at many events throughout the state, including the parade in Carson City. I also did so by flying the flag of the State of Nevada in front of my house at my residence until I received a cease and desist letter from the Champion Village HOA even after following the procedures outlined in our governing documents. When I presented my arguments to the board and to the community manager, they were not swayed and would not hear the matter except through a closed session. However, they had no problem approving me to fly a Denver Broncos flag. I attempted to come to a resolution but I was advised that nothing could be done and that I would have to contact my legislators for a change in the *Nevada Revised Statutes* (NRS). I did this through Assemblyman Stewart, for whom I am very grateful.

I am a city planner and I do not take any issue with reasonable covenants, conditions, and restrictions (CC&Rs) and I fully understand and agree with the standards for signage and support of community aesthetics. Throughout this experience over the past year, I have reviewed signage standards and zoning codes in many of the cities and counties across the state, and none contain prohibitions on flying state flags on residential or commercial properties. Some even explicitly allow for it, including the City of Henderson, the City of Las Vegas, and Carson City. However, if you live in an HOA, as many Nevadans do, where HOA governing documents apply, it depends.

Most HOAs tend to be restrictive. Some, such as ArrowCreek in Reno and the Sun City communities in southern Nevada, only allow the American flag. Some, including Caughlin Ranch in Reno, explicitly allow for the state flag to be flown and others, including my HOA, may leave it up to the boards' discretion to pick and choose how you can decorate your property.

In my case, this is our state government's flag and as a matter of state and civic pride, I hope that all Nevadans, whether they live in Laughlin, Jackpot, West Wendover, or Lake Tahoe, have the right to freely fly our state's emblem, regardless of whether we are celebrating a milestone or not. The American flag is protected under NRS, and I respectfully ask this Subcommittee and the Legislature to extend the same protection to our state flag as well. Thank you for the opportunity to testify before you today and for your efforts this session.

Chair Seaman:
Thank you for your patriotic testimony.

Assemblyman Ohrenschall:
Thank you for bringing this bill. You either love HOAs or you hate HOAs. A lot of us are wondering why we even need a bill like this and why should we have to amend the NRS for this. I understand why you are doing it, but I am sorry that your constituent had to go through that. I think it shocks the conscience.

Assemblyman Elliot T. Anderson:
I love Nevada and I love this bill. Home means Nevada.

Robert Frank, Private Citizen, Henderson, Nevada:
I represent homeowners on the Commission for Common-Interest Communities and Condominium Hotels but I am representing my own opinion tonight. I think this deals with one of the fundamental complaints that I hear so often against HOAs and it is the domineering bullying against people for no good reason whatsoever.

Homeowners' associations are supposed to be protecting the property rights, the lifestyle of people, and the ability to have the quiet enjoyment of their properties. It is so ridiculous across the country and in this state that we see so many boards—I admit it is always a minority—insulting us citizens by taking advantage of us and abusing their authority by wanting to change a statute for something as simple as this.

It gets me really stirred up as an American patriot to simply say you have to change the statute in order for everyone to be allowed to show their patriotism for their state and for the American flag. I am glad you are doing this, but I am saddened that we have to do this sort of thing from a statutory point of view. I am glad to endorse and encourage this kind of thinking.

Jonathan Friedrich:
Me, too. This is regarding the behavior of boards that most people find repulsive, and so do I.

John Radocha, Private Citizen, Las Vegas, Nevada:
This is an example of when you come into an HOA community, you read the CC&Rs and bylaws, and they are vague. Then when you decide to do something that you feel is highly personal, they beat and fine you to death.

I do not know why the CC&Rs cannot be held the way they are. You look at it and think you can live by that, but then they come with these other things that are not in the CC&Rs or bylaws. Who gave them the authority? They want me to abide by the CC&Rs and bylaws but they decide that maybe they do not like me or maybe I am anti-Nevada. Maybe I came from California and I do not like Nevada. This is what my gripe is.

Chair Seaman:
Are you in support of the bill?

John Radocha:
One hundred percent. I had put out a sign that said "Support our Troops" and you should have seen the hell I got for that.

Chair Seaman:
Is there anyone in opposition to A.B. 301? [There was no one.] Is there anyone in neutral for A.B. 301? [There was no one.]

Assemblyman Jones:
Assemblyman Stewart, do you want to amend and add the "Support the Troops" as well just so we do not have a hassle next year or later on in the session?

Assemblyman Stewart:
I do not want to complicate matters, but I do support our troops.

Chair Seaman:
I will close the hearing on A.B. 301 and open the hearing on Assembly Bill 192.

Assembly Bill 192: Makes various changes relating to common-interest communities. (BDR 10-661)

Assemblywoman Melissa Woodbury, Assembly District No. 23:
Assembly Bill 192 is a measure that pertains to the timing for the transition of a declarant-controlled homeowners' association (HOA) board in large scale master planned communities. *Nevada Revised Statutes* (NRS) defines such common-interest communities as having 1,000 units or more. Typically, master planned communities are built in accordance with a development agreement. The development agreement requires the construction of key infrastructure such as parks, trails, and police and fire stations at various phases of the project development. In southern Nevada, there are several master planned communities, which include Southern Highlands, Mountain's Edge, Summerlin South, The Village at Tule Springs, and Inspirada.

Assembly Bill 192 allows the developer within a master planned community to remain on the board until 90 percent of the units are conveyed. The additional time on the board allows the developer to continue completing its obligations under the development agreement, while working with the homeowners who have joined the board. Since the developer is ultimately responsible for the proper completion of the community infrastructure, allowing the developer to remain in control of the board for a longer period of time also ensures the financial stability of the master planned community once it is conveyed to the association for maintenance.

Jennifer Lazovich and Angela Rock of Olympia Companies are here to go into more depth regarding the bill.

Jennifer Lazovich, representing Olympia Companies:
I turned in an amendment that I would like to talk about (Exhibit H). I would probably consider it more of a technical clarification. When the bill was drafted, our intent was that if the developer was going to stay on the board for a longer period of time—that period rising from 75 to 90 percent—we felt it was also a good idea to bring a homeowner onto the board sooner. For those master planned communities of 1,000 units or more, we are suggesting that if the numbers increase to 90 percent, then a homeowner can come onto the board at 15 percent rather than 25 percent. My attempt at the technical amendment was to ensure that the reduction from 25 to 15 percent applied for those master planned communities of 1,000 or more units.

As Assemblywoman Woodbury indicated, Angela Rock and I represent Olympia Companies. They have been the developer of the Southern Highlands community and will be the developer of another master planned community in southern Nevada called Sky Canyon, which is in the northwest portion of Las Vegas. They have a lot of experience being the master developer, and as part of their obligations with Clark County in the case of Southern Highlands, they have to put in parks, fire stations, numerous trails, and obviously the infrastructure in the roads and spine streets. That takes a lot of development experience, but it also takes a lot of accounting experience. To give you an example, even though Southern Highlands has not completely built out its master planned community, their operating budget for their development as it sits today is $8 million. The master association has five seats on the board. When they created the board, the developer put three people on the board with expertise in the following areas: a certified public accountant for the accounting background; someone with an urban planning background to assist in the development of trails; and a construction manager, with the idea that there are substantial amounts of infrastructure we have to put in and complete before our obligations under the development agreement are finished. That is the background as to why we think it is important for us to stay on the board until 90 percent occupation.

Angela K. Rock, representing Olympia Companies:
I will keep it brief because I believe that Assemblywoman Woodbury and Ms. Lazovich basically covered the tenets of the bill. I will make myself available for questions as we move through it, but essentially I just want to make it clear to everyone that, as Ms. Lazovich stated, we are dealing with a budget of about $8.5 million in Southern Highlands. It is going to be the same and potentially more for Sky Canyon because there will be more community amenities. I think it is key to bring a homeowner onto the board early. Think about a community—for the ease of math—as having 10,000 units. If you have 2,500 units built in an association, think about how large that is, how many parks, how many sidewalks, and how much money you are dealing with at that point in time. It can be very daunting for a homeowner representative to come on the board and learn about the process and the budgeting. On top of all of that, everything we have learned tonight about NRS Chapter 116 and managing all of that process, as you continue to move through it, at 75 percent—from looking at that mythical association with 10,000 homes—you still have 2,500 homes left to build. You have parks, sidewalks, streets, lights, and intersections.

One of the important things to note is that when a developer transitions, they are required to turn over a funded reserve account. It is a reserve account so those homeowners can have a budget they can take and fiscally and responsibly

move through and keep the assessments at the same rate. If you are turning over a reserve account and thereafter building a great deal of infrastructure, you have a disconnect. You want to push that number so that as they are completing the infrastructure, they are then turning over the reserve accounts and control of the association to a group of individuals who have been there from the 15 to 90 percent and have had a great deal of time to learn all this.

Assemblyman Gardner:
What are your concerns regarding the developers', the declarants', ability to basically extend their control of these kinds of communities? For example, there are communities around my area where they have built it over a 10 to 15 year period and there is still a lot to be built. So for 10 to 15 years, it is basically a declarant's fiefdom. Do you think increasing the number is going to increase the number of people they will be able to basically, in my opinion, somewhat abuse in this time frame?

Jennifer Lazovich:
In a master planned community, you have the master association which I just described with the five board members and their expertise. As each community is built within that master association, it has its own homeowners' association board that transitions quicker than the master planned association would transition; therefore, you get homeowner input within their individual communities quicker. The master association is meant to oversee the bigger picture part of the master planned community, not so much the individual details of each subassociation.

Chair Seaman:
Are there any other questions from the Committee members? [There were none.] Is there anyone in support of A.B. 192?

Garrett Gordon, representing Nevada Chapter, Community Associations Institute:
Today I am here on behalf of the Legislative Action Committee of the Community Associations Institute, which is made up of over 1,000 associations and homeowners. We think this bill strikes a good balance between both of them. A homeowner gets on the board sooner and the developer is able to stay on longer to fulfill its obligations to these large communities. We think it strikes a balance with the amendment and we are in full support.

Pamela Scott, representing the Howard Hughes Corporation:
We are in support of this bill. Summerlin is a vast community; we have 30,000 developed homes in our three master associations right now. We have another 10,000 acres to develop and another 30,000 homes that will eventually be built. As Ms. Lazovich said, these are master associations.

Assemblyman Gardner had concerns about developers staying on the board and abusing it. I have to tell you that I have been managing at Summerlin for close to 20 years, and the developers who have served on the boards in the past have known which hat they are wearing when they are sitting on the board. They know that hat is the homeowners' hat, and I have always been very impressed with it.

Summerlin North Community Association, which is a master association of about 16,000 units, transitioned to a seven-member homeowner board in 2001. The Howard Hughes Corporation still manages that association by contract, not because we want to stay, but they do not want us to leave. We are under contract to give them two years' notice if we want to leave. I do not think abuse in these master associations is an issue, but we can be supportive of the bill.

Chair Seaman:
Is there anyone in opposition to A.B. 192?

Robert Frank, Private Citizen, Henderson, Nevada:
I am speaking from experience, serving for two years after a transition period on the board of a community with over 7,000 homes. I have also had experience for two years on the Commission for Common-Interest Communities and Condominium Hotels, but I am representing my personal opinion tonight. I am strongly opposed to this bill because I think that proper balance between homeowner interest and developer interest are already in the current legislation.

In my opinion, when a developer is trying to extend this period of time, it is all about the money control, the profit control, and it delays the amount of investment into the reserves. It delays a lot of the decisions. Go back to the basic question—is this a community association? Is the lifestyle and the quiet enjoyment of the environment under the control of the people who live there, or is it being dictated by the developer until the 90 percent completion? It makes no sense at all to me. During the period of time of transition between 75 percent and 100 percent sales—which I have experienced—there is a natural inclination of the developer and the homeowners to want to cooperate and work together as a team. The sales of final properties are just as important to the homeowners as they are to the developer. Everyone wants to sell out and

successfully complete but, unfortunately, depending on the circumstances of the personality of the developer, there is a tendency to want to maximize profits as you get toward the end. I think this kind of control and motivation for overcontrol is dangerous and destructive to the community lifestyle. I do not see any need for it whatsoever and, therefore, I strongly oppose it. I am going to be listening to some of the arguments as they come in, if there are more, about why this is necessary. As of now, the proponents that I heard tonight gave me no compelling evidence to recommend that you do this. I am still strongly opposed.

Jonathan Friedrich, representing Nevada Homeowner Alliance:
I am speaking on behalf of the Nevada Homeowner Alliance as a legislative affairs spokesperson. I am a former commissioner on the Commission for Common-Interest Communities and Condominium Hotels. Once again, the greedy HOA developers and industry officials are trying to fatten their bottom lines at the homeowners' expense. We need to stop them. When a developer decides to create a homeowners' association in Nevada, state law clearly says that when 75 percent of the community is built and sold, it then transitions to a homeowners' association. At that time, the developer is no longer in charge of the management of the community unless the new association run by the homeowners decides to hire them back. This has been the law forever and the developers know this. The HOA industry officials know this, yet they want it changed. Southern Highlands is close to being 75 percent built out, and holds very profitable management contracts for the community in addition to being the developer in that area of Las Vegas. Furthermore, when the developer turns the community over to the association, the amenities, such as parks and clubhouses, must be built and completed. Reserve funds must be in the bank and also turned over to the new board. This is a costly step in the transition process.

In the Southern Highlands case, it seems like they are not willing to give up their contracts and turn over control of the community. They are asking to rewrite the rule book in the middle of the game. The HOA industry is always telling the homeowner that they have to follow the rules. By increasing the percentage of community completion from 75 to 90 percent, they can hang on for many years longer or possibly forever. They tried to change this two years ago at the last legislative session and it failed. This is nothing short of pure greed at the expense of homeowners. This bill was introduced in the last session of the Legislature, was opposed by the Real Estate Division, Department of Business and Industry, and it did not pass. It deserves the same treatment in this session.

Just a couple of other comments on items I heard about completing the infrastructure. It is my belief that the county and/or the city requires bonds to safeguard that the developer or the declarant completes those projects. Mr. Robey will speak next and he has some information about the Uniform Common-Interest Ownership Act.

Bob Robey, Vice Chair, Nevada Homeowner Alliance:
I am a past board member for a very large Sun City Summerlin community association. I am also the past president of a very small association in California. I used to work at the National Security Agency for a short time during my military service, and I enjoy flying the flag.

I am going to read you something from the Uniform Planned Community Act. The Uniform Law Commission wrote the following: "A common problem in the development of condominium and planned community projects: the temptation on the part of the developer, while in control of the association, to enter into, on behalf of the association, long-term contracts and leases with himself or with an affiliated entity." [Mr. Robey submitted prepared testimony (Exhibit I).] This is in Article 3, Section 3-105, Termination of Contracts and Leases of Declarant, which is part and parcel of the Uniform Planned Community Act and NRS Chapter 116.

Chair Seaman:
Mr. Robey, we have your testimony on NELIS, so go ahead and summarize.

Bob Robey:
I looked at the Legislature's opinion poll, and in the last two days 194 people voted no. The industry opposes this bill. The homeowners desperately need it. If you read the opinion poll for this bill, you will see Southern Highlands people commenting about their association, but they are not here tonight. That is a very confusing thing to me. Why are they not here? They have called me on the phone, they have called Mr. Friedrich on the phone, but they are not here.

John Radocha, Private Citizen, Las Vegas, Nevada:
I am against this bill. To me as a homeowner, it is legalized theft. That is my opinion. I am not arguing with anyone or saying it is, but to me it is legalized theft. I am against it and I would appreciate it if you would say that we are going to keep things as they are because they have been working, and seeing that they are working, they do not need to be fixed.

[A memorandum from the Real Property Section of the State Bar of Nevada (Exhibit J) was submitted but not discussed.]

Chair Seaman:
Is anyone in Las Vegas or Carson City neutral on A.B. 192? [There was no one.] I will close the hearing on A.B. 192, and open it up for public comment. Is there any public comment? [There was none.] Are there any comments from the Committee members before we adjourn?

Assemblyman Ohrenschall:
I would like to thank all the presenters and the witnesses in Las Vegas for sticking around so late. I know everyone cares about the good running of the HOAs and protecting homeowners' rights.

I also want to congratulate you, Madam Chair. You did an excellent job for your first time in chairing a legislative committee.

[A list of bills related to common-interest communities (Exhibit K) was submitted but not discussed.]

Chair Seaman:
I will now adjourn the meeting [at 8:28 p.m.].

RESPECTFULLY SUBMITTED:

_____
Linda Whimple
Committee Secretary

APPROVED BY:

_____
Assemblywoman Victoria Seaman, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary Subcommittee

Date: March 19, 2015 **Time of Meeting: 6:02 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 240	C	Bob Robey, Nevada Homeowner Alliance	Testimony in Favor
A.B. 240	D	Gayle Kern, representing Nevada Chapter, Community Associations Institute	Letter in Opposition
A.B. 240	E	Lori Martin, representing Terra West Management Services	Letter in Opposition
A.B. 240	F	Barbara Holland, H & L Realty, Las Vegas, Nevada	Letter in Opposition
A.B. 259	G	Assemblyman Elliot T. Anderson	Written Testimony
A.B. 192	H	Jennifer Lazovich, representing Olympia Companies	Proposed Amendment
A.B. 192	I	Bob Robey, Nevada Homeowner Alliance	Testimony
A.B. 192	J	Real Property Section, State Bar of Nevada	Memorandum
	K	Assemblyman Ira Hansen	List of Common-Interest Community Bills

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No.: 65260

GMAC MORTGAGE, LLC

Appellant,

vs.

KEYNOTE PROPERTIES, LLC; NEVADA ASSOCIATION SERVICES, INC.; and PECCOLE RANCH COMMUNITY ASSOCIATION,

Respondents,

Certified Question from the U.S. District Court, District of Nevada
The Honorable Gloria M. Navarro, United States District Judge
Federal Court Case No.: 2:13-cv-01157-GMN-NJK

APPELLANT'S OPENING BRIEF

Respectfully Submitted By:

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DISCLOSURE STATEMENT PURSUANT TO NRAP 26.1

The undersigned counsel of record certifies the following are persons and entities pursuant to NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

On May 14, 2012, Residential Capital, LLC and certain of its direct and indirect subsidiaries, including Plaintiff/Appellant GMAC Mortgage, LLC (collectively, the "Debtors"), filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). The Debtors' Chapter 11 cases are being jointly administered, indexed at case number 12-12020 (MG). There are no parent corporations and no publically held company holds more than 10% of GMAC Mortgage, LLC's stock. GMAC has been represented throughout litigation and appeal by Pite Duncan, LLP

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Cases Cited:

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STATEMENT OF JURISDICTION

This Court has jurisdiction to consider this certified question pursuant to Nevada Rule of Appellate Procedure ("NRAP") 5. Pursuant to that rule, the Court "may answer questions of law certified to it by … a United States District Court… if there are involved in any proceeding before those courts questions of law of this state which may be determinative of the cause then pending in the certifying court," and there is no clearly controlling Nevada precedent with regard to that issue. NRAP 5(a); *Volvo Cars of N. Am. v. Ricci*, 122 Nev. 746, 749-51, 137 P.3d 1161, 1163-64 (2006).

Here, the United States District Court, District of Nevada ("United States District Court") issued an Order on March 17, 2014, certifying two questions to this Court. On November 13, 2014, the Court declined to answer one of the questions; however, it accepted the other question presented by the United States District Court.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

This Court accepted the following certified question from the United States District Court:

1. What effect, if any, is there upon a foreclosure sale conducted pursuant to Nev. Rev. Stat. §116.31162 when the association refuses to provide the holder of a first security interest under a deed of trust secured by the unit with the specific amount due under the portion of the association's delinquent assessments lien that has been made prior to the deed of trust by Nev. Rev. Stat. §116.3116(2)[]?

STATEMENT OF THE CASE

The current certified question stems from a dispute over the validity of a homeowner's association ("HOA") foreclosure sale. Prior to the foreclosure sale, GMAC, as beneficiary of the first priority security interest, sought to pay off the superpriority piece of the HOA lien to prevent foreclosure from extinguishing GMAC's deed of trust. To do so, it sent multiple requests to Peccole Ranch Community Association ("Peccole Ranch") and its agent, Nevada Association Services, Inc. ("NAS") seeking a payoff demand. However, NAS and Peccole Ranch chose to rebuff GMAC's multiple requests. Instead, NAS and Peccole Ranch proceeded with foreclosure without ever providing GMAC the opportunity to prevent the foreclosure sale or protect its secured interest in the real property by making a payment to satisfy the superpriority piece of Peccole Ranch's lien.

STATEMENT OF FACTS[1]

A. PECCOLE RANCH FORECLOSES WITHOUT PROVIDING PAYOFF AMOUNTS TO GMAC.

The property at issue in this case is located at 9740 Ravine Avenue, Las Vegas, NV 89117, APN #163-06-316-165 ("Property"). (II JA000335; I JA000010-28.) On June 26, 2006, Carolyn M. Brown executed and delivered to non-party GMAC Mortgage Corporation dba ditech.com a Deed of Trust[2] encumbering the Property, which was recorded on August 3, 2006. (II JA000335; I JA000002.) The Deed of Trust secured a promissory note in the amount of $245,000.00. (I JA000011.) On August 9, 2011, the beneficial interest in the

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[1] Pursuant to NRAP 5(c)(2), the Order certifying the question to this court shall set forth a statement of all facts relevant to the question certified. Accordingly, the facts presented are taken from the United States District Court's Order and for the purpose of answering the certified questions should be taken as true.

[2] The Deed of Trust was recorded in Clark County as Book and Instrument No. 20060803-0003020 (I JA000010-28.)

Deed of Trust was assigned to GMAC via an Assignment of Deed of Trust,[3] which was recorded on August 22, 2011. (II JA000335-36; I JA000003.)

The Property is subject to a set of Covenants, Condition, and Restrictions ("CC&Rs") recorded by Peccole Ranch. (II JA000336; II JA000283-284; I JA000032.) Ms. Brown defaulted on her HOA dues under the CC&Rs, and on August 26, 2011, NAS, as agent for Peccole Ranch, recorded a Notice of Lien for Delinquent Assessments ("Notice of Lien").[4] (II JA000336; I JA000003.) The Notice of Lien indicates that on August 23, 2011, Ms. Brown owed $1,188.94 to Peccole Ranch for various fees and charges. (II JA000336; I JA000032.)

On October 27, 2011, NAS, as agent for Peccole Ranch recorded a Notice of Default and Election to Sell Under Homeowners Association Lien ("Notice of Default").[5] (II JA000336; I JA000003.) The Notice of Default indicates that on October 26, 2011, Ms. Brown owed $2,276.04 to Peccole Ranch for various fees and charges. (II JA000336; I JA000034.)

On May 31, 2012, NAS, as agent for Peccole Ranch, recorded a Notice of Foreclosure Sale ("Notice of Sale"),[6] setting a sale date for the Property on June 29, 2012. (II JA000336; I JA000003.) The Notice of Sale indicates that on May 29, 2012, Ms. Brown owed $3,807.46 to Peccole Ranch for various fees and charges. (II JA000336; I JA000037-38.) GMAC contacted NAS concerning the Notice of Sale, and the sale was thereafter postponed. (II JA000337; I JA000004.)

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[3] The Assignment of Deed of Trust was recorded in Clark County as Book and Instrument No. 20110822-0001895. (I JA000030.)

[4] The Notice of Lien was recorded in Clark County as Book and Instrument No. 20110826-0002537. (I JA000032.)

[5] The Notice of Default was recorded in Clark County as Book and Instrument No. 20111027-0004855. (I JA000034-35.)

[6] The Notice of Sale was recorded in Clark County as Book and Instrument No. 20120531-0001766. (I JA000037-38.)

On multiple occasions, GMAC contacted NAS and/or Peccole Ranch and requested they provide information concerning the amount necessary to effectuate release of the lien and cancellation of the pending foreclosure sale. (II JA000337; I JA000004.) NAS and Peccole Ranch, however, either refused to provide the requested information or simply ignored the communication. (II JA000337; I JA000004.) Following GMAC's failed attempts to satisfy the lien, NAS, as agent for Peccole Ranch conducted a foreclosure sale on April 17, 2013. (II JA000337; I JA000004.) A Foreclosure Deed[7] was recorded on May 21, 2013, which indicates that Keynote Properties, LLC ("Keynote") purchased the Property for $7,200.00 at the foreclosure sale. (II JA000337; I JA000040-42.)

B. PROCEDURAL HISTORY

On July 1, 2013, GMAC filed its Complaint with the United States District Court, alleging wrongful foreclosure and negligence and seeking declaratory relief and quiet title. (II JA000337; I JA000001.) NAS, Peccole Ranch, and Keynote were served a copy of the Complaint and Summons on August 20, August 22, and September 11, 2013, respectively. (II JA000337; I JA000049-50; I JA000047-48; I JA000087-88.) NAS and Peccole Ranch filed their Answer on September 13, 2013, denying all claims asserted in the Complaint. (II JA000337; I JA000051-60.) On October 1, 2013, Keynote filed its Answer and Counterclaim denying all claims asserted by GMAC and asserting its own claim for quiet title as well as claims for injunctive relief and unjust enrichment against GMAC. (II JA000337; I JA000064-83.)

On October 25, 2013, GMAC filed its Motion to Dismiss Keynote's Counterclaims. (II JA000337; I JA000089-97.) Keynote filed its Response to the

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[7] The Foreclosure Deed was recorded in Clark County as Book and Instrument No. 20130521-0001176. (I JA000040-42.)

Motion to Dismiss on November 8, 2013, and GMAC filed its Reply on November 18, 2013. (II JA000337-38; II JA000098-281; II JA000304-18.)

The initial issue before the United States District Court was whether GMAC's interest under the Deed of Trust could be extinguished by a foreclosure sale conducted under the authority of NRS Chapter 116. (II JA000338.) As there was no controlling Nevada law on the issue at the time, Keynote filed a Motion to Certify Question to the Nevada Supreme Court seeking clarification on the issue. (II JA000338; II JA000282-97.) As GMAC's attempts to satisfy Peccole Ranch's lien may affect the validity of the foreclosure sale, GMAC filed it Response to Motion to Certify Question opposing certification or alternatively seeking certification of the question currently before this Court. (II JA000338; IIJA000320-32.)

The United States District Court issued its Order submitting the certified questions to the Court on March 17, 2014, and the Court issued its Order Declining Certified Question and Accepting Certified Question on November 13, 2014. (II JA000335-44.)

SUMMARY OF THE ARGUMENT

For far too long, HOAs and their agents have refused to provide first security interest holders with any payoff amounts, let alone a payoff amount for the superpriority piece of an HOA lien. They seemingly believe that because there is no explicit statutory provision obligating them to provide payoff figures to junior interest holders beyond the statutorily required foreclosure notices, they are under no obligation to provide a payoff amount to junior interest holders. They are mistaken.

Viewing the statutory scheme as a whole, the requirement is inherent. Within any statutory framework, there are requirements that go unstated because listing every particular requirement would be too time-consuming and voluminous,

and many of the unstated requirements obviously and naturally follow from the provision that are expressly stated. The requirement that an HOA and/or its agent provide superpriority payoff information to a first security interest holder is one of these requirements that goes without saying. In light of the recent *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.* decision, it is established that first security interests are subordinate to a portion of an HOA lien and that the first security interest holder is entitled to pay off the superpriority portion of that HOA lien. It only follows logically that the first security interest holder is also entitled to notice regarding the amount necessary to pay off that superpriority portion.

Omitting this requirement from the statutory scheme would not only lead to absurd results but also violates fundamental principles of due process. Without this requirement, the first security interest holder does not receive notice regarding the amount of the lien that is senior to its secured interest nor the opportunity to protect its interest in the property. Instead, the fate of the first security interest rests in the hands of the HOA. This gives HOAs and their collection agents the option of providing the superpriority amount – thereby allowing the first security interest holder to pay it off – or alternatively, withholding that information and forcing the first security interest holder to pay the full amount of the lien. Because it is in the HOA's interest to accept nothing less than a full payment, HOAs would likely never voluntarily provide the superpriority amount. The end result would be that a first security interest holder's right to pay off only the superpriority amount would become nothing but a theoretical possibility.

Finally, eliminating any doubt that HOAs and their agents are obligated to provide superpriority payoff amounts, NRS Chapter 116 fills any gaps with an overarching requirement that sales be conducted in good faith. Conducting a foreclosure sale in good faith means the HOAs and their agents cannot withhold any pertinent information. Of the types of information that an HOA may be

obligated to provide, none is more pertinent to a first security interest holder than the amount necessary to pay off the superpriority piece of the HOA lien. Any failure to provide this information, especially after the first security interest holder specifically requests it, rises to the type of oppression and unfairness that undermines the validity of any resulting sale.

Regardless of what an HOA may claim, it and/or its agents are required to notify a first security interest holder of the amount necessary to pay off the superpriority piece of the HOA lien. If the HOA refuses to provide the superpriority payoff, any resulting sale is void and should be set aside.

ARGUMENT

A. AN HOA'S REFUSAL TO PROVIDE THE SUPERPRIORITY PAYOFF AMOUNT RENDERS ANY RESULTING FORECLOSURE SALE VOID.

HOAs have liens against a unit within the association for any unpaid assessment levied against that unit. NRS 116.3116; *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, ___, 334 P.3d 408, 410 (2014). To enforce their lien, NRS Chapter 116 authorizes HOAs to foreclose on the liens and, more importantly, sets forth the specific requirements the association and its agent must satisfy for the sale to be valid. NRS 116.31162 *et seq.*; *SFR Investments*, 130 Nev. at ___. 334 P.3d at 411-12. If the association or its agent fails to satisfy the statutory requirements, the foreclosure sale is void. *See Title Ins. and Trust Co. v. Chicago Title Ins. Co.*, 97 Nev. 523, 527, 634 P.2d 1216, 1218 (1981) (holding that failure to provide statutorily required notices renders a trustee's sale void).

In determining the requirements an HOA must satisfy to effectuate a valid foreclosure sale, this Court must look to the statutory scheme as a whole and interpret the various provision harmoniously to effectuate the purpose of the

statute.[8] *See Simmons Self-Storage v. Rib Roof, Inc.*, 130 Nev. ___, ___, 331 P.3d 850, 854 (2014); *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 418, 132 P.3d 1022, 1028 (2006). The Court determines the purpose of the statute by examining the spirit of the law as well as the cause that induced the Legislature to act. *Leven v. Frey*, 123 Nev. 399, 405, 16/8 P.3d 712, 716 (2007). Additionally, the Court harmonizes the statutory provisions so as to avoid rendering any provision meaningless or producing "absurd or unreasonable results." *Id.*; *Great Basin Water Network v. State Eng'r*, 126 Nev. ___, ___, 234 P.3d 912, 918 (2010).

Within any statutory framework, there are inherent requirements and obligations beyond those expressly stated. *See Blackjack Bonding v. City of Las Vegas Municipal Ct.*, 116 Nev. 1213, 1218, 14 P.3d 1275, 1279 (2000) (stating that it is impossible to give an all-inclusive enumeration of all inherent powers); *Checker, Inc. v. Public Service Comm.*, 84 Nev. 623, 629-30, 446 P.2d 981, 985 (1968) ("It is the universal rule of statutory construction that wherever a power is conferred by statute, everything necessary to carry out that power and make it effectual will be implied."); *see also Huntington Continental Townhouse Assoc., Inc. v. Miner*, 230 Cal.App.4th 590, 601-02 (2014) (recognizing that an HOA is inherently obligated to accept partial payments because the relevant statute sets forth the order in which payments are to be applied). For instance, within NRS 116.31162 *et seq.*, there is no express provision requiring HOAs or their agents to accept a payment from anyone in particular.[9] However, this Court has recognized

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[8] The Court looks beyond the plain language of a statute when the language is ambiguous or **it is silent on the issue in question**. *Allstate Ins. Co. v. Fackett*, 125 Nev. 132, 138, 206 P.3d 572, 576 (2009) (emphasis added). Here NRS 116.31162 *et seq.* is silent on the issue of whether an HOA or its agent is required to provide payoff information beyond the specific foreclosure notices identified.

[9] Notably, there is not even an express requirement that the HOA accept a payment from homeowners. Rather, the statute implies that homeowners can pay off the HOA lien. *See e.g.*, NRS 116.31162(1)(c) (stating that an HOA cannot foreclosure its lien until the "unit's owner ... has failed to pay the amount of the lien, including costs, fees, and expenses incident to its

that a junior interest holder can pay off the lien to protect its interest. *SFR Investments*, 130 Nev. at ___. 334 P.3d at 414. Tacitly then, there must be a requirement that when a junior interest holder tenders funds to pay off a lien, the lien holder must accept those funds. *See id.*

Similarly, there is no statutory provision expressly requiring HOAs to provide updated payoff figures as part of the foreclosure process.[10] Nonetheless, such a requirement is inherent and becomes readily apparent when the statutory scheme is read as a whole with the purpose of the statute in mind.

1. HOAs and Their Agents Must Give Subordinate Interest Holders the Opportunity to Protect Their Secured Interests.

Central throughout the statutorily prescribed foreclosure process is the notion that any person whose interest may be affected by the sale must be given notice of the sale and notice of what is required to prevent that sale. *See e.g.,* NRS 116.31162(1)(a) (requiring notice of the amount of the assessments and any other amounts due before recording a notice of sale); NRS 116.31163(1) (incorporating the notice requirements set forth in NRS 107.090, requiring notice to all junior lienholders); NRS 116.31168 (similarly incorporating the notice requirements of NRS 107.090); *see also SFR Investments,* at ___, 334 P.3d at 411. The purpose of the notice requirement is to allow an interested party the opportunity to pay off the lien and protect its interest in the property. *See* NRS 116.31162 (giving the homeowner 120 days to make a payment before a notice of sale can be recorded); *SFR Investments*, at ___, 334 P.3d at 414 ("as a junior lienholder, [the secured

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enforcement for 90 day…). The statute scheme assumes, as it should, that if the homeowner tenders a payment the HOA will and should accept it.

[10] As discussed in more detail *infra*, there is a requirement that HOAs provide updated account information, including the current monthly assessments charged by the association plus any unpaid obligations owed by homeowner, when requested by either the homeowner or secured interest holder. NRS 116.4109(7). However, this requirement relates to resale of a unit and is not specifically incorporated into the requirements for conducting a valid foreclosure sale.

lender] could have paid off the [homeowner association] lien to avert loss of its security").[11]

With this purpose in mind, it follows logically that when an interested party requests current payoff figures during the pendency of the foreclosure, the HOA and/or its agent are obligated to provide those figures. It so universally understood that a foreclosing HOA must provide updated payoff figures that none of the twenty one states that have enacted some version of the UCIOA have needed to address this issue.[12] Moreover, the requirement to provide updated payoff information is so obvious that the Nevada Legislature did not feel it necessary to articulate this requirement in the context of either HOA foreclosures or nonjudicial foreclosures of deeds of trust pursuant to NRS 107.080. Similar to NRS 116.31162, NRS 107.080 speaks in terms of whether an interested party has paid off the debt and prohibits the beneficiary of a deed of trust from proceeding with foreclosure until interested parties have had adequate opportunity to "make good the deficiency in performance." *See* NRS 107.080(2)(b). Implicit in NRS 107.080 is that interested parties be given the amount necessary to "make good the deficiency."

The statutory notices specifically identified in NRS Chapter 116 are not sufficient to provide updated payoff information. Under the letter of the statute, the last statutory notice an HOA is obligated to provide is the notice of sale. However by the time the notice of sale is recorded and mailed it may already out of date. Moreover, there is nothing obligating the association to conduct its sale

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[11] Notably, the Court went on to add that "nothing appears to have stopped [the secured lender] from determining the precise superpriority amount in advance of the sale or paying the entire amount and requesting a refund of the balance." *SFR Investments,* at ___, 334 P.3d at 418. Here, Peccole Ranch and NAS both took steps to prevent GMAC from determining the precise superpriority amount in advance of the sale.

[12] After thorough research, counsel for Appellant was not able to locate a case in any of the twenty one relevant states that addresses this issue.

within a certain amount of time after it records the notice of sale.[13] If the association elects not to foreclose immediately, it may be several months, if not longer, between when the notice of sale was generated and the association attempts to foreclose.[14] In those months, the amount of the association's lien will continue to grow as additional assessments come due. The result is that interested parties are left to guess at the current payoff amount. Such a result not only runs contrary to the general intent – to allow interested parties the opportunity to protect their interests – but quite simply defies common sense.

As it relates to first security interests, this Court recently clarified that only a limited piece of the HOA lien, the "superpriority piece," takes priority over a first security interest. *Id.* at ___, 334 P.3d at 411. The purpose behind creating a unique split lien is to "strike an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lenders." *Id.* (citing Uniform Common Interest Ownership Act ("UCIOA") §3-116 cmt 2.) In doing so, the Court also recognized the first security interest holder's right to pay off the superpriority piece of the lien to prevent its security interest from being extinguished. *Id.*; *see also* NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION ADVISORY OP. 13-01 at 9, dated December 12, 2012 [hereinafter "Advisory Opinion"] ("...the first security interest holder will **either pay the super priority lien amount or**

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[13] Pursuant to NRS 116.31164, the association or its agent can "from time to time postpone the sale by such advertisement and notice as it considers reasonable." Unlike foreclosure sales conducted pursuant to NRS 107.080, there is no restriction on the number times a sale can be postponed. *Compare* NRS 116.31164, *with* NRS 107.082(2) (stating that the trustee of a deed of trust can only postpone a foreclosure sale three times). Further there is no restriction on how long after the notice of sale is recorded that the foreclosure sale must be conducted. *Compare* NRS 116.31163, *with* NRS 107.550 (requiring that a notice of sale must be rescinded if the sale does not take place within 90 days of when the notice of sale is recorded).

[14] Here, the NOS was recorded on May 29, 2012, but the sale was not conducted until April 17, 2013, almost a year later.

lose its equity."). The superpriority piece of the lien "consist[s] of the last nine months of unpaid HOA dues and maintenance and nuisance abatement charges." *Id.*

However, from the statutory notices alone it is impossible to determine the amount of the superpriority piece of the lien, even from a newly recorded notice, because the notices only identify the total amount of the lien.[15] The notices do not identify the amount of the monthly dues charged by the association or identify what portion of the lien, if any, is made up of maintenance or nuisance abatement charges. (*See e.g.*, I JA000037-38.) This leaves first security interest holders without the vital information they need to adequately protect their interests. This notable gap undermines the statutory intent of allowing interested parties the opportunity to protect their interests unless the gap is filled. To prevent such an absurd loophole in the statutory scheme, there must be an implicit requirement that HOAs and/or their agents provide that missing information to a first security interest holder.

Moreover, NRS Chapter 116 was amended to clarify that an HOA and/or its agents must provide accurate payoff information to the homeowner or a secured interest holder upon request. NRS 116.4109(7).[16] "A unit's owner ... or **the holder of a security interest on the unit** may request a statement of demand from the association." *Id.* (emphasis added). Once requested, the association "**shall**

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[15] The Court noted in *SFR Investments* that it is appropriate for the statutory required notices to identify only the total amount of the lien because the notices go to the homeowner and other junior interest holders. *Id.* at ___, 334 P.3d at 418.

[16] NRS 116.4109 was amended to add subsection 7 by Senate Bill 280 in 2013. However, the amendment did not go into effect until October 1, 2013, after the foreclosure sale in this case. Ironically, at approximately the same time Peccole Ranch and NAS were refusing to provide payoff information to GMAC, Senator Ruben J. Kihuen, who sponsored SB 280, explained that the bill was intended to address the problem of HOAs failing to communicate effectively. Minutes of the Senate Committee on Judiciary, Seventy-Seventh Session April 1, 2013 at 2, available at https://www.leg.state.nv.us/Session/77th2013/Minutes/Senate/JUD/Final/708.pdf.

furnish" an updated payoff statement within ten days after receipt of the written request. *Id.* (emphasis added). The statement must set forth the amount of the monthly assessment plus any unpaid obligations owed by the unit's owner. *Id.* From this demand, the unit owner or any security interest holder can calculate the amount necessary to pay off the lien. In the case of a first priority security interest holder, it can calculate the amount necessary to pay off the superpriority piece of the association's lien and pay that amount to protect its security interest.

Ultimately, there is an inherent requirement that HOAs or their agents provide current payoff information if requested by junior lien holders. Such an inherent requirement both harmonizes the statutory scheme and advances the spirit and purpose behind it. Therefore, an HOA or its agent that refuses to provide this essential information deprives the security interest holder of its right to protect its interest and fails to satisfy the requirements for conducting a valid nonjudicial foreclosure sale.

2. An Interpretation of NRS 116.31162, *et seq.* That Allows HOAs to Withhold Payoff Amounts Renders the Statutory Scheme Unconstitutional and Leads to Absurd Results.

Absent a requirement to provide interested parties with updated payoff information, HOAs and their agents would control whether interested parties are able to protect their interests. It strips any interest holder of the ability to control its fate, and instead hands that power to the HOA. Not only does this power shift lead to absurd results, but it violates the basic principles of due process.

a) *The foreclosure notices alone do not provide sufficient notice of the amount necessary for a first security interest holder to protect its interest.*[17]

A non-judicial foreclosure, which deprives a party of its interest in real property, is the type of action that entitles the interested party to procedural due process. *See generally Swartz v. Adams*, 93 Nev. 240, 241, 563 P.2d 74, 75 (1977) (holding that executing a judgment lien against a property requires procedural due process); *see also J.D. Construction v. IBEX Int'l Group*, 126 Nev. ___, ___, 240 P.3d 1033, 1040 (2010) (holding that enforcement of a mechanic's lien is a taking that requires due process). The essence of due process requires notice and an opportunity to be heard. *J.D. Construction*, 126 Nev. at ___, 240 P.3d at 1040. The precise procedures required to satisfy due process are "flexible and call[] for such procedural protections as the particular situation demands." *Id.* The ultimate goal is to ensure that a party entitled to receive notice is actually notified of what is required of it to prevent the deprivation of its property. *Kotecki v. Augusztiny*, 87 Nev. 393, 395, 487 P.2d 925, 926 (1971) ("process which is a mere gesture is not due process" and further adding that "the purpose of notice is to give notice."); *see also Swartz*, 93 Nev. at 243, 563 P.2d at 75-76 (holding technical compliance with statutory notice requirements does not satisfy due process when a lien claimant has more efficient means of ensuring actual notice).

In the context of HOA foreclosure sales, due process demands that first

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[17] In *SFR Investments*, the court rejected the secured lender's argument that the notice requirements in NRS 116.31162 through NRS 116.31168 violate due process based on the procedural posture of the underlying action. *Id.* at ___, 334 P.3d at 418. That litigation was still at the motion to dismiss stage, and therefore the court took all assertions in the operative complaint as true. *Id.* Because the plaintiff alleged in the complaint that all required notices were given, the court was forced to conclude that the foreclosure sale was conducted in compliance with NRS 116.31162 through NRS 116.31168. *Id.* However, in certifying the current question to this Court, the United States District Court specifically noted that Peccole Ranch and NAS failed to provide notice of the amount necessary to payoff the superpriority piece. Accordingly, this Court should assume, for the purposes of answering the certified question that no such notice was provided. *See* NRAP 5(c)(2).

security interest holders be given notice of the amount necessary to pay off the superpriority piece of the HOA lien. An interpretation of NRS 116.31162, *et seq.* that does not require HOAs or their agent to provide superpriority payoff information fails to provide sufficient process to first security interest holders as it does not provide a reasonable opportunity for them to protect their interest. Mere technical compliance with the individual statutory foreclosure provisions does not provide the amount necessary to satisfy the superpriority piece of the HOA lien, as those statutory notices only provide the full amount of the HOA lien.[18] However, to avoid offending the principles of due process, the statute must inherently require that HOAs and their agents provide the amount of the superpriority piece of the lien, especially when the first security interest holder requests.

b) Giving HOAs the option to withhold payoff amounts leads to absurd results.

From a business perspective, HOAs and, in particular, their collection agents would likely never provide payoff figures if given the option. Instead, foreclosing on the full amount of the HOA's lien maximizes the amounts both collect. If HOAs were given the option of whether to provide superpriority payoff information, a first security interest holder's right to pay off the superpriority piece of an HOA lien would be nothing more than a mirage.

From the perspective of a collection agency, it is in its best interest to conduct a foreclosure sale because there is an additional fee charged for each step the collection agency takes toward foreclosure. To the collection agency each step in the process equals increased its profits. Thus, there is no apparent benefit to the collection agency to allow an interest holder to pay off the lien and prevent the foreclosure, as doing so cuts off a potential stream of income. Moreover, there is

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[18] In *SFR Investments*, the court noted that it was appropriate to state only the full amount of the HOA lien on the statutory notices, as those notices went to all interested party including the unit owner and other junior interest holders. *Id.* at 130 Nev. ___, 334 P.3d at 418.

no determinant to driving up its costs of conducting the sale as it is guaranteed to collect these fees and costs from the proceeds of the foreclosure sale. *See* NRS 116.31164(3)(c).

Similarly, it is in the best interest of an HOA's to either accept a payment for the entire amount of the lien, or proceed with the foreclosure sale. If an HOA accepts a payment for the superpriority piece of the HOA's lien, the remainder of its lien is junior to the first security interest. In the current housing market, many of the properties being foreclosed upon do not have any positive equity. Accordingly, it is highly unlikely any potential buyer at the HOA foreclosure sale would bid much, if anything, for a property if it were purchasing it subject to a first security interest.[19] This results in one of two possible scenarios, neither of which is favorable to the HOA. First, the HOA does not credit bid and allows a buyer to pay less than the full amount of the HOA lien. Obviously, this means the HOA recovers less than the full amount it is owed. The alternative is for the HOA to credit bid the full amount of the debt. If there are no bids higher than the credit bid, the HOA takes title to the property subject to the first security interest. In this scenario, not only does the HOA not have an asset it can reasonably liquidate to recover the past due assessments, but moving forward the property remains a unit where no assessments are paid. Rather than facing either of these scenarios, HOAs simply reject any partial payments and assure themselves that they will collect the full amount owed - either from an interested party seeking to protect its interest or the highest bidder at the HOA's ultimate foreclosure sale.

If given the option of whether or not to provide the superpriority payoff amount, HOAs and their agents would likely never voluntarily do so. Without

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[19] If the amount owed on the first security interest exceeds the fair market value of the property, the only potential value in the property is for the use and possession of the property until the first security interest holder forecloses.

something requiring an HOA to provide the superpriority amount, first security interest holders would never be given a legitimate opportunity to protect their interests. The possibility would be available in theory, but non-existent in practice. It is unreasonable to allow parties with no motivation to facilitate payment of the superpriority piece of the lien to control if a first security interest holder can protect its interest. This Court has previously held that first security interest holders have the right to protect their interest. *SFR Investments*, 130 Nev. at ___, 334 P.3d at 411. It defeats the purpose of the statute to give HOAs and their agents a way to prevent the first security interest holders from doing so by unilaterally determining whether and when to provide the superpriority payoff amount. Giving HOAs the power to choose whether a first security interest holder can protect its interest destroys the equitable balance the statute seeks to achieve. This is the type of absurd result this Court strives to avoid in construing statutes.

B. A FORECLOSURE SALE IS NOT CONDUCTED IN GOOD FAITH, AND SHOULD BE SET ASIDE, IF THE HOA AND/OR ITS AGENT FAILS AND REFUSES TO PROVIDE PAYOFF INFORMATION.

Aside from the specific requirements set forth in NRS 116.31162 through NRS 116.31168, HOAs and their agents have a general obligation to conduct foreclosure sales in good faith. NRS 116.1113 ("Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement."); *see also Nevada Land & Mortgage Co. v. Hidden Wells Ranch, Inc.*, 83 Nev. 501, 504, 435 P.2d 198, 200 (1967) (stating that a foreclosure sale that is the result of "fraud, unfairness or oppression" is ripe to be set aside); *Long v. Towne*, 98 Nev. 11, 13, 639 P.2d 528, 530 (1982). Conducting a foreclosure sale in good faith requires both "honesty in fact" and "reasonable standards of fair dealing." UCIOA §1-113; *Will v. Mill Condominium Owners' Ass'n*, 848 A.2d

336, 340-41 (Vt. 2004) (citing the Official Comment to UCIOA §1-113).[20] Conversely, when the sale is the result of deceit or trickery, such as providing false information or withholding pertinent information, it raises serious questions that undermine the validity of the sale. *See McLaughlin v. Mut. Bldg. & Loan Ass'n of Las Vegas*, 57 Nev. 181, 60 P.2d 272, 276 (1936).

In the context of a foreclosure sale, there can be no more pertinent information than the amount necessary to pay off the lien and prevent the sale. For first security interest holders, the most pertinent information is the amount of the superpriority piece of the HOA lien. Withholding that information from an interested party seeking to pay off the lien hardly constitutes good faith. Failing to provide that information as a matter of course to the first-lien holder and ignoring repeated requests from an interested party seeking to pay off the lien, is the epitome of the type of oppression and unfairness that warrants setting aside a foreclosure sale. Yet, this is precisely the conduct that Peccole Ranch and NAS employed to effectuate the foreclosure sale in this case. (II JA0000000337; I JA000004.) It was their actions that prevented GMAC from protecting its security interest. Even though both were well aware the GMAC wanted to submit a payment, NAS and Peccole Ranch, actively sought to frustrate GMAC's attempts to do so. Had they not resorted to deceit, GMAC would have paid off the superpriority piece of Peccole Ranch's lien, if not the entire lien.

Ultimately, the foreclosure sale was not conducted in good faith, but rather was a direct result of Peccole Ranch's and NAS' oppressive and unfair actions. Accordingly, it, and any other sale resulting from an HOA's refusal to provide payoff figures, should be set aside and declared void.

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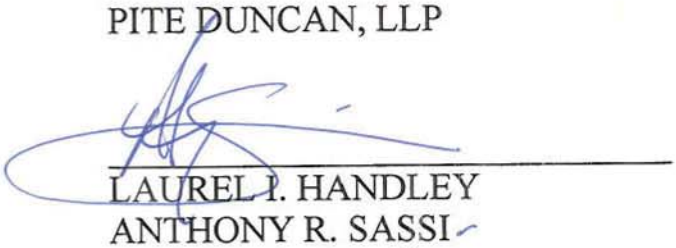
[20] Because NRS Chapter 116 is based upon UCIOA, the court can look to the comments of the National Conference of Commissioners on Uniform State Laws, national commentary, and other states cases to interpret NRS Chapter 116. *SFR Investments,* 130 Nev. ___, 334 P.3d at 410.

CONCLUSION

For the foregoing reasons, GMAC respectfully requests that this Court hold that inherent in the provisions of NRS 116.31162 through NRS 116.31168 is the requirement that homeowner's associations and their agents provide first security interest holders with the amount necessary to satisfy the superpriority portion of the homeowner's association's lien. Therefore, if the association refuses to provide the specific amount of the superpriority portion, any resulting foreclosure sale is void and has no effect on the first security interest.

DATED this 27th day of February, 2015.

PITE DUNCAN, LLP



LAUREL I. HANDLEY
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Attorneys for Appellant

CERTIFICATE OF COMPLIANCE

I hereby certify that this Opening Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this Opening Brief has been prepared in a proportionally spaced typeface using Word in size 14 Times New Roman. I further certify that this Opening Brief complies with the page or type volume limitations of NRAP 32(a)(7)(A) because, excluding the parts exempted by NRAP 32(a)(7)(C), it does not exceed 30 pages.

Finally, I hereby certify that I have read this Opening Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Opening Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 27th day of February, 2015.

PITE DUNCAN, LLP

LAUREL I. HANDLEY
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Attorneys for Appellant

CERTIFICATE OF SERVICE

I, the undersigned, declare: I am, and was at the time of service of the papers herein referred to, over the age of 18 years, and not a party to this action. My business address is 520 South Fourth Street, Suite 360, Las Vegas, Nevada 89101.

I hereby certify that on February 27, 2015, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 27th day of February, 2015, at Las Vegas, Nevada.

Natasha D. Petty

NATASHA D. PETTY

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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

PREMIER ONE HOLDINGS, INC.,	CASE NO. A-13-681541-C
Plaintiff,	DEPT. NO. VI
vs.	**TRANSCRIPT OF PROCEEDINGS**
DEUTSCHE BANK NATIONAL TRUST COMPANY, et al.,	
Defendants.	

BEFORE THE HONORABLE ELISSA F. CADISH, DISTRICT COURT JUDGE

BENCH TRIAL - DAY 2

PARTIAL TRANSCRIPT
(TESTIMONY OF PATRICK PITTMAN AND CHRISTOPHER YERGENSEN)

TUESDAY, JUNE 2, 2015

APPEARANCES:

FOR THE PLAINTIFF: JOSEPH Y. HONG, ESQ.

FOR THE DEFENDANTS: DANA J. NITZ, ESQ.
JORY GARABEDIAN, ESQ.

COURT RECORDER:

JESSICA KIRKPATRICK
District Court

TRANSCRIPTION BY:

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Englewood, CO 80110
(303) 798-0890

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

INDEX

WITNESSES

* * * * *

EXHIBITS

CHRISTOPHER YERGENSEN, DEFENDANTS' WITNESS, SWORN

THE CLERK: Thank you. You may be seated. Please state your complete name, spelling both your first and last name.

THE WITNESS: It's Christopher Yergensen, C-h-r-i-s-t-o-p-h-e-r, and my last name is Yergensen, Y-e-r-g-e-n-s-e-n.

THE CLERK: Thank you.

THE COURT: Go ahead.

DIRECT EXAMINATION

BY MR. NITZ:

Q Mr. Yergensen --

MR. NITZ: Your Honor, Mr. Vilkin sent me an e-mail yesterday (inaudible).

THE COURT: Because of another day?

MR. NITZ: So, may I approach and give it to --

THE COURT: Yes.

MR. NITZ: -- the witness?

THE COURT: Yes.

MR. NITZ: Okay.

THE WITNESS: Thank you.

THE COURT: Thank you for your patience, Mr. Yergensen.

THE WITNESS: No problem.

//

BY MR. NITZ:

Q There are two checks there in the amount of 25; one for you and one for Ms. Kluska's appearance this morning.

A Okay.

Q Are you currently employed by Nevada Association Services?

A I am.

Q Are you a direct employee?

A Yes.

Q What is -- what is your position?

A Corporate counsel.

Q And what are your duties and responsibilities as corporate counsel?

A I overview the company with respect to legal matters.

Q Are you familiar with the property located at 54 Attebury Court, Henderson, Nevada that's the subject of this lawsuit?

A I'm not.

Q Mr. Vilkin advised us the other day that you were being presented to testify in response to the subpoena that we served on NAS listing 16 different topics. And he indicated that you'd be testifying on the topics dealing with policies and procedures; is that your understanding, as well?

A Yes.

Q Ms. Kluska testified this morning that you would also be testifying on behalf of NAS regarding Topic 9, any requests for payoffs tendered to the Association or NAS related to the HOA lien on the property; is that accurate?

A Yes.

Q Did you review any of the -- well, here's the exhibit binder. Would you turn to Exhibit 201?

A Can I move this over?

Q It's towards the back.

THE COURT: Sure.

THE WITNESS: Just don't unplug it, right?

THE COURT: Right. Don't unplug it and make sure it's close enough to pick up your voice.

THE WITNESS: Okay. I'm sorry, can you repeat; 201?

BY MR. NITZ:

Q Yes.

A Okay.

Q That was identified this morning by Ms. Kluska as the business records of NAS pertaining to this property. If you look at, I believe it starts on DBNT-78, and it continues through DBNT-287.

A Okay.

Q I'm sorry.

A Yeah, that's correct.

Q Did you review these records in preparation for your

BY MR. NITZ:

Q All right. Mr. Yergensen, at the time of the June 2011 letter by Mr. Jung -- Jung -- it is your understanding that NAS had a policy to refuse to provide a nine month super priority lien amount, is that right, upon requests like Mr. Jung's letter of June 2011?

A The policy of NAS was to not disclose the nature of the debt in violation of the Federal Debt Collection Practices Act unless there was written consent from the debtor.

Q And that was NAS's policy in June 2011?

A Generally speaking, yes.

Q Okay. So in response to letters like this, it was NAS's policy to simply provide the full lien amount, plus all collection costs and fees?

A Actually, it was to provide nothing. But the -- that didn't always mean our employees followed our policies. We -- we -- we had -- from my knowledge, we had a few employees that didn't follow the policy and we ended up getting sued for wrongful disclosure to third parties under the FDCPA in federal court in which we had to settle a large amount. And --

Q Are you saying that this -- that the response given to Mr. Jung to his June 2011 letter was a violation of NAS policies at that time?

A Yes.

Q Okay. But --
A But it was disclosed, yes.
Q And what was disclosed was solely that it was -- this is the full lien amount, plus all collection fees and costs?
A It was -- it was an accounting ledger that was -- that was disclosed.
Q Of the entire fees and costs --
A Everything that's owed, yes.
Q -- and assessments due?
A Everything. Even violations would have been on there. Everything that the homeowner owed.
Q Okay. At or about the time of Mr. Jung's letter, June 2011, did NAS have a policy to demand payment of the entire lien amount?
A Yes. Upon request, NAS's policy was to give what we deemed to be called a payoff, which was a payoff amount that somebody could pay in order to satisfy the HOA lien, yes.
Q And that would include the entire lien amount, plus all collection costs, fees and violations?
A It would have included all that. The reason why -- violations, I'm not sure about. But yes, it would have included violations, as well.
Q Would you look at DBNT-295? Do you recognize that as a type of accounting that was supplied in response to

payoff requests at that time -- point in time?

A This would have been an accounting ledger, not a payoff request.

Q Okay. Is this the sort of ledger that was, on occasion at that time, delivered by NAS in response to a request for payoff?

A And I don't mean to play semantics with you, because a request for payoff, we would actually give a payoff and say, if you pay this, you will satisfy. For example, if a homeowner called and said, I'd like -- I want to know what's due, we're not giving them a payoff. We're giving him, Mr. Homeowner, here's the ledger. That appears to be what was given to your client here. It was just a ledger saying, this is the amount due as of 8/19/2011.

Q If you look --

A And the difference is-- I'm sorry -- the difference is, we would charge for that payoff amount, because we assume liability of giving the right amount as a payoff. And so we would be able to charge $150 for that service. Giving out accounting ledgers, homeowners are entitled to that freely. And so we would give that out.

Q What you're really talking about though is what has occurred since October 1, 2013, after the statute went into effect that provided the charge and then the charge for an accelerated response?

A No, sir. And actually, I wrote that -- I wrote that law. That law was -- was intended to try to help us encourage collection agencies like us to give information to your clients without the FDCPA bogging over us. I couldn't change federal law, but I could change state law to allow us to give to first trust deed holders a payoff amount.

Q If you look at DBNT-295, about a third of the way down, one of the items listed there is miscellaneous violations; correct?

A Yes. Um-hum.

Q And there's an amount included there for $229.13?

A Correct.

Q At or about the time of this letter of June 2011, did NAS have a policy to refuse payment of any amount less than the full amount?

A No. With -- if -- as long as it didn't have any conditions on the check.

Q At or about the time of Mr. Jung's letter, if NAS received anything less than the full amount of the lien, plus all collection fees and costs, would NAS go forward with the lien foreclosure sale?

A I'm sorry, sir. I don't understand your question.

Q At or about the time of this letter, if something less than the full amount of the lien, plus all collection fees and costs was tendered, would NAS go forward with the

sale?

A So, when NAS would receive a partial payment, it would apply the partial payment to the amount due, which included collection costs. The HOA lien is basically one lien, which includes all costs, collections of -- and etcetera. Depending on our -- our contract with the Homeowners Association it would depend on how that partial payment would be applied; would it be applied -- would it be sent mostly to the HOA, would it be mostly cover our costs?

Typically, a partial payment we would split 50/50 with the Homeowners Associations. That policy has been in effect since before my time, and it still stands today, because most of our contracts do not provide for a application of partial payments.

At that point, the policy was then to ask the Homeowners Association what they wanted to do, whether or not they wanted to continue forward. If they said, yes, then we would continue forward with the foreclosure sale.

Q At or about June 2011, was it NAS's policy to not supply a Release of Lien unless the full amount of the lien and all collection fees and costs were paid, and it was requested by the entity that tendered?

A Let's see, you're going to have to repeat that.

Q You testified earlier that you would, more recently --

A Um-hum.

Q -- give the lender or other person that tendered a partial Release of Lien, okay, at -- but that was more recent. At this point in time, back in June 2011, was it NAS's practice to not give a Release of Lien unless the entire lien amount, and all collection fees and costs were paid?

A If the entire amount was paid, we gave a Release of Lien, yes. If somebody had made a partial payment and wanted a partial release, I am not aware of that ever happening.

Q By June 2011, did NAS have a policy in place to refuse letters from Miles Bauer tendering what they deemed to be the 9 month -- what they deemed to be 9 months of assessments due?

A Yes. The policy of NAS in June of 2011 was, if a letter from Miles Bauer came that claimed to be payment in full of the super priority amount, which is only a portion of the HOAs lien, and the condition said, it's paid in full, and it did not pay the amount that we believed to be the true amount, then NAS rejected it and simply handed it right back to the process server, typically. Sometimes it got left on the desk and then we would turn around and mail them back.

Q And that same policy or procedure was in effect two months later in August 2011 when Miles Bauer did send a tender letter?

A That is correct. And that -- that policy still

exists today, sir.

Q And if you'd turn to DBNT-296.

THE COURT: The Exhibit C page?

MR. NITZ: Yes. I'm -- well, starting there, but going through 298.

BY MR. NITZ:

Q On 298, it indicates -- Mr. Jung indicates, the third paragraph, or second from the bottom, "Our client has authorized us to make a payment to you in the amount of $817.38 to satisfy his obligations to the HOA as holder of the First Deed of Trust against the property." Was that typical of the letters that Miles Bauer was sending out at that time?

A Yes.

Q Based on your knowledge working at Red Rock Financial?

A Yes. Um-hum.

Q Look back at DBNT-295. And there it indicates that the assessment amount is $90.82; right?

A That is correct; um-hum.

Q Mr. Jung suggests that $817.38 is 9 times that amount; right?

A Yes.

Q Would you agree, that 9 times $90.82 is $817.38?

A Yes. I -- I could do my math, but I think that's correct. Actually, I think it's --

CERTIFICATION

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

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Posted November 4, 2011 - 2:02am

New state law slows banks from starting foreclosures

By Hubble SmithLAS VEGAS REVIEW-JOURNAL

A new Nevada law that took effect in October has slowed banks from initiating foreclosures, resulting in just 116 notices of default filed in the first three weeks of October, compared with 3,649 filings in September, a spokesman for ForeclosureRadar.com said Thursday.

"We have seen a huge drop-off from September to October in regards to notices of default filed in Clark County," said Mike Daniel, marketing director for ForeclosureRadar, a Discovery Bay, Calif.-based listing service. "It's a shocking hit."

That will choke off bank-owned inventory in coming months and spark the kind of "knee-jerk reaction" that created the housing bubble in the first place, foreclosure investor Zolt Szorenyi said.

Typically, about half of notices of default are cleared up, usually by people catching up on delinquent mortgages, while 1,700 to 1,900 go to foreclosure, he said. About 200 a month are sold to third parties at trustee auctions.

Roughly half of existing home sales in Las Vegas are real-estate-owned, or bank-owned properties. With a current REO inventory of 10,000 homes, it will take four to six months to absorb that inventory, Szorenyi said.

"People are going to see this and have a knee-jerk reaction. They're going to make offers without appraisals, just like they did five years ago," said Szorenyi, president of Lenders Clearing House Las Vegas, a company that works with banks in selling REO properties.

"With this constant interference from the government, they are putting shackles on the banks and holding everything back and then releasing the shackles," he said. "That artificially jerks the market around. Banks have a huge bottleneck to deal with. They'll just cut prices left and right because they're just competing with themselves,"

Assembly Bill 284 requires a lender seeking to foreclose in Nevada to record a notarized affidavit of authority to foreclose that includes information showing that they have the legal right to exercise the power of sale.

The new law protects homeowners from improper foreclosures and protects the integrity of the homeownership system, Nevada Attorney General Catherine Cortez Masto said. It was crafted largely in response to the robo-signing scandal that surfaced last year. Servicers of mortgage loans will be fined $5,000 if robo-signing fraud is detected.

CTADD1287

The law also gives Nevada homeowners access to data on companies that hold their mortgages by requiring that documents used in foreclosure be recorded in the county where the property is located, a challenge to the Mortgage Electronic Registration System, or MERS.

No one knows what will happen if foreclosures are halted or slowed materially, broker Frank Nason of Residential Resources said. He thinks investors would abandon the market except for select properties.

"Could it increase prices? Possibly, but it could stop the absorption of all product types until it became clear what the ultimate disposition of the distressed inventory was," Nason said. "Just because foreclosures were halted for legal reasons doesn't fix the underlying problem -- underwater houses and people losing their jobs or other life events that require a sale or walk-away."

Foreclosure filings in Clark County topped 6,000 in July, August and September last year, retreating into the 4,000 to 5,000 range for most of this year, according to ForeclosureRadar.

Nevada Bankers Association President Bill Uffelman said affidavit requirements from the new law are tripping up title companies.

"The reality is because of past allegations of robo-singing, what all the financial institutions are doing now is revalidating, if you will, everything in the foreclosure process, dotting the i's and crossing the t's and checking everything a second time because you don't want to suffer the consequences," he said.

"OK, it'll take one or two more months, but it'll return," he added. "What everyone loses track of is the individual not paying their mortgage. At some time, the banks have to foreclose. You can't sit in a house and not pay anyone."

Contact reporter Hubble Smith at hsmith@reviewjournal.com or 702-383-0491.

Local existing-home sales... Las Vegas home prices jump...

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CTADD1288

LAS VEGAS SUN

Housing:

Banks press for changes to 2011 foreclosure law

By David McGrath Schwartz

Sunday, Dec. 9, 2012 | 2 a.m.

Foreclosures in Nevada could spike next year if lawmakers and banks roll back a bill passed in 2011 that played a large role in stymieing banks' attempts to retake homes from Nevadans, according to the state's banking association president and housing analysts.

But more foreclosures aren't necessarily a bad thing for Nevada's housing market, at least in the long term, according to housing analysts.

Banks are in talks with Attorney General Catherine Cortez Masto and lawmakers about how to amend the state law that slowed foreclosures to a trickle in fall 2011.

Although foreclosures since have risen, they're still about a quarter of where they were before the law went into effect.

At issue is Assembly Bill 284, a measure passed by the Nevada Legislature in 2011 and signed by Gov. Brian Sandoval that forces banks to prove they have the legal right to foreclose on a particular home before they take action. Most important, the law requires bank workers to sign an affidavit that they have personal knowledge of a property's document history, or they will face criminal or civil penalties.

Democratic lawmakers and Cortez Masto, a Democrat, who helped pass the bill, said the law was intended to uphold the integrity of the legal process and protect homeowners from banks wrongfully foreclosing on homeowners without having necessary paperwork.

Cortez Masto has said it was never intended to prevent legitimate foreclosures.

But after the law took effect in late 2011, foreclosures in Nevada — which previously led the nation in foreclosures — ground to a halt.

In August 2011, banks issued 5,350 foreclosure notices in the state, according to the Nevada Foreclosure Mediation Program. In September, there were 4,684 "notices of default."

In October 2011, when the law went into effect, the number dropped to 80.

Since then, the foreclosure filings per month have crept upward, reaching 1,417 in November.

That is proof, according to some consumer advocates, that banks are figuring out the paperwork behind home loans that had been sliced and diced into various investment instruments at the height of the housing boom. That slicing and dicing is what made it so difficult to determine which entity could legally foreclose on a home.

Many housing analysts believe the law is stalling legitimate foreclosures and creating an artificial, short-term boost in housing prices.

Cortez Masto has created a working group involving the state's largest banks to discuss possible changes to the law in the next legislative session.

That group includes bankers, servicers, title and other real estate interests, as well as consumer representatives and lawmakers.

"We do not anticipate recommending repeal of any of the current provisions of the law," she said in the statement. "The working group is attempting to clarify some of the terms in the law."

She said it's still unclear what recommendations the group will make to lawmakers.

Bill Uffelman, president and CEO of the Nevada Bankers Association, which lobbies the Legislature, said banks were not looking to repeal the entire law.

"The Attorney General's Office and affected parties are working to change the affidavits so it's workable, without fear of criminal or civil liability," Uffelman said.

"Just amend it," he said. "The notion behind AB284 wasn't bad. The policy's fine. Let's fix the application."

Some housing analysts say the law has allowed some Nevadans to live in their homes without paying a mortgage. Banks, confounded by their own shoddy paperwork and the state law, aren't able to foreclose for months or years. Economics analyst Jeremy Aguero this fall labeled them "strategic squatters."

This shadow inventory — of homes headed for almost certain foreclosure — has loomed over the seemingly positive news of slightly increasing home values and the rise of new housing construction.

John Restrepo, principal of RCG Economics in Las Vegas, called it "a bit of an artificial spike not likely to be sustained as it is today, depending on how the law is changed."

The politics of easing restrictions for banks are dicey and likely to face opposition.

Sen. Tick Segerblom, D-Las Vegas, chairman of the Senate Judiciary Committee, said he'd listen to Cortez Masto, a fellow Democrat.

But, he said, "I'm extremely reluctant to change anything that everyone agrees has raised property values in the state of Nevada."

He said if banks can't foreclose, it's their own fault for losing track of the paperwork.

"If it comes down to a homeowner who had a mortgage, or a bank — who has the right to be there? I'll go with the homeowner," he said. "I'm not worried about the banks. They made their beds. They can sleep in it."

Uffelman, the banking association president, said banks have been focused on meeting the terms of the National Mortgage Settlement — the $26 billion settlement that requires banks to take such actions as principal reductions, short sales and forgiveness of second loans. But soon, their focus is going to turn back to foreclosures.

"The reality is foreclosures are going to start again, probably sooner rather than later," he said.

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CTADD1293

Posted October 13, 2009 - 1:36pm

Mediation in home foreclosures 'slowing the process'

By JOHN G. EDWARDS LAS VEGAS REVIEW-JOURNAL

Nevada's mortgage foreclosure mediation program and similar programs in other states are delaying efforts to resolve problem loans, the top official at the Mortgage Bankers Association said today.

"We find it's just slowing the process down," said John Courson, chief executive officer of the Mortgage Bankers Association. Courson spoke during a conference call from the association's annual convention in San Diego.

Courson said programs such as Nevada's Foreclosure Mediation Program, which allows homeowners facing foreclosure to demand mediation, often results in the homeowner having to wait until after mediation to complete forms needed for the lender to approve a mortgage loan modification.

However, Tisha Black Chernine, a real estate attorney, said mediation doesn't slow the process unless the lender is found to be mediating in bad faith.

"I think (mediation) is doing what it was set up to do," Black Chernine said.

She said lenders are agreeing to reduce mortgage interest rates, although they are offering few principal reductions.

One of her clients who had two mortgage loans, one for 10 percent and one for 12 percent, was able to refinance into a 3.5 percent, 30-year fixed-rate mortgage that cut his payments to $1,118 from $2,500, she said.

Assembly Speaker Barbara Buckley, D-Las Vegas, also disagreed with Courson's statements.

She noted that one of the state's first mediation sessions was avoided after the lender negotiated with the homeowner.

"In Nevada, we're ground zero for foreclosure in the nation," she said. "To me, foreclosure mediation is an opportunity for these Nevadans who have not been able to reach their lenders to sit across the table from them, Legislators wouldn't be initiating this law if the lenders were working with homeowners."

Before the mediation law, "people were getting foreclosed in their home without any communication between the lender and the borrower," said Assemblyman Marcus Conklin, D-Las Vegas.

CTADD1294

The association, however, said that 75 percent of homeowners who seek mortgage modifications end up not returning the completed application forms.

The group reported that the industry has provided more 5.2 million workout plans since July 2007 to help delinquent borrowers avoid foreclosure.

In more than 2 million of those, lenders have reduced the borrowers' interest rates, lengthened their loan terms, added the delinquent amount to the mortgage balances, reduced the loan principal or set up some combination of those approaches.

Yet one Nevada mediator complained to Buckley that he has been stymied in scheduling mediation sessions when lenders keep referring him from one person to another, she said, adding that makes her wonder how lenders were treating homeowners before the Nevada Supreme Court began appointing mediators.

Since July 1, when the program became effective, 2,664 homeowners have requested mediation sessions, according to the Nevada Supreme Court, which administers the program.

Of those, 1,049 have filed documents and paid fees of $200 for the borrower and $200 for the lender to try to mediate new mortgage terms.

More than 70 mediation sessions have been held so far, according to the state's high court.

Association chief economist Jay Brinkmann said the industry has processed most of the delinquent subprime mortgage loans and now is working with people who have strong credit and prime mortgages default on loans. Many of these homeowners have lost their jobs.

It's difficult to modify mortgages to accommodate an unemployed worker with no income, Brinkmann said. However, he said government sponsored mortgage lenders are granting forbearance for 12 months in some cases.

The economist said jobless rates and mortgage delinquency rates are tracking each other. Brinkmann expects national unemployment rates to increase to 10.2 percent by mid-2010. The federal government pegged national unemployment at 9.8 percent last month.

Contact reporter John G. Edwards at jedwards@reviewjournal.com or 702-383-0420.

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CTADD1296

Nevada No Longer Leads in Foreclosures

Published 12/10 2009 09:16PM Updated 12/10 2009 09:16PM Fewer people in Las Vegas are losing their homes to foreclosure and the city is no longer at the top of the foreclosure list.

November numbers dropped Las Vegas to fifth in the nation for the rate of foreclosures. Experts largely credit the new mediation program for helping more people stay in their homes. With the program in place, if homeowners elect mediation, lenders are required to at least hear them out for a possible loan modification.

And only months after nearly 100 people were sworn in as mediators for the Nevada Foreclosure Mediation Program, 75 more will now be added to that list.

"It's been an avalanche of paperwork. Constant change, but the program is working. It's up and running and it is working," said program manager Verise Campbell

Campbell says since the program started, homeowners facing foreclosure choosing mediation is steadily on the rise. "Each week we see the numbers growing, as far as the numbers of elections for mediations coming in," said Campbell.

From July through December, there have been almost 3,300 requests for mediation. So far just over 500 have been conducted with more than 1,000 already scheduled. "Homeowners are contacting us, lenders are contacting us, and mediations are being conducted," she said.

Michael Joe of the Legal Aid Center of Southern Nevada says they've seen the spike in interest for mediation. But he admits while that while loan modifications may be good for some homeowners, it may not be the answer for all of them. "It doesn't mean that a year from now they are still going to be in their home, but it just means that right now for them we've managed to slow down the foreclosure process," he said.

Still, he agrees with the mediation program in place. It does put a dent in Nevada having the highest foreclosure rate in the country. "A homeowner that would have lost their home except for mediation is still in their home now. I think that's a good thing," he said.

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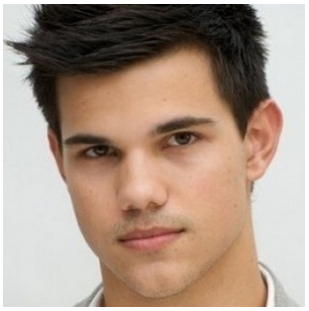

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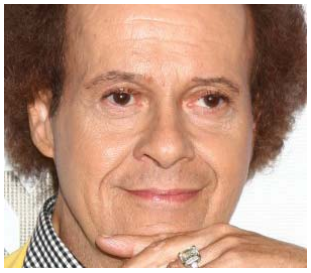

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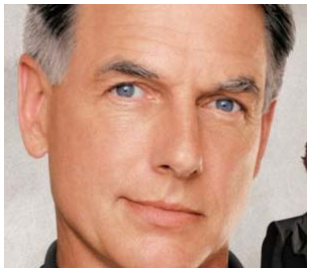

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116.31166 defeats, as a matter of law, NYCB's action to set aside the trustee's deed and to quiet title in itself.

C.

The question remains whether NYCB demonstrated sufficient grounds to justify the district court in setting aside Shadow Wood's foreclosure sale on NYCB's motion for summary judgment. *Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 669, 918 P.2d 314, 318 (1996) (stating the burden of proof rests with the party seeking to quiet title in its favor). As discussed above, demonstrating that an association sold a property at its foreclosure sale for an inadequate price is not enough to set aside that sale; there must also be a showing of fraud, unfairness, or oppression. *Long*, 98 Nev. at 13, 639 P.2d at 530.

NYCB failed to establish that the foreclosure sale price was grossly inadequate as a matter of law. NYCB compares Gogo Way's purchase price, $11,018.39, to the amount NYCB bought the property for at its foreclosure sale, $45,900.00. Even using NYCB's purchase price as a comparator, and adding to that sum the $1,519.29 NYCB admits remained due on the superpriority lien following NYCB's foreclosure sale, Gogo Way's purchase price reflects 23 percent of that amount and is therefore not obviously inadequate. *See Golden*, 79 Nev. at 511, 387 P.2d at 993 (noting that even where a property was "sold for a smaller proportion of its value than 28.5%," it did not justify setting aside the sale); *see also* Restatement (Third) of Prop.: Mortgages § 8.3 cmt. b (1997) (stating that while "[g]ross inadequacy cannot be precisely defined in terms of a specific percentage of fair market value[, g]enerally . . . a court is warranted in invalidating a sale where the price is less than 20 percent of fair market

value and, absent other foreclosure defects, is usually not warranted in invalidating a sale that yields in excess of that amount").[3]

Other than the sale price, NYCB focuses on the actions of Shadow Wood and its counsel, Alessi & Koenig, which NYCB submits amounted to fraud, unfairness, or oppression that, combined with the inadequate price, justify setting aside the sale. NYCB focuses on Shadow Wood's alleged overstatement of its lien amount. The district held that Shadow Wood was limited to the superpriority lien that survived its first deed of trust foreclosure sale, which NYCB asserts was capped at $1,519.29, or nine months of $168.71 monthly assessments. NYCB persuaded the district court to find, as a matter of law, that Shadow Wood's actions in trying to collect more than $1,519.29 from NYCB were "unreasonable and oppressive" and justified the district court in setting aside the sale.

NYCB's argument does not account for the fact that, after foreclosing its first deed of trust, NYCB became the owner of the property. Its foreclosure sale extinguished Shadow Wood's subpriority lien, eliminating the original owner's monthly assessment arrearages going back further than the nine months accorded superpriority status by NRS 116.3116(2) (2013). But NYCB's foreclosure did not absolve NYCB of its

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[3]Although not argued by NYCB, the record includes an unauthenticated appraisal of the property setting its value at $53,000. The $11,018.39 sale price is slightly more than 20 percent of that estimate, so it does not affect the analysis in the text. *See also* Restatement (Third) of Prop.: Mortgages § 8.3 cmt. b (stating that "courts can properly take into account the fact that the value shown on a recent appraisal is not necessarily the same as the property's fair market value on the foreclosure sale date").

obligation, as the new owner, to pay the monthly HOA assessments as they came due, which it failed to do. The lien delinquency breakdowns that Shadow Wood sent NYCB charged NYCB with monthly assessments from August 9, 2010, through February 29, 2012. NYCB foreclosed its deed of trust on May 9, 2011, so Shadow Wood went back nine months, to August 9, 2010, to calculate NYCB's superpriority monthly assessment delinquency of $1,519.29. To this sum, though, Shadow Wood properly added the monthly assessments NYCB owed as owner on an ongoing basis, from June 9, 2011, projected through February 2012, when the Shadow Wood foreclosure sale occurred, which effectively doubles the monthly assessment delinquency. In holding that Shadow Wood acted unfairly and oppressively in seeking to collect more than $1,519.29, the district court erred, since it excluded the ongoing monthly assessments due from NYCB as owner.[4]

NYCB's analysis also does not adequately defend its complete exclusion of all fees and costs associated with Shadow Wood's foreclosure of its lien, even fees and costs incurred after NYCB became the owner of the property. The omission is understandable, given the district court's holding that Shadow Wood was limited as a matter of law to $1,519.29. The question of whether and, if so, to what extent costs and fees are recoverable in the context of an HOA superpriority lien is open, particularly as to foreclosures that pre-date the 2015 amendments to NRS

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[4]The Shadow Wood breakdown sets out $3,252.39 as the monthly assessment delinquency from August 9, 2010, through February 29, 2012. The record does not explain the math that produced this number. Nineteen months of assessments, assuming the split month is included, works out to $3,205.49.

Chapter 116. But here, because the parties did not develop in district court what the fees and costs represent, when they were incurred, their (un)reasonableness, and the impact, if any, of Shadow Wood's covenants, conditions and restrictions (CC&Rs) on their allowance,[5] we leave this issue to further development in the district court on remand.

The district court erred in simply stopping at its conclusion that Shadow Wood was entitled only to nine months' worth of assessments. None of the parties, most importantly NYCB, whom the district court found carried its burden to show no genuine issues of material fact existed and that it therefore was entitled to judgment as a matter of law, point to uncontroverted evidence in the record to show exactly what Shadow Wood was entitled to post-NYCB's foreclosure sale and up until the association foreclosure sale, leaving that amount surrounded by issues of fact and not a proper basis upon which to enter summary judgment. *Anderson v. Heart Fed. Sav. & Loan Ass'n*, 256 Cal. Rptr. 180, 189 (Ct. App. 1989) (reversing grant of summary judgment where there remained triable issues of fact as to the amount actually owed to the trustee and thus as to whether the tender was sufficient).

As further evidence of the oppression and unfairness, NYCB points to the inconsistent lien amounts provided by Shadow Wood,

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[5]The record on appeal does not include the complete CC&Rs. Allegedly, section 4.01 of the CC&Rs reads as follows:

> The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the Condominium Unit and shall be a continuing lien upon the Condominium Unit against which such assessment is made.

through Alessi & Koenig, from the time it filed the 2011 notice of delinquent assessment to the time it actually sold the property to Gogo Way.[6] The recorded instruments and communications between the parties indeed demonstrate that Shadow Wood and its counsel provided varying lien amounts to NYCB throughout the foreclosure process, conduct that, if it rose to the level of misrepresentations and nondisclosures that indeed prevented NYCB's ability to cure the default, might support setting aside the sale. *Cf. In re Tome*, 113 B.R. 626, 636 (Bankr. C.D. Cal. 1990) (holding that where the security interest holder had not notified the borrower that it had purchased the interest, it was bound by the previous holder's provision of inaccurate information to the borrower concerning the amount due to halt the foreclosure sale and that such inaccurate information supported setting aside the sale).

Against these inconsistencies, however, must be weighed NYCB's (in)actions. The NOS was recorded on January 27, 2012, and the sale did not occur until February 22, 2012. NYCB knew the sale had been scheduled and that it disputed the lien amount, yet it did not attend the sale, request arbitration to determine the amount owed, or seek to enjoin the sale pending judicial determination of the amount owed. The NOS included a warning as required by NRS 116.311635(3)(b):

> WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME,

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[6]NYCB does not argue that it invoked NRS 116.3116(8) (2013), so our analysis does not take this statute into consideration.

EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE.

(Emphasis added.) In addition to the required warning, Shadow Wood's NOS listed the lien amount as $8,539.77. For whatever reason, NYCB tendered only $6,783.16.

Taken together, the record demonstrates too many unresolved issues of material fact for the district court to assess the competing equities in this case as between Shadow Wood and NYCB on the summary judgment record assembled.

D.

There also remain issues surrounding Gogo Way's putative status as a bona fide purchaser and its bearing on the equitable relief requested. NYCB argues that Gogo Way waived its presently made bona fide purchaser argument because it relied below on NRS Chapter 645F's bona fide purchaser provisions, rather than the common-law-based argument it makes on appeal. *See Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 436, 245 P.3d 542, 544 (2010) (stating points not urged in the trial court generally are deemed waived on appeal).

When sitting in equity, however, courts must consider the entirety of the circumstances that bear upon the equities. *See, e.g., In re Petition of Nelson*, 495 N.W.2d 200, 203 (Minn. 1993) (considering whether the totality of the circumstances supported granting equitable relief to set aside a sale when the former owner had failed to act during the redemption period); *see also La Quinta Worldwide LLC v. Q.R.T.M., S.A. de C.V.*, 762 F.3d 867, 880 (9th Cir. 2014) (remanding for reconsideration of a district court's decision granting a permanent injunction because the district court's analysis did not discuss a fact relevant to the weighing of the equities); *Murray v. Cadle Co.*, 257 S.W.3d 291, 301 (Tex. App. 2008)

(considering the totality of the circumstances to determine whether to uphold the lower court's equitable subrogation decision); *Savage v. Walker*, 969 A.2d 121, 125 (Vt. 2009) (noting trial courts should consider the totality of the circumstances to determine if a constructive trust, an equitable remedy, was warranted). This includes considering the status and actions of all parties involved, including whether an innocent party may be harmed by granting the desired relief.[7] *Smith v. United States*, 373 F.2d 419, 424 (4th Cir. 1966) ("Equitable relief will not be granted to the possible detriment of innocent third parties."); *see also In re Vlasek*, 325 F.3d 955, 963 (7th Cir. 2003) ("[I]t is an age-old principle that in formulating equitable relief a court must consider the effects of the relief on innocent third parties."); *Riganti v. McElhinney*, 56 Cal. Rptr. 195, 199 (Ct. App. 1967) ("[E]quitable relief should not be granted where it would work a gross injustice upon innocent third parties.").

Here, Gogo Way was a party before the district court in this quiet title action, claiming a right to the property as the foreclosure purchaser to whom the deed had been delivered. So, its status as a potentially innocent third party that would be harmed by setting aside the

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[7]Consideration of harm to potentially innocent third parties is especially pertinent here where NYCB did not use the legal remedies available to it to prevent the property from being sold to a third party, such as by seeking a temporary restraining order and preliminary injunction and filing a lis pendens on the property. *See* NRS 14.010; NRS 40.060. *Cf. Barkley's Appeal. Bentley's Estate*, 2 Monag. 274, 277 (Pa. 1888) ("In the case before us, we can see no way of giving the petitioner the equitable relief she asks without doing great injustice to other innocent parties who would not have been in a position to be injured by such a decree as she asks if she had applied for relief at an earlier day.").

foreclosure sale and placing title back with NYCB was in issue. In fact, the district court's determination that Gogo Way was not a bona fide purchaser allowed it to set aside the sale and quiet title in NYCB's favor without taking into account the harm that would cause Gogo Way, as the order reflects no further discussion of Gogo Way beyond that summary determination. Therefore, we find the issue of whether Gogo Way was an innocent purchaser who took the property without any knowledge of the pre-sale dispute between NYCB and Shadow Wood was sufficiently in controversy before the district court, and indeed formed the basis of a major aspect of the district court's decision, such that the issue was not waived.

A subsequent purchaser is bona fide under common-law principles if it takes the property "for a valuable consideration and without notice of the prior equity, and without notice of facts which upon diligent inquiry would be indicated and from which notice would be imputed to him, if he failed to make such inquiry." *Bailey v. Butner*, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947) (emphasis omitted); *see also Moore v. De Bernardi*, 47 Nev. 33, 54, 220 P. 544, 547 (1923) ("The decisions are uniform that the bona fide purchaser of a legal title is not affected by any latent equity founded either on a trust, [e]ncumbrance, or otherwise, of which he has no notice, actual or constructive."). Although, as mentioned, NYCB might believe that Gogo Way purchased the property for an amount lower than the property's actual worth, that Gogo Way paid "valuable consideration" cannot be contested. *Fair v. Howard*, 6 Nev. 304, 308 (1871) ("The question is not whether the consideration is adequate, but whether it is valuable."); *see also Poole v. Watts*, 139 Wash. App. 1018 (2007) (unpublished disposition) (stating that the fact that the foreclosure

sale purchaser purchased the property for a "low price" did not in itself put the purchaser on notice that anything was amiss with the sale).

As to notice, NYCB submits that "the simple fact that the HOA trustee is attempting to sell the property, and divest the title owner of its interest, is enough to impart constructive notice onto the purchaser that there may be an adverse claim to title." Essentially, then, NYCB would have this court hold that a purchaser at a foreclosure sale can never be bona fide because there is always the possibility that the former owner will challenge the sale post hoc. The law does not support this contention.

When a trustee forecloses on and sells a property pursuant to a power of sale granted in a deed of trust, it terminates the owner's legal interest in the property. *Charmicor, Inc. v. Bradshaw Fin. Co.*, 92 Nev. 310, 313, 550 P.2d 413, 415 (1976). This principle equally applies in the HOA foreclosure context because NRS Chapter 116 grants associations the authority to foreclose on their liens by selling the property and thus divest the owner of title. *See* NRS 116.31162(1) (providing that "the association may foreclose its lien by sale" upon compliance with the statutory notice and timing rules); NRS 116.31164(3)(a) (stating the association's foreclosure sale deed "conveys to the grantee all title of the unit's owner to the unit"). And if the association forecloses on its superpriority lien portion, the sale also would extinguish other subordinate interests in the property. *SFR Invs.*, 334 P.3d at 412-13. So, when an association's foreclosure sale complies with the statutory foreclosure rules, as evidenced by the recorded notices, such as is the case here, and without any facts to indicate the contrary, the purchaser would have only "notice" that the former owner had the ability to raise an equitably based post-sale challenge, the basis of which is unknown to that purchaser.

That NYCB retained the ability to bring an equitable claim to challenge Shadow Wood's foreclosure sale is not enough in itself to demonstrate that Gogo Way took the property with notice of any potential future dispute as to title. And NYCB points to no other evidence indicating that Gogo Way had notice before it purchased the property, either actual, constructive, or inquiry, as to NYCB's attempts to pay the lien and prevent the sale, or that Gogo Way knew or should have known that Shadow Wood claimed more in its lien than it actually was owed, especially where the record prevents us from determining whether that is true. *Lennartz v. Quilty*, 60 N.E. 913, 914 (Ill. 1901) (finding a purchaser for value protected under the common law who took the property without record or other notice of an infirmity with the discharge of a previous lien on the property). Because the evidence does not show Gogo Way had any notice of the pre-sale dispute between NYCB and Shadow Wood, the potential harm to Gogo Way must be taken into account and further defeats NYCB's entitlement to judgment as a matter of law.

III.

"Where the complaining party has access to all the facts surrounding the questioned transaction and merely makes a mistake as to the legal consequences of his act, equity should normally not interfere, especially where the rights of third parties might be prejudiced thereby." *Nussbaumer v. Superior Court in & for Yuma Cty.*, 489 P.2d 843, 846 (Ariz. 1971). NYCB did not tender the amount provided in the notice of sale, as statute and the notice itself instructed, and did not meet its burden to show that no genuine issues of material fact existed regarding the proper amount of Shadow Wood's lien or Gogo Way's bona fide status. Though perhaps NYCB could prove its claim at trial by presenting sufficient evidence to demonstrate that the equities swayed so far in its

favor as to support setting aside Shadow Wood's foreclosure sale, NYCB did not prove that it was entitled to summary judgment on the matter. *Chapman v. Deutsche Bank Nat'l Tr. Co.*, 129 Nev., Adv. Op. 34, 302 P.3d 1103, 1106 (2013).

We therefore vacate the district court's judgment and remand.

Pickering, J.
Pickering

We concur:

Parraguirre, C.J.
Parraguirre

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

Exhibit L

Exhibit L

Exhibit L

Exhibit L

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

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

QUESTION #1:

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

QUESTION #2:

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

QUESTION #3:

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

SHORT ANSWER TO #1:

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

SHORT ANSWER TO #2:

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

SHORT ANSWER TO #3:

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

ANALYSIS OF THE ISSUES:

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

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

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

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

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

(emphasis added).

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

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

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

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

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

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

(emphasis added).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The reasonable expenses of sale;

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

(2) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by the declaration, reasonable attorney's fees and other legal expenses incurred by the association;
(3) Satisfaction of the association's lien;
(4) Satisfaction in the order of priority of any subordinate claim of record; and
(5) Remittance of any excess to the unit's owner.

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

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

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

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

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

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

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

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

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

NRS 116.3116(2) states:

> A lien under this section is prior to all other liens and encumbrances on a unit except:
> (a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;
> (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and
> (c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.
> ***The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien***, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

(emphasis added)

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

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

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

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

The second portion of the super priority lien is "to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien."

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

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

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

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

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

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

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

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

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

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

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

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

(emphasis added).[13]

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

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

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

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

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

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

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

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

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

~~(ii)~~(2) except as otherwise provided in subsection (c), a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent~~,~~; and

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

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

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

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

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

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

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

The Nevada Legislature had the opportunity to change NRS 116.3116 in 2009 and 2011 to conform to the Uniform Act. It chose not to. While the revisions under the

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

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

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

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

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

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

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

ADVISORY CONCLUSION:

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

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

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

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

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

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[14] NRS 116.31164.

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

Exhibit M

Exhibit M

Exhibit M

Exhibit M

A-12-672790-C

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	COURT MINUTES	January 28, 2013
A-12-672790-C	Stanford Burt, Plaintiff(s) vs. Sutter Creek Homeowners Association, Defendant(s)	

January 28, 2013 3:00 AM Minute Order Re: Decision on Plaintiff's Motion For Preliminary Injunction

HEARD BY: Becker, Nancy COURTROOM: RJC Courtroom 14D

COURT CLERK: Susan Jovanovich

RECORDER: Kerry Esparza

REPORTER:

NO PARTIES PRESENT:

JOURNAL ENTRIES

This matter came before the Court on January 14, 2013, on Plaintiff Burt's Motion For Preliminary Injunction and Defendant SBW Investments' Countermotion To Dismiss The Complaint. The Court granted a temporary restraining order on January 14, 2013, prohibiting SBW from evicting Burt pending the Court's decision on the motions. The Court has reviewed all the pleadings in this case, including all exhibits attached to the complaint, and the motions, as well as additional documents supplied to the Court during, or immediately, after the hearing, as requested by the Court. The following ruling is based on the information supplied in all of the pleadings and supplemental documents.

This matter involves a dispute between Burt and his homeowner's association, Sutter Creek over assessments and late fees. In 2009, Sutter Creek claimed that Burt was behind in his assessments, and began charging him late fees. Burt asserted that he had paid his assessments. Sutter Creek records indicate in the same time period, a member of the Association s Board was charged with embezzling Association funds and removed. The Association asked Burt to supply records of the payments he claimed were not properly credited. Meanwhile, Burt made his current monthly assessments payments. The records reflect the Association continued to charge late fees each month. It is unclear whether these were being imposed because the disputed amounts had not been paid, or because Burt

was late each month in paying the current assessment.

The records reflect no action by Burt to supply the documentation by August of 2010. On August 2, 2010, Sutter Creek filed a lien against the property in the amount of $1,080.00 pursuant to NRS 116.3116(1). The accounting records and the lien reflect that the amount included attorney fees and costs of collection. A Notice of Default was filed on February 23, 2011. The amount was now $1,924.00, which again included attorney fees and costs of collection. Burt had 90 days to satisfy the lien or face foreclosure. On April 21, 2011, Burt supplied the Association with money orders (MO) and checks to support his claim that payments were not credited to his account. Although the notations on the Association records reflect they received the documents, there is no notation of what was done with them. No additional credits appear on Burt's account and there is no notation that the records were reviewed, and why the Association believed they did not support applying additional credits.

At some point Burt sought help from the Senior Citizens Law Project. A spreadsheet prepared by them allegedly indicates Burt was not properly credited with payments. This would affect the accrual of late charges, and whether Burt owed any assessments. The process or documents used to create the spreadsheet are not indicated in the pleadings.

The Association pursued foreclosure upon the lien and a Notice of Trustee's Sale was recorded on July 17, 2012. The sale was scheduled to occur on August 12, 2012. According to the documents supplied by Sutter Creek, Burt and the first deed of trust holder, Defendant Wells Fargo, were sent a copy of the Notice of Sale by certified mail on July 18, 2012. According to the Trustee s Deed Upon Sale, the property was sold on August 29, 2012 to Defendant SBW.

The central legal issues involved whether the lien was proper under NRS 116.3116(1). If the lien, and therefore the subsequent foreclosure notices which relied upon the lien, were improper, then Burt argues the foreclosure was invalid, and SBW should be enjoined from evicting him or selling the property pending this litigation. SBW asserts even if the lien was improper, Burt waited too long to assert his rights and the complaint should be dismissed pursuant to NRS 107.080(5). SBW also claims Burt failed to comply with NRS 38.310. The Court is not convinced that statute applies to the instant circumstances.

The Court will not recite the law relating to preliminary injunctions here, it is correctly cited by the parties and the Court has considered the relevant factors as noted in the pleadings. The Court has also considered the administrative opinions of the Commission for Common Interest Communities and Condominium Hotels (Adv. Op. 2010-01) and State Real Estate Division (Adv. Op. 13-01). While not binding upon a court, opinions issued by agencies charged with enforcing or interpreting a state statute can be given deference. Both agencies meet this standard. This Court finds the rationale of the Real Estate Division opinion the more persuasive and well-reasoned interpretation of NRS 116.3116(1) and the various statutes which related to the provision. The Court finds as follows:

1. NRS 116.3116(1) and NRS 116.3116(2) do not describe two separate association liens as asserted by

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Burt. There is only one lien procedure and only one lien. What can be included in that lien by an association is described in NRS 116.3116(1). The so-called 'super-priority lien' discussed in NRS 116.3116(2) is not a separate lien. Rather that section simply describes how much of the lien under NRS 116.3116(1) will have statutory super priority over other liens, trusts, etc. that were recorded before the associations lien.

2. The Court agrees with the Real Estate Division that the only fees, assessments, etc. which can be part of a lien under NRS 116.3116(1) are those specifically enumerated by the statutes. Attorney fees and costs of collection are not so enumerated and cannot be included in an association's lien. Since there is no dispute that the lien in this case did include such amounts, there is a reasonable probability of Burt succeeding on this issue.

3. If the lien is improper, then does the inclusion of these improper amounts in the subsequent foreclosure proceedings invalidate the proceedings? Burt asserts that if the lien is improper than the foreclosure proceedings become void. Burt asserts actions for constructive fraud, wrongful foreclosure and breach of fiduciary duty to support this. The Court agrees if the lien is invalid then Under NRS 107.080(3) the Notice of Default and Election to Sell would be invalid. As the lien included amounts not permitted under NRS 116.3116(1), the Notice would be defective. The purpose of the notice, which is to give the amount necessary for redemption, is defeated if the amount is materially in error.

4. NRS 107.080(5) says, essentially, that a good faith purchaser at a foreclosure sale takes title regardless of equity and without right of redemption so long as the notices are proper. Burt has a reasonable probability of succeeding in showing the notice was improper under NRS 107.080, therefore a court would be mandated to set aside the sale except for one additional provision. NRS 107.080(5)(b) requires an action to void the foreclosure must be made within 90 days of the date of sale. Here, the date of sale was August 29, 2012 and the action was not filed until November 30, 2012, beyond the 90 day period. Burt claims NRS 107.080(5)(b) does not apply, rather the appropriate period of time is the 120 day period in NRS 107.080(6). Burt also asserts that only his statutory claims are barred by NRS 107.080(5)(b) citing to Long v. Towne, 98 Nev. 11, 639 P.2d 928 (1982).

5. Long v. Towne does not support Burt's position. The case deals with the definition of constructive fraud, not the interpretation of NRS 107.080(5)(b). There is no indication in the case that it was not timely filed or that the statute was even considered.

6. NRS 107.080(6) provides if the homeowner was not given proper notice under NRS 107.080(3) and/or NRS 107.080(4)(a), then the owner has 120 days from the date actual notice of the sale is received. As noted above, NRS 107.080(3) governs the Notice of Default and Election to Sell. The body of the Notice of Default and Election was defective as the amount included attorney fees and collection costs. Sutter Creek has supplied the Court with a Transaction Report that indicates the Notice was sent to Burt by regular and certified mail on February 25, 2011. NRS 107.080(4)(a)

requires the Notice of Sale be personally served or sent by certified or registered mail. Sutter Creek's exhibits indicate this was done on July 18, 2012.

7. Burt has presented no evidence that NRS 107.080(4)(a) was not complied with, therefore, that provision provides no relief. The only issue, therefore, is what does proper notice under NRS 107.080(3) mean? Does it refer only to the service of the Notice of Default and Election, in which case, Burt has failed to meet his burden of proving it was not properly mailed. Or, does the term 'proper notice' also include the content of the notice? If that is that is the case, then Burt has a reasonable probability of showing the Notice of Default was not proper and the 120 day rule would apply.

8. The Court finds the statute is capable of two reasonable interpretations, and therefore, the Court will interpret the statute in Burt's favor for purposes of the request for a preliminary injunction. Granting the injunction will maintain the status quo while the parties research cases and legislative intent on this issue as it relates to SBW's Motion to Dismiss. The Court takes no position on the ultimate interpretation to be given to the statute.

9. The motion for preliminary injunction is GRANTED as follows:

a. SBW is enjoined from pursuing eviction proceedings or selling the property pending resolution of Plaintiff's Complaint and its Motion To Dismiss.

b. Burt shall continue to pay his mortgage to Wells Fargo. As nothing in the Complaint alleges Wells Fargo had anything to do with the foreclosure proceedings, there is no basis for any injunction relief against it. It may continue to administer the first deed of trust as though the sale had not occurred, that is, if Burt defaults on the first deed of trust, Wells Fargo is not prohibited from pursuing any remedies provided by law.

c. Burt must pay the difference between the rent SBW is demanding and the mortgage to SBW. Burt must also pay all association fees and assessments during the term of the injunction.

d. Although Burt requests no bond or a bond of $1.00, the Court rejects this request. Burt had many opportunities to seek legal relief or the help of the State Ombudsman long before the foreclosure took place and the claim to set aside the foreclosure may well be time barred depending on the resolution of the NRS 108.080(6) issue. But a $40,000 bond is also not warranted in light of the Court's finding about the propriety of the lien amounts. The Court believes a bond of $6,000 is reasonable under the circumstances.

10. Finally, SBW's motion to dismiss will be CONTINUED. SBW will have twenty days from the date of these minutes to file supplement pleadings addressing the interpretation of NRS 108.080(6). Burt shall have twenty days from service of SBW's supplemental pleadings to respond and address SBW's arguments regarding NRS 108.080(6) and/or assert any other arguments why claims relating to setting aside the foreclosure proceedings are not time barred. SBW shall then have ten days from service of the opposition to file a reply.

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11. The Clerk of the Court shall set a status check after the dates for filing supplemental pleadings have passed so that the Court may determine whether the Motion To Dismiss is ready to be set for argument.

12. Burt shall prepare the draft order and preliminary injunction for Senior Judge Becker's signature and shall submit it after providing copies to the Defendants. Senior Judge Becker will resolve any issues concerning the content of the orders relating to the preliminary injunction motion. All other matters will be handled by Judge Leavitt.

3/25/13 8:30 A.M. STATUS CHECK: SUPPLEMENTAL PLEADINGS AND ARGUMENTS ON SBW INVESTMENT LLC'S MOTION TO DISMISS

CLERK'S NOTE: A copy of the above minute order has been delivered by facsimile to: Richard S. Ehlers, Esq. (Fax No. (702) 946-1345); Huong Lam, Esq. (Fax No. (702) 222-4043); Richard L. Tobler, Esq. (Fax No. (702) 256-2248); Sheryl Serreze, Esq. (Nevada Legal Services Fax No. (702) 388-1641); and Anita Lapidus, Esq. (Nevada Legal Services Fax No. (702) 388-1641). /// sj

Exhibit N

Exhibit N

Exhibit N

APPRAISAL OF REAL PROPERTY

LOCATED AT
6727 Maple Mesa Street
N Las Vegas, NV 89084
Unit 315, Block 9, Parks Unit 4

FOR
Wright, Finlay & Zak
7785 W Sahara Avenue, Ste 200
Las Vegas, NV 89117

AS OF
February 13, 2013

BY
R. Scott Dugan, SRA
R. Scott Dugan Appraisal Company, Inc.
8930 West Tropicana Avenue, Suite 1
Las Vegas, NV 89147
702-876-2000
appraisals@rsdugan.com

March 27, 2015

Wright, Finlay & Zak
7785 W Sahara Avenue, Ste 200
Las Vegas, NV 89117

Re: Property: 6727 Maple Mesa Street
N Las Vegas, NV 89084
Borrower: N/A
File No.: 6727 Maple Mesa St

Opinion of Value: $ 134,000
Effective Date: February 13, 2013

As requested, we have prepared an analysis and valuation of the referenced property. The purpose of this assignment was to develop a value opinion based upon the assignment conditions and guidelines stated within the attached report. Our analysis of the subject property was based upon the property (as defined within the report) and the economic, physical, governmental and social forces affecting the subject property as of the effective date of this assignment.

The analysis and the report were developed and prepared within the stated Scope of Work and our Clarification of Scope of Work along with our comprehension of applicable Uniform Standards of Professional Appraisal Practice and specific assignment conditions provided by the client and intended user.

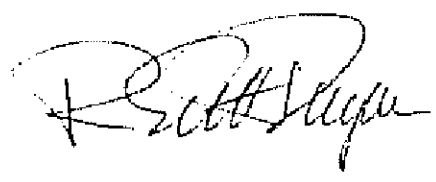
The findings and conclusions are intended for the exclusive use of the stated client and for the specific intended use identified within the report. The reader (or anyone electing to rely upon this report), should review this report in its entirety to gain a full awareness of the subject property, its market environment and to account for identified issues in their business decisions regarding the subject property.

Use and reliance on this report by the client or any third party indicates the client or third party has read the report, comprehends the basis and guidelines employed in the analysis and conclusions stated within and has accepted same as being suitable for their decisions regarding the subject property.

The value opinion reported is as of the stated effective date and is contingent upon the Certification and Limiting Conditions attached. The Assumptions and Limiting Conditions along with the Clarification of Scope of Work provide specifics as to the development of the appraisal along with exceptions that may have been necessary to complete a credible report.

Thank you for the opportunity to service your appraisal needs.

Sincerely,



R. Scott Dugan, SRA
License or Certification #: A.0000166-CG
State: NV Expires: 05/31/2015
appraisals@rsdugan.com

Client	Wright, Finlay & Zak			File No.	6727 Maple Mesa St
Property Address	6727 Maple Mesa Street				
City	N Las Vegas	County Clark	State NV	Zip Code	89084
Borrower/Client	N/A				

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RESIDENTIAL APPRAISAL REPORT

File No.: 6727 Maple Mesa St

SUBJECT

Property Address: 6727 Maple Mesa Street City: N Las Vegas State: NV Zip Code: 89084
County: Clark Legal Description: Parks Unit 4 Plat Book 94 Page 35 Unit 315 Block 9
Assessor's Parcel #: 124-22-314-059
Tax Year: 2013 R.E. Taxes: $ N/A Special Assessments: $ 0 Borrower (if applicable): N/A
Current Owner of Record: Peter A & Tamera A Jensen Occupant: ☐ Owner ☒ Tenant ☐ Vacant ☐ Manufactured Housing
Project Type: ☒ PUD ☐ Condominium ☐ Cooperative ☐ Other (describe) HOA: $ 74 ☐ per year ☒ per month
Market Area Name: Parks - North Las Vegas Map Reference: 25-A2 Census Tract: 36.22

ASSIGNMENT

The purpose of this appraisal is to develop an opinion of: ☒ Market Value (as defined), or ☐ other type of value (describe)
This report reflects the following value (if not Current, see comments): ☐ Current (the Inspection Date is the Effective Date) ☒ Retrospective ☐ Prospective
Approaches developed for this appraisal: ☒ Sales Comparison Approach ☐ Cost Approach ☐ Income Approach (See Reconciliation Comments and Scope of Work)
Property Rights Appraised: ☒ Fee Simple ☐ Leasehold ☐ Leased Fee ☐ Other (describe)
Intended Use: Provide a Retrospective Market Value opinion for litigation involving the HOA foreclosure of the subject property. For definitions, refer to the attached Explanatory Comments - Retrospective Value and Definition of Value section in the Residential Certifications Addendum.
Intended User(s) (by name or type): Wright, Finlay & Zak and/or legal professionals associated with this case.
Client: Wright, Finlay & Zak Address: 7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117
Appraiser: R. Scott Dugan, SRA Address: 8930 W Tropicana Avenue, Suite 1, Las Vegas, NV 89147

MARKET AREA DESCRIPTION

				Predominant Occupancy	One-Unit Housing			Present Land Use		Change in Land Use
Location:	☐ Urban	☒ Suburban	☐ Rural		PRICE		AGE	One-Unit	80 %	☒ Not Likely
Built up:	☒ Over 75%	☐ 25-75%	☐ Under 25%		$(000)		(yrs)	2-4 Unit	0 %	☐ Likely * ☐ In Process *
Growth rate:	☐ Rapid	☐ Stable	☒ Slow	☒ Owner						
Property values:	☒ Increasing	☐ Stable	☐ Declining	☐ Tenant	50	Low	0	Multi-Unit	0 %	* To:
Demand/supply:	☐ Shortage	☒ In Balance	☐ Over Supply	☐ Vacant (0-5%)	300	High	15	Comm'l	10 %	
Marketing time:	☒ Under 3 Mos.	☐ 3-6 Mos.	☐ Over 6 Mos.	☒ Vacant (>5%)	150	Pred	7	Vacant	10 %	

Market Area Boundaries, Description, and Market Conditions (including support for the above characteristics and trends): Bruce Woodbury Beltway - N, N 5th Street - E, Ann Road - S, and Revere Street - W. The subject project of the Parks is in North Las Vegas and consists of 449 +/- homes, with a gated entry and community parks. There are a variety of residential tract housing with supporting services in the immediate area. Major office / retail / major medical facilities are within 2 to 5 +/- miles, which includes the Aliante Hotel & Casino, College of Southern Nevada Cheyenne Campus, Craig Ranch Regional Park, and VA Southern Nevada Healthcare Services Center. The subject is within 8 to 11 +/- miles of the Las Vegas CBD and Resort Corridor (key employment centers) with good freeway and major street access. The metro area experienced a rapid upswing in prices, peaking in 2006. With correction, bank, short sales and investor flips dominated many neighborhoods. Currently, price points in various areas continue to adjust to supply/demand. Over the short term entry-level and first-tier housing, i.e., move-up, housing is in good demand by investors for rental and by end users, evidenced by short market times. Refer to - market conditions, trends, etc.

SITE DESCRIPTION

Dimensions: 45 x 100 Site Area: .10 Acre (4,356 Sq Ft)
Zoning Classification: R-CL Description: Single Family/Compact Lot (Residential)
Zoning Compliance: ☒ Legal ☐ Legal nonconforming (grandfathered) ☐ Illegal ☐ No zoning
Are CC&Rs applicable? ☒ Yes ☐ No ☐ Unknown Have the documents been reviewed? ☐ Yes ☒ No Ground Rent (if applicable) $ N/A
Highest & Best Use as improved: ☒ Present use, or ☐ Other use (explain) The highest and best use is limited to single-family residential via zoning, master plan and CC&R's.
Actual Use as of Effective Date: Single Family Residential Use as appraised in this report: Single Family Residential
Summary of Highest & Best Use: The subject is zoned residential and limited to residential uses by zoning and CC&R's, with no other uses permitted. There is sufficient demand and therefore the current use is the Highest & Best Use.

Utilities	Public	Other	Provider/Description	Off-site Improvements	Type	Public	Private
Electricity	☒	☐	NV Energy	Street	Asphalt	☐	☒
Gas	☒	☐	SW Gas	Curb/Gutter	Concrete	☐	☒
Water	☒	☐	LLVWD	Sidewalk	Concrete	☐	☒
Sanitary Sewer	☒	☐	Clark County	Street Lights	Electric	☐	☒
Storm Sewer	☒	☐	Clark County	Alley	None	☐	☐

Topography	Built Up Pad
Size	Typical for Area
Shape	Rectangular
Drainage	Appears Adequate
View	Residential

Other site elements: ☒ Inside Lot ☐ Corner Lot ☐ Cul de Sac ☒ Underground Utilities ☐ Other (describe)
FEMA Spec'l Flood Hazard Area ☐ Yes ☒ No FEMA Flood Zone X FEMA Map # 32003C1767F FEMA Map Date 11/16/2011
Site Comments: The subject market area is situated near or under one of the flight paths that services Nellis Air Force Base. The external influence, if any, may or may not be a factor in the sale of the subject property. The obsolescence is noted but, because of the limited data in the market, the appraiser was unable to isolate and quantify an adjustment for this comparison. All comparable homes used in this analysis are similarly affected. Refer to - Nellis AFB Environs Overlay District Map.

DESCRIPTION OF THE IMPROVEMENTS

General Description		Exterior Description		Foundation		Basement ☒ None		Heating	Yes
# of Units	One ☐ Acc.Unit	Foundation	Concrete/Avg	Slab	Concrete	Area Sq. Ft.		Type	FWA
# of Stories	Two	Exterior Walls	Stucco/Avg	Crawl Space	None	% Finished		Fuel	Gas
Type	☒ Det. ☐ Att. ☐	Roof Surface	Tile/Avg	Basement	None	Ceiling			
Design (Style)	Ranch/2-Story	Gutters & Dwnspts.	None	Sump Pump	☐ None	Walls		Cooling	Yes
	☒ Existing ☐ Proposed ☐ Und.Cons.	Window Type	Insulated/Avg	Dampness	☐ None	Floor		Central	Yes
Actual Age (Yrs.)	12	Storm/Screens	None	Settlement	None	Outside Entry		Other	None
Effective Age (Yrs.)	12			Infestation	None				

Interior Description		Appliances		Attic ☐ None		Amenities		Car Storage ☐ None	
Floors	Exterior Only	Refrigerator	☐	Stairs	☐	Fireplace(s) #	0	Garage # of cars (2 Tot.)	
Walls	Exterior Only	Range/Oven	☒	Drop Stair	☐	Patio	Yes	Attach.	
Trim/Finish	Exterior Only	Disposal	☒	Scuttle	☒	Deck	None	Detach.	
Bath Floor	Exterior Only	Dishwasher	☒	Doorway	☐	Porch	Yes	Bit.-In	2
Bath Wainscot	Exterior Only	Fan/Hood	☒	Floor	☐	Fence	Yes	Carport	
Doors	Exterior Only	Microwave	☒	Heated	☐	Pool	None	Driveway	Yes
		Washer/Dryer	☐	Finished	☐	Spa	None	Surface	Concrete

Woodstove(s) #

Finished area above grade contains: 6 Rooms 3 Bedrooms 2.5 Bath(s) 1,871 Square Feet of Gross Living Area Above Grade
Additional features: The property has fiberglass rear-yard fencing, and standard features and amenities with for this submarket.

Describe the condition of the property (including physical, functional and external obsolescence): No external obsolescence noted, unless indicated in this report. As an exterior-only street inspection was made with no interior inspection, and this is a retrospective assignment, the appraiser invokes the following Extraordinary Assumptions: 1) appraiser assumes both the SF and components (size of garage, pool, quality, appliances, etc.) were equal to those stated in the MLS and or assessor records, 2) condition of the exterior (not viewed) and interior are at minimum average 3) no obsolescence affected the interior improvements (layout was unknown-tandem room, missing kitchen appliances or bath fixtures, no AC, etc.), 4) subject was consistent in design, layout, amenities, etc. with its competition, 5) subject is tenant occupied. If any of these are found to be false, it could alter the value opinion and or other conclusions in this report. Refer to the Explanatory Comments - Extraordinary Assumption.

RESIDENTIAL APPRAISAL REPORT

File No.: 6727 Maple Mesa St

TRANSFER HISTORY

My research ☐ did ☒ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data Source(s): Public Records

1st Prior Subject Sale/Transfer	Analysis of sale/transfer history and/or any current agreement of sale/listing: Local MLS and public records were used as sources for the Transfer History section, as applicable. Refer to Explanatory Comments - Sale History
Date:	
Price:	
Source(s):	Comparable sales/transfers - If comparables used sold previously within the date range of reporting guidelines, every reasonable effort was made to analyze the data to ensure that none were questionable transactions. As applicable, refer to the Summary of Sales Comparison Approach.
2nd Prior Subject Sale/Transfer	
Date:	
Price:	
Source(s):	

SALES COMPARISON APPROACH

SALES COMPARISON APPROACH TO VALUE (If developed) ☐ The Sales Comparison Approach was not developed for this appraisal.

FEATURE	SUBJECT	COMPARABLE SALE # 1		COMPARABLE SALE # 2		COMPARABLE SALE # 3	
Address	6727 Maple Mesa Street N Las Vegas, NV 89084	6632 Petrified Forest Street N Las Vegas, NV 89084		6635 Petrified Forest Street N Las Vegas, NV 89084		6732 Maple Mesa Street N Las Vegas, NV 89084	
Proximity to Subject		0.10 miles S		0.11 miles SW		0.03 miles NE	
Sale Price	$		$ 130,000		$ 135,990		$ 137,689
Sale Price/GLA	$ /sq.ft.	$ 69.48 /sq.ft.		$ 72.68 /sq.ft.		$ 73.59 /sq.ft.	
Data Source(s)	Document No.	20121214-3362		20121002-4275		20121025-2595	
Verification Source(s)	Ext Inspection	MLS-Public Records		MLS-Public Records		MLS-Public Records	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) $ Adjust.	DESCRIPTION	+(-) $ Adjust.	DESCRIPTION	+(-) $ Adjust.
Sales or Financing Concessions		FHA Traditional		CONV Traditional		VA Traditional	
Date of Sale/Time		12/14/2012		10/02/2012		10/25/2012	
Rights Appraised	Fee Simple	Fee Simple		Fee Simple		Fee Simple	
Location	Average/Gated	Average/Gated		Average/Gated		Average/Gated	
Site	.10 Acre/Interior	.10 Acre/Interior		.12 Acre/Interior	0	.13 Acre/Interior	0
View	Residential	Residential		Residential		Park	0
Design (Style)	Ranch/2-Story	Ranch/2-Story		Ranch/2-Story		Ranch/2-Story	
Quality of Construction	Stucco	Stucco		Stucco		Stucco	
Age	2001	2001		2001		2001	
Condition	Average	Good	-7,500	Good/Part Renov	-11,200	Good/Part Renov	-11,200
Above Grade Room Count	Total 6 / Bdrms 3 / Baths 2.5	Total 6 / Bdrms 3 / Baths 2.5		Total 6 / Bdrms 3 / Baths 2.5		Total 6 / Bdrms 3 / Baths 2.5	
Gross Living Area	1,871 sq.ft.	1,871 sq.ft.		1,871 sq.ft.		1,871 sq.ft.	
Basement & Finished	None	None		None		None	
Rooms Below Grade	None	None		None		None	
Functional Utility	Average	Average		Average		Average	
Heating/Cooling	Central	Central		Central		Central	
Energy Efficient Items	Standard	Standard		Standard		Standard	
Garage/Carport	2 Car Garage	2 Car Garage		2 Car Garage		2 Car Garage	
Porch/Patio/Deck	C/Patio	C/Patio	0	Patio	0	Patio	0
Extras	None	None		None		None	
Contract Date	None	10/2012	+7,800	09/2012	+10,200	10/2012	+8,300
Net Adjustment (Total)		☒ + ☐ -	$ 300	☐ + ☒ -	$ -1,000	☐ + ☒ -	$ -2,900
Adjusted Sale Price of Comparables			$ 130,300		$ 134,990		$ 134,789

Summary of Sales Comparison Approach: In consideration of the above market transactions and current market conditions, greatest consideration is placed on the Sales Comparison Approach to Value. The value opinion is correlated at $134,000. The package price per square foot of $72 (rounded) includes land plus improvements. The comparable closed transactions indicate a package price from $66 to $76. The subject's package price is supported by the unadjusted sale price divided by gross living area of the comparables utilized which in the appraiser's determination would reasonably compete with the subject property. The best two sales were renovated and adjust between $134,000 and $135,000. Insufficient information was available to adjust for patio, 1-story versus 2-story, site, etc. Four of five sales indicate a range of $132,000 to $138,000, with two that may have sold low due to limited market exposure of less than 10 days. The central tendency is $134,000 and lends good support the final value. The value See Explanatory Comments - Sales Comparison Approach comments.

Indicated Value by Sales Comparison Approach $ 134,000

RESIDENTIAL APPRAISAL REPORT

File No.: 6727 Maple Mesa St

COST APPROACH

COST APPROACH TO VALUE (if developed) ☒ The Cost Approach was not developed for this appraisal.

Provide adequate information for replication of the following cost figures and calculations.

Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value): The Cost Approach is not applicable due to building design and inability to construct a single unit. The subject improvements and site were constructed with some degree of "economy of scale" (multiple units - single developer) as a small tract subdivision. The cost approach is based upon the theory of a buyer being able to "build a substitute property" as opposed to buying the subject property. In this case, a buyer would not have this option for several reasons: 1) economy of scale and 2) the inability to purchase a small finished building site in the same general location as the subject. These and other conditions render the cost approach unreliable.

ESTIMATED ☐ REPRODUCTION OR ☐ REPLACEMENT COST NEW	OPINION OF SITE VALUE		=$
Source of cost data:	DWELLING	Sq.Ft. @ $	=$
Quality rating from cost service: Effective date of cost data:		Sq.Ft. @ $	=$
Comments on Cost Approach (gross living area calculations, depreciation, etc.):		Sq.Ft. @ $	=$
Refer to the above section on site value.		Sq.Ft. @ $	=$
		Sq.Ft. @ $	=$
			=$
	Garage/Carport	Sq.Ft. @ $	=$
	Total Estimate of Cost-New		=$
	Less Physical	Functional	External
	Depreciation		=$( )
	Depreciated Cost of Improvements		=$
	"As-is" Value of Site Improvements		=$
			=$
			=$
Estimated Remaining Economic Life (if required): 68 Years	INDICATED VALUE BY COST APPROACH		=$

INCOME APPROACH

INCOME APPROACH TO VALUE (if developed) ☒ The Income Approach was not developed for this appraisal.

Estimated Monthly Market Rent $ N/A X Gross Rent Multiplier N/A = $ N/A Indicated Value by Income Approach

Summary of Income Approach (including support for market rent and GRM): The income approach was not developed for several reasons: 1) while units were being rented in the area, tenant occupied properties highly similar to the subject were not sold in sufficient numbers from which to develop a reliable GRM and 2) investors were buying, renovating and selling properties as opposed to renting and holding for investment cash flow. Effectively, the income data was not sufficient to provide a reasonable and consistent value indication via this method.

PUD

PROJECT INFORMATION FOR PUDs (if applicable) ☒ The Subject is part of a Planned Unit Development.

Legal Name of Project: Parks

Describe common elements and recreational facilities: Gated entry, private streets, perimeter fencing, landscaped areas, park, and enforcement of CC&R's.

RECONCILIATION

Indicated Value by: Sales Comparison Approach $ 134,000 Cost Approach (if developed) $ N/A Income Approach (if developed) $ N/A

Final Reconciliation The value opinion is based upon direct sales comparison and considers a 30 to 90 day concurrent marketing and exposure period of the improvements. The cost and income approaches were not applied for the reasons stated within those areas. The value opinion is based upon the extraordinary assumptions noted below and assumes all systems (mechanical, electrical, plumbing, structural, roof, etc.) are operational and functioning correctly. The appraiser is not a home inspector and anyone relying on this report should not consider this appraisal as a home inspection. Please read the report in its entirety for a full understanding of the techniques and logic employed.

This appraisal is made ☒ "as is", ☐ subject to completion per plans and specifications on the basis of a Hypothetical Condition that the improvements have been completed, ☐ subject to the following repairs or alterations on the basis of a Hypothetical Condition that the repairs or alterations have been completed, ☐ subject to the following required inspection based on the Extraordinary Assumption that the condition or deficiency does not require alteration or repair: An exterior inspection of the subject was made by the appraiser on March 15, 2015. The retrospective market value was estimated as of February 13, 2013. This report is subject to Extraordinary Assumptions. Refer to Explanatory Comments.

☒ This report is also subject to other Hypothetical Conditions and/or Extraordinary Assumptions as specified in the attached addenda.

Based on the degree of inspection of the subject property, as indicated below, defined Scope of Work, Statement of Assumptions and Limiting Conditions, and Appraiser's Certifications, my (our) Opinion of the Market Value (or other specified value type), as defined herein, of the real property that is the subject of this report is: $ 134,000 , as of: February 13, 2013 , which is the effective date of this appraisal. If indicated above, this Opinion of Value is subject to Hypothetical Conditions and/or Extraordinary Assumptions included in this report. See attached addenda.

ATTACHMENTS

A true and complete copy of this report contains 37 pages, including exhibits which are considered an integral part of the report. This appraisal report may not be properly understood without reference to the information contained in the complete report.

Attached Exhibits:

☒ Letter of Transmittal	☒ Assumptions/Limiting Cond	☒ Market Conditions 3pg	☒ Map & Photo Addenda	☒ Appraiser License
☒ GP-Res CertsAddenda	☒ Additional Sales	☒ Sketch Addendum	☒ Clarification of SOW	☒ Appraiser Resume
☒ Extraordinary Assumptions	☒ Market A.Overview	☒ Plat and or Flood Maps	☒ Explanatory Comments	☒ Trustee's Deed

SIGNATURES

Client Contact: Wright, Finlay & Zak Client Name: Wright, Finlay & Zak

E-Mail: nlehman@wrightlegal.net Address: 7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117

APPRAISER

Appraiser Name: R. Scott Dugan, SRA

Company: R. Scott Dugan Appraisal Company, Inc.

Phone: 702-876-2000 Fax: 702-253-1888

E-Mail: appraisals@rsdugan.com

Date of Report (Signature): March 27, 2015

License or Certification #: A.0000166-CG State: NV

Designation: SRA

Expiration Date of License or Certification: 05/31/2015

Inspection of Subject: ☐ Interior & Exterior ☒ Exterior Only ☐ None

Date of Inspection: March 15, 2015

SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable)

Supervisory or Co-Appraiser Name:

Company:

Phone: Fax:

E-Mail:

Date of Report (Signature):

License or Certification #: State:

Designation:

Expiration Date of License or Certification:

Inspection of Subject: ☐ Interior & Exterior ☐ Exterior Only ☐ None

Date of Inspection:

ADDITIONAL COMPARABLE SALES

File No.: 6727 Maple Mesa St

SALES COMPARISON APPROACH

FEATURE	SUBJECT	COMPARABLE SALE # 4		COMPARABLE SALE # 5		COMPARABLE SALE # 6	
Address	6727 Maple Mesa Street N Las Vegas, NV 89084	6722 Petrified Forest Street N Las Vegas, NV 89084		6605 Mammoth Canyon Place N Las Vegas, NV 89084			
Proximity to Subject		0.02 miles SW		0.26 miles SE			
Sale Price	$	$ 122,900		$ 132,000			$
Sale Price/GLA	$ /sq.ft.	$ 65.69 /sq.ft.		$ 76.48 /sq.ft.		$ /sq.ft.	
Data Source(s)	Document No.	20120606-3126		20120918-2464			
Verification Source(s)	Ext Inspection	MLS-Public Records		MLS-Public Records			
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) $ Adjust.	DESCRIPTION	+(-) $ Adjust.	DESCRIPTION	+(-) $ Adjust.
Sales or Financing Concessions		CASH Traditional		CASH Traditional			
Date of Sale/Time		06/06/2012		09/18/2012			
Rights Appraised	Fee Simple	Fee Simple		Fee Simple			
Location	Average/Gated	Average/Gated		Average/Gated			
Site	.10 Acre/Interior	.10 Acre/Interior		.10 Acre/Interior			
View	Residential	Residential		Park	0		
Design (Style)	Ranch/2-Story	Ranch/2-Story		Ranch/1-Story	0		
Quality of Construction	Stucco	Stucco		Stucco			
Age	2001	2001		2002			
Condition	Average	Good	-7,500	Good	-6,900		
Above Grade Room Count	Total 6 / Bdrms 3 / Baths 2.5	Total 6 / Bdrms 3 / Baths 2.5		Total 6 / Bdrms 3 / Baths 2	0	Total / Bdrms / Baths	
Gross Living Area	1,871 sq.ft.	1,871 sq.ft.		1,726 sq.ft.	+5,100	sq.ft.	
Basement & Finished Rooms Below Grade	None / None	None / None		None / None			
Functional Utility	Average	Average		Average			
Heating/Cooling	Central	Central		Central			
Energy Efficient Items	Standard	Standard		Standard			
Garage/Carport	2 Car Garage	2 Car Garage		2 Car Garage			
Porch/Patio/Deck	C/Patio	Patio	0	Patio	0		
Extras	None	None		Full Appliances	-2,000		
Contract Date	None	05/2012	+16,600	09/2012	+9,900		
Net Adjustment (Total)		☒ + ☐ -	$ 9,100	☒ + ☐ -	$ 6,100	☐ + ☐ -	$
Adjusted Sale Price of Comparables			$ 132,000		$ 138,100		$

Summary of Sales Comparison Approach **The comparable sales were on the market 9, 32, 59, 48, and 5 days, respectively. Data was verified through MLS and public records, and the appraiser was able to determine that there appeared to be no significant sales concessions, special financing, or other considerations unless noted in the report.**

Comparable one reported a transfer on 01/07/2011 for $95,500.

Comparable two reported a transfer on 07/27/2012 for $97,400.

Comparable three reported a transfer on 07/24/2012 for $100,000.

Comparable four reported a transfer on 09/30/2011 for $83,000 as a Trustee's Deed.

Comparable five reported a transfer on 09/18/2012 for $100,000 as a Trustee's Deed.

Assumptions, Limiting Conditions & Scope of Work

File No.: 6727 Maple Mesa St

Property Address:	6727 Maple Mesa Street	City: N Las Vegas	State: NV	Zip Code: 89084	
Client:	Wright, Finlay & Zak	Address:	7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117		
Appraiser:	R. Scott Dugan, SRA	Address:	8930 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147		

STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS

— The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.

— The appraiser may have provided a sketch in the appraisal report to show approximate dimensions of the improvements, and any such sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size. Unless otherwise indicated, a Land Survey was not performed.

— If so indicated, the appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.

— The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.

— If the cost approach is included in this appraisal, the appraiser has estimated the value of the land in the cost approach at its highest and best use, and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used. Unless otherwise specifically indicated, the cost approach value is not an insurance value, and should not be used as such.

— The appraiser has noted in the appraisal report any adverse conditions (including, but not limited to, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property, or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property, or adverse environmental conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.

— The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.

— The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice, and any applicable federal, state or local laws.

— If this appraisal is indicated as subject to satisfactory completion, repairs, or alterations, the appraiser has based his or her appraisal report and valuation conclusion on the assumption that completion of the improvements will be performed in a workmanlike manner.

— An appraiser's client is the party (or parties) who engage an appraiser in a specific assignment. Any other party acquiring this report from the client does not become a party to the appraiser-client relationship. Any persons receiving this appraisal report because of disclosure requirements applicable to the appraiser's client do not become intended users of this report unless specifically identified by the client at the time of the assignment.

— The appraiser's written consent and approval must be obtained before this appraisal report can be conveyed by anyone to the public, through advertising, public relations, news, sales, or by means of any other media, or by its inclusion in a private or public database.

— An appraisal of real property is not a 'home inspection' and should not be construed as such. As part of the valuation process, the appraiser performs a non-invasive visual inventory that is not intended to reveal defects or detrimental conditions that are not readily apparent. The presence of such conditions or defects could adversely affect the appraiser's opinion of value. Clients with concerns about such potential negative factors are encouraged to engage the appropriate type of expert to investigate.

The Scope of Work is the type and extent of research and analyses performed in an appraisal assignment that is required to produce credible assignment results, given the nature of the appraisal problem, the specific requirements of the intended user(s) and the intended use of the appraisal report. Reliance upon this report, regardless of how acquired, by any party or for any use, other than those specified in this report by the Appraiser, is prohibited. The Opinion of Value that is the conclusion of this report is credible only within the context of the Scope of Work, Effective Date, the Date of Report, the Intended User(s), the Intended Use, the stated Assumptions and Limiting Conditions, any Hypothetical Conditions and/or Extraordinary Assumptions, and the Type of Value, as defined herein. The appraiser, appraisal firm, and related parties assume no obligation, liability, or accountability, and will not be responsible for any unauthorized use of this report or its conclusions.

Additional Comments (Scope of Work, Extraordinary Assumptions, Hypothetical Conditions, etc.):

Important – Please Read – The client should review this report in its entirety to gain a full awareness of the subject property, its market environment and to account for identified issues in their business decisions. This appraisal report includes comments, observations, exhibits, maps, explanatory comments, and addenda that are necessary for the reader to comprehend the relevant characteristics of the subject property. The Expanded Comments and Clarification of Scope of Work provides specifics as to the development of the appraisal along with exceptions that may have been necessary to complete a credible report.

INTENDED USE/USER:

The intended user of this appraisal report is the lender/client. No additional intended users are identified by the appraiser. This report contains sufficient information to enable the client to understand the report. Any other party receiving a copy of this report for any reason is not an intended user; nor does it result in an appraiser-client relationship. Use of this report by any other party(ies) is not intended by the appraiser.

SCOPE OF WORK:

In the normal course of business, the appraiser attempted to obtain an adequate amount of information regarding the subject and comparable properties. Some of the required standardized responses, especially those in which the appraiser has not had the opportunity to verify personally or measure, could mistakenly imply greater precision and reliability in the data than is factually correct or typical in the normal course of business. Consequently, this information should be considered an estimate unless otherwise noted by the appraiser.

Examples include condition and quality ratings, as well as comparable sales and listing data. Not every element of the subject of the subject property was viewable, and comparable property data was generally obtained from third-party sources (real estate agents, buyers, sellers, public records, and the Greater Las Vegas Board of Realtors Multiple Listing Service).

Certifications

File No.: 6727 Maple Mesa St

Property Address: 6727 Maple Mesa Street	City: N Las Vegas	State: NV	Zip Code: 89084
Client: Wright, Finlay & Zak	Address: 7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117		
Appraiser: R. Scott Dugan, SRA	Address: 8930 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147		

APPRAISER'S CERTIFICATION

I certify that, to the best of my knowledge and belief:
— The statements of fact contained in this report are true and correct.
— The credibility of this report, for the stated use by the stated user(s), of the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
— I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
— I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
— My engagement in this assignment was not contingent upon developing or reporting predetermined results.
— My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
— My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.
— I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.
— Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.
— Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification.

Additional Certifications:

Supplemental Certification: In compliance with the Ethics Rule of USPAP, I hereby certify that I have not performed any services with regard to the subject property within the 3-year period immediately preceding the engagement of this assignment.

Supplemental Certification: The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. As of the date of this report, I, R. Scott Dugan, SRA, Certified General Appraiser, have completed the continuing education program of the Appraisal Institute.

Definition of Market Value: (X) Market Value ( ) Other Value

Source of Definition: FDIC Interagency Appraisal and Evaluation Guidelines (December 2, 2010) Appendix D

As defined in the Agencies' appraisal regulations, the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

*The definition of market value above is the most widely cited by federally regulated lending institutions, HUD and VA. Absent a specific definition from the client, this definition was used in the assignment.

SIGNATURES

Client Contact: Wright, Finlay & Zak Client Name: Wright, Finlay & Zak
E-Mail: nlehman@wrightlegal.net Address: 7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117

APPRAISER	SUPERVISORY APPRAISER (If required) or CO-APPRAISER (if applicable)
Appraiser Name: R. Scott Dugan, SRA	Supervisory or Co-Appraiser Name:
Company: R. Scott Dugan Appraisal Company, Inc.	Company:
Phone: 702-876-2000 Fax: 702-253-1888	Phone: Fax:
E-Mail: appraisals@rsdugan.com	E-Mail:
Date Report Signed: March 27, 2015	Date Report Signed:
License or Certification #: A.0000166-CG State: NV	License or Certification #: State:
Designation: SRA	Designation:
Expiration Date of License or Certification: 05/31/2015	Expiration Date of License or Certification:
Inspection of Subject: ☐ Interior & Exterior ☒ Exterior Only ☐ None	Inspection of Subject: ☐ Interior & Exterior ☐ Exterior Only ☐ None
Date of Inspection: March 15, 2015	Date of Inspection:

Explanatory Comments

File No. 6727 Maple Mesa St

Client	Wright, Finlay & Zak				
Property Address	6727 Maple Mesa Street				
City	N Las Vegas	County Clark	State NV	Zip Code 89084	
Borrower/Client	N/A				

EXTRAORDINARY ASSUMPTION:

USPAP provides the following definition for "extraordinary assumption":

Defined as an assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser's opinions or conclusions.

Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. (USPAP, 2014-2015 Edition)

This report was completed without an interior inspection of the subject. External sources including, but not limited to, information from a drive-by street inspection, appraiser's files, county records, and or multiple listing service data were relied upon for information used to describe the improvements and or condition of the subject.

As indicated on page 1 of this report, if the assumptions invoked are found to be false, it could alter the value opinion and or other conclusions in this report. As such, the appraiser reserves the right to amend the value opinion and or conclusions based on new or revised information.

Retrospective Value: is generally defined as "A value opinion effective as of a specified historical date. The term does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiation, deficiency judgments, estate tax, and condemnation. Inclusion of the type of value with this term is appropriate, e.g., "retrospective market value opinion." Source: Appraisal Institute, The Dictionary of Real Estate Appraisal, 5th ed. (Chicago: Appraisal Institute, 2010).

The final value within this appraisal assignment represents a "Retrospective" Market Value opinion as of the date of the HOA sale, February 13, 2013, the effective date of this report. The physical exterior inspection of the subject property was performed on March 15, 2015.

Sale History: Per county records, there has been no recorded transfer of title or ownership for the subject property within the past three years. As of the effective date of this appraisal, the subject has not, within the last 12 months, been offered for sale through the Las Vegas Board of Realtors Multiple Listing Service.

Comments on Sales Comparison Approach: Based on research of properties considered competitive to the subject and appropriate for use in this assignment, a smaller than typical number of recently closed comparables were available for analysis from within the subject project of the Parks. The comparables used in this report range in gross living area from 1,726 to 1,871 square feet, with four of five used reported to be model matches to the subject.

The comparables required one or more of the following adjustments: variation in gross living area (GLA) at $35 per square foot, condition at $4 and $6 per square of living area, respectively, for good and good with part renovation, with the renovated sales reporting two or more of the following as new: carpet, paint, tile or base boards, and extras at $2,000 for full appliances. Cross comparison did not render adjustments for variations in: bath count, site size, patio, or view or one-story versus.

Explanatory Comments

File No. 6727 Maple Mesa St

Client	Wright, Finlay & Zak				
Property Address	6727 Maple Mesa Street				
City	N Las Vegas	County Clark	State NV	Zip Code 89084	
Borrower/Client	N/A				

If supported, individual line item adjustments were made to the comparable to reflect the market recognized contribution of key attributes or factors present or absent, when contrasted to the subject property. The contribution of big ticket items (location, age/condition, quality, site, view, GLA, swim features, etc.) were adjusted on a line item basis. Minor value features (fireplaces, solar screens, storage sheds, etc.), that may appeal to some buyers, typically are not significant enough in their contribution to isolate as a single line item adjustment. In such cases, the presence of such items in the comparables were contrasted to the similar or offsetting items in the subject and factored into the reconciliation and final value opinion. Minor value features and or others, i.e., external factors lacking adjustment support, may not have been noted in the grid.

Adjustments for one-story versus two-story styled homes were considered. As a result of the limited data in the present market, the appraiser was unable to isolate and quantify an adjustment for this comparison. Lacking a more measurable market reaction, this purchase option appears to be more of a personal preference within this market area.

Comparables were adjusted at 1.5% percent per month of sale price from date of contract, to reflect changes in market conditions over this period of time. This generally is considered consistent with the Case-Shiller Index for Las Vegas. Refer to market condition comments and Case Shiller and Trend graphs.

The Case Shiller index is a composite for the entire Las Vegas Valley metropolitan area. As with any composite index, the index represents the blended market movement rate, for the entire area. There will be areas within the market that are performing above or below the area index (mean).

Also affecting the index (and the market), are product types. In a recovering market like the Las Vegas valley, the housing supply is segmented between many types (condo/townhouse/sfr) and by many pricing tiers (entry level, 1-3 tier move-up, high-quality production, custom homes, etc.).

The third factor impacting the index and the market, is the sale type (REO, short sale, traditional, etc.). While the Case Shiller index for the valley is showing "overall improvement" for the valley/metropolitan area, specific market areas or market segments (tiers) may or may not be in concert with the overall valley movement.

For example, when the market was declining and financing was not available (severely impacting the normal market) the luxury quality home market was not affected in the same way and lagged behind the general market. Similarly, when the market started its recovery, entry level homes were appreciating rapidly, while higher-tier move-ups continued to decline and or remained flat due to excessive supply in that market segment.

These observations are discussed in general in the report. While the valley's median price continues to rise per Case Shiller (Case Shiller is a 90 day lagging index), this is the overall market. Market areas and segments (product types, tiers, etc.,) within this market will continue to be subject to pockets that perform above/below/equal to the "mean".

In 2013 (as shown in the report) the median overall price was improving, however, the volume of listings without offers was increasing, sales volume was down, as was the list to sale ratio. All of this was pointing to the market beginning to stabilize. In examining many of the neighborhood areas (price and supply factors), some continued to improve (increase); while others had peaked (stabilized) during the time period or effective date of value.

Explanatory Comments

File No. 6727 Maple Mesa St

Client	Wright, Finlay & Zak				
Property Address	6727 Maple Mesa Street				
City	N Las Vegas	County Clark	State NV	Zip Code 89084	
Borrower/Client	N/A				

Las Vegas is a correcting market that is affected by many factors. This market will continue to stabilize over the next several years, depending upon many factors discussed in the report (employment, investors, shadow inventory, rents, interest rates, etc.), which will in turn, impact individual areas differently, based upon supply/demand in the immediate area, rent levels, investor activity, etc.

Keep in mind that in 2012/2013, 75% of the sales volume in the valley was investor driven, all cash. Many of these were flips, others rentals, etc., and many of these were concentrated in the same housing tracts or neighborhoods. When looking at the areas most impacted by the housing debacle, most were the new home areas of the valley.

These are the same areas where all of the REOs, short sales, etc., were concentrated. These are also the same areas where the HOA lien sales are taking place and the same areas with significant investor activity. Effectively, you will have pocket areas where you have good demand, and limited supply, increasing trends or areas that are more in balance, affected by how many investor owned homes, short-sales or REOs were placed on the market during that time-period.

In neighborhoods where we have clear evidence of rising price points during the effective date of value, we are making time adjustments. Some of these areas had peaked and stabilized around the effective date, however, many of the sales had contract dates months prior to the EDOV and required market conditions adjustments, even though as of the EDOV, the neighborhood had stabilized.

In developing the value opinion, the sales comparison approach was weighted. This approach considers and analyzes listings (active, pending sales, expired, etc.), along with closed sales, to determine the value opinion, factors affecting the market and the market direction or trends. This permits reconciliation of the trends and value indicators to form an opinion reflective of market conditions as of the date of value.

The following table depicts MLS transactions reviewed in the market area.

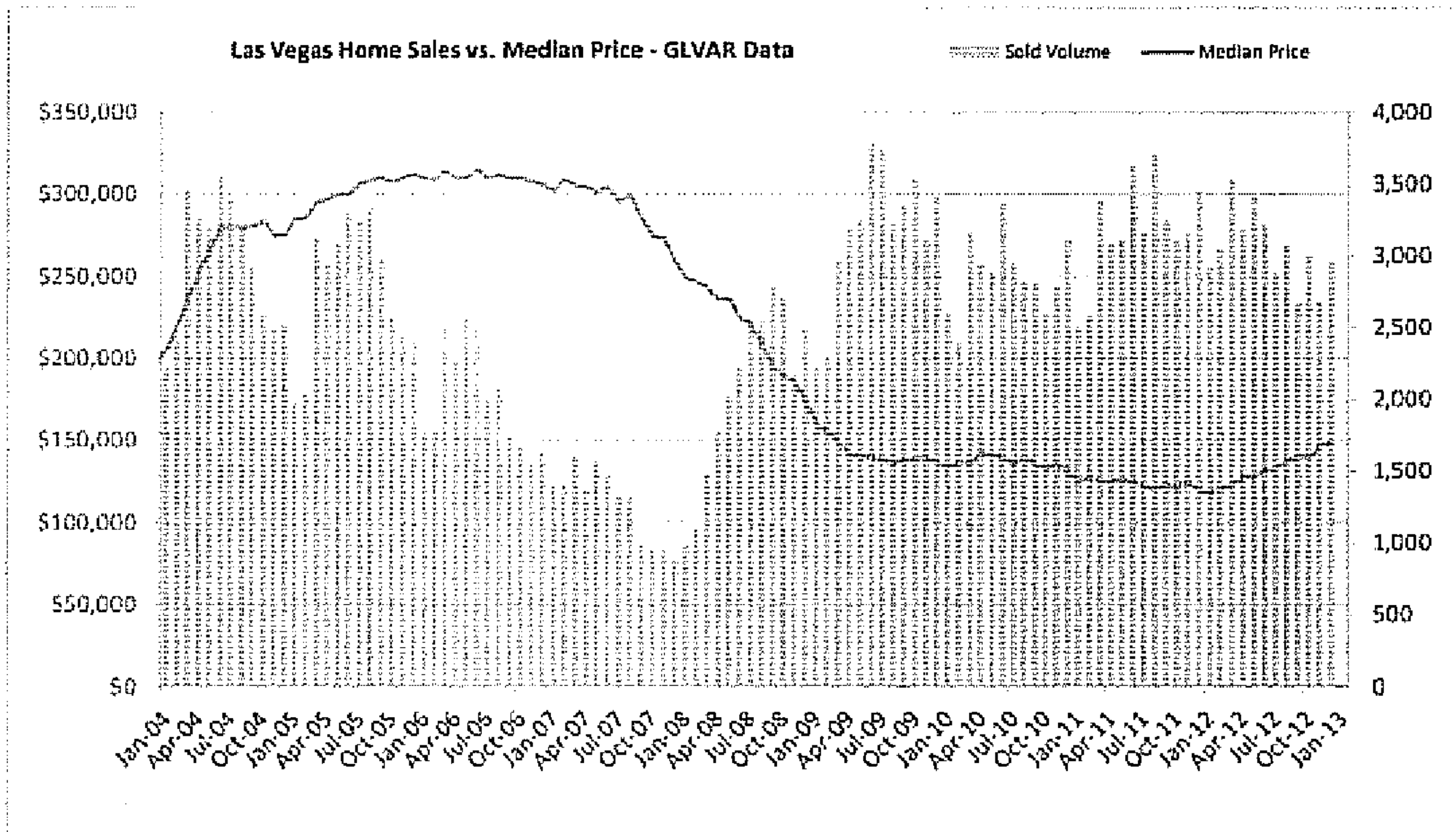
Address	List Price	Sold Price	Year	SF	Lot	List Date	Pend Date	Sale Date	REO	SS
6620 PETRIFIED FOREST ST	124,900	124,900	2001	1665	4356	8/24/2012	8/24/2012	1/15/2013	N	N
532 LAVA BEDS WY	129,900	129,900	2001	2224	5663	8/9/2012	8/12/2012	12/28/2012	N	Y
6652 PETRIFIED FOREST ST	120,000	120,000	2001	1871	4792	5/9/2012	10/6/2012	12/20/2012	N	Y
6632 PETRIFIED FOREST ST	130,000	130,000	2001	1871	4356	10/17/2012	10/26/2012	12/14/2012	N	N
618 PAINTED OPUS PL	104,900	105,000	2002	1871	4356	5/10/2012	5/14/2012	11/9/2012	N	N
6715 MAPLE MESA ST	110,000	110,000	2001	1871	10019	8/8/2012	8/15/2012	11/8/2012	N	Y
6732 MAPLE MESA ST	134,990	137,689	2001	1871	5663	8/3/2012	10/1/2012	10/25/2012	N	N
332 HARBOR GULF CT	119,990	114,000	2001	2240	6098	4/5/2012	4/10/2012	10/19/2012	N	Y
6635 PETRIFIED FOREST ST	139,990	135,990	2001	1871	5227	8/10/2012	9/11/2012	10/2/2012	N	N
6710 CINNABAR COAST LN	99,000	105,000	2001	1871	5480	2/15/2011	4/10/2012	8/31/2012	N	N
6635 PETRIFIED FOREST ST	97,400	97,400	2001	1871	5398	11/12/2011	3/27/2012	7/27/2012	N	Y
6732 MAPLE MESA ST	99,900	100,000	2001	1871	5679	8/25/2011	3/26/2012	7/24/2012	N	Y
417 HORSE POINTE AV	90,000	88,000	2001	1674	8276	4/13/2012	4/13/2012	6/26/2012	N	Y
630 LAVA BEDS WY	90,000	98,000	2001	1980	4356	4/14/2012	4/17/2012	6/22/2012	N	Y
6722 PETRIFIED FOREST ST	122,900	122,900	2001	1871	4356	3/28/2012	5/15/2012	6/6/2012	N	N
630 PAINTED OPUS PL	118,750	119,755	2002	1665	4356	5/3/2012	5/15/2012	6/4/2012	N	N
6716 MAPLE MESA ST	115,000	114,000	2001	2224	8851	10/19/2011	12/6/2011	5/30/2012	N	Y
6702 CINNABAR COAST LN	110,100	110,000	2002	1871	4496	1/13/2012	3/16/2012	5/3/2012	Y	N
444 LAVA BEDS WY	79,900	84,500	2002	1665	4499	11/8/2011	11/23/2011	4/19/2012	N	Y
6744 MAPLE MESA ST	98,000	105,000	2001	1871	5281	8/3/2011	1/23/2012	4/17/2012	N	Y
6644 PETRIFIED FOREST ST	87,500	87,500	2001	1665	4538	1/24/2012	2/24/2012	3/27/2012	Y	N
645 PAINTED OPUS PL	107,990	104,900	2001	1871	6149	11/26/2011	1/17/2012	2/16/2012	N	N

Economic Indicators

Economic Indicators Addendum

Economic Overview - Key Indicators - Clark County, NV	2006	2007	2008	2009	2010	2011	2012	M
POPULATION - Mid Yr	1,874,837	1,954,319	1,967,716	1,973,619	1,920,756	1,931,510	1,990,466	11*
EMPLOYMENT - Annual	873,249	890,104	880,822	864,353	853,969	856,174	869,640	11
LABOR FORCE - Annual	911,492	933,770	969,998	980,387	994,210	994,152	970,959	11
UNEMPLY. RATE - Yr End	4.20%	4.68%	9.19%	11.84%	14.11%	13.88%	10.40%	11
Pop. to Employ Ratio	2.15	2.20	2.23	2.28	2.25	2.26	2.29	11
Labor Force Growth	36,572	22,278	36,228	10,389	13,823	-58	-23,193	11
Net Jobs Created	38,663	16,855	-9,282	-16,469	-10,384	2,205	13,466	11
Labor to Pop. Ratio	2.06	2.09	2.03	2.01	1.93	1.94	2.05	11
TAXABLE SALES -000'S	$34,133,810	$36,052,682	$36,358,261	$34,652,262	$28,503,924	$28,207,925	$26,195,444	10
Taxable Sales / Capita	$19,001	$18,448	$18,477	$17,558	$14,840	$14,604	$13,160	10
HOTEL ROOMS	146,605	145,948	146,372	153,165	161,383	164,574	162,257	11
Vistors/Room	300	300	300	273	247	247	244	11
VISITOR VOLUME	44,025,888	43,840,535	43,915,629	41,793,952	39,870,781	40,705,384	39,568,304	11
Hotel Occupancy	89%	87%	88%	85%	81%	81%	85%	11
Airport Passengers	44,267,362	46,198,000	47,703,259	44,060,564	40,455,300	39,757,359	38,705,133	11
Convention Attend.	6,166,194	6,307,961	6,209,253	5,899,725	4,492,275	4,473,134	4,873,681	11
GAMING REVENUE - 000's	$9,718,807	$10,643,828	$10,868,509	$9,796,972	$8,833,902	$8,908,697	$8,574,214	11
Revenue per room	$66,292	$72,929	$74,253	$63,964	$54,739	$54,132	$52,843	11
Housing - Clark County Totals								
HOUSING STOCK TOTAL	704,826	740,817	769,875	784,688	796,255	814,868	816,099	MidYr
Pop./Housing Ratio	2.66	2.64	2.56	2.52	2.41	2.37	2.44	11
Emp/Housing Ratio	1.24	1.20	1.14	1.10	1.07	1.05	1.07	11
LabFor/Housing Ratio	1.29	1.26	1.26	1.25	1.25	1.22	1.19	11
RESIDENTIAL PERMITS	38,254	33,942	24,069	14,555	5,741	4,859	7,189	11
Single Family	29,408	20,748	13,011	6,095	3,840	4,324	6,006	11
Multi-Family	8,846	13,194	11,058	8,460	1,901	535	1,183	11
INTEREST RATES	5.87%	6.41%	6.34%	6.03%	5.01%	4.75%	3.94%	12

Existing Home Supply and Demand - GLVAR MLS	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	M
Single Family Listed	31,194	60,661	57,943	64,049	62,783	61,038	57,016	56,643	55,174	40,271	12
Single Family Sold	30,142	35,260	33,529	24,130	15,279	24,924	38,127	34,434	38,153	36,609	12
Percentage	97%	58%	58%	38%	24%	41%	67%	61%	69%	91%	Up
Single Family Median Price						$222,500	$140,000	$135,347	$124,750	$132,393	Up
Single Family Average Price						$285,934	$170,118	$166,917	$152,924	$165,998	UP
Condo/Townhome Listed	7,531	11,306	11,474	15,589	15,243	13,076	14,249	12,838	11,537	8,411	12
Condo/Townhome Sold	5,539	7,581	7,872	5,826	3,276	3,694	8,752	8,526	9,146	7,569	12
Percentage	74%	67%	69%	37%	21%	28%	61%	66%	79%	90%	Up
Condo/TH Median Price						$136,250	$66,644	$65,000	$56,500	$63,700	Up
Condo/TH Average Price						$185,375	$87,696	$73,159	$64,056	$70,899	Up
Total Home Sales	**35,681**	**47,841**	**41,401**	**29,956**	**18,555**	**28,618**	**46,879**	**42,960**	**47,299**	**44,178**	**Up**
SFR Rentals Leased	N/A	N/A	N/A	13,670	16,716	18,748	21,756	25,100	28,272	33,653	12
SFR Median Rental	N/A	N/A	N/A	$1,195	$1,295	$1,250	$1,195	$1,113	$1,115	$1,194	4



 *estimated indicator

Home Builders Research, Inc.

THE LAS VEGAS HOUSING MARKET – 2009 – 2012

2009 – In 2009 there were 5,275 new home closings. That translated to a year to year decline of 5,229 transactions or 50 percent. The median new home price in 2009 was $234,173, and decreased to $216,854 by December, a change of 7%.

There were 3,850 new home permits pulled by home builders in 2009. That was a decrease of 2,279 permits, or 37 percent.

We counted 44,885 resale closings in 2009, which was a year to year increase of 14,394 transactions, or 47 percent. The rising number of recorded resales was indicative of the increasing number of investors purchasing REO and other distressed properties. The median price of the resale closings in January, 2009 was $155,000, and in December, 2009 it was $123,000, a change of $32,000 or 21 percent.

2010 – In 2010 we counted 5,379 new home closings, a year to year improvement of 104 sales. The median price in January, 2010 was $200,716 and in December it stood at $218,080. This translated to an improvement of $17,364 or 8.7 percent. The new home sales and pricing data during 2010 was greatly affected by the federal tax credit program that caused closings in June to jump to 976, a one month increase of 460, or 89 percent. During mid-2010 the median price jumped by approximately $20,000.

New home permits in 2010 totaled 4,550, a year to year increase of 700, or 18 percent. It could be concluded that the federal tax credit brought an "artificial demand level" that resulted in 700 additional new home permits. The local economy certainly did NOT display any overall characteristics of a recovery as unemployment continued to rise and job growth was anemic.

The resale activity in 2010 declined year to year at 42,673 transactions. It would appear that some buyers were enticed by the federal tax credit program to purchase a new home instead of the lower priced resale homes. The median price of the resale closings in January, 2010, was $125,000. In December, 2010, it dropped to $119,000. This translates to a change of 5 percent.

2011 – The Las Vegas housing market hit its bottom in 2011. The new home closings in 2011 decreased to 3,894. This was a year to year decline of 1,485 sales, or 28 percent. There was an apparent "hangover" from the federal tax credit period in 2010. During the first 6 months there was an average of 279 closings per month, and during the last 6 months the average was 370 closings per month.

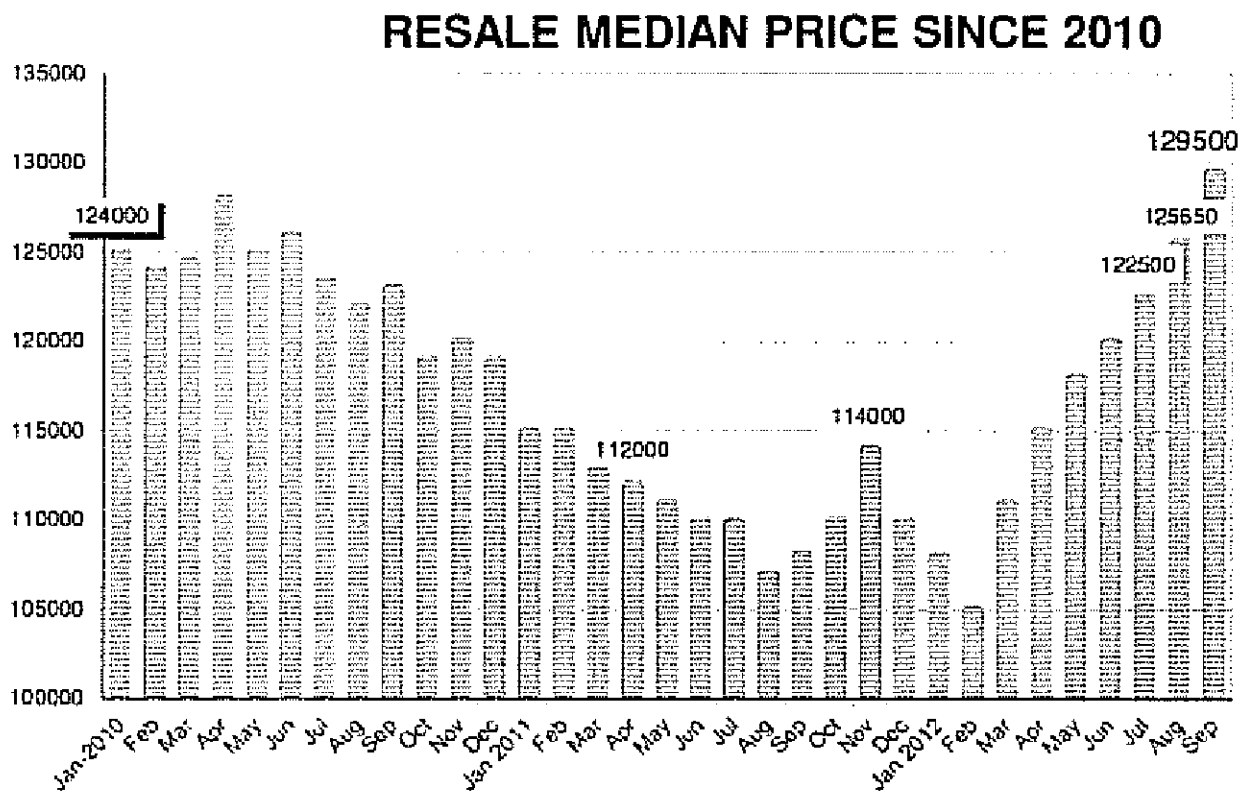
The median price of the new home closings in January, 2011, was $208,145. It dipped to roughly $198,000 by mid-year, and in December was $212,250. By the end of 2011 we were starting to realize the decline of new and resale home inventories. The effects of the National Mortgage Settlement (NMS) and passage of Assembly Bill 284 (AB 284) brought Notice of Defaults (NOD) to a minimum. Prior to October 1st, 2011, (when AB 284 took effect) the number of residential NODs averaged 3,148 per month. During the first 6 months after AB 284 was in effect, the number of residential NODs averaged 171 per month. It certainly could be assumed that lenders were responding to this bill.

find adequate replacement lots for sold out subdivisions. Our research displays the 31 percent decline in the number of finished lots during 2012.

The number of new home closings through September totaled 3,710, a year to year increase of 33 percent. It now appears there could be approximately 5,700 new home closings in 2012. Also, through September the number of new home permits has risen to 4,451, a year to year increase of 53 percent.

The median price of the new home single family closings in September was $198,945, a year to year decline of 3.3 percent. Because of the lengthening production schedules for new homes, their closing prices are now lagging indicators. A better way of understanding the current new home pricing trends is the base price changes in the subdivisions. Some of the better locations (specific parts of Summerlin, the southwest sub-market, Henderson, and the northwest) have now seen base prices jump 25 – 45 percent in 2012. However, there are still problems with distressed pricing in other vicinities of North Las Vegas and the east sub-markets.

The tight inventory levels have also affected the number of resale closings and their pricing. Although we have recently observed the number of monthly resale closings begin to decline, through September the 2012 sum (37,498) has increased year to year by 5 percent. The monthly resale median price has risen for the last 7 consecutive months. Year to year it represents an increase of 20 percent.



Home Builders Research, Inc.

The following chart summarizes the changes in the inventory of resale listings in the MLS since April, 2011. It is striking how the number of available existing homes for sale has changed during 2012. The REO and short sale homes listed for sale without contingent offers (the bottom half of the chart) on October 7th was 1,239, an 85 percent change from April, 2011.

SFR MLS Listings Inventory	4/17/2011	7/9/2012	8/2/2012	10/7/2012
Available SFR including accepted contingent offers				
Total	20127	14,993	15,115	15,051
Repo/REO	3306	902	827	599
Short Sales	12206	10,434	10,434	10,271
Other	4615	3,657	3,855	4,181
Available SFR NOT including accepted contingent offers				
Total	11683	3,759	3,926	4,093
Repo/REO	2127	336	365	312
Short Sales	5916	910	909	927
Other	3641	2,513	2,652	2,854

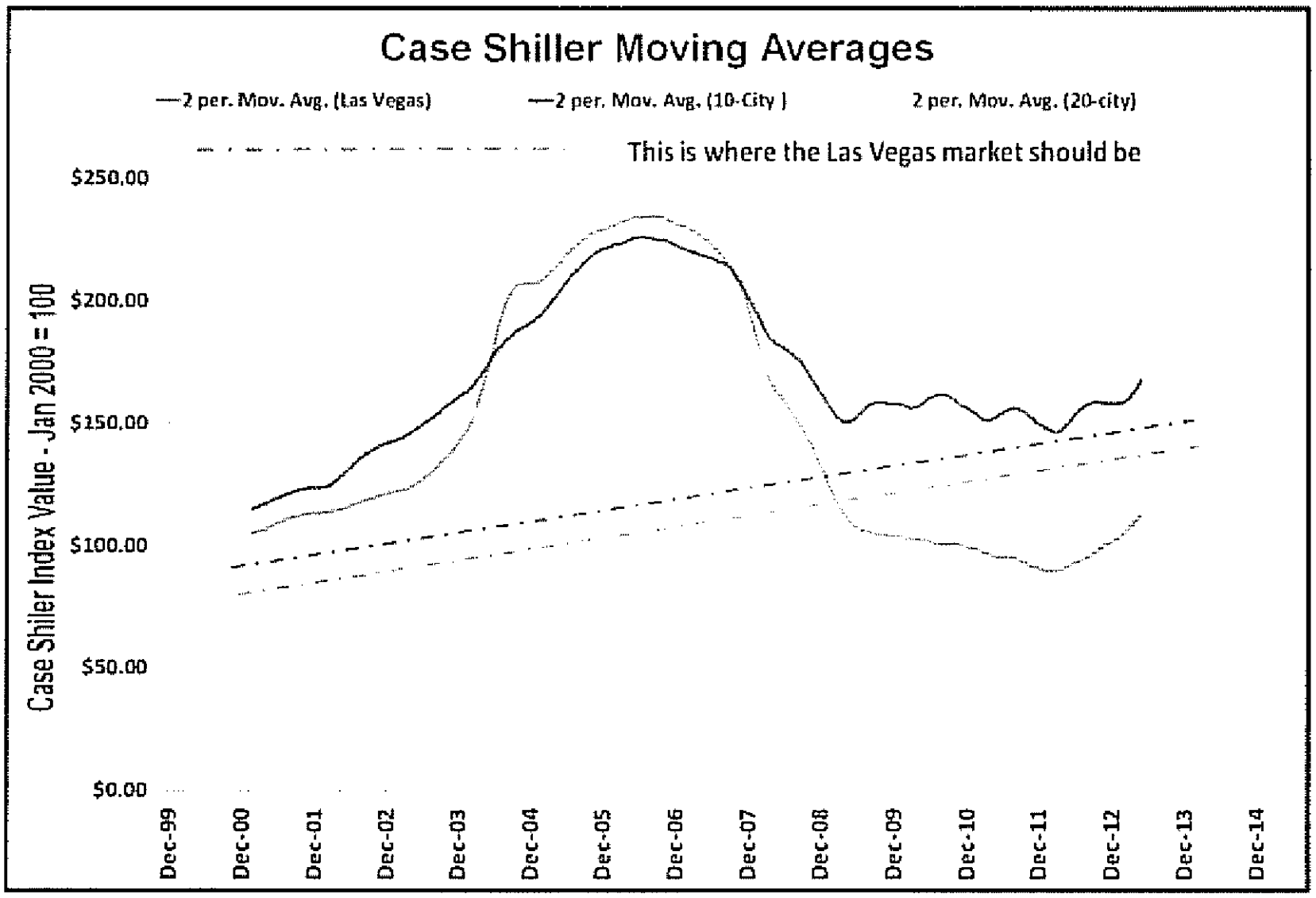
Looking forward to the end of 2012 and into 2013, we believe there will be a rise in NOD's and the resulting foreclosures. Short sales have become the favorite means for most lenders and servicers to dispose of distressed mortgages. As resale prices climb, their losses diminish by going the short sale route. As more resale inventory becomes available there will be more resale closings, primarily as investors purchase any foreclosures entering the marketplace. They can still take advantage of a fairly strong rental market.

It appears that very tight lending policies by the banks will continue, suggesting limitations to potential owner occupants wanting to buy a home. According to a recent national study, required FICO scores are approaching 750 for most new mortgages. And, many of the banks still classify Las Vegas as a "risky or declining market", therefore there still seems to be no indication that underwriting standards will change in the near term.

Tens of thousands of the existing mortgages in southern Nevada are still underwater. Even as prices begin to slowly climb, it will take many years for the Las Vegas housing market to return to any sense of "normalcy".

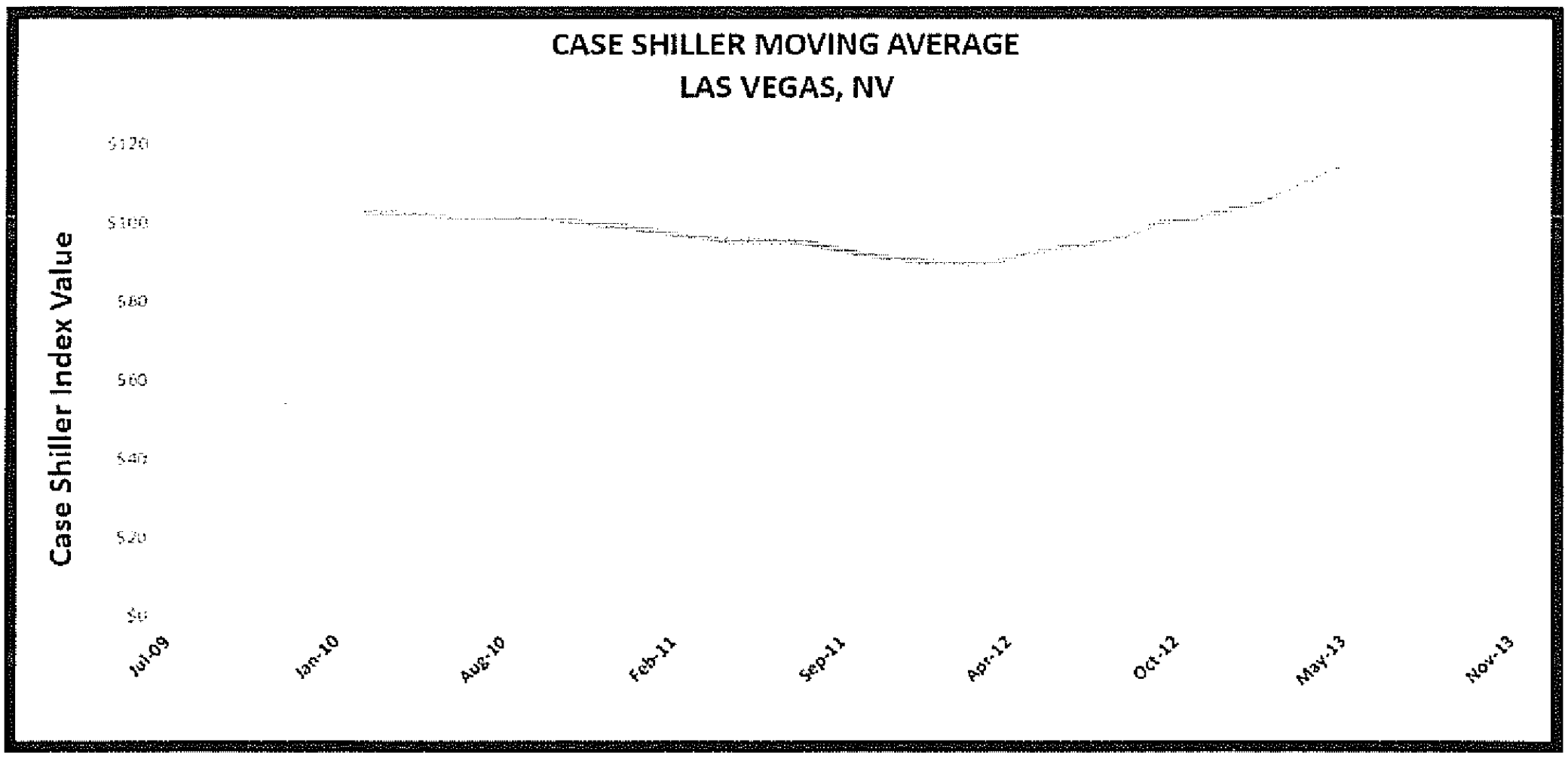
Case Shiller

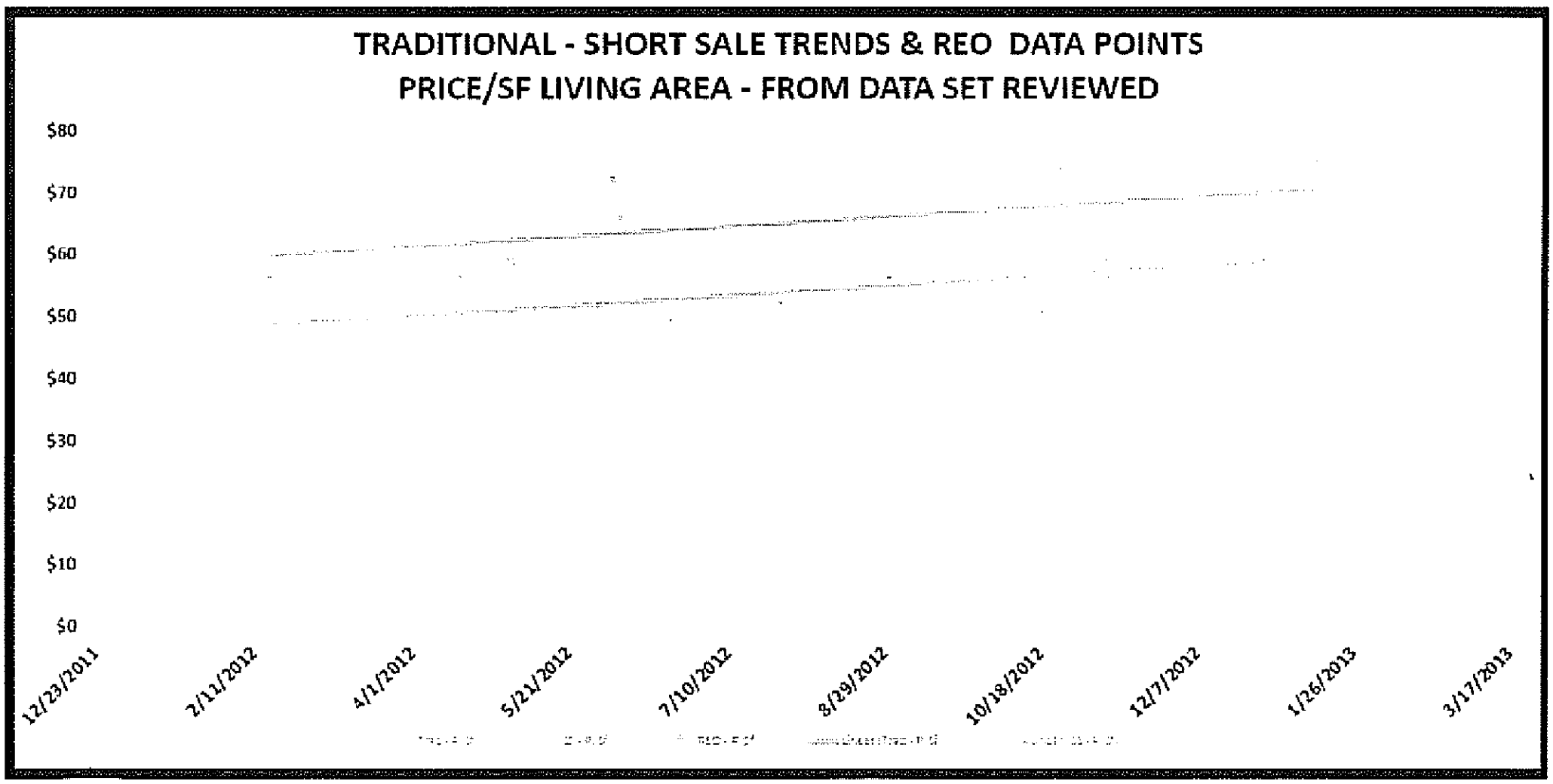
Client	Wright, Finlay & Zak						
Property Address	6727 Maple Mesa Street						
City	N Las Vegas	County	Clark	State	NV	Zip Code	89084
Borrower/Client	N/A						



Trends

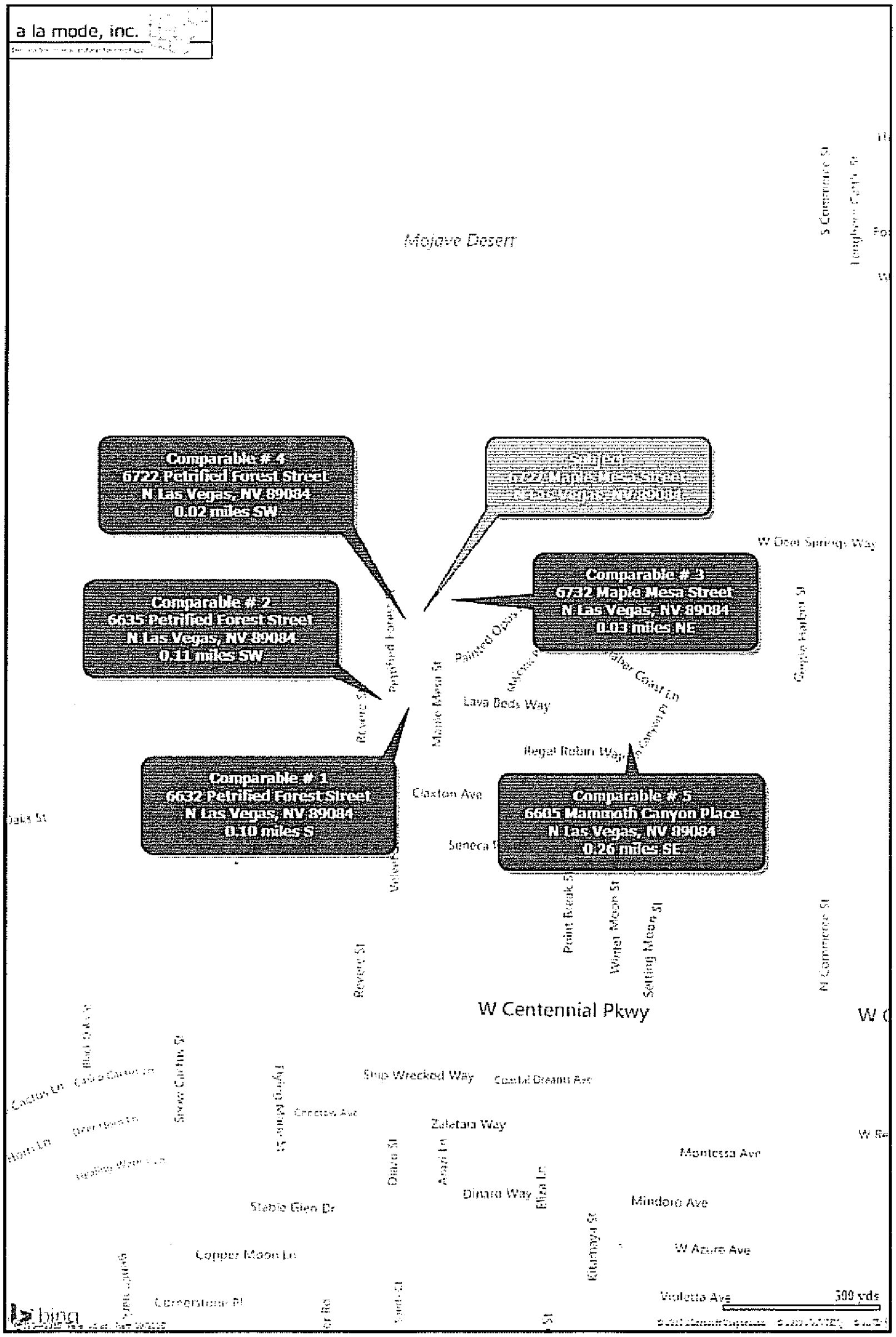
Client	Wright, Finlay & Zak						
Property Address	6727 Maple Mesa Street						
City	N Las Vegas	County	Clark	State	NV	Zip Code	89084
Borrower/Client	N/A						





Location Map

Client	Wright, Finlay & Zak						
Property Address	6727 Maple Mesa Street						
City	N Las Vegas	County	Clark	State	NV	Zip Code	89084
Borrower/Client	N/A						



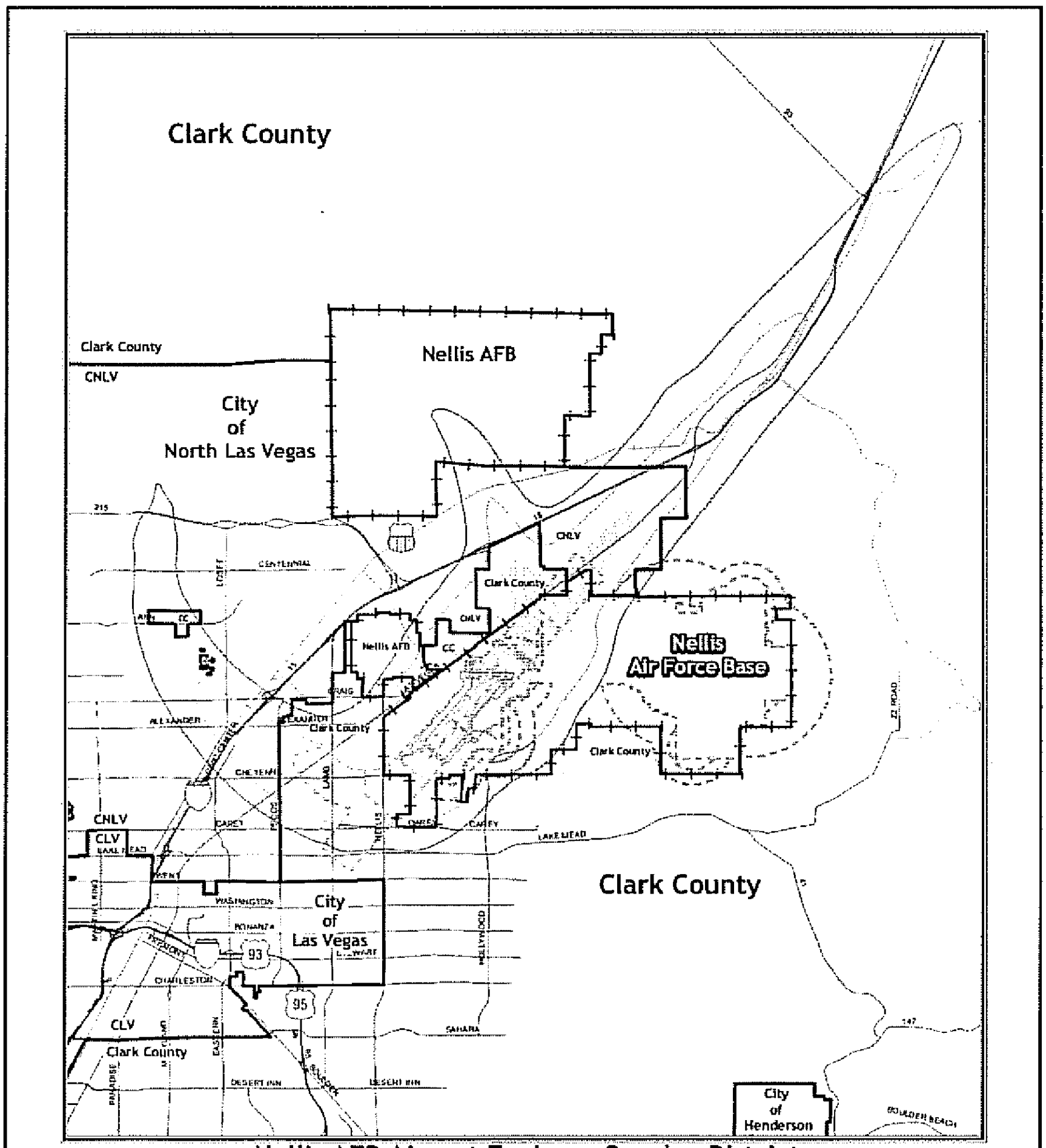
Form MAP.LOC — "WinTOTAL" appraisal software by a la mode, inc. — 1-800-ALAMODE

CTADD1154

Plat Map

Client	Wright, Finlay & Zak						
Property Address	6727 Maple Mesa Street						
City	N Las Vegas	County	Clark	State	NV	Zip Code	89084
Borrower/Client	N/A						

Nellis AFB Environs Overlay District



Building Sketch

SKETCH/AREA TABLE ADDENDUM

S:\Mi124\12\WhisperUS.AXF APN 124-22- 314-059

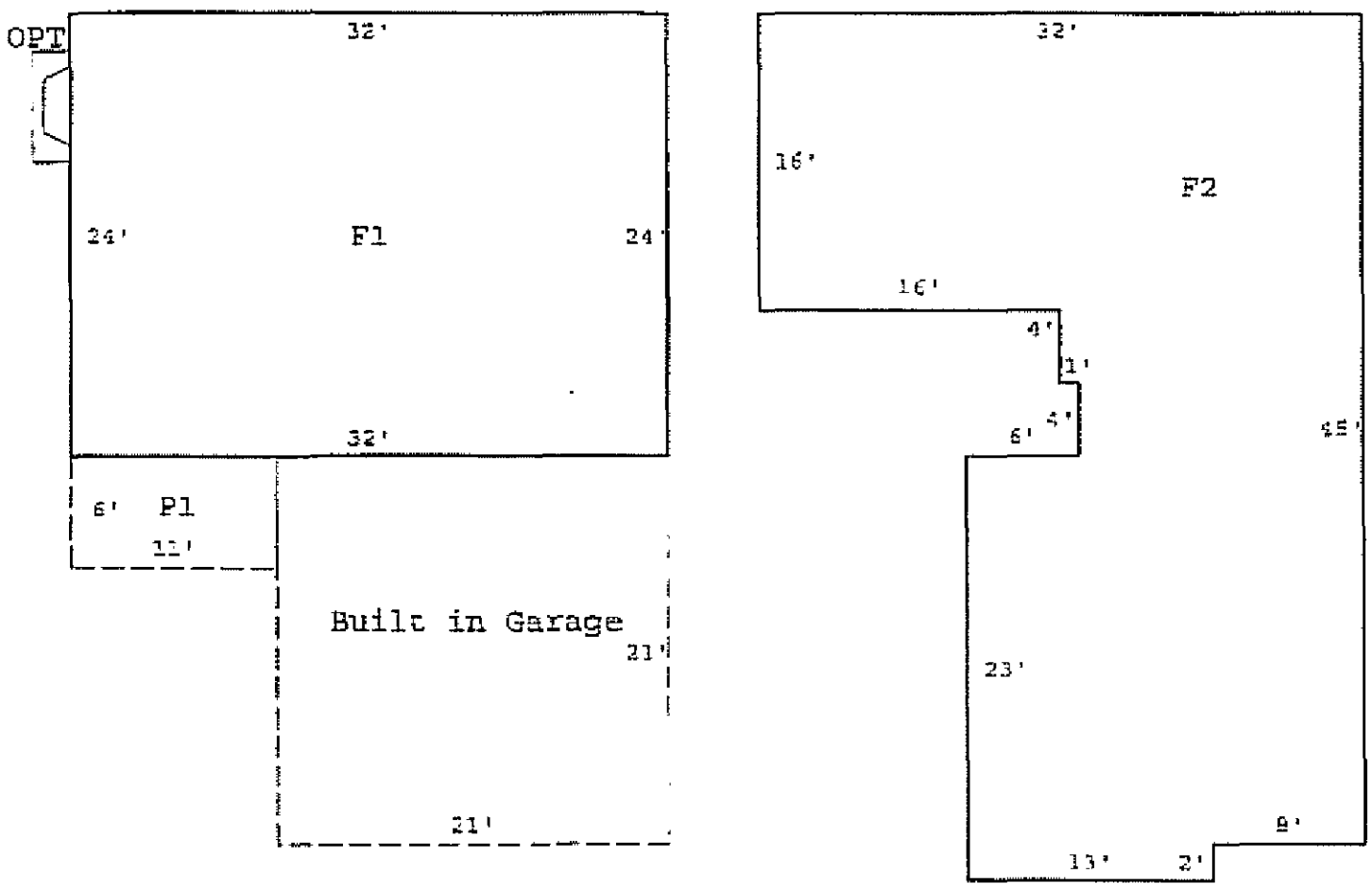
Address

Date 04-2001 N/A LC# 052

Sub/Project WHISPERING MEADOWS

Model 35 (GOSSAMER)

Drawn by # 062



Comments This is for Tax Assessment Purposes Only.This drawing shows all possible options for this model.For specific information please go to our website at www.co.clark.nv.us/assessor/assessor.htm.

Scale 1" = 12'

AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
GLA1	F1	1.00	768.00	112.0	768.00
GLA2	F2	1.00	1103.00	170.0	1103.00
BIG	Built in Garage	1.00	441.00	84.0	441.00
P1	P1	1.00	66.00	34.0	66.00

Net LIVABLE Area	(rounded w/ factors)	1871

COMMENTS

FIXTURES

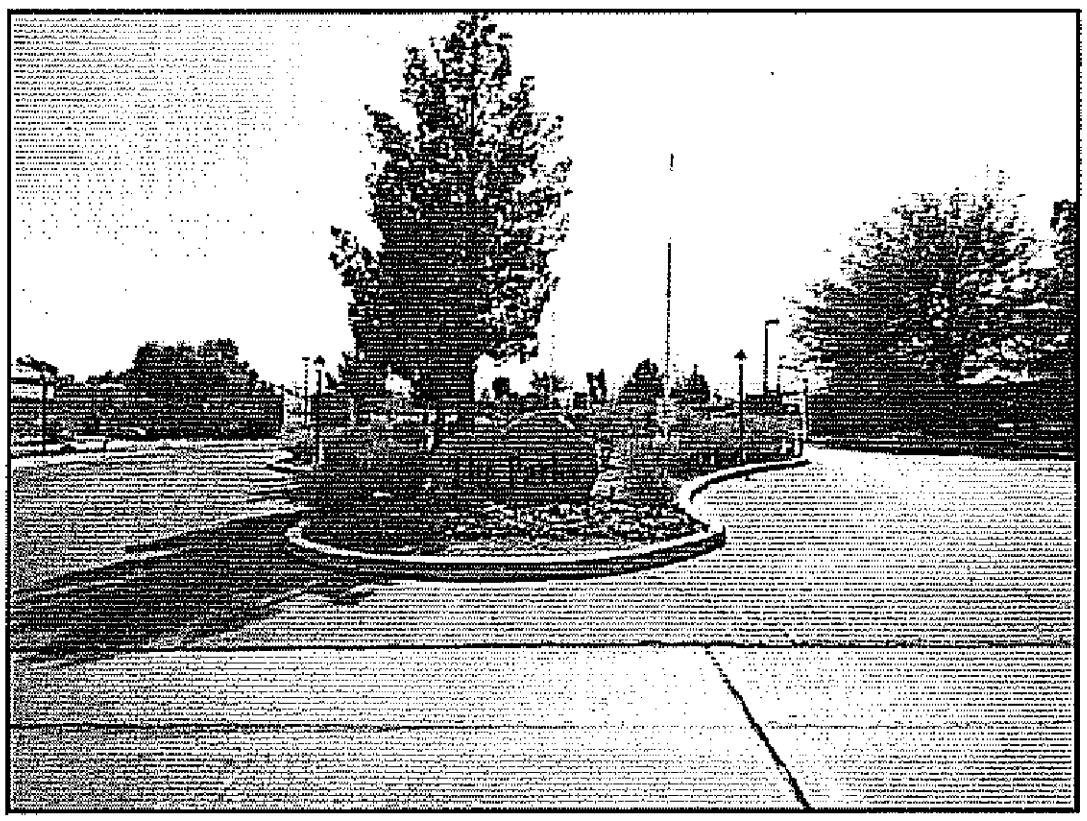
Subject Photo Page

Client	Wright, Finlay & Zak				
Property Address	6727 Maple Mesa Street				
City	N Las Vegas	County Clark	State NV	Zip Code 89084	
Borrower/Client	N/A				

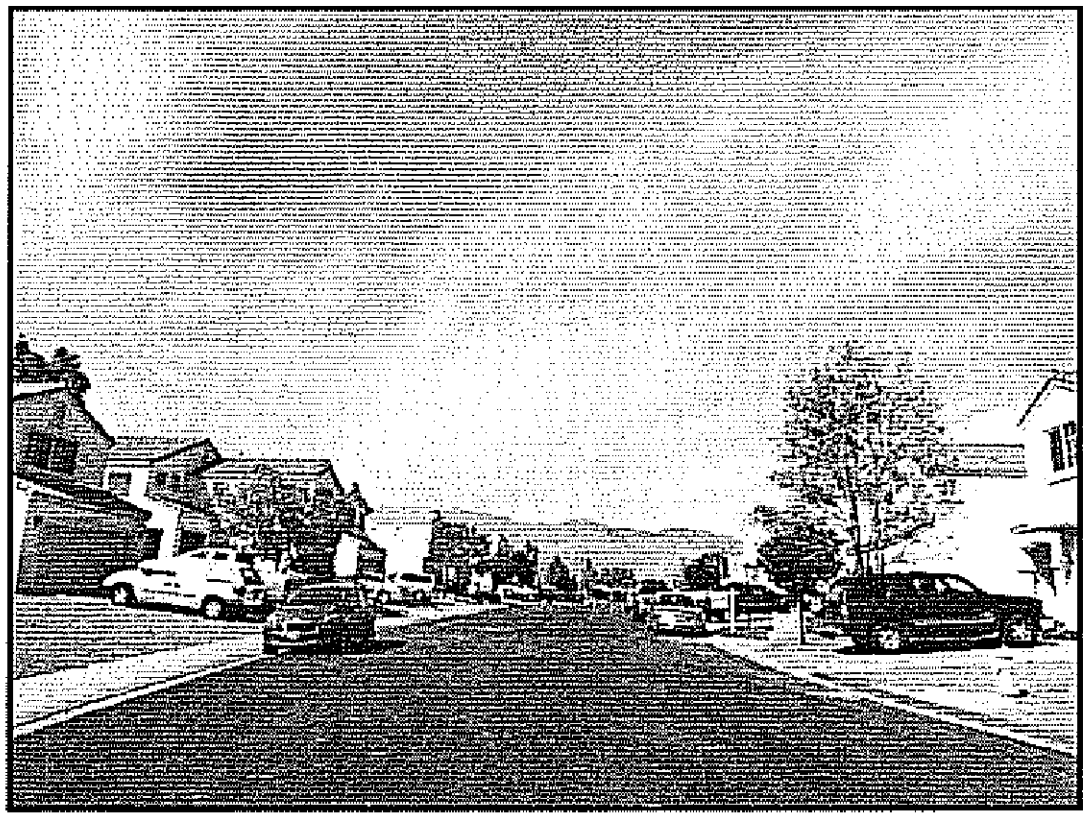
Subject Front

6727 Maple Mesa Street

Sales Price	
Gross Living Area	1,871
Total Rooms	6
Total Bedrooms	3
Total Bathrooms	2.5
Location	Average/Gated
View	Residential
Site	.10 Acre/Interior
Quality	Stucco
Age	2001



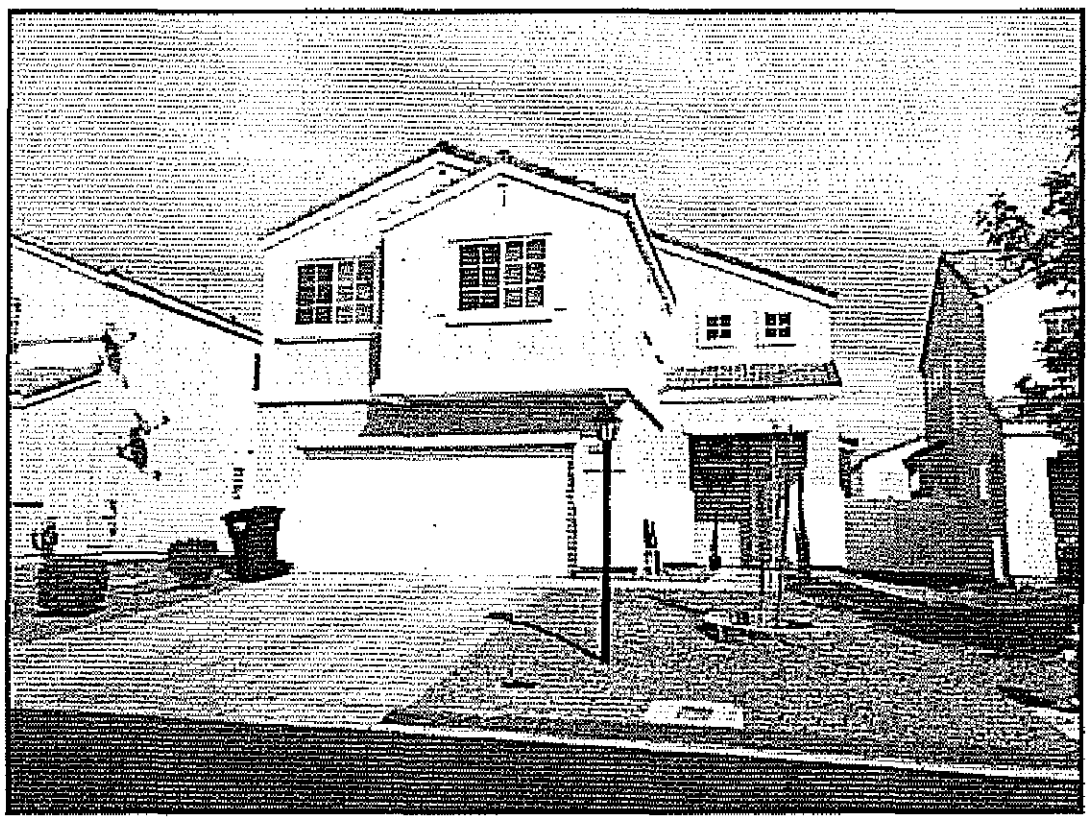
Project Entry Gate



Subject Street

Comparable Photo Page

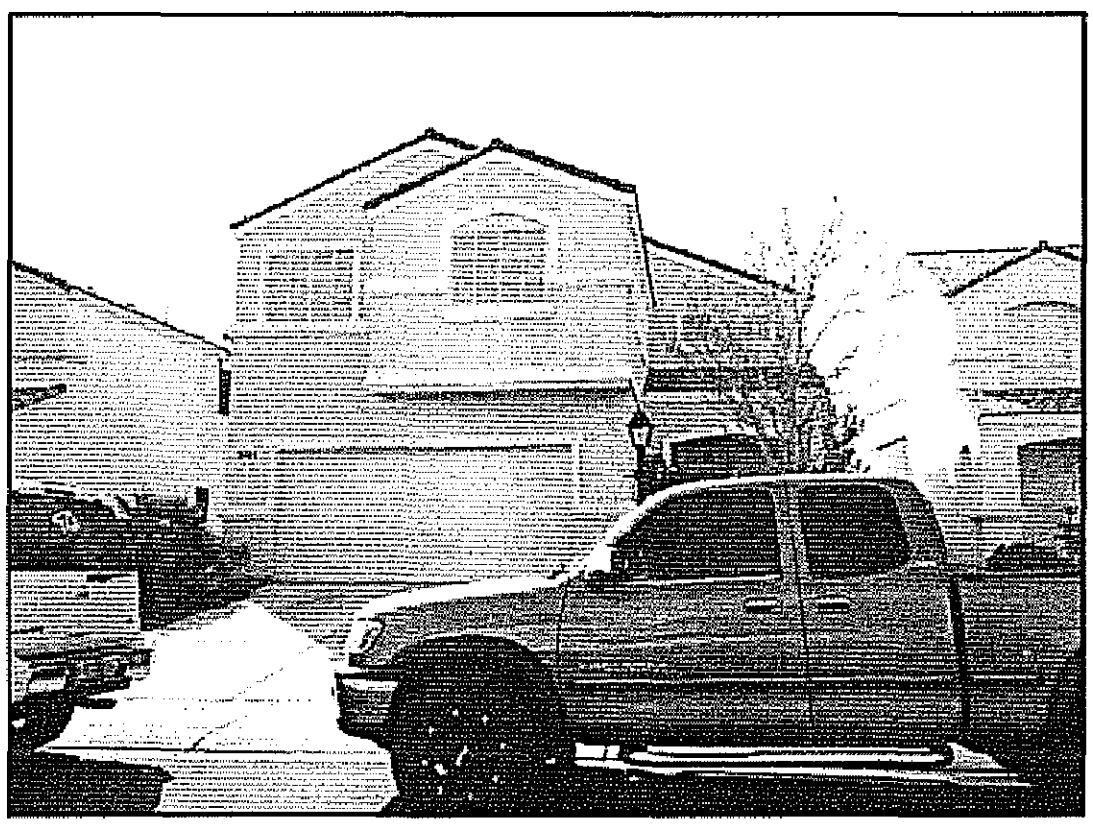
Client	Wright, Finlay & Zak			
Property Address	6727 Maple Mesa Street			
City	N Las Vegas	County Clark	State NV	Zip Code 89084
Borrower/Client	N/A			



Comparable 1

6632 Petrified Forest Street

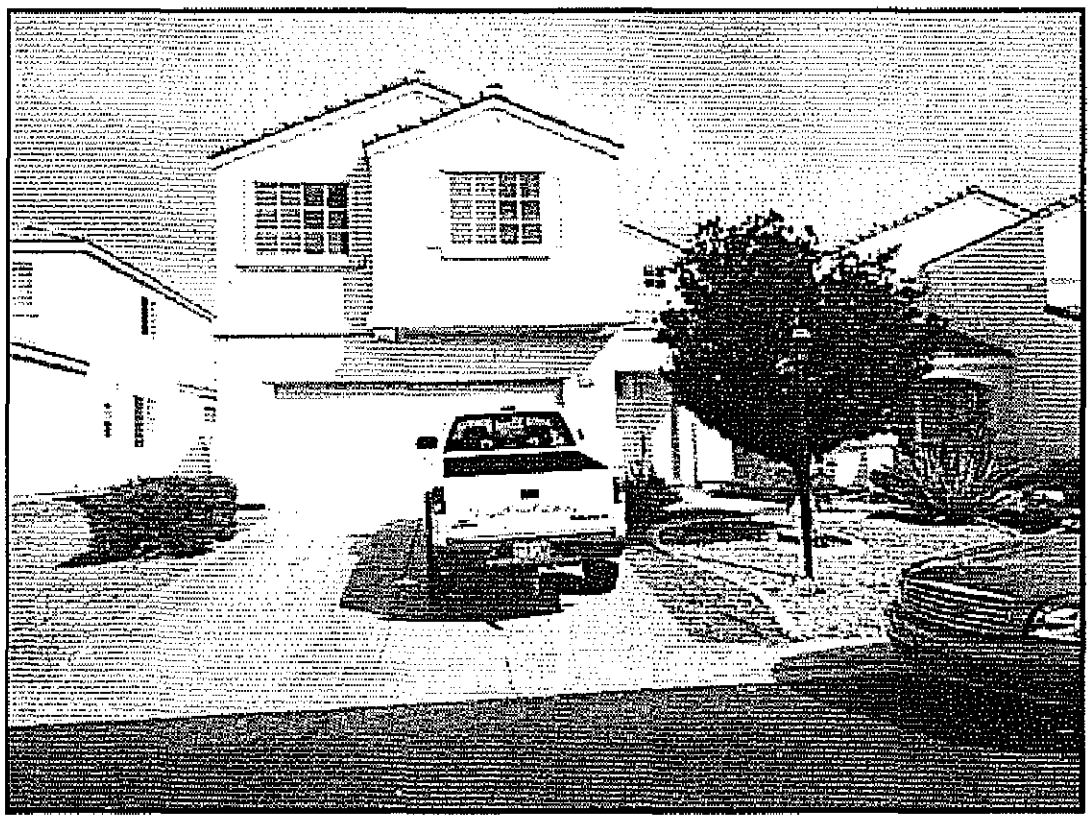
Prox. to Subject	0.10 miles S
Sales Price	130,000
Gross Living Area	1,871
Total Rooms	6
Total Bedrooms	3
Total Bathrooms	2.5
Location	Average/Gated
View	Residential
Site	.10 Acre/Interior
Quality	Stucco
Age	2001



Comparable 2

6605 Mammoth Canyon Place

Prox. to Subject	0.11 miles SW
Sales Price	135,990
Gross Living Area	1,871
Total Rooms	6
Total Bedrooms	3
Total Bathrooms	2.5
Location	Average/Gated
View	Residential
Site	.12 Acre/Interior
Quality	Stucco
Age	2001



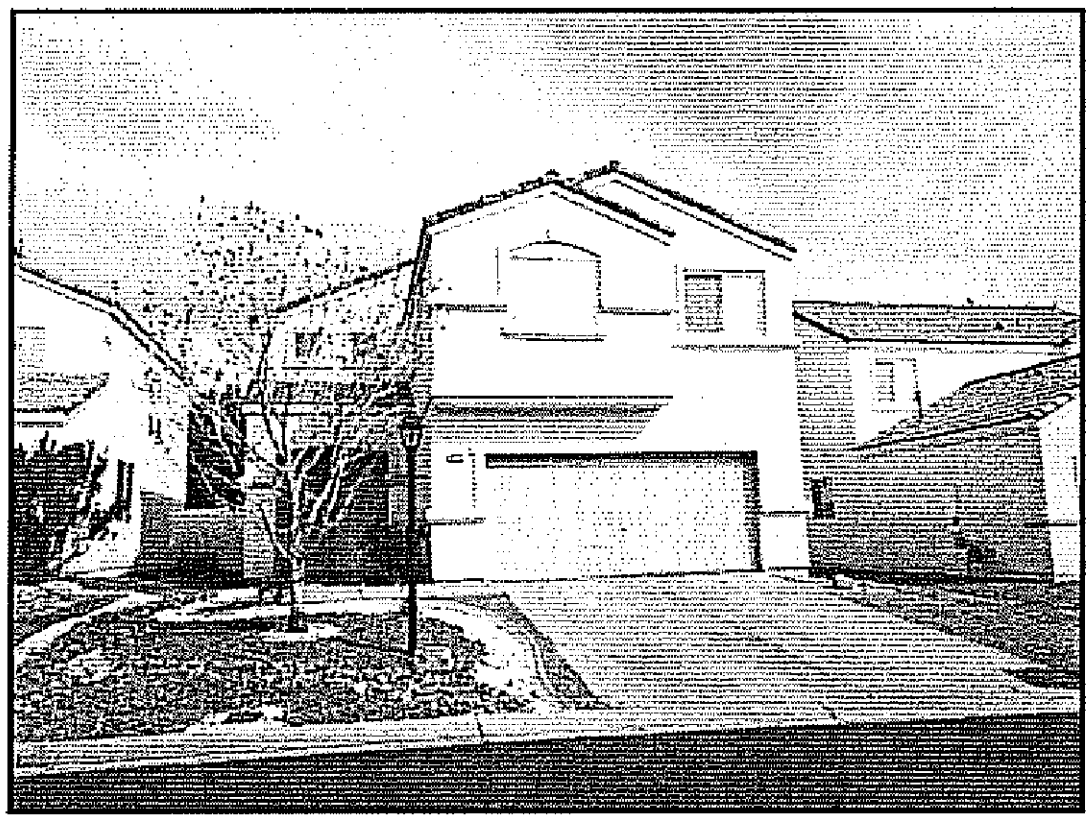
Comparable 3

6635 Petrified Forest Street

Prox. to Subject	0.03 miles NE
Sales Price	137,689
Gross Living Area	1,871
Total Rooms	6
Total Bedrooms	3
Total Bathrooms	2.5
Location	Average/Gated
View	Park
Site	.13 Acre/Interior
Quality	Stucco
Age	2001

Comparable Photo Page

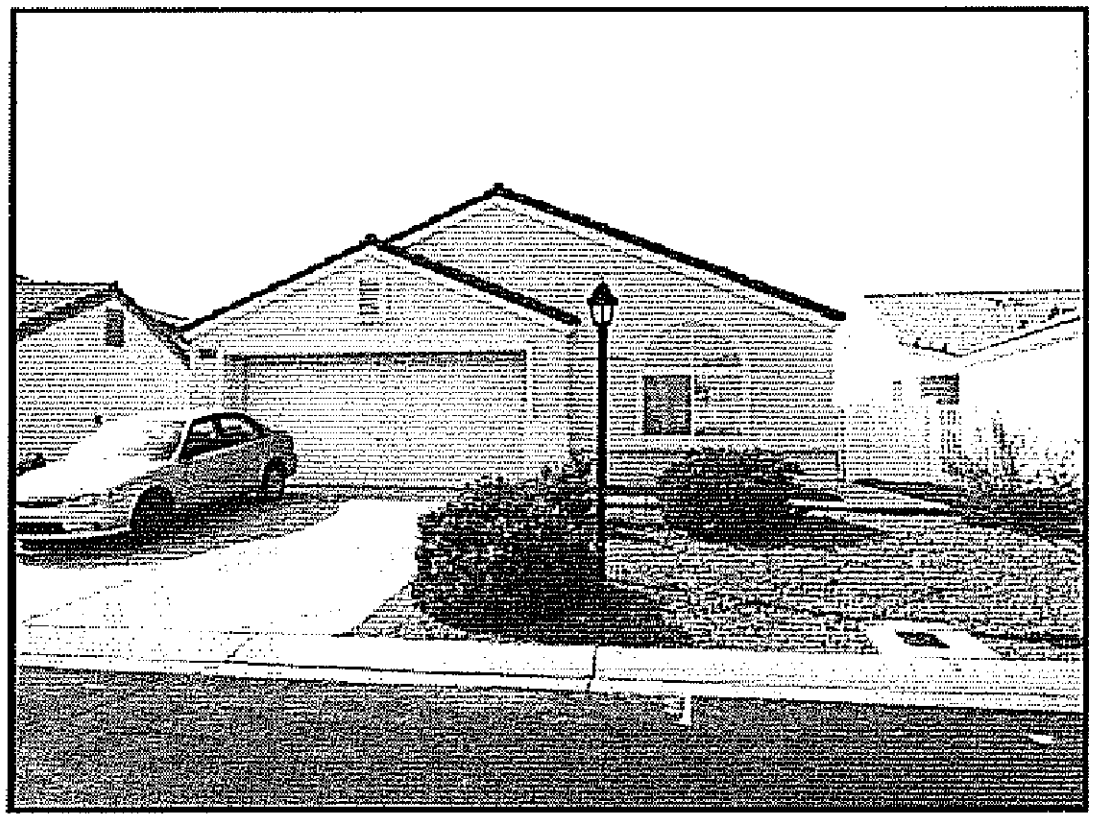
Client	Wright, Finlay & Zak				
Property Address	6727 Maple Mesa Street				
City	N Las Vegas	County Clark	State NV	Zip Code 89084	
Borrower/Client	N/A				



Comparable 4

6722 Petrified Forest Street

Prox. to Subject	0.02 miles SW
Sales Price	122,900
Gross Living Area	1,871
Total Rooms	6
Total Bedrooms	3
Total Bathrooms	2.5
Location	Average/Gated
View	Residential
Site	.10 Acre/Interior
Quality	Stucco
Age	2001



Comparable 5

6605 Mammoth Canyon Place

Prox. to Subject	0.26 miles SE
Sales Price	132,000
Gross Living Area	1,726
Total Rooms	6
Total Bedrooms	3
Total Bathrooms	2
Location	Average/Gated
View	Park
Site	.10 Acre/Interior
Quality	Stucco
Age	2002

Trustee's Deed - Page 1

Inst #: 201302190002943
Fees: $17.00 N/C Fee: $0.00
RPTT: $63.75 Ex: #
02/19/2013 12:28:46 PM
Receipt #: 1502301
Requestor:
ALESSI & KOENIG LLC
Recorded By: MGM Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

(2)
-1

When recorded mail to and
Mail Tax Statements to:
SFR Investments Pool 1, LLC
5030 Paradise Road, St. B-214
Las Vegas, NV 89119

A.P.N. No.124-22-314-059 TS No. A24592

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: **SFR Investments Pool 1, LLC**
The Foreclosing Beneficiary herein was: **The Parks Homeowners Association**
The amount of unpaid debt together with costs: $6,314.28
The amount paid by the Grantee (Buyer) at the Trustee's Sale: **$12,100.00**
The Documentary Transfer Tax: $63.75
Property address: **6727 Maple Mesa St, N. Las Vegas, NV 89084**
Said property is in [ ] unincorporated area: City of **N. Las Vegas**
Trustor (Former Owner that was foreclosed on): **Peter A & Tamera A Jensen**

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded **December 30, 2010** as instrument number **0002450**, in Clark County, does hereby grant, without warranty expressed or implied to: **SFR Investments Pool 1, LLC** (Grantee), all its right, title and interest in the property legally described as: **LOT 315 BLOCK 9**, as per map recorded in Book **94**, Pages **35** as shown in the Office of the County Recorder of Clark County Nevada.

TRUSTEE STATES THAT:
This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on **February 13, 2013** at the place indicated on the Notice of Trustee's Sale.

Ryan Kerbow, Esq.
Signature of AUTHORIZED AGENT for Alessi & Koenig, LLC

State of Nevada)
County of Clark)

SUBSCRIBED and SWORN to before me 2/15/13

WITNESS my hand and official seal.
(Seal) (Signature)

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
LANI MAE U. DIAZ
Appt. No. 10-2800-1
My Appt. Expires Aug. 24, 2014

Trustee's Deed - Page 2

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 124-22-314-059
   b. _____
   c. _____
   d. _____
2. Type of Property:
   a. ☐ Vacant Land b. ☑ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other

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

3.a. Total Value/Sales Price of Property $ 12,100.00
b. Deed in Lieu of Foreclosure Only (value of property) ( )
c. Transfer Tax Value: $ 12,100.00
d. Real Property Transfer Tax Due $ 63.75

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

5. Partial Interest: Percentage being transferred: 100 %

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

Signature _____ Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION (REQUIRED)	BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Alessi & Koenig, LLC	Print Name: SFR Investments Pool 1, LLC
Address:9500 W Flamingo Rd., Suite 205	Address: 5030 Paradise Road, St. B-214
City:Las Vegas	City: Las Vegas
State:NV Zip: 89147	State:NV Zip:89119

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Alessi & Koenig, LLC
Escrow #N/A Foreclosure
Address:9500 W Flamingo Rd., Suite 205
City: Las Vegas
State:NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Clarification of Scope of Work

File No. 6727 Maple Mesa St

Client	Wright, Finlay & Zak				
Property Address	6727 Maple Mesa Street				
City	N Las Vegas	County Clark	State NV	Zip Code 89084	
Borrower/Client	N/A				

CLARIFICATION OF SCOPE OF WORK (Rev. 09/08/2014)

This following, explanatory comments are not a modification of the assumptions, limiting conditions or certifications in the appraisal report, but a "clarification" of the appraiser's actions with respect to generally accepted appraisal practice and the requirements of this assignment. The intent is to clarify and document what the appraiser did and or did not do in order to develop the value opinion.

Limitations of the Assignment: The appraisal process is technical and therefore requires the intended user or anyone relying on the conclusions, to have a general understanding of the appraisal process to comprehend the limits of the applicability of the value opinion to the appraisal problem. Real estate is an "imperfect market" and one that can be affected by many factors. Therefore, supplemental reporting requirements and the realities of the market, including the reliability of the data sources, inability to verify key information and the reliance on information sources as being factual and accurate, can affect the conclusions within the report. Those relying on the report and its conclusions must understand and factor these limitations into their decisions regarding the subject property.

The "single point of value" (SPV) is based on the definition of value (stated within the report) which has criteria that may or may not be consistent in the marketplace. Value definitions often assume "knowledgeable buyers and sellers" or "no special motivations," when these and other criteria cannot be verified. For most assignments, guidelines require the selection and reporting of a SPV, taken from a range of value indicators that may vary high or low from the SPV due to factors that cannot be quantified or qualified within the constraints of the data, market conditions and time limits imposed in the development of the report and associated scope of work.

The SPV conclusion is a "benchmark" in time, provided at the request of the client and or intended user of this report and for the purpose stated. Anyone relying upon the conclusions should read the report in its entirety, to comprehend and accept the assignment conditions as suitable and reliable for their purpose. The definition of market value and its criteria is not universal in its application, nor consistent from one intended use to another.

This report was prepared to the intended user's requirements and only for their stated purpose. The analysis and conclusions are unique to that purpose and should not be relied upon for another purpose or use, even though they may seem similar. Decisions related to this property should only be made after properly considering all factors including information not within the report, but known or available to the reader and comprehending the process and guidelines that shape the appraisal process.

SCOPE OF WORK (SOW): Is "the type and extent of research and analysis in an assignment." This is specific to each appraisal given the appraisal problem and assignment conditions. The SOW is generally similar for most assignments, however, the property type or assignment conditions may require deviations from normal procedures. With some assignments, it is not possible to complete an interior inspection of the subject property. Likewise, with a retrospective date of value, the subject property and comparables may appear different than they were as of the effective value date.

For these and other reasons, this "clarification of scope of work" (COSOW) is intended as a guide to general tasks and analysis performed by the appraiser. These statements are a guide for comparison purposes (as part of the valuation process) and do not represent a detailed analysis of the physical or operational condition of these items. This report is not a home inspection. Any statement is advisory based only upon casual observation. The reader or intended user should not rely on this report to disclose hidden conditions and defects.

Complete Visual Inspection Includes: A visual inspection of only the readily accessible areas of the property and only those components that were clearly visible from the ground or floor level. List amenities, view readily observable interior and exterior areas, note quality of materials/workmanship and observe the general condition of improvements. Determine the building areas of the improvements; assess layout and utility of the property. Note the conformity to the market area. Perform a limited check and or observation of mechanical and electrical systems. Photograph interior/exterior, view site, observe and photograph each comparable from the street.

Complete Visual Inspection Does/Did NOT Include: Observation of spaces or areas not readily accessible to the typical visitor; building code compliance beyond obvious and apparent issues; testing or inspection of the well or septic system; mold and radon assessments; moving furniture or personal property; roof condition report beyond observation from the ground level.

No Interior Inspection: Some assignment conditions preclude inspection of the interior and or improvements on the site. Drive-by, review assignments, proposed construction and other assignment factors may affect the ability to view the improvements from the interior and at times, the exterior. In these cases, the appraiser has disclosed the "non-inspection" and used various sources of information to determine the property characteristics and condition as of the effective date of value. When applicable, these assignment conditions are stated in the report.

Inspect The Neighborhood: Observations were limited to driving through a representative number of streets in the area, reviewing maps and other data and observing comparables from the street to determine factors that may influence the value of the subject property. "Neighborhood" boundaries are not exact and are defined by the influence of physical, social, economic and governmental characteristics (the same criteria used to define census tracts). Over time, small areas merge and once

Clarification of Scope of Work

File No. 6727 Maple Mesa St

Client	Wright, Finlay & Zak				
Property Address	6727 Maple Mesa Street				
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Borrower/Client	N/A				

distinct boundaries become less defined. **Comparable data was selected based upon the area proximate to the subject that a buyer would consider directly competitive.**

Repairs or Deterioration: Deficiency and **livability** are subjective terms. The value considers repair items that (in his/her opinion), affect **safety, adequacy, and marketability** of the property. Physical deterioration has not been itemized, but considered in the approaches to value.

Construction Defects: Construction defect issues (even when widely publicized) are not consistently reported in the MLS data. State law requires disclosure by the seller to a buyer of known defects and or prior issues. The definition of value assumes "informed buyer" and disclosure to the buyer is mandated by law. The analysis and conclusions presume the prices reported in the market data reflect the buyer's knowledge of prior or current defect related issues (if any).

Satisfactory Completion: The work will be completed as specified and consistent with the quality and workmanship associated with the quality classification identified and physical characteristics outlined within the report.

Cost Approach: Is applicable when the improvements are new or relatively new and when sufficient building sites are available to provide a buyer with a "construction alternative" to purchasing the subject. In areas where similar sites are not available and or in cases where the economy of scale from multi-unit construction is not available to a potential buyer, reliability of the cost approach is limited. Applicability of the cost approach in this assignment is specifically addressed in that section of the appraisal report.

If the cost approach was used it represents the "replacement cost estimate." If used, its inclusion was based on one of the following: request by the client; age requirement under FHA/HUD guidelines; or deemed appropriate for use by the appraiser for "valuation purposes." Regardless of the condition or reason for its use, it should not be relied upon for insurance purposes. The definition of "market value" used within this report is not consistent with the definition of "insurable value."

Income Approach: Is applicable when investors regularly acquire properties that are similarly desirable to the subject for the express purpose of the income they provide. While rentals may exist in any area, their presence alone is not proof of a viable rental and investor marketplace. Use or exclusion of the income approach is specifically addressed in that section of the appraisal report.

Gross Living Area (GLA): The Greater Las Vegas Association of Realtors ® MLS auto-populates the GLA from Clark County Assessor (CCAO) records. Assessors in Nevada are granted (by statute), leeway in determination of the GLA via several commonly employed methods to measure properties and typically rounds measurements to the nearest foot. Therefore, it is common to have variances between the "as measured" GLA by the appraiser and the "as reported" GLA from the CCAO. The GLVAR MLS handles more than 90% of the transactions in this area. Buyers and sellers rely on the MLS and therefore, the GLAs therein are the de-facto standard used by the market as a decision making factor. The appraiser deems the CCAO reported GLA as being reasonable and reliable for comparison purposes, regardless of any other standard used by builders, architects, agents, etc. The appraiser has considered these facts in the analysis and reconciled in the value opinion, only differences in GLA that would be "market recognized" and contribute to greater utility or function in the subject or comparable and greater value by the buying and selling public.

Extent of Data Research-Comparable Data: The appraiser used reasonably available information from city/county records, assessor's records, multiple listing service (MLS) data and visual observation to identify the relevant characteristics of the subject property. Comparables used were considered relevant to the analysis of subject property and applicable to the appraisal problem. The data was adjusted to the subject to reflect the market's reaction (if any and in terms of value contribution) to differences. Photographs taken by the appraiser are originals and un-altered, unless physical access was unavailable. In some cases, MLS photographs may be used to illustrate property conditions, views, etc.

Public and Private Data: The appraiser has access to public records and data available on the internet, the Multiple Listing Service, various cost estimating services, flood data, maps and other property related information, along with private information and knowledge of the market that is pertinent and relevant for this assignment.

Adverse Factors: Based upon the standards of the party observing the property, a range of factors internal or external to the property may be "adverse" by their viewpoint. The appraiser noted factors that may affect the marketability and livability to potential buyers, based upon knowledge of the market and as evidenced by sales of properties with similar or comparable conditions. These items are noted in the report and the valuation approaches that were applied to the analysis. Some buyers in the market may consider factors such as drug labs, registered sex offenders, criminal activity, interim rehabilitation facilities, halfway houses or similar uses as "adverse". No attempt was made to investigate or discover such activities, unless such factors were readily apparent and obviously affecting the subject property as evidenced by market data. If the intended user or a reader has concerns in these areas, it is recommended that they secure this information from a reliable source.

Easements: Major power transmission and distribution lines, railroad and other services related easements, including utility easements, limited common areas and conditions that grant others the right to access the subject property and or travel adjacent to the private areas of the subject property. The term adverse applies to individual perspective. It may or may not be

Clarification of Scope of Work

File No. 6727 Maple Mesa St

Client	Wright, Finlay & Zak						
Property Address	6727 Maple Mesa Street						
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Borrower/Client	N/A						

negative, dependent upon the individual. One perspective may hold easements to be unappealing visually or disruptive. From another, such easements and corridors provide open space and ensure greater privacy (due to the size of the easement) from neighboring properties. Unless the easement affects the utility or use of the site or improvements, any impact was only considered from the perspective of marketability. In cases where the site abuts a major power transmission easement, the towers are generally centered within the right of-way and engineered to collapse within the easement. The effect or impact is inconsistent (as measured in the market) and therefore unless compelling evidence was found in comparable data, no adjustment was made, only the presence stated.

Valuation Methodology: The data presented in the report is considered to be the most relevant to the valuation of the subject property (and its market segment) based on its current occupancy and market environment. In areas influenced by foreclosure, short-sale and REO activity, and motivated (or impacted) by factors that cannot be qualified or quantified, the transactional characteristics of those sales may not fully meet the definition of market value criteria and therefore may be misleading. Verifications and drive-by inspections frequently reveal inconsistencies between the MLS and public records. Through this process, the appraiser can present the rationale supporting the final value opinion within the reconciliation and the reader can comprehend the logic and its application to the valuation process.

The Value Opinion: The value opinion may not be valid in another time-period. It is important for anyone relying on the report to comprehend the dynamic nature of real estate and the validity of the single value point or value range reported. The reported value is a benchmark or reference in time (as of a specific date) and subject to change (sometimes rapidly), based upon many factors including market conditions, interest rates, supply and demand. Therefore, anyone relying on the reported conclusions should first comprehend and accept the assignment conditions, assumptions, limiting conditions and other factors stated within the report as being suitable and reliable for their purpose and intended use.

Specific Reporting Guidelines: Market participants have unique appraisal reporting guidelines. The COSOW is supplemental to the forms stated scope of work, providing an overview of the appraiser's actions with respect to general appraisal practice and the stated requirements of the assignment. The intent is to clarify what the appraiser did and or did not do in order to develop the value opinion. Guidelines require the borrower receive a copy of the appraisal report, however, the borrower is not an intended user. The appraisal process and specific reporting requirements are highly technical and in most cases, beyond the comprehension of most readers. Anyone choosing to rely upon the appraisal should read the report in its entirety and if needed, consult with professionals that can assist them with understanding the basis of this report and the required reporting requirements, prior to making any decisions based upon the conclusions and or observations stated within.

Use of Electronic Appraisal Delivery Services: If the client directed that the appraiser transmit the content of this report via Appraisal Port or a similar delivery portal service, pursuant to user agreements, these services disclaim any warranty that the service provided will be error free and that these services may be subject to transmission errors. Accordingly, the client should make its own determination as to the accuracy and reliability of any such service they employ. The appraiser makes no representations and specifically disclaims any warranty regarding the accuracy or portrayal of content transmitted via Appraisal Port or any similar service or their reliability. The appraiser uses such technology at the specific direction and sole risk of the client. At its request, the client may obtain a true copy of the original report directly from the appraiser via email (PDF), mail or other means.

Appraiser License

Client	Wright, Finlay & Zak						
Property Address	6727 Maple Mesa Street						
City	N Las Vegas	County	Clark	State	NV	Zip Code	89084
Borrower/Client	N/A						

APPRAISER CERTIFICATE

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY

REAL ESTATE DIVISION — NOT TRANSFERABLE

This is to Certify That : RICHARD SCOTT DUGAN — Certificate Number: A.0000166-CG

Is duly authorized to act as a CERTIFIED GENERAL APPRAISER from the issue date to the expiration date at the business address stated here on, unless the certificate is sooner revoked, cancelled, withdrawn, or invalidated.

Issue Date: September 9, 2014 — Expire Date: May 31, 2015

In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, by virtue of the authority vested in Chapter 645C of the Nevada Revised Statutes, has caused this Certificate to be issued with its Seal printed thereon. This certificate must be conspicuously displayed in place of business.

FOR: R SCOTT DUGAN APPRAISAL COMPANY — REAL ESTATE DIVISION
INC
8920-W TROPICANA AVE STE# 1
LAS VEGAS, NV 89147

JOSEPH (JD) DECKER
Administrator

Appraiser Resume (Qualifications) - Page 1

R. Scott Dugan, SRA

GENERAL APPRAISAL EXPERIENCE:

- Independent Real Estate Appraiser - September 1976 to Present
- Senior Real Estate Appraiser First Western Savings Association, Las Vegas, NV - 10/74 to 09/76
- Independent Real Estate Appraiser - 1969 to 1974

SPECIALIZED VALUATION EXPERIENCE:

Qualified Expert Witness: Real Estate and Appraisal Matters- District, Bankruptcy and Federal Courts

Forensic Review Expert: Appraisal reviews for litigation. Clients include major banks, attorneys and the FDIC.

TYPES OF PROPERTIES:

Residential, Condominium, Planned Unit Developments, Small Residential Income, Existing, Proposed and Vacant Land, Commercial and Income units.

LICENSING:
Licensed in the State of Nevada, Certified General Appraiser-License #A.0000166-CG

PROFESSIONAL DESIGNATION:
SRA Member - Appraisal Institute - 1989 to Present

EDUCATION:
Bachelor of Science in Business Administration - Finance, University of Nevada
High School Diploma - General Studies, Ed W. Clark High School, Las Vegas, NV

REALTOR ASSOCIATIONS:
Appraiser Member - National Association of Realtors - 1992 to Present
Appraiser Member - Greater Las Vegas Association of Realtors - 1992 to Present

MEMBERSHIPS:

Employee Relocation Council, Appraiser Member – 1990 to 2013
Member of the Clark County Board of Equalization - 1994 to Present (Current Vice Chair)
Relocation Appraisers & Consultants Member - 1995 to Present

REFERENCES:

Cheryl Moss, SVP – Chief Appraiser
Bank of Nevada
2700 W. Sahara Avenue
Las Vegas, NV 89102
702-252-6366

Glenn Anderson, MAI, SRPA
Glenn Anderson
1601 S. Rainbow Boulevard, Ste. 230
Las Vegas, NV 89146
702-307-0888

Terry Jones, VP
First Security Bank
10501 W. Gowan Road, Ste.170
Las Vegas, NV 89129
702-853-0950

Sandy Boatwright, Branch Manager
I Mortgage
2855 St. Rose Parkway, Ste. 110
Henderson, NV 89052
702-575-6413

Dan Schwartz, VP
City National Bank
555 S. Flower St, 10th Floor
Los Angeles, CA 90071
213-673-9283

Jim Goodrich, MAI, SRA, CCIM
Goodrich Realty Consulting, LLC
2570 Eldorado Pkwy, Ste. 110
McKinney, TX 75070
972-529-2828

Timothy R. Morse – MAI, SRPA
Timothy R. Morse & Associates
801 S. Rancho Drive, Ste. B-1
Las Vegas, NV 89106
702-386-0068 X21

Rick Piette, Owner
Premier Mortgage Lending Group
8689 W. Sahara Ave, Ste. 100
Las Vegas, NV 89117
702-485-6600

Appraiser Resume (Qualifications) - Page 2

OFFICES HELD:

- Nevada Commission of Appraisers - Real Estate Division Educational Committee - 1994-1996
- Member of the Regional Ethics and Counseling Panel Appraisal Institute - 1994-1996
- State Chair Nevada, State Government Relations Subcommittee Appraisal Institute - 1994-1995
- Chapter Admissions Chair, Las Vegas Chapter Appraisal Institute - 1994
- Chapter Representative, Las Vegas Chapter Appraisal Institute - 1993-1995
- Vice Chair Nevada, State Government Relations Subcommittee Appraisal Institute - 1993
- Member of Region VII Nominating Committee Appraisal Institute - 1992-1995
- President, Las Vegas chapter Appraisal Institute - 1992
- First Vice President, Las Vegas Chapter Appraisal Institute - 1990 - 1991

CONTINUING EDUCATION: GENERAL, LITIGATION, APPRAISAL INSTITUTE, ERC, and SREA:

- A.I. Las Vegas Market Symposium 2014 – November 2014
- Unraveling the Mystery of Fannie Mae Appraisal Guidelines – June 2014
- Litigation Assignments for Residential Appraisers: Expert Work on Atypical Cases – June 2014
- Liability Issues for Appraisers Performing Litigation and Other Non-Lending Work – May 2014
- 2014 National USPAP Update Course – January 2014
- Las Vegas Market Symposium 2013 – November 2013
- Do's and Don't's of Litigation Support – October 2013
- Appraising the Appraisal: Appraisal Review-Residential – April 2013
- A. I. Uniform Appraisal Dataset Aftereffects: Efficiency vs. Obligation – February 2013
- Complex Litigation Appraisal Case Studies – January 2013
- Seller Concessions in Market Value Appraisals – November 2012
- National USPAP Update Course – May 2012
- Valuation of Basements – March 2012
- Accurately Analyzing and Reporting Market Rebounds and Declines – December 2011
- Las Vegas Market Symposium 2011 – October 2011
- The Uniform Appraisal Dataset from FNMA and FMAC –July 2011
- Tools, Techniques & Opportunities for Residential Appraising – November 2010
- Business Practice and Ethics –September 2010
- Appraisal Curriculum Overview Residential –September 2010
- Nevada Commission of Appraisers Hearing – June 2010
- Inspecting the Residential Green or High Performance House – January 2010
- ENERGY STAR and the Appraisal Process – January 2010
- 2009 National USPAP Update Course – January 2010
- A.I. Committee CE Credit – Chapter Level – December 2009
- Residential Design: The Making of a Good House November 2009
- The New Residential Market Conditions Form Seminar –March 2009
- REO Appraisal - Appraisal of Residential Property Foreclosure – October 2008
- National USPAP Update Course - Las Vegas, NV - March 2008
- Dealing with Client Pressure, Appraiser Identity Theft and Appraisal Report Tampering – March 2008
- Inside & Outside the Boxes, Developing & Communicating the URAR – October 2007
- Housing Market Analysis - September 2007
- Making Sense of the Changing Landscape of Value - Las Vegas, NV - July 2007
- The Real Estate Economy: What's in Store for 2008? - Las Vegas, NV - July 2007
- Real Estate Investing & Development - A Valuation Perspective - July 2007
- Litigation Skills for the Appraiser: An Overview - October 2006
- National USPAP Update Course - June 2006
- The Professional's Guide to the Uniform Residential Appraisal Report Seminar - July 2005
- Re-appraising, Re-addressing, and Re-assigning What to do and why Seminar - June 2005
- Market Analysis and the Site to Do Business Seminar - June 2005
- Secrets of a Successful Litigation Seminar - June 2005
- Mortgage Fraud & the Appraiser's Role Seminar - June 2005
- Uniform Standards of Professional Appraisal Practice Update Course - February 2005
- Course 705 Litigation Appraising - October 2004
- Avoiding Liability as a Residential Appraiser - October 2004
- AVM, VFR and Power Tools for Appraisers -September 2004
- Course 400 - National USPAP Update - November 2003
- Residential Sales Comparison Approach - October 2003
- Appraisal Review (Residential) - February 2003
- Nevada Real Estate Appraisal Statutes - October 2002
- National USPAP Update Course - June 2002
- Standard of Professional Practice Part A and Part B - Course 410 and 420 - September 2001
- Appraisal Procedures - Course 120 - November 2000
- Standards of Professional Practice Part A - Course 410 - October 1999
- Standards of Professional Practice Part B - Course 420 - October 1999
- Attacking & Defending an Appraisal in Litigation - September 1999
- FHA and the Appraisal Process - July 1999

Appraiser Resume (Qualifications) - Page 3

- Reporting Sales Comparison Grid Adjustments for Residential Properties - March 1999
- Valuation of Detrimental Conditions in Real Estate - September 1998
- Standards of Professional Practice Part C - Course 430 - May 1998
- Incorporating Energy Efficiency into Residential Appraisals – December 1998
- Residential Design and Functional Utility Seminar - September 1997
- Alternative Residential Reporting Forms Seminar - July 1996
- Evaluation Guidelines Workshop – July/August 1994
- Understanding Limited Appraisals and Appraisal Reporting Options – July/August 1994
- Appraisal Review - Residential properties – July/August 1994
- Fair Lending and the Appraiser - July 1994
- Evaluation Guidelines Workshop July 1993
- Environmental Checklists, ASTM Property Screen Standard & the Valuation Process – July 1993
- Current Standards of Professional Appraisal Practice Issues-July 1993
- Americans With Disabilities Act (ADA)- July 1993
- The New Uniform Residential Appraisal Report- September 1993
- Intern Appraiser and the Law -February 1993
- Appraisal Reporting of Complex Residential Properties – December 1992
- Accrued Depreciation Seminar - September 1992
- Appraising from Blueprints - September 1992
- Appraising the Tough Ones -July 1992
- Employee or Independent Contractor- The Impact of an IRS Audit on an Appraiser-July 1992
- Landfills and Their Effect Upon Value- August 1991
- Subdivision Analysis- August 1991
- Real Estate Law for Real Estate Appraisers- August 1991
- Technical Inspection of Real Estate August 1991
- Relocation Appraisal Seminar- August 1991
- Practical Approach: The New Small Residential Income Property Guidelines – July 1990
- Extraction of Market Data on Residential Properties- August 1990
- Residential Appraisal Report from the User's Perspective- August 1990
- Legislative Update Panel-August 1990
- Relocation Appraising in the 90's PHH Home Equity – September 1990
- Nevada Real Estate Appraisal Statute October 1990
- Professional Practice and Real Estate Appraisal Law- October 1990
- Exam Preparation Seminar for Appraiser - General Certification – October 1990

ERC NATIONAL RELOCATION CONFERENCE:

- ERC – RAC Trac Conference - May 2007
- National Relocation Appraisal Forum - May 1996

PHH REAL ESTATE NETWORK:

- Regional Seminar "Hearts, Smarts & Courage" - September 1996
- "Force of Excellence" – November 1995
- Western Appraiser Regional Seminar "Leaders in Change" -September 19

CLIENTS: Banks and Mortgage Companies:

- AAA Mortgage
- Allegiance Relocation Services
- AMC Links
- Appraisal Logistics
- Appraisals2U
- Axia Home Loans
- Bank of Las Vegas
- Bank of Nevada
- Bank of New York
- Boulder Dam Credit Union
- Broad Street Nationwide Valuations
- Capital One Bank
- Castle & Cook Mortgage
- Chase Bank
- Citibank
- Citicorp Mortgage, Inc.
- City National Bank
- Clark County Public Guardians Office
- Coester Appraisal Management Co.
- D.L. Evans Bank
- Deutsche Bank
- ENG Lending
- Evergreen Home Loans
- Sirva Relocation
- Federal National Mortgage Association
- First Republic Bank
- First Security Bank of Nevada
- Guarantee Bank
- Guaranteed Rate
- Home Base Mortgage
- HomeBridge Financial Services, Inc.
- Imortgage
- Irwin Union Bank and Trust Company
- J.P. Morgan
- Kinecta Federal Credit Union
- Leader One Financial
- Lender X
- Meadows Bank

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- Mellon Bank
- Mutual of Omaha Bank
- Nationstar Mortgage
- Nevada Guardian Services
- Northern Trust Bank
- Paramount Residential Mortgage Group
- Premier Mortgage Lending Group
- Prudential Relocation
- Real Valuation Services
- Red Rock Mortgage
- Reichert Workforce Mobility
- Rels Valuation - Wells Fargo Bank
- REO Management Services
- RMS & Associates
- Royal Business Bank
- RPM Mortgage
- Settlement One
- SIRVA Relocation
- Solidifi
- Solution Star
- South Pacific Financial
- Stars Valuations Services
- The Home Lending Group
- Trimavin Appraisal Management Co.
- United States Appraisals
- US Bank
- Valuation Partners
- Veteran's Administration
- Washington Federal Savings
- Wells Fargo Bank

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(Rev. February 19, 2015)

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

U.S. BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR THE FIRST FRANKLIN MORTGAGE LOAN TRUST, MORTGAGE ASSET-BACKED CERTFICATES, SERIES 2007-FF1

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada Limited Liability Company; D'ANDREA COMMUNITY ASSOCIATION, a Domestic Non-Profit Corporation; and ALESSI & KOENIG, LLC, a Domestic Limited Liability Company,

Defendants.

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

Counterclaimant,

vs.

U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE FOR THE FIRST FRANKLIN

Case No.: 3:15-cv-00241-RCJ-WGC

PLANTIFF'S REPLY IN SUPPORT OF MOTION TO DISMISS WITH PREJUDICE SFR INVESTMENTS POOL 1, LLC'S AMENDED COUNTERCLAIM, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT
and
OPPOSITION TO SFR INVESTMENT POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT

MORTGAGE LOAN TRUST, MORTGAGE ASSET-BACKED CERTIFICATES, SERIES 2007-FF1; TROY F. REHAUME, an individual; TROY T. OWEN, an individual

Counter-Defendant/Cross-Defendants

Plaintiff, U.S. Bank National Association, as Trustee for the First Franklin Mortgage Loan Trust, Mortgage Asset-Backed Certificates, Series 2007-FF1 (hereinafter, "Plaintiff" or "The Trust"), by and through its attorneys of record, Dana Jonathon Nitz, Esq. and Natalie C. Lehman, Esq., of the law firm of Wright, Finlay & Zak, LLP, hereby submits its Reply in Support of Motion to Dismiss with Prejudice Defendant and Counterclaimant SFR Investments Pool 1, LLC (hereinafter, "SFR") Amended Counterclaim, or in the alternative, Motion for Summary Judgment and Plaintiff's Opposition to Defendant's Countermotion for Summary Judgment.

This Reply and Opposition is based on the attached Memorandum of Points and Authorities, all papers and pleadings, all facts judicially noticed, and on any oral or documentary evidence that may be presented at a hearing on this matter.

DATED this 29th day of February, 2016.

WRIGHT, FINLAY & ZAK, LLP

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The argument espoused by SFR that the Nevada Supreme Court's ruling in *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014) (hereinafter, "*SFR*") was expected, foreseeable and that no inequity would result from its retroactive application, is ludicrous and disingenuous. The *SFR* decision on September 18, 2014, established a new principle of law that brought huge windfalls to professional property purchasers, such as SFR, and divested mortgage lenders of their first priority deeds of trust, securing millions of dollars in loans made to Nevadans. Thousands of homeowners in Nevada were left without a means to discharge their obligation to their mortgage lender, either through a short sale, deed in lieu of foreclosure or foreclosure sale. Had homeowners and mortgage lenders foreseen this outcome, surely there would not be the mass number of properties presently embroiled in litigation.

The CC&Rs for D'Andrea Homeowners Association, where the subject property is located, explicitly state in **Section 14.10 "Assessment Lien Subordinated": "No lien created under the provisions of Section 4.10, above, shall in any way defeat, invalidate or impair the rights of any Mortgagee under any such recorded Mortgage."**[1] The D'Andrea CC&Rs were recorded in 1999, eight years after Nevada adopted the Uniform Common Interest Ownership Act ("UCIOA") as NRS 116. Seven years later, in 2006, Plaintiff's Deed of Trust was recorded against the subject property to secure a loan in the amount of $236,000. At the time the Deed of Trust was recorded, there was no reason to doubt that the mortgagee protection provision of the D'Andrea CC&Rs would be upheld. Plaintiff's predecessor did not foresee that seven years after recording its Deed of Trust, its security interest could be extinguished by a homeowner's association foreclosure sale for less than 6% of fair market value.

The Nevada Supreme Court in *SFR* failed to address the following issues: (1) whether the decision should be applied retroactively; (2) whether the foreclosure scheme under NRS

[1] See D'Andrea CC&Rs, attached to Plaintiff's Request for Judicial Notice as **Exhibit 15.**

Chapter 116 (prior to revision by SB 306) is facially constitutional; and (3) the effect of a wrongfully rejected super-priority lien on the resulting foreclosure sale. Due to these limitations, the *SFR* decision is not dispositive of the entirety of the HOA issue and the decision leaves open a myriad of legal issues regarding the merits of SFR's Amended Counterclaim.

SFR seeks a judicial determination that all liens and encumbrances were extinguished by the D'Andrea homeowners association foreclosure sale (hereinafter "HOA Sale") that is the subject of this litigation. As far as Plaintiff's Deed of trust, SFR is simply wrong as a matter of law, as the Deed of Trust survived the HOA Sale and remained in first position, superior to any interest SFR acquired.

Plaintiff's Motion to Dismiss, or in the alternative should be granted on the following grounds:

First, SFR should be applied prospectively only, for it establishes a new principle of law by overruling clear past precedent on which litigants may have relied and by deciding an issue of first impression whose resolution was not clearly foreshadowed.

Second, the sale of HOA Sale should be set aside in equity because it was commercially unreasonable both due to the grossly inadequate price and the unfairness, fraud and oppression inherent in the HOA's bad faith rejection of the super priority lien tender made by Plaintiff's predecessor.

Third, the recitals in the Trustee's Deed Upon Sale are NOT CONCLUSIVE PROOF that the HOA sale was commercially reasonable or whether it satisfied due process**.**

Fourth, the Statute violates both procedural and substantive due process in contravention to both the United States and Nevada Constitutions. The plain language of the Statute requires lenders who have ***a recorded security interest*** to take affirmative steps to request notice of an HOA foreclosure—this is the definition of an "opt-in" notice requirement and a clear violation of Plaintiff's due process rights.

Finally, NRS Chapter 116, prior to the enactment of SB 306 (hereinafter, the "Statute"), ***constitutes an impermissible regulatory taking*** without just compensation in violation of both the United States and Nevada Constitutions. SFR's Amended Counterclaim also invokes state

action in that the Counterclaim seeks a judicial determination that Plaintiff's Deed of Trust was extinguished and that the HOA Sale is valid under the Statute.

For any or all of these reasons, SFR's Amended Counterclaim fails as a matter of law. The Amended Counterclaim should be dismissed, or in the alternative, summary judgment should be entered in favor of Plaintiff.

II. RESPONSE TO SFR'S STATEMENT OF FACTS

A. Response to SFR's Statement of Disputed Facts

SFR's Disputed Fact #1: **"The fact that the sale price of $9,000 was approximately 6% of the Property's value demonstrates that it was not made in good faith as a matter of law."** The Nevada Supreme Court recently held in *Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc.*, 132 Nev., Adv. Op. 5 (Jan. 28, 2016) ("*Shadow Wood*"), that "a court is warranted in invalidating a sale where the price is less than 20 percent of fair market value," citing to the Restatement (Third) of Property: Mortgages section 8.3 comment b (1997). Further, Plaintiff did disclose the expert appraisal attached to its motion as Exhibit C, on January 28, 2016. That expert appraisal was prepared to determine the fair market value of the property as of the date of the HOA Sale on June 6, 2013, and that value was $162,000. SFR contends that some lower distressed sale value should be used as a comparison rather than fair market value, however, even if that were so, foreclosure sales typically do not warrant a 94% discount! When the purchase price is compared to the value of the Rheaume Loan, the amount paid by SFR is less than 4% of that value and as such, the equities lie in favor of Plaintiff.

SFR's Disputed Fact #2: "MBBW, on behalf of BANA, tendered super priority lien payoff in the amount of $288.00 to Alessi…." Plaintiff did in fact tender a super priority lien payment to Alessi. See discussion in Section C below.

B. Response to SFR's Statement of Undisputed Facts

SFR's Statement of Undisputed Facts states that, "The Bank was sent the Association's notice of sale" and references SFR's Exhibit A-2, also marked as A&K00123. This exhibit does not show that the Notice of Trustee's Sale was mailed to U.S. Bank or to Bank of America. SFR also states that Plaintiff and/or its predecessors did not file a lis pendens – none would be

permitted nor required until the filing of this lawsuit, making that statement irrelevant. Further, because the HOA wrongfully rejected Plaintiff's super priority lien tender, no release of super priority lien would have been recorded.

III. LEGAL ARGUMENT

A. RESPONSE TO SFR'S LEGAL STANDARDS

1. A Motion to Dismiss is Proper Because Legal Conclusions Are Not Taken As True By the Court

Pursuant to F.R.C.P. Rule 12(b)(6), "failure to state a claim upon which relief can be granted," is a basis to dismiss a Complaint [or Counterclaim] where the moving party can demonstrate beyond doubt that the Petitioner cannot provide a set of facts in support of his claim which would entitle them to relief," such that this Motion to Dismiss should be granted. *Puckett v. Park Place Entertainment Corp.,* 332 F. Supp. 2d 1349, 1352 (D. Nev. 2004). In making a determination, the allegations made in the Complaint are generally taken as true and viewed in the light most favorable to the non-moving party. Id. While the Court should typically take the allegations as alleged in the Complaint (or Counterclaim) as true, "Courts do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations." *Puckett,* 332 F. Supp. 2d at 1352 (quoting, *Western Mining Counsel v. Watt,* 643 F.2d 618, 624 (9th Cir. 1981)). "Conclusory allegations of law and unwanted inferences are insufficient to defend a Motion to Dismiss for failure to state a claim." *In re Stac Electronics Securities Litigation,* 89 F.3d 1399, 1403 (9th Cir. 1996) *(quoting, In re VeriFone Securities Litigation,* 11 F.3d 865, 868 (9th Cir. 1993)).

Here, because the HOA foreclosure sale was conducted pursuant to an unconstitutional Statute, even if all of the factual allegations in SFR's Counterclaim are accepted as true, the HOA sale would still be void and SFR's claims would fail as a matter of law.

2. SFR's Motion for Summary Judgment Must Be Denied Because Fails to Prove Essential Facts.

SFR implies that every foreclosure sale under the Statute is presumed to be a valid sale on a super-priority lien. Noticeably absent from SFR's Motion is any statement (or affidavit) of the amount of the super-priority lien that must have existed at the time of sale. If there was no

super priority lien, than the HOA Sale could not have conveyed superior title to SFR. In addition, there is further no attestation, under oath, that neither the HOA nor the HOA Trustee received any payment of the super-priority lien. Thus, SFR's alternative Motion for Summary Judgment must be denied due to absence of any admissible evidence of a super-priority lien. Therefore, none of the foreclosure notices can be presumed compliant with Nevada law that there was a proper foreclosure on a super-priority lien.

B. THIS COURT HAS RULED THAT THE *SFR* DECISION SHOULD NOT BE APPLIED RETROACTIVELY

SFR's attempt to spin the Trust's argument against retroactivity as a "second bite at the apple," is disingenuous and completely ignores this Court's ruling in *Christina Trust v. K & P Homes, et al.*, U.S. District Court, District of Nevada, Case No. 2:15-cv-01534-RCJ, Slip Copy (2015), 2015 WL 6962860. In *Christina Trust*, this same Court held that the Nevada Supreme Court's interpretation of NRS Chapter 116 (the "Statute"), as enacted ***prior to*** the revisions made by Senate Bill 306 effective October 1, 2015, should not be applied retroactively.[2] In reaching its decision, this Court looked to the factors announced in the *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971).[3] In *Christina Trust*, this Court explained that in its prior ruling on retroactivity, in the present case involving the Trust, the Court, "resolved the motions before it on different grounds and therefore did not address the issue closely; rather, it assumed the Nevada Supreme Court would apply its ruling retroactively . . . [and upon a] closer look . . . [the *SFR* Decision] is silent on retroactivity and [ ] the Nevada Supreme Court approved the *Huson* Rule." In other words, while this Court may not have fully considered the Trust's retroactivity argument previously, the Court can and has changed its view on the issue, making the Trust's argument proper.

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[2] See *Christina Trust v. K & P Homes, et al.*, 2015 WL 6962860 at 5, attached to the Third Supplement to Plaintiff's RJN as **Exhibit 16.** The "Statute" refers to the version of NRS Chapter 116 which existed ***prior to*** the enactment of Senate Bill 306, effective October 1, 2015, which amended NRS Chapter 116 to require affirmative notice to holders of a first deed of trust of an HOA foreclosure.

[3] In *Christina Trust*, this Court recognized that the Nevada Supreme Court has quoted the rule in *Chevron Oil Co. v. Huson,* 404 U.S. 97, 106-07, 92 S. Ct. 349, 355, 30 L.Ed.2d 296 (1971), with approval in *Breithaupt v. USAA Prop. & Cas. Ins. Co.*, 867 P. 2d 402, 405 (Nev. 1994).

Under *Chevron Oil*, the three factors considered in a civil case to determine if a new rule is applied retroactively are: "(1) whether the decision 'establish[es] a new principle of law'; (2) 'whether retrospective operation will further or retard [the rule's] operation' in light of its history, purpose, and effect; and (3) whether [the] decision 'could produce substantial inequitable results if applied retroactively.'"[4] The Trust's and this Court's recently announced position on retroactivity, clearly meet all three *Chevron Oil* factors.

Further, the pertinent point of *Chevron Oil*, is that "the decision to be applied non-retroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, (citation omitted) *or by deciding an issue of first impression whose resolution was not clearly foreshadowed*."[5] Testimony from the Nevada legislature supports the Trust's assertion that the *SFR* decision was not foreshadowed by the players involved. The Nevada legislature, when discussing possible changes to the HOA lien foreclosure statute in 2011, had Michael Buckley, former chair of the Commission for Common Interest Community Board, give instruction as to the lien priority position of the HOA super lien. In 2011, Nevada's legislature considered amending NRS 116.3116(2)(c) with Senate Bill 174.[6] Mr. Buckley testified regarding the 2009 amendment to NRS 116.3116(2)(c), and explained the meaning of a super priority lien:

> Mr. Buckley explained the meaning of an HOA "super priority lien" on May 17, 2011:
>
> We are not changing the super priority lien. It will be six to nine months, which is what the law states now. **Once an HOA gets paid the super priority lien, it no longer has a lien against the unit. That is existing law.** When an investor buys a unit and resells it, it is great for the association who gets new owners because they

[4] *Nunez-Reyes v. Holder*, 646 F.3d 684, 692 (9th Cir. 2011) (quoting *Chevron Oil Company*, 404 U.S. at 106-07).

[5] *Chevron Oil Co. v. Huson*, 404 U.S. 97, 106-07, 92 S. Ct. 349, 355, 30 L.Ed.2d 296 (1971) (Emphasis added).

[6] See Hearing on SB 174 Before Senate Comm. on the Judiciary, 76th Legislature (2011) (Statement of Michael Buckley, Commission, Las Vegas, Commission for Common Interest Communities Commission, Real Estate Division, Department of Business and Industry; Real Property Division, State Bar of Nevada), pages 11 and 12, attached hereto as **Exhibit D.**. The entire transcript can be found at http://www.leg.state.nv.us/Session/76th2011/Minutes/Assembly/JUD/Final/1248.pdf

> start paying the dues on the unit that was foreclosed. … We are not changing the law or the super priority lien. What we are trying to do is to clear up the title once the association has been paid its super priority lien. **The association can only get the super priority lien if there is a foreclosure by the first mortgage.** If there is no foreclosure by the first mortgage, the HOA could foreclose. **Super priority lien deals only with the foreclosure by the first mortgage.** (Emphasis added.)[7]

This legislative history of the HOA lien foreclosure statute demonstrates that even the legislature treated the HOA super lien as not even *existing* until the bank foreclosed prior to the 2014 *SFR* decision. The legislative history of NRS 116.3116(2)(c) demonstrates that prior to *SFR*, the "super priority lien" merely allowed HOAs a payment priority *after* a senior deed of trust holder forecloses.

As this Court has previously held in this very case, the unfairness of applying *SFR* decision retroactively not only violates procedural due process, but also substantive due process in that the Nevada Supreme Court's interpretation of the Statute deprives the Trust of its fundamental right to property. In *Obergefell v. Hodges*, the U.S. Supreme Court struck down a state statute under the substantive due process component of the Due Process Clause of the Fourteenth Amendment.[8] Under the Fourteenth Amendment, where a law deprives person of a **right to life, liberty, or property**, that a court in its "**reasoned judgment**" believes is "**fundamental**," a court may strike down such a law even if the proffered right is not specifically listed in the Constitution, so long as the right can be perceived from history, tradition, or "new insight."[9] The Court in *Obergefell* reasoned that a court should only exercise its reasoned judgment to invalidate a democratically enacted law in the absence of any clear constitutional requirement to do so after there has been "a quite extensive discussion" concerning the right at issue in the halls of government and amongst the general public.[10]

The *SFR* decision launched a tsunami of litigation and led to the enactment of Senate Bill 306. A reasonable lender, giving a first deed of trust secured by a property within an HOA bound

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[7] *Id*. at p. 12.
[8] *Obergefell v. Hodges*, 2015 WL 247345, at 11, 20 (2015).
[9] *U.S. Bank, N.A. v. SFR Investments Pool 1, LLC*, 2015 WL 5023450, 5, citing to *Obergefell v. Hodges*.
[10] *U.S. Bank, N.A. v. SFR Investments Pool 1, LLC*, 2015 WL 5023450, 5, citing to *Obergefell v. Hodges* at page 9.

by a mortgagee protection clause in its CC&Rs, would not have anticipated that the Nevada Supreme Court would years later interpret the Statute the way it did in the *SFR* decision. *SFR* should be applied prospectively only, for it establishes a new principle of law by overruling clear past precedent on which litigants may have relied and by deciding an issue of first impression whose resolution was not clearly foreshadowed.

Weighing the merits and demerits by looking to the prior history of NRS 116.3116 et seq., in general, and NRS 116.3116(2), in particular, its purpose and effect, favors prospective application only. Thus, if the *SFR* decision does not apply retroactively, Plaintiff's Deed of Trust continues to encumber the Property and SFR's interest is subject to the Deed of Trust and summary judgment should be entered in favor of Plaintiff and against SFR.

C. PLAINTIFF'S PRE-FORECLOSURE TENDER WAS SUFFICIENT TO DISCHARGE THE SUPER PRIORITY LIEN

In section F of its Opposition, SFR presents a string of authority that all come to the same (erroneous) conclusion: tender means the actual unconditional production of money. Here, contrary to SFR's assertions that Plaintiff did not provide actual payment, there was an "actual unconditional production of money" because Plaintiff calculated the nine month assessment lien (the super-priority portion of the lien) and enclosed a check for that amount to the HOA Trustee.[11] It was the HOA Trustee who wrongfully rejected Plaintiff's tender of the super-priority lien amount. SFR argues that the tender offered by Plaintiff was conditional and thus not a proper tender. However, not all conditions are prohibited in a valid tender. The common law definition of tender is "**an offer of payment that is coupled either with no conditions or only with conditions upon which the tendering party has a right to insist.**" *Property Plus Investments, LLC v. Bank of America, N.A. et. al.,* Case No. A-13-692200-C (July 14, 2015) (citing to *Fresk v. Kraemer,* 337 Or. 513, 522, 99 P.3d 282, 286-7 (2004)) (emphasis added). It is not reasonable to expect that Plaintiff would make a payment to the HOA without the expectation of receiving something in return, namely, a lien release.

[11] See letter dated April 18, 2013 and check in the amount of $288.00, attached as exhibit 2 to the Miles Bauer Affidavit, attached to Plaintiff's Motion, **as Exhibit A**.

SFR also takes issue with the amount tendered and argues that Plaintiff was obligated to pay the full amount of the HOA lien in order to discharge the super priority lien, based on the *SFR* holding that the HOA can non-judicially foreclose its entire lien. While, it is true that an HOA can now non-judicially foreclose its entire lien, it is erroneous that the ability to do so would prevent Plaintiff from being able to discharge the super priority portion. Further, SFR's argument completely ignores the language of the *SFR* decision stating that "nothing appears to have stopped U.S. Bank from determining the precise superpriority amount in advance of the sale or paying the entire amount and requesting a refund of the balance."[12] That is exactly what happened in this case; despite Plaintiff's super lien tender, Alessi wrongfully rejected the payment, in hopes that a full lien payoff would be made to stop the sale.[13]

Here, Plaintiff's predecessor in interest, BANA, through its counsel, MBBW, obtained a full lien payoff demand from Alessi, calculated the nine months of assessments and tendered payment prior to the HOA Sale.[14] The payoff demand from Alessi showed that the amount of the monthly assessment was $32.00, multiplied by nine months, equals $288.00, the exact amount tendered by BANA. While this amount was much less than the total balance due of $5,812.49, Plaintiff was not obligated to pay more than the super priority lien to protect its first position Deed of Trust. Footnote 3 in the *SFR* decision also states, "The lion's share of most HOA liens will be the unpaid dues, which have superpriority status." Here, the super priority amount of $288 represented 9 months of assessments, which is just over 3% of the amount the purchase price at the HOA Sale. During the time of the HOA Sale, HOA's and their collection agents were holding properties hostage trying to get banks to pay the whole HOA lien because in light of the foreclosure crisis, it was guaranteed that no excess proceeds would be available to pay the subpriority portion after the deed of trust foreclosure sale. Is it reasonable to expect the HOA or its Trustee that refused to provide the 9-month payoff turn around and refund the difference just because the holder asks for it back?

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[12] *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 418 (2014).

[13] See Miles Bauer Affidavit, attached to Plaintiff's Motion as **Exhibit A**, showing that Alessi did receive BANA's letter and check and then later rejected the payment.

[14] See *Id.*

In the Eighth Judicial District Court, where the majority of the HOA quiet title litigation in Nevada is currently pending, Judges Bell, Sturman and Leavitt have all recently found that because the homeowners association's trustee rejected the bank's calculation and attempt to pay off the nine month assessment lien, the super-priority lien that could have been claimed was now discharged.[15] These rulings imply that an HOA can split its lien and go to sale on the subpriority portion of the lien, making the resulting sale subject to the first deed of trust. Judge Gordon of the U.S. District Court for the District of Nevada, has also opined that it may be possible for an HOA can split its lien and go to sale only on the subpriority portion.[16] Thus, even if this Court finds that the HOA sale was proper, and the *SFR* decision applies retroactively (which, this Court has previously said it does not), then the Court should find that the HOA went to sale on the subpriority portion of its lien, as the super lien having been discharged by Plaintiff's tender.

Further, SFR's use of *Gaffney v. Downey Savings & Loan Assn.*, 200 Cal. App. 3d 1154 (1988), is misplaced. Although the court in *Gaffney* did state that "nothing short of the full amount due to the creditor is sufficient to constitute a valid tender, and the debtor must at his peril offer the full amount," the facts and circumstances surrounding that conclusion are wholly distinct from the case at hand. *Id.* at 1165. In *Gaffney*, the borrowers were delinquent on their loan payments. *Id.* at 1160. In order to bring their loans current, the borrowers took out another loan, secured by a second deed of trust, to cover their missed payments. *Id.* The title company handling the escrow for the second loan then submitted two separate checks to the creditor on

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[15] See *Property Plus Investments, LLC v. Bank of America, N.A. et. al.*, Case No. A-13-692200-C (July 14, 2015) attached to the Third Supplement to Plaintiff's RJN as **Exhibit 17.** *First 100, LLC v. U.S. Bank National Association*, Case No. A-12-669876-C, Department XII, decided on November 9, 2015, a copy of the court minutes is attached to the Third Supplement to Plaintiff's RJN as Exhibit 18; and *Zaisan Enterprises LLC v. Alenoush Davidian*, Case No. A-14-708690-C, Department XXVI, decided on October 6, 2015, a copy of the court minutes is attached to the Third Supplement to Plaintiff's RJN as Exhibit19; Plaintiff recognizes that these lower level court rulings are not binding precedent on this Court, and Plaintiff offers them merely as persuasive authority, as this area of law is developing.

[16] See *7912 Limbwood Court Trust v. Wells Fargo Bank, N.A., et.al.*, Case No. 2:13-cv-00606-APG-GWF (August 31, 2015), attached to the Third Supplement to Plaintiff's RJN as Exhibit 20. Plaintiff recognizes that Judge Gordon's ruling is not binding precedent and Plaintiff offers it merely as persuasive authority, as this area of law is developing.

behalf of the borrowers. Id. However, because the payments were made separately (instead of one payment to cover the entire balance due) and there was no note that indicated there would be two separate payments to cover the deficiencies, the payments were processed separately and determined to be insufficient. Id.

Although the trial court in *Gaffney* concluded that the creditor could have merely found the two separate payments and put them together to bring the account current; the appellate court found that requiring the creditor "to coordinate [5,000-7,000] separate payments to discover whether, possibly, two separate part payments were submitted which together equal the amount due on a particular loan" was "an unreasonable burden" and "legally unwarranted." *Id.* at 1165. The appellate court stated that it was the borrower's "responsibility to make an unambiguous tender of the entire amount due or else suffer the consequence that the tender is of no effect." *Id.* Ultimately, the appellate court held that the borrowers' "submission of two partial payments, without any attempt to notify [the creditor] that payments would be submitted in that manner, did not constitute a valid tender of the amounts due." Id. at 1165-66. Unlike the borrowers in *Gaffney*, where the two separate payments did not individually satisfy the entire balance, **here, Plaintiff calculated the statutory nine month assessment lien, provided a letter to the HOA trustee that indicated this calculation, and enclosed a check that satisfied the entire "super-priority" amount.** Therefore, Plaintiff's tender of the nine month assessment lien should (1) discharge the super-priority portion of the lien and (2) preserve Plaintiff's Deed of Trust on the Property in first position.

D. PLAINTIFF'S MOTION SHOULD BE GRANTED BECAUSE THE HOA SALE WAS COMMERCIALLY UNREASONABLE

SFR argues extensively in section E of its Opposition that fair market value cannot be the benchmark for commercial reasonableness in evaluating a forced sale, however, common sense will inform the Court that no bidder at a foreclosure sale expects to receive a 94% discount. Ordinarily, in a traditional mortgage foreclosure sale, the lienholder is prepared to place a credit bid that covers substantially the amount of the debt and is close to the value of the property. In an HOA foreclosure sale, the amount of the lien has no relation to the value of the property and, at least pre-SFR, the sale was almost guaranteed to leave nothing left for the

remaining lienholders due to the large disparity in the sale price and the value of the property. It should say something that in a post-SFR market, the amount realized at HOA foreclosure sales is now considerably closer to fair market value, or what a lender could expect from a deed of trust foreclosure sale.

The recent decision of the Nevada Supreme Court in *Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc.*, 132 Nev., Adv. Op. 5 (Jan. 28, 2016) ("*Shadow Wood*"), attached hereto for the convenience of the Court,[17] examined the issue of commercial reasonableness and fully supports Plaintiff's position that **a grossly inadequate purchase price compared to the fair market value at the time of the HOA Sale *can* be sufficient to set aside the sale.** The *Shadow Wood* decision recognized the Restatement (Third) of Prop.: Mortgages § 8.3 ant. b (1997), position that while "[g]ross inadequacy cannot be precisely defined in terms of a specific percentage of fair market value [, g]enerally … a court is warranted in invalidating a sale where the price is less than 20 percent of fair market value and, absent other foreclosure defects, is usually not warranted in invalidating a sale that yields in excess of that amount." **In other words, this Court can invalidate the HOA Sale if the purchase price is less than 20 percent of fair market value without more, and this Court can invalidate the HOA Sale if the purchase price is more than 20 percent of fair market value if there are "other foreclosure defects."** The Court then evaluated the sale in that case and determined the price did not meet the Restatement definition of "grossly inadequate price" because purchase price reflected 23 percent of that value. And footnote 3 again recognized the 20% threshold: "The $11,018.39 sale price is slightly more than 20 percent of that estimate, so it does not affect the analysis in the text." The *Shadow Wood* decision thus reaffirmed the concept that a sale can be set aside if it is not commercially reasonable.

The *Shadow Wood* decision is consistent with Nevada's version of the Uniform Common Interest Ownership Act ("UCIOA"), as discussed in Plaintiff's Motion, which imposes an

[17] See *Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc.*, 132 Nev., Adv. Op. 5 (Jan. 28, 2016), attached to the Fourth Supplement to the Plaintiff's Request for Judicial Notice as **Exhibit 21,** and also attached hereto for the convenience of the Court as **Exhibit E.**

express obligation of good faith on an HOA. NRS 116.31164 provides, "Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement." This requirement is verbatim from Section 1-113 of the UCIOA, which was adopted by the Nevada Legislature in 1991. See Assembly Bill 221 (1991), Section 44.

SFR fails to discredit the *Shadow Wood* decision by asserting on page 24 of its Opposition that the *Shadow Wood* Court's reliance on the Restatement (Third) of Prop.: Mortgages was not expressly adopted by the Nevada Supreme Court. In fact, the Nevada Supreme Court in deciding *SFR* also relied on the Restatement (Third) of Prop:: Mortgages[18] In the instant case, the purchase price is grossly inadequate when compared to the fair market value at the time of the HOA Sale. The foreclosure sale in this case was void as commercially unreasonable if it did, as SFR claims, eliminate the senior deed of trust. The HOA made no effort to obtain the best price or to protect other lienholders. The sales price of $9,000 demonstrates that it was not made in good faith as a matter of law, as the property secures a loan in excess of $236,000, with a fair market value at the time of the sale of $162,000. In other words, the HOA Sale price was less than 4% of the loan value and less than 6% of the fair market value and is indisputable evidence of the lack of good faith.

SFR contends on page 21 of their Opposition that, pursuant to *Golden v. Tomiyasu*, 79 Nev. 503, 387 P.2d 989 (1963), Plaintiff needs to show fraud, unfairness, or oppression as well as an inadequate price to attack the commercial reasonableness of the sale. Here, SFR paid only $9,000.00 when the Property was worth more than $162,000, thus, triggering the close scrutiny into the sale. There are ***multiple factors which point to fraud, unfairness and/or oppression concerning the HOA's sale***: (1) Alessi & Koenig, (the "HOA Trustee"), wrongfully rejected of Plaintiff's tender of the super priority lien[19]; (2) prior to the SFR decision, the HOA Trustee (along with other HOA's and Trustee's) took the position that the super priority lien was not

[18] See *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 418 (2014).
[19] See Miles Bauer Affidavit, attached to Plaintiff's Motion as **Exhibit A.**

triggered until the lender forecloses[20]; and (3) the HOA Trustee had agreements with property investors to ensure that there would be bidders at the sale.[21]

SFR also attempts to discredit the Vermont Supreme Court's decision in *Will v. Mill Condominium Owner's Ass'n*, 848 A.2d 336 (2004), on page 23 of its Opposition, by contending that the Court made its decision based on the facts that (1) the price was low; (2) there was only one bidder at the sale and (3) that the HOA told the bidder that the minimum bid be $3,510.10. While these factors were discussed, they were not the Court's basis for invalidating the sale as commercially unreasonable. The basis for the Court's ruling was Section 1-113 of the Uniform Common Interest Ownership Act (UCIOA), which renders a duty on an HOA that "every contract or duty governed by this title imposes an obligation of good faith on all parties in its performance." *Id*. at 386. This duty is reflected, virtually verbatim, in NRS 116.1113.[22] Similar to the facts in *Will*, Plaintiff here also tendered a super priority lien payoff, which despite satisfying the obligation, was wrongfully rejected and did not stop the foreclosure sale.

The holding in *Will* is on point and is persuasive regarding the commercial reasonableness standard with regard to foreclosure sales conducted pursuant to the Statute. In fact, *SFR* supports this contention when it cites to NRS 116.1109, "obligating this court to interpret its version of the UCIOA so as to 'make uniform the law . . . among the states enacting it." The *Will* case was the only case the undersigned could find that had interpreted the language of UCIOA Section 1-113, which this Court must consider. The court found that "the official comment to § 1-113 expresses in unequivocal terms the Legislature's intent to import the commercial reasonableness standard into the UCIOA." Thus, the *Will* court held that "the enforcement mechanisms provided for in § 3-116 must be conducted in good faith as defined in § 1-113, that is, in a commercially reasonable manner." 48 A.2d at 342 (emphasis added). There is no evidence before this Court that the HOA's Sale was commercially reasonable. In *Will*, 48

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[20] See Arbitration Order, attached hereto as **Exhibit B** and Letter from Alessi & Koenig, attached hereto to as **Exhibit E.**

[21] See Letter from Alessi regarding guaranteed sales, attached hereto as **Exhibit F.**

[22] NRS Chapter 116.1113 states, "Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement."

A.2d at 342, the court noted that the burden of proof to demonstrate commercial reasonableness belonged to the HOA: "In the case at hand, in order to support the summary judgment under this standard, the court would have to find that the Condominium Association ... had proved specific facts which, when 'viewed in totality,' constituted a commercially reasonable disposition of appellant's property." Similarly, because **SFR has not produced any evidence that the HOA sale was conducted in a commercially reasonable manner**, **this Court could not enter judgment quieting title in SFR's favor.**

E. THE "CONCLUSIVE PRESUMPTIONS" IN THE TRUSTEE'S DEED UPON SALE ARE NOT CONCLUSIVE EVIDENCE THAT THE SALE WAS PROPERLY CONDUCTED AND THE SALE CAN BE SET ASIDE IN EQUITY

SFR's assertion that the "conclusive presumptions" in the HOA's foreclosure deed trump this Court's ability to review the propriety of the sale is incorrect. Even if this Court were to disregard that the Statute is unconstitutional, the conclusive presumptions in the Trustee's Deed Upon Sale are not enough to quiet title in SFR's favor. SFR relies on the *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, 30 F.Supp.3d, which is irrelevant in light of the recently decided *Shadow Wood* case. In *Shadow Wood*, the Nevada Supreme Court rejected the argument that the recitals in a foreclosure deed are conclusive. After extensively examining the basis and history of NRS 116.31166, the *Shadow Wood* Court concluded,

> [T]he Legislature, through NRS 116.31166's enactment, did not eliminate the equitable authority of the courts to consider quiet title actions when an HOA's foreclosure deed contains conclusive recitals. We therefore reject [third party buyer's] contention that NRS 116.31166 defeats, as a matter of law, [the bank's] action to set aside the trustee's deed and to quiet title in itself.

Moreover, the Statute provides that the recitals in a deed made pursuant to NRS 116.31164 can be conclusive only regarding the following:

> (a) Default, the mailing of the notice of delinquent assessment, and the recording of the notice of default and election to sell;
> (b) The elapsing of the 90 days; and
> (c) The giving of the notice of sale.

However, for a conclusive presumption to apply, the deed must provide a recital of facts specifying what the trustee has done, not just mere conclusory statements that the trustee has

complied with the law.[23] In considering conclusive presumptions in a trustee's deed, the Washington Court of Appeals similarly held that "[w]e are unwilling to accept a trustee's legal conclusions contrary to the actual facts of the foreclosure process as conclusive evidence where an accurate reporting of the facts would have shown the legal conclusions to be incorrect."[24] The appellate court went on to hold "a trustee's bald statements that he or she has complied with the law, as distinguished from recitals of fact demonstrating such compliance, tend to dilute the statutory protections afforded borrowers by the Act."[25]

The Trustee's Deed Upon Sale in this matter simply stated, "All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with".[26] These bare assertions simply do not fulfill the requirements of the Statute. **The deed fails to identify any facts regarding the requirements under the Statute for this particular foreclosure.** The deed offers no dates of service for the purported notices, no facts identifying who received the purported notice, and no specific facts evidencing that the notices included all required information. **The deed does not indicate whether the HOA foreclosed on the super-priority portion of the lien, if any existed unsatisfied**, or whether it foreclosed on the sub-priority portion of the lien. The deed's conclusory and vague assertions make it impossible to determine, as a matter of fact, whether the law was complied with in this case. Moreover, here, it is of course an affront to the principle of due process that, if the HOA must give these notices to the first mortgagee, they can preclude any inquiry into whether they did in fact give the notices simply by recording a document that says they gave the notices. **Further, whether the notices were sent and received does not have any bearing on the commercial reasonableness of the sale or the wrongful rejection of Plaintiff's super lien tender, for which no recitals to that effect are stated in the Trustee's Deed Upon Sale.** Therefore, SFR cannot rely on the generic recitals in the HOA's foreclosure

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[23] Rosenberg v. Smidt, 727 P.2d 778, 785 (Alaska 1986).
[24] Albice v. Premier Mortg. Services of Washington, Inc., 157 Wash.App. 912, 924, 239 P.3d 1148, 1155 (Wash.Ct.App. 2010).
[25] Id.
[26] See Trustee's Deed Upon Sale, attached to Plaintiff's RJN as **Exhibit10.**

deed to establish as a matter of law that the Statute was complied with in this case. These generic recitals cannot, in and of themselves, provide the basis to give SFR good title or extinguish Plaintiff's Deed of Trust. Furthermore, whether the HOA actually provided notice to Plaintiff is irrelevant when considering a constitutional challenge to the statute.

F. THE STATUTE'S MINIMAL NOTICE REQUIREMENTS VIOLATE DUE PROCESS

The fatal flaw of the Statute – which *SFR* did not address – is that none of its express notice provisions provide for mandatory notice to lenders[27]; despite the fact that their property rights are directly threatened by an HOA's non-judicial foreclosure. **Under the Statute, the affirmative duty is not on the HOA to provide notice, but rather on the lender to "opt-in" to request notice, despite clear mortgagee protection language in most CC&Rs governing HOA's in Nevada.** This is true even when the lender has a prior recorded interest.

The Nevada Supreme Court in *SFR*, recognized that the Statute departs from the UCIOA upon which it is based in a fundamental way concerning notice. The *SFR* Court, comparing NRS 116.3116 and the UCIOA, acknowledged that, "Where the UCIOA states general third party notice requirements, see 1982 UCIOA section 3-116(j)(4),("In case of foreclosure under [insert power of sale statute], the association shall give reasonable notice of its action to all lienholders of the unit whose interest would be affected."), ***NRS 116.31168 imposes specific timing and notice requirements***."[28] These "specific timing and notice requirements," which refers to the "opt-in" request notice provisions of the Statute, violate the Due Process Clause of the Nevada and United States Constitutions.

Indeed, the Supreme Court never addressed whether notice was or was not constitutionally required. This distinction also demonstrates that it would not matter to a facial challenge if, in an individual case, the lender had *actual* notice but the statutes permit the taking without requiring notice. This Court need only evaluate whether the terms of the statute itself violates a constitutional right. This is a purely legal issue appropriate for determination even at

[27] Plaintiff uses "lender" to include the original lender or owner of the loan, or a subsequent investor, servicer, or beneficiary of the deed of trust at issue.
[28] See *SFR* at page 6.

the motion to dismiss stage.[29] For the reasons set forth below, the Statute is unconstitutional because its "opt-in" notice provisions do not comply with the due process requirements. The statute itself is devoid of any notice requirements that could pass constitutional muster. Distorting the plain language of NRS 107.090 does not change the outcome. Such facially defective notice requirements establish the constitutional infirmity of NRS 116.3116 and necessitate setting aside the HOA sale and dismissing SFR's Amended Counterclaim with prejudice as a matter of law in favor of Plaintiff, or in the alternative, granting judgment in favor of Plaintiff.

1. Plaintiff Has Met the Burden for a Constitutional Challenge.

SFR argues that because *SFR* decided an as-applied challenge, Plaintiff's facial challenge "cannot stand" because *SFR* "demonstrated at least one circumstance in which the statute was valid." Although it is true that in certain situations the party challenging a statute on its face "bears the burden of demonstrating that there is no set of circumstances under which the statute would be valid," *Déjà vu Showgirls v. State Dept. of Tax.*, 334 P.3d 392, 398 (Nev. 2014), this standard is inapplicable in this case. The Nevada Supreme Court in *Flamingo Paradise Gaming*, acknowledged the U.S. Supreme Court's differing rules for facial challenges, especially with regard to statutes involving constitutional rights or criminal penalties.[30] *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 511 (2009). These challenges do not use the "no set of circumstances" test but rather, "a higher standard applies to statutes involving constitutional rights or criminal penalties." *Id.* at 511-12 (citing *U.S. v. Doremus*, 888 F.2d 630, 635 (9th Cir. 1989)). The courts have not articulated what the "higher standard" is but a look into the standard

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[29] *Ezell*, 651 F.3d at 697.

[30] In *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 511 (2009), the Court stated, "On the one hand, the Court in *Hoffman Estate*, *Salerno* and *Washington State Grange*, stated the requirement that a statute must be void in all its applications. On the other hand, in Kolender and Morales, the Court questioned this standard, at least in cases with statutes involving constitutional rights or criminal penalties." (Citing Hoffman Estates v. Flipside, Hoffman Estates, 455 U.S. 498, 102 S.Ct. 1186 (1982); United States v. Salerno, 481 U.S. 739, 107 S.Ct. 2095 (1987); Washington State Grange v. Washington State Republic Party, 552 U.S. 442, 128 S.Ct. 1184 (2008); Kolender v. Lawson, 461 U.S. 352, 103 S.Ct. 1855 (1983); Chicago v. Morales, 527 U.S. 41 (1999)

for facial vagueness challenges provides some guidance. Id. at 512. When a facial vagueness challenge to a civil statute is brought "the plaintiff must show that the statute is impermissibly vague in all of its applications." Id. (citing *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 (2008). On the other hand, "when the statute involves criminal penalties or constitutionally protected rights" a higher standard is used. Id. And "under the higher standard, the question becomes whether vagueness so permeates the text that the statute cannot meet these requirements in most applications; and thus, this standard provides for the possibility that some applications of law would not be void, but the statute would still be invalid if void in most circumstances." Id. at 513 (citation omitted). Using this reasoning, and contrary to SFR's assertions, the *SFR* decision does not preclude Plaintiff from challenging the facial validity of the statute because constitutional rights are involved.

2. SFR is not dispositive of Plaintiff's Motion.

The Nevada Supreme Court in *SFR* never addressed whether notice was or was not constitutionally required. By contrast, Plaintiff's Motion to Dismiss directly challenges the provisions regarding parties required to receive notice, a direct facial challenge to the Statute. This is a purely legal question which makes the particular facts of this case irrelevant. This is a pure issue of law, appropriate for determination at this stage of the proceedings. *Ezell v. City of Chicago*, 651 F .3d 684, 697 (7th Cir. 2011). The facts of whether an individual lienholder received notice, or if the HOA complied with all the requirements set forth in the Statute are likewise irrelevant for purposes of this argument. *Id*. For purposes of Plaintiff's due process challenge, this Court need only evaluate whether the terms of the Statute itself violate a constitutional right.

The question before this Court, and one that *SFR* did not consider, is whether the "opt-in" provisions of NRS Chapter 116 are unconstitutional as they do not comply with due process requirements.

3. The Nevada Supreme Court's denial of a rehearing is not a basis to deny the Motion to Dismiss.

SFR contends that since the Nevada Supreme Court refused to rehear *SFR*, this Court should deny Plaintiff's Motion to Dismiss. The denial of a rehearing carries no precedent or

even persuasive value.[31] The Court should not be persuaded by SFR's misguided claims to the contrary.

The Order Denying Rehearing in *SFR* stated, "We have considered the briefs of amici curiae in resolving the petition for rehearing." SFR's argument here is not supported by that Order. The Court first stated the standard for reviewing petitions for rehearing:

> NRAP 40 places strict limits on petitions for rehearing: (1) "Matters presented in the briefs and oral arguments may not be reargued in [a] petition for rehearing", NRAP 40(c)(1); and (2) "[t]he court may consider rehearing" if the petition demonstrates ·that the court "has overlooked or misapprehended a ... material question o(law ... or overlooked, · misapplied or failed to consider a statute [or other law] directly controlling a dispositive issue in the case." NRAP 40(c)(2).

The Court thus recognized two essential requirements a petition must meet to permit rehearing: (1) matters may not be reargued; and (2) the court must be persuaded it overlooked or misapprehended a material question of law or statute. The Court however simply found, "This petition for rehearing reargues matters the court already heard and decided and so does not meet the requirements of NRAP 40(c)," **thus only ruling on the first requirement**. No ruling was made on the second requirement as it was not necessary. There is no precedential value to the Order on the second requirement which was not necessarily determined by the Court.

4. The Legislature's Enactment of the Statute and the Court's Interpretation thereof in *SFR* satisfy the State Actor and State Action Requirements.

On page 13 of the Opposition, SFR contends that because the Statute provides a private remedy for use by private parties, it does not demonstrate the required "state action" for a due process challenge. Plaintiff is not challenging the specific exercise of the powers enumerated in the Statute. It is asserting a facial challenge to the provisions of the Statute. "State actions within the meaning of the Fourteenth Amendment include not only the acts of a legislature, but also the actions of the State's judicial officers." *Beazley v. Davis*, 92 Nev. 81, 83, 545 P. 2d 206, 208 (1976). The "state action" requirement is met as the Nevada Legislature enacted the Statute which permits an HOA to sell real property without notice to the holder of a first deed of trust

[31] Marshak v. Reed, 229 F.Supp.2d 179, 184 (E.D.N.Y. 2002); Landreth v. Comm'r, 859 F.2d 643, 648 (9th Cir. 1988); Exxon Chemical Patents, Inc. v. Lubrizol Corp., 137 F.3d 1475, 1479-1480 (Fed. Cir. 1998); Luckey v. Miller, 929 F.2d 618, 622 (11th Cir. 1991).

and potentially extinguish that first deed of trust. The state actor and state action requirements are further met by the Nevada Supreme Court's act of interpreting the Statute in the *SFR* decision, in a manner that has caused lenders across Nevada to potentially be deprived of their secured interest without due process of law.

On page 14 of the Opposition, SFR also challenges this Court's prior state actor determination under Shelly, SFR cites to *Naoko Ohno v. Yuko Yasuma*, 723 F.3d 984 (9th Cir. 2013) for the proposition that the state actor analysis in *Shelly* is confined solely to discrimination claims under the Equal Protection clause. However, the court in *Naoko Ohno*, declined to extend *Shelley's* holding on the basis that the case involved judicial enforcement of a foreign judgment. In that case, Ohno obtained a judgment in Japan against a church in the United States, from which she claims she was defrauded money. Ohno sought to enforce the judgment in the U.S. court system. The church, in turn, alleged that such foreign judgment was an infringement upon its Constitutional rights. However, because the Church could not find state action on the part of the Japanese government in rendering the judgment, due to that nation not being subject to the U.S. Constitution, the Church sought to have the domestic court's enforcement of the foreign judgment deemed state action. 723 F.3d at 1000. In declining to extend the reasoning in *Shelly*, the *Ohno* court reasoned that, "extending *Shelley's* holding to **judicial enforcement of foreign-country money judgments would effectively require foreign governments desiring American recognition of their judicial rulings to apply the substantive provisions of the U.S. Constitution in their courts."** The *Ohno* court concluded that "such wholesale imposition of all aspects of our Constitution abroad is inconsistent with the principles of comity and respect for sovereignty underlying the recognition of foreign judgments." 723 F.3d at 1000.

The instant case is easily distinguishable in that here, that all the actors are subject to the U.S. Constitution and the judicial enforcement sought by the Defendant involves asking this Court to deprive the Plaintiff of its fundamental right to property by means of enforcing the Statute.

5. The plain meaning of the Statute supports only "opt-in" notice requirement.

On page 15 of the Opposition, SFR claims that the lender's act of recording the deed of trust is sufficient notice to the HOA, under the Statute, such to obviate the need to "opt-in" to receive notice. SFR's contention is belied by the plain language of the Statute. SFR's Opposition includes attempts to convince this Court that the Statute requires notice to the holder of a first deed of trust, when the plain meaning of the Statute states otherwise.[32]

It is well established by case law that a statute should be given its plain meaning.[33] NRS 116.31163 only requires that notice be provided to a party "who has requested notice pursuant to NRS 107.090 or 116.31168" or the holder of a recorded security interest who "has notified the association, 30 days before the recordation of the notice of default, of the existence of the security interest." SFR argues, on page 16 of the Opposition, that the recording of the Deed of Trust is sufficient notice to the HOA under NRS 116.31163(2) or NRS 116.31165(b)(2) and thus obligates the HOA to send notice to the lender; however, if the lender's recording of its Deed of Trust was sufficient notification to the HOA, it does not make sense why the notice provisions specify holders of a ***recorded*** security interest versus all holders of security interests, recorded or not. Judge Jesse Walsh recently found[34], when interpreting these notice provisions of the statute,

> the plain language of NRS 116.31163(2) and NRS 116.31165*(b)(2), both … expressly require that an HOA notice "any holder of a recorded security interest" where the interest holder has provided notification to the HOA of its interest in the property – this language demonstrates that further affirmative action is required of lenders with recorded security interest. Based on the plain language of NRS 116.31163(2) and NRS 116.31165*(b)(2), it is readily apparent that lenders (even those who have recorded their Deed of Trust) must take affirmative steps to "opt-in" to being noticed of a HOA foreclosure sale.

Likewise, NRS 116.31168, "Foreclosure of liens: Requests by interested persons for notice of default and election to sell…," also unconstitutionally shifts the burden to lenders, requiring they "opt in" to receive notice of foreclosure as under NRS 107.090 "as if a deed of trust were being foreclosed" with a *request* that "must identify the lien by stating the names of

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[32] See Opposition pages 15-19.
[33] State v Quinn, 117 Nev. 709, 713, 30 P.3d 1117 (2001).
[34] See Judge Walsh's Minute Order, attached to Plaintiff's RJN as Exhibit 14. Although Judge Walsh's order is not binding precedent upon this Court, it is persuasive.

the unit's owner and the common-interest community."[35] If NRS 116.31168 requires that the holder of the first recorded secured interest must request notice, then it cannot be said the statute requires notice be given simply by virtue of the recording of that interest.

NRS 107.090 does not save the Statute from its constitutional infirmities. Just like NRS 116.31168, the caption of NRS 107.090 highlights the fact that it is a "request for notice" provision, only governing an articulated request. NRS 107.090 is titled: "*Request* for notice of default and sale: Recording and contents; mailing of notice; *request* by homeowners' association; effect of *request*." (Emphasis added.) NRS 107.090(1) goes on to define a request from a "person with an interest" as "any person who has or claims any right, title or interest in, or lien or charge upon, the real property described in the *deed of trust*…." (Emphasis added.) If NRS 107.090 requires that the holder of the first recorded secured interest must request notice, then it cannot be said the statute requires notice be given simply by virtue of the recording of that interest.

This Court has already correctly determined, in this very case, that the Statute is unconstitutional on its face because its "opt-in" request notice provision violates due process. An excerpt from this Court's prior decision, is provided here:

> The Court finds that that the statutes [referring to NRS Chapter 116.31168 and NRS Chapter NRS 107.090] did not in fact require mailed notice to US Bank of the NOD or the NOS. **There is an ambiguity in NRS 116.31168 that the Nevada Legislature has recently clarified by amending the statute. NRS 116.31168's first sentence read alone appears to incorporate NRS 107.090 en toto.** See Id. Section 116.31168(1))"The provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed."). **But its second sentence makes it appear as if the Nevada Legislature may have intended to incorporate only the opt-in provision under NRS**

[35] It should be noted that NRS 116.31168 only applies to a notice of default and election to sell and does not apply to any other form of notice – specifically, the notice of trustee's sale, a document required to be recorded before the sale can take place. Thus, even if the provision required actual notice to the lender of the notice of default and election to sell (and it does not), that alone is insufficient. The lender (and any interested party for that matter) must additionally receive notice of the time and place of sale, and details to cure any alleged default. Notice of *only* the breach *without notice of the corresponding sale* does not comply with the minimum requirements of Mullane, Mennonite, or Small Engine and fails to satisfy the lender's constitutional due process rights before taking its interest in real property.

> **107.090(2).** See id. ("*The request* must identify the lien by stating the names of the unit's owner and the common interest community."(Emphasis added)). A recent amendment to NRS 116.31168 completely amends that section, removing any mention of NRS 107.090 and making clear that the opt-in procedure applies to both NODs and NOSs. See S.B. 306 Section 7, 2015 Leg., 78th Sess. (Nev. 2015).
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> **Contemporaneous amendments** to NRS 116.311663 and 116.311635 applicable to foreclosures where the NOD or NOS are recorded on or after October 1, 2015, respectively, **requires certifies mail of a copy of both the NOD and the NOS to all lienors of record** whose liens were recorded prior to the recordation of the NOD or the mailing of the NOS, respectively. See id. Sections 304, 9 (1). These latter amendments probably avoid any facial due process notice issues going forward, but the very need for these amendments indicates that the Nevada Legislature perceived hat the statutes previously did not require such notice, i.e., that NRS 116.31168 did not incorporate NRS 107.090(3)-(4)
>
> **The Nevada Supreme Court itself has noted that the Nevada Legislature had declined to adopt the Uniform Common Interest Ownership Act's ("UCIOA") recommendation of "reasonable notice . . . to all lien holders of the unit whose interest would be affected**," UCIOA 3-116(j)(4), in favor of its own particularized notice provisions under Chapter 116. See SFR Inves. Pool 1, 334 P.3d at 411. Critically, although the Nevada Supreme Court noted that NRS 107.090 is incorporated by section 116.31168(1), in the very same paragraph, and even when specifically citing to NRS 107.090(3)(b) and (4)(provisions requiring mailed notice of NODs and NOSs to junior lienors of record in deed of trust foreclosures), the Court concluded that notice to a lienor of record requires the lienor to have notified the HOA of the interest before the recordation of the NOD or mailing of the NOS under NRS 116.31163 and 116.311635, respectively. See id. This shows that the Nevada Supreme Court either reads NRS 116.31168 not to incorporate the automatic notice provisions of NRS 107.090(3)-(4) or that it reads the opt-in provisions of NRS 116.31163 and 116.311635 to supersede NRS 107.090(3)-(4)'s automatic notice provision as to HOA foreclosures even if NRS 107.090 is otherwise incorporated into Chapter 116 foreclosures general via NRS 116.31168. (Emphasis added.)

This Court thereafter concluded that, if the automatic notice provisions of NRS 107.090 were not incorporated, notice only by publication of the time and place of the sale, which could *theoretically* reach the lender, would not be constitutionally reasonable: "It is not constitutionally reasonable to require an interested party to monitor the public records for a NOS [notice of sale] or to proactively request notice of a potential future NOS." The Court further determined that "[m]erely recording a notice of sale in the public records and posting it near the courthouse steps where active effort is required to discover it rather than mailing the interested party

a copy of the notice at his easily obtainable address is not constitutionally reasonable" would satisfy due process under *Mennonite* or *Mullane*, for it is the sale itself which had caused the deprivation to the lender and thus that is the event of which the lender had a constitutional right to notice.[36]

Thus this Court need not resort to the doctrine of constitutional avoidance because the plain meaning of the Statute renders it susceptible to only one construction; the Statute is unconstitutional. Further, the Fifth Circuit's use of the constitutional avoidance doctrine in *Small Engine Shop, Inc. v. Cascio,* 878 F.2d 883 (1989), does little to support SFR's argument that it should be equally applicable in this case. The request-notice statute in *Small Engine* read in part, "any person desiring to be notified in the event specific immovable property is seized shall file a request for notice…." Id. at 886. As Plaintiff argued in its motion to dismiss, the Fifth Circuit stated that the State may not "consistent with the Constitution, prospectively shift the entire burden of ensuring adequate notice to an interested property owner regardless of the circumstances." Id. at 884. Accordingly, a request-notice statute, in and of itself, "would constitute an unnecessarily sweeping, 'unreasonable procedure' inconsistent with constitutional limitations upon legislative action." Id. at 890. However, in an attempt to "avoid[] finding constitutional defects in the statute," the court found that the "statute simply supplement[ed] Louisiana's preexisting constructive notice scheme" for foreclosure actions. Id. What sets this case apart from *Small Engine* is that the Nevada Revised Statute's request-notice provisions cannot supplement any type of constructive notice scheme because unlike the Louisiana statute, the Nevada Revised Statutes specifically requires "recorded security interest" holders to request notice. Thus, there is no way to read the Statute constitutionally because when the Statute is given its plain meaning, it "prospectively shift[s] the entire burden of ensuring adequate notice to an interested property owner" inconsistent with the Constitution. Id. at 884.

SFR's interpretation would violate the canon that "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Corley v. United States*, 556 U.S. 303, 314 (2009) (citation omitted). When

[36] See Id.

considering a statute, this Court "must give its terms their plain meaning, considering its provisions as a whole so as to read them 'in a way that would not render words or phrases superfluous or make a provision nugatory.'"[37] If, as SFR suggests, the incorporation of NRS 107.090 mandates notice to the lender, the express request for notice provisions set out in NRS 116.31163, NRS 116.311635 and NRS 116.31168 would be superfluous and meaningless. NRS 116.31163 and NRS 116.311635 both require *any* secured creditor – either senior or subordinate – to give notice to an association before the association has an obligation to provide the notice of default or notice of sale. This would not be necessary if the holder was entitled to notice just from the recorded interest. NRS 116.31163 and NRS 116.311635 would effectively be written out of the Statute if NRS 107.090 became the sole governing notice provision. There would be no reason to include the detailed and express opt-in provisions in the Statute if all that the legislature intended was to mimic, verbatim, the notice requirements of NRS 107.090.

The statutory scheme under NRS 116.31162 to NRS 116.31168 cannot be read to require notice to the holder of the first recorded secured interest simply from the fact of the recording of that interest. If it could, the numerous provisions for the holder of the first recorded secured interest to request notice would all be superfluous. That result is not permitted by the common rules of statutory construction and interpretation.

[37] S. Nevada Homebuilders Ass'n v. Clark County, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005); Harris Assocs. v. Clark County Sch. Dist., 119 Nev. 638, 641-42, 81 P.3d 532, 534-35 (2003) ("no part of a statute should be rendered meaningless").

IV. CONCLUSION

Based on the above, the Trust respectfully requests the Court grant the Motion to Dismiss with Prejudice SFR Investments Pool 1, LLC's Amended Counterclaim, or in the alternative, grant Summary Judgment in favor of the Trust.

DATED this 29th day of February, 2016.

WRIGHT, FINLAY & ZAK, LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of WRIGHT, FINLAY & ZAK, LLP; that service of the foregoing **THE TRUST'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS WITH PREJUDICE SFR'S AMENDED COUNTERCLAIM AND OPPOSITION TO SFR'S COUNTERMOTION FOR SUMMARY JUDGMENT** was made on the 29th day of February, 2016, by using the CM/ECF system which will cause the document to be served upon the following counsel of record:

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/*s/ Natalie C. Lehman, Esq.*
An employee of Wright Finlay Zak

CTADD1200

Exhibit D

Exhibit D

Exhibit D

of the super priority lien. When Nevada went from six to nine months, that language was put in because in condominiums, Fannie Mae regulations are limited to six months. This proposal would add not only the time portion of the super priority lien, but the amounts of fees and collection costs would be limited by Fannie Mae guidelines. The other thing I would like to point out is that I have had this debate about what exactly Fannie Mae says about these fees. Some would argue that Fannie Mae prohibits the payment of collection costs and only permits the payment of assessments. I have found language that states that the collection costs can be paid in addition to the assessments. I think that if we adopt this language which now refers back to Fannie Mae regulations for collection costs, we will be injecting much more uncertainty into what must be paid at foreclosure, which I do not think is a good idea. It seems that the idea of a law is to make things more certain than less certain. That is why it was limited in the past to just the time and not the costs.

Chairman Ohrenschall:
So you are seeing that there would be a conflict between the six months that Fannie Mae allows for condominiums and the nine-month super priority lien?

Michael Buckley:
No. The way the law is currently written, there is no conflict because Fannie Mae limits condominiums to six months and our statute says nine months unless Fannie Mae says six months. I think the proposed amendment language would make things uncertain because I am not convinced that Fannie Mae regulations address this. For example, when Fannie Mae approves a project, there are regulations that address whether the project is approved for Fannie Mae financing. The other part of the process that Fannie Mae deals with is when there has actually been a loan that was sold to Fannie Mae because it was an approved project, and now Fannie Mae holds the mortgage. There is a different set of regulations that deal with what Fannie Mae will pay if it is foreclosing. There is also the lender who made the loan and sold the loan to Fannie Mae. There are different regulations that apply there also. I think this language, which would refer to Fannie Mae guidelines on how much collection costs you pay, is creating uncertainty.

Chairman Ohrenschall:
So you have concerns with the first part of the amendment, but you are all right with the section that comes from S.B. 174?

Michael Buckley:
That is correct.

Assemblyman Carrillo:
Assessments are the HOA's lifeblood. If we pass this bill and eliminate all the assessments from the previous owner, are we removing the lifeblood of an HOA? How will this affect the HOAs? If the HOA is dependent on the assessments, it will have to make up the difference by increasing the assessments for the rest of the homeowners.

Michael Buckley:
We are not changing the super priority lien. It will be six to nine months, which is what the law states now. Once an HOA gets paid the super priority lien, it no longer has a lien against the unit. That is existing law. When an investor buys a unit and resells it, it is great for the association who gets new owners because they start paying the dues on the unit that was foreclosed. If there is a problem with title, if the new owner has some question about having to pay the old owner's assessments, that affects the ability of those units to sell. We are not changing the law or the super priority lien. What we are trying to do is to clear up the title once the association has been paid its super priority lien. The association can only get the super priority lien if there is a foreclosure by the first mortgage. If there is no foreclosure by the first mortgage, the HOA could foreclose. Super priority lien deals only with the foreclosure by the first mortgage. When that has been paid, the old lien is gone, and the unit can go on the marketplace with a clean slate.

Assemblyman Carrillo:
You also stated that this will protect investors. Obviously, homeowners are now purchasing homes at the same prices that were paid 15 years ago. If the whole purpose of this bill is to protect investors, then this is missing the point.

Michael Buckley:
I think you make a very good point. Currently homes are very affordable. People can now afford to buy a home, and may want to buy a foreclosed unit from the bank. The association or an unscrupulous collection company could say, "There is a $4,000 lien on your property." The first-time homebuyer does not know whether he has to pay that or not. This is not a question of protecting the investor; it is a question of protecting the new owner.

Chairman Ohrenschall:
Any other questions? [There were none.]

Garrett Gordon:
I would echo Mr. Buckley's testimony. We have no objection to the language from S.B. 174. We do strongly object to the amendment on page 1. This deals with collection costs. There has been a huge debate over the last couple

Exhibit E

Exhibit E

Exhibit E

DAVID ALESSI *
THOMAS BAYARD *
ROBERT KOENIG **
RYAN KERBOW ***
HUONG LAM ****

* Admitted to the California Bar
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3/15/12

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ATTN: Rock K. Jung
2200 Paseo Verde Parkway, Suite 250
Henderson, NV 89052
Fax: (702) 369-4955

Re: 6727 Maple Mesa St/ The Parks Homeowners Association

Mr. Jung,

The Commission for Common Interest Communities and Condominium Hotels (the "Commission") released Advisory Opinion No. 2010-01 which specifically addresses the issue of whether or not collection costs are included in the super-priority amount. In the opinion, the Commission concluded that associations may collect, as part of the super priority lien, the costs of collecting as authorized by NRS 116.310313. The Commission also amended NAC 116 establishing provisions concerning fees charged by an association or a person acting on behalf of an association to cover the costs of collecting a past due obligation of a unit's owner.

Furthermore, the nine-month super-priority is not triggered until the beneficiary under the first deed of trust forecloses. As such, please be advised that Alessi & Koenig, LLC, on behalf of the HOA, will continue the foreclosure process unless $5,308.74 is paid pursuant to the attached demand letter. This amount includes all past due obligations, plus collection costs and fees.

Regards,

Ryan Kerbow, Esq.

Licensed in Nevada.

Exhibit F

Exhibit F

Exhibit F

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May 14, 2012

TO FORECLOSE OR NOT TO FORECLOSE? This question has plagued many associations during the recent foreclosure crisis. Associations face record delinquencies and are forced to write off more bad debt than ever before. Despite aggressively pursuing collection policies, many associations are reluctant to complete the foreclosure process and be left owning delinquent properties, most of which are upside down with their mortgage loans.

Over the past several months, Alessi & Koenig (A&K) has been working hard to develop innovative solutions to meet this ongoing crisis. As a result, we our pleased to inform you that we have recently come to an understanding with multiple investors who are interested in purchasing upside down and delinquent properties at our HOA sales. In sum, we have an arrangement whereby we ensure the properties we auction on behalf of our HOA clients will be purchased. ***The HOA will be paid in full.*** This includes all past due assessments, late fees, interest and all of AK's legal fees and costs. We anticipate the new owners will not only bring the account current, but will also continue to pay all future assessments.

Given the possibility that associations might end up owning delinquent properties, A&K customarily postponed foreclosure auctions until the association had signed an "authorization to sell" letter. However, given these new circumstances, it is clearly in everybody's best interest for A&K to proceed with sales. This is especially true because our selling the properties will ensure the associations will receive payment in full and will not ever receive an invoice for A&K's fees and costs.

Please find attached a list of properties that will be sold at our upcoming auctions. We will continue to ask for your specific authorization to sell any properties where we cannot guarantee purchase.

Please call us with any questions.

Ryan Kerbow, Esq.
Alessi & Koenig, LLC

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NEVADA ASSOCIATION SERVICES, INC.

HOME CONTACT STATUS REPORT LOGIN DEMANDS HOMEOWNER FORMS

WHO WE ARE YouTube WHAT WE DO ARTICLES PRESS RELEASES COLLECTION TIMES FOR MANAGERS

In Business Las Vegas#vsrwdjkwhq#Qhydgd#Dvvrfldwlrq#Vhuylfhv/#Lqf1#dv#d#krw#frp sdq|#ar#z dwfk1% QDV#Lqf1#z dv#rqh#ri#45#frp sdqlhv#lq#wkh#vwdwh#ar#uhfhlyh#d#Qhydgd#Hqwuhsuhqhxu#Dz dug#Eq#533;1

Nevada Association Services, Inc., has more than a decade of experience specializing in assessment collection. As Nevada's largest assessment collection company, NAS provides its community association clients with the most efficient and cost-effective services available.

Homeowner Talk TV highlights collections in common interest communities.
See video **here**.

NAS, has built a strong reputation for collecting overdue assessments through the process of "non-judicial foreclosure." This collection process is completed at no cost to the association, produces results usually within 30 days.

NAS, Inc. has personnel well versed in every aspect of the "non-judicial foreclosure" process. NAS offers assistance to management companies and associations when delinquent homeowners file for bankruptcy or banks foreclose. Additionally, NAS monitors transfers of title and provides up-to-date homeowner information upon request.

NAS has a 98 percent success rate in collecting delinquent assessments from government agencies, such as HUD and Veteran's Administration, as well as bank-owned properties.

With its extensive history and knowledge of the collections field, NAS confronts collections issues with expertise and professionalism. From governmental officials to board members, NAS, Inc. makes its clients' needs top priority.

Click here for a copy of
NAC 116.470
Also known as the COLLECTION FEE REGULATION R199-09,
which became effective May 5, 2011

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CTADD1208

Hot Topics:
As co-host of Homeowner Talk, David Stone educates, informs homeowners and HOAs

It's not an easy time to be a homeowner. David Stone knows that, and that's why he's dedicated himself to helping people across the Valley through Homeowner Talk, a public service television show that focuses on homeowner and homeowner association issues. The series runs on Las Vegas KCLV Channel 2.

As president of Nevada Association Services, Inc., Stone has spent more than 20 years in the collections and assessment collections fields. NAS, Inc. specializes in non-judicial foreclosures and proactively counsels homeowners associations, providing services to associations and community managers. It's the state's largest assessment collection company, and also one of the most successful: The company has a 98 percent success rate in collecting delinquent assessments from government agencies such as HUD, Veteran's Administration and bank-owned properties.

Before launching NAS, Inc. in 1999, Stone – a licensed real estate broker and real estate investor – owned an assessment collection agency in California. He knows about home ownership issues and homeowners association issues from the inside out, and said he is thrilled to have Homeowner Talk as a platform for sharing his expertise and passion about industry issues.

"We are excited about Homeowner Talk because it's a great way to reach the mass market and help homeowners and HOA board members out there," says Stone.

Stone, along with co-host John Leach, who is a partner in the law firm of Leach Johnson Song and Gruchow, spend each episode talking with guests about important homeowner association topics.

While Homeowner Talk is a new adventure for Stone and executive producer Andrea Behrens, who is vice president, sales & marketing for NAS, Inc., the two have always taken a hands-on approach and made educating the public a priority for years. They work with homeowners associations and community managers and offer free seminars on a wide range of topics.

Behrens says that Homeowner Talk will allow them to further expand their sphere of influence.

"We are proud to associate our company with Homeowner Talk," Behrens says. "There is a lot of misinformation out there right now in the HOA industry and we truly want Homeowner Talk to be a resource." She added that guests will answer questions not only on the show but through the show's website, Homeownertalktv.com. Homeowner Talk also has an active Facebook page.

To ensure that Homeowner Talk is, indeed, a valuable resource, Behrens has been conducting extensive research to find a direction for the program that will be beneficial, all around. "We conducted interviews and focus groups with HOA board members to find out which topics would interest them. We also spoke to non-board members who reside in HOAs," she said.

Behrens added that the show's topics vary and the fact that both hosts have extensive background in the HOA industry helps make for conversations that are lively and entertaining.

Issues range from homeowner maintenance problems to banking questions, landscaping, HOA resources, collections and more. One hot-button issue that Homeowner Talk will address is foreclosure. It's a subject that resonates with many Southern Nevadans. In November of 2009, RealtyTrac found that Nevada led the nation in foreclosures, with one in every 119 households affected.

"For 2010 we will likely see more of the same" says Stone. "I don't see much change in the general economy as a whole. But we like to look on the bright side. Hopefully our company is helping get homeowners associations through trying times."

Indeed, that's what NAS, Inc. is all about. For the past 10 years the collections agency has been willing to work with homeowners and devise payment plans, or other means, to help them avoid foreclosure. Thanks to NAS, Inc.'s ability to communicate with homeowners, Stone says that his company deals with fewer foreclosures now than even five years ago, despite the fact that business has increased nearly 25 percent. At a time when foreclosures are skyrocketing, that's testament to success. So are 10-plus years of service.

David Stone
President, Nevada Association Services, Inc.
Co-Host, Homeowner Talk TV

"These are hard times, but if you follow certain procedures you will end up having a higher level of collection success," says Stone. "Our goal is not only collecting from homeowners, but helping the homeowner stay in their home. And when a bank has foreclosed on a property we work closely with the HOA client to collect monies due to them."

The company works with more than 1,100 associations, and in 2009 alone collected in excess of $15 million in assessments for clients. Because the company charges the homeowner and not the HOA, the associations pay nothing for use of NAS, Inc.'s services.

Now, with Homeowner Talk as his pulpit, Stone looks forward to spreading the word. "I feel like a preacher sometimes, getting the word out to all of these non-believers," he says. Homeowner Talk (homeownertalktv.com) airs Tuesdays at 7 p.m. on Channel 2 in Las Vegas. The program changes monthly.

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CTADD1209

PAID ADVERTORIAL 2010

IN THE SUPREME COURT OF THE STATE OF NEVADA

*****

CASE NUMBER: 65260

GMAC MORTGAGE, LLC,

Appellant,

vs.

KEYNOTE PROPERTIES, LLC; NEVADA ASSOCIATION SERVICES, INC., and PECCOLE RANCH COMMUNITY ASSOCIATION,

Respondents,

*****

Certified Question from the U.S. District Court, District of Nevada,

Case No. 2:13-cv-1157-GMN-NJK.

*****

RESPONDENTS' ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible recusal or disqualification.

Respondent Nevada Association Services, Inc. is a domestic corporation licensed to do business in Nevada. Respondent Peccole Ranch Community Association is a Domestic Non-Profit Cooperative Corporation. Nevada Association Services, Inc. and Peccole Ranch Community Association have been represented in this litigation by Kaleb Anderson of Lipson, Neilson, Cole, Seltzer Garin, P.C.

Dated May 13, 2015

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

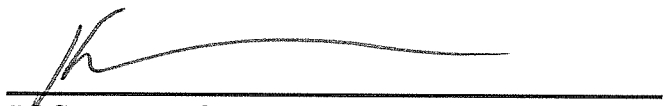

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TABLE OF AUTHORITIES

Cases

Statutes

I. STATEMENT OF ISSUES

The question of law certified to this Court is as follows:

> What effect, if any, is there upon a foreclosure sale conducted pursuant to Nev. Rev. Stat. § 116.31162 when the association refuses to provide the holder of a first security interest under a deed of trust secured by the unit with the specific amount due under the portion of the association's delinquent assessments lien that has been made prior to the deed of trust by Nev. Rev. Stat. § 116.3116(2)(c).

II. STATEMENT OF THE CASE

A. Nature of the Case.

This case is about a lender's failure to exercise its contractual right to pay a nominal lien in order to protect its deed of trust from the effect of a foreclosure of a homeowners association's ("HOA") superior lien. There is nothing an HOA can do to prevent any junior lien holder from paying an HOA's lien. From the time a Nevada HOA records its declaration ("CC&Rs") the HOA has a perfected lien for assessments for common expenses. When a homeowner within the HOA fails to pay assessments, the HOA can enforce the lien, through foreclosure if necessary. As this Court has ruled, an HOA's assessment lien is superior to a first deed of trust. *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014). When an HOA properly forecloses on its assessment lien, the first deed of trust is extinguished. *Id.*

The *SFR* decision does not discuss the content of most deeds of trust, which establishes the rights and obligations of the parties thereto, as well as the

mechanism for a lender to protect itself from ***any*** lien. Lenders knowingly take risks when they make loans, so their deeds of trust address those risks. According to deeds of trust, in exchange for money, the borrower promises to repay the money and to protect the lender's deed of trust by paying assessment, taxes, and liens, among other obligations. If the borrower fails to protect the deed of trust, the deed of trust provides the mechanism for the lender to step in and protect the deed of trust. This mechanism is available to the lender regardless of the HOA's conduct and regardless of the nature of the threat to the deed of trust.

If the borrower fails to protect the deed of trust, the lender may protect it. The lender has little to lose because amount the lender pays in order to protect the deed of trust is added to the balance of the underlying debt which the deed of trust secures. Thus, by operation of the provisions in the deed of trust, if the lender pays the lien, the deed of trust is protected, and the lender may recover its payment from the borrower who promised to protect the deed of trust in the first place.

The HOA is not a party to the deed of trust and is not involved in the loan transaction between the lender and borrower or the borrower's obligations to the lender. ***Accordingly, waiting for a super-priority computation should not deter a lender from choosing to protect its deed of trust because whatever amount the lender pays, including any non-super-priority amount, the lender recovers by adding the amount, automatically, to the debt secured by the deed of trust.***

Thus, the certified question considers only a portion of the issue, the association's conduct, and cannot be fully answered without an analysis of the lender's conduct as well, especially when viewed in light of the lender's rights and remedies regarding the protection of the deed of trust. *See* Nev. Rev. Stat. § 116.1108 (principles of law and equity supplement Nev. Rev. Stat. §116). The effect of the lender's conduct can be stated as a corollary question, which may inform the Court as it considers the certified question:

> What effect, if any, is there upon a foreclosure sale conducted pursuant to Nev. Rev. Stat. § 116.31162 when the lender refuses to protect itself by paying a lien pursuant to the contractual rights and remedies stated within a deed of trust, and instead pursues the HOA for an injury caused by the lender's borrower's breach of the obligation to protect the deed of trust, and the lender's failure to protect itself by paying the lien, and the lender's failure to protect itself by bidding at the publically noticed foreclosure sale?

A lender's inaction should not equate an HOA's liability. Each of the foreclosure notices in this case included the lien amount, and as this Court said, "[I]t is well established that due process is not offended by requiring a person with actual, timely knowledge of an event that may affect a right to exercise due diligence and take necessary steps to preserve that right.... [and] nothing appears to have stopped" the lender from paying the entire lien. *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 418 (2014). The lender failed to protect its deed of trust when its borrower stopped paying assessments. This Court should not do for the lender what the lender was unwilling to do for itself.

NRS 116 is silent with respect to a volunteer HOA Board's or its agent's obligation to answer a junior lien holder's request for a "super-priority" amount. There is disagreement among the HOAs, the Courts, within the Nevada Real Estate Division, and among many other, as to the "super-priority" amount of an HOA's lien. It is unreasonable to expect a private group of volunteer home-owners who comprise the typical HOA Board or the HOA's agent, to embark as legal vanguards on the path of parsing a lien into separate portions and declaring each separate portion's respective priorities—when such a path is not set forth within the CC&Rs or within NRS 116. The borrower's and lender's failure to protect a deed of trust should not add to the volunteer HOA's obligations under NRS 116, which contains no provision requiring the HOA to parse lien amounts and determine their respective priorities at the request of junior lien holders.

The issue is particularly troubling in this case, where the lender slept on its rights for nearly two years without taking any action relative to the HOA's lien. The Notice of Delinquent Assessment Lien was recorded in August of 2011 (II JA000336), and the HOA's foreclosure sale took place in April of 2013 (II JA000337). In that 20 month window of opportunity, the lender admits it knew about that lien and contacted the HOA "and/or" Nevada Association Services ("NAS") about the foreclosure. (Opening Brief p. 3). However, the lender's "failed attempts to satisfy the lien" did not include actually trying to satisfy the lien. In

other words, the lender's efforts to protect the deed of trust did not involve actually paying the lien or pursuing the borrower for the borrower's failure to protect the deed of trust. The sum total of the lender's effort was merely asking questions about an ethereal "super-priority" amount, questions which neither NAS nor the volunteer HOA Board was obligated to respond.

B. Course of Proceedings.

This certification proceeding arises from an underlying nonjudicial foreclosure of the Peccole Ranch Community Association's (the "Association") super-priority assessment lien (the "Lien"). After the Association's foreclosure, the lender ("GMAC") filed a complaint in the U.S. District Court, District of Nevada. (I JA00001). The Association and co-respondent, Nevada Association Services, Inc. ("NAS") filed an Answer on September 13, 2013 (I JA000051-60). Co-defendant Keynote Properties, LLC ("Keynote") filed an Answer and Counterclaim. (I JA000064-83). GMAC filed a Motion to Dismiss Keynote's Counterclaims. (I JA000089-97). Keynote and GMAC filed Motions to Certify Questions to this Court (II JA000282-97 and II JA000320-32 respectively). The U.S. District Court submitted its Order requesting certification of the questions.

On November 13, 2014, this Court issued its Order declining one question, which had been resolved by the *SFR* ruling, and certifying the other question. (II JA000335-44).

III. STATEMENT OF FACTS

A. The Association, the Property, the Deed of Trust.

In 1991, Nevada adopted the UCIOA codified as Nev. Rev. Stat. § 116.

The property at issue in this case is located at 9740 Ravine Avenue, Las Vegas, Nevada 89117, APN 163-06-316-165 (the "Property") (Order at II JA000335). The Property is subject to a Declaration ("CC&Rs") which was recorded by Peccole Ranch Community Association (the "Association") (Order at II JA000336).

On June 26, 2006, Carolyn M. Brown (the "Borrower") executed and delivered a deed of trust (the "Deed of Trust"). (I JA000010-28). The Borrower initialed or signed each page of the Deed of Trust. (*Id.*) On August 3, 2006, the Deed of Trust was recorded. (II JA00035).

The Deed of Trust secured a promissory note memorializing a $245,000.00 loan. (I JA000011). The Deed of Trust contains a Planned Unit Development Rider ("PUD Rider"). (I JA000025-28). GMAC received an Assignment of the Deed of Trust on August 9, 2011, (Assignment of Deed of Trust, I JA 000142)

The Lender had actual knowledge of the Association's lien for assessments as memorialized references to the CC&Rs and to the lien within the Deed of Trust and the PUD Rider. (*See* Deed of Trust and PUD Rider at JA000011, ¶ K; JA000014, § 4; JA000016, § 9; PUD Rider, JA000025-26).

Paragraph K of the Deed of Trust defines "Community Association Dues, Fees and Assessments" as "all dues, fees, assessments and other charges that are imposed on Borrower or the Property by [the Association]." (I JA000011).

Section 4 of the Deed of Trust states that the Borrower "shall pay all taxes, assessments, charges, fines ... which can attain priority over this [Deed of Trust and shall pay] Community Association Dues, Fees, and Assessments..." (Deed of Trust § 4, JA000014). Section 4 of the Deed of Trust also expressly obligates the Borrower to pay "any lien" which has priority over the Deed of Trust. *Id.*

Section 9 of the Deed of Trust relates to GMAC's remedies in the event the Borrower fails to perform the obligations under the Deed of Trust. (JA00016-17).

Section 9 of the Deed of Trust states that the Lender may "do and pay for whatever is reasonable or appropriate to protect [the Deed of Trust]." *Id.*

Section 9 of the Deed of Trust states that the Lender may pay reasonable attorneys' fees to protect the Deed of Trust. *Id.*

In the event GMAC did decide to protect the Deed of Trust, as was its right, then "[a]ny amounts disbursed by Lender under this Section 9 ***shall become additional debt of Borrower secured by this*** [***Deed of Trust***]." (I JA000017) (emphasis added).

The PUD Rider also requires the Borrower to perform all the obligations in the CC&Rs. (PUD Rider, ¶ A, I JA000025).

The PUD Rider echoes § 9 of the Deed of Trust and states that, in the event the Borrower fails to pay dues and assessments, then the Lender may pay them, and that any amount paid by the Lender is added to the underlying debt secured by the Deed of Trust. (PUD Rider at ¶ F, JA000026)

B. The Foreclosure of the HOA's Lien

The Borrower stopped paying the Association's monthly assessments which resulted in Notice of Delinquent Assessment Lien recorded on August 26, 2011 and which included the amount due: $1,188.94. (Notice of Delinquent Assessment Lien; I JA000032).

The total lien amount, $1,188.94 is less than ½ of 1% of the loan amount secured by the Deed of Trust.[1] Still neither the Borrower nor GMAC paid the Lien.

A Notice of Default and Election to Sell Under Homeowner Association Lien was recorded on October 27, 2011 which included the amount due: $2,276.04. (Notice of Default, I JA000034-35). The total lien amount, $2,276.04, is less than 1% of the loan amount secured by the Deed of Trust. Still, the Borrower never paid the Lien, nor did GMAC.

On May 31, 2012, a Notice of Foreclosure Sale was recorded, which included the amount due: $3,807.46. (Notice of Foreclosure Sale, JA000037-38).

[1] This Court may take judicial notice of information which is "Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute." Nev. Rev. Stat. § 47.130.

By then, the total lien amount, $3,807.46 was about 1 ½ % of the loan secured by the Deed of Trust. The Borrower never paid this amount, nor did GMAC.

On April 27, 2013, the sale took place and the Property was sold to Keynote; a Foreclosure Deed was recorded on May 21, 2013. (Foreclosure Deed, I JA000040). The Foreclosure Deed contains recitals regarding the legal compliance of the foreclosure notices. (*Id.*)

GMAC alleged in its Complaint that prior to the sale it requested the super-priority lien amount so it could pre-pay the Lien and stop the pending foreclosure sale. (Compl. ¶ 16; I JA0000004.) Other than the allegations in the Complaint, there is no evidence to that effect in the record of this case.

IV. SUMMARY OF THE ARGUMENTS

The Borrower and the Lender entered into the loan transaction with their eyes wide open with respect to the Association's Lien and the Borrower's and Lender's respective obligations and rights under the Deed of Trust. The Borrower's obligations are to the Lender, both to repay the loan and to protect the Deed of Trust. The Borrower has obligations to the Association, to pay assessments, and to pull weeds, among others. The Association did not participate in the negotiations or the transaction between GMAC and the Borrower. The Association's obligations are to the Association's homeowners.

GMAC's rights to protect the Deed of Trust are expressed in the Deed of Trust itself which allows GMAC to pay assessments (or any liens) when the Borrower fails to do so. GMAC had actual knowledge of the Association's Lien because GMAC alleges it contacted the Association and NAS to obtain a super-priority payoff amount. Assuming that fact as true, and assuming further than the Association and NAS did not provide the information requested, GMAC still refused to do what GMAC had contemplated at the time of the transaction, and contracted with the Borrower, and what would have been reasonable, i.e., to protect itself as expressly stated within the Deed of Trust by paying the Lien.

GMAC could have, and should have, paid the nominal Lien to protect the Deed of Trust because any such payment by GMAC would have automatically been added to the debt secured by the Deed of Trust. GMAC also elected not to appear at the Association's foreclosure sale to protectively bid on the Property in order to protect the value of the Deed of Trust. Other than complaining about not receiving a partial lien payoff amount from NAS or the Association, GMAC did nothing to protect the Deed of Trust by paying the entire Lien and adding the payment to the debt secured by the Deed of Trust.

Whether NAS or the Association provide a partial payoff amount to GMAC has nothing to do with the GMAC's rights to protect the Deed of Trust or to enforce its Deed of Trust, on behalf of, or against GMAC's Borrower, and has

nothing to do with GMAC's election to do nothing.[2] GMAC's choice not to pay the Lien should not invalidate the Association's foreclosure sale. Similarly, the "good faith" requirement for contracts and duties applies to the Association for contracts with the Association, and the duties of the Association's to its members. There is no contract between the Association and GMAC, and the HOA Board's duties to the Association are to comply with the Nev. Rev. Stat. § 116.

Nev. Rev. Stat. § 116 (the "Statute") does not require an HOA to parse a lien or to provide partial lien "payoff amounts" to third-parties. On the other hand, the Statute requires that the foreclosure notices contain the lien amount and that the notices are publically recorded. Nev. Rev. Stat. § 116 prescribes the content of the Notice of Delinquent Assessment (Nev. Rev. Stat. § 116.61162(1)(a)), the Notice of Default (Nev. Rev. Stat. § 116.61162(1)(b)), and the Notice of Sale (Nev. Rev. Stat. § 116.311635). And as this Court has stated in the *SFR* decision, that it is proper for the notices to state the entire lien amount because the notices go to the homeowner as well as other junior lien holders. Thus, whether the Association responds to a junior lien holder's request for a partial lien amount, which is not required under Nev. Rev. Stat. § 116, should have no effect on the validity of the Association's foreclosure sale.

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[2] As a result of GMAC's inaction, GMAC is subject to multitude of equitable defenses such as laches, estoppel, waiver, and failure to mitigate.

The volunteer HOA board's duties and obligations are stated within the CC&Rs and Nev. Rev. Stat. § 116. There is no provision of Nev. Rev. Stat. § 116 which requires the Association to protect GMAC or that the Association owes a duty to GMAC. The good faith obligation of the HOA board attaches to contracts entered into by the volunteer HOA Board on behalf of the Association. Likewise, the duties are "governed by this chapter" require the board to comply with Nev. Rev. Stat. § 116, which does not require any disclosure of partial payoffs or other debtor information to third-parties such as GMAC.

Finally, under the FDCPA, NAS and the Board could be subject to liability by improperly disclosing information regarding association member's debts to third-parties, such as GMAC.

V. ARGUMENT

GMAC's failure to avail itself to its contractual rights and remedies under the Deed of Trust undermines its position that the HOA somehow prevented GMAC from paying the Lien. As set forth in the Deed of Trust, only the Borrower was obligated to protect the Deed of Trust. As set forth in the Deed of Trust, GMAC could pay the Lien when the Borrower failed to protect the Deed of Trust. As set forth in the Deed of Trust, GMAC's protective payment would be added to the debt secured by the Deed of Trust. The Association and NAS did nothing to deprive GMAC's "ability to control its fate." (Opening Brief p. 12).

The volunteer HOA Board is obligated to comply with the Statute, and is not obligated to engage in creative statutory construction with might violate the HOA Board's duties as a fiduciary of the Association subject to the business judgment rule, or otherwise expose the Association to liability for discussing association member's debt with third-party junior lien holders.

A. The Lender's Failure to Avail itself to its Contractual Rights and Remedies under the Deed of Trust does not Create Additional Obligations or Liability on the HOA.

GMAC knew about the Lien but refused to take the action necessary to protect the Deed of Trust. *See, e.g., Alliance Property Management & Dev., Inc. v. Andrews Ave. Equities, Inc.*, 133 A.D.2d 30, 34, 518 N.Y.S.2d 804, 807, (N.Y. App. Div. 1st Dep't 1987) ("those who lend money secured by real property are aware that the security provided by the real property is dependent on the payment by owners of the real property of real estate taxes, and that they should inform themselves of the relevant statutory provisions.") (dictum in dissent).

A promissory note and deed of trust are contracts which expressly define the contracting parties' rights and obligations. *See Garand v. JPMorgan Chase Bank*, 532 F. App'x 693, 696 (9th Cir. 2013) ("the rights and obligations of the parties are dictated by express contracts—the first mortgage note and deed of trust."). Contracts such as the Deed of Trust in this case, expressly provide for the remedies in the event of a breach by one of the parties. "We recognized long ago that a deed of trust 'provides the remedies for its own enforcement.' *Spruill v. Ballard*, 61

App.D.C. 112, 58 F.2d 517, 519 (1932)." *Bryant v. Jefferson Fed. Sav. & Loan Ass'n*, 509 F.2d 511, 513 (D.C. Cir. 1974).

It is axiomatic that a contract bind only the parties to the contract. *See Wallace, Saunders, Austin, Brown, & Enochs, Chtd. Vs. Rahm,* 963 S.W.2d 419,422 (Mo. Ct. App. W.D. 1998) (holding that "A contract generally binds no one but the parties thereto, and it cannot impose any contractual obligation or liability on one not a party to it." [citation omitted]); *See also, Kovacs, M.D. vs. Freeman, et. al.*, 957 S.W.2d 251 (Ky. 1997) (holding it is a "basic principle that the obligations of a contract are limited to the parties thereto and cannot be imposed on a stranger to the contract....").

The Association is not a party to the Deed of Trust (see Deed of Trust, I JA000010-11, (setting forth the parties thereto)). There is no provision within the Deed of Trust, and no authority which obligates the HOA to protect the Deed of Trust. (*Id.*) *See also, Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, No. 2:13-CV-00649-PMP, 2015 WL 301063, at *5 (D. Nev. Jan. 23, 2015) (granting summary judgment against the lender, noting that the lender does not "point to evidence or legal authority indicating that beyond selling the property to the highest bidder, the HOA was responsible for protecting [the lender's] interests in addition to the homeowners' interests.").

It is axiomatic that equity requires clean hands. *See Smith v. Smith*, 68 Nev. 10, 20, 226 P.2d 279, 284 (1951). ("[H]e who seeks equity must do equity, and must come into court with clean hands.").

There are multiple points in time when GMAC could have avoided the loss of the Deed of Trust but failed to do so. At any time prior to the HOA Lien Foreclosure Sale, GMAC could have paid the past due assessments to protect the Deed of Trust. On the day of the HOA Lien Foreclosure Sale, GMAC could have appeared at the public auction, and protectively bid to preserve the Deed of Trust. Instead of taking action, however, GMAC chose inaction. GMAC cannot, through its own inaction, cause a specific and avoidable result and then complain at the result, even if based on an erroneous assumption regarding the effect of the HOA's sale. It is a long held maxim that a mistake of law, where the party knows the facts but is ignorant of the consequences, is no ground for relief, and money paid under such mistake cannot be recovered back. *Upton v. Tribilcock*, 91 U.S. 50 (1875).

Stated more recently by this Court: "[I]t is well established that due process is not offended by requiring a person with actual, timely knowledge of an event that may affect a right to exercise due diligence and take necessary steps to preserve that right." *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 418 (2014) (*quoting In re Medaglia*, 52 F.3d 451, 455 (2d Cir.1995)).

In this case, it is undisputed that GMAC knew about the Association's Lien and what GMAC's rights and remedies were with respect to the Deed of Trust because GMAC's Deed of Trust expressly references the Association and the Association's Lien and CC&Rs. *See* Deed of Trust and PUD Rider at JA000011, ¶ K; JA000014, § 4; JA000016, § 9; PUD Rider, JA000025-26). Paragraph K of the Deed of Trust defines "Community Association Dues, Fees and Assessments" as "all dues, fees, assessments and other charges that are imposed on Borrower or the Property by [the Association]." (I JA000011). Section 4 of the Deed of Trust states that the Borrower "shall pay all taxes, assessments, charges, fines ... which can attain priority over this [Deed of Trust and shall pay] Community Association Dues, Fees, and Assessments..." (Deed of Trust § 4, JA000014). Section 4 of the Deed of Trust also expressly obligates the Borrower to pay "any lien" which has priority over the Deed of Trust. *Id.* Section 9 of the Deed of Trust relates to GMAC's remedies in the event the Borrower fails to perform the obligations under the Deed of Trust. (JA00016-17). Section 9 of the Deed of Trust states that the Lender may "do and pay for whatever is reasonable or appropriate to protect [the Deed of Trust]" and that the Lender may pay and recover against the borrower, reasonable attorneys' fees to protect the Deed of Trust. *Id.*

In the event GMAC did decide to protect the Deed of Trust, as was its right, then "[a]ny amounts disbursed by Lender under this Section 9 ***shall become***

additional debt of Borrower secured by this [Deed of Trust]. (I JA000017) (emphasis added).

The PUD Rider also requires the Borrower to perform all the obligations in the CC&Rs. (PUD Rider, ¶ A, I JA000025). The PUD Rider echoes § 9 of the Deed of Trust and states that, in the event the Borrower fails to pay dues and assessments, then the Lender may pay them, and that any amount paid by the Lender "shall" be added to the underlying debt secured by the Deed of Trust. (PUD Rider at ¶ F, JA000026).

In addition to the express references in the Deed of Trust and the PUD Rider to the HOA, assessments, and liens, at the time of the loan in 2006, the Lender had notice of the Association's Lien because Nevada had adopted Nev. Rev. Stat. § 116 in the year 1991, placing GMAC on notice "by operation of the statute....[thus, an HOA lien foreclosure extinguishing a] first deed of trust recorded prior to a notice of delinquent assessments, does not violate [the lender's] due process rights." *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 418 (2014) (*quoting 7912 Limbwood Court Trust v. Wells Fargo Bank, N.A.*, 979 F.Supp.2d 1142, 1152, D. Nev. 2013); s*ee also, Alliance Property Management & Dev., Inc. v. Andrews Ave. Equities, Inc.*, 133 A.D.2d at 34 (lender should inform themselves of applicable statutes).

It is further undisputed that GMAC knew about the Lien because the Complaint alleges GMAC made multiple contacts with "NAS and/or Peccole Ranch" prior to the HOA Lien Foreclosure Sale. (Opening Brief p. 3; I JA000004:4-7; II JA000337:3-5). Knowing about a lien but refusing to pay the lien does not provide GMAC with an excuse to ignore its contract with the Borrower and choose not pay the lien. Refusing to enforce a contract is not a basis for GMAC to request this Court to void a foreclosure sale. *SFR Investments Pool 1 v. U.S. Bank,* 130 Nev. Adv. Op. 75, 334 P.3d 408, 418 (2014) (person with notice must exercise due diligence and take reasonable steps).

Despite having actual knowledge of the Lien, GMAC elected to take no action to protect the Deed of Trust. Instead, GMAC acts as if the HOA somehow prevented GMAC from paying the nominal Lien. The Court should not do for GMAC that which GMAC was unwilling to do for itself.

B. Nev. Rev. Stat. § 116 Does Not Require HOAs or their Agents to Determine the "Super-priority" portion of an HOA's Assessment Lien or to Provide such Determinations at the Request of Junior Lienholders.

There is no provision within the Statute which requires or permits the HOA to: (1) determine a super-priority amount of the Lien, (2) bifurcate the HOA's Lien, (3) respond to junior lien holder's inquiries, or (4) accept a partial lien payment on the Lien, and then (5) release only a portion of the lien.

The Statute is Nevada's implementation of the UCIOA, which was designed to protect HOAs and balance the power between HOAs and lenders. (Opening Brief, p. 10). The Statute's purpose is well chronicled in the legislative history which the Court considered in the *SFR* decision. As the Court is acutely aware, there is much debate and litigation about the about the precise amount of this super-priority portion of the lien, (e.g., *Horizon at Seven Hills Homeowners Association vs. Ikon Holdings*, NV Supreme Court Case No. 63178).

The Statute ensures that ***when a lender forecloses*** a first security instrument, that the HOA gets paid at least portion of its delinquent assessments as set forth in Nev. Rev. Stat. § 116.3116(2). When a lender timely forecloses, the HOA's lien survives the lender's foreclosure ensuring that the HOA gets paid at least a portion of past due assessments. Nev. Rev. Stat. § 116.3116(2). And when a lender forecloses first and pays the HOA as a result, there is no need for the HOA to foreclose.

On the other hand, if the HOA forecloses its superior lien first, the Statute provides for the distribution of the foreclosure proceeds as follows:

> (c) Apply the proceeds of the sale for the following purposes in the following order:
>
> (1) The reasonable expenses of sale;
> (2) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by

the declaration, reasonable attorney's fees and other legal expenses incurred by the association;

(3) Satisfaction of the association's lien;

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

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

Nev. Rev. Stat. § 116.31164(3)(c) (emphasis added). The Statute does not provide for separate priority tranches for the Association's Lien. The Lender's interest is in the fourth priority position for any excess proceeds. Thus, there is no suggestion that Nev. Rev. Stat. § 116.31164(3) requires the HOA make a "super-priority" determination or to conduct any bifurcation of the HOA Lien and then publish or provide the information prior to the foreclosure sale to third-parties.

Additionally, the Statute sets forth the notice requirements. This Court has already determined that the total amount of the lien is appropriately stated in the foreclosure notices. *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 418 (2014) ("The notices went to the homeowner and other junior lienholders, not just U.S. Bank, so it was appropriate to state the total amount of the lien.").

In this case, the Complaint admits the foreclosure notices included the amounts. (Complaint ¶¶ 12, 13, 14; I JA000003). The Notice of Delinquent Assessment included the amount of the Lien pursuant to Nev. Rev. Stat. § 116.61162(1)(a). *See* Notice of Delinquent Assessment Lien (I JA000032). The Notice of Default and Election to Sell Under Homeowners Association Lien

included the amount of the Lien pursuant to Nev. Rev. Stat. § 116.61162(1)(b). *See* Notice of Default (I JA000034). And finally, the Notice of Foreclosure Sale included the amount of the lien pursuant to Nev. Rev. Stat. § 116.311635. *See* Notice of Foreclosure Sale (I JA000037-38).

GMAC posits that "there must be a requirement that when a junior lien holder tenders funds to pay off a lien, the lienholder must accept those funds." (Opening Brief p. 8. (*citing SFR,* 334 P.3d at 414). While that may be true, the facts do not exist in this case. The operative language of GMAC's statement is a junior lien holder offering to "pay off a lien" rather than merely attempting to make a partial payment on a lien. The argument is a non-starter in this case because the Complaint does not allege that GMAC tendered anything. (Compl. ¶ 18, I JA000004). And because the Statute does not require or establish how the volunteer HOA Board or NAS would: (1) determine the highly disputed "super-priority" amount of the Lien, and then (2) bifurcate the Lien, and then (3) communicate the bifurcated lien amount to third-parties, and then (4) accept payment on a bifurcated portion of the Lien, and then (5) release a bifurcated portion of the Lien, [3] the volunteer HOA Board would not be acting in the best interest of the Association as fiduciaries subject to the business judgment rule.

[3] Even application of the principle of Equitable Subrogation requires the junior lien to completely "pay[] off" the senior lien, rather than making a partial payment in order to leapfrog the priority of the senior lien. *See Am. Sterling Bank v. Johnny*

1. The 2013 Amendment Does Not Apply to Foreclosures.

GMAC notes that after the foreclosure sale in this case, Nev. Rev. Stat. § 116.4109(7) was amended to ensure that a holder of a security interest in a unit would receive a "statement of demand" which includes: "the amount of the monthly assessment for common expenses and ***any unpaid obligation of any kind***, including, without limitation, management fees, transfer fees, fines, penalties, interest, collection costs, foreclosure fees and attorney's fees currently ***due from the selling unit's owner***" Nev. Rev. Stat. § 116.4109(7) (emphasis added). However, in addition to taking effect after this foreclosure sale, the new requirement does not apply to HOA lien foreclosures.

First, as stated by the title of this subsection, "***Resales of units***" this subsection of the Statute applies only when an owner resells a unit and does not apply to HOA lien foreclosures. As emphasized above, this subsection is not part of the lien foreclosure subsection, Nev. Rev. Stat. § 116.3116. Additionally, the clear and unambiguous language of the statute requiring the statement of demand applies to "fees currently due from the ***selling unit's owner***." Nev. Rev. Stat. § 116.4109(7) (emphasis added). Thus the unit's owner is the seller, not a foreclosing entity.

Mgmt. LV, Inc., 126 Nev. Adv. Op. 41, 245 P.3d 535, 539 (2010) (*quoting Houston v. Bank of America*, 119 Nev. 485, 488, 78 P.3d 71, 73 (2003) (*quoting Mort v. U.S.*, 86 F.3d 890, 893 (9th Cir.1996)).

Second, the statement of demand includes all fees and costs, but does not require a determination of any priority of each of the fees and costs. Thus, when a ***unit owner*** is selling a unit, a secured creditor may request a statement of demand and the HOA must provide the statement, including all fees and costs, assuming the requester pays the fee. (Nev. Rev. Stat. § 116.4109(7)). In addition, because the unit owner is conducting the sale, a statement of demand is useful because there are no foreclosure notices or other notices which would inform the requester of any outstanding lien amounts.

Also, through this subsection of the Statute, the Unit's Owner consents to the HOA's third-party disclosure of the homeowner's debt information. Such consent of the unit's owner is not obtained in an involuntary HOA Lien Foreclosure Sale, where each of the foreclosure notices already appropriately contains the total Lien amount.

GMAC's choice to ignore the publically recorded foreclosure notices does not provide a basis for the Court to set aside an HOA Lien Foreclosure Sale.

C. The Volunteer HOA Board's Duties and Obligations are to the Association, and to Comply with the Statute and the Volunteer HOA Board has no duty to Construe the Statute in a way which adds requirements.

The Volunteer HOA Board's duties and obligations are to the Association and are set forth in the CC&Rs and in Nev. Rev. Stat. § 116 which states:

> [The HOA Board] acts on behalf of the association. In the performance of their duties, the officers and members of the executive board are fiduciaries

> and shall act on an informed basis, in good faith and in the honest belief that their actions are in the best interest of the association. Officers and members of the executive board: (a) Are required to exercise the ordinary and reasonable care of officers and directors of a nonprofit corporation, subject to the business-judgment rule…

Nev. Rev. Stat. § 116.3103(1). The business judgment rule is "presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 632, 137 P.3d 1171, 1178-79 (2006) (citation omitted). The same year Nevada adopted the UCIOA, Nevada codified the Business Judgment Rule as Nev. Rev. Stat. 78.138.

In this case, the volunteer HOA Board and NAS were acting pursuant to their fiduciary duties, subject to the business judgment rule, by complying with the Statute as it was written, which sets forth the notice requirements for a foreclosure sale. As GMAC admits, the Statute does not say that the HOA or NAS must: (1) determine the super-priority amount, (2) bifurcate the lien, and (3) respond to junior lien holder's questions regarding the HOA's determination regarding the bifurcation and priority of the lien. *See* Opening Brief pp. 4-5 (discussing "unstated requirements" that are "too time-consuming and voluminous" to state expressly and "goes without saying."). Nevertheless, GMAC would have the group of volunteers HOA Board members and NAS unilaterally modify the Statute to include unstated requirements.

The Association and NAS respectfully disagree. A fiduciary duty subject to the business judgment rule does not requires a volunteer HOA Board to add requirements to the Statute, or to otherwise invent additional obligations on the Association where none existed. *See, e.g., Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, No. 2:13-CV-00649-PMP, 2015 WL 301063, at *5 (D. Nev. Jan. 23, 2015) (no "evidence or legal authority indicating that beyond selling the property to the highest bidder, the HOA was responsible for protecting [the lender's] interests in addition to the homeowners' interests.")

Indeed, GMAC recognizes the importance of statutory compliance when it cites a case applying Nev. Rev. Stat. § 107.080, where failure to comply with that statute was fatal to the foreclosure. (Opening Brief, p. 6, (*citing Title Ins. & Trust Co. v. Chicago Title Ins. Co.*, 97 Nev. 523, 527, 634 P.2d 1216, 1218 (1981))).

The Association and NAS do not provide the super-priority amount because, as fiduciaries of the Association acting under the business judgment rule, the Statute does not require the Association or NAS to provide GMAC with information that would require the HOA Board and NAS to engage in speculative computations. As noted *ad nauseam*, above, each of the foreclosure notices provide GMAC with the information need for GMAC to protect the Deed of Trust. GMAC's cries that the Association and NAS have somehow prevented GMAC from protecting the Deed of Trust ring hollow. In a word, the answer to the

certified question before the Court is: none. There is no effect on a foreclosure sale conducted pursuant to Nev. Rev. Stat. § 116.31162 when the Association does not delineate the super-priority amount of its lien.

D. The Statute's Notice Provision Provides all Junior Lien Holders with Sufficient Information to Protect their Interests.

The Statute provides sufficient notice to all junior lien holders who are actually interested in protecting their interests. The Statute already requires the foreclosure notices to contain the information required for all junior lien holders to protect their interests. (Nev. Rev. Stat. §§ 116.31163-31165).

GMAC argues that the HOA is obligated to provide "interested parties" with current payoff figures and deems the non-requirement as "universally understood" because there is no authority in twenty-one other UCIOA adopting jurisdictions. (Opening Brief p. 9). However, a more logical interpretation of the absence of authority is that the other UCIOA jurisdictions have concluded what this Court has already stated, that the foreclosure notices required by the Statute are sufficient and appropriately contain the total lien amount. *SFR Investments Pool 1* 130 Nev. Adv. Op. 75, 334 P.3d at 418.

The notice provisions of the Statute do not say "if you hold a Deed of Trust, then you may contact the HOA for a different lien amount." What a junior lien holder elects to do (or not do) with the publically recorded lien payoff information

is completely up to the junior lien holder and completely beyond the control of the HOAs.

1. The Association and NAS have not violated Nev. Rev. Stat. § 116.1113.

GMAC argues that the foreclosure was not in good faith due to the Association's and NAS's "oppressive and unfair actions" and cites Nev. Rev. Stat. § 116.1113 in support. (Opening Brief pp. 16, 17). GMAC's characterization of oppression is unpersuasive. A more accurate description of the Association's conduct is that, by recording the foreclosure notices as required by the Statute, the Association and NAS have put the entire world on notice of the Association's Lien, the amount of the Lien, and of the steps any junior lien holder could take to pay the Lien to protect the junior lien. *See Allen v. Webb*, 87 Nev. 261, 272, 485 P.2d 677, 684 (1971) (recording of real property instrument provides notice to the world).

The Association's and NAS's undisputed actions were simply complying with the notice provisions of the Statute, i.e., recording the Notice of Delinquency, Notice of Default, and Notice of Sale. It is undisputed that GMAC knew about the sale, even to the point that the sale was postponed once. (Complaint ¶ 15; I JA000004). But rather than protect the Deed of Trust, GMAC chose to do nothing.

E. The Volunteer HOA Board is Not Obligated to Risk Liability Under the Fair Debt Collections Practices Act ("FDCPA") simply because a Lender refuses to protect its Deed of Trust.

The volunteer HOA Board hired NAS to effect collection of the Borrower's HOA debt through the enforcement of the HOA's Lien pursuant to the Statute. Debt collection is subject to the statutes which apply to such activities. One such statute is the FDCPA, which states:

> (b) Communication with third parties
> Except as provided in section 1692b of this title, ***without the prior consent of the consumer given directly to the debt collector***, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, ***a debt collector may not communicate***, in connection with the collection of any debt, ***with any person other than the consumer***, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

15 U.S.C. § 1692c(b). Violation of the FDCPA subjects NAS and the Association to civil liability, including damages and the costs of any resulting litigation. 15 U.S.C. § 1692k.

In this case, as noted above, the Association's duties and obligations, are set forth in the CC&Rs and in Nev. Rev. Stat. § 116.3103(1) (fiduciary in best interests of association, subject to the business judgment rule).

As noted above, the business judgment rule requires the HOA Board to act in the Association's best interest. *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 632, 137 P.3d 1171, 1178-79 (2006).

In this case, the volunteer HOA Board and NAS were acting pursuant to their duties under the Statute because none of the FDCPA exceptions apply to the rule barring communications with third-parties, such as GMAC. The Complaint does not allege that: (1) GMAC has obtained the Borrower's consent to discuss the Borrower's debt with NAS or the Association, or that (2) GMAC has a court order requiring NAS or the Association to discuss the consumer's debt, or (3) that GMAC was trying to effect a postjudgment judicial remedy. *See* Complaint I JA000001-42.

Therefore, the Court should not require the volunteer HOA Board or its agent NAS to participate in conduct (the disclosure of debt information to third-parties) which, in the volunteer HOA Board's business judgment, and as a fiduciary of the Association, may expose the Board or the Association to liability for violation of the FDCPA by discussing debts of the Borrower with the third-party, GMAC.

VI. CONCLUSION

The Court should not do for GMAC, what GMAC was unwilling to do for itself. Contrary to GMAC's allegations, neither the Association nor NAS acted as an impenetrable barrier to GMAC's right to pay the Lien in order to protect its Deed of Trust. Each of the publically recorded foreclosure notices communicated,

to all persons who gazed upon them, the amount of the lien. GMAC chose to ignore the obvious and failed to protect its Deed of Trust, either by paying the Lien or by protectively bidding at the foreclosure sale. The Court should answer the certified question as follows:

> There is no effect on a foreclosure sale conducted pursuant to Nev. Rev. Stat. § 116.31162 when an association does not provide a super-priority amount because the Statute already provides lenders with sufficient information to enable them to protect their Deeds of Trust. Communicating a lien amount, through the publically recorded foreclosure notices is not thwarting a lender's effort to protect its Deed of Trust, especially in instances where the Deed of Trust, and any riders thereto, expressly provide a mechanism for lenders to protect the Deed of Trust, and contains remedies for the borrower's failures to protect the Deed of Trust. Creating additional requirements on the HOAs or their agents, which are not already stated within the text of the Nev. Rev. Stat. § 116, is the province of the legislature.

Respectfully submitted, this 13 day of May, 2015.

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CERTIFICATE OF COMPLIANCE (BASED UPON NRAP FORM 9)

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word in 14 point Times New Roman type style.

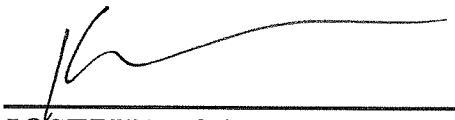
2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points, and contains 7,456 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of appellate procedure, in particular NRAP 28(C)(1), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to page and volume number, if any, of the transcripts or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the

accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated May 13, 2015

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.



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CERTIFICATE OF SERVICE

I certify that I am an employee of Lipson, Neilson, Cole, Seltzer, Garin, P.C. and that on this 13th day of May, 2015 the **RESPONDENTS' ANSWERING BRIEF** was filed electronically with the Clerk of the Nevada Supreme Court and therefore electronic service was made in accordance with the master service list as follows:

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DISTRICT COURT

CLARK COUNTY, NEVADA

ALESSI & KOENIG, LLC, a Nevada limited liability company, Plaintiff, vs. PETER A. JENSEN, an individual, TAMERA A. JENSEN, an individual, BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, an unknown entity; USAA FEDERAL SAVINGS BANK, an unknown entity; OCWEN LOAN SERVICING, LLC, a foreign limited liability company; DOE INDIVIDUALS I through X; and ROE CORPORATIONS XII through XXX, inclusive, Defendants.	Case No.: A-13-685172-C Dept. No.: VI **DEFENDANT BAC'S MOTION FOR SUMMARY JUDGMENT**
BAC HOME LOANS SERVICING, LP FKA COUNTYWIDE HOME LOANS SERVICING, LP Counter-Claimant,	

vs.

ALESSI & KOENIG, LLC, a Nevada limited liability company; THE PARKS HOMEOWNERS ASSOCIATION, a Nevada non-profit corporation; SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; DOE INDIVIDUALS DOES 1-10, inclusive; and ROE CORPORATIONS 11-20, inclusive,

Counter-Defendants.

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

Counter-Claimant

vs.

BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP, FKA COUNTRYWIDE HOME LOANS SERVICING, LP; USAA, FSB, a federal savings bank; PETER A. JENSEN, an individual; TAMMERA V. JENSEN, an individual; DOES 1 through 10 and ROE BUSINESS ENTITIES 1 through 10 inclusive,

Counter-Defendant/Cross-Defendants.

Defendant/Counter-claimant, BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP, (hereinafter "BAC" or "Defendant") by and through its attorneys of record, Dana Jonathon Nitz, Esq., Natalie C. Lehman, Esq., and Kristine A. O'Quinn, Esq. of the law firm of Wright, Finlay & Zak, LLP, hereby submits its Motion for Summary Judgment.

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The Motion is based on the attached Memorandum of Points and Authorities, the Declaration of counsel filed concurrently herewith, the Request for Judicial Notice filed concurrently herewith, all papers and pleadings on file herein, all judicially noticed facts, and any oral or documentary evidence that may be submitted at a hearing on this matter.

DATED this 13th day of June, 2016.

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NOTICE OF HEARING

PLEASE TAKE NOTICE that the undersigned will bring **DEFENDANT BAC'S MOTION FOR SUMMARY JUDGMENT** on the 19 day of July, 2016, at the hour of 8:30 a.m., or as soon thereafter as counsel may be heard.

DATED this 13th day of June, 2016.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This quiet title action involves the claimed rights and interests in real property located at 6727 Maple Mesa Street, North Las Vegas, Nevada 89084 (the "Property"). BAC is the current beneficiary under the first Deed of Trust, as defined below, and seeks a judicial determination that the first Deed of Trust was not extinguished by the HOA foreclosure sale held on February 13, 2013 (the "HOA Sale") and SFR took subject to that Deed of Trust, or, in the alternative, the HOA Sale should be set aside because it was invalid.

This Motion seeks summary judgment on the following grounds. First, the tender of the nine months of assessments by BAC was sufficient to discharge the HOA's super-priority lien, thus rendering the HOA Sale either void, or subject to BAC's deed of trust. Second, the sale of the property for approximately nine percent of its fair market value was commercially unreasonable as a matter of law. Third, the HOA sale must be declared invalid because the sale failed to comply with NRS 116.3116 et seq. because the foreclosure notices were not sent certified mail and first-class mail to all necessary interest holders and included additional costs and fees that are impermissible under the statute. Finally, the CC&Rs of the HOA preclude the extinguishment of the first Deed of Trust. Based on the foregoing, BAC respectfully requests that this Court enter summary judgment in its favor.

II. STATEMENT OF UNDISPUTED FACTS

Jensen Loan Documents

1. On or about February 19, 2004, Peter A. Jensen and Tammera A. Jensen (hereinafter "Jensen") purchased the property located at 6727 Maple Mesa Street, North Las Vegas, Nevada 89084; APN 124-22-314-059 (hereinafter "Property").[1]

2. On August 6, 2004, the Jensen Deed of Trust was recorded, naming Countrywide Bank, a Division of Treasury Bank, N.A., as the Lender, CTC Real Estate Services as the Trustee, and Mortgage Electronic Registration Systems, Inc. (MERS), as beneficiary acting

[1] A true and correct copy of the Grant, Bargain and Sale Deed recorded in the Clark County Recorder's Office as Book and Instrument Number 200402193023 is attached to BAC's RJN as **Exhibit 1**.

solely as a nominee for Lender and Lender's successors and assigns, and secured a loan in the amount of $212,000.00 (hereinafter the "Jensen Loan").[2]

3. On February 9, 2010, an Assignment of Deed of Trust was recorded whereby MERS assigned all of its right, title and interest in the Deed of Trust to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP.[3]

4. The Property is subject to a Declaration of Covenants, Conditions, and Restrictions (the "CC&Rs"), which were recorded on or about August 18, 2000.[4]

HOA Lien Documents

5. Section 5.08 of the CC&Rs, entitled "Mortgage Protection" states, "[N]o lien created under this Article V or under any other Article of this Declaration, nor any lien arising by reason of any breach of this Declaration, nor the enforcement of any provision of this Declaration, shall defeat or render invalid the rights of the beneficiary under any Recorded Mortgage of first and senior priority now or hereafter upon a Lot, made in good faith and for value, perfected before the date on which the Assessment sought to be enforced became delinquent. However, after the foreclosure of any such first Mortgage, such Lot shall remain subject to this Declaration and shall be liable for all regular Assessments and all special Assessments levied subsequent to the date six (6) months prior to the institution of an action to foreclose on any such first Mortgage."[5]

6. On December 30, 2010, a Notice of Delinquent Assessment Lien ("Lien") was recorded by Alessi & Koenig, LLC (hereinafter "A&K" or "HOA Trustee") on behalf of The Parks Homeowners Association (hereinafter "the HOA").[6] The Lien listed a total amount due

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[2] A true and correct copy of the Deed of Trust recorded as Book and Instrument Number 20040806-0003565 is attached to BAC's RJN as **Exhibit 2.**

[3] A true and correct copy of the Assignment of Deed of Trust recorded as Book and Instrument Number 201002090000330 is attached to BAC's RJN as **Exhibit 3.**

[4] A true and correct copy of the Declaration of Covenants, Conditions, and Restrictions recorded as Book and Instrument Number 20000818-01058 is attached to BAC's Supplemental RJN as **Exhibit 14.**

[5] Id. at p. 27.

[6] A true and correct copy of the Notice of Delinquent Assessment Lien recorded as Book and Instrument Number 201012300002450 attached to BAC's RJN as **Exhibit 4.**

of $1,213.48.[7] Further, the Lien stated that "$1,163.48 represent Collection and/or Attorney fees, assessments, interest, late fees, and service charges. $50.00 represent collection costs."[8]

7. On March 14, 2011 a Notice of Default and Election to Sell Under Homeowners Association Lien ("Notice of Default") was recorded against the property.[9] The Notice of Default listed a total amount due of $2,418.48.

8. On January 27, 2012, a Notice of Trustee's Sale was recorded against the property by the HOA Trustee.[10]

9. On August 14, 2012, a second Notice of Trustee's Sale was recorded against the Property by the HOA Trustee.[11] The Notice of Sale listed a total amount due of $5,308.74.[12] The Notice of Sale was mailed via certified mail only.[13]

10. On February 19, 2013, a Trustee's Deed Upon Sale was recorded showing that a sale occurred on February 13, 2013 (hereinafter the "HOA Sale"), whereby SFR Investments Pool 1, LLC ("Buyer") acquired its interest in the Property, if any, for $12,100.00.[14]

Super Lien Tender of Payment

11. On February 24, 2012, BAC, through prior counsel, Miles, Bauer, Bergstrom & Winters, LLP, (hereinafter "MBBW"), requested a current payoff demand and account ledger

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[7] Id.

[8] Id.

[9] A true and correct copy of the Notice of Default and Election to Sell Under Homeowners Association Lien recorded as Book and Instrument Number 20110314000250 7 attached to BAC's RJN as **Exhibit 5.**

[10] A true and correct copy of the Notice of Trustee's Sale recorded as Book and Instrument Number 20120127000222 3 attached to BAC's RJN as **Exhibit 6.**

[11] A true and correct copy of the Notice of Trustee's Sale recorded as Book and Instrument Number 20120814000190 2 attached to BAC's RJN as **Exhibit 7.**

[12] Id.

[13] See Notice of Sale mailings, bates-stamped A&K0058-0060, attached hereto as **Exhibit A**; see also HOA Trustee's Status Report, bates-stamped A&K0183-0184, attached hereto as **Exhibit B** (the HOA Trustee's Status Report indicates that the Notice of Sale recorded on August 14, 2012 was mailed via certified mail, whereas the Status Report indicates that the prior Notice of Sale recorded on January 27, 2012 was mailed via certified *and* regular mail).

[14] A true and correct copy of the Trustee's Deed Upon Sale, recorded as Book and Instrument Number 20130219000294 3, is attached to BAC's Supplemental RJN as **Exhibit 12.**

from the HOA and/or HOA Trustee.[15]

12. On March 15, 2012 MBBW received a payoff demand from HOA Trustee (the "Payoff Demand"), which did not include a statement of the super priority lien amount.[16]

13. At the time of the Payoff Demand, one month of assessments was equal to $74.00.[17] The Payoff Demand showed the total assessments due to be $1,742.42, nearly two years' worth of assessments; however the total amount demanded by the HOA Trustee to prevent the foreclosure sale was three times this amount at $5,308.74.[18]

14. The Payoff Demand was accompanied by a cover letter ("A&K Letter") in which the HOA Trustee refused to provide the super priority lien amount and demanded full satisfaction of the HOA's lien plus HOA Trustee's fees and costs in order to stop the foreclosure sale.[19] In the letter, **the HOA Trustee stated**, as a basis for demanding a full payoff, that **"the nine month super-priority is not triggered until the beneficiary under the first deed of trust forecloses."**

15. On March 19, 2012, BAC authorized a Wire Payout Request to MBBW in the amount of $660.00, which is the undisputed equivalent of 9 months of assessments. BAC did so for the purpose of tendering payment of the amount sufficient to protect its first priority deed of trust. On March 29, 2012, MBBW, on behalf of BAC, tendered a super priority lien payoff in the amount of $666.00 to the HOA Trustee.[20]

16. On April 11, 2012, the HOA Trustee refused to accept the tender of the super priority lien payoff.[21]

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[15] See Payoff Demand from MBBW, bates-stamped A&K0119, attached hereto as **Exhibit C**; see also **Exhibit B** at A&K0183; see also Deposition of A&K's N.R.C.P. 30(b)(6) designee, David Alessi, at p. 49:23-50:5, attached hereto as **Exhibit D**.

[16] See A&K0120-0131, attached hereto as **Exhibit E**; see also **Exhibit B** at A&K0183

[17] See **Exhibit E** at A&K0130-0131.

[18] See Id. at A&K0121-0122

[19] See Id. at A&K0120

[20] See Correspondence from MBBW to A&K, bates-stamped BAC158-160, attached hereto as **Exhibit F**; see also **Exhibit D** at p. 54:14-55:6

[21] See **Exhibit D** at p. 57:18-22; see also **Exhibit F** BAC142

III. LEGAL ARGUMENT

A. MOTION FOR SUMMARY JUDGMENT LEGAL STANDARD

The primary purpose of a summary judgment procedure is to secure a "just, speedy, and inexpensive determination of any action." Albatross Shipping Corp. v. Stewart, 326 F.2d 208, 211 (5th Cir. 1964); accord McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005). Although summary judgment may not be used to deprive litigants of trials on the merits where material factual doubts exist, summary proceedings promote judicial economy and reduce litigation expenses associated with actions clearly lacking in merit. Id. Summary judgment enables the trial court to "avoid a needless trial when an appropriate showing is made in advance that there is no genuine issue of fact to be tried." Id. (quoting Coray v. Hom, 80 Nev. 39, 40-41, 389 P.2d 76, 77 (1964)).

"Summary judgment is appropriate if, when viewed in the light most favorable to the nonmoving party, the record reveals there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." DTJ Design, Inc. v. First Republic Bank, 130 Nev. Adv. Op. 5, 318 P.3d 709, 710 (2014) (citing Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 713, 57 P.3d 82, 87 (2002)). The plain language of Rule 56(c) "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 2552 (1986) (adopted by Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005)). In such a situation, there can be "no genuine issue as to any material fact" because a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. Id.

While the party moving for summary judgment must make the initial showing that no genuine issue of material fact exists, where, as here, the non-moving party will bear the burden of persuasion at trial, the party moving for summary judgment need only: "(1) submit[] evidence that negates an essential element of the nonmoving party's claim, or (2) 'point[] out ... that there is an absence of evidence to support the nonmoving party's case.'" Francis v. Wynn Las Vegas,

LLC, 127 Nev. Adv. Op. 60, 262 P.3d 705, 714 (2011). Once this showing is met, summary judgment must be granted unless "the nonmoving party [can] transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact." Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 603, 172 P.3d 131, 134 (2007).

Parties resisting summary judgment cannot stand on their pleadings once the movant has submitted affidavits or other similar materials. N.R.C.P. 56(e). Affidavits which do not affirmatively demonstrate personal knowledge are insufficient. Id.; accord Coblentz v. Hotel Employees & Rest. Employees Union Welfare Fund, 112 Nev. 1161, 1172, 925 P.2d 496, 502 (1996); see also British Airways Bd. v. Boeing Co., 585 F.2d 946, 952 (9th. Cir. 1978) (applying analogous federal rule). Likewise, "legal memoranda and oral argument are not evidence and do not create issues of fact capable of defeating an otherwise valid motion for summary judgment." British Airways, 585 F.2d at 952; accord N.R.C.P. 56(e).

Though inferences are to be drawn in favor of the non-moving party, an opponent to summary judgment must show that he can produce evidence at trial to support his claim. Van Cleave v. Kietz-Mill Minit Mart, 97 Nev. 414, 417, 633 P.2d 1220, 1222 (1981). The Nevada Supreme Court has rejected the "slightest doubt" standard, under which any dispute as to the relevant facts defeats summary judgment. Wood v. Safeway, 121 Nev. at 731, 121 P.3d at 1031. A party resisting summary judgment "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 302, 622 P.2d 610, 621 (1983) (quoting Hahn v. Sargent, 523 F.2d 461, 467 (1st Cir. 1975)). Rather, the non-moving party must demonstrate specific facts as opposed to general allegations and conclusions. LaMantia v. Redisi, 118 Nev. 27, 29, 38 P.3d 877, 879 (2002); Wayment v. Holmes, 112 Nev. 232, 237, 912 P.2d 816, 819 (1996). Indeed, an opposing party "is not entitled to have [a] motion for summary judgment denied on the mere hope that at trial he will be able to discredit movant's evidence; he must at the hearing be able to point out to the court something indicating the existence of a triable issue of fact." Hickman v. Meadow Wood Reno, 96 Nev. 782, 784, 617 P.2d 871, 872 (1980) (quoting Thomas v. Bokelman, 86 Nev. 10, 14, 462

P.2d 1020, 1022-23 (1970)); see also Aldabe v. Adams, 81 Nev. 280, 285, 402 P.2d 34, 37 (1965) ("The word 'genuine' has moral overtones; it does not mean a fabricated issue.")); Elizabeth E. v. ADT Sec. Sys. W., 108 Nev. 889, 892, 839 P.2d 1308, 1310 (1992).

B. BAC'S TENDER WAS SUFFICIENT TO DISCHARGE THE SUPER PRIORITY PORTION OF THE HOA LIEN

BAC's tender was sufficient to discharge the super priority portion of the HOA lien. The super priority lien tender was (1) sufficient in amount and (2) wrongfully rejected. A&K admitted that BAC's tender was received and that they had a policy of rejecting such tenders of the super priority lien. BAC's Deed of Trust remained the superior encumbrance on the Property because the tender operated to discharge the super priority lien prior to the HOA Sale. Because the super priority lien was discharged prior to the HOA Sale, SFR took its interest subject to the first Deed of Trust. SFR therefore cannot prevail on its quiet title claim against BAC. Consequently, this Court should enter summary judgment in favor of BAC.

Nevada's HOA lien statute in NRS 116.3116 is a creature of the UCIOA and thus commentary to the UCIOA aid in the interpretation of the statute. SFR, 334 P.3d at 410. Much like the UCIOA, NRS 116.3116(2)(b) elevates the priority of HOA liens over most other liens except, among others, first deeds of trust. Id. There is a partial exception to the priority of a first deed of trust commonly known as the super-priority lien. Id. at 410-11. NRS 116.3116(2) defines the super-priority lien as:

> The [HOA] lien also prior to all security interest described in paragraph (b) to the extent of any [maintenance and nuisance-abatement] charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses [i.e., HOA dues] based on the periodic budge adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately *preceding the institution of an action to enforce the lien* unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. . .

Id. (emphasis added).

The super-priority lien thus may consist of up to nine months of assessments plus maintenance and nuisance abatement charges.[22] The UCIOA's definition of the super-priority

[22] There is no contention that maintenance and nuisance abatement charges were included in the

lien contains similar language as NRS 116.3116(2). The main difference between the two (for purposes of this case) is that the UCIOA super-priority lien is limited to six months immediately preceding the institution of an action to enforce the lien. Id. at 411, fn. 1, citing 1982 UCIOA § 3-116.

The Uniform Law Commission (ULC) has established a Joint Editorial Board for Uniform Real Property Acts (JEB), made up of members from the ULC which is responsible for monitoring the uniform real property acts including the UCIOA. Id. at 413. JEB recently released a report (hereinafter the "JEB Report") that dealt with various national issues of the super-priority lien under the UCIOA including whether an association could take successive actions to claim and enforce a super-priority lien. (See Report of the Joint Editorial Board for Uniform Real Property Acts, "The Six-Month 'Limited Priority Lien' For Association Fees Under the Uniform Common Interest Ownership Act," pgs. 10-14 (June 1, 2013))[23]. The JEB Report concluded:

> [S]ection 3-116(c) [of the UCIOA] does not (and was not intended to) authorize an association to file successive lien enforcement actions every six months as means to extend the association's limited lien priority. Only one action is necessary to permit the association to enforce its lien, sell the unit/parcel, and deliver clear title; accordingly, successive action would only serve to extend the association's lien priority beyond the six-month period express in section 3-116(c). Id. at 12-13; see also Drummer Boy Homes Association, Inc. v. Britton, 2011 Mass. App. Div. 186 (2011) (holding a super-priority lien is limited only to six months and that the association was not permitted to commence three successive actions to establish super-priority for 18 months of assessments as such a maneuver essentially elevates the entire lien over a first mortgage and nullifies the general priority of first mortgages).

However, the JEB Report does not stop at the above analysis. The JEB Report further goes on to address whether the super-priority lien is a one time lien, or whether it is a re-occurring lien. Id. at 13. Consistent with its conclusion that successive actions cannot be filed to extend the super-priority lien amounts, the JEB Report concludes the super-priority lien is a one

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HOA lien in this case. Thus, the sole focus is on the nine months of assessments and the institution of the action to enforce the lien.

[23] Available at http://www.uniformlaws.org/shared/docs/jeburpa/2013jun1_JEBURPA_UCIOA%20Lien%20Priority%20Report.pdf (last visited March 9, 2015).

time lien and states:

> Section 3-116(c) [of the UCIOA] provides an association with first lien priority *only to the extent of the six months of unpaid common expense assessment that accrued immediately preceding a lien foreclosure action by either the association or the first mortgage* . . . the drafters of UCIOA § 3-116(c) did not contemplate the now-common scenario in which the first mortgagee's foreclosure action might remain pending for two years or more. Id. at 14 (emphasis added); see also Lake Ridge Condo. Assoc. v. Vegas, No. NNHCV116021568S (Conn. Super. Ct. June 25, 2012) (holding that the first mortgage paid and satisfied the super-priority lien while its foreclosure action was pending, so the HOA was not entitled to commence a second action two years later to establish another super-priority lien while the first mortgage foreclosure was still pending).

The JEB Report is also consistent with a recent advisory opinion from the Nevada Real Estate Division ("NRED") on the super-priority lien under NRS 116.3116(2). NRED concludes the super-priority lien is limited to nine months of assessments from the institution of an action to enforce the association's lien. See 13-01 Op. Dep't. of Bus. & Indus., Real Estate Div., p.17 (2012). NRED further concludes that NRS 116.31162 provides the first steps to foreclose, which is to mail the notice of delinquent assessment. Id. at 17-18. "At that point, the immediately preceding 9 months of assessments based on the association's budget determine the amount of the super priority lien." Id. The super-priority lien simply does not extend past nine months of assessments and cannot be re-triggered by successive actions to foreclose.

The super-priority lien is prior to a first deed of trust "to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution." NRS 116.3116(2). The super-priority lien thus consists of up to 9 months of common assessments and any nuisance abatement charges. See SFR, 334 P.3d at 410-11; see also NRED 13-01 Op. Dep't. of Bus. & Indus., Real Estate Div. 2 (2012) (super-priority lien is limited to: (1) 9 months of assessments; and (2) [nuisance abatement] charges allowed by NRS 116.310312). Once the super-priority amount has been paid to the association, the association's foreclosure on the remaining amounts transfer title to the unit/property subject to the first mortgage or deed of trust. See Report of the Joint Editorial

Board for Uniform Real Property Acts, "The Six-Month 'Limited Priority Lien' For Association Fees Under the Uniform Common Interest Ownership Act," pg. 3 (June 1, 2013).[24]

1. The Nevada Supreme Court has confirmed in the Ikon decision that the Super Priority Lien is equal to exactly nine months of assessments.

On April 28, 2016, the Nevada Supreme Court issued the Ikon opinion, clarifying that "the superpriority lien granted by NRS 116.3116(2) does not include an amount for collection fees and foreclosure costs incurred; rather it is limited to **an amount equal to** the common expense **assessments due during the nine months before foreclosure.**" (Emphasis added.)

While the facts in Ikon differ slightly from those in the instant matter, the Nevada Supreme Court's determination of what constitutes the "super-priority" portion of a lien is conclusive and should be followed by this Court.[25] The Court held the super-priority lien could not include the collection fees and foreclosure costs, for those amounts were subordinate to the first deed of trust. Here, the tender of nine months of assessments by MBBW, on behalf of Plaintiff's predecessor in interest, was sufficient to discharge the super priority portion of the HOA lien.

The Ikon Court reviewed both the legislative history of NRS 116.3116, as well as advisory opinions from NRED, which concluded that "[t]he association's lien does not include "costs of collecting" defined by NRS 116.310313, so the super priority portion of the lien may not include such costs. NRS 116.310313 does not say such charges are a lien on the unit, and NRS 116.3116 does not make such charges part of the association's lien."[26] The Ikon Court then found that the Legislature *intentionally* excluded late fees and interest from the superpriority lien statute.[27] Based on a consideration of the Legislature's intent, the statutory text of NRS 116.3116 and statutory construction principles, the court concluded that "the superpriority lien

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[24] Available at http://www.uniformlaws.org/shared/docs/jeburpa/2013jun1_JEBURPA_UCIOA%20Lien%20Priority%20Report.pdf (last visited March 9, 2015).

[25] There, Ikon was the successor in interest to the buyer at the lender's foreclosure on a first deed of trust, and Ikon admitted it purchased the property subject to the association's unextinguished superpriority lien. The dispute was whether that superpriority lien could include roughly $2,700 for collection fees and foreclosure costs.

[26] Id. at *11-12, citing 13-01 Op. NRED 1 (2012).

[27] Id. at *12, fn.8.

granted by NRS 116.3116(2) does not include an amount for collection fees and foreclosure costs incurred; rather it is limited to an amount equal to the common expense assessments due during the nine months before foreclosure."[28] In reaching this conclusion, the court was careful to note the distinction with its finding in Shadow Wood that "the superpriority lien does not limit amounts due from a property owner to an HOA" for assessments and collection fees and costs arising *after* the association's sale.[29]

Accordingly, BAC respectfully requests that this Court enter summary judgment in its favor as a matter of law.

2. Super Priority Lien Tender

In the Eighth Judicial District Court, where the majority of the HOA quiet title litigation in Nevada is currently pending, Judge Bell recently found that because the homeowners association's trustee rejected the bank's calculation and attempt to pay off the nine month assessment lien, the super-priority lien that could have been claimed was now discharged. In coming to this conclusion, Judge Bell stated that:

> **A party's tender of the super-priority amount is sufficient to extinguish the super-priority character of the lien, leaving only a junior lien.** See Segars v. Classen Garage & Serv. Co., 1980 OK CIV APP 9, 612 P.2d 293, 295 ("a proper and sufficient tender of payment operates to discharge a lien"). The common law definition of tender is "an offer of payment that is coupled either with no conditions or only with conditions upon which the tendering party has a right to insist." Fresk v. Kraemer, 337 Or. 513, 522, 99 P.3d 282, 286-7 (2004); see also 74 Am. Jur. 2d Tender §22. **Tender is satisfied where there is "an offer to perform a condition or obligation, coupled with the present ability of immediate performance, so that if it were not for the refusal of cooperation by the party to whom tender is made, the condition or obligation would be immediately satisfied.**" 15 Williston, A Treatise on the Law of Contracts, §1808 (3d. ed. 1972). **A tender which has been made and rejected precludes foreclosure and discharges the mortgage or lien secured by property.** See Bisno v. Sax, 175 Cal. App. 2d, 714, 724, 346 P.2d 814 (1959) ("Speaking generally, the acceptance of payment of a delinquent installment of principal or interest cures that particular default and precludes a foreclosure sale based upon such preexisting delinquency. The same is true of a tender which has been made and rejected."); see also, Lichty v. Whitney, 80 Cal. App. 2d 696, 701, 182 P.2d 582 (1947) (holding that **"[a] tender of the amount of a debt, though refused,**

[28] Id. at *13.
[29] Id. at *13, fn.9.

> **extinguishes the lien of a pledgee, and will entitle the pledger to recover the property pledged...**[t]he creditor, by refusing to accept, does not forfeit his right to the thing tendered, but he does lose all collateral benefits or securities. The instantaneous effect is to discharge any collateral lien, as a pledge of goods or right of distress.")[30] (Emphasis added.)

The principles of law and equity, including the law of real property, supplement the provisions of NRS Chapter 116, unless they are inconsistent with that chapter. NRS 116.1108. The common law definition of tender is "an offer of payment that is coupled either with no conditions or only with conditions upon which the tendering party has a right to insist." Fresk v. Kraemer, 99 P.3d 282, 286-287 (Or. 2004); see also 74 Am. Jur. 2d Tender §22 (2014). Tender is satisfied where there is "an offer to perform a condition or obligation, coupled with the present ability of immediate performance, so that if it were not for the refusal of cooperation by the party to whom tender is made, the condition or obligation would be immediately satisfied." 15 Williston, A Treatise on the Law of Contracts, § 1808 (3d. ed. 1972).

A proper and sufficient tender of payment operates to discharge a lien. Segars v. Classen Garage and Service Co., 612 P.2d 293 (Ok. Ct. App. Div. 1, 1980). Further, a tender which has been made and rejected precludes foreclosure and discharges the mortgage or lien secured by property. See Bisno v. Sax, 175 Cal. App. 2d 714, 723, 346 P.2d 814; see also, Lichty v. Whitney, 80 Cal. App. 2d 696, 701, 182 P.2d 582, 585 (1947) (holding that "[a] tender of the amount of a debt, though refused, extinguishes the lien of a pledgee, and will defeat an action to recover the property pledged . . . [t]he creditor, by refusing to accept, does not forfeit his right to the thing tendered, but he does lose all collateral benefits or securities [and] [t]he instantaneous effect is to discharge any collateral lien, as a pledge of goods or right of distress.") (internal citations omitted); Winnett v. Roberts, 179 Cal. App. 3d 909, 921-22, 225 Cal. Rptr. 82, 88-89 (1986); McFarland v. Christoff, 120 Ind. App. 416, 421, 92 N.E.2d 555, 557-58 (1950); In re Greenbaum, 172 Misc. 1034, 1036, 14 N.Y.S.2d 983, 985 (1939).

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[30] See Property Plus Investments, LLC v. Bank of America, N.A. et. al., Case No. A-13-692200-C (July 14, 2015) (emphasis added), attached hereto as **Exhibit G**. BAC recognizes that this court ruling, and all other unpublished decisions cited herein, is not binding precedent on this Court, and BAC offers them merely as persuasive authority, as this area of law is developing.

Judge Sturman and Judge Leavitt of the Eighth Judicial District have also ruled that a lender's tender of nine months of assessments was sufficient to discharge the super priority lien, making the interest conveyed at the homeowner's association foreclosure sale subject to the first deed of trust.[31] These rulings imply that an HOA can split its lien and go to sale on the subpriority portion of the lien, making the resulting sale subject to the first deed of trust. Judge Gordon of the U.S. District Court for the District of Nevada has also weighed in on whether an HOA can split its lien and go to sale on the subpriority portion, opining that it is really irrelevant as the result – superiority of the deed of trust – is established in either case.[32] Specifically, he decided if the HOA can split its lien, and if the HOA foreclosed on only its sub-priority lien, the buyer cannot meet its burden of showing it has title superior to the beneficiary; and if the HOA cannot split its lien, the HOA foreclosure sale is void, and the buyer cannot meet its burden of showing it has title superior to the defendants.

At the time BAC made the super priority lien tender, which amounted to exactly nine months of assessments, it was not the owner of the Property and the first Deed of Trust encumbered the Property. Therefore, at issue in the instant case is what is whether the amount paid satisfied the super-priority. Further, and most importantly, is the Ikon Court's use of the language "**an amount equal to**." This is a clearly objective standard with no room for interpretation or analysis of intent. A payment to the HOA in "an amount equal to" assessments due during the nine months before foreclosure satisfies the super-priority lien. The facts of this case, as evidenced by admissible evidence, reveal that Plaintiff's predecessor in interest, through counsel, paid an amount equal to nine-months of assessments to Alessi before the HOA Sale.[33] Therefore, the super-priority portion of the HOA lien was discharged before the HOA Sale.

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[31] See First 100, LLC v. U.S. Bank National Association, Case No. A-12-669876-C, Department XII, decided on November 9, 2015, a copy of the Order is attached hereto as **Exhibit H**; and Zaisan Enterprises LLC v. Alenoush Davidian, Case No. A-14-708690-C, Department XXVI, decided on October 6, 2015, a copy of the court minutes is attached hereto as **Exhibit I.**

[32] See 7912 Limbwood Court Trust v. Wells Fargo Bank, N.A., et al., Case No. 2:13-cv-00606-APG-GWF (August 31, 2015), attached hereto as **Exhibit J.**

[33] See Miles Bauer Affidavit, bates-stamped BAC141-162, attached hereto as **Exhibit F.**

Here, BAC, through its counsel, MBBW, obtained a payoff demand from Alessi, calculated the nine months of assessments and tendered payment prior to the HOA Sale.[34] The payoff demand from Alessi showed that the amount of the monthly assessment was $74.00, multiplied by nine months, equals $666.00, the exact amount tendered by BAC. While this amount was much less than the total balance due of $5,308.74, BAC was not obligated to pay more than the super priority lien to protect its first position Deed of Trust. The SFR Decision states that the lender can calculate the nine month super priority lien and tender it prior to the sale. That is exactly what happened in this case, however, despite BAC's super lien tender, Alessi wrongfully rejected the payment, in hopes that a full lien payoff would be made to stop the sale.[35] The result was that the foreclosed lien included only amounts junior to the first Deed of Trust. Therefore, Alessi and the HOA did not foreclose on a super-priority lien, leaving the first Deed of Trust as the superior lien on title. Consequently, because Alessi and the HOA conveyed title to the Buyer without warranty, Buyer cannot prevail on its claim for quiet title. Accordingly, BAC respectfully requests that this Court enter summary judgment in its favor as a matter of law.

3. The tender by MBBW was wrongfully rejected by Alessi and the HOA

Alessi and the HOA had an obligation to accept Plaintiff's super priority lien tender and to make a pronouncement at the HOA Sale that the super priority lien had been satisfied. NRS 116.1113 imposes an obligation of good faith in performing or enforcing any contract or duty under the Statute. Further, the principles of law and equity, including the law of real property, supplement the provisions of the Statute, unless they are inconsistent with the Statute.[36] Generally, a proper and sufficient tender of payment operates to discharge a lien.[37] The common law definition of tender is "an offer of payment that is coupled either with no conditions or only

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[34] Id.

[35] See Miles Bauer Affidavit, attached hereto as **Exhibit F,** showing that Alessi did receive BAC's letter and check and then later rejected the payment.

[36] NRS 116.1108.

[37] Segars v. Classen Garage and Service Co., 612 P.2d 293 (Okla. App 1980).

with conditions upon which the tendering party has a right to insist."[38] However, an actual or strict or formal tender is not necessary if it will be rejected as the law does not require a futile act.[39] Not only is tender excused, but the lien itself may be waived.[40] Here, any attempt at tender of any super-priority lien would have been an exercise in futility. Still, even the Defendants would concede that a first deed of trust has the right to pay off the super-priority portion of an HOA lien prior to sale. However, the policies of Alessi impaired this right. Here, BOA's attempt at tender of the super-priority lien was an exercise in futility because anything less than the full amount would have been and was rejected.

As discussed above, in the Eighth Judicial District Court, Judges Bell, Sturman and Leavitt have ruled that a lender's tender of nine months of assessments was sufficient to discharge the super priority lien, making the interest conveyed at the homeowner's association foreclosure sale subject to the first deed of trust. But Judge Gordon's analysis in Limbwood[41] of whether an HOA can split its lien and go to sale on the subpriority portion is particularly illuminating: if the HOA can split its lien, and if the HOA foreclosed on only its sub-priority lien, the buyer cannot meet its burden of showing it has title superior to the beneficiary; but if the HOA cannot split its lien, the HOA foreclosure sale is void, and the buyer cannot meet its burden of showing it has title superior to the defendants. In either case, SFR cannot demonstrate its interest is superior to BAC's Deed of Trust.

In this case, MBBW contacted the HOA Trustee requesting a payoff amount for any super-priority lien being claimed by the HOA. MBBW received a payoff demand, which did not include the super priority amount of the lien. In fact, the payoff demand was accompanied by a letter wherein the HOA Trustee refused to provide the super priority lien amount and demanded full satisfaction of the HOA's lien plus HOA Trustee's fees and costs in order to stop the foreclosure sale. In the letter, the HOA Trustee improperly stated, as a basis for demanding a

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[38] Fresk v. Kraemer, 99 P.3d 282, 286-287 (Or. 2004); see also 74 Am. Jur. 2d Tender §22 (2014).

[39] See Enfield v. Huffman Motor Co., 117 Cal. App. 2d 800, 807 (1953).

[40] Id.

[41] See 7912 Limbwood Court Trust v. Wells Fargo Bank, N.A., et al., Case No. 2:13-cv-00606-APG-GWF (August 31, 2015), attached hereto as **Exhibit J.**

full payoff, that **"the nine month super-priority is not triggered until the beneficiary under the first deed of trust forecloses**." MBBW nonetheless tendered a super priority lien payoff in the amount of $666.00 to the HOA Trustee, which is the undisputed equivalent of nine months of assessments. This was the proper amount to tender under Ikon.[42] It is an offer to pay the super priority lien obligation; it shows "the present ability of immediate performance" – indeed, inclusion of the check *was* immediate performance; and it immediately satisfied the super priority lien, thereby satisfying the conditions of tender.[43] This proper and sufficient tender of payment operated to discharge the HOA lien[44] and should have precluded foreclosure of the super-priority lien.[45] Moreover, tendering the super priority amount with a demand that the super priority obligation be discharged was not a "conditions upon which the tendering party has [no] right to insist."[46] The tender was therefore improperly rejected by the HOA Trustee. The any super-priority lien that could be claimed or foreclosed on by the HOA or the HOA Trustee was discharged.

Based on the above, BOA's Motion to Summary Judgment should be granted, as the tender of nine months of assessment was sufficient to discharge the super-priority portion of the HOA lien, leaving SFR's interest subordinate to the Deed of Trust.

C. BAC'S MOTION FOR SUMMARY JUDGMENT SHOULD BE GRANTED BECAUSE THE HOA SALE DID NOT COMPLY WITH NRS CHAPTER 116

1. The HOA Notices Did Not Comply With The Notice Requirements Of NRS Chapter 116

SFR cannot show that the subject HOA sale complied with NRS 116.3116 et seq.

NRS 116.311635 states:

> The association or other person conducting the sale shall also, after the expiration of the

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[42] Ikon, p. 13: "[T]he superpriority lien granted by NRS 116.3116(2) does not include an amount for collection fees and foreclosure costs incurred; rather it is limited to **an amount equal to** the common expense **assessments due during the nine months before foreclosure**." (Emphasis added.)

[43] See 15 Williston, A Treatise on the Law of Contracts, § 1808 (3d. ed. 1972).

[44] See Segars v. Classen Garage and Service Co., 612 P.2d 293 (Ok. Ct. App. Div. 1, 1980).

[45] See Bisno v. Sax, 175 Cal. App. 2d 714, 723, 346 P.2d 814; see also, Lichty v. Whitney, 80 Cal. App. 2d 696, 701, 182 P.2d 582, 585 (1947)

[46] See Fresk v. Kraemer, 99 P.3d 282, 286-287 (Or. 2004); and 74 Am. Jur. 2d Tender §22 (2014).

90 days and before selling the unit:

> (b) Mail, on or before the date of first publication or posting, a copy of the notice by first-class mail to:
> 1. Each person entitled to receive a copy of the notice of default and election to sell notice under NRS 116.31163;
> 2. The holder of a recorded security interest or the purchaser of the unit, if either of them has notified the association, before the mailing of the notice of sale, of the existence of the security interest, lease or contract of sale, as applicable; and
> 3. The Ombudsman.

SFR cannot show proof of mailing of the Notice of Sale by first-class mail to BAC as required by statute. A&K's documents only show that the Notice of Sale was sent via certified mail.[47] As such, due to A&K's failure to comply with the applicable notice provisions of law, the HOA sale should be declared void and set aside. Further, the recitals in the Trustee's Deed Upon Sale cannot be conclusive proof of the items stated therein. Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc., 132 Nev., Adv. Op. 5, 366 P.3d 1105, 1110 and 1112 (Jan. 28, 2016) ("Shadow Wood"), attached hereto for the convenience of the Court.[48] The recitals falsely state that all requirements of law have been complied with, and the evidence shows otherwise. Based on the above, BAC's Motion for Summary Judgment should be granted as to all claims and against all Counterdefendants, as the HOA Sale is void and should be set aside.

2. The HOA Lien Violates NRS Chapter 116 and Nevada Law with the inclusion of Additional Fees and Costs.

Because a super-priority lien under NRS 116.3116 cannot include collection fees and costs, the HOA sale was invalid or could not have displaced BAC's deed of trust from its first position in the chain of title. While the Court in Shadow Wood, 366 P.3d at 1113, left open the issue of what costs and fees could be included in the HOA super-priority Lien,[49] the Nevada Supreme Court's recent decision in Horizons at Seven Hills Homeowners Association v. Ikon Holdings, LLC, 132 Nev. Adv. Op. 35 (April 28, 2016) ("Ikon") answered that question: they

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[47] See **Exhibit A** at A&K0150.
[48] See **Exhibit K.**
[49] The Court stated, "The question of whether and, if so, to what extent costs and fees are recoverable in the context of an HOA super-priority lien is open, particularly as to foreclosures that pre-date the 2015 amendments to NRS Chapter 116." 132 Nev. Adv. Op. *17-18.

cannot. Under the Ikon decision, NRS Chapter 116, and the Nevada Real Estate Division's ("NRED") Advisory Opinion 13-01, a lien under NRS 116.3116(1) can only include costs and fees that are specifically enumerated in the statute.[50] NRS Chapter 116 specifically excludes attorney's fees and the costs of collection from being included in an HOA Lien. The language in NRS 116.3102(1) lists five categories of penalties, fees, charges, late charges, fines, and interest that an HOA can include in the association's lien. The costs of collecting and attorney's fees are not listed in any of the five categories under NRS 116.3102(1). The Ikon decision illustrates that if the HOA is going to foreclose on a super-priority lien pursuant to NRS Chapter 116, then the HOA super-priority lien cannot include the "cost of collection." The Notice of Delinquent Assessment Lien explicitly states that the lien included attorney's fees and collection costs, specifically separating the amount of delinquent assessments compared to the "costs of collection."[51] The inclusion of attorney's fees and collection costs in the association's lien either violates NRS Chapter 116 or shows the lien was not a super-priority lien.

Several Judges in the Eighth Judicial District Court of Clark County, Nevada have issued opinions consistent with the above interpretation of NRS Chapter 116. The Court in Stanford Burt v. Sutter Creek Homeowners Association, et al., Case No. A-12-672790-C, stated that an HOA Lien was statutorily improper and the foreclosure sale by the HOA should be rescinded because the HOA lien included the costs of collection.[52] The Court in Wingbrook Capital, LLC v. Peppertree Homeowners Association, Case No. A-11-636948-B, Order, confirms that an association's lien does not include any fees, cost of collection, or additional costs outside the scope of NRS Chapter 116. Wingbrook concluded,

> [T]he **Super Priority Lien amount is not without limits** and NRS 116.3116 provides that the amount of the Super Priority Lien (i.e. the amount of a homeowners' associations' Statutory Lien which retains priority status over the First Security Interest) is limited "to the extent" of those assessments for common expenses based upon the associations' periodic budget that would have become due in the nine (9) month period immediately preceding an associations' institution of an action to enforce its Statutory Lien and "to the extent" of external repaid costs pursuant to NRS 116.310312.[53]

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[50] See NRED Opinion 13-01 is attached hereto as **Exhibit L.**
[51] *See* Exhibits 4-7 attached to BAC's RJN.
[52] See the Burt Court Minutes attached hereto **Exhibit M.**
[53] Id.

> Therefore after the foreclosure by a First Security Interest holder … the monetary limit of a homeowners' association's Super Priority Lien is limited to a maximum amount equaling nine (9) times the homeowners' association's monthly assessment amount to unit owners for common expenses based on the periodic budget which would have become due immediately preceding the institution of an action to enforce the lien plus external repair costs pursuant to NRS 116.310312.[54]

Therefore, the Court in Wingbrook and Burt reaffirm the NRED Opinion and statutory language in NRS Chapter 116 that the HOA Lien cannot include attorney's fees or collection costs.

The NRED Opinion 13-01 has also stated that attorney's fees and the costs of collecting on an HOA lien cannot be included in the lien. In August of 2012, the Nevada Supreme Court recognized that NRED is responsible for interpreting NRS Chapter 116 and issuing advisory opinions relating to the extent and priority of the association super-priority lien. See State, Bus. & Indus. v. Nev. Ass'n Servs., 128 Nev. Adv. Op. 34, 294 P.3d 1223, 1227 (2012) ("We therefore determine that the plain language of the statutes requires that the CCICCH and the Real Estate Division, and no other commission or division, interpret NRS Chapter 116."). It has also stated that courts generally give "great deference" to an agency's interpretation of a statute that the agency is charged with enforcing. State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co., 116 Nev. 290, 293 (2000); see also Dutchess Business Services v. Nev. State Bd. Of Pharmacy, 124 Nev. 701, 709 (2008) (stating that it "defer[s] to an agency's interpretation of its governing statutes or regulations if the interpretation is within the language of the statute."). NRED's Advisory Opinion 13-01 is directly on point. The Opinion strongly stated that an HOA lien cannot include the costs of collection as defined in NRS 116.310313. The Opinion cites to the Commission for Common Interest Communities and Condominium Hotels Advisory Opinion No. 2010-01 to support the assertion that the cost of collecting is not included in the association's lien. The Advisory Opinion No. 2010-01 states, "An association may collect as a part of the super priority lien (a) interest permitted by NRS 116.3115, (b) late fees or charges authorized by the declaration, (c) charges for preparing any statements of unpaid assessments and (d) the "costs of collecting" authorized by NRS 116.310313."

The NRED Opinion clearly states that the "Costs of collecting" defined by NRS

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[54] Id.

116.310313 is too broad to fall within the parameters of charges for late payment of assessments.[55] By definition, the "costs of collecting" relate to the collection of past due "obligations," which are in turn defined as "any assessment, fine, construction penalty, fee, charge or interest levied or imposed against a unit's owner."[56] Since the instant HOA Notices included the cost of collection in the HOA Lien, the HOA Lien and subsequent sale are void and in direct violation of NRS Chapter 116, or in the alternative, the HOA Sale was a sale solely on the subpriority portion of the HOA Lien, and thus BAC's First Deed of Trust was not foreclosed out.[57] Therefore, BAC's Motion for Summary Judgment should be granted because the plain language of NRS 116.3116(1), Nevada case law, and the statutory interpretation of the NRED Opinion, state that the costs of collecting cannot be included in the HOA Lien.

The fact that A&K proceeded with the HOA Sale in spite of the above stated defects requires the Court to rescind the HOA Sale or in the alternative requires the Court to enter a ruling that Defendants took title subject to BAC's Deed of Trust. Based on the above, BAC's Motion for Summary Judgment should be granted.

D. BAC'S MOTION SHOULD BE GRANTED BECAUSE THE HOA SALE WAS COMMERCIALLY UNREASONABLE

The SFR decision did not address the commercial reasonableness arguments asserted by the bank, because that concept was not appropriate at that pleadings stage – namely, a complaint followed by a motion to dismiss. Here, at the summary judgment stage, BAC can properly assert that the sale was not conducted in good faith and was not commercially reasonable.

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[55] Charges for late payment of assessments come from NRS 116.3102(1)(k) and are incorporated into NRS 116.3116(1).

[56] NRS 116.310313.

[57] Judge Gordon of the U.S. District Court for the District of Nevada has also weighed in on whether an HOA can split its lien and go to sale on the subpriority portion. 7912 Limbwood Court Trust v. Wells Fargo Bank, N.A., et al., Case No. 2:13-cv-00606-APG-GWF (August 31, 2015), attached hereto as **Exhibit J.** Judge Gordon's decision is in line with several decisions by judges in the Eighth Judicial District Court, who have ruled that when an HOA proceeds to sale after a super priority lien tender by a lender, the sale is solely on the subpriority portion of the lien, and the buyer takes subject to the first Deed of Trust. This will be discussed in further detail infra.

The recent decision of the Nevada Supreme Court in Shadow Wood, 366 P.3d at 1112-13, examined the issue of commercial reasonableness and fully supports BAC's position that a grossly inadequate purchase price compared to the fair market value at the time of the HOA Sale *can* be sufficient to set aside the sale. The Shadow Wood decision, id., recognized the Restatement (Third) of Prop.: Mortgages § 8.3 ant. b (1997), position that while "[g]ross inadequacy cannot be precisely defined in terms of a specific percentage of fair market value [, g]enerally … a court is warranted in invalidating a sale where the price is less than 20 percent of fair market value and, absent other foreclosure defects, is usually not warranted in invalidating a sale that yields in excess of that amount." **In other words, this Court can invalidate the HOA Sale if the purchase price is less than 20 percent of fair market value without more, and this Court can invalidate the HOA Sale if the purchase price is more than 20 percent of fair market value if there are "other foreclosure defects."** The Court then evaluated the sale in that case and determined the price did not meet the Restatement definition of "grossly inadequate price" because purchase price reflected 23 percent of fair market value. And footnote 3 again recognized the 20% threshold: "The $11,018.39 sale price is slightly more than 20 percent of that estimate, so it does not affect the analysis in the text." The Shadow Wood decision thus reaffirmed the concept that a sale can be set aside if it is not commercially reasonable.

The Shadow Wood decision is consistent with Nevada's version of the Uniform Common Interest Ownership Act ("UCIOA") which imposes an express obligation of good faith on an HOA. NRS 116.31164 provides, "Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement." This requirement is verbatim from Section 1-113 of the UCIOA, which was adopted by the Nevada Legislature in 1991. See Assembly Bill 221 (1991), Section 44. The Comment to Section 1-113 of the UCIOA states as follows:

> This section sets forth a basic principle running throughout this Act: in transactions involving common interest communities, good faith is required in the performance and enforcement of all agreements and duties. Good faith, as sued (sic) in this Act, means observance of two standards: "honesty in fact", and observance of reasonable standards of fair dealing. While the term is not defined, the term is derived from and used in the same manner as in Section 1-201 of the

> Uniform Simplification of Land Transfers Act, and Sections 2-103(i)(b) and 7-404 of the Uniform Commercial Code.

The term "commercial reasonableness" has been interpreted in several Nevada cases. See Levers v. Rio King Land & Inv. Co., 93 Nev. 95, 560 P.2d 917 (1977); Dennison v. Allen Group Leasing Corp., 110 Nev. 181, 871 P.2d 288 (1994); and Savage Canst., Inc. v. Challenge-Cook Bros., Inc., 102 Nev. 34 (1986). These cases hold that a sale by a creditor must be done in a commercially reasonable manner. The Levers Court, 93 Nev. at 98-99, 560 P.2d at 919-20, stated:

> In addition to giving reasonable notice, a secured party must, after default, proceed in a commercially reasonable manner to dispose of collateral. NRS 104.9504(3) (Citation omitted.) **Every aspect of the disposition, including the method, manner, time, place, and terms, must be commercially reasonable.** NRS 104.9504(3). Although the price obtained at the sale is not the sole determinative factor, nevertheless, it is one of the relevant factors in determining whether the sale was commercially reasonable.... **A wide discrepancy between the sale price and the value of the collateral compels close scrutiny into the commercial reasonableness of the sale.** This is especially true where, as here, the secured party purchases the collateral and subsequently resells it for a vastly greater amount than was credited to the debtor. (Citations omitted; emphasis added.)

Likewise, the Court in Dennison, 110 Nev. at 186, 871 P.2d at 291, stated,

> The conditions of a commercially reasonable sale should reflect a calculated effort to promote a sales price that is equitable to both the debtor and the secured creditor. The "quality of the publicity, the price obtained at the auction, [and] the number of bidders in attendance are important factors to consider when analyzing the commercial reasonableness of a public sale. (Citations omitted.)

Nevada has also adopted the Uniform Commercial Code ("UCC"). See generally, NRS Chapter 104. Section 2-103(1)(b) of the UCC states, "Good faith ... means honesty in fact *and* the observance of reasonable commercial standards of fair dealing in the trade." (Emphasis added.) Moreover, NRS 104.1201 defines good faith as "honesty in fact *and* the observance of reasonable commercial standards of fair dealing." (Emphasis added.)

In Will v. Mill Condominium Owners' Assn, 848 A. 2d 336, 340 (Vt. 2004), the only case the undersigned could find that had interpreted the language of UCIOA Section 1-113, the Court found that "the official comment to § 1-113 expresses in unequivocal terms the Legislature's intent to import the commercial reasonableness standard into the UCIOA." Thus,

the Will court held that "the enforcement mechanisms provided for in § 3-116 must be conducted in good faith as defined in § 1-113, that is, in a commercially reasonable manner." 48 A.2d. at 342 (emphasis added). The holding in Will is correct because of UCIOA § 3-116 and NRS 116.3116's "unconventional" split-lien approach, which is "[a] significant departure from existing practice." See SFR at p. 10. A foreclosure under NRS 116.3116, which elevates a nominal HOA lien over a first position deed of trust, would have to be done in a commercially reasonable manner. There is no evidence before this Court that the HOA's Sale was commercially reasonable. In Will, 48 A.2d. at 342, the court noted that the burden of proof to demonstrate commercial reasonableness belonged to the HOA: "In the case at hand, in order to support the summary judgment under this standard, the court would have to find that the Condominium Association ... had proved specific facts which, when 'viewed in totality,' constituted a commercially reasonable disposition of appellant's property." This places the buyers in the awkward position of having to explain why it is reasonable to obtain clear title to a property for less than 10% of its FMV when doing so divests a secured lender of an interest that is probably worth as much or more as the property itself.

The Eighth Judicial District Court has repeatedly dismissed quiet title cases involving HOA foreclosure sales on the independent basis that such sales were not commercially reasonable.[58] In the instant case, the purchase price is grossly inadequate when compared to the fair market value at the time of the HOA Sale. The foreclosure sale in this case was void as commercially unreasonable if it did, as SFR claims, eliminate the senior deed of trust. A&K and

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[58] In SFR Investments Pool I, LLC v. Nationstar Mortgage, LLC, the Court found that a $7,000 purchase price was one factor the court considered in determining that the plaintiff buyer was not a bona fide purchaser, because the plaintiff did not provide valuable consideration for the property. SFR Investments Pool I, LLC v. Nationstar Mortgage, LLC, Order Denying Application for Temporary Restraining Order n. 9, Case No. A13-684596-C, Dept. XXXI, entered on August 5, 2013; see also Design 3.2 LLC v. Bank of New York Mellon, Case No. A-10-621628, Dept. XV, "Design 3.2 Order", entered on June 15, 2011 (finding that the purchaser at the HOA foreclosure sale was not a bona fide purchaser, in part because plaintiff purchased for only $3,743.84 and the deed of trust was $576,000). Courts from other jurisdictions have reached this same conclusion. See Will, 848 A.2d 336 (Vt. 2004) (voiding an HOA super-priority foreclosure sale, holding that sale of the property for $3,510.10 was not commercially reasonable when the property had a fair market value of $70,000).

the HOA made no effort to obtain the best price or to protect other lienholders. The sales price of $12,100.00 demonstrates that it was not made in good faith as a matter of law, as the property secures a loan in excess of $212,000.00. In other words, the HOA Sale price was approximately 0.5% of the loan value. Further, the sales price is indisputable evidence of the lack of good faith because the fair market value of the property at the time of the sale was $134,000.00.[59] The HOA Sale price was approximately 9% of the fair market value of the Property. **The purchase price alone being less than 10% is enough under Shadow Wood for this Court to set aside the sale in equity.**

It is anticipated that Buyer may argue that, pursuant to Golden v. Tomiyasu, 79 Nev. 503, 387 P.2d 989 (1963), BAC needs to show fraud, unfairness, or oppression as well as an inadequate price to attack the commercial reasonableness of the sale. Here, Buyer paid only $12,100.00 when the Property was worth more than $134,000, thus, triggering the close scrutiny analysis into the sale. However, there are also factors which point to fraud, unfairness and/or oppression concerning the HOA's sale. The subject sale failed to comply with the notice provisions of NRS 116.3116 et seq. A&K and the HOA wrongfully rejected BAC's tender of the super priority lien, improperly noting that "the nine month super-priority is not triggered until the beneficiary under the first deed of trust forecloses."[60]

Further, A&K had a policy of refusing to provide lienholders with super-priority lien payoffs, and rejecting tenders of super-priority amounts, which further establishes the unfairness of the subject HOA sale.[61] Any attempt at tender of any super-priority lien would have been an exercise in futility, as shown by the herein rejection of the tendered super-priority amount.

In the instant case, the grossly inadequate purchase price at less than 10% of the fair market value, is sufficient in and of itself to permit setting aside the sale. In addition to the purchase price and value of the Property, BAC has established that there was a showing of fraud, unfairness, or oppression in the rejected tender of the super priority lien. Thus, this

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[59] See BAC's Expert Appraisal Report, attached hereto as **Exhibit N.**
[60] See Miles Bauer Affidavit, attached hereto as **Exhibit F**; see also **Exhibit E** at A&K0120.
[61] See **Exhibit D** at 90:20-22; 95:5-16.

Court should grant BAC's Motion for Summary Judgment on the basis that the HOA Sale was commercially unreasonable as a matter of law and set aside the sale, leaving BAC's first Deed of Trust as an encumbrance on the Property.

E. THE PROVISIONS OF THE CC&RS SHOULD NOT BE DISREGARDED BY THE COURT.

Many sections of Chapter 116 itself recognize that an HOA only has as much power as it grants itself in its Declaration. NRS 116.3116(1) provides, "**Unless the declaration otherwise provides**, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section." (Emphasis added.) NRS 116.3116(4) provides, "**Unless the declaration otherwise provides**, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority." (Emphasis added.) NRS 116.3116(10)(b) provides, "In a cooperative where the owner's interest in a unit is personal property under NRS 116.1105, the association's lien: (1) May be foreclosed as a security interest under NRS 104.9101 to 104.9709, inclusive; or (2) **If the declaration so provides**, may be foreclosed under NRS 116.31162 to 116.31168, inclusive." (Emphasis added.) And NRS 116.31164(2) provides, "[T]he person conducting the sale may sell the unit at public auction to the highest cash bidder. **Unless otherwise provided in the declaration or by agreement,** the association may purchase the unit and hold, lease, mortgage or convey it…." (Emphasis added.)

Here, the CC&Rs specifically provide for the protection of Mortgagees, defined as a "beneficiary under any Recorded Mortgage of first and senior priority now or hereafter upon a Lot, made in good faith and for value, perfected before the date on which the Assessment sought to be enforced became delinquent."[62] The pertinent section of the CC&Rs provides as follows:

> 5.08 Mortgage Protection Notwithstanding any other provision of this Declaration, **no lien** created under this Article V or under any other Article of this Declaration, nor any lien arising by reason of any breach of this Declaration, **nor the enforcement of any provision of this Declaration, shall defeat or render invalid the rights of the beneficiary under any recorded Mortgage of first and senior priority now or hereafter upon a Lot, made in good faith and for value, perfected before the date on which the Assessment sought to be**

[62] *See* **Exhibit 14** to the Supplemental Request for Judicial Notice at Section 5.08.

> **enforced became delinquent.** However, after the foreclosure of any such first Mortgage, such Lot shall remain subject to this Declaration and shall be liable for all regular Assessments and all special Assessment levied subsequent to the date six (6) months prior to the institution of an action to foreclose on any such first Mortgage.[63] (Hereinafter, "Mortgage Protection Clause.")

The HOA granted itself the power to preserve the first mortgage to enable its growth and survival, which was necessarily relied on by them when they financed the owners' purchases. The HOA should be estopped from claiming after the fact that lenders like Plaintiff should not have relied on those clauses. In addition, Buyer purchased the Property with at least record and inquiry notice that the Mortgage Protection Clause shielded the first mortgages, like BAC's Deed of Trust, from extinguishment.

The HOA never provided notice that the Mortgage Protection Clause was null and void nor have the CC&Rs been amended after the initial recording to exclude the Mortgage Protection Clause. CC&Rs are described in terms of a real property instrument that must be executed and recorded like a deed upon real property and is searchable by the grantor-grantee index. NRS 116.2101. BAC was on record notice that its interest would be protected after an HOA sale. This Mortgage Protection Clause further supports the finding of unfairness or oppression in the HOA Sale sufficient to set aside the Sale.

The CC&Rs establish that a homeowner's association foreclosure sale does not extinguish a first position deed of trust and that title to the Property is sold subject to that Deed of Trust. It is undisputed that BAC's Deed of Trust was recorded prior to the date of the delinquency in assessments. Section 5.08 clearly establishes that the HOA intended the sale of the Property, pursuant to NRS 116.3116, to be subject to the first Deed of Trust secured against the Property.[64]

It is expected Counter-defendants will also argue that the CC&Rs violate NRS 116.1104, which provides:

> Except as expressly provided in this chapter, its provisions may not be varied by agreement, and rights conferred by it may not be waived. Except as otherwise provided in paragraph (b) of subsection 2 of NRS 116.12075, a declarant may not act under a power

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[63] See Id. at section 5.08 (emphasis added).
[64] Id.

> of attorney, or use any other device, to evade the limitations or prohibitions of this chapter or the declaration.

While there was no bargained for exchange between the HOA and BAC regarding the terms of the CC&Rs, BAC and similar lenders to purchasers of units within the HOA were the intended third party beneficiaries of the CC&Rs. CC&Rs are a real property instrument that burdens the land. A mortgage protection clause incentivizes lenders to lend to would be purchasers of units in the community.

BAC lent money in an HOA with the express reservation of its interest being protected from any sale conducted under the CC&Rs. The CC&Rs that were recorded at or near the time the loan was being financed clearly preserved a first mortgage from being extinguished by an HOA Sale based on delinquent assessments. The prohibition against varying the provisions of Chapter 116 by agreement is not applicable to a real property instrument such as the HOA's CC&Rs. The HOA should be able to contract around the Nevada lien priority statute unless the contract is against public policy. If the agreement is not against public policy, the HOA is free to contract around it. Contrast the Mortgage Protection Clause with provisions of declarations which, for example, require the unit owners and the association to submit construction defect claims by the homeowners association or its members against responsible contractors under NRS Chapter 40 to mandatory, binding arbitration because those provisions clearly are against public policy as they act to act to the detriment of the unit's owners and the associations. Here, the existence of the Mortgage Protection Clause benefits the HOA because it enables the purchase of the units and the funding of the HOA coffers to allow it to function for the benefit of all members to avoid having to "increas[ing] the assessment burden on the remaining unit/parcel owners or reduce the services the association provides (e.g., by deferring maintenance on common amenities)." SFR, 334 P.3d at 414, quoting JEB, "The Six-Month "Limited Priority Lien," at 5-6. Here, the CC&Rs reinforce the view that the non-judicial HOA Sale could not have extinguished the first Deed of Trust because the HOA intended its lien to be subordinate to the Deed of Trust. Further, the Mortgage Protection Clause is the basis for the Trust's claims against the HOA for negligence.

These provisions distinguish this case from the SFR decision. And to the extent the SFR

decision conflicts with the premise that the HOA could choose to subordinate its interests to the first mortgagee for the greater good of the association and to promote the associations' interests by permitting subordination of the HOA lien to the first mortgagee, it should be overturned and should be rejected by this Court in this case. See N.R.C.P. 11(b)(2). It favors public policy to permit such subordination – something not considered by the Nevada Supreme Court.

Therefore, because the HOA included the Mortgagee Protection Clause in the CC&Rs, of which BAC is a third party beneficiary, and the HOA breached the promises contained therein, summary judgment should be entered in favor of BAC on all claims against the HOA.

IV. CONCLUSION

Based on the above, BAC's Motion for Summary Judgment should be granted and the Court should make a judicial determination that BAC's first deed of trust was not extinguished by the HOA Sale but remained superior to the HOA lien, or in the alternative that the HOA Sale is void and BAC's Deed of Trust remained in first position in the chain of title for the Property.

DATED this 13th day of June, 2016.

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AFFIRMATION

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

The undersigned does hereby affirm that the preceding **DEFENDANT BAC'S MOTION FOR SUMMARY JUDGMENT** filed in Case No. A-13-685172-C **does not** contain the social security number of any person.

DATED this 13th day of June, 2016.

WRIGHT, FINLAY & ZAK, LLP

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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 13th day of June, 2016, I did cause a true copy of **DEFENDANT BAC'S MOTION FOR SUMMARY JUDGMENT** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFR 9 and/or by depositing a true copy of same in the United States Mail, at Las Vegas, Nevada, addressed as follows:

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An Employee of WRIGHT, FINLAY & ZAK, LLP

Exhibit A

Exhibit A

Exhibit A

Exhibit A

Inst #: 201208140001902
Fees: $17.00
N/C Fee: $0.00
08/14/2012 01:24:30 PM
Receipt #: 1271180
Requestor:
ALESSI & KOENIG LLC
Recorded By: SAO Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:
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9500 West Flamingo Rd., Suite 205
Las Vegas, NV 89147
Phone: 702-222-4033

APN: 124-22-314-059 TSN A24592

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

NOTICE IS HEREBY GIVEN THAT:

On September 12, 2012, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on December 30, 2010, as instrument number 0002450, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

The street address and other common designation, if any, of the real property described above is purported to be: 6727 Maple Mesa St, N. Las Vegas, NV 89084. The owner of the real property is purported to be: Peter A & Tamera A Jonson

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is $5,308.74. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: August 6, 2012

By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of The Parks Homeowners Association

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SAN ANTONIO, TX 78288-0558

Ombudsman Office
Attn: Gordan Milden
2501 East Sahara Avenue, Suite 202
Las Vegas, Nevada 89104-4137

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Street, Apt. No.; or PO Box No.: 6727 Maple Mesa St
City, State, ZIP: N. Las Vegas, NV 89084-1237

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J.F.

NOTS MAILINGS

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BAC HOME LOANS SERVICING, LP
400 COUNTRYWIDE WAY SV-35
Sent To
Street, Apt. No.; or PO Box No.
SIMI VALLEY, CA 93065
City, State, ZIP+4

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2380 PERFORMANCE DR, TX2-985-07-03
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7251 AMIGO STREET, SUITE 100
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Street, Apt. No.; or PO Box No.
LAS VEGAS, NV 89119
City, State, ZIP+4

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MERS
PO BOX 2026
Sent To
Street, Apt. No.; or PO Box No.
FLINT, MI 48501-2026
City, State, ZIP+4

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A&K0059

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Street, Apt. No.; or PO Box No.: 4890 W. 10000 N.
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Street, Apt. No.; or PO Box No.: 6727 MAPLE MESA ST.
City, State, ZIP+4: NO LAS VEGAS, NV 89084-1237

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Street, Apt. No.; or PO Box No.: 400 COUNTRYWIDE WAY, MSN SV-88
City, State, ZIP+4: SIMI VALLEY, CA 93065

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City, State, ZIP+4: SAN ANTONIO, TX 78288-0555

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Exhibit B

Exhibit B

Exhibit B

DAVID ALESSI*
ROBERT KOENIG**
THOMAS BAYARD*

* Admitted in CA
** Admitted in CA, NV CO
*** Admitted in NV

ALESSI KOENIG
A Multi-Jurisdictional Law Firm
Telephone: 702-222-4033
Facsimile: 702-222-4043
www.alessikoenig.com

STEVEN T. LOIZZI, JR.***
HUONG LAM***
VANESSA S. GOULET***

ADDITIONAL OFFICES
AGOURA HILLS, CA
PHONE: 818- 735-9600

RENO NV
PHONE: 775-626-2323

The Parks Homeowners Association

Peter A & Tamera A Jensen

6727 Maple Mesa St
N. Las Vegas NV 89084
Account #: 6727MM

June 20, 2015	Filed Answer to Counterclaim on behalf of A&K and HOA; began drafting discovery responses to BAC from A&K.
November 20, 2014	Paid In Full through 2/1/2013
November 20, 2014	Paid In Full through 2/1/2013
August 19, 2014	Second ECC to be held to allow Ocwen to participate.
June 4, 2014	Paid In Full through 2/1/2013
May 20, 2014	Drafted Amendment to Complaint to include Ocwen Loan Servicing as a party to the interpleader litigation.
January 14, 2014	Paid In Full through 2/1/2013
June 25, 2013	Complaint in Interpleader filed on 07/15/2013 Case No.: A-13-685172-C
April 9, 2013	Paid In Full through 2/1/2013
February 28, 2013	Cut check to The Parks Homeowners Association for $3,853.28
February 28, 2013	Cut check to Pinnacle Community Association Management for $400.00
February 28, 2013	Paid In Full through 2/1/2013
February 15, 2013	Payment in full received in the amount of $12,180.75. 10 day waiting period for funds to clear initiated.
February 14, 2013	Sold to 3rd Party at Sale
December 11, 2012	3rd postponement of HOA sale. New sale date 02.13.2013.
October 22, 2012	Authorization to conduct HOA sale sent to management/board via email
October 22, 2012	2nd postponement of HOA sale. New sale date 12.12.2012.
September 10, 2012	1st postponement of HOA sale. New sale date 10.24.2012.
August 17, 2012	Notice of Trustee Sale mailings sent via certified mail
August 8, 2012	Publication Date down processed for posting and publishing of Trustee Sale
August 6, 2012	HOA sale set for 09.12.2012.
July 28, 2012	Trustee Sale Not Authorized per Board of Directors
June 23, 2012	Status check for Senior Default and Bankruptcy, no current records

DAVID ALESSI*
ROBERT KOENIG**
THOMAS BAYARD*

* Admitted in CA
** Admitted in CA, NV CO
*** Admitted in NV

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A Multi-Jurisdictional Law Firm
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VANESSA S. GOULET***

ADDITIONAL OFFICES
AGOURA HILLS, CA
PHONE: 818- 735-9600

RENO NV
PHONE: 775-626-2323

The Parks Homeowners Association

May 23, 2012	Trustee Sale Not Authorized per Board of Directors
May 21, 2012	No contact from Property Owner. HOA sale set for 5-30-12
April 19, 2012	3rd postponement of HOA sale. New sale date 05.30.2012.
April 2, 2012	Payment received
March 22, 2012	2nd postponement of HOA sale. New sale date 04.25.2012.
March 16, 2012	Demand made to Alex at Miles, Bauer, Bergstrom & Winters via email demand will expire 4/16/12
February 27, 2012	Received Payoff request from Miles, Bauer, Bergstrom & Winters
February 14, 2012	1st postponement of HOA sale. New sale date 03.28.2012.
February 9, 2012	No contact from Property Owner, HOA sale set for 2-22-12
February 1, 2012	Notice of Trustee Sale mailed regular and certified
January 24, 2012	Publication Date down processed for posting and publishing of Trustee Sale
January 10, 2012	HOA sale set for 02.22.2012.
January 10, 2012	Authorization to conduct HOA sale sent to management/board via email
November 16, 2011	No contact from Property Owner. Monitoring public records for bank activity, no current activity recorded
October 17, 2011	File currently under review for Trustee Sale
September 13, 2011	Review file for Notice of Trustee Sale
September 13, 2011	Senior (Bank) sale follow up; sale has been cancelled
August 13, 2011	Senior (Bank) sale follow up; no sale information at this time
July 13, 2011	Demand made to ReconTrust, demand will expire on 8-12-11
June 21, 2011	Payoff request received from Bank of America/ReconTrust
June 20, 2011	Senior Notice of Trustee Sale recorded, Monitoring Senior Foreclosure
May 28, 2011	Notice of Default and Election to Sell (30) day waiting period
April 27, 2011	Notice of Default and Election to Sell (60) day waiting period
March 23, 2011	10 Day Notice of Default Mailings sent via certified mail, (90) day waiting period initiated
March 14, 2011	Notice of Default recorded and sent for 10-Day mailings
March 10, 2011	TRI Complete-Waiting for Recorded NOD
February 24, 2011	TRI Data Received
February 16, 2011	Notice of Default Drafted and sent for TRI Report
February 16, 2011	TRI Data Ordered
January 12, 2011	Pre-Notice of Default sent to homeowner via regular mail

DAVID ALESSI*
ROBERT KOENIG**
THOMAS BAYARD*

* Admitted in CA
** Admitted in CA, NV CO
*** Admitted in NV

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VANESSA S. GOULET***

ADDITIONAL OFFICES
AGOURA HILLS, CA
PHONE: 818- 735-9600

RENO NV
PHONE: 775-626-2323

The Parks Homeowners Association

December 30, 2010	Lien recorded
December 7, 2010	Lien recordation sent via regular and certified mail

Exhibit C

Exhibit C

Exhibit C

Exhibit C

MILES, BAUER, BERGSTROM & WINTERS, LLP
ATTORNEYS AT LAW SINCE 1985

2200 Paseo Verde Parkway, Suite 250
Henderson, NV 89052
Phone: (702) 369-5960
Fax: (702) 369-4955

FACSIMILE TRANSMISSION

DATE:	02-27-12
TO:	Alessi & Koenig, LLC; Payoff Department
RE:	HOA Delinquent Accounts; Payoff requests
FAX NUMBER:	702-222-4043

FROM: **Alexander Bhame**
Civil Litigation Department
702-942-0443 phone
abhame@mileslegal.com email

NUMBER OF PAGES TRANSMITTED, INCLUDING THIS COVER: 1

Hello,

Our firm represents Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP with regard to the following real properties:

[redacted]

6727 Maple Mesa St.

Our client is the lienholder on the deed of trust encumbering the properties and has been made aware that an HOA default exists. Would you please send me the HOA arrears as they currently exist?

Thank you very much!

Exhibit D

Exhibit D

Exhibit D

Exhibit D

In the Matter Of:

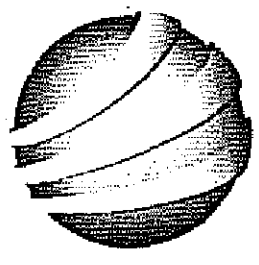
ALESSI & KOENIG vs. JENSEN

A-13-685172-C

DAVID ALESSI

April 12, 2016

30(b)(6)



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DISTRICT COURT

CLARK COUNTY, NEVADA

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Plaintiff,

vs.

PETER A. JENSEN, an individual; TAMERA A. JENSEN, an individual; BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, an unknown entity; USAA FEDERAL SAVINGS BANK, an unknown entity; OCWEN LOAN SERVICING, LLC, a foreign limited liability company; DOES INDIVIDUALS I through X, inclusive; and ROE CORPORATIONS XII through XXX, inclusive,

Defendants.

(Caption Continued.)

CASE NO. A-13-685172-C
DEPT NO. VI

DEPOSITION OF RULE 30(b)(6) DESIGNEE

FOR ALESSI & KOENIG, LLC

DAVID ALESSI

Taken on Tuesday, April 12, 2016
At 10:10 a.m.

At 7785 West Sahara Avenue, Suite 200
Las Vegas, Nevada

KERRIE KELLER, CCR NO. 612

. . .
BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP,

Counter-Claimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited liability company; THE PARKS HOMEOWNERS ASSOCIATION, a Nevada nonprofit corporation; SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; DOE INDIVIDUALS 1 through 10, inclusive; and ROE CORPORATIONS 11 through 20, inclusive,

Counter-Defendants.
)

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

Counter-Claimant,

vs.

BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP; USAA, FSB, a federal savings bank; PETER A. JENSEN, an individual; TAMMERA A. JENSEN, an individual; DOES 1 through 10; and ROE BUSINESS ENTITIES 1 THROUGH 10, inclusive,

Counter-Defendant
Cross-Defendants.
)

APPEARANCES OF COUNSEL

FOR DEFENDANT/COUNTER-CLAIMANT/COUNTER-DEFENDANT BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP:

WRIGHT, FINLAY & ZAK, LLP
BY: DANA JONATHON NITZ, ESQ.
BY: NATALIE C. LEHMAN, ESQ.
7785 West Sahara Avenue
Suite 200
Las Vegas, Nevada 89117
702.475.7964
dnitz@wrightlegal.net

FOR COUNTER-DEFENDANT/COUNTER-CLAIMANT SFR INVESTMENTS POOL 1, LLC:

KIM GILBERT EBRON
BY: JEREMY BEASLEY, ESQ.
7625 Dean Martin Drive
Suite 110
Las Vegas, Nevada 89139
702.485.3300
jeremy@kgelegal.com

FOR PLAINTIFF/COUNTER-DEFENDANT ALESSI & KOENIG, LLC:

ALESSI & KOENIG, LLC
BY: DAVID ALESSI, ESQ.
9500 West Flamingo Road
Suite 250
Las Vegas, Nevada 89147
702.222.4033

I N D E X

WITNESS: RULE 30(b)(6) DESIGNEE, DAVID ALESSI

INDEX TO EXHIBITS

DEPOSITION OF RULE 30(b)(6) DESIGNEE, DAVID ALESSI

April 12, 2016

(Prior to the commencement of the proceedings, Counsel present agreed to waive statements by the court reporter, pursuant to NRCP 30(b)(4) or FRCP 30(b)(5), as applicable.)

(Exhibit A marked for identification.)

RULE 30(b)(6) DESIGNEE, DAVID ALESSI, having been first duly sworn to testify to the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MR. NITZ:

Q. Would you state your full name and professional address for the record.

A. Sure. David Alessi, A-L-E-S-S-I. 9500 West Flamingo Road, Las Vegas, Nevada 89147.

Q. Mr. Alessi, I've handed you what's been marked as Exhibit A, and that's the Amended Notice of Taking Deposition of Plaintiff/Counter-defendant Alessi & Koenig, LLC, under Rule 30(b)(6).

Have you reviewed that amended notice before

in this case, it looks to the Gina Garcia -- didn't -- I don't know exactly how that field, if it could be manually changed or not, but I have seen in my depositions where that "to" line showed the homeowner's name, but it was -- it was not actually sent to the homeowner. It was just their name was automatically pulled into that field. I don't know if that's the case with regard to this document.

Again, the status report should be helpful in ascertaining whether or not this breakdown went to the homeowner or some other party. With that said, though, it does appear that this document, from the face of it, went to the homeowner.

Q. Okay. Was Gina Garcia a legal assistant for A&K at this time, July 13, 2011?

A. Yes.

Q. Is she still with A&K?

A. No.

Q. Do you know where she is?

A. No.

Q. Or who she works for?

A. No.

Q. All right. Turn to the next page, A&K 119. This is a fax dated 2/27/2012 to A&K from Miles, Bauer, Bergstrom & Winters office. Agreed?

A. Yes.

Q. And it requests the HOA arrears as they currently exist for various properties, including the subject property. Would you agree?

A. Yes, I do agree.

Q. Would you expect the black bars cover up other addresses that were subject of the fax?

A. Yes.

Q. And the next document begins at A&K 120. It's a response letter from A&K dated 3/15/2012 to Miles Bauer from Ryan Kerbow.

Would this letter have been sent in response to the fax in the previous page?

A. I don't know. Normally, what I have seen with regard to these Miles, Bauer, Bergstrom & Winters correspondence is more than just a fax cover letter. And generally, the response is to a letter from Miles Bauer. I don't see that letter in the file, however.

So based upon my review of these documents, the fax cover letter is February 27, 2012, and it does appear that this March 2012 letter from our office to Mr. Young is in response to that.

My only confusion is that it just doesn't seem to be -- it seems to be -- it seems to contain

information that is not directly responsive to this fax cover letter, that would be more closely related to a response that I have seen to other letters from Miles Bauer.

With that said, it does appear from my review of these documents that this is a response to the fax cover letter.

Q. Okay. The fax requests the HOA arrears as they currently exist. And the letter of 3/15/2012 with the attachments, response to that request, provides arrears.

A. I'm just -- I didn't realize that there were attachments to the letter from Ryan Kerbow, but it -- now it makes more sense to me now that this would have been a response, inasmuch as he did include a breakdown of the total amount due on the file.

Q. Okay. Let's go back to 119, the fax. And there it indicates that the fax is from Alexander Bhame, B-H-A-M-E.

A. Yes.

Q. Okay. And now --

A. The response is to Mr. Young, however, so . . .

Q. Yeah. Well, we'll get to the rest.

In the second paragraph of the letter,

A&K 120, the second sentence says, "As such, please be advised that Alessi & Koenig, LLC, on behalf of the HOA will continue the foreclosure process unless $5,308.74 is paid pursuant to the attached demand letter."

And that reference to the attached demand letter would be those pages A&K 121 through 130.

Would you agree?

A. I don't -- I don't know. I don't know that -- I would agree in a -- to the extent of 121 and 122, the cover letter says that there is two pages. So I assume that it was those two pages.

But I see now that the Transaction Report is dated 3/14/2012. So it's very likely that the -- we also provided the Financial Transaction Report.

Just a little confusing to me, inasmuch as the cover letter says there are only two pages attached, but the date of the report seems to indicate that it was sent along with it.

Q. Would you expect that the fax cover letter, A&K 121 and 122, was generated from the information contained in the Financial Transaction Report 3/14/2012, A&K 123 to 131?

A. In part. I mean, certainly, the item No. 3 on the fax cover letter, assessments due April 2016,

we would have ascertained that from, if not this financial report, some financial report provided to us by the HOA and management.

I note that this financial report has assessments through March of 2012. Our demand has assessments through April of 2012, as well as late fees through April 2012. But it would not at all surprise me that this was the Financial Transaction Report attached to this cover letter.

Q. Okay. Besides the assessments, line three, would you expect the amount for the late fees, number four, the fines, number five, and the interest, number six, would have also come from information provided in the Financial Transaction Report of 3/14/2012?

A. That would not surprise me at all.

Q. Now, the rest of the items, like number one, and seven through 15, would those all have been added on by A&K?

A. Or the management company.

Q. Well, that would probably take out number nine or --

A. Number ten.

Q. And ten.

A. Correct.

Q. But the rest of them would have been added by A&K?

A. Fees and costs incurred by A&K. Correct.

Q. Okay. After A&K sent this fax to Miles Bauer, I would expect there was some sort of response by them, but I don't see it in A&K's records.

A. I don't know.

MR. NITZ: I'm going to have A&K 120 to 131 separated out as an exhibit. I have other copies. I'll have that marked as D.

(Exhibits D - E marked for identification.)

BY MR. NITZ:

Q. I've had the reporter mark as Exhibit E a letter on Miles Bauer letterhead dated March 29, 2012.

A. Yes.

Q. And you can see it is addressed to A&K at A&K's local address for the property, and this one is from Paterno Jurani; right?

A. Yes.

Q. Okay. Do you have any reason to dispute that this letter was, indeed, sent to A&K on or about March 29, 2012?

A. I don't.

Q. And attached to this letter is a cashier's check -- well, a trust account check from Miles Bauer to A&K in the amount of $666.10; correct?
A. Yes.
Q. And that check is dated 3/27/2012?
A. Yes.
Q. During that period, March 2012 through February 2013, did A&K regularly get letters of this type from Miles Bauer?
A. I believe so, yes. I don't know of the exact time period, but I know we received quite a few of these letters from Miles Bauer.
Q. Let's go back for a moment to the A&K response letter. What's the exhibit number?
A. D.
Q. The first sentence of the second paragraph states, "Furthermore, the nine-month superpriority is not triggered until the beneficiary under the First Deed of Trust forecloses."
Was that A&K's position in the period November 2010 through February 13, 2013?
A. Yeah. Obviously, I've seen this document before from Ryan Kerbow. That was not our position. I believe what Ryan was referring to, in an albeit inarticulate way, is the understanding that nine

months -- the nine-month superpriority interest of the HOA survives the bank foreclosure. I don't think that Ryan was addressing the issue of the bank's rights vis-a-vis an HOA foreclosure.

Q. That would be speculation on your part. We would have to ask Ryan?

A. Right. That's right.

Q. Okay. And I think you indicated that you are aware that Ryan Kerbow regularly sent out letters that included that language "the nine-month superpriority is not triggered until the beneficiary of the First Deed of Trust forecloses."

A. No. I would take exception to the term "regularly." I was --

Q. You knew he sent those out?

A. I -- I did not know that, and I still don't know that. I would assume, you know, it's got a 3/15/2012 date. Up until recently, it was always my assumption that this was an internal document that never was sent out. But I can see here that it's got a date on it, and so I would -- you know, I would imagine that Miles Bauer would be able to produce a copy of this letter, if they have a copy.

I see that it's our Bates number, so I just don't know, but I wouldn't say -- I've seen this

letter a couple of times. I would not say regularly.

Q. Okay. You would at least agree that on more than one occasion, Ryan Kerbow sent out letters containing that letter during that period?

A. I don't know. I mean, that would be easy enough to find out. This is produced by us. I don't know if it's a letter that Ryan drafted and never sent out. I just don't know. He may have drafted it and saved it and we produced it, but certainly, Miles Bauer would know whether or not they received it.

Q. Did A&K accept the check tendered with Exhibit E?

A. Did we accept -- I would take exception to the term "tendered," and I would take exception to the term "accept."

I don't believe that we returned the check, but I would say we certainly did not accept it as tendered.

Q. Did you apply it?

A. No.

Q. What did you do with it?

A. I think we just held onto it, I think. I think we just noted the status report that we

received correspondence from Miles Bauer, that we received -- I have seen status reports where we note that a payment in an amount equal to nine times the monthly assessment was received.

But as you and I, I believe, have discussed, and I think you're well aware, we did not accept this as payment. We had a -- we had and have a problem with the -- what we considered to be unacceptable restrictive language contained in the letter.

And I can see that this letter has that same restrictive language attached to the payment. And we felt that accepting this payment on behalf of the HOA would have jeopardized our client's rights. And I think that over time, that has been proven to the true.

Q. All of that's nonresponsive to my question.

Would you read back the question.

(The requested portion of the record was read by the reporter.)

THE WITNESS: We kept it. I think we -- I don't think we returned it. We didn't apply it. I believe we just may have scanned it. I don't know exactly what we did with the checks that we received from Miles Bauer, but I do know that we did not

apply it to the past due balance, and I don't believe that we returned it to Miles Bauer, but I don't know that.

BY MR. NITZ:

Q. Okay. Let's return to Exhibit B. I'll direct you to A&K 140 and up through 143, or 142 rather.

A. Yes.

Q. All right. This is a letter on A&K stationery to the homeowners dated December 7, 2010, enclosing a Notice of Delinquent Assessment Lien. Agreed?

A. Yes.

Q. And it indicates at the bottom that the amount that must be received to discharge the lien is $1,302.79.

A. Yes.

Q. There are two copies of the letter. One has a certified mail receipt sticker on it addressed to the Jensens at 6727 Maple Mesa, and the second to the Jensens at 4890 West 10000 North, Elwood, Utah.

Why was it sent certified mail to the Jensens at those two addresses?

A. Likely because the property records search of the public records indicated that the Jensens had

delinquent assessments recoverable by an HOA. This is a nonnegotiable amount, and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance of -- on your part of the facts stated herein and express agreement that BANA's financial obligations towards the HOA in regards to the real property located at 6727 Maple Mesa Street have now been" -- and it's funny; puts it in quotes -- "paid in full."

BY MR. NITZ:

Q. Was it -- did A&K regularly receive that type of letter or letter with those statements from Miles Bauer during that period, November 2010 to February 2013?

A. I have been informed and it's my recollection that all payments during that time received by Miles Bauer contained restrictive language similar to the language I just read.

Q. Did A&K have a policy to not apply the funds coming with letters of that type?

A. Yes. We also had a policy to apply the funds that were not accompanied with letters of this type.

Q. What was A&K's policy or practice during

that period, November 2010 to February 2013, if it received a check for nine months of super -- nine months of superpriority lien amounts without a letter?

MR. BEASLEY: Objection. Calls for speculation.

BY MR. NITZ:

Q. Let me rephrase the question.

What was A&K's policy or practice during the period November 2010 to February 2013 if it received nine months of assessments without a cover letter, transmittal letter?

A. From the bank?

Q. Yeah, from the bank.

A. My understanding is that if we received a check for nine months of assessments with no restrictive language, we would accept that check, apply it to the account. If no further payments were made and we went to sale on the property, there would be a -- a statement made at the sale by our firm, the crier of the sale, that we received a payment equal to less than or greater than the superpriority amount.

If we received a payment of nine months of assessments, plus all of our fees and costs, there

would be a statement at the sale that we received a -- that we received that payment, so we would announce the payment and the receipt of the payment -- and we still do that to this day -- at the sale.

Q. What announcements did A&K make at the subject sale on February 13, 2013?

A. I don't believe any were made.

Q. Who would know that?

A. Well, I could tell you our policy is that we did not announce the Miles Bauer's scenario. In other words, we did not announce that we received a payment equal to nine months of the monthly assessment levied by the association against the homeowner with an accompanying letter containing restrictive language that we found unacceptable on behalf of our client, and therefore, did not consider the payment tendered and did not accept it. We didn't make any announcement like that.

Q. That's nonresponsive to my question. I simply asked you who would know what announcements were made at the sale in February 13, 2013.

A. I could -- I could -- well, I think that that -- I think my testimony is that there were no announcements made pertaining to the Miles Bauer. I can follow up with our Nevada counsel to 100 percent

confirm that, but I'm -- I'm fairly certain, but I'll be happy to follow up with our Nevada counsel, but I am fairly certain that these, quote/unquote, Miles Bauer checks were not announced at the sale. But I'll make a note to look further into that.

Q. And you'll let us know?

A. Yes.

Q. Now, I'm not looking at just whether there was an announcement regarding the Miles Bauer tender. I just want to know who would know what announcements, if any, were made at the time of the sale.

A. One of our Nevada counsel.

Q. Okay. The one that conducted the sale?

A. George Bates would probably know that as well because he attended the sales.

Q. Okay. During that period, how would A&K conduct the sale? Would it set the minimum bid? How would it conduct the sale?

A. We would announce the assessor's parcel number, we would announce the common address, and we would announce the amount of the opening bid, and we would open bidding to the floor.

Q. We talked earlier about the January 2012 Notice of Trustee's Sale, and you didn't know why

there were two.

During that period of 2012 to 2013, did A&K have a policy or practice that if nobody bid on a property, that they would postpone it or withdraw it?

A. No. No. The postponement of sales is -- the determination to postpone or not to postpone the sale is made independent of whether or not anybody's at the sale and prior to the sale. So we did not have a policy such as that.

Q. What I'm trying to get at is if A&K announced the minimum bid or opening bid on the property and nobody bid on it, what would happen?

A. The property would revert to the association as the credit -- successful credit bidder. I don't know if -- I believe the file would be closed at that point. I'm going to have to look into that too. I think there was -- we would not -- we would not postpone the sale. I know that.

If the association didn't want to take ownership of the property, we would have to either re- -- and I don't actually know the answer to your question in full, except to say that we would not postpone the sale, or the association would take ownership of the property as the successful credit

bidder, or we would have to restart the collection process, republish, and repost the sale. But we couldn't just set another sale without republishing it. And that was not our policy.

Q. Was it A&K's policy during that period, November 2010 to February 2013, if it received a request from a bank or servicer or beneficiary or their counsel or agent for a nine-month payoff or a superpriority lien payoff amount, that A&K would not provide a nine-month or superpriority amount?

A. We would provide a total amount due and a breakdown similar to the one you see in this file. The process that we followed on this file in as far as the amount of the breakdown given to Miles Bauer is reflective of our general policy. We would give a breakdown for the total amount due.

MR. NITZ: All right. I'll pass the witness.

EXAMINATION

BY MR. BEASLEY:

Q. Just a few questions.

Going back to Exhibit F, when we had the two different Notice of Trustee's Sale. If --

A. Yes.

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

I, Kerrie Keller, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify:

That I reported the taking of the deposition of the witness, DAVID ALESSI, at the time and place aforesaid;

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth; that before the proceedings' completion, that reading and signing of the deposition has not been requested by the deponent or a party pursuant to NRCP 30(e);

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true, and accurate transcription of testimony provided by the witness at said time to the best of my knowledge, skills, and ability;

I further certify that I am not a relative or employee of counsel of any of the parties, nor a relative or employee of the parties involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 25th day of April, 2016.

Kerrie Keller

Kerrie Keller, CCR No. 612

Exhibit E

Exhibit E

Exhibit E

Exhibit E

DAVID ALESSI *
THOMAS BAYARD *
ROBERT KOENIG **
RYAN KERBOW ***
HUONG LAM ****
* Admitted to the California Bar
** Admitted to the California, Nevada and Colorado Bar
*** Admitted to the Nevada and California Bar
**** Admitted to the Nevada Bar

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3/15/12

MILES, BAUER, BERGSTROM & WINTERS, LLP
ATTN: Rock K. Jung
2200 Paseo Verde Parkway, Suite 250
Henderson, NV 89052
Fax: (702) 369-4955

Re: 6727 Maple Mesa St/ The Parks Homeowners Association

Mr. Jung,

The Commission for Common Interest Communities and Condominium Hotels (the "Commission") released Advisory Opinion No. 2010-01 which specifically addresses the issue of whether or not collection costs are included in the super-priority amount. In the opinion, the Commission concluded that associations may collect, as part of the super priority lien, the costs of collecting as authorized by NRS 116.310313. The Commission also amended NAC 116 establishing provisions concerning fees charged by an association or a person acting on behalf of an association to cover the costs of collecting a past due obligation of a unit's owner.

Furthermore, the nine-month super-priority is not triggered until the beneficiary under the first deed of trust forecloses. As such, please be advised that Alessi & Koenig, LLC, on behalf of the HOA, will continue the foreclosure process unless $5,308.74 is paid pursuant to the attached demand letter. This amount includes all past due obligations, plus collection costs and fees.

Regards,

Ryan Kerbow, Esq.

Licensed in Nevada.

DAVID ALESSI*

THOMAS BAYARD *

ROBERT KOENIG**

RYAN KERBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada and Colorado Bars

*** Admitted to the Nevada and California Bar

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&
DIAMOND BAR CA
PHONE: 909-861-8300

FACSIMILE COVER LETTER

To:	Alex at MBBW	**Re:**	6727 Maple Mesa St/HO #24592
From:		**Date:**	Thursday, March 15, 2012
Fax No.:	702-369-4955	**Pages:**	2, including cover
		HO #:	24592

Dear Alex at MBBW:

This cover will serve as an amended demand on behalf of The Parks Homeowners Association for the above referenced escrow; property located at 6727 Maple Mesa St, N. Las Vegas, NV. The total amount due through April 16, 2012 is $5,308.74. The breakdown of fees, interest and costs is as follows:

Notice of Delinquent Assessment Lien -- Nevada	$325.00
Pre NOD	$90.00
Release of Lien	$30.00
P.U.D. 1 Demand	$75.00
Notice of Default	$395.00
Notice of Trustee Sale	$275.00
HOA Collection Fees	$435.00
Foreclosure Fee	$150.00
Total	$1,775.00

1. Attorney and/or Trustees fees:	$1,775.00
2. Notary, Recording, Copies, Mailings, and PACER	$375.00
3. Assessments Through April 16, 2012	$1,742.40
4. Late Fees Through April 16, 2012	$210.00
5. Fines Through April 16, 2012	$0.00
6. Interest Through April 16, 2012	$146.34
7. RPIR-GI Report	$85.00
8. Title Research (10-Day Mailings per NRS 116.31163)	$275.00
9. Management Company Audit Fee	$200.00
10. Management Account Setup Fee	$200.00
11. Publishing and Posting of Trustee Sale	$175.00
13. Conduct Foreclosure Sale	$125.00
14. Capital Contribution	$0.00
15. Progress Payments:	$0.00

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

DAVID ALESSI*

THOMAS BAYARD *

ROBERT KOENIG**

RYAN KERBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada and Colorado Bars

*** Admitted to the Nevada and California Bar

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&
DIAMOND BAR CA.
PHONE: 909-861-8300

FACSIMILE COVER LETTER

Sub-Total:	$5,308.74
Less Payments Received:	$0.00
Total Amount Due:	$5,308.74

Please have a check in the amount of $5,308.74 made payable to the Alessi & Koenig, LLC and mailed to the above listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

The Parks H.O.A.
FINANCIAL TRANSACTIONS - 03/14/12

6727 Maple Mesa Street
PETER & TAMERA JENSEN

Unit ID: 6727MM
STATUS: 25 - ACCT @ ALESSI
PREPAID BAL: 0.00

TXN DATE	PAYMT AMT	CHECK #	DEP DT	CODE	N/A	DESCRIPTION	AMOUNT	BALANCE DUE
123106	130.00	CR BAL FWD		PP		Credit-Prepaid	(130.00)	(130.00)
010107		APPLY CHARGES		A1		ASSESSMENT	65.00	(65.00)
010107		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)	(65.00)
011607	65.00	777777	011607	PP		Credit-Prepaid	(65.00)	(130.00)
020107		APPLY CHARGES		A1		ASSESSMENT	65.00	(65.00)
020107		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)	(65.00)
021607	65.00	777777	021607	PP		Credit-Prepaid	(65.00)	(130.00)
030107		APPLY CHARGES		A1		ASSESSMENT	65.00	(65.00)
030107		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)	(65.00)
031607	65.00	777777	031607	PP		Credit-Prepaid	(65.00)	(130.00)
040107		APPLY CHARGES		A1		ASSESSMENT	65.00	(65.00)
040107		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)	(65.00)
041607	65.00	777777	041607	PP		Credit-Prepaid	(65.00)	(130.00)
050107		APPLY CHARGES		A1		ASSESSMENT	65.00	(65.00)
050107		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)	(65.00)
051607	65.00	777777	051607	PP		Credit-Prepaid	(65.00)	(130.00)
060107		APPLY CHARGES		A1		ASSESSMENT	65.00	(65.00)
060107		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)	(65.00)
061507	65.00	777777	061507	PP		Credit-Prepaid	(65.00)	(130.00)
070107		APPLY CHARGES		A1		ASSESSMENT	65.00	(65.00)
070107		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)	(65.00)

071607	65.00	777777	071607	PP		Credit-Prepaid	(65.00)
(130.00)							

080107		APPLY CHARGES		A1		ASSESSMENT	65.00
(65.00)							
080107		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)
(65.00)							
081607	65.00	777777	081607	PP		Credit-Prepaid	(65.00)
(130.00)							

090107		APPLY CHARGES		A1		ASSESSMENT	65.00
(65.00)							
090607		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)
(65.00)							
091407	65.00	777777	091407	PP		Credit-Prepaid	(65.00)
(130.00)							

100107		APPLY CHARGES		A1		ASSESSMENT	65.00
(65.00)							
100307		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)
(65.00)							
101607	65.00	777777	101607	PP		Credit-Prepaid	(65.00)
(130.00)							

110107		APPLY CHARGES		A1		ASSESSMENT	65.00
(65.00)							
110307		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)
(65.00)							
111607	65.00	995491	111607	PP		Credit-Prepaid	(65.00)
(130.00)							

120107		APPLY CHARGES		A1		ASSESSMENT	65.00
(65.00)							
120107		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)
(65.00)							
121407	65.00	995514	121407	PP		Credit-Prepaid	(65.00)
(130.00)							

010108		APPLY CHARGES		A1		ASSESSMENT	74.75
(55.25)							
010108		APPLY PREPAYMNT		A1		ASSESSMENT	(74.75)
(55.25)							
011508	65.00	995528	011508	PP		Credit-Prepaid	(65.00)
(120.25)							

020108		APPLY CHARGES		A1		ASSESSMENT	74.75
(45.50)							
020108		APPLY PREPAYMNT		A1		ASSESSMENT	(74.75)
(45.50)							

030108		APPLY CHARGES		A1		ASSESSMENT	74.75
29.25							
030708		APPLY PREPAYMNT		A1		ASSESSMENT	(45.50)
29.25							
031808		APPLY LATE FEE		01		Late Fees	10.00
39.25							
031808	75.00	0000995584	031808	A1		ASSESSMENT	(29.25)
(35.75)							
031808				01		Late Fees	(10.00)
031808				PP		Credit-Prepaid	(35.75)
032808	(75.00)	0000995584	PA-NSF	A1		ASSESSMENT	29.25
39.25							
032808				01		Late Fees	10.00

032808				PP	Credit-Prepaid	35.75
032808		0000995584	NSF	02	NSF charges	35.00
74.25						

040108		APPLY CHARGES		A1	ASSESSMENT	74.75
149.00						
040108		EXPENSE ADJ		A1	ASSESSMENT	35.75
184.75						
040108		EXPENSE ADJ		PP	Credit-Prepaid	(35.75)
149.00						
040208		APPLY PREPAYMNT		A1	ASSESSMENT	(35.75)
149.00						
041708	75.00	995586	041708	A1	ASSESSMENT	(75.00)
74.00						
041808		APPLY LATE FEE		01	Late Fees	10.00
84.00						

050108		APPLY CHARGES		A1	ASSESSMENT	74.75
158.75						
051208	180.00	995614	051208	A1	ASSESSMENT	(103.75)
(21.25)						
051208				01	Late Fees	(20.00)
051208				02	NSF charges	(35.00)
051208				PP	Credit-Prepaid	(21.25)

060108		APPLY CHARGES		A1	ASSESSMENT	74.75
53.50						
060108		APPLY PREPAYMNT		A1	ASSESSMENT	(21.25)
53.50						
061308	75.00	995630	061308	A1	ASSESSMENT	(53.50)
(21.50)						
061308				PP	Credit-Prepaid	(21.50)

070108		APPLY CHARGES		A1	ASSESSMENT	74.75
53.25						
070108		APPLY PREPAYMNT		A1	ASSESSMENT	(21.50)
53.25						
071508	75.00	995651	071508	A1	ASSESSMENT	(53.25)
(21.75)						
071508				PP	Credit-Prepaid	(21.75)

080108		APPLY CHARGES		A1	ASSESSMENT	74.75
53.00						
080108		APPLY PREPAYMNT		A1	ASSESSMENT	(21.75)
53.00						
081408	75.00	995673	081408	A1	ASSESSMENT	(53.00)
(22.00)						
081408				PP	Credit-Prepaid	(22.00)

090108		APPLY CHARGES		A1	ASSESSMENT	74.75
52.75						
090108		APPLY PREPAYMNT		A1	ASSESSMENT	(22.00)
52.75						
091208	75.00	995697	091208	A1	ASSESSMENT	(52.75)
(22.25)						
091208				PP	Credit-Prepaid	(22.25)

100108		APPLY CHARGES		A1	ASSESSMENT	74.75
52.50						
100108		APPLY PREPAYMNT		A1	ASSESSMENT	(22.25)
52.50						
100708	75.00	995712	100708	A1	ASSESSMENT	(52.50)
(22.50)						

100708				PP	Credit-Prepaid	(22.50)

110108		APPLY CHARGES		A1	ASSESSMENT	74.75
52.25						
110108		APPLY PREPAYMNT		A1	ASSESSMENT	(22.50)
52.25						
111308	75.00	995729	111308	A1	ASSESSMENT	(52.25)
(22.75)						
111308				PP	Credit-Prepaid	(22.75)

120108		APPLY CHARGES		A1	ASSESSMENT	74.75
52.00						
120108		APPLY PREPAYMNT		A1	ASSESSMENT	(22.75)
52.00						
121608	75.00	ck95758oln	122208	A1	ASSESSMENT	(52.00)
(23.00)						
121608				PP	Credit-Prepaid	(23.00)

010109		APPLY CHARGES		A1	ASSESSMENT	74.75
51.75						
010109		APPLY PREPAYMNT		A1	ASSESSMENT	(23.00)
51.75						

020109		APPLY CHARGES		A1	ASSESSMENT	74.75
126.50						
022009	126.50	995810	022009	A1	ASSESSMENT	(126.50)
0.00						

030109		APPLY CHARGES		A1	ASSESSMENT	74.75
74.75						
031309	75.00	995814	031309	A1	ASSESSMENT	(74.75)
(0.25)						
031309				PP	Credit-Prepaid	(0.25)

040109		APPLY CHARGES		A1	ASSESSMENT	74.75
74.50						
040109		APPLY PREPAYMNT		A1	ASSESSMENT	(0.25)
74.50						
041509		APPLY LATE FEE		01	Late Fees	10.00
84.50						
043009		INTEREST		04	Interest	1.10
85.60						

050109		APPLY CHARGES		A1	ASSESSMENT	74.75
160.35						
050109	155.00	995844	050109	A1	ASSESSMENT	(149.25)
5.35						
050109				01	Late Fees	(5.75)
051309	75.00	995821	051309	01	Late Fees	(4.25)
(69.65)						
051309				04	Interest	(1.10)
051309				PP	Credit-Prepaid	(69.65)

060109		APPLY CHARGES		A1	ASSESSMENT	74.75
5.10						
060109		APPLY PREPAYMNT		A1	ASSESSMENT	(69.65)
5.10						
061209	75.00	995851	061209	A1	ASSESSMENT	(5.10)
(69.90)						
061209				PP	Credit-Prepaid	(69.90)

070109		APPLY CHARGES		A1	ASSESSMENT	74.75
4.85						

070109		APPLY PREPAYMNT		A1	ASSESSMENT	(69.90)
4.85						
071409	75.00	995868	071409	A1	ASSESSMENT	(4.85)
(70.15)						
071409				PP	Credit-Prepaid	(70.15)
073109	5.00	995880	073109	PP	Credit-Prepaid	(5.00)
(75.15)						

080109		APPLY CHARGES		A1	ASSESSMENT	74.75
(0.40)						
080109		APPLY PREPAYMNT		A1	ASSESSMENT	(74.75)
(0.40)						

090109		APPLY CHARGES		A1	ASSESSMENT	74.75
74.35						
090109		APPLY PREPAYMNT		A1	ASSESSMENT	(0.40)
74.35						
091409	75.00	995896	091409	A1	ASSESSMENT	(74.35)
(0.65)						
091409				PP	Credit-Prepaid	(0.65)
091709	(75.00)	995896	PA-NSF	A1	ASSESSMENT	74.35
74.35						
091709				PP	Credit-Prepaid	0.65
091709		995896	NSF	02	NSF charges	25.00
99.35						
092209	85.00	6812335168	092209	PP	Credit-Prepaid	(85.00)
14.35						

100109		APPLY CHARGES		A1	ASSESSMENT	74.75
89.10						
100109		APPLY PREPAYMNT		A1	ASSESSMENT	(85.00)
89.10						
101509	75.00	341	101509	A1	ASSESSMENT	(64.10)
14.10						
101509				02	NSF charges	(10.90)

110109		APPLY CHARGES		A1	ASSESSMENT	74.75
88.85						
111209	75.00	345	111209	A1	ASSESSMENT	(74.75)
13.85						
111209				02	NSF charges	(0.25)

120109		APPLY CHARGES		A1	ASSESSMENT	74.75
88.60						
120909	88.60	355	120909	A1	ASSESSMENT	(74.75)
0.00						
120909				02	NSF charges	(13.85)

010110		APPLY CHARGES		A1	ASSESSMENT	74.75
74.75						
011510		APPLY LATE FEE		01	Late Fees	10.00
84.75						
012010	88.60	362	012010	A1	ASSESSMENT	(74.75)
(3.85)						
012010				01	Late Fees	(10.00)
012010				PP	Credit-Prepaid	(3.85)

020110		APPLY CHARGES		A1	ASSESSMENT	74.75
70.90						
020110		APPLY PREPAYMNT		A1	ASSESSMENT	(3.85)
70.90						
021610		APPLY LATE FEE		01	Late Fees	10.00
80.90						

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030110              APPLY CHARGES      A1          ASSESSMENT          74.75
155.65
031510              APPLY LATE FEE     01          Late Fees           10.00
165.65
031810 Action taken: 01 - Balance Due
031810              APPLY ADMIN FEE    03          Admin. Fees         10.00
175.65
033110              INTEREST           04          Interest             1.26
176.91
------
040110              APPLY CHARGES      A1          ASSESSMENT          74.75
251.66
041510              APPLY LATE FEE     01          Late Fees           10.00
261.66
043010              INTEREST           04          Interest             0.95
262.61
------
050110              APPLY CHARGES      A1          ASSESSMENT          74.75
337.36
050710 Action taken: 02 - Lien Warning
050710              APPLY ADMIN FEE    03          Admin. Fees         25.00
362.36
051510              APPLY LATE FEE     01          Late Fees           10.00
372.36
053110              INTEREST           04          Interest             1.27
373.63
------
060110              APPLY CHARGES      A1          ASSESSMENT          74.75
448.38
060210     260.00 376          060210 A1          ASSESSMENT          (260.00)
188.38
061510              APPLY LATE FEE     01          Late Fees           10.00
198.38
061710 Action taken: 02 - Lien Warning
061710              APPLY ADMIN FEE    03          Admin. Fees         25.00
223.38
------
070110              APPLY CHARGES      A1          ASSESSMENT          74.75
298.13
070710 Action taken: 01 - Balance Due
070710              APPLY ADMIN FEE    03          Admin. Fees         10.00
308.13
071510              APPLY LATE FEE     01          Late Fees           10.00
318.13
073010              INTEREST           04          Interest             0.80
318.93
------
080110              APPLY CHARGES      A1          ASSESSMENT          74.75
393.68
080410              EXPENSE ADJ        01          Late Fees           (60.00)
333.68
080410              EXPENSE ADJ        04          Interest             (4.28)
329.40
080410              EXPENSE ADJ        03          Admin. Fees         (70.00)
259.40
080510              APPLY CCR FEE      12          Fines               100.00
359.40
081510              APPLY LATE FEE     01          Late Fees            10.00
369.40
082310              EXPENSE ADJ        12          Fines               (100.00)
269.40
082510 Action taken: 02 - Lien Warning
```

082510	APPLY ADMIN FEE	03	Admin. Fees	25.00
294.40				
083110	INTEREST	04	Interest	1.12
295.52				

090110	APPLY CHARGES	A1	ASSESSMENT	74.75
370.27				
091510	APPLY LATE FEE	01	Late Fees	10.00
380.27				
092710	Action taken: 02 - Lien Warning			
092710	APPLY ADMIN FEE	03	Admin. Fees	25.00
405.27				
093010	INTEREST	04	Interest	1.44
406.71				

100110	APPLY CHARGES	A1	ASSESSMENT	74.75
481.46				
101510	APPLY LATE FEE	01	Late Fees	10.00
491.46				
103010	INTEREST	04	Interest	1.76
493.22				

110110	APPLY CHARGES	A1	ASSESSMENT	74.75
567.97				
110510	Action taken: 25 - ACCT @ ALESSI			
111510	APPLY LATE FEE	01	Late Fees	10.00
577.97				
113010	INTEREST	04	Interest	2.09
580.06				

120110	APPLY CHARGES	A1	ASSESSMENT	74.75
654.81				
121510	APPLY LATE FEE	01	Late Fees	10.00
664.81				
122310	EXPENSE ADJ	07	Misc. Charges	385.00
1049.81				
123010	INTEREST	04	Interest	2.41
1052.22				

010111	APPLY CHARGES	A1	ASSESSMENT	74.00
1126.22				
011511	APPLY LATE FEE	01	Late Fees	10.00
1136.22				
013011	INTEREST	04	Interest	2.73
1138.95				

020111	APPLY CHARGES	A1	ASSESSMENT	74.00
1212.95				
021511	APPLY LATE FEE	01	Late Fees	10.00
1222.95				
022811	INTEREST	04	Interest	3.05
1226.00				

030111	APPLY CHARGES	A1	ASSESSMENT	74.00
1300.00				
031511	APPLY LATE FEE	01	Late Fees	10.00
1310.00				
033011	INTEREST	04	Interest	3.37
1313.37				

040111	APPLY CHARGES	A1	ASSESSMENT	74.00
1387.37				
041511	APPLY LATE FEE	01	Late Fees	10.00

1397.37				
050111	APPLY CHARGES	A1	ASSESSMENT	74.00
1471.37				
043011	INTEREST	04	Interest	3.69
1475.06				
051511	APPLY LATE FEE	01	Late Fees	10.00
1485.06				
053011	INTEREST	04	Interest	4.01
1489.07				
060111	APPLY CHARGES	A1	ASSESSMENT	74.00
1563.07				
061511	APPLY LATE FEE	01	Late Fees	10.00
1573.07				
063011	INTEREST	04	Interest	4.33
1577.40				
070111	APPLY CHARGES	A1	ASSESSMENT	74.00
1651.40				
071511	APPLY LATE FEE	01	Late Fees	10.00
1661.40				
073011	INTEREST	04	Interest	4.64
1666.04				
080111	APPLY CHARGES	A1	ASSESSMENT	74.00
1740.04				
081511	APPLY LATE FEE	01	Late Fees	10.00
1750.04				
083011	INTEREST	04	Interest	9.93
1759.97				
090111	APPLY CHARGES	A1	ASSESSMENT	74.00
1833.97				
091511	APPLY LATE FEE	01	Late Fees	10.00
1843.97				
093011	INTEREST	04	Interest	10.57
1854.54				
100111	APPLY CHARGES	A1	ASSESSMENT	74.00
1928.54				
101511	APPLY LATE FEE	01	Late Fees	10.00
1938.54				
103011	INTEREST	04	Interest	11.20
1949.74				
110111	APPLY CHARGES	A1	ASSESSMENT	74.00
2023.74				
111511	APPLY LATE FEE	01	Late Fees	10.00
2033.74				
113011	INTEREST	04	Interest	11.84
2045.58				
120111	APPLY CHARGES	A1	ASSESSMENT	74.00
2119.58				
121511	APPLY LATE FEE	01	Late Fees	10.00
2129.58				
123011	INTEREST	04	Interest	12.48
2142.06				
010112	APPLY CHARGES	A1	ASSESSMENT	74.00

2216.06				
011512	APPLY LATE FEE	01	Late Fees	10.00
2226.06				
013012	INTEREST	04	Interest	12.48
2238.54				

020112	APPLY CHARGES	A1	ASSESSMENT	74.00
2312.54				
021512	APPLY LATE FEE	01	Late Fees	10.00
2322.54				
022912	INTEREST	04	Interest	13.76
2336.30				

030112	APPLY CHARGES	A1	ASSESSMENT	74.00
2410.30				

B A L A N C E S U M M A R Y

CHARGE CODE	DESCRIPTION	AMOUNT
A1	ASSESSMENT	1,668.40
01	Late Fees	190.00
04	Interest	116.90
03	Admin. Fees	50.00
07	Misc. Charges	385.00
	TOTAL:	2,410.30

Exhibit F

Exhibit F

Exhibit F

MILES BAUER AFFIDAVIT

State of California }
}ss.
Orange County }

Affidavit being first duly sworn, deposes and says:

1. I am a managing partner with the law firm of Miles, Bauer, Bergstrom & Winters, LLP (Miles Bauer) in Cosa Mesa, California. I am authorized to submit this affidavit on behalf of Miles Bauer.
2. I am over 18 years of age, of sound mind, and capable of making this affidavit.
3. The information in this affidavit is taken from Miles Bauer's business records. I have personal knowledge of Miles Bauer's procedures for creating these records. They are: (a) made at or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information in the business record, or form information transmitted by persons with personal knowledge; (b) kept in the course of Miles Bauer's regularly conducted business activities; and (c) it is the regular practices of Miles Bauer to make such records. I have personal knowledge of Miles Bauer's procedures for creating and maintaining these business records. I personally confirmed that the information in this affidavit is accurate by reading the affidavit and attachments, and checking that the information in this affidavit matches Miles Bauer's records available to me.

4. Bank of America, N.A. (BANA) retained Miles Bauer to tender payments to homeowners associations (HOA) to satisfy super-priority liens in connection with the following loan:

   Loan Number: [redacted]

   Borrower(s): Jensen, Peter

   Property Address: 6727 Maple Mesa Street, North Las Vegas, NV 89084

5. Miles Bauer maintains records for the loan in connection with tender payments to HOA. As part of my job responsibilities for Miles Bauer, I am familiar with the type of records maintained by Miles Bauer in connection with the loan.

6. Based on Miles Bauer's business records, attached as **Exhibit 1** is a copy of the letter and payment ledger from Alessi & Koenig dated March 15, 2012.

7. Based on Miles Bauer's business records attached as **Exhibit 2** is a letter dated March 29, 2012 from Paterno C. Jurani, Esq., an attorney with Miles Bauer, to Nevada Association Services, Inc. along with a check for $666.00 which was sent with the letter. Additionally, Miles Bauer's case management includes a specific note evidencing the letter was sent to Alessi & Koenig, LLC, on or about March 29, 2012. A copy of a screenshot of the relevant case management note(s) confirming the letter was sent is attached as **Exhibit 3.**

8. Based on Miles Bauer's business records, on or about April 11, 2012, Alessi & Koenig, LLC refused the delivery of the March 29, 2012 letter and check in the amount of $666.00.

A copy of a screenshot containing the relevant case management note confirming the check was returned is attached as **Exhibit 3.**

FURTHER DECLARANT SAYETH NOT.

Date: 12/23/15

Declarant Douglas E. Miles

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Orange

Subscribed and sworn to (or affirmed) before me on this 23rd day of December, 2015, by Douglas E. Miles, proved to me on the basis of satisfactory evidence to be the person who appeared before me.
(Name of Signer)

Signature _____. (Seal)
(Signature of Notary Public)

AMANDA MARIA MENDOZA
Commission # 2078315
Notary Public - California
Los Angeles County
My Comm. Expires Aug 17, 2018

Exhibit 1

Exhibit 1

Exhibit 1

DAVID ALESSI *
THOMAS BAYARD *
ROBERT KOENIG **
RYAN KERBOW ***
HUONG LAM ****
* Admitted to the California Bar
** Admitted to the California, Nevada and Colorado Bar
*** Admitted to the Nevada and California Bar
**** Admitted to the Nevada Bar

ALESSI KOENIG
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AGOURA HILLS, CA
PHONE: 818-735-9600
RENO NV
PHONE: 775-626-2323
DIAMOND BAR CA
PHONE: 909-843-6590

3/15/12

MILES, BAUER, BERGSTROM & WINTERS, LLP
ATTN: Rock K. Jung
2200 Paseo Verde Parkway, Suite 250
Henderson, NV 89052
Fax: (702) 369-4955

Re: 6727 Maple Mesa St/ The Parks Homeowners Association

Mr. Jung,

The Commission for Common Interest Communities and Condominium Hotels (the "Commission") released Advisory Opinion No. 2010-01 which specifically addresses the issue of whether or not collection costs are included in the super-priority amount. In the opinion, the Commission concluded that associations may collect, as part of the super priority lien, the costs of collecting as authorized by NRS 116.310313. The Commission also amended NAC 116 establishing provisions concerning fees charged by an association or a person acting on behalf of an association to cover the costs of collecting a past due obligation of a unit's owner.

Furthermore, the nine-month super-priority is not triggered until the beneficiary under the first deed of trust forecloses. As such, please be advised that Alessi & Koenig, LLC, on behalf of the HOA, will continue the foreclosure process unless $5,308.74 is paid pursuant to the attached demand letter. This amount includes all past due obligations, plus collection costs and fees.

Regards,

Ryan Kerbow, Esq.

Licensed in Nevada.

DAVID ALESSI*

THOMAS BAYARD *

ROBERT KOENIG**

RYAN KERBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada and Colorado Bars

*** Admitted to the Nevada and California Bar

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AGOURA HILLS, CA.
PHONE: 818-735-9600

RENO NV
PHONE: 775-625-2323
&
DIAMOND BAR CA.
PHONE: 909-861-8300

FACSIMILE COVER LETTER

To:	Alex at MBBW	Re:	6727 Maple Mesa St/HO #24692
From:		Date:	Thursday, March 15, 2012
Fax No.:	702-368-4955	Pages:	2, including cover
		HO #:	24692

Dear Alex at MBBW:

This cover will serve as an amended demand on behalf of The Parks Homeowners Association for the above referenced escrow; property located at 6727 Maple Mesa St, N. Las Vegas, NV. The total amount due through April 16, 2012 is $5,308.74. The breakdown of fees, interest and costs is as follows:

Notice of Delinquent Assessment Lien – Nevada	$325.00
Pre NOD	$90.00
Release of Lien	$30.00
P.U.D. 1 Demand	$75.00
Notice of Default	$395.00
Notice of Trustee Sale	$275.00
HOA Collection Fees	$435.00
Foreclosure Fee	$150.00
Total	$1,775.00

1. Attorney and/or Trustees fees:	$1,775.00
2. Notary, Recording, Copies, Mailings, and PACER	$375.00
3. Assessments Through April 16, 2012	$1,742.40
4. Late Fees Through April 16, 2012	$210.00
5. Fines Through April 16, 2012	$0.00
6. Interest Through April 16, 2012	$146.34
7. RPIR-GI Report	$85.00
8. Title Research (10-Day Mailings per NRS 116.31163)	$275.00
9. Management Company Audit Fee	$200.00
10. Management Account Setup Fee	$200.00
11. Publishing and Posting of Trustee Sale	$175.00
13. Conduct Foreclosure Sale	$125.00
14. Capital Contribution	$0.00
15. Progress Payments:	$0.00

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

DAVID ALESSI*

THOMAS BAYARD *

ROBERT KOENIG**

RYAN KERBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada and Colorado Bars

*** Admitted to the Nevada and California Bar

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RENO NV
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&
DIAMOND BAR CA
PHONE: 909-861-1300

FACSIMILE COVER LETTER

Sub-Total:	$5,308.74
Less Payments Received:	$0.00
Total Amount Due:	$5,308.74

Please have a check in the amount of $5,308.74 made payable to the Alessi & Koenig, LLC and mailed to the above listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

The Parks H,O.A.
FINANCIAL TRANSACTIONS - 03/14/12

6727 Maple Mesa Street
PETER & TAMERA JENSEN

Unit ID: 6727MM
STATUS: 25 - ACCT @ ALESSI
PREPAID BAL: 0.00

TXN DATE	PAYMT AMT	CHECK #	DEP DT	CODE	N/A	DESCRIPTION	AMOUNT	BALANCE DUE
						-----PAYMENTS/TRXN DESCR-----	---------CHARGES/PAYMENT DISTR---------	
123106	130.00	CR BAL FWD		PP		Credit-Prepaid	(130.00)	(130.00)
010107		APPLY CHARGES		A1		ASSESSMENT	65.00	(65.00)
010107		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)	(65.00)
011607	65.00	777777	011607	PP		Credit-Prepaid	(65.00)	(130.00)
020107		APPLY CHARGES		A1		ASSESSMENT	65.00	(65.00)
020107		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)	(65.00)
021607	65.00	777777	021607	PP		Credit-Prepaid	(65.00)	(130.00)
030107		APPLY CHARGES		A1		ASSESSMENT	65.00	(65.00)
030107		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)	(65.00)
031607	65.00	777777	031607	PP		Credit-Prepaid	(65.00)	(130.00)
040107		APPLY CHARGES		A1		ASSESSMENT	65.00	(65.00)
040107		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)	(65.00)
041607	65.00	777777	041607	PP		Credit-Prepaid	(65.00)	(130.00)
050107		APPLY CHARGES		A1		ASSESSMENT	65.00	(65.00)
050107		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)	(65.00)
051607	65.00	777777	051607	PP		Credit-Prepaid	(65.00)	(130.00)
060107		APPLY CHARGES		A1		ASSESSMENT	65.00	(65.00)
060107		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)	(65.00)
061507	65.00	777777	061507	PP		Credit-Prepaid	(65.00)	(130.00)
070107		APPLY CHARGES		A1		ASSESSMENT	65.00	(65.00)
070107		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)	(65.00)

AR9724

071607	65.00	777777	071607	PP		Credit-Prepaid	(65.00)
(130.00)							
080107		APPLY CHARGES		A1		ASSESSMENT	65.00
(65.00)							
080107		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)
(65.00)							
081607	65.00	777777	081607	PP		Credit-Prepaid	(65.00)
(130.00)							
090107		APPLY CHARGES		A1		ASSESSMENT	65.00
(65.00)							
090607		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)
(65.00)							
091407	65.00	777777	091407	PP		Credit-Prepaid	(65.00)
(130.00)							
100107		APPLY CHARGES		A1		ASSESSMENT	65.00
(65.00)							
100307		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)
(65.00)							
101607	65.00	777777	101607	PP		Credit-Prepaid	(65.00)
(130.00)							
110107		APPLY CHARGES		A1		ASSESSMENT	65.00
(65.00)							
110307		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)
(65.00)							
111607	65.00	995491	111607	PP		Credit-Prepaid	(65.00)
(130.00)							
120107		APPLY CHARGES		A1		ASSESSMENT	65.00
(65.00)							
120107		APPLY PREPAYMNT		A1		ASSESSMENT	(65.00)
(65.00)							
121407	65.00	995514	121407	PP		Credit-Prepaid	(65.00)
(130.00)							
010108		APPLY CHARGES		A1		ASSESSMENT	74.75
(55.25)							
010108		APPLY PREPAYMNT		A1		ASSESSMENT	(74.75)
(55.25)							
011508	65.00	995528	011508	PP		Credit-Prepaid	(65.00)
(120.25)							
020108		APPLY CHARGES		A1		ASSESSMENT	74.75
(45.50)							
020108		APPLY PREPAYMNT		A1		ASSESSMENT	(74.75)
(45.50)							
030108		APPLY CHARGES		A1		ASSESSMENT	74.75
29.25							
030708		APPLY PREPAYMNT		A1		ASSESSMENT	(45.50)
29.25							
031808		APPLY LATE FEE		01		Late Fees	10.00
39.25							
031808	75.00	0000995584	031808	A1		ASSESSMENT	(29.25)
(35.75)							
051808				01		Late Fees	(10.00)
031808				PP		Credit-Prepaid	(35.75)
032808	(75.00)	0000995584	PA-NSF	A1		ASSESSMENT	29.25
39.25							
032808				01		Late Fees	10.00

032808				PP	Credit-Prepaid	35.75
032808		0000995584	NSF	02	NSF charges	35.00
74.25						
040108		APPLY CHARGES		A1	ASSESSMENT	74.75
149.00						
040108		EXPENSE ADJ		A1	ASSESSMENT	35.75
184.75						
040108		EXPENSE ADJ		PP	Credit-Prepaid	(35.75)
149.00						
040208		APPLY PREPAYMNT		A1	ASSESSMENT	(35.75)
149.00						
041708	75.00	995586	041708	A1	ASSESSMENT	(75.00)
74.00						
041808		APPLY LATE FEE		01	Late Fees	10.00
84.00						
050108		APPLY CHARGES		A1	ASSESSMENT	74.75
158.75						
051208	180.00	995614	051208	A1	ASSESSMENT	(103.75)
(21.25)						
051208				01	Late Fees	(20.00)
051208				02	NSF charges	(35.00)
051208				PP	Credit-Prepaid	(21.25)
060108		APPLY CHARGES		A1	ASSESSMENT	74.75
53.50						
060108		APPLY PREPAYMNT		A1	ASSESSMENT	(21.25)
53.50						
061308	75.00	995630	061308	A1	ASSESSMENT	(53.50)
(21.50)						
061308				PP	Credit-Prepaid	(21.50)
070108		APPLY CHARGES		A1	ASSESSMENT	74.75
53.25						
070108		APPLY PREPAYMNT		A1	ASSESSMENT	(21.50)
53.25						
071508	75.00	995651	071508	A1	ASSESSMENT	(53.25)
(21.75)						
071508				PP	Credit-Prepaid	(21.75)
080108		APPLY CHARGES		A1	ASSESSMENT	74.75
53.00						
080108		APPLY PREPAYMNT		A1	ASSESSMENT	(21.75)
53.00						
081408	75.00	995673	081408	A1	ASSESSMENT	(53.00)
(22.00)						
081408				PP	Credit-Prepaid	(22.00)
090108		APPLY CHARGES		A1	ASSESSMENT	74.75
52.75						
090108		APPLY PREPAYMNT		A1	ASSESSMENT	(22.00)
52.75						
091208	75.00	995697	091208	A1	ASSESSMENT	(52.75)
(22.25)						
091208				PP	Credit-Prepaid	(22.25)
100108		APPLY CHARGES		A1	ASSESSMENT	74.75
52.50						
100108		APPLY PREPAYMNT		A1	ASSESSMENT	(22.25)
52.50						
100708	75.00	995712	100708	A1	ASSESSMENT	(52.50)
(22.50)						

100708				PP	Credit-Prepaid	(22.50)
110108			APPLY CHARGES	A1	ASSESSMENT	74.75
52.25						
110108			APPLY PREPAYMNT	A1	ASSESSMENT	(22.50)
52.25						
111308	75.00	995729	111308	A1	ASSESSMENT	(52.25)
(22.75)						
111308				PP	Credit-Prepaid	(22.75)
120108			APPLY CHARGES	A1	ASSESSMENT	74.75
52.00						
120108			APPLY PREPAYMNT	A1	ASSESSMENT	(22.75)
52.00						
121608	75.00	ck95758oln	122208	A1	ASSESSMENT	(52.00)
(23.00)						
121608				PP	Credit-Prepaid	(23.00)
010109			APPLY CHARGES	A1	ASSESSMENT	74.75
51.75						
010109			APPLY PREPAYMNT	A1	ASSESSMENT	(23.00)
51.75						
020109			APPLY CHARGES	A1	ASSESSMENT	74.75
126.50						
022009	126.50	995810	022009	A1	ASSESSMENT	(126.50)
0.00						
030109			APPLY CHARGES	A1	ASSESSMENT	74.75
74.75						
031309	75.00	995814	031309	A1	ASSESSMENT	(74.75)
(0.25)						
031309				PP	Credit-Prepaid	(0.25)
040109			APPLY CHARGES	A1	ASSESSMENT	74.75
74.50						
040109			APPLY PREPAYMNT	A1	ASSESSMENT	(0.25)
74.50						
041509			APPLY LATE FEE	01	Late Fees	10.00
84.50						
043009			INTEREST	04	Interest	1.10
85.60						
050109			APPLY CHARGES	A1	ASSESSMENT	74.75
160.35						
050109	155.00	995844	050109	A1	ASSESSMENT	(149.25)
5.35						
050109				01	Late Fees	(5.75)
051309	75.00	995821	051309	01	Late Fees	(4.25)
(69.65)						
051309				04	Interest	(1.10)
051309				PP	Credit-Prepaid	(69.65)
060109			APPLY CHARGES	A1	ASSESSMENT	74.75
5.10						
060109			APPLY PREPAYMNT	A1	ASSESSMENT	(69.65)
5.10						
061209	75.00	995851	061209	A1	ASSESSMENT	(5.10)
(69.90)						
061209				PP	Credit-Prepaid	(69.90)
070109			APPLY CHARGES	A1	ASSESSMENT	74.75
4.85						

070109		APPLY PREPAYMNT		A1	ASSESSMENT	(69.90)
4.85						
071409	75.00	995868	071409	A1	ASSESSMENT	(4.85)
(70.15)						
071409				PP	Credit-Prepaid	(70.15)
073109	5.00	995880	073109	PP	Credit-Prepaid	(5.00)
(75.15)						

080109		APPLY CHARGES		A1	ASSESSMENT	74.75
(0.40)						
080109		APPLY PREPAYMNT		A1	ASSESSMENT	(74.75)
(0.40)						

090109		APPLY CHARGES		A1	ASSESSMENT	74.75
74.35						
090109		APPLY PREPAYMNT		A1	ASSESSMENT	(0.40)
74.35						
091409	75.00	995896	091409	A1	ASSESSMENT	(74.35)
(0.65)						
091409				PP	Credit-Prepaid	(0.65)
091709	(75.00)	995896	PA-NSF	A1	ASSESSMENT	74.35
74.35						
091709				PP	Credit-Prepaid	0.65
091709		995896	NSF	02	NSF charges	25.00
99.35						
092209	85.00	6812335168	092209	PP	Credit-Prepaid	(85.00)
14.35						

100109		APPLY CHARGES		A1	ASSESSMENT	74.75
89.10						
100109		APPLY PREPAYMNT		A1	ASSESSMENT	(85.00)
89.10						
101509	75.00	341	101509	A1	ASSESSMENT	(64.10)
14.10						
101509				02	NSF charges	(10.90)

110109		APPLY CHARGES		A1	ASSESSMENT	74.75
88.85						
111209	75.00	345	111209	A1	ASSESSMENT	(74.75)
13.85						
111209				02	NSF charges	(0.25)

120109		APPLY CHARGES		A1	ASSESSMENT	74.75
88.60						
120909	88.60	355	120909	A1	ASSESSMENT	(74.75)
0.00						
120909				02	NSF charges	(13.85)

010110		APPLY CHARGES		A1	ASSESSMENT	74.75
74.75						
011510		APPLY LATE FEE		01	Late Fees	10.00
84.75						
012010	88.60	362	012010	A1	ASSESSMENT	(74.75)
(3.85)						
012010				01	Late Fees	(10.00)
012010				PP	Credit-Prepaid	(3.85)

020110		APPLY CHARGES		A1	ASSESSMENT	74.75
70.90						
020110		APPLY PREPAYMNT		A1	ASSESSMENT	(3.85)
70.90						
021610		APPLY LATE FEE		01	Late Fees	10.00
80.90						

030110		APPLY CHARGES	A1	ASSESSMENT	74.75
155.65					
031510		APPLY LATE FEE	01	Late Fees	10.00
165.65					
031810	Action taken: 01 - Balance Due				
031810		APPLY ADMIN FEE	03	Admin. Fees	10.00
175.65					
033110		INTEREST	04	Interest	1.26
176.91					
040110		APPLY CHARGES	A1	ASSESSMENT	74.75
251.66					
041510		APPLY LATE FEE	01	Late Fees	10.00
261.66					
043010		INTEREST	04	Interest	0.95
262.61					
050110		APPLY CHARGES	A1	ASSESSMENT	74.75
337.36					
050710	Action taken: 02 - Lien Warning				
050710		APPLY ADMIN FEE	03	Admin. Fees	25.00
362.36					
051510		APPLY LATE FEE	01	Late Fees	10.00
372.36					
053110		INTEREST	04	Interest	1.27
373.63					
060110		APPLY CHARGES	A1	ASSESSMENT	74.75
448.38					
060210	260.00 376		060210 A1	ASSESSMENT	(260.00)
188.38					
061510		APPLY LATE FEE	01	Late Fees	10.00
198.38					
061710	Action taken: 02 - Lien Warning				
061710		APPLY ADMIN FEE	03	Admin. Fees	25.00
223.38					
070110		APPLY CHARGES	A1	ASSESSMENT	74.75
298.13					
070710	Action taken: 01 - Balance Due				
070710		APPLY ADMIN FEE	03	Admin. Fees	10.00
308.13					
071510		APPLY LATE FEE	01	Late Fees	10.00
318.13					
073010		INTEREST	04	Interest	0.80
318.93					
080110		APPLY CHARGES	A1	ASSESSMENT	74.75
393.68					
080410		EXPENSE ADJ	01	Late Fees	(60.00)
333.68					
080410		EXPENSE ADJ	04	Interest	(4.28)
329.40					
080410		EXPENSE ADJ	03	Admin. Fees	(70.00)
259.40					
080510		APPLY CCR FEE	12	Fines	100.00
359.40					
081510		APPLY LATE FEE	01	Late Fees	10.00
369.40					
082310		EXPENSE ADJ	12	Fines	(100.00)
269.40					
082510	Action taken: 02 - Lien Warning				

082510	APPLY ADMIN FEE	03	Admin. Fees	25.00
294.40				
083110	INTEREST	04	Interest	1.12
295.52				
090110	APPLY CHARGES	A1	ASSESSMENT	74.75
370.27				
091510	APPLY LATE FEE	01	Late Fees	10.00
380.27				
092710	Action taken: 02 - Lien Warning			
092710	APPLY ADMIN FEE	03	Admin. Fees	25.00
405.27				
093010	INTEREST	04	Interest	1.44
406.71				
100110	APPLY CHARGES	A1	ASSESSMENT	74.75
481.46				
101510	APPLY LATE FEE	01	Late Fees	10.00
491.46				
103010	INTEREST	04	Interest	1.76
493.22				
110110	APPLY CHARGES	A1	ASSESSMENT	74.75
567.97				
110510	Action taken: 25 - ACCT @ ALESSI			
111510	APPLY LATE FEE	01	Late Fees	10.00
577.97				
113010	INTEREST	04	Interest	2.09
580.06				
120110	APPLY CHARGES	A1	ASSESSMENT	74.75
654.81				
121510	APPLY LATE FEE	01	Late Fees	10.00
664.81				
122310	EXPENSE ADJ	07	Misc. Charges	385.00
1049.81				
123010	INTEREST	04	Interest	2.41
1052.22				
010111	APPLY CHARGES	A1	ASSESSMENT	74.00
1126.22				
011511	APPLY LATE FEE	01	Late Fees	10.00
1136.22				
013011	INTEREST	04	Interest	2.73
1138.95				
020111	APPLY CHARGES	A1	ASSESSMENT	74.00
1212.95				
021511	APPLY LATE FEE	01	Late Fees	10.00
1222.95				
022811	INTEREST	04	Interest	3.05
1226.00				
030111	APPLY CHARGES	A1	ASSESSMENT	74.00
1300.00				
031511	APPLY LATE FEE	01	Late Fees	10.00
1310.00				
033011	INTEREST	04	Interest	3.37
1313.37				
040111	APPLY CHARGES	A1	ASSESSMENT	74.00
1387.37				
041511	APPLY LATE FEE	01	Late Fees	10.00

1397.37				
050111	APPLY CHARGES	A1	ASSESSMENT	74.00
1471.37				
043011	INTEREST	04	Interest	3.69
1475.06				
051511	APPLY LATE FEE	01	Late Fees	10.00
1485.06				
053011	INTEREST	04	Interest	4.01
1489.07				
060111	APPLY CHARGES	A1	ASSESSMENT	74.00
1563.07				
061511	APPLY LATE FEE	01	Late Fees	10.00
1573.07				
063011	INTEREST	04	Interest	4.33
1577.40				
070111	APPLY CHARGES	A1	ASSESSMENT	74.00
1651.40				
071511	APPLY LATE FEE	01	Late Fees	10.00
1661.40				
073011	INTEREST	04	Interest	4.64
1666.04				
080111	APPLY CHARGES	A1	ASSESSMENT	74.00
1740.04				
081511	APPLY LATE FEE	01	Late Fees	10.00
1750.04				
083011	INTEREST	04	Interest	9.93
1759.97				
090111	APPLY CHARGES	A1	ASSESSMENT	74.00
1833.97				
091511	APPLY LATE FEE	01	Late Fees	10.00
1843.97				
093011	INTEREST	04	Interest	10.57
1854.54				
100111	APPLY CHARGES	A1	ASSESSMENT	74.00
1928.54				
101511	APPLY LATE FEE	01	Late Fees	10.00
1938.54				
103011	INTEREST	04	Interest	11.20
1949.74				
110111	APPLY CHARGES	A1	ASSESSMENT	74.00
2023.74				
111511	APPLY LATE FEE	01	Late Fees	10.00
2033.74				
113011	INTEREST	04	Interest	11.84
2045.58				
120111	APPLY CHARGES	A1	ASSESSMENT	74.00
2119.58				
121511	APPLY LATE FEE	01	Late Fees	10.00
2129.58				
123011	INTEREST	04	Interest	12.48
2142.06				
010112	APPLY CHARGES	A1	ASSESSMENT	74.00

2216.06				
011512	APPLY LATE FEE	01	Late Fees	10.00
2226.06				
013012	INTEREST	04	Interest	12.48
2238.54				

020112	APPLY CHARGES	A1	ASSESSMENT	74.00
2312.54				
021512	APPLY LATE FEE	01	Late Fees	10.00
2322.54				
022912	INTEREST	04	Interest	13.76
2336.30				

030112	APPLY CHARGES	A1	ASSESSMENT	74.00
2410.30				

B A L A N C E S U M M A R Y

CHARGE CODE	DESCRIPTION	AMOUNT
A1	ASSESSMENT	1,668.40
01	Late Fees	190.00
04	Interest	116.90
03	Admin. Fees	50.00
07	Misc. Charges	385.00
	TOTAL:	2,410.30

Exhibit 2

Exhibit 2

Exhibit 2

DOUGLAS E. MILES
Also Admitted in California & Illinois
JEREMY T. BERGSTROM
Also Admitted in Arizona
GINA M. CORENA
ROCK K. JUNG
KRISTA J. NIELSON
JORY C. GARABEDIAN
THOMAS M. MORLAN
Admitted in California
STEVEN E. STERN
Admitted in Arizona & Illinois
ANDREW H. PASTWICK
Also Admitted in Arizona & California
PATERNO C. JURANI

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ATTORNEYS AT LAW SINCE 1985

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RICHARD J. BAUER, JR.
FRED TIMOTHY WINTERS
KEENAN E. McCLENAHAN
MARK T. DOMEYER
Also Admitted In the District of Columbia & Virginia
TAMI S. CROSBY
L. BRYANT JAQUEZ
WAYNE A. RASH
VY T. PHAM
HADI R. SEYED-ALI
BRIAN H. TRAN
ANNA A. GHAJAR
CORI B. JONES
CATHERINE K. MASON
CHRISTINE A. CHUNG
HANH T. NGUYEN
S. SHELLY RAISZADEH
SHANNON C. WILLIAMS
ABTIN SHAKOURI
LAWRENCE R. BOIVIN
RICK J. NEHORAOFF
MICHAEL J. FOX

March 29, 2012

ALESSI & KOENIG, LLC
9500 W. FLAMINGO ROAD, SUITE 100
LAS VEGAS, NV 89147

Re: *Property Address:* 6727 Maple Mesa Street
HO #: 24592
[redacted]
MBBW File No. 12-H0423

Dear Sir/Madame:

As you may recall, this firm represents the interests of Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by you in regards to the above-referenced address shows a full payoff amount of $5,308.74. BANA is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

> The association has a lien on a unit for:
> ...
> *any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section*

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

2. A lien under this section is prior to all other liens and encumbrances on a unit except:
(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

Based on Section 2(b), a portion of your HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that are junior to our client's first deed of trust pursuant to the aforementioned NRS 116.3102 Subsection (1), Paragraphs (j) through (n).

Our client has authorized us to make payment to you in the amount of $666.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of $666.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BANA's financial obligations towards the HOA in regards to the real property located at 6727 Maple Mesa Street have now been "paid in full".

Thank you for your prompt attention to this matter. If you have any questions or concerns, I may be reached by phone directly at (702) 942-0413.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP

Paterno C. Jurani, Esq.

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct 12-H0423 Initials: SRN

Payee: Alessi & Koenig, LLC Check #: 13974 Date: 3/27/2012 Amount: 666.00

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
3/27/2012	24592	To Cure HOA Deficiency	666.00			

Miles, Bauer, Bergstrom & Winters, LLP
Trust Account
1231 E. Dyer Road, #100
Santa Ana, CA 92705
Phone: (714) 481-9100

Bank of America
1100 N. Green Valley Parkway
Henderson, NV 89074
16-66/1220
1020

13974

Date: 3/27/2012

12-H0423

Amount: $***** 666.00

Pay: $*****Six Hundred Sixty-Six & No/100 Dollars

Check Void After 90 Days

to the order of

Alessi & Koenig, LLC

[redacted]

[redacted]

Exhibit 3

Exhibit 3

Exhibit 3

Client Sort: BANK OF AMERICA, N.A. (CFP) | BANA v. Jensen HOA

General | Notes | Billing | Contacts | Matters | Events | Inquiry | Settlement | Civil | Contract Info | Custom | Deed Info | New Invoice

Date | (all)

1/1/2004 | 8/23/2004

- 2/23/2012: RCVD REFERRAL; OPENED 2/23/12
- 2/23/2012: EMF AWB re: New Referral
- 2/23/2012: EMF RKJ re: Confirmation of Referral
- 2/24/2012: 2/24 EMT CLIENT WITH INITIAL LETTERS ATTACHED; FU
- 2/27/2012: 2/21 EMF RKJ re: acceptance of referral
- 2/28/2012: EMF RKJ re: initial letters to borrower and HOA
- 3/9/2012: 3/9 EMT CLIENT RE HOA UPDATE BUT NO PO; FU 3/16
- 3/12/2012: EMF PCJ re: status update, no po, sale date 3/28/12
- 3/19/2012: 3/19 EMT CLIENT HOA UPDATE WITH PO ATTACHED; FU
- 3/20/2012: EMF PCJ re: status update w/po & figures
- 3/30/2012: 3/30 CHECK SENT TO HOA; FU 4/11 SEE IF CHECK WAS
- 3/30/2012: EMF PCJ re: Payoff Funds, 12-H0423, 6727 Maple Mesa St
- 4/11/2012: EMF PCJ re: Status of Payoff Funds (Rejected), 12-H0423, 6727 Maple Me
- 4/11/2012: 4/11 CHECK RETURNED; FU 8/27 MONITOR EX PARTE
- 4/25/2012: EMT CLNT re: sent invoice
- 9/21/2012: 12-H0423 scanned docs.PDF
- 12/27/2012: 12/27 CHECK REJECTED; F/U 1/28 MONITOR FILE
- 1/31/2013: REJECTED FILE; FU 2/15 MONITOR 2/13 SALE DATE
- 2/15/2013: PROPERTY SOLD TO 3RD PARTY AT HOA SALE; F/U 3/1
- 3/1/2013: PROPERTY SOLD TO 3RD PARTY AT HOA SALE, NEW
- 3/21/2013: TDUS recorded 2/19/13
- 4/1/2013: EMF PCJ re: closing file (prop sold at HOA sale)
- 4/4/2013: EMT MRT w/excel spreadsheet and April invoices
- 6/26/2013: EMT MRT re: status of outstanding invoice #435932
- 2/24/2015: Reply email to Paterno w HOA tender letter and check
- 2/24/2015: EMF Paterno asks for copy of HOA tender letter and check

Exhibit G

Exhibit G

Exhibit G

Electronically Filed
07/14/2015 04:57:14 PM

ORDR

EIGHTH JUDICIAL DISTRICT COURT CLERK OF THE COURT

CLARK COUNTY, NEVADA

PROPERTY PLUS INVESTMENTS, LLC, a Nevada Limited Liability Company,

Plaintiff,

vs.

BANK OF AMERICA, N.A., a Nevada Association; MORTGAGE ELECTRONIC REGISTRATION SYSTEM, an Illinois Corporation; ARLINGTON NORTH MASTER ASSOCIATION, a Nevada Non-Profit Corporation; ARLINGTON RANCH LANDSCAPE MAINTENANCE ASSOCIATION, a Nevada Non-Profit Corporation; DOES 1 through 25 INCLUSIVE; and ROE CORPORATION I through X, inclusive;

Defendants.

Case No. A-13-692200-C
Dept No. VII

DECISION AND ORDER

This real property dispute arises from conflicting claimed rights and interests of residential property located at 8787 Tom Noon Avenue, No. 21, Las Vegas, Nevada 89178. Now before the Court are competing motions for summary judgment: the first is brought by Defendants Mortgage Electronic Registration Systems, Inc. ("MERS") and Christiana Trust; the second by Plaintiff Property Plus Investments, LLC. Both motions were heard on July 7, 2015. The Court grants the Defendants' Motion for Summary Judgment and denies Plaintiff's Motion for two reasons: (1) the homeowners' association lien foreclosed on in this case lost its super-priority portion when the HOA and/or foreclosure agent refused the bank's tender of payment, and (2) the HOA lien was discharged by the United States Bankruptcy Court prior to foreclosure.

I. Background

The residential property at 8787 Tom Noon Avenue, No. 21 is subject to the Supplemental Declaration of Covenants, Conditions and Restrictions and Reservation of

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

JUL 14 2015

Easements for High Noon Arlington Ranch ("CC&Rs"). High Noon at Arlington Ranch Homeowners Association ("High Noon Association") recorded the CC&Rs on March 25, 2004. In addition to the High Noon Association, the Tom Noon property has at least two additional homeowners' associations—Arlington Ranch North Master Association ("Master Association") and Arlington Ranch Landscape Maintenance Association ("Landscape Association").

On April 27, 2007, three years after the High Noon CC&Rs were recorded, Megan Sulliban purchased the Tom Noon property. Ms. Sulliban's Deed of Trust for $215,000.00 was recorded on April 30, 2007, naming Defendant Bank of America, N.A. ("BofA") as the lender on the Deed of Trust. On August 10, 2010, BofA retained the law firm Miles, Bergstrom & Winters, LLP f/k/a Miles, Bauer, Bergstrom & Winters, LLP ("BofA counsel") to tender payment to the HOAs and/or their agents for the super-priority portion of any lien being claimed on the Tom Noon property.

On April 8, 2010, High Noon Association recorded a notice of lien for unpaid assessments. On May 18, 2010, Master Association recorded a notice of lien for unpaid assessments. Both High Noon Association and Master Association recorded defaults for their liens.

On September 23, 2010, BofA's counsel sent a letter to Alessi & Koenig ("A&K"), High Noon Association's agent, with an enclosed check intended to satisfy the maximum nine months of common assessments that could be claimed as a super-priority lien. On January 28, 2011, BofA's counsel sent a letter to Nevada Association Services, Inc. ("NAS"), Master Association's agent, with an enclosed check to satisfy the maximum nine months of common assessments that could be claimed as a super-priority lien. Both checks were ultimately rejected by A&K and NAS and returned to BofA's counsel without further correspondence or explanation of any amount necessary to cure any super-priority lien. Nonetheless, Master Association and High Noon Association both released their liens within a year after BofA's tender.

Then on July 20, 2012, High Noon Association recorded another notice of lien for unpaid assessments. And, on October 31, 2012, High Noon Association recorded a Notice of Default and Election to Sell under Homeowners Association Lien.

On December 19, 2012, Ms. Sulliban filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the District of Nevada. Ms. Sulliban indicated on her Bankruptcy Petition that she was surrendering the Tom Noon property. Ms. Sulliban listed the High Noon Association lien in her Bankruptcy Petition. Ms. Sulliban received her bankruptcy discharge on March 20, 2013.

On June 21, 2013, High Noon Association recorded a Notice of Trustee's Sale foreclosing on its July 2012 lien. At the non-judicial foreclosure sale, Plaintiff Property Plus paid $7,500.00 for the Tom Noon property. On July 30, 2013, a Trustee's Deed Upon Sale was recorded naming Property Plus as the grantee.

On April 7, 2014, an Assignment of Deed of Trust was recorded. The Assignment of Deed of Trust assigned all beneficial interest in the 2007 Deed of Trust and Note to Defendant Christiana Trust.

II. Discussion

Nevada Rule of Civil Procedure 56(a) allows a party to move the Court for summary judgment. Summary judgment is only appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. See Wood v. Safeway, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). Materiality depends on the applicable substantive law, and includes only factual disputes that could change the ultimate outcome of the case. Id. 121 Nev. at 730, 121 P.3d at 1030. Furthermore, the court must review and consider all evidence in a light most favorable to the non-moving party. Id. 121 Nev. at 730, 121 P.3d at 1030.

A. Tender of Super-Priority Lien Amount

"NRS 116.3116(2) . . . splits an HOA lien into two pieces, a superpriority piece and a subpriority piece. The superpriority piece, consisting of the last nine months of unpaid HOA dues and maintenance and nuisance-abatement charges, is 'prior to' a first deed of

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DISTRICT JUDGE
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trust." SFR Investments Pool 1 v. U.S. Bank, 130 Nev. Adv. Op. 75, 334 P.3d 408, 411 (2014), reh'g denied (Oct. 16, 2014); see also 13-01 Op. Dep't. of Bus. & Indus., Real Estate Div. 2 (2012) (super-priority lien is limited to: (1) 9 months of assessments; and (2) [nuisance abatement] charges allowed by NRS 116.310312). On the other hand, "[t]he subpriority piece, consist[s] of all other HOA fees or assessments, [and] is subordinate to a first deed of trust." Id. at 411.

The Nevada Supreme Court's SFR v. U.S. Bank decision made clear that the super-priority portion of the lien is a true super-priority lien, which will extinguish a first deed of trust if foreclosed upon pursuant to the requirements of Nevada Revised Statute chapter 116. See SFR v. U.S. at 419. However, if the super-priority amount has been paid to the association, the remaining sub-priority portion takes a junior position to earlier recorded encumbrances. An association's foreclosure on the remaining amount transfers title to the property subject to the first mortgage or deed of trust.

A party's tender of the super-priority amount is sufficient to extinguish the super-priority character of the lien, leaving only a junior lien. See Segars v. Classen Garage & Serv. Co., 1980 OK CIV APP 9, 612 P.2d 293, 295 ("a proper and sufficient tender of payment operates to discharge a lien"). The common law definition of tender is "an offer of payment that is coupled either with no conditions or only with conditions upon which the tendering party has a right to insist." Fresk v. Kraemer, 337 Or. 513, 522, 99 P.3d 282, 286-7 (2004); see also 74 Am. Jur. 2d Tender § 22. Tender is satisfied where there is "an offer to perform a condition or obligation, coupled with the present ability of immediate performance, so that if it were not for the refusal of cooperation by the party to whom tender is made, the condition or obligation would be immediately satisfied." 15 Williston, A Treatise on the Law of Contracts, § 1808 (3d. ed. 1972). A tender which has been made and rejected precludes foreclosure and discharges the mortgage or lien secured by property. See Bisno v. Sax, 175 Cal. App. 2d 714, 724, 346 P.2d 814 (1959) ("Speaking generally, the acceptance of payment of a delinquent installment of principal or interest cures that particular default and precludes a foreclosure sale based upon such preexisting

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

delinquency. The same is true of a tender which has been made and rejected."); see also , Lichty v. Whitney, 80 Cal. App. 2d 696, 701, 182 P.2d 582 (1947) (holding that "[a] tender of the amount of a debt, though refused, extinguishes the lien of a pledgee, and will entitle the pledgor to recover the property pledged . . . [t]he creditor, by refusing to accept, does not forfeit his right to the thing tendered, but he does lose all collateral benefits or securities. The instantaneous effect is to discharge any collateral lien, as a pledge of goods or right of distress.")

Here, BofA through its attorneys calculated the maximum nine months of assessments that could have been claimed by the homeowners' associations. BofA then tendered to the homeowners' associations' agents, A&K and NAS, to satisfy the maximum nine months of common assessments that could be claimed. The checks were rejected and returned back to BofA's counsel without further correspondence or explanation. The actions of BofA therefore discharged any super-priority lien that could have been claimed or foreclosed by the High Noon Association, Master Association, or their agents. As such, summary judgment is proper in favor of MERS and Christiana Trust on the ground that the High Noon Association received and rejected tender of the super-priority amount of its lien prior to foreclosing on the Tom Noon property.

B. Bankruptcy Discharge

The Bankruptcy Code specifically states that any homeowners' association fees and assessments due and owing prior to the filing of the bankruptcy petition are dischargeable. The United States Bankruptcy Code states,

> (a) A discharge under section 727, 1141, 1228 (a), 1228 (b), or 1328 (b) of this title does not discharge an individual debtor from any debt—
>
> for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership

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> association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case.

11 U.S.C. § 523(a)(16) (emphasis added).

MERS and Christiana Trust argue that, though 11 U.S.C. § 523(a)(16) does not preclude High Noon Association from foreclosing on its lien, it read in conjunction with Nevada Revised Statute chapter 116 imputed a statutory duty on the High Noon Association to record new notices that accurately reflected the correct lien amount. See NRS 116.1162(1)(b)(1) (association or agent must record notice of default which must "describe the deficiency in payment"); see also NRS 116.311635(3)(a) (before selling the unit, the association or agent must serve unit's owner a copy of the notice of sale that includes "[t]he amount necessary to satisfy the lien as of the date of the proposed sale"). Ms. Sulliban indicated on her Bankruptcy Petition that she was surrendering the Tom Noon property, which allowed for the discharge of HOA fees and assessments that arose before her March 2013 bankruptcy discharge. High Noon Association's July 2012 lien and October 2012 Notice of Default, included fees and costs that were ultimately discharged by Ms. Sulliban's bankruptcy. High Noon Association was therefore required to file new notices reflecting the new lien amounts to comply with the non-judicial foreclosure requirements of Nevada Revised Statute chapter 116. But, High Noon Association failed to record new notices after Ms. Sulliban's bankruptcy discharge; instead, from June to July 2013, High Noon Association moved forward with foreclosure of the discharged lien amounts.

High Noon Association foreclosed on a lien that contained fees and costs which were discharged by the Sulliban bankruptcy, therefore the High Noon Association foreclosure did not comply with the requirements of Nevada Revised Statute chapter 116. Because High Noon Association's foreclosure of the Tom Noon property was improper and illegal, summary judgment is proper in favor of MERS and Christiana Trust.

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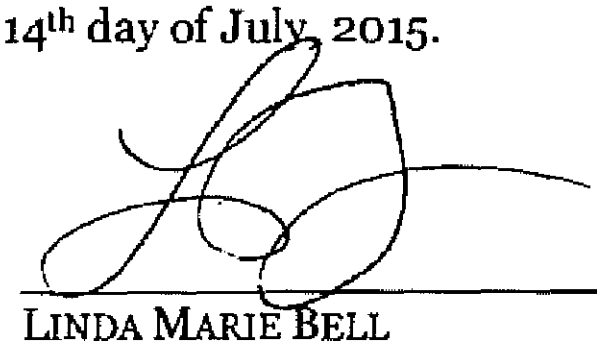
III. Conclusion

Defendants Mortgage Electronic Registration Systems, Inc.'s and Christiana Trust's Motion for Summary Judgment is granted and Plaintiff Property Plus Investments, LLC's Motion for Summary Judgment is denied because the High Noon Association lien lost its super-priority portion when the High Noon Association rejected Bank of America's tender, and the lien was discharged by the United States Bankruptcy Court prior to foreclosure.

DATED this 14th day of July, 2015.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14th of July, 2015, he caused to be served the foregoing Order through the Eighth Judicial District Court EFP system or, if no E-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for counsel as listed below:

Name	Party	Phone	Contact
Patrick Kang, Esq.	Attorney for Plaintiff Property Plus Investments, LLC		pkang@alkalaw.com
Ryan Hastings, Esq.	Attorney for Defendants Arlington Ranch Master Association and Arlington Ranch Landscape Maintenance Association		rhastings@leachjohnson.com
Dana Nitz, Esq.	Attorney for MERS and Christiana Trust		dnitz@wrightlegal.net

M. R. Dickerson

MICHAEL R. DICKERSON
LAW CLERK, DEPARTMENT VII

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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A-13-692200-C **DOES NOT** contain the social security number of any person.

/s/ Linda Marie Bell Date 7/14/15
District Court Judge

Exhibit H

Exhibit H

Exhibit H

ORDR
WRIGHT, FINLAY & ZAK, LLP
Dana Jonathan Nitz, Esq.
Nevada Bar No. 00050
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Las Vegas, Nevada 89117
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dnitz@wrightlegal.net
Attorney for Defendants, U.S. Bank, N.A., as Trustee on behalf of the Certificate Holders of HarborView Mortgage Loan Trust 2005-1, Mortgage Loan Pass-Through Certificates, Series 2005-1, and Mortgage Electronic Registration Systems, Inc.

DISTRICT COURT
CLARK COUNTY, NEVADA

FIRST 100, LLC, a Nevada limited liability company

Plaintiff,

vs.

US BANK NATIONAL ASSOCIATION, AS TRUSTEE, FOR THE BENEFIT OF HARBOR VIEW 2005-1 TRUST FUND, a REMIC Trust; BANK OF AMERICA, a National Charter Bank; COUNTRYWIDE HOME MORTGAGE, INC., a defunct Corporation; RECONTRUST COMPANY, N.A., a Foreign Corporation; DOE LOAN SERVICING COMPANY; RACHEL HUNT, an individual; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; a Foreign Corporation; REPUBLIC SERVICES, INC., a Foreign Corporation; DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-12-669876-C
Dept. No.: XII

ORDER GRANTING DEFENDANTS MOTION FOR SUMMARY JUDGMENT

Hearing Date: November 9, 2015
Hearing Time: 8:30 a.m.

On September 28, 2015, Plaintiff, First 100, LLC ("Plaintiff"), by and through its attorney of record, Luis A. Ayon, Esq. of the law firm of Maier Gutierrez Ayon PLLC, filed a Motion for Summary Judgment. On September 28, 2015, Defendants, U.S. Bank, N.A., as Trustee on behalf of the Certificate Holders of HarborView Mortgage Loan Trust 2005-1,

Mortgage Loan Pass-Through Certificates, Series 2005-1 ("U.S. Bank"), and Mortgage Electronic Registration Systems, Inc. ("MERS") (hereinafter collectively "Defendants"), by and through their attorney of record, Dana Jonathon Nitz, Esq., of Wright, Finlay & Zak, LLP, filed a Motion for Summary Judgment. On October 15, 2015, Defendants filed an Opposition to Plaintiff's Motion for Summary Judgment. On October 15, 2015, Plaintiff filed an Opposition to Defendants Motion for Summary Judgment. On November 2, 2015, Defendants filed a Reply in support of Motion for Summary Judgment. On November 3, 2015, Plaintiff filed a Reply in support of Motion for Summary Judgment.

Plaintiff's Motion for Summary Judgment and Defendants Motion for Summary Judgment came on for hearing on November 8, 2015, and the Court, having carefully considered all of the pleadings and papers on file and considering the oral argument of counsel, and for good cause appearing, hereby enters the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. This matter concerns title to that real property located at 3345 Birchwood Park Circle Las Vegas, Nevada 89141 (the "Property").

2. The Property is located within the Southern Highlands Golf Club Home Owners Association (hereinafter the "HOA").

3. On July 16, 2001, "The Villas" Neighborhood Supplement To Supplemental Declaration Of Covenants, Conditions, And Restrictions And Reservation Of Easements And Assignment Of Certain Rights Of Declarant For The Villas At Christopher Communities At Southern Highlands Golf Club were recorded the project in which the Property is located were recorded as Book and Instrument Number 20010716-02042.

4. On November 15, 2006, Declaration of Development Covenants And Restrictions by "45.96 Acre Parcel, L.L.C., a Nevada limited liability company ("Builder") and acknowledged by Southern Highlands Development Corporation" for the project in which the Property is located were recorded as Book and Instrument Number 20061115-0005315 on the Property in the Clark County Recorder's Office.

5. On January 16, 2008, Declaration of Development Covenants and Restrictions by

Town & Country Bank, Inc. for the project in which the Property is located recorded as Book and Instrument Number 20080116-0003966.

6. On January 3, 2005, Carmen Rose (hereinafter "Rose") purchased the Property

7. On January 6, 2005, Rose executed a first Deed of Trust ("Deed of Trust") securing a refinanced loan in the amount of $617,500.00.

8. The Deed of Trust, recorded on the Property as Book and Instrument Number 200501060004666 on January 6, 2005, identified Rose as the "Borrower," Countrywide Home Loans, Inc. ("Countrywide") as the "Lender," CTC Real Estate Services ("CTC") as the "Trustee," and Mortgage Electronic Registration Systems, Inc. ("MERS"), acting solely as a nominee for Lender and Lender's successors and assigns, as the "Beneficiary."

9. MERS then recorded an Assignment of Deed of Trust on November 25, 2009, by which MERS assigned all its beneficial interest under the Deed of Trust to U.S. Bank National Association, as Trustee, for the Benefit of Harborview 2005-1 Trust Fund ("U.S. Bank").

10. On May 26, 2009, Red Rock Financial Services ("Red Rock") recorded a lien for Delinquent Assessments on the property in favor of the HOA.

11. On July 8, 2009, Red Rock recorded a Notice of Default and Election to Sell Pursuant to the lien for Delinquent Assessments.

12. On May 7, 2010, the law firm Miles, Bergstrom & Winters, LLP f/k/a Miles, Bauer, Bergstrom & Winters, LLP (hereinafter "MBBW"), BAC Home Loans Servicing, LP fka Countrywide Home Loans, Inc. (hereinafter "BAC"), as servicer under the Deed of Trust, sent a letter to Red Rock which enclosed a check for $3,708.00 that could be claimed as a super-priority lien by the HOA.

13. The amount tendered represented 9 months of HOA assessments of $412.00 per month.

14. The check was rejected by Red Rock and returned to MBBW.

15. On or about July 24, 2012, First 100, the HOA and Kupperlin entered a three party agreement, entitled "Purchase and Sale of Select Current and Future Delinquent Assessment Receivables Agreement" ("PSA").

16. On August 29, 2012, a Substitution of Trustee was recorded substituting Kupperlin for Red Rock as the foreclosure trustee for the HOA.

17. On September 7, 2012, a Notice of Foreclosure Sale ("Notice of Sale") on the HOA's lien was recorded by Kupperlin.

18. The sale went forward on September 29, 2012, a Saturday, at the law office of Kupperlin.

19. First 100 was the purchaser at the foreclosure sale, acquiring its interest in the Property for $100.

20. First 100 paid Kupperlin the $100 purchase price for the Property.

21. On or about October 4, 2012, a Foreclosure Deed was recorded against the property by First 100.

22. The Foreclosure Deed was re-recorded on or about December 13, 2012.

23. A deed transferring the property to Tyrone & In-Ching LLC was recorded on March 6, 2014, and was re-recorded on June 17, 2014.

24. Any Finding of Fact which should be a conclusion of law shall be construed as such.

CONCLUSIONS OF LAW

1. The primary purpose of a summary judgment procedure is to secure a "just, speedy, and inexpensive determination of any action." *Albatross Shipping Corp. v. Stewart*, 326 F.2d 208, 211 (5th Cir. 1964); accord *McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005). Summary judgment may not be used to deprive litigants of trials on the merits where material factual doubts exist. *Id.* "Summary judgment is appropriate if, when viewed in the light most favorable to the nonmoving party, the record reveals there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *DTJ Design, Inc. v. First Republic Bank*, 130 Nev. Adv. Op. 5, 318 P.3d 709, 710 (2014) (citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002)). Summary judgment must be granted unless "the nonmoving party [can] transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts

that show a genuine issue of material fact." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 603, 172 P.3d 131, 134 (2007). A genuine issue of fact is one that could reasonably be resolved in favor of either party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51, 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986).

2. In *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (2014), the Nevada Supreme Court clearly stated that a first deed of trust holder's pre-foreclosure tender prevents the first deed of trust from being extinguished. 334 P.3d at 414 ("[A]s junior lienholder, [the holder of the first deed of trust] could have paid off the [HOA] lien to avert loss of its security[.]"); and see 1982 UCIOA § 3-116 cmt. 1 (cited with approval in *SFR Investments*, 334 P.3d at 414.).

3. This super-priority amount is equal to the amount of assessments that "would have become due in the absence of acceleration during the nine months immediately preceding institution of an action to enforce the lien...." *See* NRS 116.3116(2); *accord* NRED Letter ("the total amount of the super-priority lien attributable to assessments is no more than 9 months of the monthly assessments reflected in the association's budget.").

4. In a good faith effort to satisfy the HOA's super-priority lien, MBBW tendered a check in the amount of $3,708.00 to Red Rock on May 7, 2010, prior to the HOA foreclosure sale. This amount included the last nine months of the HOA's delinquent assessments of.

5. Red Rock rejected the payment, despite the fact that the tendered amount equaled the statutory super-priority. *See* NRS 116.3116(2).

6. A tender which has been made, even if rejected, discharges the subject lien. The acceptance of payment of a delinquent installment of principal or interest cures that particular default and precludes a foreclosure sale based upon such a preexisting delinquency. *See Bisno v. Sax*, 346 P.2d 814, 820 (Cal. Dist. Ct. App. 1959). The same is true of a tender which has been made and rejected. *Lichty v. Whitney*, 182 P.2d 582, 582 (Cal. Dist. Ct. App. 1947) ("A tender of the amount of a debt, though refused, extinguishes the lien of a pledgee, and will entitle the pledger to recover the property pledged."). Accordingly, by tendering the super-priority amount,

the super-priority lien was discharged when the tender was made. Red Rock's rejection of the tender is irrelevant.

7. Because the super-priority lien was extinguished prior to the foreclosure sale, the HOA could not convey title to the Property free and clear of the Deed of Trust. *See* NRS 116.31164(3)(a) (an HOA foreclosure sale purchaser receives "a deed without warranty which conveys to the grantee *all title of the unit's owner to the unit*" (emphasis added)).

8. The Deed of Trust remained prior to the HOA lien.

9. Plaintiff, having purchased the HOA's position, took subject to the Deed of Trust.

10. Tyrone & In-Ching LLC, having acquired its interest in the Property from First 100, also took subject to the Deed of Trust.

11. This Court makes no conclusions regarding Defendants' other bases for summary judgment.

12. Therefore, as no genuine issues of material fact remain on Defendants' claim to superior title in defense of Plaintiff's quiet title action, Defendants are entitled to judgment as a matter of law.

13. Because Plaintiff cannot demonstrate it is entitled to judgment as a matter of law based on the undisputed facts, Plaintiff's Motion for Summary Judgment is denied.

14. Any Conclusion of Law which should be a finding of fact shall be construed as such.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, Plaintiff's Motion for Summary Judgment is DENIED.

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED, Defendants' Motion for Summary Judgment is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment shall be entered in favor of Defendants and against Plaintiff on Plaintiff's Complaint.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Deed of Trust,

recorded on the Property as Book and Instrument Number 200501060004666 on January 6, 2005, was not extinguished by the HOA sale conducted on September 29, 2012, and the interest conveyed to Plaintiff by the Foreclosure Deed recorded against the property by First 100 on or about October 4, 2012, and re-recorded on or about December 13, 2012, was subject to that Deed of Trust.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Deed of Trust, recorded on the Property as Book and Instrument Number 200501060004666 on January 6, 2005, was not extinguished by the HOA sale conducted on September 29, 2012, and the interest conveyed by Plaintiff to Tyrone & In-Ching LLC by deed recorded on March 6, 2014, and re-recorded on June 17, 2014, was subject to that Deed of Trust.

DATED this 23 day of February, 2016.

DISTRICT COURT JUDGE

Respectfully submitted by:
WRIGHT, FINLAY & ZAK, LLP

Dana Jonathon Nitz, Esq.
Nevada Bar No. 0050
7785 W. Sahara Ave, Suite 200
Las Vegas, NV 89117
Attorney for Defendants, U.S. Bank, N.A., as Trustee on behalf of the Certificate Holders of HarborView Mortgage Loan Trust 2005-1, Mortgage Loan Pass-Through Certificates, Series 2005-1, and Mortgage Electronic Registration Systems, Inc.

Approved as to form and content:
MAIER GUTIERREZ AYON PLLC

Luis A. Ayon, Esq.
Nevada Bar No. 9752
400 South Seventh Street, Suite 400
Las Vegas, NV 89101
Attorney for Plaintiff, First 100, LLC

Exhibit I

Exhibit I

Exhibit I

REGISTER OF ACTIONS

CASE NO. A-14-708690-C

Zaisan Enterprises LLC, Plaintiff(s) vs. Alenoush Davidian, Defendant(s)

Case Type: Other Title to Property
Date Filed: 10/17/2014
Location: Department 26
Cross-Reference Case Number: A708690

PARTY INFORMATION

Counter Claimant	Bank of New York Mellon	Lead Attorneys Paterno C. Jurani *Retained* 702-369-5960(W)
Counter Defendant	Zaisan Enterprises LLC	Wolfe Thompson *Retained* 7022633030(W)
Defendant	Bank of New York Mellon	Paterno C. Jurani *Retained* 702-369-5960(W)
Defendant	Countrywide Home Loans Inc	Darren T. Brenner *Retained* 702-634-5000(W)
Defendant	Davidian, Alenoush	
Defendant	First American Trustee Servicing Solutions LLC	Aaron R. Maurice *Retained* 702-362-7800(W)
Plaintiff	Zaisan Enterprises LLC	Wolfe Thompson *Retained* 7022633030(W)
Third Party Defendant	Alessi & Koenig LLC	Steven Jr Loizzi *Retained* 702-410-8120(W)
Third Party Defendant	The Falls at Rhodes Ranch Condominium Owners Association Inc	Steven Jr Loizzi *Retained* 702-410-8120(W)
Third Party Plaintiff	Bank of New York Mellon	Paterno C. Jurani *Retained* 702-369-5960(W)

EVENTS & ORDERS OF THE COURT

10/06/2015 **All Pending Motions** (2:30 PM) (Judicial Officer Sturman, Gloria)

Minutes
10/06/2015 2:30 PM
- PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON QUIET TITLE CLAIM . . . BANK OF NEW YORK MELLON'S OPPOSITION TO

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON QUIET TITLE CLAIM AND COUNTERMOTION FOR SUMMARY JUDGMENT . . . COUNTRYWIDE HOME LOANS, INC.'S MOTION FOR SUMMARY JUDGMENT . . . . BONY'S JOINDER TO COUNTRYWIDE HOME LOANS, INC.'S MOTION FOR SUMMARY JUDGMENT Prior to argument on the motions, COURT STATED ITS FINDINGS regarding the former homeowners bankruptcy raised at the last hearing. Court noted the Notice of Discharge stated liens against property remain; further, the debt was not listed in the bankruptcy so the bankruptcy does not affect this matter. Mr. Brenner on behalf of Countrywide Home Loans argued the commercial reasonableness and constitutionality of the super priority statute. Mr. Jurani argued the Bank and Countrywide made a tender for the lien amount that was rejected by the HOA. Mr. Dunkley argued there was no tender but rather a demand letter or a settlement proposal. Mr. Thompson stated plaintiff was a bona fide purchaser as they had no knowledge regarding the bank's tender. Following argument, COURT STATED ITS FINDINGS; Court rejects the argument of commercial reasonableness and constitutionality. COURT FURTHER FINDS the bank made a good faith tender that should have been accepted. COURT ORDERED Countrywide's Motion for Summary Judgment DENIED; BONY's Joinder thereto DENIED; and Plaintiff's Motion for Summary Judgment DENIED. COURT FURTHER ORDERED Bank of New York Mellon's Countermotion for Summary Judgment GRANTED. Counsel then argued the status of the lien holders and COURT STATED ITS FINDINGS that Bank of New York Mellon was first. The Court took under review arguments as to which entity was second and third. COURT FURTHER ORDERED bench trial VACATED. Mr. Jurani to prepare proposed Order. JUDGE'S NOTE: Following the hearing and upon review of NRS 116.31162, the Court is persuaded that the HOA lien is prior to all liens except the First Deed of Trust; therefore, Plaintiff having purchased the HOA position takes subject to the First Deed of Trust only.

Exhibit J

Exhibit J

Exhibit J

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

7912 LIMBWOOD COURT TRUST,

Plaintiff,

v.

WELLS FARGO BANK, N.A., *et al.*,

Defendants.

Case No. 2:13-cv-00506-APG-GWF

ORDER ON SUMMARY JUDGMENT MOTIONS

(DKT. NOS. 96, 112, 113)

This case is one of many in Nevada focusing on the effects of a foreclosure sale conducted by a homeowners' association ("HOA"). Before me are the parties' cross-motions for summary judgment on the plaintiff's claims for wrongful foreclosure and to quiet title. I previously ordered the parties to file supplemental briefs discussing whether the trustee's deed following the HOA's foreclosure sale validly conveyed title to the plaintiff. (Dkt. #130.)

The sale conducted by the HOA's agent did not convey superior title to the plaintiff. I therefore enter summary judgment in favor of the defendants.

I. ANALYSIS

Summary judgment is appropriate if the pleadings, discovery responses, and affidavits demonstrate "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), (c). A fact is material if it "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue is genuine if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

The party seeking summary judgment bears the initial burden of informing the court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden

then shifts to the non-moving party to go beyond the pleadings and set forth specific facts demonstrating there is a genuine issue of material fact for trial. *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 531 (9th Cir. 2000). I view the evidence, and make reasonable inferences, in the light most favorable to the non-moving party. *James River Ins. Co. v. Hebert Schenk, P.C.*, 523 F.3d 915, 920 (9th Cir. 2008).

Under Nevada law, any person may bring a claim against others who claim an estate or interest in real property "for the purpose of determining such adverse claim." Nev. Rev. Stat. § 40.010. In an action under § 40.010 to quiet title to real property, "each party must plead and prove his or her own claim to the property in question and a plaintiff's right to relief therefore depends on superiority of title." *Chapman v. Deutsche Bank Nat'l Trust Co.*, 302 P.3d 1103, 1106 (Nev. 2013) (en banc) (quotation omitted).

I set forth the relevant facts in full in a prior order, so I will not repeat them here except where necessary. (Dkt. #130.) The plaintiff claims title through the foreclosure sale conducted by the HOA and the resulting trustee's deed upon sale (the "2012 deed"). According to the plaintiff, the HOA foreclosed on its super-priority lien, thereby extinguishing the first deed of trust. The plaintiff therefore contends the 2012 deed conveyed superior title to it. The defendants respond that the HOA foreclosed on only the non-priority portion of its lien and therefore the 2012 deed did not convey superior title to the plaintiff. The parties dispute whether an HOA can split its lien into super-priority and sub-priority portions and foreclose on only one portion of the lien.

Nevada's HOA foreclosure statutory scheme, set forth in Nevada Revised Statutes § 116.3116 *et seq.*, does not expressly permit an HOA to separately foreclose on only the super- or sub-priority portion of its lien, but it also does not expressly prohibit it. The Supreme Court of Nevada has not directly addressed this question. That Court described the HOA foreclosure statutory scheme as follows:

> As to first deeds of trust, NRS 116.3116(2) . . . splits an HOA lien into two pieces, a superpriority piece and a subpriority piece. The superpriority piece, consisting of the last nine months of unpaid HOA dues and maintenance and nuisance-abatement charges, is "prior to" a first deed of trust. The subpriority piece, consisting of all other HOA fees or assessments, is subordinate to a first deed of trust.

SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 411 (Nev. 2014) (en banc). The *SFR* Court was not confronted with the question of whether an HOA could split its lien and non-judicially foreclose on one piece independent of the other. It is thus unclear from this language whether the HOA has a single lien that is split into two pieces for the limited purposes of payment and determining priority with respect to the first deed of trust, or whether the statute splits the lien into two separately enforceable pieces.[1]

The common law offers little help resolving the question because "the split-lien approach represents a 'significant departure from existing practice.'" *Id.* at 412 (quoting Uniform Common Interest Ownership Act of 1982, § 3-116, cmt. 1; Uniform Common Interest Ownership Act of 1994 & 2008, § 3-116 cmt. 2). Instead, the split lien is a "specially devised mechanism designed to strike an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lenders." *Id.* (quotation omitted).

Other interpretive sources provide limited guidance. The Nevada Real Estate Division of the Department of Business and Industry ("NRED") is charged with administering Chapter 116. *Id.* at 416-17. The NRED issued an advisory opinion in 2012 that suggests an HOA can separately enforce its super- and sub-priority liens. In giving advice to HOAs on how best to protect their rights, the NRED suggested the following:

> Perhaps an effective approach for an association is to start with foreclosure of the assessment lien after a nine month assessment delinquency or sooner if the association receives a foreclosure notice from the first security interest holder. The association will always want to enforce its lien for assessments to trigger the super priority lien. This can be accomplished by starting the foreclosure process. The association can use the super priority lien to force the first security interest holder to pay that amount. The association should incur only the expense it believes is necessary to receive payment of assessments. If the first security interest holder does not foreclose, the association will maintain its assessment lien consisting of assessments, late charges, and interest.

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[1] The statutes sometimes refers to "a" or "the" lien, suggesting the HOA has a single lien. *See* Nev. Rev. Stat. § 116.3116(1)-(2). But the last sentence of § 116.3116(2) states that this "subsection does not affect . . . the priority of liens for other assessments made by the association." The plural "liens for other assessments" suggests the HOA may have more than one lien and that those may be liens of differing priority.

State of Nev., Dep't of Business & Industry, Real Estate Div., Advisory Op. 13-01 at 19 (Dec. 12, 2012). But the NRED did not directly address the question of whether an HOA can split its lien and non-judicially foreclose on only the sub-priority portion.

I need not resolve this question because the plaintiff in this case cannot meet its burden of showing it has superior title either way. If an HOA can split its lien, it did so here. If it cannot, then the sale is void, as explained below.

A. If the HOA Can Split Its Lien

If an HOA can split its lien, it did so here, and there is no genuine issue of material fact about that. The HOA's agent, A&T, directed that the following announcement be made at the auction prior to the sale:

> You are hereby being notified by the Association, the beneficiary, through its foreclosure agent, that the opening bid does not include the super-priority lien amount. That the super-priority lien amount will still be a lien on the property once the sale is completed. You are hereby being notified by the Association, the beneficiary, through its foreclosure agent, that said lien may affect the property, title to the property or value of the property. The purchaser buys this property with full knowledge and understanding of the same.

(Dkt. #111-14.) The 2012 deed confirms that the HOA intended to foreclose on only the sub-priority portion of its lien because the deed expressly states that it conveyed only "that portion of [the HOA's] right, title and interest secured by the sub-priority portion of its lien" on the property. (Dkt. #111-10.)

There is no genuine issue of material fact that the 2012 deed accurately reflects the parties' intended transaction. The parties' intent "must determine the nature and extent of the estate conveyed," and "that intent can be ascertained only from the language of the deed[]" itself. *City Motel, Inc. v. State ex rel. State Dep't of Highways*, 336 P.2d 375, 377 (Nev. 1959). Here, the pre-auction announcement and the 2012 deed demonstrate that the HOA did not intend to convey the property free and clear of the HOA's super-priority lien. Instead, the HOA intended to foreclose on its sub-priority lien with the property still being subject to the super-priority lien. Given the pre-auction announcement, the plaintiff took with notice that the property was still subject to the super-priority lien and thus the first deed of trust was not extinguished.

Even if the deed were ambiguous about whether the HOA had foreclosed on its super-priority lien, the announcement made before the sale parallels the language in the 2012 deed and thus confirms the deed accurately reflects the parties' intended transaction. *See Lowden Inv. Co. v. Gen. Elec. Credit Co.*, 741 P.2d 806, 809 (Nev. 1987) (stating that parol evidence "is not admissible to vary or contradict the terms of a written agreement" but "is admissible in order to resolve ambiguities in a written instrument"); *Kartheiser v. Hawkins*, 645 P.2d 967, 968 (Nev. 1982) (stating the parties' intentions "are determined from all the circumstances surrounding the transaction"). Although the plaintiff points to the notices that A&T recorded before the sale indicating that the HOA was foreclosing on its super-priority lien, the terms of the auction were changed before bidding commenced. *See* Restatement (Second) of Contracts § 28(2) ("Unless a contrary intention is manifested, bids at an auction embody terms made known by advertisement, posting or other publication of which bidders are or should be aware, as modified by any announcement made by the auctioneer when the goods are put up."). The plaintiff cites no law for the proposition that the terms of sale could not be altered prior to the auction commencing. The plaintiff was on notice of the terms of the sale before it placed a bid. It could have decided not to bid in light of the announcement.

For similar reasons, there is no basis to reform the deed. Under Nevada law, courts "have the power to order the reformation of deeds, contracts, and other instruments, when, through mistake of the parties thereto, or through the fraud of one of the parties, or unconscionable conduct amounting to fraud, such instrument does not contain the real terms of the contract between them." *Wainwright v. Dunseath*, 211 P. 1104, 1106 (Nev. 1923). Here, there is no genuine issue of material fact that the deed is consistent with the terms of sale announced at the auction prior to any bidding. The plaintiff has never sought to reform the deed.

Consequently, if the HOA can split its lien, no genuine issue of material fact remains that it do so here. Because the HOA foreclosed on only its sub-priority lien, the plaintiff cannot meet its burden of showing it has title superior to the defendants.

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B. If the HOA Cannot Split its Lien

The plaintiff nevertheless contends that regardless of the parties' intent or the deed's language, the HOA cannot split its lien so it must have foreclosed on its super-priority lien by operation of law. The plaintiff is requesting a result the parties to the transaction did not intend while also seeking the benefit of a statutory scheme with which the HOA did not comply. For the reasons set forth below, I predict[2] the Supreme Court of Nevada would hold the HOA did not foreclose on its super-priority lien and did not convey superior title to the plaintiff under the circumstances of this case.

If an HOA cannot split its lien as a matter of Nevada law, then the HOA here attempted to do something not allowed by law. It purported to impose a condition on the foreclosure sale and resulting deed that it had no right or power to require, *i.e.*, that the property would still be subject to the super-priority lien after the foreclosure sale. The sale would also be considered defective because the HOA inaccurately described what interest it was foreclosing on and what bidders would be purchasing. Therefore, if the HOA cannot split its lien as a matter of law, then the sale is void. *See, e.g., Nevada Land & Mortg. Co. v. Hidden Wells Ranch, Inc.*, 435 P.2d 198, 200 (Nev. 1967) (stating that a foreclosure sale is void if not done in accordance with the foreclosing party's power of sale and "applicable law"); *In re Cedano*, 470 B.R. 522, 530 (9th Cir. BAP 2012) (stating that "substantially defective sales have been held to be void"). When a sale is void, it is "ineffectual." *Deep v. Rose*, 364 S.E.2d 228, 232 (Va. 1988). "No title, legal or equitable, passes to the purchaser." *Id.*; *see, e.g., Gilroy v. Ryberg*, 667 N.W.2d 544, 554 (Neb. 2003) (stating "when a sale is void, 'no title, legal or equitable, passes to the sale purchaser or subsequent grantees'" even if the property is bought by a bona fide purchaser (quoting 1 Grant S. Nelson & Dale A. Whitman, Real Estate Finance Law § 7.20 (3d ed. 1993) & citing 12

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[2] When a federal court interprets state law, it is "bound by the decisions of the state's highest court." *Assurance Co. of Am. v. Wall & Assocs. LLC of Olympia*, 379 F.3d 557, 560 (9th Cir. 2004) (quotation omitted). Where the state's highest court has not decided the issue, a federal court must predict how the state's highest court would decide. *Orkin v. Taylor*, 487 F.3d 734, 741 (9th Cir. 2007). I may use "decisions from other jurisdictions, statutes, treatises, and restatements as guidance." *Assurance Co.*, 379 F.3d at 560 (quotation omitted).

Thompson on Real Property, supra, § 101.04(c)(2)(ii) at 403 (David A. Thomas ed.1994)). Consequently, no title passed to the plaintiff via the HOA's foreclosure sale.

Fairness also dictates this result.[3] *See Nevada Land*, 435 P.2d at 200 ("In the proper case, the trial court may set aside a trustee's sale upon the grounds of fraud or unfairness."); Nev. Rev. Stat. § 116.1108 ("The principles of law and equity, including . . . the law of real property, . . . estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter."). The pre-auction announcement that the super-priority portion of the HOA lien was not being foreclosed upon would have impacted who would bid on the property as well as the price bidders would pay. A reasonable first deed of trust holder, upon hearing the announcement, would assume its secured interest was not in jeopardy because only a junior lien was being foreclosed. The first deed of trust holder therefore would not be incentivized to bid to protect its security interest. Other reasonable bidders hearing the announcement would adjust their bid price to account for the increased risks and obligations associated with two senior liens on the property: the HOA super-priority lien and the first deed of trust (which would not be extinguished if the HOA foreclosed on only its sub-priority lien). In addition to this unfairness, the plaintiff is requesting a result the parties to the transaction did not intend. *See Reno Club v. Young Inv. Co.*, 182 P.2d 1011, 1016 (Nev. 1947) ("This would be virtually creating a new contract for the parties, which they have not created or intended themselves, and which, under well settled rules of construction, the court has no power to do.").

Holding as plaintiff requests—that the HOA foreclosed on its super-priority lien—would award a windfall to a purchaser who took with notice of the announcement that the sale was not of the super-priority lien. To avoid unfairness to the first deed of trust holder and other bidders and to uphold the parties' intent, equity counsels that the sale is void. Consequently, if the HOA cannot split its lien, the HOA foreclosure sale is void, and the plaintiff cannot meet its burden of showing it has title superior to the defendants.

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[3] Thus, even if the sale is voidable, as opposed to void, I would reach the same result.

C. Summary

Because the plaintiff cannot meet its burden of establishing superior title, I grant the defendants' motions for summary judgment and deny the plaintiff's motion for summary judgment on the plaintiff's quiet title claim. Additionally, because the plaintiff's quiet title claim fails, so does its wrongful foreclosure claim. *See Collins v. Union Federal Sav. & Loan Ass'n*, 662 P.2d 610, 623 (Nev. 1983). I therefore grant the defendants' motions for summary judgment and deny the plaintiff's summary judgment motion on the plaintiff's wrongful foreclosure claim.[4]

II. CONCLUSION

IT IS THEREFORE ORDERED that defendants Wells Fargo Bank, N.A. and Federal Home Loan Mortgage Corporation's renewed motions for summary judgment **(Dkt. ##112, 113) are GRANTED.**

IT IS FURTHER ORDERED that plaintiff 7912 Limbwood Court Trust's motion for summary judgment **(Dkt. #96) is DENIED**.

IT IS FURTHER ORDERED that Judgment is hereby entered in favor of defendants Wells Fargo Bank, N.A. and Federal Home Loan Mortgage Corporation and against plaintiff 7912 Limbwood Court Trust.

DATED this 31st day of August, 2015.

ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE

[4] I need not address the parties' other arguments raised on summary judgment.

Exhibit K

Exhibit K

Exhibit K

132 Nev., Advance Opinion 5

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHADOW WOOD HOMEOWNERS ASSOCIATION, INC.; AND GOGO WAY TRUST,
Appellants,
vs.
NEW YORK COMMUNITY BANCORP, INC.,
Respondent.

No. 63180

FILED

JAN 28 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

Appeal from a district court order granting summary judgment in a quiet title and declaratory relief action. Eighth Judicial District Court, Clark County; Abbi Silver, Judge.

Vacated and remanded.

Holland & Hart LLP and Patrick John Reilly, Las Vegas; Alessi & Koenig, LLC, and Bradley D. Bace, Las Vegas; Tharpe & Howell and Ryan M. Kerbow, Las Vegas,
for Appellant Shadow Wood Homeowners Association, Inc.

Law Offices of Michael F. Bohn, Ltd., and Michael F. Bohn, Las Vegas,
for Appellant Gogo Way Trust.

Brooks Hubley LLP and Gregg A. Hubley, Las Vegas; Pite Duncan, LLP, and Kenitra A. Cavin, Las Vegas,
for Respondent.

BEFORE THE COURT EN BANC.

16-02947

OPINION

By the Court, PICKERING, J.:

This is an appeal from a district court order setting aside a trustee's deed following a homeowners' association (HOA) assessment lien foreclosure sale. The district court held that NRS 116.3116(2) (2013) limited the HOA lien to nine months of common expense assessments and that the HOA acted unfairly and oppressively in insisting on more than that sum to cancel the sale; that the bid price was grossly inadequate; and that the foreclosure sale buyer did not qualify as a bona fide purchaser for value. The appellants are the HOA and the lien foreclosure sale buyer whose trustee's deed the district court set aside. They argue that NRS 116.31166 (2013), which says that certain recitals in an HOA trustee's sale deed are "conclusive proof of the matters recited," renders such deeds unassailable. We disagree and reaffirm that, in an appropriate case, a court can grant equitable relief from a defective HOA lien foreclosure sale. *E.g.*, *Long v. Towne*, 98 Nev. 11, 639 P.2d 528 (1982). We conclude, though, that the district court erred in limiting the HOA lien amount to nine months of common expense assessments and in resolving on summary judgment the significant issues of fact surrounding the parties' conduct, the HOA lien amount, the foreclosure sale buyer's status, and the competing equities in this case. We therefore vacate and remand.

I.

The parties to this case are the bank that held the note and first deed of trust on the property (respondent New York Community Bank, or NYCB), the HOA (appellant Shadow Wood Homeowners Association, or Shadow Wood), and the buyer at the HOA lien foreclosure sale (appellant Gogo Way Trust). The original homeowner is not a party.

She lost the property, a condominium, on May 9, 2011, when NYCB foreclosed on its first deed of trust. At the time NYCB foreclosed, the note securing its first deed of trust had an outstanding balance of $142,000. NYCB acquired the property at foreclosure with a $45,900 credit bid.

The original homeowner also defaulted on the periodic assessments due Shadow Wood ($168.71 per month) for her share of the condominium community's budgeted common expenses. Her defaults led Shadow Wood, in 2008 and 2009, to file a notice of delinquent assessment lien, two notices of default and election to sell, and a notice of sale against her and the property. When NYCB foreclosed, it did not pay off any part of the original homeowner's delinquent assessment lien. As to first deeds of trust like NYCB's, the HOA lien statute, NRS 116.3116 (2013), splits the HOA lien into two pieces: a superpriority piece, which survives foreclosure of the first deed of trust; and a subpriority piece, which does not. *See SFR Invs. Pool 1 v. U.S. Bank, N.A.*, 130 Nev., Adv. Op. 75, 334 P.3d 408, 410 (2014). When NYCB acquired the property via credit bid, it thus took title subject to Shadow Wood's superpriority lien but the subpriority piece of the lien was extinguished.

NYCB not only failed to pay off the superpriority lien, it also did not pay the ongoing HOA monthly assessments as they came due. This led Shadow Wood, on July 7, 2011, to record a new notice of delinquent assessment lien. The new notice listed NYCB as the owner, stated that the lien delinquency was $8,238.87 as of June 29, 2011, and advised that, "[a]dditional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice." Shadow Wood's counsel, Alessi & Koenig, sent a

certified letter to NYCB with a copy of the notice of delinquent assessment. The letter advised that "the total amount due may differ from the amount shown on the enclosed lien" and that:

> Unless you, within thirty days after receipt of this notice, dispute the validity of this debt, or any portion thereof, our office will assume the debt is valid. If you notify our office in writing within the thirty-day period that the debt, or any portion thereof, is disputed, we will obtain verification of the debt and a copy of such verification will be mailed to you.

NYCB did not respond, and on October 13, 2011, Shadow Wood engaged the next step of the HOA lien foreclosure process, recording a notice of default and election to sell (the NOD). Although NYCB had not made any payments to Shadow Wood,[1] the NOD reduced the stated lien delinquency to $6,608.34 as of August 29, 2011. (Mathematics and the record suggest, but do not definitively establish, that Shadow Wood subtracted the original owner's delinquent monthly assessments to the extent they went back further than nine months before the NYCB foreclosure sale.) The NOD advised, "You have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses," which "will increase until your account becomes current," and warned that, if not paid, foreclosure sale will follow after 90 days.

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[1]At oral argument, NYCB's counsel stated that the bank "typically" would not pay HOA assessments on property acquired by credit bid at foreclosure but, rather, would wait until the bank had a purchaser to buy the property and pay off the HOA assessment lien out of escrow funds.

After receiving the NOD, NYCB sent Alessi & Koenig (the law firm who acted as Shadow Wood's collection counsel and whom the NOD designated as Shadow Wood's trustee's agent) an email on November 2, 2011, saying, "In order to pay the dues on this property we will need a detailed statement." By December 12, 2011, Alessi & Koenig had not responded to NYCB's November 2, 2011, email or its December 2, 2011, reforwarded follow-up, so NYCB emailed Shadow Wood's management company asking for "a current statement and their W9 so that we can pay the dues." NYCB's title company also sent the management company "a demand which reflects all funds owed by OUR SELLER ONLY and not those funds which might have been owed by the prior owner of the subject property." In response, Alessi & Koenig and Shadow Wood's management firm sent NYCB various, seemingly conflicting documents, which included account history ledgers for the original homeowner and NYCB that listed the monthly assessments and late charges, and summaries that broke down the fees and costs associated with the current and prior lien foreclosure processes, charges not included on the account history ledgers.

By notice of sale (NOS) dated January 18 and recorded January 27, 2012, Shadow Wood scheduled its lien foreclosure sale for February 22, 2012. By then, the stated delinquency had increased from $6,608.34 as of the NOD date to $8,539.77 as of the NOS date. As NRS 116.31162(1)(b) (2013) requires, the NOS stated:

> WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, *EVEN IF THE AMOUNT IS IN DISPUTE.*

(Emphasis added.)

On January 31, 2012, NYCB sent Shadow Wood a $6,783.16 check, an amount less than the NOS said was required but which the bank later explained it derived from the account history ledgers. Shadow Wood rejected the check and sent NYCB breakdowns showing $9,017.39 as the current lien amount, consisting of $3,252.39 in unpaid monthly assessments from August 9, 2010, through February 29, 2012, plus fees and charges for publishing and posting of the notice of trustee's sale, recording fees, late fees, title research fees, and the like. Although the breakdowns itemize the charges and provide dates, some going back to 2009 and 2010, before NYCB foreclosed its first deed of trust, they also include parentheticals suggesting the same charges were incurred multiple times, and thus that the charges, or portions of them, were current.

Shadow Wood's lien foreclosure sale proceeded, as scheduled, on February 22, 2012. NYCB did not attend or try to halt the sale, and a third-party buyer, appellant Gogo Way, purchased the property for $11,018.39 in cash. The trustee's deed to Gogo Way recites:

> Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with.

After the sale, NYCB sued Shadow Wood and Gogo Way, seeking declaratory relief and to quiet title under NRS 40.010. NYCB's first amended complaint alleges that NYCB remained the owner because Shadow Wood did not conduct the sale in good faith and the sale price was commercially unreasonable. Represented jointly by Alessi & Koenig, Shadow Wood and Gogo Way counterclaimed with their own declaratory

relief and quiet title claims, in which they alleged that Shadow Wood properly foreclosed based on NYCB's failure to pay assessments and performed all statutory and contractual obligations in conducting the sale, so title vested in Gogo Way.

After discovery, both sides moved for summary judgment. At the district court's suggestion, NYCB supplemented its summary judgment motion to argue that Shadow Wood was only entitled to nine months' worth of HOA assessments, or $1,519.29 (monthly assessments of $168.71 multiplied by 9). The district court granted summary judgment for NYCB and against Shadow Wood and Gogo Way. It held that, under NRS 116.3116(2) (2013), Shadow Wood could only recover $1,519.29, and found, "based upon the papers and pleadings submitted . . . that Shadow Wood and/or its agents were attempting to profit off of the subject HOA foreclosure by including exorbitant fees and costs that could not be sued as the basis for an HOA foreclosure sale in this matter." The district court deemed Shadow Wood's rejection of NYCB's $6,783.16 check "unreasonable and oppressive" and also held that "Gogo Way Trust was not a bona fide purchaser at the subject HOA foreclosure sale." On these bases, the district court set aside Shadow Wood's sale and declared title vested in NYCB. Shadow Wood and Gogo Way appeal.

II.

A.

Summary judgment may be granted for or against a party on motion therefor "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." NRCP 56(c). That an action seeks declaratory or equitable relief does not prevent its adjudication on

summary judgment. *See* NRCP 56(a), (b) (declaratory judgment claims may be resolved on summary judgment); 10B Charles Alan Wright et al., *Federal Practice & Procedure: Civil* § 2731 (3d ed. 2014) ("if there are no triable fact issues and the court believes equitable relief is warranted, it is fully empowered to grant it on a Rule 56 motion"). This does not mean "that a court always will grant summary judgment in an action seeking equitable relief simply because there is no dispute as to the facts. If relief seems inappropriate, or the judge desires a fuller development of the circumstances of the case, the judge is free to refuse to grant the motion." *Id.* And even though equitable relief is sought, our review remains de novo. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1030 (2005). Finally, "as is true under Rule 56 generally, if genuine issues of fact do exist, summary judgment must be denied in a proceeding for equitable relief." 10B Charles Alan Wright et al., *supra*, § 2731.

B.

Nevada has adopted the 1982 Uniform Common Interest Ownership Act (UCIOA), codifying it as NRS Chapter 116. *See* 1991 Nev. Stat., ch. 245, § 100, at 570. In doing so, the Legislature also enacted unique provisions not contained in the UCIOA setting out the procedures for an HOA's nonjudicial foreclosure of delinquent assessment liens. *See* NRS 116.31162-.31168 (2013), *discussed in SFR Invs. Pool 1*, 130 Nev., Adv. Op. 75, 334 P.3d at 411-12.[2] Among these provisions are NRS

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[2]The 2015 Legislature revised Chapter 116 substantially. 2015 Nev. Stat., ch. 266. Except where otherwise indicated, the references in this opinion to statutes codified in NRS Chapter 116 are to the version of the statutes in effect in 2011 and 2012, when the events giving rise to this litigation occurred.

116.31164(3)(a), which mandates that, after an HOA's nonjudicial foreclosure sale, the person who conducted the sale must "[m]ake, execute and, after payment is made, deliver to the purchaser, or his or her successor or assign, a deed without warranty which conveys to the grantee all title of the unit's owner to the unit," and its companion, NRS 116.31166, which states:

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

NRS 116.31166(1)-(2) (2013).

The Gogo Way trustee's deed contains recitals that NRS 116.31166 deems "conclusive," to wit: "Default" occurred; and, "All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with." Shadow Wood and Gogo Way maintain that, under NRS 116.31166, recitals such as these bar any post-sale challenge regardless of basis, whether it disputes the HOA's compliance with the statutory default, notice, and timing requirements or, as here, seeks to set aside the sale for equity-based reasons. If true, this interpretation would call into question this court's statement in *Long v. Towne*, that a common-interest community association's nonjudicial foreclosure sale may be set aside, just as a power-of-sale foreclosure sale may be set aside, upon a showing of

grossly inadequate price plus "fraud, unfairness, or oppression." 98 Nev. at 13, 639 P.2d at 530 (citing *Golden v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963) (stating that, while a power-of-sale foreclosure may not be set aside for mere inadequacy of price, it may be if the price is grossly inadequate and there is "in addition proof of some element of fraud, unfairness, or oppression as accounts for and brings about the inadequacy of price" (internal quotation omitted))).

As a textual matter, the deed recitals to which NRS 116.31166 accords conclusive effect do not relate to the deficiencies NYCB alleges. The "conclusive" recitals concern default, notice, and publication of the NOS, all statutory prerequisites to a valid HOA lien foreclosure sale as stated in NRS 116.31162 through NRS 116.31164, the sections that immediately precede and give context to NRS 116.31166. *Cf. Bourne Valley Court Tr. v. Wells Fargo Bank, N.A.*, 80 F. Supp. 3d 1131, 1135 (D. Nev. 2015) (holding that under NRS 116.31166, when a foreclosure deed recited that there was a default, the proper notices were given, the appropriate amount of time elapsed between notice of default and sale, and the notice of sale was given, it was "'conclusive proof' that the required statutory notices were provided"). But NYCB does not dispute that it defaulted, at least as to the superpriority piece of the original homeowner's lien, or that Shadow Wood complied with the notice and publication requirements of NRS 116.31162 through NRS 116.31164. NYCB's claim is that Shadow Wood acted unfairly, oppressively, perhaps even fraudulently by overstating its lien delinquency, rejecting a valid tender of the amount due, and selling the property at foreclosure for a grossly inadequate price. And, while it is possible to read a conclusive recital statute like NRS 116.31166 as conclusively establishing a default

justifying foreclosure when, in fact, no default occurred, such a reading would be "breathtakingly broad" and "is probably legislatively unintended." 1 Grant S. Nelson, Dale A. Whitman, Ann M. Burkhart & R. Wilson Freyermuth, *Real Estate Finance Law* § 7:22 (6th ed. 2014). We decline to give the default recital such a broad and unprecedented reading, particularly since Shadow Wood and Gogo Way cite no germane authority in its support. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (this court will not consider arguments not cogently stated or supported with relevant authority).

History and basic rules of statutory interpretation confirm our view that courts retain the power to grant equitable relief from a defective foreclosure sale when appropriate despite NRS 116.31166. At common law, courts possessed inherent equitable power to consider quiet title actions, a power that required no statutory authority. *See MacDonald v. Krause*, 77 Nev. 312, 317, 362 P.2d 724, 727 (1961) ("It has always been recognized that equity has inherent original jurisdiction of bills to quiet title to property and to remove a cloud from the title."); *Robinson v. Kind*, 23 Nev. 330, 47 P. 977, 978 (1897) (recognizing the "well-settled rules that an action to quiet title is a suit in equity") (internal quotation omitted). Thus, in *Low v. Staples*, 2 Nev. 209 (1866), this court determined that, notwithstanding the then-existing statutory requirement that a quiet title plaintiff must be in possession of the property, *see* Compiled Laws State of Nev., tit. VIII, ch. 3, § 256, at 372 (1873), a plaintiff not in possession still may seek to quiet title by invoking the court's inherent equitable jurisdiction to settle title disputes. *Low*, 2 Nev. at 211-13. In so holding, the court explained:

> The plaintiff seeks a remedy which courts of equity have always granted independent of any

> statute, where a proper case was made out. The relief sought is a decree to compel certain persons to execute deeds of conveyance to the plaintiff, and to remove a cloud from his title. That it requires no statutory provisions to enable a court of equity to award relief in such cases, there can be no doubt.

Id. at 211.

In 1912, the Legislature adopted statutes to govern quiet title actions that largely stand today. *Compare* Revised Laws of Nev., ch. 62, §§ 5514-5526 (1912), *with* NRS 40.010-.130. And in *Clay v. Scheeline Banking & Trust Co.*, the court recognized that the statute authorizing a person to bring a quiet title claim against another who claims adversely, now numbered NRS 40.010, essentially codified the court's existing equity jurisprudence, stating that "there is practically no difference in the nature of the action under our statute and as it exists independent of statute." 40 Nev. 9, 16-17, 159 P. 1081, 1082 (1916). So, a person who brings a quiet title action may, consistent with NRS Chapter 40 and our long-standing equitable jurisprudence, invoke the court's inherent equitable powers to resolve the competing claims to such title.

The Legislature borrowed NRS 116.31166's conclusive recital language from NRS 107.030(8), which it enacted in 1927 to govern power-of-sale foreclosures. A.B. 131, 33d Leg. (Nev. 1927); 1927 Nev. Stat., ch. 173, § 2, at 295; Hearing on A.B. 221 Before the Senate Judiciary Comm., 66th Leg. (Nev., May 23, 1991) & Exhibit C (conversion table matching up each component of the Nevada bill with its UCIOA counterpart providing that the section that became NRS 116.31166 had no UCIOA equivalent, but was explained as: "Deed recitals in assessment lien foreclosure sale. *See* NRS 107.030(8)."). The conclusive recital provisions in NRS 107.030(8) have never been argued to carry the preemptive effect that

Shadow Wood and Gogo Way attribute to NRS 116.31166. While not directly addressing the preemption argument Shadow Wood and Gogo Way make as to NRS 116.31166, our post-NRS 107.030(8) cases reaffirm that courts retain the power, in an appropriate case, to set aside a defective foreclosure sale on equitable grounds. *See Golden v. Tomiyasu*, 79 Nev. at 514, 387 P.2d at 995 (adopting the California rule that "inadequacy of price, however gross, is not in itself a sufficient ground for setting aside a trustee's sale legally made; there must be in addition proof of some element of fraud, unfairness, or oppression as accounts for and brings about the inadequacy of price" (quoting *Oller v. Sonoma Cty. Land Title Co.*, 290 P.2d 880, 882 (Cal. Ct. App. 1955))); *McLaughlin v. Mut. Bldg. & Loan Ass'n*, 57 Nev. 181, 191, 60 P.2d 272, 276 (1936) (noting that, in the context of an action to recover possession of a property after a trustee sale, "[h]ad the conduct of the trustee and respondent, in connection with the sale, been accompanied by any actual fraud, deceit, or trickery, a more serious question would be presented"); *see also Nev. Land & Mortg. Co. v. Hidden Wells Ranch, Inc.*, 83 Nev. 501, 504, 435 P.2d 198, 200 (1967) ("In the proper case, the trial court may set aside a trustee's sale upon the grounds of fraud or unfairness."). And, cases elsewhere to have addressed comparable conclusive- or presumptive-effect recital statutes confirm that such recitals do not defeat equitable relief in a proper case; rather, such recitals are "conclusive, *in the absence of grounds for equitable relief.*" *Holland v. Pendleton Mortg. Co.*, 143 P.2d 493, 496 (Cal. Ct. App. 1943) (emphasis added); *see Bechtel v. Wilson*, 63 P.2d 1170, 1172 (Cal. Ct. App. 1936) (distinguishing between a challenge to the sufficiency of pre-sale notice, which was precluded by the conclusive recitals in the deed, and an equity-based challenge based upon the alleged

unfairness of the sale); *compare* 1 Grant S. Nelson, *Real Estate Finance Law*, *supra*, § 7:23, at 986-87 ("After a defective power of sale foreclosure has been consummated, mortgagors and junior lienholders in virtually every state have an equitable action to set aside the sale.") (footnotes omitted), *with id.* § 7:22, at 980-82 (noting that "[m]any states have attempted to enhance the stability of power of sale foreclosure titles by enacting a variety of *presumptive statutes*"), *and* 6 Baxter Dunaway, *Law of Distressed Real Estate*, § 64:161 (2015) (noting that a trustee's deed recital can be overcome on a showing of actual fraud).

The Legislature is "presumed not to intend to overturn long-established principles of law" when enacting a statute. *Hardy Cos., Inc. v. SNMARK, LLC*, 126 Nev. 528, 537, 245 P.3d 1149, 1155-56 (2010) (internal quotation omitted). Also, this court strictly construes statutes in derogation of the common law, *Holliday v. McMullen*, 104 Nev. 294, 296, 756 P.2d 1179, 1180 (1988), and has been instructed to apply "principles of law and equity, including . . . the law of real property," to NRS Chapter 116. NRS 116.1108. The long-standing and broad inherent power of a court to sit in equity and quiet title, including setting aside a foreclosure sale if the circumstances support such action, the fact that the recitals made conclusive by operation of NRS 116.31166 implicate compliance only with the statutory prerequisites to foreclosure, and the foreign precedent cited under which equitable relief may still be available in the face of conclusive recitals, at least in cases involving fraud, lead us to the conclusion that the Legislature, through NRS 116.31166's enactment, did not eliminate the equitable authority of the courts to consider quiet title actions when an HOA's foreclosure deed contains conclusive recitals. We therefore reject Shadow Wood's and Gogo Way's contention that NRS