

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICARDO PASCUA

Appellant,

vs.

BAYVIEW LOAN SERVICING LLC;

SEASIDE TRUSTEE, INC.;

BANK OF NEW YORK MELLON;

MEDIATION ADMINISTRATOR,

Respondents.

Supreme Court No. 71770

District Court No. A-16-741223-J

FILED

MAY 19 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *J. Hendrix*  
DEPUTY CLERK

**APPELLANT'S INFORMAL BRIEF**

**INSTRUCTIONS:** If you are an appellant proceeding pro se (without an attorney) in the Nevada Supreme Court, you must file either (1) a brief that complies with Nevada Rule of Appellate Procedure (NRAP) 28(a), or (2) a completed copy of this informal brief form, *see* NRAP 28(k), with the Nevada Supreme Court on or before the due date, *see* NRAP 31. In civil appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court may dismiss your appeal. In postconviction criminal appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court or Nevada Court of Appeals may decide your appeal on the record without briefing.

**HOW TO FILL OUT THIS FORM:** This form must be typed, unless you are incarcerated, in which case it must be clearly handwritten. You do not need to refer to legal authority or the district court record. If you are completing your brief on this form, write only in the space allowed on the form. **Additional pages and attachments are not allowed.** If typing an informal brief, you may either use the lined paper contained in this form or an equivalent number of pages of your own paper. Your brief will be stricken if you fail to follow the directions in this form and the Nevada Rules of Appellate Procedure.

**WHERE TO FILE THE BRIEF:** You may file your brief in person or by mail.

**To file your brief in person:** Bring the brief to the Clerk's Office at the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada, or at the Regional Justice Center Clerk's Office (Drop Box), 200 Lewis Street, 17th Floor, Las Vegas, Nevada. You can file your brief Monday through Friday, 8:00 a.m. to 4:00 p.m.

RECEIVED

MAY 19 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
DEPUTY CLERK

Brief Form October 2015

To file your brief by mail: Mail the brief to the Clerk of the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada 89701. Your brief must be postmarked on or before the due date.

You must file the original brief and 1 copy with the clerk of the Nevada Supreme Court. If you want the clerk to return a file-stamped copy of your brief, you must file the original form and 2 copies and include a self-addressed, stamped envelope. Documents cannot be faxed or emailed to the Supreme Court Clerk's Office.

Copies of the brief must be mailed or delivered to the other parties to this appeal or to the parties' attorneys, if they have attorneys. You must also include a proper certificate of service or complete the certificate that is attached to the informal brief form.

CAUTION: Pro se parties are prohibited from representing other parties. A pro se party may not complete a brief on behalf of other parties. Pro se parties may collaborate on their briefs, however, provided that if one brief is submitted on behalf of multiple pro se parties, each party must sign and date the brief to confirm that he or she has participated in the preparation of the brief and, by his or her signature, joins in the arguments and representations contained therein.

**Judgment or Order You Are Appealing.** List the judgment or order that you are appealing from and the date that the judgment or order was filed in the district court.

Filed Date	Name of Judgment or Order
Oct. 24, 2016	ORDER ON PETITION FOR JUDICIAL REVIEW

**Notice of Appeal.** Give the date you filed your notice of appeal in the district court: November 15, 2016

**Related Cases.** List all other court cases related to this case. Provide the case number, title of the case and name of the court where the case was filed.

Case No.	Case Title	Name of Court
BK-16-16566	FILED RICARDO B. PASCUA, Petitioner	BANKRUPTCY
		COURT, NEVADA
A-16-741223	PETITION FOR REVIEW	District Ct., Clark

County; Dept. XXV

**Pro Bono Counsel.** Would you be interested in having pro bono counsel assigned to represent you in this appeal?

☒ Yes ☐ No

**NOTE:** If the court determines that your case may be appropriate for having pro bono counsel assigned, an appropriate order will be entered. Assignment of pro bono counsel is not automatic.

**Statement of Facts.** Explain the facts of your case. (Your answer must be provided in the space allowed.)

1. On or about December 29, 2015, Myrna Pascua obtained a loan or the purchase of the real property situated at Haunts Walk Avenue, Las Vegas, Nevada 89178 ("Property"), and executed Promissory Note ("Note") for the loan.

2. On or about the same date, Myrna Pascua executed a Deed of Trust ("Trust Deed") to secure the note which was recorded on January 6, 2006,

3. Myrna Pascua died of cancer on May 23, 2010 and was survived by her heirs, herein Petitioner Ricardo Pascua as surviving spouse, and Aries Joy Pascua and Cassandra Pascua, as surviving children, who were minors at time of Myrna's death.

4. On or about February 16, 2011, Petitioner filed a Petition for Special Letters of Administration in the Eighth District Court, Clark County, Nevada, Case P-11-070593 ("Probate"), regarding the estate of Myrna Pascua. On February 18, 2011, the court appointed Ricardo Pascua as Special Administrator ("Probate Order") to "administer the estate in accordance with Nevada Revised Statute Chapter 104.040."

5. On March 10, 2011, the Court, Dept. M., issued an Order appointing Ricardo Pascua as guardian for the aforesaid children.

6. On or about February 9, 2016, respondents commenced a foreclosure of the Property.

7. Herein Petition requested foreclosure mediation.

8. John Boyer was appointed the mediator.

9. Petitioner never received copy of the documents that are required of the respondents to disclose or produce.

10. In the mediation on or about June 22, 2016, Petitioner appeared but he was not given a copy of any Trustee Deed or Promissory Note.

11. Petitioner never knew if the Promissory Note and the Trust Deed have been properly endorsed and the Trust Deed properly transferred. No copy of the required documents were given to Petitioner.

12. **The Mediator wrongfully found that the Property was not eligible for mediation because the borrower is deceased, and that the Probate Order did not appoint Petitioner as special administrator for the mediation. The mediator ruled to have the Certificate issued forthwith.**

13. On August 5, 2016, Petitioner filed his Petition for Judicial Review.

14. **On October 20, 2016, the Lower Court issued the assailed Order on Petition for Judicial Review denying the Petition principally based on the ground that Petitioner is not an owner of or on title to/or the Property.**

15. On November 9, 2016, the Foreclosure Mediation Office hastily issued a Certificate of Foreclosure Mediation even if the period to appeal has not lapsed.

16. Herein Petitioner claims that he was deprived of his right to a loan modification and mediation because of the wrong findings of the Mediator as well as of the Lower Court. Consequently, petitioner also claims that Certificate of Foreclosure Mediation was wrongfully/unlawfully issued and the same should be cancelled or withdrawn, as will be shown below.

17. Hence, this Appeal.

Statement of District Court Error. Explain why you believe the district court was wrong. Also state what action you want the Nevada Supreme Court to take. (Your answer must be provided in the space allowed).

Petitioner hereby respectfully repeats and re-alleges the foregoing material allegations.

It is respectfully submitted that the Lower Court committed a grave error as follows:

1. In denying the Petition for Judicial Review based exclusively on the following grounds:

**"2. Petitioner is not an owner of or on title to/of the Property.**

**3. Petitioner is not entitled to be an owner of or on title to/or the Property.**

**4. The Probate Order neither subrogates Petitioner to the rights of Myrna Pascua under the Note and Trust Deed, nor authorized Petitioner to modify the Note, nor makes Petitioner the owner of the Property." (Order on Petition for Judicial Review, p. 5.)**

Petitioner has proven, and respondents do not deny, that petitioner is the surviving spouse of the deceased homeowner-borrower, Myrna Pascua. As such survivor, he is automatically an heir of the deceased under the intestate succession law, and, therefore, he has acquired the rights and interests of the deceased over the subject property. He, therefore, has the right to ask for a loan modification and for mediation under the Foreclosure Mediation Law.

~~Petitioner has proven, and respondents admit, that petitioner has been appointed as Special Administrator of the estate of Myrna Pascua. Under NRS 140.040 which provides for the powers, duties and immunity for certain claims of the Special Administrator, a Special Administrator shall:~~

~~“Take charge and manage the real property and enter upon and preserve it from damage, waste and injury.” (NRS 140.040(1)(b)).~~

~~Said law also provides that a Special Administrator may:~~

~~“For all necessary purposes, commence, maintain or defend actions and other legal proceedings as a personal representative.” (NRS 140.040(2)(a)).~~

Clearly, the findings of the Mediator and the Lower Court are grave errors or mistakes.

2. In not holding that the respondents did deal or negotiate in good faith because:

Respondents did not disclose or show to Petitioner original of the Trustee Deed, Promissory Note, and all transfers, assignments, or endorsements thereof. In not showing to Petitioner if the Promissory Note has been properly indorsed.

Respondents did not adduce any evidence of notice to Petitioner of such required documents.

3. In not holding that respondents have violated the rights of Petitioner under the Borrowers Bill of Rights (SB 321) by resorting to dual tracking of foreclosing subject property when there is an ongoing loan modification. Respondents have also failed to give Petitioner the necessary notices and information as required by said Borrowers Bill of Rights. Respondents did not adduce any evidence of such notices as required by the said Borrowers Bill of Rights.

WHEREFORE, it is respectfully prayed that Judgment be rendered:

1. Reversing the assailed Order denying the Petition for Review.
2. Holding respondents liable for not dealing or negotiating in good faith in the mediation.
3. Holding respondents liable for violating petitioner's rights under the Borrowers Bill of Rights.
4. Granting Petitioner such other relief and remedies as this Honorable Court may deem proper.

Lined area for text entry.

DATED this 17<sup>th</sup> day of May, 2017.

Ricardo B. Pascua

Signature of Appellant

RICARDO B. PASCUA

RICARDO PASCUA

Print Name of Appellant



## CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this completed informal brief form upon all parties to the appeal as follows:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first-class mail with sufficient postage prepaid to the following address(es) (list names and address(es) of parties served):

AARON M. WAITE, ESQ.  
WEINSTEIN & RILEY, PS  
6785 South Eastern Avenue, Suite 4  
Las Vegas, Nevada 89119  
Attorneys for Respondents

MEDIATION ADMINISTRATOR  
Foreclosure Mediation Program  
200 Lewis Avenue, 17<sup>th</sup> Floor  
Las Vegas, NV 89101

DATED this 17<sup>th</sup> day of May, 2017.

Ricardo B. Pascua

Signature of Appellant

RICARDO B. PASCUA  
RICARDO PASCUA

Print Name of Appellant

560 Haunts Walk Avenue  
Las Vegas, Nevada 89178  
Address

Las Vegas, Nevada 89178  
City/State/Zip

(702) 401 3569  
Telephone