IN THE SUPREME COURT OF THE STATE OF NEVADA

SFR INVESTMENTS POOL 1, LLC,

Appellant,

vs.

FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, N.A.,

Respondent.

Case No. 71325

APPEAL

from the Eighth Judicial District Court
The Honorable Gloria Sturman, District Judge
District Court Case No. A-13-679329-C

RESPONDENT'S ANSWER BRIEF

ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
MELANIE D. MORGAN, ESQ.
Nevada Bar No. 8215
BRETT M. COOMBS, ESQ.
Nevada Bar No. 12570
AKERMAN LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
Telephone: (702) 634-5000

Attorneys for First Horizon Home Loans

NRAP 26.1 DISCLOSURE STATEMENT

Pursuant to NRAP 26.1, 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.

First Horizon Home Loans, a division of First Tennessee Bank National Association is a national bank and is a wholly-owned subsidiary of First Horizon National Corporation. There is no publicly held corporation owning 10% or more of First Horizon National Corporation's stock.

First Horizon is currently represented by Akerman LLP and was represented by Akerman before the trial court. It was previously represented by Ballard Spahr LPP before the trial court.

ROUTING STATEMENT

Pursuant to NRAP 28(a)(5) appellant states that this case raises as a principal issue [13] a question of first impression of common law and [14] a question of statewide public importance.

DATED this 24th day of February, 2017

AKERMAN LLP

/s/ Brett M. Coombs

ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
MELANIE D. MORGAN, ESQ.
Nevada Bar No. 8215
BRETT M. COOMBS, ESQ.
Nevada Bar No. 12570
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
Phone: (702) 634-5000
Attorneys for First Horizon Home Loans

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Other Authorities

ISSUES PRESENTED

(1) Whether the HOA Foreclosure sale is invalid under the HOA's CC&Rs and NRS 116 *et seq.*

(2) Whether the HOA's sale of the subject property for 10% of the value of the loan securing First Horizon's deed of trust should be set aside as commercially unreasonable.

(3) Whether the District Court properly held that the foreclosure-sale purchaser SFR was not a bona fide purchaser because it had knowledge of First Horizon Home Loans (**First Horizon**)'s interest in the property at issue when SFR purchased the Property.

(4) Whether NRS 116 is preempted by federal law as applied to deeds of trust securing FHA-insured loans.

STATEMENT OF THE CASE

This case involves a dispute over whether Appellee First Horizon's interest in real property was extinguished by a homeowners association's foreclosure sale of the property to Appellant SFR Investments Pool 1, LLC (**SFR**). Ana Torres was the owner of the property when the HOA Trustee, Alessi & Koenig, LLC, (**Alessi**) commenced foreclosure under the HOA's assessment lien. However, First Horizon became owner of the property through foreclosure under its deed of trust before the HOA foreclosure was completed. Though First Horizon had received notices from

the HOA in its prior role as a secured party, Alessi failed to provide First Horizon after it became owner through a foreclosure that wiped out the sub-priority portions of the HOA's lien. Notwithstanding that First Horizon did not have notice as owner of the property, SFR now contends it owns the property and First Horizon's interest was extinguished. The District Court disagreed with SFR and entered an order granting summary judgment in First Horizon's favor. That judgment should be affirmed.

STATEMENT OF FACTS

I. FACTUAL BACKGROUND

On or about July 15, 2008, Ana Torres (**Borrower or Torres**) purchased real property located at 5069 Midnight oil Drive, Las Vegas, Nevada 89122 (the **Property**) via a loan in the amount of $136,923.00, which was secured by a deed of trust (the **Deed of Trust**) in favor of First Horizon Home Loans (**First Horizon**), which was recorded on July 25, 2008. (JA_394). This Deed of Trust was insured by the Federal Housing Administration (**FHA**), and bore FHA Case Number 332-4647084-703. *Id.*

Torres defaulted on her loan. A notice of default and election to sell was recorded on October 30, 2012. (JA_0089). A certificate of compliance with Nevada's Foreclosure Mediation Program was recorded on February 1, 2013. (JA_0098). A notice of trustee's sale was recorded on February 7, 2013.

(JA_0100). The notice of sale stated that the date for the public auction of the property was February 26, 2013. (*Id*.) The trustee's sale occurred on February 26, 2013. (JA_0104). First Horizon credit bid for the property and obtained it for $151,283.09. (*Id*.) First Horizon's trustee's deed was recorded on March 7, 2013. (*Id*.)

On March 22, 2012, Alessi & Koenig (**HOA Trustee**), as agent for Squire Village at Silver Springs Community Association (**HOA**), recorded a Notice of Delinquent Assessment Lien, which stated the total amount due to the HOA was $1,055.00. (JA_0108). On April 20, 2012, the HOA Trustee, on behalf of the HOA, recorded a Notice of Default and Election to Sell Under Homeowners Association Lien, which stated the total amount due to the HOA was $2,089.00. (JA_0110).

On February 5, 2013, the HOA Trustee recorded a Notice of Foreclosure Sale, stating the total amount due to the HOA was $4,109.00, and setting the sale for March 6, 2013. (JA_0112).

On March 6, 2013, the HOA, through the HOA Trustee, foreclosed on the Property, selling its interest in the Property to SFR for $7,000.00. (JA_0114). SFR recorded its foreclosure deed on March 18, 2013. (JA_0114).

Section 7.7 of the CC&Rs is called "Rules Regarding Billing and Collection Procedures." (JA_0154, CC&Rs at pg. 31). It provides, in relevant part:

> The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed as set forth Section 7.10 below until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that that the Assessment or any installation thereof is or will be due and of the amount owing.

(*Id*.).

David Alessi, testified as Alessi's person most knowledgeable. (JA_0179, Transcript of David Alessi's Deposition). He testified as to Alessi's procedures where a lender forecloses and becomes owner prior to a homeowner's association foreclosure:

> Q. Okay. If Alessi had known that the lender had foreclosed days before the HOA foreclosure sale, would it have moved forward with the sale?
>
> Ms. Ebron: Calls for speculation, incomplete hypothetical.
>
> Mr. Loizzi: Join. Go Ahead.
>
> A. I would answer the question that in general we would not.
>
> Q. And why not.
>
> A. Because there would have been a new – well, would have been a trustee's deed recorded by the bank and we would have known of the foreclosure and probably would have sought payment by the bank of the amounts due. We probably would have restarted the collection process if there had been a trustee's deed recorded into the bank's name. That is my recollection of our policy at that time.

(*Id*. at 49:9-25 and 50:1).[1]

[1] The question that prompted Mr. Alessi to describe Alessi's collection policies where a new owner attains title was not objected to during the deposition.

II. PROCEDURAL BACKGROUND

SFR filed a complaint against First Horizon on April 2, 2013, asserting claims for unjust enrichment, quiet title, and declaratory relief. (JA_001). First Horizon answered the complaint on May 13, 2013. (JA_0015).

First Horizon moved for summary judgment on March 2, 2016. (JA_0037). In its motion First Horizon argued SFR's count for unjust enrichment failed because SFR conferred no benefit on First Horizon; the HOA foreclosure sale was void under the HOA's CC&Rs; the sale price was grossly inadequate; the HOA foreclosure without actual notice to First Horizon frustrates the objectives of the Single Family Mortgage Insurance Program; among other arguments.

SFR moved for summary judgment the same day. (JA_0361). In its motion, SFR argued this Court's decision in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 411 (Nev. 2014) coupled with the recitals of statutory compliance in the foreclosure deed, were dispositive of all issues in this quiet-title dispute, and that HOA foreclosure sales were not required to be commercially reasonable. *Id.* On March 21, 2016, First Horizon opposed SFR's motion and SFR opposed First Horizon's motion. (JA_0569; JA_0699).

The District Court agreed with First Horizon, granting First Horizon's motion for summary judgment and denying SFR's, holding:

(1) First Horizon was not in default of any obligation to pay assessments and the HOA's CC&Rs mandate that First Horizon be given notice of the amount owed after First Horizon's foreclosure sale and 30 days' notice in order to pay that amount prior to any foreclosure proceedings. (JA_0779);

(2) The HOA did not serve First Horizon with the notice required by Sec. 7.7 of the CC&Rs and instead proceeded immediately to foreclosure. (*Id.*);

(3) First Horizon's February 26, 2013 foreclosure extinguished its deed of trust causing the super-priority lien to be rendered moot. (*Id.*);

(4) The Due Process Clause of the U.S. Constitution requires[2] that, "at a minimum, [the] deprivation of life, liberty, or property by adjudication be preceded by notice and an opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) An "elementary and fundamental requirement of due process … is notice reasonably calculated, *under all circumstances*, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Tulsa Prof'l Collection Services, Inc. v. Pope*, 458 U.S. 478, 484 (1988) (quoting *Mullane*, 339 U.S. at 314) (emphasis added).(*Id.*);

[2] Because of this Court's intervening opinion in *Saticoy Bay LLC Series 350 Duranto 104 v. Wells Fargo Home Mortgage, a Division of Wells Fargo Bank*, 133 Nev. Advance Opinion 5, (Jan. 26, 2017), First Horizon does not present the due process issue in this brief. However, it reserves the right to assert that argument if there is a change in controlling law.

(5) First Horizon, as owner, did not receive any of the foreclosure notices required by NRS Chapter 116. First Horizon did not receive a notice of delinquent assessment. NRS 116.31162(1)(a). First Horizon did not receive a notice of default and election to sell. NRS 116.31162(1)(b). First Horizon did not receive a notice of sale. NRS 116.31165.

(6) The HOA's sale is void because it should have re-noticed the foreclosure sale to First Horizon.

SFR timely appealed.

SUMMARY OF THE ARGUMENT

The District Court's judgment should be affirmed. After it became owner of the property, First Horizon was entitled to notices required by NRS 116.31162 and the CC&Rs prior to the HOA Foreclosure sale going forward. The HOA's failure to provide required notices to the owner of the property invalidates its foreclosure. It is also evidence of unfairness which, along with the extremely low purchase price, 10% of fair market value, renders the sale commercially unreasonable.

In addition, under Nevada law, SFR had the burden of proving it took title to the Property without notice of First Horizon's Deed of Trust before it could enjoy the protection of being a bona fide purchaser. But SFR produced no evidence supporting its argument that it bought the Property without notice of First Horizon's Deed of Trust. SFR could not argue it lacked notice, given (1) that First

Horizon's Deed of Trust and a notice of sale under the Deed of Trust were both recorded before the HOA foreclosure sale, and (2) that SFR purchased the Property for an extremely low price.

More fundamentally, the HOA's foreclosure sale is void because NRS 116, *et seq.* (the **HOA Lien Statute**) is preempted as applied to FHA-insured deeds of trust under the Supremacy Clause.

ARGUMENT

I. HOA FORECLOSURE SALE IS INVALID BECAUSE IT WAS CONDUCTED IN VIOLATION OF THE CC&RS.

CC&Rs run with the land and provide a burden and a benefit of rights to the property owner. *Boulder Oaks Cmty. Ass'n v. B & J Andrews*, 169 P.3d 1155, 1160-1161 (Nev. 2007). One benefit of the CC&Rs is that the HOA must comply with the notice provisions that govern how the HOA enforces its right to collect assessments.

Here, the HOA's foreclosure collection activities were deficient under section 7.7 of the CC&Rs. The HOA had no power to foreclose against a member of the community without sending written notice to the community member. (JA_0154.) First Horizon was a member of HOA's community as of February 26, 2013 by virtue of the Deed of Trust foreclosure sale. (JA_0006, at ¶ 23). First Horizon was entitled to the benefits of its ownership. Under Section 7.7 First Horizon was owed written notice of default and written notice of the amount

supposedly due. (JA_0154, at pg. 31). The HOA made these notice provisions mandatory by stating that the "Assessment Lien therefor shall not be foreclosed," if these notice provisions are not complied with by the HOA. (*Id*.) It is undisputed that the HOA did not comply with Section 7.7. The foreclosure sale is void.

Here, First Horizon was not in default of any obligation to pay assessments. The HOA's CC&Rs mandated that First Horizon be given notice of the amount owed after First Horizon's foreclosure sale and 30 days' notice to pay that amount. (JA_0154.) SFR, contrary to *Shadow Wood Homeowners Ass's v. New York Cnty. Bancorp.,*132 Nev. Ad. Op. 5; 366 P.3d 1105 is asking this Court to confirm a default by First Horizon where none exists.

A senior mortgagee, like First Horizon prior to February 26, 2013, has no obligation to pay assessments prior to taking title. The CC&Rs provide that assessments that became due prior to First Horizon's foreclosure sale are the personal obligation of the former owner, Torres. (JA_0155-56).[3] Chapter 116 certainly provides no such obligation. SFR cites no statutory provision. No such requirement exists.

[3] Note, Section 7.8.3 is not a mortgage savings clause of the type ruled unenforceable in *SFR.* See *SFR Investments Pool 1, LLC,* 130 Nev. Adv. Op. 75 at 23-24. Section 7.8.3 recites NRS 116.3116(2). In contrast to the HOA in *SFR*, the HOA here is not waiving its rights to a super priority of assessments. Sections 7.7 and 7.8.3, when read together, provide a procedure for the HOA to collect the super priority lien amount after the mortgagee's foreclosure through 7.7's notice procedure.

Contrary to SFR's assertions, there is good reason to require restarting the HOA lien foreclosure process after a new owner has taken title pursuant to foreclosure under at first position deed of trust. SFR's Br., at 11-12. After the deed of trust foreclosure, the notices issued by the HOA prior to the deed of trust foreclosure were no longer accurate. Under both NRS 116.3116 and section 7.8.3 of the CC&Rs, the deed of trust foreclosure wiped out the sub-priority portion of the HOA's lien. NRS 116.3116(2)(b) and (3)(b) (an HOA's lien is superior to a first position deed of trust only to the extent of nine months' common assessments); *see also Horizon at Seven Hills Homeowners Ass'n v. Ikon Holdings, LLC*, 132 Nev. Advance Op. 35, at 16 (April 28, 2016) ("we conclude that a superpriority lien pursuant to NRS 116.3116(2) does not include an additional amount for the collection fees and foreclosure costs that an HOA incurs preceding a foreclosure sale; rather, it is limited to an amount equal to nine months of common assessments."); CC&Rs § 7.8.3 (JA_0155-56)("The Assessment Lien shall have priority over all liens and encumbrances except for . . . the lien of a bona fide First Mortgage Recorded prior to the date the delinquent assessment first accrued, provided, however, that the Assessment Lien is also prior to any such First Mortgage to the extent of Common Expense Assessments which became due during the six (6) months immediately preceding the date of filing of the Notice of Lien . . .".). Because the subpriority portions were not owed by First Horizon and

were no longer secured by the HOA's lien, the notice of lien, notice of default and notice of sale recorded by the HOA's agent prior to foreclosure under the deed of trust no longer reflected the lien amounts or amounts owed to the HOA. (JA_0108; JA_0110; JA_0112.)

And, as discussed above, an owner such as First Horizon was owed notice and an opportunity to pay amounts it owed. The HOA's agent, Alessi, confirmed that its policies would require restarting the foreclosure in this situation so the new owner can have an opportunity to pay assessments owed by it. (JA_0179.)

Of course, more fundamentally, the relationship of the parties changed with the deed of trust foreclosure. The HOA was no longer foreclosure out Torres' ownership interest. It was foreclosing the interest of a new owner and new member, First Horizon. It should have restarted and re-noticed its foreclosure.

The district court correctly held the HOA to its obligations under the CC&Rs and NRS 116.31162. This Court should affirm.

II. THE HOA FORECLOSURE SALE WAS NOT COMMERCIALLY REASONABLE.

This Court should affirm the District Court's judgment in First Horizon's favor because the HOA's foreclosure sale was not commercially reasonable.

In *Shadow Wood*, this Court held that a foreclosure sale must be set aside if the sale fetched an inadequate price and there is evidence of "fraud, unfairness, or oppression." *Id.* This Court also cited to the Restatement (Third) of Property

(Mortgages) in *Shadow Wood*, which states that under the gross inadequacy standard: "a court is warranted in invalidating a sale where the price is less than **20 percent of fair market value**." Section 8.3 cmt. b (emphasis added). Further, "in extreme cases a price may be so low (typically **well under 20% of fair market value**) that it would be an abuse of discretion for the court to refuse to invalidate it." *Id.* (emphasis added). Here, the Property was sold for an amount less than **10% of fair market value**. Under the Restatement view, the HOA's foreclosure sale here would surely be overturned.

The result should not be any different under Nevada law. "To say that a mortgagee with a power to sell, **who has an encumbrance on the estate of less than one-third of its value**—an encumbrance which five or six months' rent will discharge—has the right to sell the estate absolutely to the first man he meets who will pay the amount of the encumbrance, without any attempt to get a larger price for it, would in our opinion **be equivalent to saying fraud and oppression shall be protected and encouraged**." *Runkle v. Gaylord*, 1 Nev. 123, 129 (1865) (emphasis added).

Although SFR does not address commercial reasonableness in its opening brief, it argued before the trial court that a sale is not commercially unreasonable unless the inadequate price is accompanied by "fraud, unfairness or oppression." (JA_0551.) That is not the holding of *Shadow Wood* nor is it an accurate statement

of Nevada law when a grossly inadequate price (less than 20% fair market value) is at issue. However, even if it were the law, the standard is met.

The HOA represented in its CC&Rs that foreclosure would not occur unless a "Member has been given not less than thirty (30) days written notice prior to such foreclosure that that the Assessment or any installation thereof is or will be due and of the amount owing." (JA_0154.) First Horizon became a member on February 26, 2013. It received no notice of the threatened foreclosure sale between that date and the HOA's foreclosure. The HOA also represented that only 6 months of assessments would survive the Deed of Trust foreclosure. (JA_0155-56.) First Horizon had no way to know or calculate that amount. The notices of lien, default and sale issued prior to the Deed of Trust foreclosure appeared to show the entire amount of the HOA's claimed lien.

First Horizon did not have a fair opportunity to protect its interests as owner of the property and member in the association. With or without these facts, SFR's purchase of the Property for a grossly inadequate price was commercially unreasonable and should be set aside.

III. SFR is not a Bona Fide Purchaser.

The District Court correctly held that SFR was not a bona fide purchaser. SFR failed to present any evidence to satisfy its burden of proof and establish itself as a bona fide purchaser without notice of First Horizon's interest in the Property.

An argument that a party is a bona fide purchaser for value, and thus holds good title in the face of a competing claim, is an affirmative claim or defense. *Bailey v. Butner*, 64 Nev. 1, 11, 176 P.2d 226, 231 (1947). As an affirmative claim or defense, the burden of proof for each element rests on the party claiming bona fide purchaser status. *See id.* ("The claim of one asserting he was a bona fide purchaser . . . as against a prior equity, is purely a matter of affirmative defense, and unless the subsequent purchaser asserting it should, by sufficient pleading and proof, be able to achieve the position of superiority in equity, by establishing clearly that he purchased without notice, or that his immediate vendor so purchased, he should be deemed to have failed to show a right to displace the prior equity."); *accord Nev. Ass'n Servs., Inc. v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 94, 338 P.3d 1250, 1254 (2014).

SFR makes only bald assertions that it was a good faith purchaser. SFR's Br., at 15-16. Instead, it impermissibly attempts to place the burden of proof on First Horizon, arguing "[First Horizon] points to no evidence indicating that SFR knew of the [First Horizon's] ownership interest prior to the foreclosure . . .." SFR's Br., at 16. This is the wrong standard. Perhaps more importantly, it is an incorrect characterization of the evidence.

The recorded documents placed SFR on notice of First Horizon's interest. NRS 11.320 (recording a conveyance or instrument "impart[s] notice to all persons

of the contents thereof; and subsequent purchasers and mortgagees shall be deemed to purchase and take with notice."). First Horizon's deed of trust was recorded July 25, 2008, nearly five years prior to the HOA foreclosure. And First Horizon recorded a notice of sale on February 7, 2013 giving notice that a foreclosure sale under the deed of trust would occur February 26, 2013. SFR knew the property likely was sold pursuant to a deed of trust foreclosure before the HOA lien foreclosure. The consequences of failing to further investigate the outcome of the deed of trust foreclosure fall on SFR. It could have attended that foreclosure and bid there, though it would have had to pay a fair price for the property.

Even if it only had notice of First Horizon's Deed of Trust, that was enough tell SFR its title would likely be subject to a challenge by the first deed of trust holder. As of December 2012, three months before the foreclosure at issue here, SFR was involved in litigation concerning competing claims between a foreclosure deed it acquired at a foreclosure under the HOA Lien Statute and the first position deed of trust holder, which ultimately resulted in this Court's decision in *SFR Investments Pool 1, LLC v. Nationstar, N.A.* 334 P.3d 408, 411 (Nev. 2014).

SFR attempts to save its bona fide purchaser affirmative defense by arguing that, because the deed to First Horizon was not recorded before the HOA foreclosure sale, SFR's title is superior under NRS 111.325. SFR's Br., at 13-14.

But SFR selectively quotes NRS 11.325, inexplicably omitting the final, key word. NRS 111.325 states, in full:

> conveyance of real property within this State hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real property, or any portion thereof, where his or her own conveyance shall be first duly **recorded**. (emphasis added).

When read in full, NRS 111.325 clearly gives priority to a second purchaser of property only if that second purchaser both acquires and records its interest before the first purchaser records its interest. That is not the case here. First Horizon recorded its deed on March 7, 2013. SFR recorded its deed on March 18, 2013.

SFR has failed to prove or legally support its bona fide purchaser defense.

IV. THE HOA SALE WAS INVALID BECAUSE THE HOA LIEN STATUTE IS PREEMPTED.

This Court should affirm the District Court's judgment in First Horizon's favor because the HOA Lien Statute is preempted as applied to deeds of trust securing loans insured by the Federal Housing Administration (**FHA**).[4] Under the Supremacy Clause, state law that conflicts with federal law—including federal regulations—is preempted. *Crosby v. Nat'l Foreign Trade Council,* 530 U.S. 363,

[4] First Horizon raised this argument in its motion for summary judgment, though the District Court did not address it in reaching its conclusion. (JA_0048-49; JA_780-785.) "This court may affirm a decision of the lower court based upon an issue that was not found to be the deciding issue below." *Beenstock v. Villa Borega Mobile Home Parks*, 823 P.2d 270, 107 Nev. 979 (1991), citing *Hotel Riviera, Inc. v. Torres*, 97 Nev. 399, 403, 632 P.2d 1155, 1158 (1981).

372 (2000); *Fid. Fed. Savings & Loan Ass'n v. De la Cuesta*, 458 U.S. 141, 153–54 (1982) (holding that federal regulations have same preemptive force as federal statutes). Federal conflict preemption applies if the challenged [state] law "'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Crosby*, 530 U.S. at 372–73 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). A state law stands as an obstacle to federal law and is preempted whenever it conflicts, interferes, or is inconsistent with "the full purposes and objectives of Congress." *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 873 (2000) (quoting *Hines*, 312 U.S. at 67).

Applying these principles immediately after the Nevada Supreme Court's *SFR* decision, Chief Judge Navarro of the U.S. District Court in Nevada held that, "[b]ecause a homeowners association's foreclosure under Nevada Revised Statute § 116.3116 on a Property with a mortgage insured under the FHA insurance program would have the effect of limiting the effectiveness of the remedies available to the United States, the Supremacy Clause bars such foreclosure sales." *Washington & Sandhill Homeowners Ass'n v. Bank of Am., N.A.*, 2014 WL 4798565, at *7 (D. Nev. Sept. 25, 2014). Similarly, Judge Mahan of the U.S. District Court in Nevada held that "[a]llowing an HOA foreclosure to wipe out a first deed of trust on a federally-insured property . . . interferes with the purposes of the FHA insurance program." *Saticoy Bay LLC, Series 7342 Tanglewood Park v. SRMOF II 2012-1,*

et al, 2015 WL 1990076, at *4 (D. Nev. April 30, 2015). Because the deed of trust was federally insured, Judge Mahan held that "the homeowners' association sale . . . is void." *Id.* at *5.

As in *Washington & Sandhill* and *Saticoy Bay*, the HOA foreclosed on First Horizon as owner. Due to the HOA foreclosure without actual notice to the owner First Horizon, First Horizon was then unable to convey title to HUD after it foreclosed, as is required under the Single Family Mortgage Insurance Program. *See* 24 CFR § 203.366.

A. As applied to FHA-insured mortgages, the HOA Lien Statute is preempted because it extinguishes a federal interest and interferes with the governance of a federal program.

The Supremacy Clause mandates preemption of state laws when the state "legislation as applied interferes with the federal purpose or operates to impede or condition the implementation of federal policies and programs." *Rust v. Johnson*, 597 F.2d 174, 179 (9th Cir. 1979). The federal program at issue here, the FHA Insurance Program, is part of a comprehensive scheme designed to induce lenders to provide loans to at-risk borrowers who could not otherwise obtain financing to purchase a home.[5] The FHA's purpose is broad and essential, as the "[FHA] is the

[5]*Mortgage Insurance for One to Four Family Homes Section 203(b)*, HUD.gov, http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/ins/203b--df (last visited December 21, 2015) ("[T]he Federal Government expands homeownership opportunities for first time homebuyers and other borrowers who would not otherwise qualify for conventional mortgages on affordable terms, as

largest insurer of mortgages in the world, insuring over 34 million properties since its inception in 1934."[6] The effects of the FHA Insurance Program are far-reaching: "FHA provides a huge economic stimulation to the country in the form of home and community development, which trickles down to local communities in the form of jobs, building suppliers, tax bases, schools, and other forms of revenue."[7]

Critical to the FHA Insurance Program's mission is a partnership between private lenders and the federal government. Through the programs, the federal government insures certain residential mortgage loans originated by private lenders for at-risk borrowers who qualify for assistance under FHA criteria. *See, e.g.*, 12 U.S.C. § 1701t ("[T]here should be the fullest practicable utilization of the resources and capabilities of private enterprise and of individual self-help techniques.").[8] By incentivizing private lenders to make loans to at-risk borrowers,

---

well as for those who live in underserved areas where mortgages may be harder to get.").

[6]The Federal Housing Administration (FHA), HUD.gov http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/fhahistory (last visited December 21, 2015).

[7] *Id.*

[8] *See also* Housing Act of 1949, § 2, 42 U.S.C. § 1441 (policy of Housing Act of 1949 is to encourage private enterprise "to serve as large a part of the total need as it can"); Department of Housing and Urban Development Act of 1965, §§ 2, 3(a), 42 U.S.C. §§ 3531 (HUD to "encourage the maximum contributions that may be made by vigorous private home-building and mortgage lending institutions to housing, urban development, and the national economy"), 3532(b) (Secretary of HUD to do the same).

the FHA Insurance Program implements the "National Housing Act's strong policy in favor of encouraging private investment in housing." *Angleton v. Pierce*, 574 F. Supp. 719, 736 n.22 (D.N.J. 1983).[9] In managing the FHA Insurance Program, HUD, the federal agency charged with implementing the FHA, has issued comprehensive regulations to determine what mortgages will be insured, when a foreclosing mortgage servicer will be entitled to convey the home to HUD and in return receive the insurance proceeds, when payment to the servicer and conveyance of the property to HUD will be a matter of discretion rather than entitlement, and how HUD will dispose of the property once conveyed to it in a manner to best support the national housing objective.

This Court's recent decision in *Munoz v. Branch Banking & Trust Co.* is instructive on the preemptive effect that should be applied to federal statutory schemes, like the National Housing Act, where the challenged state statute's impact on private entities frustrates a federal statutory or regulatory scheme. 131 Nev.

---

[9] *The Federal Housing Administration (FHA)*, HUD.gov, http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/fhahistory (last visited Dec. 21, 2015) ("FHA mortgage insurance provides lenders with protection against losses as the result of homeowners defaulting on their mortgage loans. The lenders bear less risk because FHA will pay a claim to the lender in the event of a homeowner's default."); *Mortgage Insurance for One to Four Family Homes Section 203(b)*, HUD.gov, http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/ins/203b--df (last visited Dec. 21, 2015) ("[The 203(b)] program provides mortgage insurance to protect lenders against the risk of default on mortgages to qualified buyers."); *see also Hahn*, 430 F.2d at 1249–51; *Falzarano*, 607 F.2d at 512.

Adv. Op. 23, 348 P.3d 689 (2015). In *Munoz*, this Court considered the preemptive effect of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (**FIRREA**) on a state statute, NRS 40.459(1)(c), which limits the amount of a deficiency judgment that a successor creditor can recover to the amount it paid to acquire the interest in the secured debt, less the amount of the secured property's actual value. *Munoz*, 348 P.3d at 692. FIRREA governs the winding down of a failed bank, providing that the Federal Deposit Insurance Corporation (**FDIC**) will act as receiver for the failed bank and convert the bank's assets to cash to cover insured depositors and debtors to the maximum extent possible. *Id.* One category of a bank's assets are the loans it holds. Because the Nevada law limited the amount a subsequent private purchaser could recover on the loan, it made it less likely that a private party would purchase the loan, and hence would make it at least marginally more difficult for the FDIC to dispose of the assets. *Id.* Since the Nevada law interfered with FIRREA's express purpose of "facilitat[ing] the purchase and assumption of failed banks as opposed to their liquidation," it was preempted by the federal law. *Id.*

Like the Nevada statute in *Munoz*, the HOA Lien Statute undermines the incentives federal insurance provides to private parties, which "frustrates the purpose … or impairs the efficiencies" of a federal program—here the FHA Insurance Program. *See id.*, at 691 (quoting *McClellan v. Chapman*, 164 U.S. 347,

357 (1986)). When Congress enacted the National Housing Act and when HUD first implemented it by promulgating the FHA Insurance Programs' regulations, those two entities struck the balance between the public treasury and the private partnership with loan originators that the HOA Lien Statute frustrates and impedes. Congress, in striking that balance, made decisions that "involve[d] a balancing of factors and a consideration of complex financial data," *Falzarano v. United States*, 607 F.2d 506, 512 (1st Cir. 1979), and "economic and managerial decisions" about which "courts are ill-equipped to superintend." *Hahn v. Gottlieb*, 430 F.2d 1243, 1249-51 (1st Cir. 1970). State interference with that careful and expert balancing could "discourage the increased involvement of the private sector" that is the goal of the National Housing Act, which created the FHA. *Id.*, at 1250.

Recognizing the careful public-private balance Congress struck in enacting the FHA Insurance Program, the Ninth Circuit has consistently held that federal law, rather than state law, applies in cases involving FHA-insured mortgages, which "assure[s] the protection of the federal program against loss, state law to the contrary notwithstanding." *United States v. Stadium Apartments*, 425 F.2d at 358, 362 (9th Cir. 1970); *United States v. View Crest Gardens Apartments, Inc.*, 268 F.2d 380, 383 (9th Cir. 1959) ("[T]he federal policy to protect the treasury and to promote the security of federal investment which in turn promotes the prime purpose of the Act—to facilitate the building of homes by the use of federal

credit—becomes predominant. Local rules limiting the effectiveness of the remedies available to the United States for breach of a federal duty cannot be adopted."); *see also United States v. Victory Highway Vill., Inc.*, 662 F.2d 488, 497 (8th Cir. 1981) ("federal law, not [state] law, governs the rights and liabilities of the parties in cases dealing with the remedies available upon default of a federally held or insured loan.").

Consistent with the well-settled standard that federal law applies to federally-insured mortgages, Chief Judge Navarro held that the HOA Lien Statute was preempted in *Washington & Sandhill*. 2014 WL 4798565, at *7. "[E]xtinguish[ment] of a first secured interest" of a mortgagee where the mortgage is insured by HUD "would 'operate[ ] to impede or condition the implementation of federal policies and programs' and therefore 'must yield under the supremacy clause of the Constitution to the interests of the federal government.'" *Id.*, at *6 (quoting *Rust*, 597 F.2d at 179). "Allowing an HOA foreclosure to wipe out a first deed of trust on a federally-insured property thus interferes with the purposes of the FHA insurance program." *Saticoy Bay*, 2015 WL 1990076, at *4.

Foreclosure on and extinguishment of federally-insured mortgages "would run the risk of substantially impairing the Government's participation in the home mortgage market and of defeating the purpose of the National Housing Act." *Rust*, 597 F.2d at 179. The Supremacy Clause "forbids application of a state law that

impedes a federal interest," and the federal interest in the mortgage is impeded where "the property was federally insured at the time of the HOA foreclosure sale." *Saticoy Bay*, 2015 WL 1990076, at *5. Because the HOA Lien Statute impedes the operation of the FHA Insurance Programs, the statute is preempted as applied to FHA-insured mortgages, like the Deed of Trust in this case. Accordingly, the HOA's foreclosure sale is void, and the District Court's judgment should be affirmed.

B. As applied to FHA-insured mortgages, the HOA Lien Statute is preempted because it frustrates FHA's foreclosure-avoidance efforts.

In addition to threatening the partnership between private and public entities, allowing HOAs to foreclose on FHA-insured mortgages also threatens HUD's comprehensive regulations that seek to avoid foreclosure and keep at-risk borrowers in their homes. FHA loans are issued to borrowers who might otherwise not qualify for conventional mortgages due, for example, to their inability to make more than a minimal down payment or their having significantly lower credit scores than banks would otherwise approve.[10]

[10] Mortgage Credit Analysis for Mortgage Insurance on One- to Four-Unit Mortgage Loans (4155.1), ch. 4, § 2.A.2.a, *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=4155-1_2_secA.pdf (last visited Dec. 21, 2015) ("In order for FHA to insure this maximum loan amount, the borrower must make a required investment of at least 3.5% of the lesser of the appraised value or the sales price of the property."). *Id.* § 4.A.1.c (showing that

The FHA is not analogous to a private insurer. As a federal agency, "FHA insures mortgages so that lenders will be encouraged to make more mortgages available for people."[11] "HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all."[12] This strong federal interest encompasses keeping borrowers in their homes for some period of time during default as the lender and borrower work to resolve the delinquency.[13] The FHA Programs include a comprehensive set of servicing guidelines that are aimed at keeping at-risk borrowers in their homes to the extent possible, including in circumstances where the borrowers are in financial distress. For example, before claiming a default and initiating foreclosure proceedings, the FHA Programs' regulations require mortgagees consider forbearance and pre-foreclosure counseling[14]—which can take six months or more[15]—and provide that

---

borrowers with credit scores between 500 and 579 are eligible for a maximum Loan-To-Value ratio of 90%).

[11] *Discontinuing Monthly Mortgage Insurance Premium Payments*, HUD.gov, http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/comp/premiums/prem2001 (last visited Dec. 21, 2015).

[12] *See* HUD's Mission Statement, *available at* http://portal.hud.gov/hudportal/HUD?src=/about/mission (last visited, Dec. 21, 2015).

[13] *See* HUD Mortgagee Letter 2010-04, at 1 (Jan. 22, 2010), http://portal.hud.gov/hudportal/documents/huddoc?id=10-04ml.pdf (last visited Dec. 21, 2015). ("Loss Mitigation is critical to both borrowers and FHA because it works to fulfill the goal of helping borrowers retain homeownership while protecting the FHA Insurance Fund from unnecessary losses.").

[14] *See* 24 C.F.R. § 203.501 (requiring that mortgagees "must consider" actions such as "special forbearance," meaning in cases where the mortgagor does not own

noncompliance may result in a civil monetary penalty and withdrawal of HUD's approval of the mortgagee as a program participant, 24 C.F.R. § 203.500.

In addition to forbearance,[16] FHA regulations require mortgagees consider or attempt other forms of relief short of foreclosure, including modifying a loan's terms to make it more affordable. *Id.*, at §§ 203.357, 203.370, 203.608, 203.616. Moreover, even where foreclosure is inevitable, FHA regulations identify a lengthy and exhaustive process that details the level and form of borrower communications required before foreclosure may begin.[17] Federal regulators have marshalled many decades of expertise to enact a comprehensive and detailed approach to foreclosure and foreclosure forbearance on FHA-insured mortgages, the goal of which is to

---

other FHA-insured property and the default was caused by circumstances beyond the mortgagor's control, the forbearance agreement will not require increased payments before the original maturity date of the mortgage); HUD Administration of Insured Home Mortgages Handbook 4330.1, ch. 7, §§ 7-3, *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=43301c7HSGH.pdf (last visited Dec. 21, 2015) (requiring that servicers "make a concerted effort to help the mortgagor resolve his/her financial problems," specifically addressing that a mortgage servicer should endeavor to be aware of marital difficulties, substance abuse, excessive gambling, loss of income, loss of employment, illness, and other factors, and then refer borrowers to counseling before initiating foreclosure).

[15] HUD Administration of Insured Home Mortgages Handbook 4330.1 app. 18, at 2, *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=43301x18HSGH.pdf (last visited Dec. 21, 2015).

[16] *See* 24 C.F.R. §§ 203.471, 203.614.

[17] *See generally* HUD Administration of Insured Home Mortgages Handbook 4330.1, ch. 7, § 7-7, *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=43301c7HSGH.pdf (last visited Dec. 21, 2015).

expand the housing market for those who otherwise would not be able to purchase a home. By allowing HOAs to foreclose on distressed borrowers, Nevada law conflicts with FHA regulations specifying foreclosure as a "last resort" for this potentially vulnerable category of borrowers.[18]

The U.S. Supreme Court and other federal courts have found preemption of state law under the Supremacy Clause in much less compelling circumstances than those presented here. For instance, in *Fidelity Fed. Sav. & Loan Ass'n v. De la Cuesta*, the Supreme Court held that a Federal Home Loan Bank Board regulation permitting—but not requiring—federal savings and loan associations to include "due-on-sale" clauses in their mortgage contracts preempted state law that restricted the use of such clauses. 458 U.S. 141, 170 (1982). "By further limiting the availability of an option the Board considers essential to the economic soundness of the thrift industry, the State has created 'an obstacle to the accomplishment and execution of the full purposes and objectives' of the due-on-sale regulation." *Id.*, at 156 (citations omitted). Here, HUD explicitly directs mortgage servicers to exercise restraint in proceeding with foreclosures to help keep borrowers in their homes. Because the HOA Lien Statute impermissibly

[18] HUD Administration of Insured Home Mortgages Handbook 4330.1, ch. 9, § 9-3, *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=43301c9HSGH.pdf (last visited Dec. 21, 2015) ("Foreclosure should be considered only as a last resort and shall not be initiated until all other relief options have been exhausted.").

restricts the discretion of both the servicer and HUD in addressing borrower default, it is preempted under the Supremacy Clause as applied to FHA-insured mortgages.[19]

Finally, the preemptive effect here is modest. Nothing about HUD regulations or federal preemption requires HOAs to give up their partial payment priority, NRS 116.3116(2); they simply require that HOAs yield to the FHA-insured mortgagee with respect to the timing of their recovery out of foreclosure proceeds. *See* NRS 116.31162. The HOAs will still receive the fees that are entitled to super-priority status following a sale conducted by the mortgagee. But allowing an HOA to foreclose on an FHA-insured loan plainly frustrates the objectives of HUD regulations in restricting foreclosures on at-risk FHA borrowers where specified foreclosure avoidance measures offer some promise of keeping the borrowers in their homes.

---

[19] Similarly, in *Forest Park II v. Hadley*, 336 F.3d 724 (8th Cir. 2003), a state statute required owners of federally subsidized low-income housing to comply with prepayment requirements and schedules that differed from those imposed under federal law and HUD regulations. The Court in *Forest Park II* noted it was possible to comply with both laws. At issue were conflicting notice requirements and "Forest Park could give 365 days-notice to the state and 250 days-notice to HUD." *Id.*, at 732. But by requiring more notice under state law, the private entity would be required to wait longer than it otherwise would have before it could prepay its loans. While the Eighth Circuit recognized that compliance with both statutes was possible, it reasoned that such an argument did "not address the principal problem with these state statutes—they fly in the face of the Constitution's Supremacy Clause." *Id.*

Because the HOA Lien Statute "interferes with the federal purpose or operates to impede or condition the implementation" of the FHA Programs, it is preempted as applied to FHA-insured mortgages, like First Horizon's deed of trust. *See Rust*, 597 F.2d at 179. Accordingly, this Court should affirm the District Court's grant of summary judgment in First Horizon's favor.

VI. THE DISTRICT COURT AND THIS COURT MAY CONSIDER ALL ARGUMENTS RAISED BY FIRST HORIZON—NRS 38.310 DOES NOT APPLY.

SFR argues this Court and the District Court lack jurisdiction to interpret the CC&Rs relating to this property until after NRED mediation occurred. (Appellant's Initial Br., at 17-18.) SFR did not raise this argument below and may not raise it here.[20] "A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal." *Old Aztec Mine v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981); *see also Kahn v. Morse & Mowbray*, 121 Nev. 464, 480 n. 24, 117 P.3d 227, 238 n. 24 (2005).

To the extent the Court is inclined to hear SFR's argument, it fails because NRS 38.310 does not apply to SFR's or First Horizon's claims.

A. NRS 38.310 Does Not Apply to First Horizon's Claims

SFR's and First Horizon's first cause of action for declaratory judgment are indisputably exempt from NRS 38. NRS 38.300(3) specifically excludes "actions

[20] To the extent SFR contends it need not have raised this argument below because it goes to jurisdiction, SFR has failed to cite authority holding NRS 38.310 is a limit on jurisdiction. Labeling an argument jurisdictional does not make it so.

related to the title to residential property" from the definition of "civil action" subject to NRS 38.310. This action plainly "relates to the title to residential property," as the question of who has title and the nature of that title is the primary crux of the dispute. *See McKnight Family, L.L.P. v. Adept Mgmt.*, 310 P.3d 555, 559 (Nev. 2013) (action "exempt from NRS 38.310…[because it] directly relates to an individual's right to possess and use his or her property.") Nevada federal judges have rejected similar overbroad arguments to those SFR now makes. *See U.S. Bank v. Ascente Homeowners Ass'n*, No. 2:15-cv-00302-JAD-VCF, ECF No. 20 (D. Nev. Dec. 15, 2015); *see also Nationstar v. Shadow Hills Master Ass'n* 2015 WL 9592498 (D. Nev. Dec. 31, 2015), No. 2:15-cv-1320-GMN-PAL, ECF No. 15. SFR's request this Court determine who holds superior title to the property is ultimately a question "relating to the title to residential property," which is expressly beyond NRS 38.310's reach.

SFR's application of NRS § 38.310 to apply to this action concerning title to real property is directly contrary to the statutory text. It is also at odds with the explicit legislative history evidencing the Nevada legislature's intent to confine NRS § 38.310's to claims between homeowners and HOA's pertaining to rules and regulations governing the homeowner in the planned community.

Legislative history shows the Nevada legislature never intended to compel mediation of disputes regarding title and the foreclosure processes. The prime

sponsor described the purpose of NRS 38.310 (Assembly Bill 152) at the initial hearing:

> r. Schneider, the prime sponsor of A.B. 152, stated it is a form of dispute resolution which developed as a result of his working closely with property management associations. Over the past year he has been privy to problems arising in the associations developed for the homeowners, by the homeowners. The associations have developed their own constitutions which are referred to as covenants, conditions and restrictions (CC&R's). Although these associations have flourished and existed with encouragement, ***there are personality problems and management problems between the board and the residents***. As a result, many lawsuits are being filed which could be resolved in some sort of dispute resolution such as arbitration. Dispute resolution may bring about results in 30 to 45 days rather than the years it takes to a lawsuit to proceed through District Court.

Statement of Assemblyperson Schneider, Hearing on AB 152 Before Assemb. Comm. on the Judiciary, 68th Legislature, p. 12 (2009) (emphasis added). This legislative history reveals NRS 38.310 was designed to steer disputes such as those over fence color or how high a particular hedge can grow, into mediation. The framers of NRS 38.310's predecessor, Assembly Bill 152, focused these "personality driven" disputes into a non-judicial forum to ease the strain on Nevada's court system. SFR's and First Horizon's claims, which are between two entities with competing claims to title, are not the type contemplated by Nevada legislators nor the plain language of NRS 38.310. Even if SFR could somehow avoid the plain statutory exemption for actions concerning title, the language of a statute "'should not be read to produce absurd or unreasonable results.'" *Harris*

Assocs. v. Clark Cty. Sch. Dist., 119 Nev. 638, 642, 81 P.3d 532, 534 (2003) (quoting *Glover v. Concerned Citizens for Fuji Park*, 118 Nev. 488, 492, 50 P.3d 546, 548 (2002), overruled in part on other grounds by *Garvin v. Dist. Ct.*, 118 Nev. 749, 765 n. 71, 59 P.3d 1180, 1190 n.71 (2002)). It would be absurd, and wasteful, to require First Horizon and SFR to mediate these claims.

CONCLUSION

For all of the above reasons, this Court should affirm the District Court's judgment.

DATED this 24th day of February, 2017.

AKERMAN LLP

/s/ Brett M. Coombs
ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
MELANIE D. MORGAN, ESQ.
Nevada Bar No. 8215
BRETT M. COOMBS, ESQ.
Nevada Bar No. 12570
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
Telephone: (702) 634-5000

Attorneys for First Horizon, N.A.

CERTIFICATE OF COMPLIANCE

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 Times New Roman and 14 point font size.

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 answer exempted by NRAP 32(a)(7)(C) it is proportionally spaced, has a typeface of 14 points or more and contains 9,284 of text words.

FINALLY, I CERTIFY that I have read this **Respondent's Answer 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 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 answer is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 24th day of February, 2017.

AKERMAN LLP

/s/ Brett M. Coombs
ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
MELANIE D. MORGAN, ESQ.
Nevada Bar No. 8215
BRETT M. COOMBS, ESQ.
Nevada Bar No. 12570
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
Telephone: (702) 634-5000
Attorneys for First Horizon, N.A.

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 24th day of February, 2017. Electronic service of the foregoing **Respondent's Answer Brief**, shall be made in accordance with the Master Service List as follows:

Docket Number and Case Title: 71325 - SFR INV.'S POOL 1, LLC VS. FIRST HORIZON HOME LOANS
Case Category Civil Appeal
Information current as of: Feb 24 2017 02:36 p.m.

Electronic notification will be sent to the following:

Jacqueline Gilbert
Melanie Morgan
Brett Coombs
Christine Parvan

Notification by traditional means must be sent to the following:

Zachary Clayton
Karen Hanks
Diana Cline Ebron

Dated this 24th day of February, 2017

/s/ Tracey Wayne
An Employee of AKERMAN LLP