

Electronically Filed
Jun 06 2017 04:51 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL PAWLIK;

Appellant,

vs.

SHAYNG-FENN DENG; LINDA
HSIANG-YU CHIANG DENG,
TRUSTEES OF THE SHYANG-FENN
AND LINDA HSIANG-YU CHIANG
DENG REVOCABLE TRUST DATED
AUGUST 18, 2006; VANETTA
APPLEYARD, TREASURER OF THE
CITY OF LAS VEGAS; AND THE CITY
OF LAS VEGAS, A POLITICAL
SUBDIVISION,

Respondents.

No.: 71055

APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may The undersigned counsel of record certifies that the following are persons and entities as described in 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.

Appellant Paul Pawlik is an individual, and thus has no parent corporations and has issued no stock.

Walsh, Baker & Rosevear has appeared on behalf of Mr. Pawlik in this case before the district court, and is the only firm which is expected to appear on behalf of Mr. Pawlik before this Court.

Respectfully submitted this 6th day of June, 2017.

/s/ James M. Walsh

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TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii, iii, iv
JURISDICTIONAL STATEMENT	1
ROUTING STATEMENT	1
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS	3
SUMMARY OF ARGUMENT	7
ARGUMENT	9
A. Standard of review.....	9
B. Service of Notice of Expiration of Redemption May Properly Occur During the Two Year Period of Redemption Under NRS 271.595	9
1. Appellant strictly complied with the plain language of NRS 271.595	10
2. Appellant substantially complied with NRS 271.595 under a directory analysis	17
C. Early Notice is Proper to the Extent that it Does Not Prejudice the Receiving Party	24
CONCLUSION	28
ATTORNEY’S CERTIFICATE OF COMPLIANCE.....	30
CERTIFICATE OF SERVICE	32

TABLE OF AUTHORITIES

CASES

<i>Anderson v. Heart Federal Sav. & Loan Assn.</i> , 256 Cal. Rptr. 180 (3d Dist. Cal. 1989).....	25
<i>Associates v. Safeco Title Ins. Co.</i> , (1985) 39 Cal.3d 281, 286, 216 Cal.Rptr. 438, 702 P.2d 596	26
<i>Collier v. Hilltop Nat. Bank</i> , 920 P.2d 1241, 1242 (Wyo.1996).....	18, 19, 21
<i>Einhorn v. BAC Home Loans Servicing, LP</i> , 128 Nev. Adv. Op. 69, 290 P.3d 249, 251 (2012)	13, 17
<i>Gonzales-Alpizar v. Griffith</i> , 130 Nev. Adv. Op. 2, 317 P.3d 820, 827 (2014).....	23
<i>Harris Assocs. v. Clark County Sch. Dist.</i> , 119 Nev. 638, 641, 81 P.3d 532, 534 (2003).....	9
<i>International Game Tech. v. Dist. Ct.</i> , 124 Nev. 193, 198, 179 P.3d 556, 559 (2008).....	9
<i>Jones v. Short</i> , 696 P.2d 665 (Alaska 1985).....	22, 23
<i>Knapp v. Doherty</i> , (2004) 123 Cal.App.4th 76, 86-87 [20 Cal.Rptr.3d 1]	25, 26, 28
<i>Leven v. Frey</i> , 123 Nev. 399, 402 168 P.3d 712, 713 (2007).....	9, 11, 12, 17, 18, 23
<i>Markowitz v. Saxon Special Servicing</i> , 129 Nev. Adv. Op. 69, 310 P.3d 569, 572 (2013).....	9, 13, 17
<i>Mennonite Bd. of Missions v. Adams</i> , 462 U.S. 791, 103 S.Ct. 2706, 2709, 77 L.Ed.2d 180 (1983).....	23
<i>Miller v. Cote</i> , 179 Cal. Rptr. 753 (Court of Appeals Cal. 4 th Dist. 1989)	25
<i>Mullane v. Central Hanover Bank & Trust Co.</i> , 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950).....	23
<i>Multani v. Witkin & Neal</i> , (2013) 215 Cal.App.4th 1428 (Multani I)	25, 26, 28

<i>Ram v. OneWest Bank, FSB</i> , 183 Cal. Rptr. 3d 638 (Cal. Ct. App. 2015).....	25
<i>Tulsa Prof'l Collection Servs., Inc. v. Pope</i> , 485 U.S. 478, 484, 108 S.Ct. 1340, 99 L.Ed.2d 565 (1988).....	23

CALIFORNIA CIVIL CODE

California Civil Code § 2924.....	26
-----------------------------------	----

NEVADA STATUTES

NRS 11.190(1)(a).....	11
NRS 17.214.....	11, 12
NRS 17.214(1)(a).....	11
NRS 17.214(1)(b) and (3).....	12
NRS 34.160	2
NRS 271	4, 6
NRS 271.555.....	9
NRS 271.595	1, 2, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 22, 26, 27, 29
NRS 271.595(1)(a)-(b).....	9
NRS 271.595(3)	1, 9, 14
NRS 271.595(4)	1, 3, 6, 10, 14, 21

WYOMING STATUTE

Wyoming Stat. § 15-6-418.....	18, 19
-------------------------------	--------

IDAHO STATUTE

Idaho Stat. § 50-1743	21
Idaho Stat. § 50-1745	20

JURISDICTIONAL STATEMENT

The Nevada Supreme Court has jurisdiction over this appeal pursuant to Nevada Rules of Appellate Procedure (“NRAP”) 3A(b)(1). The district court entered final judgment on July 13, 2016, granting Defendant’s Motion to Dismiss and denying Plaintiff’s Application for Writ of Mandamus. (AA0286.) Pawlik timely filed and served a Notice of Appeal on August 18, 2016. (AA0297.) An Order Reinstating Briefing was entered by this Court on March 8, 2017, directing appellants to file and serve the opening brief and appendix within 90 days of the Order.

ROUTING STATEMENT

Pursuant to this Court’s Order Reinstating Briefing entered on March 8, 2017, the Supreme Court of the State of Nevada presumptively retains this matter. This Court has issued no orders routing this matter to the Court of Appeals.

STATEMENT OF ISSUES

1. Was service of a Notice of Expiration of Redemption Period prior to the expiration of the two year period of redemption under NRS 271.595 premature and ineffective, so as to cause Appellant’s entire action to fail?
2. Does NRS 271.595(3) - (4) contains mandatory time triggers as to when service of a Notice of Expiration of Redemption Period may be made?

3. Were Respondents prejudiced by the timing of service of the Notice of Expiration of Redemption Period?

STATEMENT OF THE CASE

The real property at issue in this case was purchased by Appellant Pawlik on January 27, 2014 at a duly noticed and authorized sale conducted by the Treasurer of the City of Las Vegas after the former owners (Respondent Deng) defaulted on special assessments and entered into delinquency. (AA0002.)

On January 7, 2016, Appellant Pawlik prepared and sent a Notice of Expiration of Redemption Period and of Intent of Owner of Certificate of Sale to Demand Deed to Real Property to Respondent Deng's last known address. (AA0003, AA0014.) The period of redemption was set to expire on January 26, 2016. (AA0002.) After unsuccessfully mailing notice to Appellee Deng, Appellant Pawlik published notice until January 27, 2016. (AA0003.) On March 14, 2016, Appellant Pawlik applied to the Treasurer for the issuance of the deed. The Treasurer refused and continues to refuse to issue the Deed. (AA0004.)

Pursuant to NRS 34.160 Appellant Pawlik applied for a Writ of Mandamus from the district court on April 25, 2016. (AA0004.) The Application requested that the City of Las Vegas and/or Vanetta Appleyard as Treasurer discharge its legal obligation to issue a deed to real property pursuant to NRS 271.595.

(AA0004, AA0046.) Thereafter, Appellant's Motion for Writ of Mandamus was denied and Respondent's Motion to Dismiss was granted. (AA0003, AA0016.) The district court found that Appellant Pawlik improperly made notice of intent to take property and demand on Respondent Deng prior to the expiration of the redemption period pursuant to NRS 271.595(4). (AA0317.) The trial court further held that because the notice Appellant Pawlik provided to Respondent Deng occurred before the expiration of the redemption period, notice was therefore deficient, causing Appellant's entire action to fail. (AA0317.)

STATEMENT OF THE FACTS

1. At all times mentioned herein, Appellant Pawlik is the owner of certain real property located in the city of Las Vegas, county of Clark, State of Nevada and commonly known as 10669 Royal View Avenue Las Vegas, Nevada, Clark County Assessor's Parcel Number (APN) 137-25-314-020 (the "Property") and more particularly described as follows:

Lot Three-Hundred Seventy-Four (374) Block C of Chardonnay #61 by Lewis Homes as shown by map thereof on file recorded in Book 78 of Plats, Page 77, in the office of the County Recorder, Clark County, Las Vegas, Nevada.

Subject To: Covenants, Conditions, Restrictions, Reservations, Rights, Rights of Way and Easements now of record. (AA0002.)

2. Respondents Shyang-Fenn Deng and Linda Hsiang-Yu Chiang Deng, trustees of the Shayng-Fenn and Linda Hsiang-Yu Chiang Deng revocable trust dated August 18, 2006 are former owners of the real property described above. (AA0002.)

3. Respondent Vanetta Appleyard is the Treasurer of the City of Las Vegas and is being sued herein in her official capacity. (AA0002.)

4. Respondent The City of Las Vegas is a political subdivision of the State of Nevada. (AA0002.)

5. Pursuant to Nevada Revised Statutes Chapter 271, a duly noticed and authorized sale of the property after default of a special assessment was conducted by Vanetta Appleyard as Treasurer and/or The City of Las Vegas on January 27, 2014 and the real property was sold to Kevin Love or Paul Pawlik for the former owners' failure to cure the delinquency and pay assessments. (AA0002.)

6. The property was sold for the full amount of the assessment due, including interest, penalties and costs totaling \$1,996.62 on January 27, 2014. (AA0002.)

7. After sale a Sheriff's Certificate of Sale was issued to Kevin Love or Paul Pawlik pursuant to the provisions of Chapter 271 of the Nevada Revised

Statutes (NRS). Said Certificate of Sale was recorded February 4, 2014 as Instrument No. 201402040000939, Official Records of Clark County. (AA0002.)

8. Pursuant to recorded Assignment of Certificate of Sale, Kevin Love did assign all of his right, title and interest in said Certificate of Sale to Paul Pawlik. Said Assignment was recorded February 21, 2014 as Instrument No. 201402210001266, Official Records of Clark County. (AA0002.)

9. NRS 271.595 grants the owners a two-year redemption period and if no redemption is made within said period the Treasurer, herein Vanetta Appleyard, upon demand of the purchaser and the surrender to the Treasurer of the Certificate of Sale and after 60 days' notice to the former owner must issue a Deed to the holder of the Certificate. (AA0003.)

10. NRS 271.595 states that the notice to the former owner must be given either by personal service or if an owner is not a resident of the State of Nevada or cannot be found after diligent search, the notice may be given by publication. (AA0003.)

11. On or about January 7, 2016, Pawlik did cause to be prepared a Notice of Expiration of Redemption Period and of Intent of Owner of Certificate of Sale to Demand Deed to Real Property described herein. (AA0003.)

12. Pawlik did attempt personal service upon Respondents in the state of Nevada at the address of the property in question and various other addresses all unsuccessfully. After said service attempts it was determined that Respondents had moved out of the state of Nevada. (AA0003.)

13. Thereafter, Pawlik did cause to be published in the Las Vegas Review Journal the Notice of Expiration of Redemption Period with the final publication date being January 27, 2016. (AA0003.)

14. Pawlik did further attempt service of the Notice of Expiration of Redemption Period upon Respondents Deng at the last known address in Aiken, South Carolina. Said Notice was returned to sender as not deliverable as addressed and unable to forward. (AA0003.)

15. Thereafter, on or about March 14, 2016, pursuant to the provision of NRS 271.595, Pawlik did make application to Respondent Vanetta Appleyard for the issuance of a Deed pursuant to the provisions of NRS 271.595(4). (AA0003.)

16. Appleyard accepted the Application for Deed on March 14, 2016 through her authorized representative Adrian Ramirez. (AA0004.)

17. Since that time, Appleyard has failed and refused and continues to fail and refuse to issue the Deed as required by Chapter 271 of the Nevada Revised

Statutes and has in fact informed Pawlik that she intended to allow redemption of the property by former owners. (AA0004.)

18. On April 6, 2016, Respondent Deng attempted to redeem by making payments to the City of Las Vegas. (AA0103, AA0146.)

SUMMARY OF ARGUMENT

NRS 271.595 contains mandatory provisions delineating a two-year period of redemption and 60 days' notice before demand can be made upon the treasurer for execution of a deed. Appellant Pawlik strictly complied with the provisions of the statute by not making demand upon the treasurer until after the period of redemption had run. Appellant Pawlik also waited to make the above demand until after 60 days of serving Respondent Deng with Notice of Expiration of Redemption Period.

Alternatively, NRS 271.595 contains both mandatory and directory language. Appellant Pawlik, still strictly complied with the mandatory provisions of the statute and substantially complied with the statute's directory provisions by serving Notice of Expiration of Redemption on Respondent Deng during the final month of the two-year redemption period. Doing so satisfies both the statute's warning purpose and due process safeguards that notice must be reasonably

calculated under all the circumstances to apprise the recipient of the pendency of an action that affects his or her right to property.

Courts will also forgive slight deviations in notice requirement timing, especially if notice is served early, to the extent that it does not prejudice the receiving party. Here, Appellant Pawlik's service of the Notice of Expiration of Redemption Period warned Respondent Deng of the imminent expiration of time to redeem, and did so in a manner that did not cut off or abridge Respondent's rights. Rather, Respondent's complaint is essentially that there was too much notice.

Pursuant to each alternative analysis above, the fact remains that Respondent Deng did not redeem until well after expiration of the two-year redemption period, well after 60 days of notice, and also well after any combination of two years plus 60 days of notice, depending on how this Court interprets NRS 271.595. Appellant Pawlik, on the other hand, complied with the protective two-year period, perfected proper notice, and made a timely demand upon the treasurer for execution of the deed in his favor.

As such, it is respectfully requested that this Court reverse the trial court's Order Granting Defendants' Motion to Dismiss, and in so doing remand with instructions that Appellant's Motion for Writ of Mandamus be granted consistent with this Court's holding.

ARGUMENT

A. Standard of Review

The issue present in this appeal is purely a question of law, specifically one of statutory construction. The review by this Court is therefore de novo. *Leven v. Frey*, 123 Nev. 399, 402 168 P.3d 712, 713 (2007) (reviewing issues of statutory construction de novo); *see also International Game Tech. v. Dist. Ct.*, 124 Nev. 193, 198, 179 P.3d 556, 559 (2008); *Markowitz v. Saxon Special Servicing*, 129 Nev. Adv. Op. 69, 310 P.3d 569, 572 (2013); *Harris Assocs. v. Clark County Sch. Dist.*, 119 Nev. 638, 641, 81 P.3d 532, 534 (2003).

B. Service of Notice of Expiration of Redemption May Properly Occur During the Two Year Period of Redemption Under NRS 271.595.

NRS 271.595(1)(a)-(b) in pertinent part states:

1. **Any property sold for an assessment**, or any installment thereof, **is subject to redemption by the former owner**, or grantee, mortgagee, heir or other representative of the former owner:

(a) If there was a permanent residential dwelling unit or any other significant permanent improvement on the property at the time the sale was held pursuant to NRS 271.555, as determined by the governing body, **at any time within 2 years**;

...after the date of the certificate of sale[.] [emphasis added]

NRS 271.595(3) states:

3. **If no redemption is made within the period of redemption as determined pursuant to subsection 1, the treasurer shall,**

on demand of the purchaser or the purchaser's assigns, and the surrender to the treasurer of the certificate of sale, **execute** to the purchaser or the purchaser's assigns **a deed to the property. No deed may be executed until the holder of the certificate of sale has notified the owners of the property that he or she holds the certificate, and will demand a deed therefor.** The notice must be given by personal service upon the owner. However, if an owner is not a resident of the State or cannot be found within the State after diligent search, the notice may be given by publication. The notice and return thereof, with the affidavit of the person, or in the case of the municipality, of the clerk, claiming a deed, showing that service was made, must be filed with the treasurer. [emphasis added]

NRS 271.595(4) states:

4. If redemption is not made within 60 days after the date of service, or the date of the first publication of the notice, as the case may be, **the holder of the certificate of sale is entitled to a deed.** The deed must be executed only for the property described in the certificate, and after payment of all delinquent taxes and special assessments, or installments thereof, whether levied or assessed before or after the issuance of the certificate of sale. A deed may be issued to any municipality for the face amount of the certificate of sale, plus accrued interest from the date of sale to the date of the execution of the deed at a rate of not exceeding 1 percent per month.[emphasis added]

1. Appellant strictly complied with the plain language of NRS 271.595.

Respondents seek to expand the interpretation of NRS 271.595 to read in mandatory time triggers on behalf of the purchaser's application procedure. The mandatory time contained within the statutes is the limitation upon the redemptioners timeframe within in which the prior owner may redeem or be barred from his ability to do so.

The Nevada Supreme Court has dealt with these timing issues before. In *Leven v. Fray*, cited *supra*, it was held that the statutory timeframes for judgment renewal were mandatory. This Court in *Leven* analyzed mandatory timeframes within the context of NRS 17.214. Specifically, this Court concluded that:

Under the statute's express terms, then, a judgment may be renewed by filing an affidavit with the district court **within ninety days** before the judgment's expiration, recording the affidavit **within three days** of filing, and serving the affidavit on the debtor **within three days** of filing.

Generally, when a statute's language is plain and its meaning clear, the courts will apply that plain language. Here, NRS 17.214's mandatory requirements of filing, recording, and service of the affidavit are plainly set forth and must be followed for judgment renewal.

In particular, NRS 17.214(1)(a)'s requirement, that an affidavit of renewal be filed with the court clerk **within 90 days** before the judgment expires by limitation, **is unambiguous**. An action on a judgment or its renewal must be commenced **within six years** under NRS 11.190(1)(a); thus a judgment expires by limitation in six years. **The requirement that an affidavit be filed within ninety days of the expiration of this six-year period provides a clear first step in the procedure for renewing judgments.** [emphasis added]

Leven, 123 Nev. 399, 168 P.3d at 715. Further, this Court concluded that:

Generally, in determining whether strict or substantial compliance is required, courts examine the statute's provisions, as well as policy and equity considerations. Substantial compliance may be sufficient "to avoid harsh, unfair or absurd consequences." Under certain procedural statutes and rules, however, failure to strictly comply with time requirements can be fatal to a case. In other contexts, a court's requirement for strict or substantial compliance may vary depending on the specific circumstances. This court, however, has never indicated that substantial compliance with specific timing

requirements is sufficient in the context of recording and service under NRS 17.214. To the contrary, since the statute includes no built-in grace period or safety valve provision, **its explicit three-day language leaves little room for judicial construction or "substantial compliance" analysis.** [citations omitted] [emphasis added]

Id. at 718-719. This Court found that Frey did not serve the affidavit of renewal until October 30, 2002, and did not record the affidavit until November 4, 2002, well beyond the three-day requirement for recording and service under the facts. *Id.* at 714. Because Frey did not timely record and serve his affidavit of renewal, he did not comply with NRS 17.214(1)(b) and (3), and thus he failed to successfully renew the judgment in strict compliance with the statute's mandatory language. *Id.*

Leven, however, is a case of missed deadlines and late service in the context of clear mandatory language. Therefore, *Leven* is factually distinguishable from this matter because Respondents, here, have complained of receiving notice too early, and potentially too much notice. As discussed below, courts are often lenient in terms of early notice, to the extent that it does not prejudice the party receiving notice. (See sections B. 2.; C.) *Leven* is also distinguishable from this matter because, unlike NRS 17.214 in *Leven*, NRS 271.595, here, has clear mandatory provisions, but lacks explicit, mandatory language connecting the two-year mandate to the 60 days' notice mandate.

On the other hand, as set forth in *Markowitz v. Saxon Special Services*, cited *supra*, a statute may contain both mandatory and directory provisions. *Markowitz*, 310 P.3d 569 at 571. There this Court dealt with a bank's failure to timely file an appraisal or broker's price opinion as required by the foreclosure mediation statutes. *Id.* at 570. To determine if the bank's late filing constituted compliance with directory provisions of the statute, the court noted that the analysis will be whether the provisions in question, as to form and content, dictate who must take action and what information that party is required to provide. *Id.* at 573. This Court found the time limits and information directory and allowed late filing. *Id.* at 574. This Court, however, noted that because they do not implicate notice, form and content-based rules are typically directory and may be satisfied by substantial compliance. *Id.* at 572, citing *Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. Adv. Op. 69, 290 P.3d 249, 251 (2012).

Here the statute at issue implicates both notice and time limits, thus generally militating in favor of a plain reading analysis with mandatory provisions under *Leven*. However, a plain language analysis of mandatory provisions in NRS 271.595 shows that service of the 60 days' Notice of Expiration of Redemption Period is not mandated to occur only after the two-year redemption period.

The two-year time limit for redemption under NRS 271.595 is clear and must be followed. However, relating the two-year redemption period to the 60 days' notice provision is the essence of this appeal. The statute is silent on whether a certificate holder must wait until the two years have expired to serve a potential redemptionor with notice of expiration and intent to take. Indeed, the statute states that "[i]f redemption is not made **within 60 days after the date of service...**the holder of the certificate of sale is entitled to a deed." NRS 271.595(4) [emphasis added]. Thus, the statute only references two timeframes: two years for redemption and, separately, 60 days' notice. The statute does not connect those two requirements with any explicit "shall" or "must" language dictating that notice can only be served after two years.

Rather, the "shall" language in the statute dictates that after the period of redemption, the treasurer **shall** on demand of the certificate holder execute a deed for the certificate holder after the period of redemption. NRS 271.595(3). In order for the certificate holder to properly make such a demand on the treasurer, the purchaser **must** have given redemptioners 60 days' notice.

Service of the 60 days' notice and demand upon the treasurer are therefore independent actions taken by certificate holder. The only intricacy is that notice has to take place before demand and demand can only happen after two years. As

such, a certificate holder should be allowed to give notice during or within 60 days before the two years have run, thus satisfying 60 days' notice requirement, which would allow the certificate holder to demand the deed from the treasurer on the exact date the two-year redemption period expires. In this case, Appellant's 60 day notice spilled over the final portion of the two-year redemption period and into expired time, creating a safe zone for Respondents until March 14, 2016.

Under the law, a certificate holder could also allow two years to elapse and then, at his or her own peril, wait some amount of time after the two-year period and *then* serve 60 days' notice, thus extending the safety zone for redemptioners indefinitely.

The trial court in this matter has read the latter interpretation to be mandatory, so that the statute requires 60 days of safe harbor based on notice *after* two years of redemption period, therefore reading two months or longer onto the mandatory two-year redemption period. Essentially, the trial court's interpretation found at least 26 mandatory months to exist in a statute that contemplates 24 months of redemption period. Neither the statute itself, nor the legislative history of NRS 271.595, refer to the 60 days' notice requirement as a grace period or a safety zone. (See Section B. 2. *Infra*.)

It should be noted that Respondent Deng did not follow the two-year timeframe for redemption, regardless of whether 60 days' notice had been served before or on the day of expiration. (AA0103, AA0146.) Assuming arguendo that Appellant Pawlik had served the 60 days' notice exactly after expiration, Respondent Deng did not attempt to redeem until April 6, 2016, well after 60 days of actual notice and 10 days after 60 days of the trial court's interpretation of a 60 day notice based safety zone following the two years. (AA0103, AA0146.)

Essentially, Respondent Deng has complained of receiving too much notice. If this Court finds that notice, under the statute, is designed to warn redemptioners of both the expiration of two years for redemption **and** that redemptions have a safety zone of 60 days following the two years, then Respondent Deng's redemption still falls outside that timeframe. Under the math of this matter, Appellant Pawlik first attempted to serve Respondent Deng with notice 20 days early (and then published notice later in the month on January 13, 2016). (AA0020.) This would have given Respondent Deng about an extra 14-20 days of notice, while also including an additional 60 days of safety that Respondent did not take advantage of.

As such, Appellant Pawlik, strictly complied with any mandatory provisions of NRS.271.595.

2. Appellant substantially complied with NRS 271.595 under a directory analysis.

In the alternative, NRS 271.595 contains both mandatory and directory provisions, thus allowing substantial compliance as described in *Markowitz*.

Under this type of analysis, the statute's mandatory language is both the two-year redemption period and the 60 days' notice. However, the directory provisions are related to who and how notice must be served. *Markowitz*, 310 P.3d 569 at 572; *Leven*, 168 P.3d at 717; "[F]orm and content provisions...dictate who must take action and what information that party is required to provide." *Einhorn*, 290 P.3d at 254.

Here, Appellant Pawlik strictly complied with the statute's mandatory provisions: Appellant waited two years before making demand upon the treasurer and only did so after providing the required 60 days' notice to Respondents. The mandatory aspect of the 60 days' notice is, therefore, that notice must last 60 days before a demand can be made on the treasurer. As stated above, even if 60 days is also a safety zone starting after and lasting beyond the two-year redemption period, Respondent Deng failed to redeem even within that more generous period.

The directory aspect, however, of the 60 days' notice is that the statute does not specifically mandate when the 60 days' notice must be given. As such, it

cannot be said that there is language in the statute that *mandates* when the 60 days' notice must be served.

Further, as to form and content, Appellant complied strictly, despite form and content falling under the more directory aspects of the law: Appellant attempted to serve notice personally, but to no avail; Appellant then served the notice through publication, which continued until January 27, 2016. (AA0020.) The form and content of Appellant's notice are not at issue in this matter.

Finally, "in determining whether strict or substantial compliance is required, courts examine the statute's provisions, as well as policy and equity considerations, courts will consider the legislative intent, policy and equity principles of the statute." *Leven*, 123 Nev. 399, 168 P.3d at 717.

The legislative history of NRS 271.595 is scant.¹ As stated in the footnote below, Nevada's version of NRS 271.595 was based on Idaho and Wyoming statutes in 1969. NRS 271.595 mirrors the exact language of Wyo. Stat. § 15-6-

¹ The Nevada Legislative history of NRS 271.595 only states that the statute was based on Idaho and Wyoming statutes. See <http://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1969/SB074,1969.pdf> , top p. 46, bottom p. 34. An online search of Idaho and Wyoming legislative history is unavailing because those state records, from 1967 and 1965 respectively, are not preserved online and can only be reviewed by traveling to each state's capitol. However, the analogous Wyoming law, Wyo. Stat. § 15-6-418, has been interpreted by the Wyoming Supreme Court in *Collier v. Hilltop Nat. Bank*, 920 P.2d 1241, 1242 (Wyo.1996), and is discussed *infra*.

418. The only case to interpret Wyoming’s analogous statute is *Collier v. Hilltop Nat. Bank*, 920 P.2d 1241, 1242 (Wyo.1996). The issue before the Court in *Collier* was not the timing of the notice of expiration of redemption, but whether the statute applied to “second class” cities the same way it applied to “first class cities,” based on population. *Collier*, 920 P.2d 1241, 1243. However, in dicta, the court outlined the apparent procedure for an:

In addition to this two year redemption period, it also provides owners with a final sixty day window within which they can redeem their property. Before a deed can be executed in favor of the payor of the delinquent assessment, the owner must be notified of the payor's intention to seek a deed for the property. The owner then has a final sixty day period in which to redeem the property. If the owner fails to redeem the property within that sixty day period, the deed must be issued to the payor.

Id. at 1243. Though dicta, the Court’s statements seem to corroborate the Nevada trial court’s ruling in this matter that 60 days is an “addition” to the two year period of redemption, as the Court in *Collier* calls it, “a window.” *Id.* However, even under the *Collier* Court’s proposed analysis, Respondent Deng in this matter did not take advantage of any 60 day window. Rather, Respondent Deng had notice prior to the expiration of the period of redemption and chose not to redeem. Importantly, the Court in *Collier* ruled on separate issues and did not clarify whether the 60 day window could occur during the final two months of the period of redemption. *Id.*

The analogous Idaho statute reads, in pertinent part:

50-1745. Notice of expiration of time of redemption. **The treasurer shall, at least one (1) month and not more than three (3) months before the expiration of the time of redemption of any property, serve or cause to be served, a written or printed, or partly written and partly printed notice** on the person or persons in the actual possession or occupancy of such land or lots, and shall also, within the same time, serve upon or mail to, the person in whose name the same stands upon the assessment records in the county assessor's office, a copy of said notice; [emphasis added]

Idaho Code Section 50-1745. Idaho's notice of expiration of redemption period clearly contemplates service before the period of redemption has run. Thus, it can be inferred that notice of expiration of redemption period serves as a warning, rather than an additional grace period, as long as service is not provided too early – prior to three months before expiration, as the case may be. Indeed, the Idaho statute mandates service before expiration, since such service must occur no later than one month before expiration.

Though Idaho's statute is not copied into Nevada's statute the same way as Wyoming's, Idaho law is explicitly mentioned in the legislative record as the basis for the Nevada law. The reason for this is probably that Wyoming's statute rolls the two-year redemption period and service into one concise statutory section, whereas Idaho's statute regarding notice of expiration of redemption period stands separately from the other Idaho statute establishing a two-year period of

redemption, Idaho Code Section 15-1743. Therefore, the Nevada law was copied from Wyoming but also contemplates Idaho's pre-expiration notice scheme as it does not obviously conflict with or contradict any provisions of the Wyoming and Nevada statute.

Further, Respondent urges this court not to follow the dicta of the Wyoming Supreme Court in *Collier*, and instead base its decision on the policy considerations discussed below, which comport with Idaho's pre-expiration notice structure.

The policy and equitable considerations inherent in NRS 271.595(4) are very clear. The notice requirement of the statute is designed to alert potential redemptionors that a crucially important two years of redemption period is about to expire. Notice under the statute is therefore designed to give warning that a certificate holder's ability to demand a deed from the treasurer draws near and that the certificate holder intends to make such a demand. It would make little sense that, as a warning, the 60 days' notice should be required to be given *after* the period of redemption has already expired. After all, the statute requires *notice of expiration of redemption period*, and not *notice of upcoming 60 day grace period*.

Instead, the statute itself provides two independent levels of protection: two years for redemption and notice over a period of sixty days. Of course, it would be

beneficial for potential redemptioners to have the extra time; and there may be instances where such parties are given extra time when certificate holders wait longer than two years to give 60 days' notice. However, it is also beneficial for potential redemptioners to have warning before the two-year period expires, essentially informing them that a time limit is about to expire. Indeed, it is clear from the statute that the explicit and mandatory two-year time limit offers the most protection to redemptioners. The two-year limit is the crucial part of the statute. It has teeth. Therefore, notice before the time limit serves to warn such parties not to sleep on their rights. On the other hand, a warning after the fact does little good for potential redemptioners when the statute does not explicitly mandate "two years plus two months of safe harbor."

It should be noted that Appellant's service in this case would have been considered too late under Idaho law, as notice in that state must be served no later than one month prior to the expiration of the redemption period. Here, Appellant served notice during the final month of the two year period. As such, the warning function of the 60 days notice in each state's statute is clear.

Under this analysis, even if NRS 271.595 contemplates that notice must be given after two years have expired, Appellant Pawlik has substantially complied with the warning purpose of the statute's notice requirement. *See Jones v. Short*,

696 P.2d 665 (Alaska 1985) (deciding that a party "substantially complies" by engaging in conduct that falls short of strict compliance with statutory requirements but nevertheless affords to the public the same protection as would strict compliance), *cited in Leven*, 168 P.3d at 718, n. 27. As such, Appellant's notice was reasonably calculated to apprise Respondent's that their right to redeem would expire and that Appellant would demand the treasurer to execute a deed in his favor, thus affording to Respondents the same protection as would strict compliance.

In doing so, Appellant's notice was *reasonably calculated under all the circumstances* to apprise Respondents of the pendency of an action affecting their property rights so as to satisfy due process. *See Gonzales-Alpizar v. Griffith*, 130 Nev. Adv. Op. 2, 317 P.3d 820, 827 (2014), *quoting Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 2706, 2709, 77 L.Ed.2d 180 (1983)²; "[W]hether a particular method of notice is reasonable

² *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 2706, 2709, 77 L.Ed.2d 180 (1983) is nearly factually identical to this matter, but occurs in the context of an Indiana tax sale. However, in *Mennonite*, the issue did not concern notice of expiration of redemption but rather the form of notice of the initial sale, which was published rather than mailed certified. Further, there was no issue of early service of notice of expiration of redemption period.

depends on the particular [factual] circumstances." *Tulsa Profl Collection Servs., Inc. v. Pope*, 485 U.S. 478, 484, 108 S.Ct. 1340, 99 L.Ed.2d 565 (1988).

Pursuant to the above mentioned due process case law, under all the circumstances, Appellant attempted to perfect notice through both personal service and publication so as to apprise Respondents of an important statutory expiration affecting their rights. Appellant then waited 60 days and made demand upon the treasurer on March 14, 2016. (AA0003, AA0033.) Doing so did not prejudice or negatively impact Respondent Deng's ability to redeem. Rather, it encouraged Respondent Deng to redeem in a timely matter, which he did not do.

Though the trial court in this matter concluded that Appellant improperly attempted to perform service early within the final month of a two-year timeframe, Appellant still complied with not making demand upon the treasurer until two years had elapsed and after 60 days' notice to Appellants.

C. Early Notice is Proper to the Extent that it Does Not Prejudice the Receiving Party.

An analogy may also be drawn to foreclosure situations in this matter. It must be noted, that Respondent Deng has not contested the validity of the original sale. Respondents' only objection is to the adequacy of the demand notice as it relates to the 60 day period. In a foreclosure situation, a notice of the default or sale, which contains a factual defect, may be subject to attack only upon a

sufficient showing of prejudice resulting from the error to the property owner. See *Anderson v. Heart Federal Sav. & Loan Assn.*, 256 Cal. Rptr. 180 (3d Dist. Cal. 1989); *Miller v. Cote*, 179 Cal. Rptr. 753 (Court of Appeals Cal. 4th Dist. 1989); *Ram v. OneWest Bank, FSB*, 183 Cal. Rptr. 3d 638 (Cal. Ct. App. 2015).

Multani v. Witkin & Neal (2013) 215 Cal.App.4th 1428 (Multani I) provides an apt briefing of *Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 86-87 [20 Cal.Rptr.3d 1].

[In *Knapp*] the plaintiff provided evidence that the defendant had served a notice of sale prematurely. Under the Civil Code, the trustee was required to comply with multiple timing requirements when serving the notice of sale: Civil Code section 2924 required the trustee to serve the notice no earlier than "three months' following recordation of the notice of default" *Knapp*, 123 Cal.App.4th 76, 92, while section 2924b required that the trustee serve the notice "at least 20 days prior to the sale" *Id.* at 88. The court explained that the evidence showed the trustee "served the [s]ale [n]otice on ... a date that was slightly less than three months after recordation of the [d]efault [n]otice," but 29 days prior to the sale date. *Id.* at 92. "Thus, while the [s]ale [n]otice did not comply fully with the three-month requirement under section 2924, it provided more than the 20 days notice mandated under section 2924b" *Id.*

The court ruled that, under such circumstances, the foreclosure need not be set aside, concluding: "[T]he slight procedural irregularity in the service of the [s]ale [n]otice did not cause any injury to [b]orrowers. They had notice of the original sale date; the trustee's sale did not go forward until almost one year after the date noticed. There was no prejudicial procedural irregularity." *Id.* at 94 (some italics omitted.) In the court's view, the **"[b]orrowers' objection to the premature notice [wa]s, in effect, a criticism that the trustee provided too much notice of the sale.**

There [wa]s no evidence that they were prejudiced by the premature mailing of the notice.

Id. at 96. as cited in *Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428 (Multani I)[emphasis added]

In *Knapp*, the court, however, did rule that notice was premature, and noted that “[t]aken to its extreme, a trustee could serve a notice of sale immediately after recording the notice of default, so long as the sale date noticed was at least three months plus 20 days after the recordation of the notice of default.” *Knapp*, 123 Cal.App.4th 76 at 94; See *I.E. Associates v. Safeco Title Ins. Co.* (1985) 39 Cal.3d 281, 286, 216 Cal.Rptr. 438, 702 P.2d 596. However, the *Knapp* court’s ruling remained that because the borrower suffered no prejudice and the notice was served close in time to the end of the three-month buffer zone, the premature service did not invalidate the sale. *Knapp*, 123 Cal.App.4th 76 at 94.

This matter is analogous to the facts of *Knapp*, but distinguishable from the statute at issue. In *Knapp*, California Civil Code Section 2924 explicitly stated that notice of the sale could not be served until after three months of recordation of notice of default had elapsed. Such is not the case in NRS 271.595 because there is no explicit proscription of service before the two years have expired. Nor would serving slightly early under NRS 271.595 trick or discourage a redemptioner into not redeeming, as was feared in cases of extremely early service in *Knapp*. Under

NRS 271.595, it would not do a certificate holder any good to serve a 60 days' notice on the day of the initial sale because the statute's two year period of redemption would be in effect for at least another 22 months. Obviously, such an action may serve to trick redemptioners into not redeeming, but that is not the case here, and it has never been alleged that Appellant sought to trick Respondent into avoiding redemption.

Appellant's service of the notice occurred slightly before the two-year period of redemption had run. As noted above, there are two ways this Court can interpret this: 1) the notice was to inform the prior owners that the redemption period would soon expire and that 60 days of notice covers some time beyond the two years (minus the days it was served early); or 2) the notice was to inform the prior owners that the redemption period would soon expire and that 60 days' grace of grace period would soon begin.

Under either interpretation, Respondents have not suffered prejudice. Primarily, Respondent Deng did not attempt to redeem until April 6, 2016, which is about 70 days after the end of the redemption period. (AA0103, AA0146.) Publication of notice in this case also ran until January 27, 2016 and attempted service began on January 7, 2017. (AA0003, AA0014, AA0020.) Therefore,

serving notice on Respondent on January 27, 2016, at the latest, would have presumably resulted in the same late redemption by Respondent Deng.

Under the standard set forth in both *Knapp* and *Multani*, as well as the argument *supra* (see Section B.), Respondent is complaining of too much notice. Under the first alternative, 60 days from the date of first publication of notice is March, 14, 2016. (AA0020.) This period of warning extends beyond two year minimum, which ended on January 27, 2016. (JA0010.) On the other hand, if this Court finds that notice mandates a 60 day grace period after the expiration of the two years, then it should not matter if notice was served slightly early, either. The result is that Appellant's attempts to serve notice and actual service of notice through publication gave Respondent Deng about an extra 14-20 days of warning, while *also* including an additional 60 days of safety zone that Respondent did not take advantage of.

Here, Deng had two opportunities to redeem the property. He slept on his rights both times and did not attempt redemption until after the expiration of all periods of time.

CONCLUSION

Pursuant to each alternative analysis above, the fact remains that Respondent Deng did not redeem until well after expiration of the two-year redemption period,

well after 60 days of notice, and also well after any combination of two years plus 60 days of notice, depending on how this Court interprets NRS 271.595. Appellant Pawlik, on the other hand, complied with the protective two-year period, perfected proper notice, and made a timely demand upon the treasurer for execution of the deed in his favor.

As such, it is respectfully requested that this Court reverse the trial court's Order Granting Defendants' Motion to Dismiss, and in so doing remand with instructions that Appellant's Motion for Writ of Mandamus be granted consistent with this Court's holding.

Respectfully submitted this 6th day of June, 2017.

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ATTORNEY'S CERTIFICATE OF COMPLIANCE FOR
APPELLANTS OPENING BRIEF

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 Microsoft Word in 14 point font and type style Times New Roman.

I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points, and contains 7,771 words.

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 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.

Respectfully submitted this 6th day of June, 2017.

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CERTIFICATE OF MAILING

I hereby certify that on the 6th day of June, 2017, I served a true and correct copy of **APPELLANT’S OPENING BRIEF** upon all counsel of record by:

- ☒ Electronic filing with the Clerk of the Court by using the E-Flex system which will send a notice of electronic filing to the following individuals at the email addresses set forth below.
- ☒ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada postage paid, following the ordinary course of business practices;
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