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SUPREME COURT COURT

STATE OF NEVADA

SATICOY BAY LLC SERIES 9050 W WARM SPRINGS 2079, Appellant, vs. NEVADA ASSOCIATION SERVICES; THE FALLS AT RHODES RANCH CONDOMINIUM OWNERS ASSOCIATION, INC; QUICKEN LOANS, INC., and JAMES P. MARKEY, Respondents.	CASE NO.: 74153

JOINT APPENDIX 2

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DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 9050 W WARM SPRINGS 2079, Plaintiff, v. NEVADA ASSOCIATION SERVICES; QUICKEN LOANS, INC.; and JAMES P. MARKEY, Defendants. DITECH FINANCIAL LLC, Intervenor.	Case No.: A-16-730623-C Dept. No.: XVI Hearing Date: June 20, 2017 Hearing Time: 9:00 a.m. **DITECH FINANCIAL LLC'S SUPPLEMENTAL BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

DITECH FINANCIAL LLC ("Ditech"), by and through its undersigned attorneys for record, hereby submits this Supplemental Brief in in support of its Motion for Summary Judgment. This Supplemental Brief is supported by the accompanying Memorandum of Points and Authorities, the original Motion and Reply, the accompanying exhibits, the pleadings and papers on file herein, and any other arguments presented to the Court at or before the hearing on this Motion.

DATED: June 15, 2017

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

This supplement addresses the Court's inquiry about whether the HOA foreclosure redemption statute (NRS 116.31166) requires substantial or strict compliance to effectuate a homeowner's redemption of the property. The three legal issues for this Court to decide are as follows:

1. **Whether Saticoy Bay received sufficient Notice of homeowner, James Markey's redemption;**

2. **Whether NAS's tender of the redemption amount to Saticoy Bay on behalf of Markey was proper; and**

3. **Whether Markey may redeem despite not having provided Saticoy Bay with a certified copy of the deed to unit.**

The relevant portion of the redemption statute at issue is NRS 116.31166(3)-(4):

> 3. A unit sold pursuant to NRS 116.31162 to 116.31168, inclusive, may be redeemed by the unit's owner whose interest in the unit was extinguished by the sale, or his or her successor in interest, or any holder of a recorded security interest that is subordinate to the lien on which the unit was sold, or that holder's successor in interest. The unit's owner whose interest in the unit was extinguished, the holder of the recorded security interest on the unit or a successor in interest of those persons may redeem the property at any time within 60 days after the sale by paying:
>
> (a) The purchaser the amount of his or her purchase price, with interest at the rate of 1 percent per month thereon in addition, to the time of redemption, plus:
>
> (1) The amount of any assessment, taxes or payments toward liens which were created before the purchase and which the purchaser may have paid thereon after the purchase, and interest on such amount;
>
> (2) If the purchaser is also a creditor having a prior lien to that of the redemptioner, other than the association's lien under which the purchase was made, the amount of such lien, and interest on such amount; and
>
> (3) Any reasonable amount expended by the purchaser which is reasonably necessary to maintain and repair the unit in accordance with the standards set forth in the governing documents, including, without limitation, any provisions governing maintenance, standing water or snow removal; and
>
> (b) If the redemptioner is the holder of a recorded security interest on the unit or the holder's successor in interest, the amount of any lien

> before his or her own lien, with interest, but the association's lien under which the unit was sold is not required to be so paid as a lien.
> 4. Notice of redemption must be served by the person redeeming the unit on the person who conducted the sale and on the person from whom the unit is redeemed, together with:
> (a) If the person redeeming the unit is the unit's owner whose interest in the unit was extinguished by the sale or his or her successor in interest, a certified copy of the deed to the unit and, if the person redeeming the unit is the successor of that unit's owner, a copy of any document necessary to establish that the person is the successor of the unit's owner.
> (b) If the person redeeming the unit is the holder of a recorded security interest on the unit or the holder's successor in interest:
> (1) An original or certified copy of the deed of trust securing the unit or a certified copy of any other recorded security interest of the holder.
> (2) A copy of any assignment necessary to establish the claim of the person redeeming the unit, verified by the affidavit of that person, or that person's agent, or of a subscribing witness thereto.
> (3) An affidavit by the person redeeming the unit, or that person's agent, showing the amount then actually due on the lien.

To determine whether Markey redeemed the subject property under the above-referenced statute, the Court must first determine whether the Legislature intended for the redemption statute to require strict compliance, substantial compliance, or a combination of both. Here, the Legislature's intent in enacting the 2015 amendments to NRS Chapter 116, which included the addition of the 60-day redemption, makes clear that the Court should find that Markey complied with the redemption statute, and that Saticoy Bay is not entitled to the subject property.

STATEMENT OF MATERIAL FACTS

1. June 11, 2004: Markey purchased the subject property from builder, Rhodes Ranch General Partnership, as his sole and separate property, recorded with the Clark County Recorder as Instrument No. 20040615-0004598 on June 15, 2004. **Exhibit A**.

2. January 30, 2013: Markey borrowed $135,775.00 from Quicken Loans Inc., which was secured by a Deed of Trust encumbering the subject property, recorded with the Clark County Recorder as Instrument No. 201304120000455 on April 12, 2013. **Exhibit B** ("Jan. 2013 DOT").

3. February 1, 2013: Federal National Mortgage Association ("Fannie Mae") purchased the Mortgage Loan (the Promissory Note and the Jan. 2013 DOT) encumbering the subject property

from Quicken Loans, Inc. *See* Declaration of John Curcio ¶ 5 and Exhibit A (Fannie Mae SIR Acquisition Screen Shot), March 21, 2017, attached hereto as **Exhibit C**.

4. March 31, 2013: Ditech began servicing the Fannie Mae-owned Mortgage Loan. *See* Curcio Dec. at ¶ 10 and Exhibit A (Fannie Mae SIR Servicing Transfer Request Detail Screen Shot), attached hereto as **Exhibit C**.

5. January 10, 2015: Nevada Association Services, Inc. ("NAS") executed a Notice of Delinquent Assessment Lien for the amount of $1,616.35 against the property on behalf of The Falls Condominiums aka The Falls @ Rhodes Ranch ("HOA"), recorded with the Clark County Recorder as Instrument No. 20150112-0002436 on January 12, 2015. **Exhibit D** ("HOA NOL").

6. April 20, 2015: NAS executed a Notice of Default and Election to Sell Under HOA Lien against the property on behalf of the HOA, recorded with the Clark County Recorder as Instrument No. 20150421-0003050 on April 21, 2015. **Exhibit E** ("HOA NOD").

7. September 4, 2015: NAS executed a Notice of Foreclosure Sale against the property on behalf of the HOA, recorded with the Clark County Recorder as Instrument No. 20150909-0001506 on September 9, 2015. **Exhibit F** ("HOA NOS").

8. **The HOA Sale was conducted on November 20, 2015**: NAS sold the property at the HOA foreclosure auction on behalf of the HOA. *See* Cert. of Foreclosure Sale Subject To Redemption, recorded with the Clark County Recorder as Instrument No. 20151123-0001792 on November 23, 2015. **Exhibit G** ("Cert. of Foreclosure Sale"). Saticoy Bay LLC Series 9050 W. Warm Springs 2079 ("Saticoy Bay") purchased the property at the HOA foreclosure auction for the amount of $48,600.00. *Id*.

9. **The last day to redeem the property under NRS 116.31166(3) was Tuesday, January 19, 2016**.[1]

10. At the time of the November 20, 2015, HOA foreclosure auction, Markey was the only person with a recorded interest in the property, other than recorded Deed of Trusts and Assignments, since he first purchased the property as new construction from Rhodes Ranch General Partnership on June 11, 2004. *See* Clark County Recorder's Office Search Results for all documents

[1] Ditech requests that the Court take judicial notice of this fact, pursuant to NRS 47.130.

recorded against APN 176-05-414-199, June 13, 2017, attached hereto as **Exhibit H**.

11. On December 1, 2015, Ditech advised NAS of its intent to redeem the property under the newly enacted redemption statute that was part of the 2015 amendments to NRS Chapter 116. *See* **Exhibit I** at 21-24.[2,3] That same day, NAS advised Eddie Haddad, managing member and corporate representative for Saticoy Bay ("Haddad"), and Michael Bohn, Esq., counsel for Saticoy Bay and Eddie Haddad ("Bohn") of Ditech's notice of intent to redeem. *Id*. at 20-21.

12. On December 15, 2015, NAS advised Saticoy Bay and Ditech that it had received a certified letter from the homeowner notifying them of his intent to redeem the property. *Id*. at 10; *See also* Declaration of James Markey at ¶ 8, dated June 13, 2017, and filed June 15, 2017, and Exhibit B to Markey Dec.

13. On January 12, 2016, NAS advised Saticoy Bay that it had received the redemption funds from Markey, and that NAS would have a check for Saticoy Bay ready to pick up the following day in the amount of $49,984.15. *See* **Exhibit I** at 4. That same day, Haddad advised Bohn and NAS that he does not have to accept a check from NAS because "[t]he redemption must come from either the prior owner or the bank or any other party who has an interest in the property." *Id*. However, Haddad also stated that "if NAS would like to trust the borrower and release the surplus funds, and in turn the borrower submits the redemption payment, then so be it." *Id*.

14. On January 15, 2016, NAS delivered a cashier's check to Saticoy Bay's counsel's office for the amount of $50,052.16, following Markey's "explicit instructions" to NAS to deliver the cashier's check to Saticoy Bay as payment of the redemption price. **Exhibit I** at 3 and **Exhibit J**; *see also* Declaration of James Markey at ¶¶ 11-5, dated June 13, 2017, and filed June 15, 2017, and Exhibit B to Markey Dec. That same day, Saticoy Bay advised NAS that it was rejecting the

[2] From December 1, 2015 to January 20, 2016, Eddie Haddad, managing member and corporate representative for Saticoy Bay ("Haddad"), Christopher Yergensen, Esq., counsel for NAS ("Yergensen"), Ryan O'Malley, Esq., former counsel for Ditech ("O'Malley"), Michael Bohn, Esq., counsel for Saticoy Bay and Eddie Haddad ("Bohn"), and Markey engaged in numerous discussions regarding redemption of the subject property that were memorialized in e-mail correspondences, attached hereto as **Exhibits I, J**

[3] The e-mail correspondences by, among and between Haddad, Bohn, Yergensen, O'Malley and Markey are charged with the disputable presumptions that the dates of the e-mails are true and that such e-mails were sent and received in their regular course. NRS 47.250(12)-(13). In addition, these e-mail correspondences are present sense impressions (NRS 51.085), recorded recollections (NRS 51.125), records of regularly conducted activity (NRS 51.135). Therefore, these e-mails are exceptions to the general rule against the admission of hearsay as evidence.

cashier's check because it was from NAS with "the owner's name on it", and the redemption funds must come from the owner. **Exhibit I** at 2.

15. After Markey became aware of Saticoy Bay's rejection of his tender, he sent a personal check to NAS for the redemption amount, which Markey claims was NAS delivered to Saticoy B on January 19, 2016. *See* Declaration of James Markey at ¶¶ 11-5, dated June 13, 2017, and filed June 15, 2017.

16. On January 19, 2016, Ditech advised NAS of its position that Markey's redemption of the property was effective, and therefore Ditech was not raising a claim to the excess proceeds from the sale. **Exhibit J**. However, in light of Saticoy Bay's rejection of Markey's tender, Ditech authorized NAS to tender any sales proceeds to which Ditech may still have an interest to Saticoy Bay through the end of the redemption period for the benefit of Markey. *Id.*

17. On January 20, 2016, NAS advised Saticoy Bay NAS takes the legal position that Markey's redemption was completed on January 15, 2016, when NAS delivered the cashier's check for the amount of $50,052.16 to Bohn's office, and therefore, NAS would not deliver a foreclosure deed to Saticoy Bay at that time. **Exhibit K**. NAS also advised Saticoy Bay of its understanding that Markey and Ditech intended to seek a legal determination of this matter, and therefore, NAS would place Markey's funds in its trust account and await the legal determination of this matter. *Id.*

18. Later that same day, Saticoy Bay advised Markey, Ditech and NAS that the redemption period had lapsed and neither the owner nor the trust deed holder has properly complied with the redemption statute. *Id.* Specifically, Saticoy Bay claimed that the entirety of the redemption funds must come from either the unit owner or trust holder, and that neither party can use the excess proceeds to pay Saticoy Bay the redemption amount, because those funds are Saticoy Bay's funds. *Id.* In addition, Saticoy Bay advised the parties that, even if its position regarding the funds is not upheld, the unit owner and trust deed holder failed to comply with the other provisions of the redemption statute because no notice of redemption was served and there was no certified copy of the deed, trust deed or assignment of the trust deed served. *Id.*

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19. April 21, 2016, MERS assigned the record beneficial interest in the Jan. 2013 DOT to Ditech, recorded with the Clark County Recorder as Instrument No. 20160428-0003296 on April 28, 2016, and attached hereto as **Exhibit L** ("April 2016 Assignment").

LEGAL ARGUMENT

I. MARKEY REDEEMED THE SUBJECT PROPERTY PURSUANT TO NRS 116.31166.

"To determine whether a statute and rule require strict compliance or substantial compliance, [the] court looks at the ***language used and policy and equity considerations***." *Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470, 255 P.3d 1275, 1278–79 (2011) (emphases added). Notably, the Court must determine "***whether the purpose of the statute or rule can be adequately served in a manner other than by technical compliance with the statutory or rule language***." *Id*. (Emphases added) (quoting *Leven v. Frey*¸ 123 Nev. 399, 407 n. 27, 168 P.3d 712, 717 n. 27 (emphasis added) (internal citation omitted)). "In general, 'time and manner' requirements are strictly construed, whereas substantial compliance may be sufficient for 'form and content' requirements." *Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. Adv. Op. 61, 290 P.3d 249, 254 (2012) (quoting *Leven v. Frey*, 123 Nev. 399, 408, 168 P.3d 712, 718 (2007)). In fact, "one part of a statute can be subject to strict compliance, even though other aspects of the statutory scheme [require] substantial compliance". *Id*. (quoting *Leven* at 408 n. 31, 168 P.3d at 718 n. 31). Importantly, "strict compliance does not mean absurd compliance." *Id*. (quoting *Pellegrini v. State*, 117 Nev. 860, 874, 34 P.3d 519, 528 (2001) ("[W]e must construe statutory language to avoid absurd or unreasonable results...."); 2A Norman J. Singer & J.D. Shambie Singer, Statutes and Statutory Construction § 46:2, at 162 (7th ed. 2007) ("Statutes should be read sensibly rather than literally and controlling legislative intent should be presumed to be consonant with reason and good discretion"))). "[A] court's requirement for strict or substantial compliance may vary depending on the specific circumstances." *Leven*, 123 Nev. at 407, 168 P.3d at 717. "Substantial compliance may be sufficient 'to avoid harsh, unfair or absurd consequences." *Leyva*, 255 P.3d at 1278–79 (2011). "***Ultimately, the Court is charged with carrying out the clear intent of the legislature***." *Id*. at 1279 (emphases added).

The undisputed facts reflect that Markey complied with NRS 116.31166's redemption provisions. In addition, any lack of strict compliance by Markey should not prevent this Court's finding that Markey redeemed the property because Saticoy Bay will not be substantially harmed by Markey's redemption, even despite any alleged lack of strict compliance by Markey. Further, any alleged lack of strict compliance with the redemption statute, when weighed against Saticoy Bay's prior representations to all interested parties during the redemption period, as well as Saticoy Bay's improper rejection of Markey's timely tender, lead to the indisputable conclusion that Markey must be found to have redeemed the property. Therefore, Ditech's Motion for Summary Judgment and Markey's Joinder must be GRANTED.

A. The Nevada Legislature's clear intent behind enacting the 2015 amendments to NRS Chapter 116 was to provide further protections and assurances for <u>all</u> interested parties to an HOA foreclosure proceeding.

Nevada State Senator and primary drafter of the 2015 amendments to NRS Chapter 116, Aaron D. Ford, provided a comprehensive overview of the intent behind the 2015 amendments when he first presented the bill to the Senate on April 7, 2015:

> Senate Bill 306 **balances the interest of <u>all parties involved</u> when a homeowners' association (HOA) forecloses its lien on a unit to collect past-due association assessments**. The foreclosure of an HOA lien has an effect on homeowners, HOAs, banks, mortgage lenders, government-sponsored entities that insure and guarantee the vast majority of mortgages in Nevada, investors who purchase foreclosed homes and the title industry. A wide swath of entities and individuals are affected when a superpriority lien is foreclosed. Senate Bill 306 seeks to do a number of things to help this situation. The bill provides protection for homeowners who have fallen behind in their HOA dues. It enables HOAs to effectively collect the assessments necessary to preserve and maintain the community, and it allows banks and mortgage lenders to protect their lien interests in a home when the HOA proceeds with a foreclosure. **The bill creates certainty about the consequences of the HOA foreclosure so that HOA home titles do not become clouded.**
>
> …
>
> S.B. 306 strikes a balance between the interests of homeowners, HOAs, banks, mortgage lenders, government-sponsored entities, investors and the title industry. Senate Bill 306 provides all homeowners with a realistic opportunity to enter into a repayment plan and an opportunity to redeem their units if they fall behind on their

> HOA dues. Homeowner associations can collect assessments needed to maintain their communities. Banks, mortgage lenders and government-sponsored entities will receive enhanced notice of HOA foreclosures and greater opportunities to protect their interests. Investors in the title industry will receive greater certainty regarding the title status of units that have been foreclosed upon by the HOA.

Minutes of Hearing on S.B. 306 Before the Senate Comm. On Judiciary, 78th Leg. (Nev., April 7, 2015) at 2-8 (testimony of Senator Aaron D. Ford), attached hereto as **Exhibit M**. Clearly, the intent behind the Legislature's 2015 amendments to add the redemption provision to NRS Chapter 116's framework was to provide the homeowner and/or first secured encumbrancer an opportunity to redeem their interests within a reasonable time after the HOA foreclosure sale, while still ensuring that the HOA is compensated for its past-due assessments and collection efforts, and incentivizing potential investors to continue to bid on HOA foreclosure properties by guaranteeing a return on their investments even if the property is ultimately redeemed.

Saticoy Bay claims that Markey and Ditech failed to comply with the statutory redemption requirements within the 60-day redemption period because Saticoy Bay takes the position that Markey cannot use the excess proceeds to pay Saticoy Bay the redemption amount, because those funds are Saticoy Bay's funds. *See* **Exhibit K**. Therefore, Saticoy Bay claims that the Jan. 15, 2016 tender was insufficient and properly rejected. In addition, Saticoy Bay claims that it was not required to accept the redemption funds from NAS because the statute requires the Further, Saticoy Bay claims that even if its position regarding the use of the excess funds is not upheld, the unit owner and trust deed holder failed to comply with the other provisions of the redemption statute because no notice of redemption was served and there was no certified copy of the deed, trust deed or assignment of the trust deed served. *Id*.

Saticoy Bay's claims are not supported by the Legislature's intent behind enacting the 2015 amendments to NRS Chapter 116, and specifically the redemption provisions. Saticoy Bay and its agents and representative' actions (and inactions) during the redemption period clearly show that Saticoy Bay was not and is not acting in accordance with the spirit of the 2015 amendments to NRS Chapter 116. Rather, Saticoy Bay's actions reflect that it improperly attempted to thwart Ditech and Markey's reasonable efforts to redeem the property within the 60-day redemption period, in an effort

to obtain a windfall, i.e. clear title to the property, by trying to defeat Marky's proper redemption based upon immaterial variances from the specific statutory language. Equity requires that Saticoy Bay not be permitted to prevail in this action and obtain clear title to the property at a significant cost to Markey and Ditech. Therefore, the Court should GRANT Ditech's Motion and Markey's Joinder, by finding that Markey's substantial compliance with NRS 116.31166 entitles him to redeem the subject property.

B. The Type of Compliance Necessary under NRS 116.31166's Redemption Provisions Depends On The Specific Circumstances Of The Case.

1. 60-day Redemption Period Generally Requires Strict Compliance, unless such compliance would create harsh, unfair or absurd consequences.

The 60-day redemption period (NRS 116.31166(3)) generally requires strict compliance because it sets forth a specific time period in which to act. "[S]tatutes allowing for a "reasonable time" to act are subject to interpretation for substantial compliance, those with set time limitations are not." *Leven*, 123 Nev. at 407-08, 168 P.3d at 718. Further, strict compliance with the 60-day redemption period supports the Legislature's intent of "strik[ing] a balance between the interests of homeowners, HOAs, banks, mortgage lenders, government-sponsored entities, investors and the title industry" by providing additional protections to the unit owner by offering them a realistic opportunity to redeem their units if they fall behind on HOA dues, while also ensuring that the purchaser at the HOA foreclosure sale is afforded clear title at the end of the redemption period. **Exhibit M** at 8 (testimony of Senator Aaron D. Ford); *see also* Memorandum Of Members of the Real Prop. Section, State Bar of Nevada to Senators Ford and Hammond and other members of Senate Judiciary Committee, prep. April 3, 2016, and presented as Exhibit "C" at Hearing on S.B. 306 Before the Senate Comm. On Judiciary, 78th Leg. (Nev., April 7, 2015), attached hereto as **Exhibit N**; Minutes of Hearing on S.B. 306 Before the Assembly Comm. On Judiciary, 78th Leg. (Nev., April 28, 2015) at 43, 45 (testimony of Senator Aaron D. Ford, Senate Dist. 11), attached hereto as **Exhibit O**.

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a. Substantial Compliance with the 60-day redemption time period is appropriate where equity requires to avoid unfair, harsh or absurd results.

It would be inequitable for this Court to find that the 60-day time period can never be tolled, even in cases where the circumstances warrant a tolling of the time period. Nevada law has long-recognized a reasonable tolling or extension of specific time periods in cases where such tolling and/or extension is warranted. For example, the doctrine equitable tolling of the statute of limitations has long been recognized in Nevada as an available remedy to a plaintiff where equity warrants an extension of the statute of limitations where an otherwise diligent and reasonable plaintiff shows good cause for an excusable delay. *See Lukovsky v. City and County of San Francisco,* 535 F.3d 1044, 1051 (9th Cir.2008) (quoting *Johnson v. Henderson,* 314 F.3d 409, 414 (9th Cir.2002)); *see also Black's Law Dictionary* 618 (9th ed. 2009) (equitable tolling is defined as "[t]he doctrine that the statute of limitations will not bar a claim if the plaintiff, despite diligent efforts, did not discover the injury until after the limitations period had expired"). The EMRB's reasonable conclusion that equitable tolling is permitted with respect to claims that are before it is entitled to deference. *See Lukovsky v. City and County of San Francisco,* 535 F.3d 1044, 1051 (9th Cir.2008) (In cases where plaintiff "would not have known of the existence of a possible claim within the limitations period then equitable tolling will serve to extend the statute of limitations for filing suit until the plaintiff can gather what information he needs" (internal citation omitted); *Black's Law Dictionary* 618 (9th ed. 2009) (equitable tolling is defined as "[t]he doctrine that the statute of limitations will not bar a claim if the plaintiff, despite diligent efforts, did not discover the injury until after the limitations period had expired"); *Copeland v. Desert Inn Hotel,* 99 Nev. 823, 826, 673 P.2d 490, 492 (1983) ("procedural technicalities that would bar claims of discrimination will be looked upon with disfavor"; factors to be analyzed when determining whether equitable tolling will apply include "the claimant's diligence, knowledge of the relevant facts, reliance on misleading authoritative agency statements and/or misleading employer conduct, and any prejudice to the employer."). Nevada's civil procedure rules also provide certain exceptions to otherwise specific time and manner requirements. NRCP 4(i) allows a party to file a motion to enlarge time for service when good cause is shown for why the enlargement is warranted.

In fact, a review of the entire NRS Chapter 116 statutory scheme shows that the Legislature intended for substantial compliance to be substituted for provisions generally requiring strict compliance in circumstances where equity so requires. Specifically, NRS 116.1113 requires that "every contract or duty governed by this chapter imposes an obligation of **good faith** in its performance or enforcement." (Emphasis added). In addition, NRS 116.1114 provides that "[t]he **remedies provided by this chapter must be liberally administered** to the end that the aggrieved party is put in as good a position as if the other party had fully performed." (Emphasis added). Accordingly, in determining what time of compliance is required under NRS 116.31166, traditional notions of applying a strict compliance requirement to time and manner provisions should not be applied where doing so would cause severe prejudice or an absurd result. In this case, the only equitable determination that satisfies the Legislature's clear intent of restoring balance to the HOA foreclosure process is to find that Markey redeemed the property and that Saticoy Bay is entitled to the redemption funds in the amount of $50,052.16 that was tendered to Saticoy Bay on January 15, 2016.

2. Markey Complied With The Notice Provision Of NRS 116.31166(4)(b) Because The Purpose Of The Notice Requirement Was Fulfilled.

Substantial compliance is required to satisfy the form, content and manner of the NRS 116.31166(4)(b) notice requirement.[4] "Where the purpose of the notice requirements is fulfilled, but not necessarily in a manner technically compliance with all of the terms of the statute, the Court has found such substantial compliance to satisfy the statute." *Leyva*, 255 P.3d at 1278-79.

The statute does not set forth any specific provisions for the form or content of the notice of redemption, aside from the above-referenced provision.

a. Saticoy Bay Received Actual Notice of Markey's Redemption within the 60-day redemption period.

Saticoy Bay's receipt of *actual* notice that Markey was exercising his right to redeem within the 60-day redemption period satisfies NRS 116.31166(4)'s notice requirement. The actual person

[4] "Notice of redemption must be served by the person redeeming the unit on the person who conducted the sale and on the person from whom the unit is redeemed together with" a certified copy of the deed to the unit if the person redeeming the unit is the unit's owner whose interest in the unit was extinguished by the sale. NRS 116.31166(4)(b).

serving the notice is a matter of form and requires only substantial compliance, as long as the necessary parties receive actual, timely notice. *See, e.g. Einhorn*, wherein the Nevada Supreme Court determined that the actual party providing the required documents at a NRS 107 mediation is a matter of form, as long as all required documents "are … present, authenticated, and accounted for, is a matter of form." 290 P.3d at 254 (internal citations omitted). On December 15, 2015, former counsel for Ditech, Ryan O'Malley, advised Haddad, Yergensen and Bohn that Markey (the borrower) "has expressed an interest in redeeming." **Exhibit I** at 11. Later that same day, NAS's counsel, Chris Yergensen, Esq., informed Haddad, Bohn and O'Malley that he received a certified letter from Markey stating his intention to redeem the property. **Exhibit I** at 10. Accordingly, Plaintiff had actual notice of Markey's redemption within the statutory time period and Plaintiff suffered no prejudice by receiving actual notice of Markey's redemption through NAS.

In addition, Saticoy Bay never expressed any issue with the form and manner of Markey's *notice* of redemption through NAS at any time during the 60-day redemption period, despite having ample opportunity to do so. *See* **Exhibit I**. Furthermore, Saticoy Bay never expressed any issue with Ditech's notice of redemption, which was served in exactly the same manner. *See* **Exhibit I** at 19-24. In fact, Saticoy Bay did not express any objections or reservations Markey's redemption from the time it received actual notice of Markey's redemption on December 15, 2015, until almost a month later, on January 12, 2016, when Haddad emailed Yergensen and Bohn to advise them that he did not have to accept the redemption check from NAS, but that it had to come from "the prior owner or the bank." *Id*. at 4. These facts clearly reflect that Saticoy Bay was on actual notice of Markey's intent to redeem, and it was not prejudiced by Markey's method of notice. Therefore, the Court should find that such notice satisfies the statutes substantial compliance requirement.

b. Markey's alleged failure to provide a certified copy of a deed to the unit does not defeat Markey's redemption claim because there was no issue regarding his ownership interest in the property.

Markey's compliance with the redemption statute is not defeated by an alleged failure to provide a certified copy of his deed to the property because there was no issue or question that Markey was the prior owner of the unit and therefore had standing to redeem the unit. In *Einhorn*, the Nevada Supreme Court determined that "strict compliance with the statute's document mandate

[was] required" because the clear legislative intent of the document mandate was to ensure that the mediator and the homeowner were satisfied "that whoever is foreclosing actually owns the note and has authority to modify the loan," and, further, that the party seeking the FMP certificate is the proper entity, under the nonjudicial foreclosure statutes, to proceed against the property." 290 P.3d at 254 (internal citations omitted); *see also Leyva*, 255 P.3d at 1279 ("The legislative intent behind requiring a party to produce the assignments of the deed of trust and mortgage note is to ensure that whoever is foreclosing "actually owns the note" and has authority to modify the loan.") citing Minutes of Hearing on A.B. 149 Before the Joint Comm. on Commerce and Labor, 75th Leg. (Nev., February 11, 2009) (testimony of Assemblywoman Barbara Buckley)).

Much like NRS 107.086's document mandate, the clear legislative intent behind NRS 116.31166(4)(b)'s requirement that the redeeming unit owner produce a certified copy of his deed to the unit is to ensure that the person seeking to redeem the property has the standing and authority to exercise redemption rights. However, *unlike* NRS 107 and the FMR's, NRS Chapter 116 does not include a mandatory recommendation for sanctions where a redeemer fails to strictly comply with the provisions of the redemption statute. Rather, Chapter 116 provides that "[t]he **remedies provided by this chapter must be liberally administered** to the end that the aggrieved party is put in as good a position as if the other party had fully performed." NRS 116.1114 (Emphasis added). This requirement that remedies under this chapter are to be *liberally administered* supports a determination that the failure of a unit owner to produce a certified copy of his deed to the unit shall not necessarily defeat his redemption. Furthermore, the legislative intent behind the 2015 amendments to Chapter 116 – striking a balance "between the interests of homeowners, HOAs, banks, mortgage lenders, government-sponsored entities, investors and the title industry" – also supports this proposition. "Taking away a Nevada homeowner's most significant financial asset must come with significant protections". **Exhibit O** at 52 (Testimony by Steve VanSickler, Chief Credit Officer, Silver State Schools Credit Union, Las Vegas, Nevada). "Nevada homeowners benefit by the changes made in this bill as well. Taking away someone's property that is worth hundreds of thousands of dollars is not a matter that should be taken lightly and there are quite a few

consumer protections in this bill." *Id*. at 55 (Testimony by Jonathan Gedde, Chairman, Board of Governors, Nevada Mortgage Lenders Association).

Here, there is no question or issue that Markey was the unit's owner and therefore had authority to redeem the unit under NRS 116.31166. At the time of the November 20, 2015, HOA foreclosure auction, Markey was the only person with a recorded interest in the property, other than recorded Deed of Trusts and Assignments, since he first purchased the property as new construction from Rhodes Ranch General Partnership on June 11, 2004. *See* **Exhibit H**. Saticoy Bay never challenged Markey's authority to redeem the property following the HOA sale, nor did it demand that Markey produce a certified copy of his deed to the property during the redemption period. *See* **Exhibit I**. Rather, Saticoy Bay's only stated objection during the redemption period was its opinion that it was not required to accept the redemption funds from NAS, but that the funds had to come from the unit owner or the deed of trust beneficiary. *See* **Exhibit I** at 4. In fact, the first time Saticoy Bay stated any objection to the sufficiency of the redemption notice and Markey's alleged failure to provide a certified deed was the day after the 60-day redemption period ended, January 21, 2016, when Saticoy Bay's counsel advised the parties that Markey and Ditech failed to comply with the redemption statutes requirements and demanded that NAS execute and deliver a foreclosure deed. *See* **Exhibit K**.

Plaintiff's argument that there was no redemption because it did not receive a notice or deed directly from Markey is an improper attempt to obtain a windfall by seeking to have the Court ignore the Nevada Legislature's clear intent of incorporating the redemption provision into NRS Chapter 116. Furthermore, the facts clearly show that Saticoy Bay was in no way prejudiced by any alleged deficiencies in Markey's method of notice, or his alleged failure to deliver to Saticoy Bay a certified copy of his deed. Therefore, the Court should determine that Markey substantially complied with the statute and that he redeemed the property from Saticoy Bay.

c. Even if the Court determines that Markey failed to strictly comply with the statute, it should not defeat Markey's redemption.

Even if strict compliance is required, the Nevada Supreme Court's decision in *Pasillas v. HSBC Bank USA* supports a finding that failure to comply with a statute's strict compliance

provisions does not necessarily defeat the abusing party's rights and claims. Specifically, the *Pasillas* Court determined that the district court was required to consider appropriate sanctions where the Bank failed to adhere to the strict compliance requirements of NRS 107.086. 127 Nev. at 469, 255 P.3d 1286-87. Notably, the *Pasillas* Court did *not* determine that the district court was prohibited from ordering the Foreclosure Mediation Program administrator from entered a Letter of Certification that would allow the bank to proceed with the foreclosure process. *Id*. (Emphasis added). Rather, the Court remanded the case to the district court with instructions to consider "appropriate sanctions." *Id*. The Court then noted that the district court should review certain factors more specific to the foreclosure mediation context when considering appropriate sanctions in the case, including "whether the violations were intentional, the amount of prejudice to the nonviolating party, and the violating party's willingness to mitigate any harm by continuing meaningful negotiation." *Id*. at 470, 255 P.3d at 1287.

Saticoy Bay should not be rewarded for its decision to wait until the redemption period lapsed before objecting to the redemption based upon sufficiency of notice and Markey's alleged failure to serve a certified copy of the deed, especially in light of the fact that Markey made every effort to comply with the redemption requirements during the statutory timeframe and save his property interest. Again, when analyzing the circumstances of the instant action under the backdrop of the legislative intent behind the 2015 amendments, the Court must find in favor of Ditech and Markey, who attempted to work with Saticoy Bay in good faith during the redemption period. Indeed, the only way to ensure that all parties to the instant action are "put in as good a position as if the other party had fully performed" (*see* NRS 116.1114) is to find that Markey redeemed and that Saticoy Bay is entitled to the redemption funds.

C. NAS's Unconditional Tender of the Redemption Amount to Plaintiff on Behalf of Markey Extinguished Plaintiff's Interest in the Subject Property.

"Tender occurs when a party makes an amount available without conditions." *US Bank, N.A. v. SFR Investments Pool 1, LLC*, 3:15-cv-00241-RCJ-WGC, 2016 WL 4473427, at *6 (D. Nev. Aug. 24, 2016) (quoting *Tender*, Black's Law Dictionary 1696 (10th ed. 2014)). "It was settled law before Nevada even became a state that timely and complete tender immediately discharges a lien

against real property, even if the tender is rejected, although the lienor remains entitled to repayment of the debt." *US Bank, N.A. v. SFR Investments Pool 1, LLC*, at *6-7 (internal citations omitted). This long-standing doctrine is applicable in the HOA foreclosure context. *See Stone Hollow Ave. Trust v. Bank of Am., Nat'l Ass'n*, 391 P.3d 760 (2016) (Pickering, J., dissenting) (citing 1 Grant S. Nelson, Dale A. Whitman, Ann M. Burkhart & R. Wilson Freyermuth, Real Estate Finance Law § 7:21 (6th ed. 2014)) ("Under the prevailing view, however, a tender of the lien amount invalidates a foreclosure sale to the extent that the sale purports to extinguish the tenderer's interest in the property.") Here, tender of the full redemption amount was made to Saticoy Bay within the statutory timeframe, which immediately extinguished Saticoy Bay's interest in the property as a matter of law.

1. Markey's Ratification of NAS's Tender Renders it Valid and Enforceable.

Tender "need not be made by [a debtor] personally." *Forderer v. Schmidt*, 154 F. 475, 477 (9th Cir. 1907). "If made by a third person at his request it is sufficient, and, if made by a stranger without his knowledge or request, it seems that a subsequent assent of the debtor would operate as a ratification and make the tender good." *Id*. The Restatement (Third) of Property (Mortgages) § 6.4(e) (1997) further supports a finding that NAS may properly tender the redemption amount on behalf of Markey:

> A performance in full of the obligation secured by a mortgage, or a performance that is accepted by the mortgagee in lieu of payment in full, by one who holds an interest in the real estate subordinate to the mortgage but is not primarily responsible for performance, does not extinguish the mortgage, but redeems the interest of the person performing from the mortgage and entitles the person performing to subrogation to the mortgage under the principles of § 7.6. Such performance may not be made until the obligation secured by the mortgage is due, but may be made at or after the time the obligation is due but prior to foreclosure.

The Restatement (Third) of Property (Mortgages) § 6.4(e) (1997).[5] The same principle applies to the instant action. Here, it is undisputed that NAS delivered a cashier's check to Saticoy

[5] The Nevada Supreme Court has typically followed the Restatement in related contexts in recent years. *See In re Montierth*, 354 P.3d 648, 651 (Nev. 2015).

Bay's counsel on January 15, 2016 (still within the 60-day redemption period), and there is no dispute that the checks satisfied the full redemption amount under the statute. *See* Pl.'s Opp'n to Ditech's Mot. for Summ. J. 2. The cashier's check was an unconditional order to pay the money required to be tendered to Saticoy Bay to allow Markey to redeem the property under NRS 116.31166(3). *See also* NRS 104.3104. Accordingly, Saticoy Bay's interest in the property was extinguished on January 15, 2016, when NAS delivered the cashier's check for the amount of $50,052.16 to Bohn's office. Therefore, summary judgment is proper.

2. Plaintiff is required to execute the Necessary Documentation Reflecting that its Interest in the Property has been released.

Markey's January 15, 2016, tender of the redemption amount requires Saticoy Bay to provide an appropriate document indicating that its lien (or interest) in the property has been released. *See* Restatement (Third) of Property (Mortgages) § 6.4(e) & cmt. c (1997). Because the full redemption amount was tendered within the statutory time frame, Plaintiff had a duty to execute a certificate of redemption. *See* NRS 116.31166(5)(b). In light of Plaintiff's improper rejection, the Court must provide the appropriate judicial relief by granting summary judgment against Saticoy Bay. *See* Restatement (Third) of Property (Mortgages) § 6.4(f) (1997) ("Upon receipt of performance … the mortgagee has a duty to provide to the person performing, within a reasonable time, an appropriate assignment of the mortgage in recordable form. If the mortgagee fails to do so upon reasonable request, the person performing may obtain judicial relief ordering the mortgage assigned and, unless the mortgagee acted in good faith in rejecting the request, awarding against the mortgagee any damages resulting from the delay.")

D. Markey's use of excess proceeds toward the redemption amount was proper.

Saticoy Bay's claim that excess proceeds cannot be used to provide the redemption amount is nothing more than a red herring. NRS 116.31164(7)(b) directs the person conducting the sale to distribute the excess proceeds from the sale, i.e. the remaining proceeds after all expenses of the sale, expenses of the HOA of securing possession before the sale, and the HOA's lien have been satisfied, to subordinate claims of record and then to the unit's prior owner,. Here, Ditech would have been entitled to all of the remaining excess proceeds because it was servicing the Fannie Mae Mortgage

Loan that was the first senior security interest on the property at the time of the HOA Sale.[6] *See* Curcio Dec. at ¶ 10 and Exhibit A (Fannie Mae SIR Servicing Transfer Request Detail Screen Shot), attached hereto as **Exhibit C**. Ditech authorized NAS to tender the excess proceeds to fund the redemption amount for the benefit of Markey. *See* **Exhibit J**. Therefore, Markey's use of excess proceeds toward the redemption amount was proper. Accordingly, this Court should enter summary judgment against Saticoy Bay and find that Markey redeemed his interest in the property in accordance with NRS 116.31166.

CONCLUSION

Based on the foregoing, Ditech respectfully requests this Court GRANT this motion, Order Plaintiff to accept the redemption, and enter SUMMARY JUDGMENT in favor of Markey Ditech.

DATED: June 15, 2017.

WOLFE & WYMAN LLP

By: */s/ Brigette E. Foley*
BRIGETTE E. FOLEY, ESQ.
Nevada Bar No. 12965
6757 Spencer Street
Las Vegas, NV 89119
Attorneys for Intervenor
DITECH FINANCIAL LLC

[6] This statement is made solely for the purpose of the instant argument regarding the distribution of excess proceeds in the absence of any challenges to the validity or effect of the HOA sale, and is not an admission or concession about the validity or effect of the HOA Sale. Ditech maintains its claims and defenses raised in its underlying Answer and Counterclaim.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Wolfe & Wyman LLP and that on the 15th day of June, 2017, I did cause a true copy of the foregoing **DITECH FINANCIAL LLC'S SUPPLEMENTAL BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT** to be served via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve System to:

All Parties on E-Service List

By: */s/ Cheryl Klukas*
an employee of
Wolfe & Wyman LLP

EXHIBIT “A”

EXHIBIT “A”

20040615-0004598
Fee $16.00 RPTT $754.80
06/15/2004 13:58:36 T20040039648
Req COMMERCE TITLE
Frances Deane
Clark County Recorder Pgs: 3

A.P. No. 176-05-414-199
Escrow No. 501136-MP/
R.P.T.T. $754.80

WHEN RECORDED MAIL TO:
James P. Markey
6557 Harbor Dr. NW
Canton, OH 44718

MAIL TAX STATEMENT TO:
James P. Markey
6557 Harbor Dr. NW
Canton, OH 44718

(3)

15

GRANT, BARGAIN and SALE DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Rhodes Ranch General Partnership, a Nevada General Partnership

do(es) hereby *GRANT, BARGAIN and SELL* to

James P. Markey, a married man as his sole and separate property

the real property situate in the County of Clark, State of Nevada, described as follows:

Parcel No. 1:

Living Unit 2079, in Phase 10-Building 25, as shown on the Final Map for APACHE SPRINGS CONDOMINIUMS (A Condominium Development and Common Interest Community), recorded in Book 105 of Plats, Page 25 and as amended by that certain Amended Final Map for Apache Springs Condominiums recorded in Book 107 of Plats, Page 37, and thereafter Certificate of Amendment recorded in Book 20030324 as Instrument No. 0670 in the Office of the County Recorder of Clark County, Nevada.

Parcel No. 2:

An undivided 1/360th interest into that portion of the Common Area (CA) shown as Phase 10 on the Final Map for Apache Springs Condominiums (A Condominium Development and Common Interest Community) recorded in Book 105 of Plats, Page 25 and as amended by that certain Amended Final Map for Apache Springs Condominiums recorded in Book 107 of Plats, Page 37, and thereafter Certificate of Amendment recorded in Book 20030324 as Instrument No. 0670 and as set forth in Declaration of Covenants, Conditions and Restrictions for The Falls Condominiums recorded October 31, 2002, in Book 20021031 as Instrument No. 4692 in the Office of the County Recorder of Clark County, Nevada.

1. All general and special taxes for the current fiscal year.

2. Covenants, Conditions, Restrictions, Reservations, Rights, Rights of Way and Easements now of record.

TOGETHER with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Rhodes Ranch General Partnership, a Nevada
General Partnership

L.J. Harris

By: L.J. Harris

STATE OF **NEVADA**)
: **ss.**
COUNTY OF **CLARK**)

This instrument was acknowledged before me on June 11, 04 by **L.J. Harris.**

Notary Public
(My commission expires: December 31, 05

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a) 176-05-414-199
   b)
   c)
   d)

15

2. Type of Property
   a) ☐ Vacant Land b) ☐ Single Fam. Res
   c) ☑ Condo/Twnhse d) ☐ 2-4 Plex
   e) ☐ Apt. Bldg. f) ☐ Comm'l/Ind'l
   g) ☐ Agricultural h) ☐ Mobile Home
   i) ☐ Other

FOR RECORDERS OPTIONAL USE ONLY
Document/Instrument
Book Page:
Date of
Notes

3. Total Value/Sales Price of Property: $ 147,520.00
   Deed in Lieu of Foreclosure Only (value of property) ($)
   Transfer Tax Value: $ 147,520.00
   Real Property Transfer Tax Due $ 754.80

4. **If Exemption Claimed:**
   a. Transfer Tax Exemption, per 375.090, Section:
   b. Explain reason for exemption:

5. Partial Interest: Percentage being transferred: %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: [signature] Capacity: Authorized Agent
Signature: for James P. Markey Capacity: Buyer

SELLER (GRANTOR) INFORMATION (REQUIRED)		BUYER (GRANTEE) INFORMATION (REQUIRED)	
Print Name:	Rhodes Ranch General Partnership	Print Name:	James P Markey
Address:	4730 South Fort Apache	Address:	0557 Harbor DR NW
City:	Las Vegas	City:	Canton
State:	NV Zip: 89147	State:	OH Zip: 44718

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: Commerce Title Company File Number: 501136mp
Address 8970 West Tropicana Avenue, Suite 6
City Las Vegas State: NV Zip: 89147

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

Reproduced by First American Title Insurance Rev*02001

1596

EXHIBIT “B”

EXHIBIT “B”

Inst #: 201304120000455
Fees: $39.00
N/C Fee: $0.00
04/12/2013 08:05:15 AM
Receipt #: 1571891
Requestor:
TITLE SOURCE, INC.
Recorded By: ECM Pgs: 23
DEBBIE CONWAY
CLARK COUNTY RECORDER

Assessor's Parcel Number:
176-05-414-199
Return To:
Document Management
Quicken Loans Inc.
1050 Woodward Ave
Detroit, MI 48226-1906

Prepared By:
Kia Baker

Recording Requested By:
See 'Return To:' name

[Space Above This Line For Recording Data]

57363402 - 1749630
①

DEED OF TRUST

MIN 100039033108736871
3310873687

DEFINITIONS
Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.
(A) "Security Instrument" means this document, which is dated January 30, 2013 , together with all Riders to this document.
(B) "Borrower" is James P. Markey, a married man, as his Sole and Separate Property

Borrower is the trustor under this Security Instrument.
(C) "Lender" is Quicken Loans Inc.

Lender is a Corporation
organized and existing under the laws of the State of Michigan
Lender's address is 1050 Woodward Ave. Detroit. MI 48226-1906

(D) "Trustee" is Title Source. Inc.

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
(F) "Note" means the promissory note signed by Borrower and dated January 30. 2013 .
The Note states that Borrower owes Lender One Hundred Thirty Five Thousand Seven Hundred Seventy Five and 00/100 Dollars
(U.S. $ 135.775.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than February 1, 2043 .
(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider	☒ Condominium Rider	☒ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☐ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	☒ Other(s) [specify] Legal Attached

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.
(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.
(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County [Type of Recording Jurisdiction] of Clark [Name of Recording Jurisdiction]:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.
SUBJECT TO COVENANTS OF RECORD.

Parcel ID Number: 176-05-414-199 which currently has the address of
9050 W Warm Springs Rd Unit 2079 [Street]
Las Vegas [City], Nevada 89148 [Zip Code]
("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower

might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can

require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's

right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination of certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under

Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to,

entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the

amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in

writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA

requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to

acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option, and without further demand, may invoke the power of sale, including the right to accelerate full payment of the Note, and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. $ N/A .

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

_____

01/30/2013 (Seal)
James P. Markey -Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

STATE OF NEVADA
COUNTY OF Clark

This instrument was acknowledged before me on January 30, 2013 by James P. Markey, a married man, as his Sole and Separate Property

ERMA J. WILLIAMS
STATE
OF
TENNESSEE
NOTARY
PUBLIC
SHELBY COUNTY

My Commission Expires:
April 6, 2014

Mail Tax Statements To: Quicken Loans Inc.
1050 Woodward Ave
Detroit, MI 48226-1906

MERS MIN: 100039033108736871 3310873687

CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this 30th day of January, 2013, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to

Quicken Loans Inc.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

9050 W Warm Springs Rd Unit 2079
Las Vegas, NV 89148

[Property Address]

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as: Apache Springs ~~NA~~

[Name of Condominium Project]

(the "Condominium Project"). If the owners association or other entity which acts for the Condominium Project (the "Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest.

CONDOMINIUM COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. CondominiumObligations. Borrower shall perform all of Borrower's obligations under the Condominium Project's Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Project; (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, from which Lender requires insurance, then: (i) Lender waives the provision in

Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the unit or to common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property, whether of the unit or of the common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the Condominium Project, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Condominium Rider.

James P. Markey 01/30/2013 (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

MERS MIN: 100039033108736871 3310873687

SECOND HOME RIDER

THIS SECOND HOME RIDER is made this 30th day of January, 2013, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower" whether there are one or more persons undersigned) to secure Borrower's Note to

Quicken Loans Inc.

(the "Lender") of the same date and covering the Property described in the Security Instrument (the "Property"), which is located at:

9050 W Warm Springs Rd Unit 2079
Las Vegas, NV 89148
[Property Address]

In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree that Sections 6 and 8 of the Security Instrument are deleted and are replaced by the following:

6. Occupancy. Borrower shall occupy, and shall only use, the Property as Borrower's second home. Borrower shall keep the Property available for Borrower's exclusive use and enjoyment at all times, and shall not subject the Property to any timesharing or other shared ownership arrangement or to any rental pool or agreement that requires Borrower either to rent the Property or give a management firm or any other person any control over the occupancy or use of the Property.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's second home.

q03310873687 0370 275 0102

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Second Home Rider.

James P. Markey 01/30/2013 (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

q03310873687 0370 275 0202

EXHIBIT A - LEGAL DESCRIPTION

Tax Id Number(s): 17605414199, 176-05-414-199

Land Situated in the County of Clark in the State of NV

PARCEL ONE (1):

LIVING UNIT 2079 IN PHASE 10— BUILDING 25, AS SHOWN ON THE FINAL MAP FOR APACHE SPRINGS CONDOMINIUMS, (A CONDOMINIUM DEVELOPMENT AND COMMON INTEREST COMMUNITY), RECORDED IN BOOK 105 OF PLATS, PAGE 25, AND AS AMENDED BY THAT CERTAIN AMENDED FINAL MAP FOR APACHE SPRINGS CONDOMINIUMS RECORDED IN BOOK 107 OF PLATS, PAGE 37, AND THEREAFTER CERTIFICATE OF AMENDMENT RECORDED MARCH 24, 2003, IN BOOK 20030324, AS INSTRUMENT NO. 00670, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL TWO (2):

AN UNDIVIDED 1/360TH INTEREST INTO THAT PORTION OF THE COMMON AREA (CA) SHOWN AS PHASE 10 ON THE FINAL MAP FOR APACHE SPRINGS CONDOMINIUMS, (A CONDOMINIUM DEVELOPMENT AND COMMON INTEREST COMMUNITY), RECORDED IN BOOK 105 OF PLATS, PAGE 25, AND AS AMENDED BY THAT CERTAIN AMENDED FINAL MAP FOR APACHE SPRINGS CONDOMINIUMS RECORDED IN BOOK 107 OF PLATS, PAGE 37, AND THEREAFTER CERTIFICATE OF AMENDMENT RECORDED MARCH 24, 2003, IN BOOK 20030324, AS INSTRUMENT NO.00670 AND AS SET FORTH IN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE FALLS CONDOMINIUMS RECORDED OCTOBER 31, 2002, IN BOOK 20021031, AS INSTRUMENT NO. 04692, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

Commonly known as: 9050 W Warm Springs Rd Unit 2079 , Las Vegas, NV 89148

EXHIBIT “C”

EXHIBIT “C”

DECL
COLT B. DODRILL, ESQ.
Nevada Bar No. 9000
WOLFE & WYMAN LLP
6757 Spencer Street
Las Vegas, NV 89119
Tel: (702) 476-0100
Fax: (702) 476-0101
cbdodrill@wolfewyman.com

Attorneys for Intervenor
DITECH FINANCIAL LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 9050 W WARM SPRINGS 2079, Plaintiff, v. NEVADA ASSOCIATION SERVICES; QUICKEN LOANS, INC.; and JAMES P. MARKEY, Defendants. DITECH FINANCIAL LLC, Intervenor.	Case No.: A-16-730623-C Dept. No.: XVI **DELCARATION OF JOHN CURCIO**

I, John Curcio, declare as follows:

1. My name is John Curcio. I have personal knowledge of and am competent to testify as to the matters stated herein by virtue of my position as Assistant Vice President for Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States.

2. This declaration is being filed in support of Ditech Financial LLC's motion on federal preemption.

3. As Assistant Vice President for Fannie Mae, I am familiar with certain Fannie Mae systems that contain data regarding mortgage loans acquired and owned by Fannie Mae. I am also

familiar with the Servicing Guidelines and Lender Letters applicable to entities that service mortgage loans on behalf of Fannie Mae as well as Fannie Mae's relationship with Mortgage Electronic Registration Systems, Inc. ("MERS").

4. Attached hereto as Exhibit "A" are true and correct copies of printouts from Fannie Mae's Servicer & Investor Reporting platform ("SIR"). SIR is an electronic system of record that contains information regarding mortgage loans acquired and owned by Fannie Mae. Entries in SIR are made at or near the time of the events recorded by, or from information transmitted by, persons with knowledge. SIR is kept in the course of Fannie Mae's regularly conducted business activity, and it is the regular practice of Fannie Mae to keep and maintain information regarding mortgage loans owned by Fannie Mae. Exhibit "A" consists of records that were made and kept by Fannie Mae in the course of its regularly conducted activities pursuant to its regular business practice of creating such records. The printouts in Exhibits "A" are Fannie Mae business records.

5. Exhibit "A" reflects that Fannie Mae acquired ownership of a mortgage loan (including the note and associated deed of trust) secured by real property located at 9050 W. Warm Springs Rd. Unit 2079, Las Vegas, NV 89148 (the "Loan") in February 2013 and remains the owner of the Loan.

6. The first page of Exhibit "A" is a printout of the SIR "Acquisition" tab relating to the Loan. The acquisition date referenced above is shown in the Acquisition tab.

7. The second page of Exhibit "A" is a printout of the SIR "Property" tab relating to the Loan. The property address referenced above is shown in the Property tab.

8. Beginning at the third page of Exhibit "A" is the SIR Loan Activity History for this Loan. The Loan Activity History reflects that Fannie Mae owned the Loan before and during the month of November 2015 and remains the owner of the Loan. The Loan Activity History shows that the Loan servicer reported certain information to Fannie Mae regarding the Loan (such as the unpaid principal balance) on a monthly basis. This information was reported to Fannie Mae because Fannie Mae owns this Loan. If Fannie Mae did not own this Loan, this loan activity information would not have been reported to Fannie Mae.

9. Additionally, had Fannie Mae ceased to own this Loan (if, for example, the Loan had been paid off, foreclosed, or sold to another entity), information reflecting that would appear under the "Action Code – Action Description" column on the Loan Activity History. There is no such information under the "Action Code – Action Description" column on the attached Loan Activity History, which means that the Loan is still owned by Fannie Mae as of the last reporting shown in Exhibit "A."

10. The final page of Exhibit "A" is a printout of entries in the SIR Servicing Transfer Request Detail showing that the rights to service the Loan were transferred from Quicken Loans Inc. to Ditech Financial, LLC ("Ditech") on or about March 31, 2013.

11. The banner appearing above the Acquisition Tab, Property Tab, and Loan Activity History reflects that the current servicer of the Loan for Fannie Mae is Ditech.

12. The Fannie Mae Single-Family Servicing Guide ("Guide") is a publicly accessible document which serves as a central document governing the contractual relationship between Fannie Mae and its loan servicers nationwide, including Ditech. A true and correct copy of the current Guide and archived prior versions of the Guide can be found at https://www.fanniemae.com/content/guide/servicing/index.html. Prior versions of the Guide are available at that URL by clicking "Show All" in the left hand column of that site.

13. I am aware that Fannie Mae owns loans secured by recorded deeds of trust or assignments thereof showing MERS as the beneficiary. In these circumstances, MERS appears in the land records solely as nominee for the Lender (as defined in the security instrument) and the Lender's successors or assigns. The MERS System Rules, as they exist now and as they have been amended over the years, are among the documents governing the contractual relationship between MERS and Fannie Mae with regard to all loans owned by Fannie Mae and registered with MERS. A true and correct copy of the current version of the MERS System Rules is available at http://mersinc.org/join/1273-rom-09012015/file. This relationship between MERS and Fannie Mae is also reflected in Section A2-8-01 of the Guide.

14. True and correct copies of applicable Guide sections are attached here to as Exhibit "B."

15. A true and correct copy of Fannie Mae Lender Letter LL-2015-04 dated September 16, 2015 is attached as Exhibit "C" and is publicly accessible at https://www.fanniemae.com/content/announcement/ll1504.pdf.

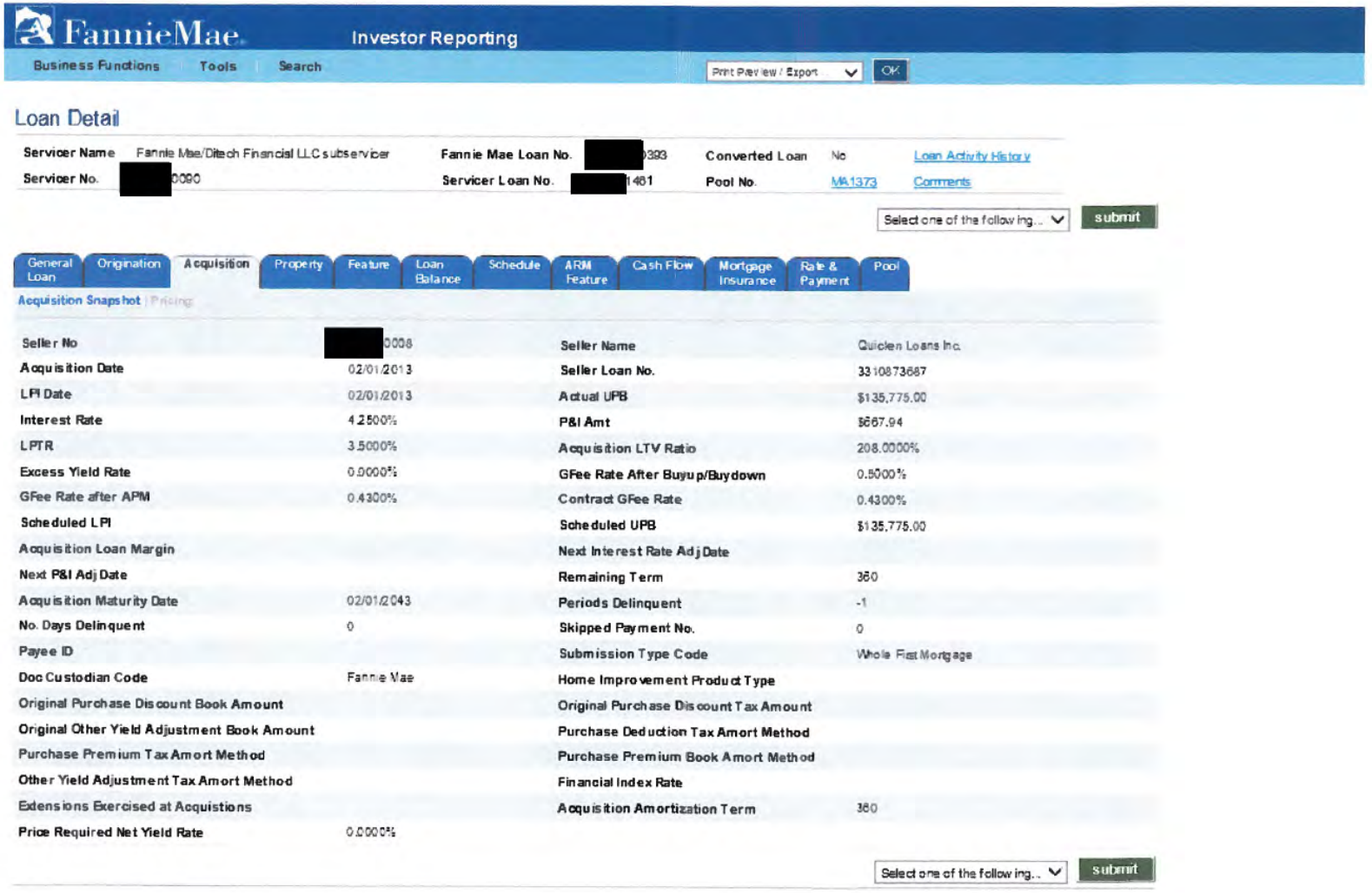
I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct.

Executed on March 21, 2017.

John Curcio, AVP

EXHIBIT “A”

EXHIBIT “A”



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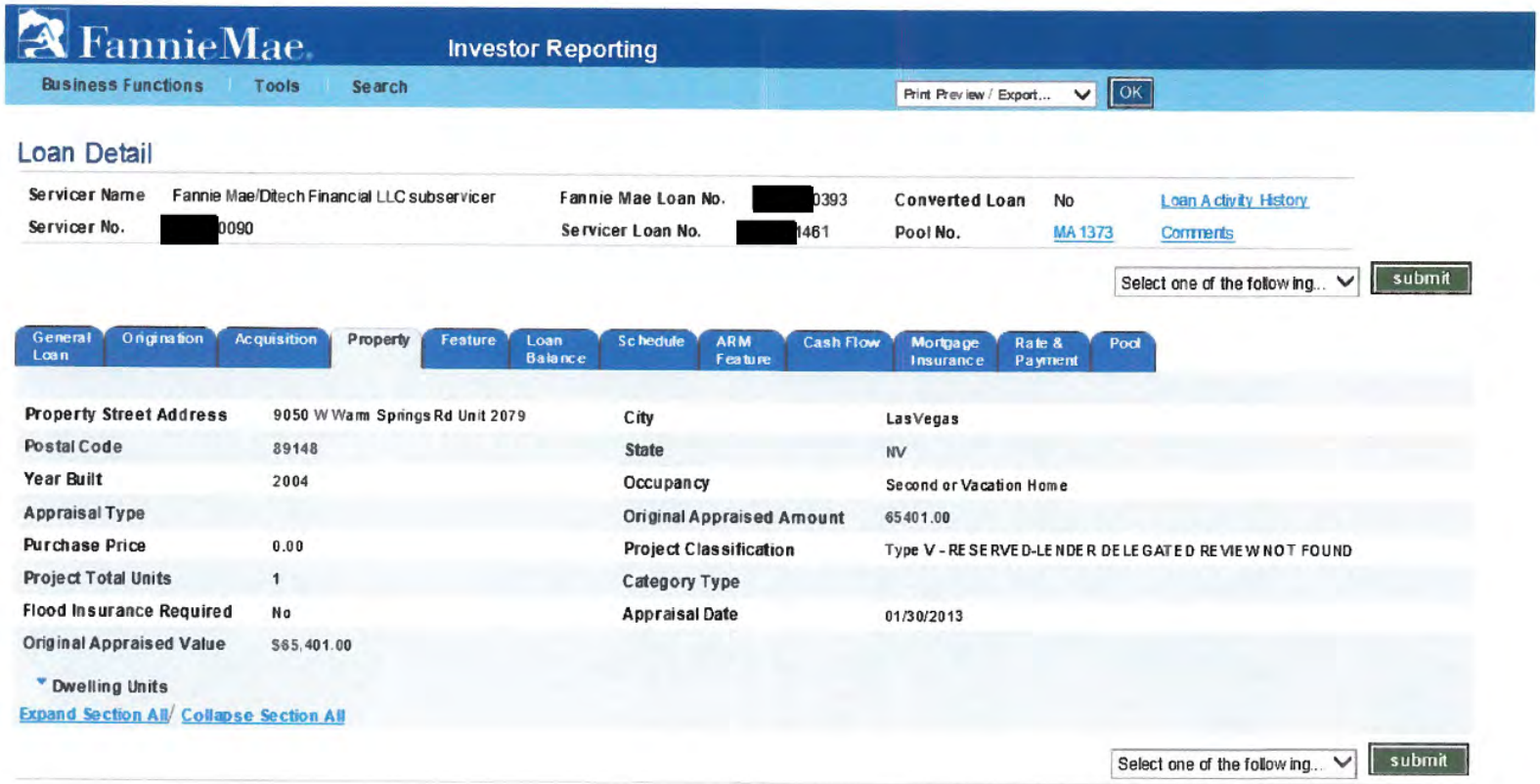
Date Printed: 3/7/17

APP000257



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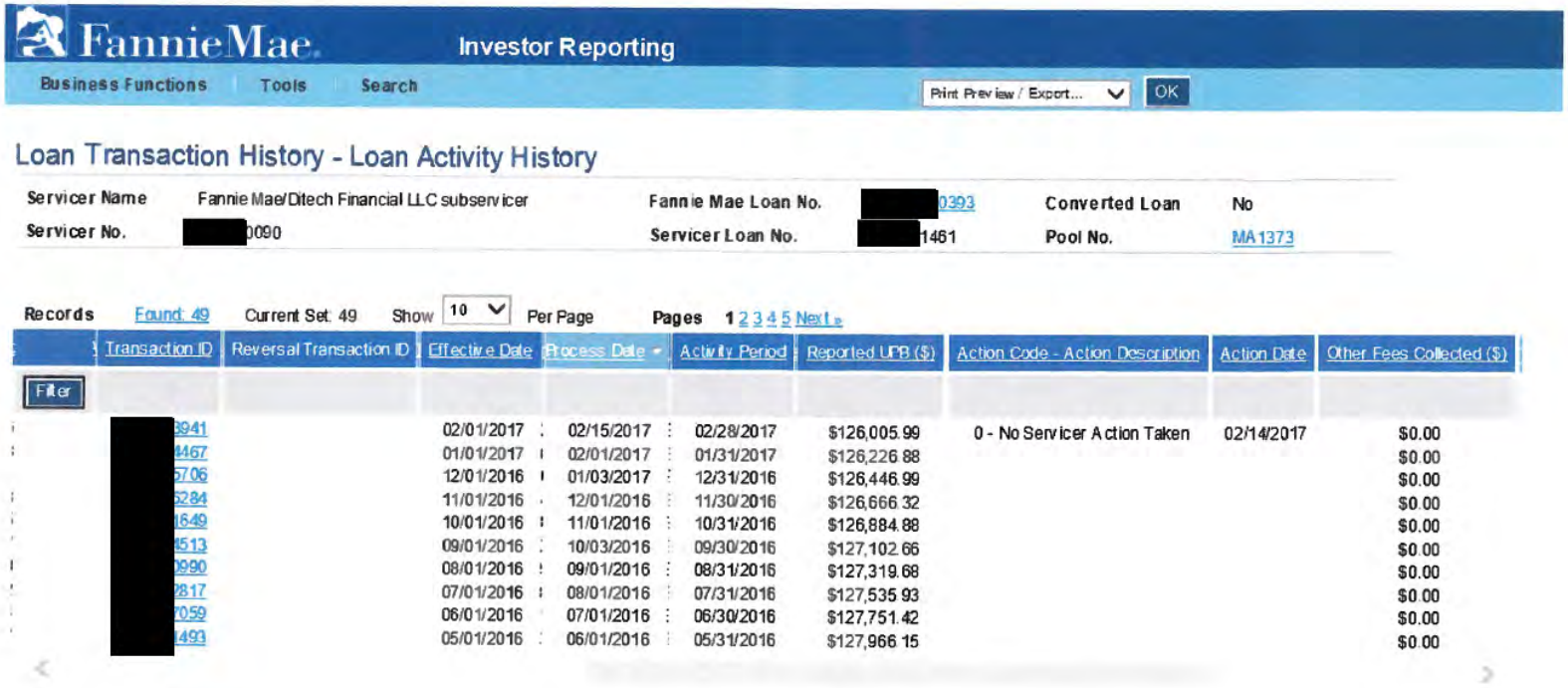
Date Printed: 3/7/17

APP000258



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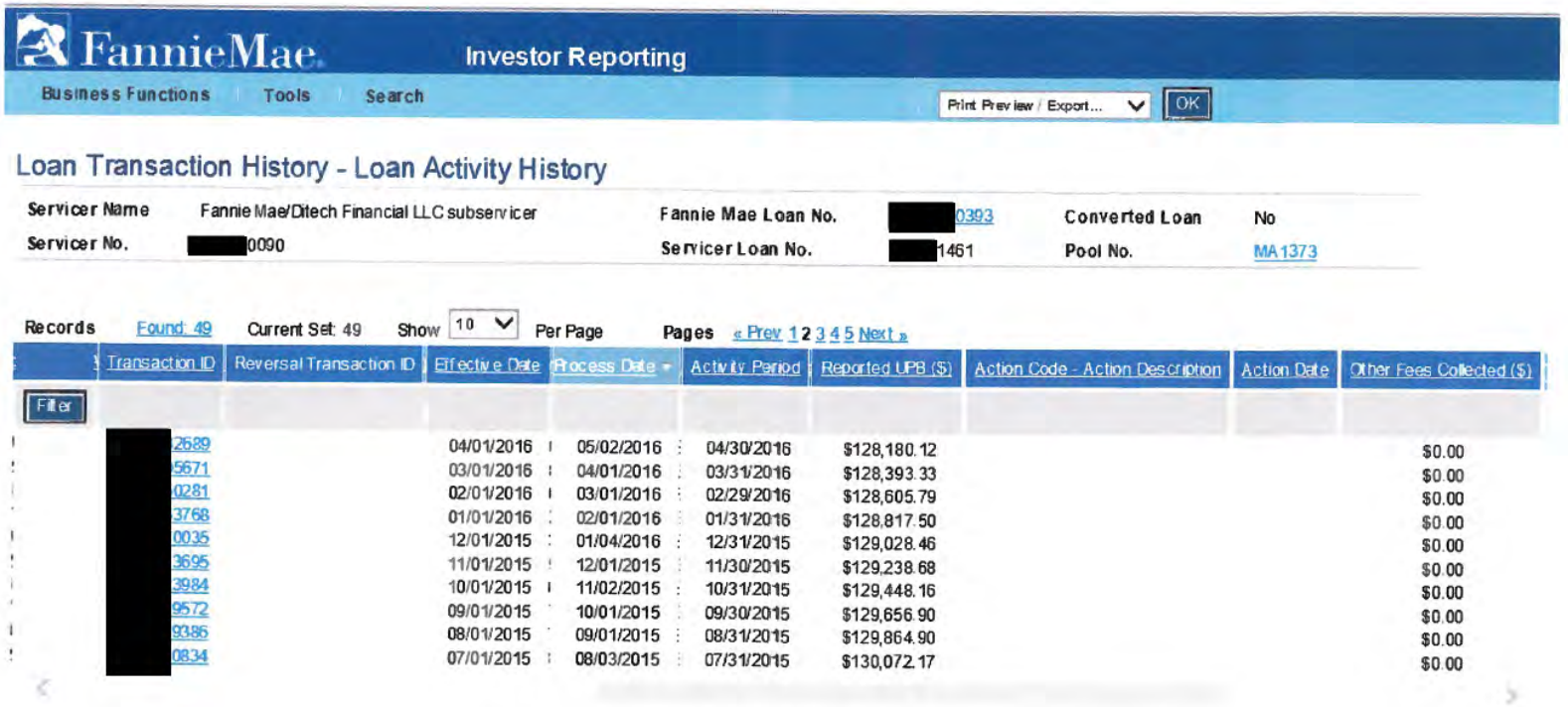

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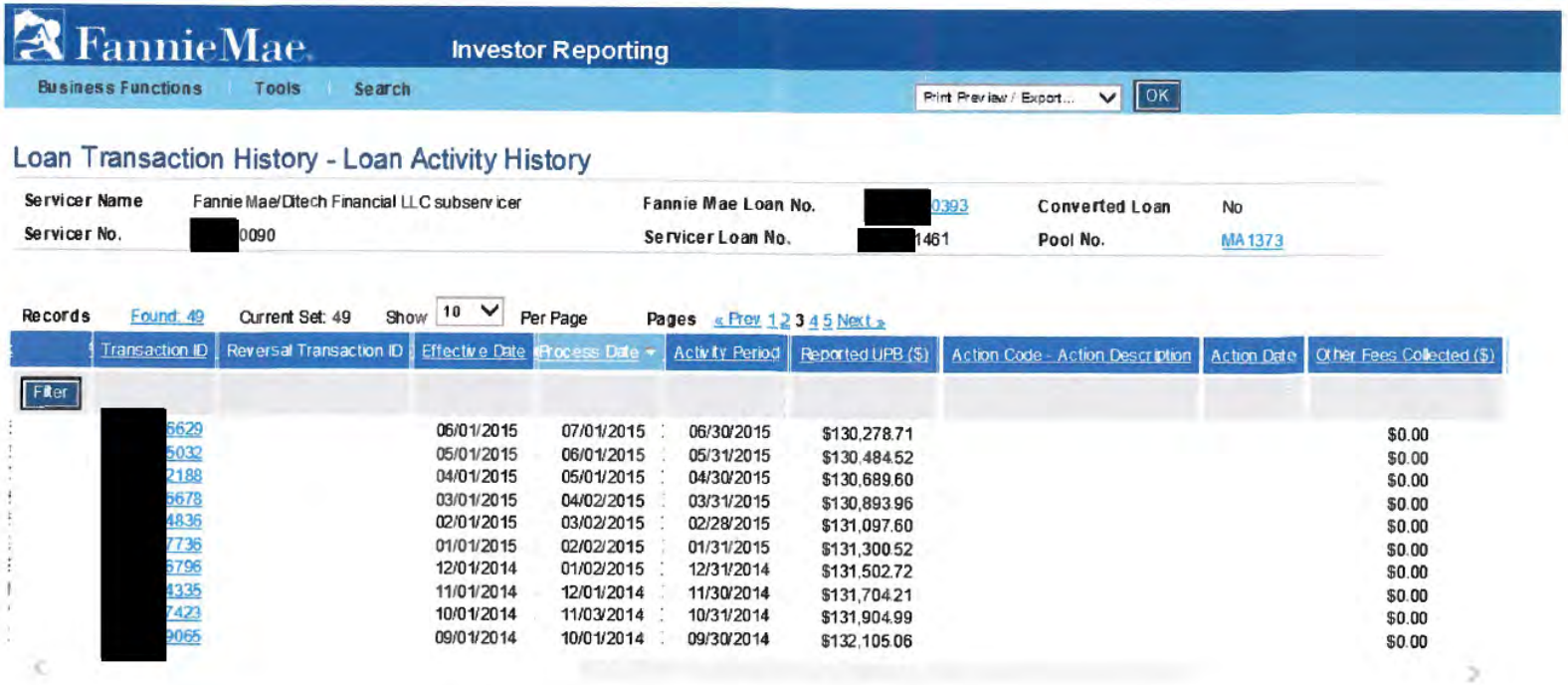

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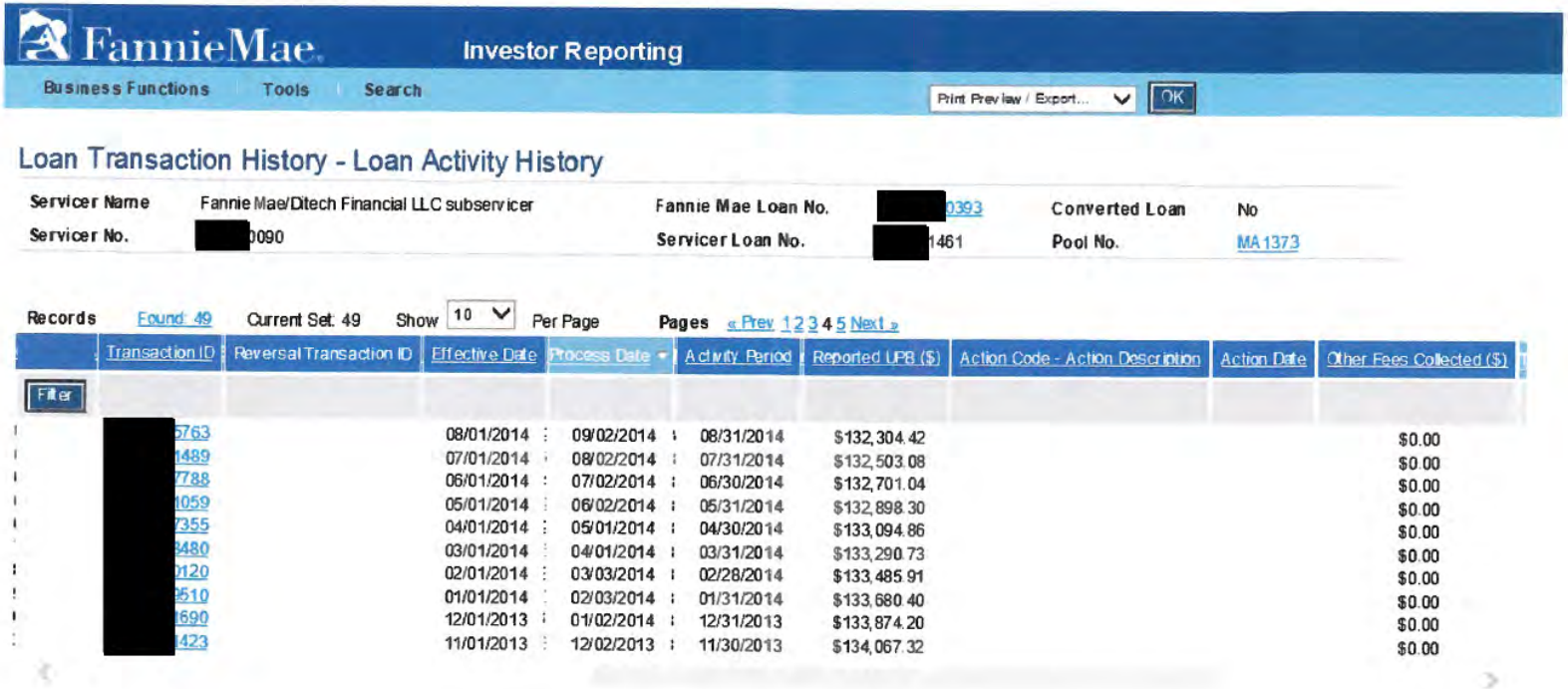
Date Printed: 3/7/17



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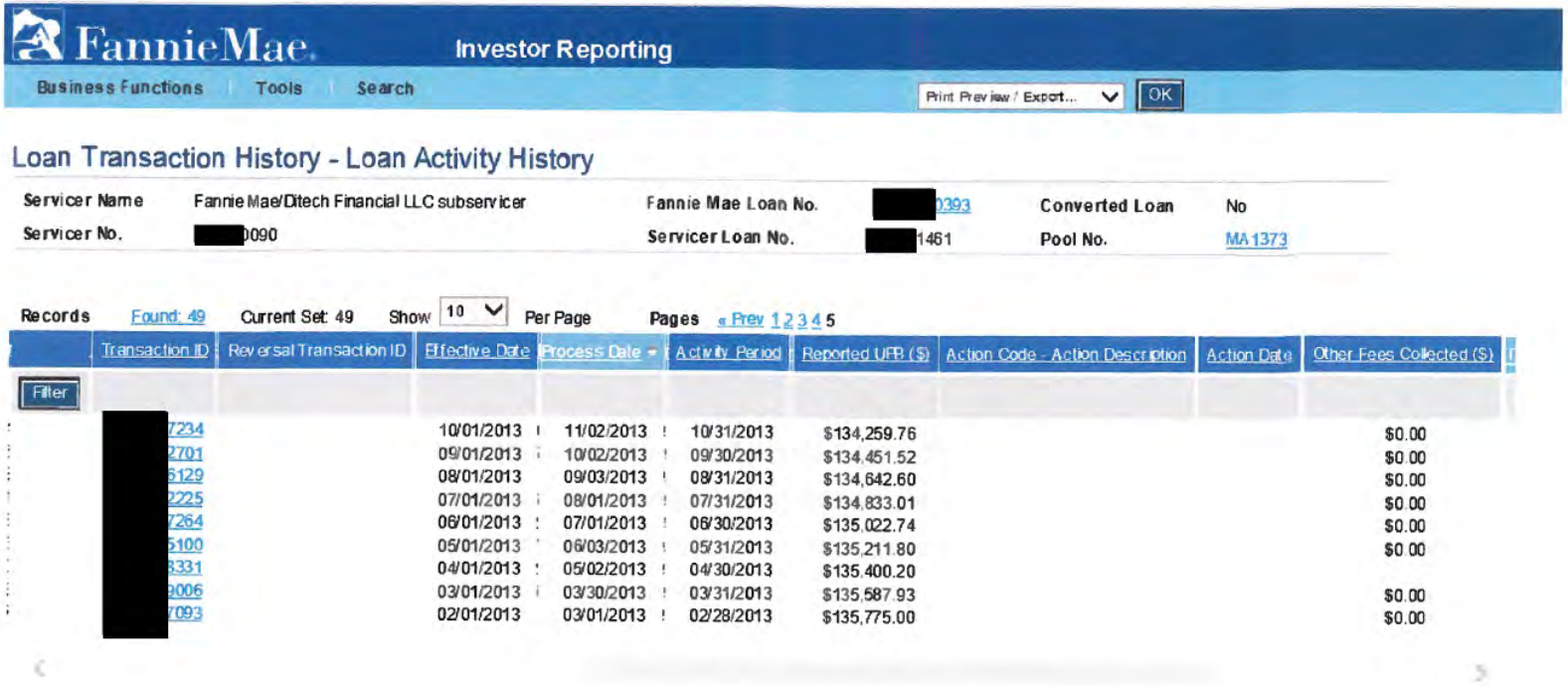
Date Printed: 3/7/17



Printed by: Eric Johnson

Date Printed: 3/7/17

Return To Previous Page

Servicing Transfer Request (STR) Detail

Transferor No	[redacted]385				
STR No.	[redacted]120	Transferor	Quicken Loans Inc.	Transferee	Fannie Mae/Ditech Financial LLC subservicer
STR Status	Completed With Exceptions	Transferor Contact Name		Transferee Contact Name	
STR Type	Inter-Servicer	Transferor Contact No.		Transferee Contact No.	
Effective Date	03/31/2013	Audit Trail		Activity Checks	
No. of Loans to Transfer	7388	No. of Loans Approved	0	No. of Loans Transferred	7388
UPB	$1,064,983,014.96	UPB	$0.00	UPB	$1,418,105,845.46
Delinquency Ratio	17.5961%	Delinquency Ratio	0.0000%	Delinquency Ratio	17.5961%
No. of Loans Passed Validation	7388				
No. of Loans Failed Validation	0				

View All Loans

* = required fields

Printed by: Eric Johnson

Date Printed: 3/7/17

EXHIBIT “B”

EXHIBIT “B”

Special Seller/Servicer Approval and Mortgage Selling and Servicing Contract Addendum

Certain mortgage loan types require special approval to deliver or service. The following special approvals will be documented by an addendum to the MSSC between Fannie Mae and the seller/servicer:

- co-op share mortgage loans,
- second lien mortgage loans,
- HomeStyle® renovation mortgage loans,
- Texas Section 50(a)(6) mortgage loans, and
- electronic mortgage loans (eMortgages).

Servicers may request approval to service these mortgage loans through its Fannie Mae Servicing Representative (see F-4-03, List of Contacts). Servicers may not service these mortgage loan types unless they obtain the applicable special approval and execute any additional agreements required by Fannie Mae.

A1-1-03, Nature of the Contractual Relationship (11/12/2014)

Introduction

This topic contains the following:

- Overview of the MSSC and Lender Contract
- Defining the Responsible Party
- Fannie Mae's Choice of Law
- Representation and Warranty Requirements for All Fannie Mae Mortgage Loans
- Representation and Warranty Requirements for Mortgage Loans with Mortgage Insurance
- Indemnification for Losses

Overview of the MSSC and Lender Contract

Once Fannie Mae approves the seller/servicer, both parties execute the MSSC and any other relevant agreements needed at the time to establish the terms and conditions of the contractual relationship. The continuation of that relationship depends on both parties honoring the mutual promises in the MSSC and on the seller/servicer satisfying the requirements of all of the agreements, including, without limitation:

- the *Selling Guide*, the *Servicing Guide*, the *Servicing Guide Procedures*, the *Guide to Delivering eMortgage Loans to Fannie Mae*, the *Requirements for Document Custodians*, and the *Multifamily Guide(s)* (if applicable) (the "Guides");
- the *Reverse Mortgage Loan Servicing Manual*, the *Investor Reporting Manual,* and the *Balloon Mortgage Loan Servicing Manual* (the "Manuals");
- any supplemental servicing instructions or directives provided by Fannie Mae;
- any Announcements, Lender Letters, Notices, release notes, and information posted on Fannie Mae's website that is incorporated by reference into the *Selling* or *Servicing Guide*;
- all applicable master agreements (including MBS pool purchase contracts and variances), recourse agreements, repurchase agreements, indemnification agreements, loss-sharing agreements, and any other agreements between Fannie Mae and the seller/servicer;
- any other agreement(s) a seller/servicer has entered into with Fannie Mae; and
- all such items as amended, modified, restated, or supplemented from time to time.

The seller/servicer's obligations under all of the agreements described above are referred to in the *Servicing Guide* in their entirety as the "Lender Contract."

The MSSC establishes the basic legal relationship between the seller/servicer and Fannie Mae. Specifically as to servicing, the MSSC, when executed

- establishes the seller/servicer as an approved servicer of applicable mortgage loans;
- provides the general terms and conditions for servicing;
- incorporates by reference the terms of the Guides and any supplementary matter such as the *Servicing Guide Procedures*, Manuals, Announcements, Lender Letters, directives, Notices, forms and exhibits and any other procedures and documents which may be incorporated by reference into the Guides, all as amended from time to time; and

- may state the types of mortgage loans the seller/servicer may sell and/or service.

Sellers/servicers must originate and service mortgage loans in a sound, businesslike manner, in accordance with applicable law and good judgment. Engaging in business practices that have the apparent intent of avoiding Fannie Mae requirements that would ordinarily apply violates the Lender Contract.

All of the items that make up the Lender Contract form a single integrated MSSC and not a separate contract or agreement.

Notwithstanding any other provisions in the Guides, or any assignment or transfer of servicing by a seller/servicer to another entity:

- The seller/servicer's benefits and obligations with respect to its contractual rights to service mortgage loans are, and were at the time of execution of the Lender Contract, fully integrated and non-divisible from the seller/servicer's benefits and obligations with respect to its contractual rights and obligations to sell mortgage loans under the Lender Contract.

- Absent such integration, Fannie Mae would not have entered into, or continued to be bound by, the Lender Contract and would not have entered into, or continued to be bound by, separate agreements with the seller/servicer providing for the contractual right to sell or to service mortgage loans for Fannie Mae.

- When Fannie Mae consents to a transfer of servicing, it relies on the integration and non-divisibility of the Lender Contract. Unless explicitly agreed to the contrary in writing by Fannie Mae, Fannie Mae requires that

  – the transferor servicer remain obligated for all selling and servicing representations and warranties and recourse obligations upon the transfer of servicing, and

  – the transferee servicer, whether the original seller, responsible party, or a transferee servicer, undertake and assume joint and several liability for all selling representations and warranties, all servicing responsibilities and liabilities, and all recourse obligations related to the mortgage loans it services.

Regardless of the medium through which they are issued, including without limitation, information posted on Fannie Mae's website, all of Fannie Mae's communications (Guides, Manuals, Announcements, Lender Letters, and Notices) are incorporated into the Guides by reference. These communications are the instructions Fannie Mae provides to enable a servicer to perform its obligations to Fannie Mae under the terms of the MSSC.

Certain information and requirements are posted on Fannie Mae's website. This information and the requirements are incorporated by reference into the Guides.

No borrower or other third party is intended to be a legal beneficiary of the MSSC or to obtain any such rights or entitlements through our seller/servicer communications.

Defining the Responsible Party

The *Servicing Guide* references "seller," "servicer," lender," and "seller/servicer". The *Servicing Guide* generally describes the relationship between Fannie Mae and the servicer. However, the particular designation should not be considered an exclusion with respect to an entity's responsibilities in connection with a particular mortgage loan. Depending on the structure of the transaction in question, the entity that has the responsibility for a selling representation and warranty or for the servicing responsibilities or liabilities may be

- both the seller and the servicer,
- either the seller or the servicer, or
- neither the seller nor the current servicer.

The "responsible party" means a seller, servicer, or other entity that is responsible for the selling representations and warranties and/or for the servicing responsibilities or liabilities on a mortgage loan.

Terms not defined in the *Servicing Guide* have the meaning given them in the *Selling Guide*.

Fannie Mae's Choice of Law

Fannie Mae has adopted New York law as its choice of law provision for the Lender Contract. This *Servicing Guide* shall be construed, and the rights and obligations of Fannie Mae and the seller, servicer, and/or responsible party hereunder determined, in accordance with the laws of the State of New York without regard to its conflict of law rules.

Representation and Warranty Requirements for All Fannie Mae Mortgage Loans

In order to sell mortgage loans to Fannie Mae or deliver pools of mortgage loans to Fannie Mae for MBS, the seller makes certain representations and warranties concerning the seller itself as well as the mortgage loans it is selling or delivering. The MSSC contains specific representations and warranties as does the *Selling Guide*. Additional representations and warranties are contained in the *Servicing Guide* and elsewhere in the Lender Contract. Violation of any representation or warranty is a breach of the Lender Contract, including the warranty that the mortgage loan

complies with all applicable requirements of the Lender Contract, which provides Fannie Mae with certain rights and remedies.

All selling representations and warranties are made to Fannie Mae as of the date a seller/servicer transfers mortgage loans to Fannie Mae and continue and survive

- the sale of mortgage loans to Fannie Mae or delivery of pools of mortgage loans for Fannie Mae MBS,
- any subsequent resale of the mortgage loans by Fannie Mae, and
- termination of the MSSC and any agreement that is part of the Lender Contract unless Fannie Mae expressly releases the seller/servicer from them in writing.

The seller/servicer makes each representation and warranty set forth in the Lender Contract separately and independently from every other warranty it makes for a specific mortgage loan.

Representations and warranties are not limited to matters of which the seller/servicer had knowledge, except for the warranties numbered 10, 11, and 17 of Section IV, A: Specific Warranties, of the MSSC, which are violated only if the seller/servicer had knowledge of the untruth or, acting as a prudent seller/servicer, should have known about it through the exercise of due diligence. Although warranty number 17 is limited to matters of which the seller/servicer has knowledge or, as a prudent seller/servicer, should have discovered, this limitation does not in any way limit the seller/servicer's warranty number 1 that the mortgage loan meets all applicable requirements in the Lender Contract, nor does it affect any other warranty. Sellers/servicers are deemed to know matters that are of public record.

Because the selling warranties are not limited to matters within a seller/servicer's knowledge, except as noted above, the action or inaction (including misrepresentation or fraud) of the borrower, or a third party, as well as the action or inaction (including misrepresentation or fraud) of the seller/servicer will constitute the seller/servicer's breach of a selling warranty.

A servicer that acquires the servicing of a mortgage loan (either concurrently with or subsequent to Fannie Mae's purchase of the mortgage loan) assumes and is responsible for the same selling warranties that the party responsible for the selling representations and warranties made when the mortgage loan was sold to Fannie Mae. When a servicer transfers its contractual right to service some or all of its servicing responsibilities to another Fannie Mae-approved servicer, any variance or waiver granted to a transferor servicer does not automatically transfer to the transferee servicer. In addition, the transferor servicer and transferee servicer must ensure that all existing special servicing obligations associated with the transferred mortgage loan are disclosed.

By submitting any mortgage loan or participation interest to Fannie Mae under any execution, including MBS, or a portfolio mortgage loan, the seller/servicer represents and warrants that

- there is no agreement with any other party providing for servicing the mortgage loans that continues after such date unless there is full compliance with all the Fannie Mae Guide requirements for subservicing, or

- any prior servicing agreement is made expressly subordinate to Fannie Mae's rights as owner of the mortgage loans.

The party that was servicing for the seller/servicer prior to such date may become the servicer for Fannie Mae, if there is full compliance with all the *Servicing Guide* requirements that provide for assignment of servicing from the seller/servicer concurrent with conveyance of the mortgage loan to Fannie Mae. (For more information, refer to the requirements of A2-7-01, Concurrent Servicing Transfers.)

Representation and Warranty Requirements for Mortgage Loans with Mortgage Insurance

The seller represents and warrants that each mortgage loan it sells and delivers is insurable and that no fraud or material misrepresentation has been committed

- by any employee, any agent of the responsible party, or any third party including, without limitation, the borrower;

- by act or omission, in connection with the origination of the mortgage loan or servicing prior to the sale; and

- regardless of the level or type of documentation, verification, or corroboration of information that may be required by the *Selling Guide* or any other contract.

A mortgage loan is insurable if a mortgage insurer would not decline to insure it by reason of any fraud, misrepresentation, negligence, or dishonest, criminal, or knowingly wrongful act in origination or servicing, and would not be entitled to deny a claim by reason of any of the foregoing.

See Chapter B-8, Mortgage Insurance for additional information.

Indemnification for Losses

Fannie Mae requires a party that makes or assumes selling representations and warranties to Fannie Mae to indemnify and hold Fannie Mae (including its successors and assigns and its employees, officers, and directors individually when they are acting in their corporate capacity) harmless against all losses, damages, settlements, judgments, claims, legal actions, costs, expenses, attorney's fees, and other legal fees that are based on, or result from, the responsible

party's breach or alleged breach of its selling warranties or representations or its origination, delivering, or selling activities related to Fannie Mae-owned or Fannie Mae-securitized mortgage loans including any other liabilities that arise in connection with the mortgage loans or the servicing of them prior to the delivery of the mortgage loans to Fannie Mae.

Similarly, Fannie Mae requires a servicer to indemnify and hold Fannie Mae (including its successors and assigns and its employees, officers, and directors individually when they are acting in their corporate capacity) harmless against all losses, damages, judgments, settlements, claims, legal actions, costs and expenses, attorney's fees, and other legal fees that are based on, or result from, the servicer's failure or alleged failure to satisfy its duties and responsibilities for mortgage loans or MBS pools it services for Fannie Mae under the provisions of the Lender Contract any additional requirements that may have been imposed, or any additional obligations the servicer has assumed with respect to such mortgage loans or MBS pools.

In addition, the obligation of a party that makes or assumes selling representations and warranties on mortgage loans secured by manufactured homes to indemnify Fannie Mae in certain circumstances encompasses all losses, damages, judgments, settlements, claims, legal actions, costs and expenses, attorney's fees and other legal fees that are based on, or result from, a breach or alleged breach of obligations owed to the borrower by the manufacturer or by any party that sells the manufactured home to the borrower, delivers it to the site, or installs it at the site.

The indemnities set forth above apply regardless of whether Fannie Mae is a party to the lawsuit or other proceeding (for example, the indemnity would apply if Fannie Mae is served with a subpoena in connection with a suit concerning an indemnifiable claim to which Fannie Mae is not a party). The indemnities set forth above likewise apply regardless of whether the claim, suit, or proceeding has merit. However, the indemnification would not include losses resulting solely from the indemnifying party following the written instructions of Fannie Mae given during a claim, suit, or proceeding.

All payments for indemnification are due within 60 days of demand or within such other time frame as specified by Fannie Mae unless an appeal is made to Fannie Mae. If an appeal is denied, the responsible party must submit the indemnification payment within 15 days from the date of Fannie Mae's denial of the appeal.

The indemnities set forth above do not modify or otherwise affect Fannie Mae's right to manage its defense for any claim, suit, or proceeding in accordance with its own judgment, including, but not limited to selecting its own counsel. If Fannie Mae chooses its own counsel, the indemnifying party will still be obligated to the full extent of the indemnities set forth above, including but not limited to paying the attorney's fees and costs of counsel selected by Fannie Mae. If Fannie Mae decides that its interests and the party's coincide, Fannie Mae may decide to cooperate with the party in a joint defense.

- the applicable *Servicing Guide* provisions or, in the absence of *Servicing Guide* provisions, customary servicing practices of prudent servicers in servicing and administering mortgage loans for their own portfolios.

In the *Servicing Guide* or through its contracts with servicers, Fannie Mae from time to time may limit the availability and application of certain servicing terms stated in a trust document. Thus, the *Servicing Guide* may be more restrictive than the MBS trust documents with respect to servicing provisions, but neither the *Servicing Guide* nor any contractual agreement (including variances and waivers) with a servicer may be more expansive than or otherwise inconsistent with the MBS trust documents.

A2-1-03, Execution of Legal Documents (11/12/2014)

Introduction

The servicer ordinarily appears in the land records as the mortgagee to facilitate performance of the servicer's contractual responsibilities, including (but not limited to) the receipt of legal notices that may impact Fannie Mae's lien, such as notices of foreclosure, tax, and other liens. However, Fannie Mae may take any and all action with respect to the mortgage loan it deems necessary to protect its or an MBS trust's ownership of the mortgage loan, including recordation of a mortgage assignment, or its legal equivalent, from the servicer to Fannie Mae or its designee. In the event that Fannie Mae determines it necessary to record such an instrument, the servicer must assist Fannie Mae by

- preparing and recording any required documentation, such as mortgage assignments, powers of attorney, or affidavits; and
- providing recordation information for the affected mortgage loans.

The servicer is authorized to execute legal documents related to payoffs, foreclosures, releases of liability, releases of security, mortgage loan modifications, subordinations, assignments, and conveyances (or reconveyances) for any mortgage loan for which it (or the Mortgage Electronic Registration System, or MERS®) is the owner of record. When an instrument of record requires the use of an address for Fannie Mae, including assignments of mortgage loans, foreclosure deeds, REO deeds, and lien releases, the servicer must refer to the procedures in F-1-13, Obtaining and Executing Legal Documents.

This topic contains the following:

- Fannie Mae's Limited Power of Attorney to Execute Documents
- Correcting Conveyances to Fannie Mae

Fannie Mae's Limited Power of Attorney to Execute Documents

When Fannie Mae is the owner of record for a mortgage loan, it permits the servicer that has Fannie Mae's limited power of attorney to execute certain types of legal documents on Fannie Mae's behalf. The servicer must have a limited power of attorney in place to be authorized to execute the following legal documents on behalf of Fannie Mae:

- release of a borrower from personal liability under the mortgage or deed of trust following an approved transfer of ownership of the security property;
- full satisfaction or release of a mortgage or the request to a trustee for a full reconveyance of a deed of trust;
- partial release or discharge of a mortgage or the request to a trustee for a partial reconveyance or discharge of a deed of trust;
- modification or extension of a mortgage or deed of trust;
- subordination of the lien of a mortgage or deed of trust;
- completion, termination, cancellation, or rescission of foreclosure relating to a mortgage or deed of trust, including (but not limited to) the following actions:
  - the appointment of a successor or substitute trustee under a deed of trust, in accordance with state law and the deed of trust;
  - the issuance or cancellation or rescission of notices of default;
  - the cancellation or rescission of notices of sale; and
  - the issuance of such other documents as may be necessary under the terms of the mortgage, deed of trust, or state law to expeditiously complete said transactions, including, but not limited to, assignments or endorsements of mortgage loans, deeds of trust, or promissory notes to convey title from Fannie Mae to the Attorney-in-Fact under this Limited Power of Attorney;
- conveyance of properties to FHA, HUD, the VA, RD, or a state or private mortgage insurer; and
- assignment or endorsement of mortgage loans, deeds of trust, or promissory notes to FHA, HUD, VA, RD, a state or private mortgage insurer, or MERS.

To request a limited power of attorney, the servicer must refer to the *Fannie Mae Contacts for Document Execution Requests* in F-1-13, Obtaining and Executing Legal Documents.

Upon receiving the executed limited power of attorney from Fannie Mae, the servicer must have the document recorded in the proper jurisdiction. The servicer is authorized to submit the limited power of attorney for recordation immediately upon its receipt or wait until such time as it is actually needed to process a covered transaction.

If the servicer does not have a limited power of attorney to execute documents on Fannie Mae's behalf or has a power of attorney that does not authorize it to execute documents for a specific type of transaction, the servicer must send the documents requiring execution in any instance in which Fannie Mae is the owner of record for the mortgage loan by email, when permitted. If, however, an original document must be executed by Fannie Mae, the servicer must send the document by regular or overnight mail to Vendor Oversight/Custody Group, the NSO, or NSO Loss Mitigation (see F-4-03, List of Contacts).

Correcting Conveyances to Fannie Mae

The servicer must execute a quitclaim deed for properties that have been conveyed in error to Fannie Mae. The servicer must comply with F-1-13, Obtaining and Executing Legal Documents in preparing the reconveyance quitclaim deed. A quitclaim deed is an instrument of conveyance of real property that passes whatever title, claim, or interest that the grantor has in the property, but does not make any representations as to the validity of such title. A quitclaim deed is not a guarantee that the grantor has clear title to the property; rather it is a relinquishment of the grantor's rights, if any, in the property. The holder of a quitclaim deed receives only the interest owned by the person conveying the deed.

Fannie Mae will execute the quitclaim deed only if the servicer has prepared the document to quitclaim or assign back to the previous grantor or assignor. Within five business days of receipt of the fully executed quitclaim deed from Fannie Mae, the servicer must submit the quitclaim deed for recording.

The servicer must send the request for quitclaim deed execution to Fannie Mae as described in *Fannie Mae Contacts for Document Execution Requests* in F-1-13, Obtaining and Executing Legal Documents.

A2-1-04, Note Holder Status for Legal Proceedings Conducted in the Servicer's Name (11/12/2014)

Introduction

Fannie Mae is at all times the owner of the mortgage note, whether the mortgage loan is in Fannie Mae's portfolio or part of the MBS pool. In addition, Fannie Mae at all times has possession of and is the holder of the mortgage note, except in the limited circumstances expressly described in this topic.

This topic contains the following:

- Ownership and Possession of Note by Fannie Mae
- Temporary Possession by the Servicer
- Physical Possession of the Note by the Servicer
- Reversion of Possession to Fannie Mae

Ownership and Possession of Note by Fannie Mae

Fannie Mae may have direct possession of the note or a custodian may have custody of the note. If Fannie Mae possesses the note through a document custodian, the document custodian has custody of the note for Fannie Mae's exclusive use and benefit.

Temporary Possession by the Servicer

In order to ensure that a servicer is able to perform the services and duties incident to the servicing of the mortgage loan, Fannie Mae temporarily gives the servicer possession of the mortgage note whenever the servicer, acting in its own name, represents the interests of Fannie Mae in foreclosure actions, bankruptcy cases, probate proceedings, or other legal proceedings.

This temporary transfer of possession occurs automatically and immediately upon the commencement of the servicer's representation, in its name, of Fannie Mae's interests in the foreclosure, bankruptcy, probate, or other legal proceeding.

When Fannie Mae transfers possession, if the note is held by a document custodian on Fannie Mae's behalf, the custodian has possession of the note on behalf of the servicer so that the

servicer has constructive possession of the note and the servicer shall be the holder of the note and is authorized and entitled to enforce the note in the name of the servicer for Fannie Mae's benefit.

Physical Possession of the Note by the Servicer

In most cases, the servicer will have a copy of the mortgage note. If the servicer determines that it needs physical possession of the original mortgage note to represent the interests of Fannie Mae in a foreclosure, bankruptcy, probate, or other legal proceeding, the servicer may obtain physical possession of the original mortgage note by submitting a request directly to the document custodian.

If Fannie Mae possesses the original note through a third-party document custodian that has custody of the note, the servicer must submit a *Request for Release/Return of Documents* (Form 2009) to Fannie Mae's custodian to obtain the note and any other custodial documents that are needed.

In either case, the servicer must specify whether the original note is required or whether the request is for a copy.

Reversion of Possession to Fannie Mae

At the conclusion of the servicer's representation of Fannie Mae's interests in the foreclosure, bankruptcy, probate, or other legal proceeding, or upon the servicer ceasing to service the loan for any reason, possession automatically reverts to Fannie Mae, and Fannie Mae resumes being the holder for itself, just as it was before the foreclosure, bankruptcy, probate, or other legal proceeding. If the servicer has obtained physical possession of the original note, it must be returned to Fannie Mae or the document custodian, as applicable.

Section A2-5.1, Ownership, Establishment and Maintenance of Mortgage Loan Files and Records

A2-5.1-01, Ownership of Individual Mortgage Loan Files and Records (11/12/2014)

All records pertaining to mortgage loans sold to Fannie Mae are at all times the property of Fannie Mae and any other owners of a participation interest in the mortgage loan, regardless of their physical form or characteristics or whether they were developed or originated by the mortgage loan seller, servicer, or others. The types of records owned by Fannie Mae include, but are not limited to, the following:

- mortgage notes,
- security instruments,
- mortgage loan applications,
- credit reports,
- property appraisals,
- payment records,
- insurance policies and insurance premium receipts,
- water stock certificates,
- ledger sheets,
- insurance claim files and correspondence,
- foreclosure files and correspondence,

- current and historical computerized data files,
- machine-readable materials, and
- all other documents, instruments, and papers pertaining to the mortgage loan including, without limitation, any records, data, information, summaries, analyses, reports, or other materials representing, based on, or compiled from such records that are reasonably required to originate and subsequently service a mortgage loan properly.

The mortgage loan originator, seller, or servicer, any service bureau, or any other party providing services in connection with servicing a mortgage loan for or delivering a mortgage loan to Fannie Mae will have no right to possession of these documents and records except under the conditions specified by Fannie Mae.

Any of these documents and records in possession of the mortgage loan originator, seller, or servicer, any service bureau, or any other party providing services in connection with selling a mortgage loan to, or servicing a mortgage loan for, Fannie Mae are retained in a custodial capacity only.

The seller/servicer must maintain an individual mortgage loan file for each mortgage loan it sells to Fannie Mae. Each file must be clearly identified by Fannie Mae's loan number, which can be marked on the file folder or logically associated with any file which is composed of electronic records.

Individual mortgage loan files for participation mortgage loans must be clearly identified by the words "Fannie Mae participation" and Fannie Mae's percentage interest.

Individual mortgage loan files for MBS mortgage loans must identify the number of the related MBS pool.

Individual mortgage loan files must include any records that will be needed to service and that support the validity of the mortgage loan. The servicer must use the individual mortgage loan file established at the time of origination to accumulate other pertinent servicing and liquidation information, including, but not limited to, the following:

- property inspection reports,
- copies of delinquency repayment plans,
- copies of disclosures of ARM loan interest rate and payment changes,
- documents related to insurance loss settlements, and

- foreclosure notices.

A2-5.1-02, Overview of Individual Mortgage Loan Files and Records (11/12/2014)

Introduction

This topic contains the following:

- General Provisions of Individual Mortgage Loan Files and Records
- Contents of the Individual Mortgage Loan File
- Special Individual Mortgage Loan File Requirements for Bifurcated Mortgage Loans
- Identifying Manufactured Home Mortgage Loans

General Provisions of Individual Mortgage Loan Files and Records

The individual mortgage loan file consists of the mortgage loan origination file, mortgage loan custodial file, and mortgage loan servicing file held by a seller, servicer, or prior servicer arising from or related to the origination, sale, securitization, or servicing of an individual mortgage loan or acquired property, as applicable.

The mortgage loan origination file consists of all documents, records, and reports used to support the underwriting decision required by the Lender Contract or any documentation required by Fannie Mae or by law relating to the mortgage loan arising from or related to the origination, closing, sale, securitization, and/or delivery of a mortgage loan, including, but not limited to, those that are required as part of the post-closing mortgage loan file documentation requirements in the *Selling Guide*.

The mortgage loan custodial file consists of the custodial documents and any and all documents, books, records, and reports, in any format, required to be retained by the document custodian pursuant to the *Servicing Guide* or other Fannie Mae requirements.

The mortgage loan servicing file (including the file maintained with respect to an acquired property) consists of all documents, books, records, reports, and payment and escrow histories, in any format, arising from or related to the servicing of the mortgage loan or acquired property by the current servicer or any prior servicer, including, but not limited to, those required at any time

- foreclosure notices.

A2-5.1-02, Overview of Individual Mortgage Loan Files and Records (11/12/2014)

Introduction

This topic contains the following:

- General Provisions of Individual Mortgage Loan Files and Records
- Contents of the Individual Mortgage Loan File
- Special Individual Mortgage Loan File Requirements for Bifurcated Mortgage Loans
- Identifying Manufactured Home Mortgage Loans

General Provisions of Individual Mortgage Loan Files and Records

The individual mortgage loan file consists of the mortgage loan origination file, mortgage loan custodial file, and mortgage loan servicing file held by a seller, servicer, or prior servicer arising from or related to the origination, sale, securitization, or servicing of an individual mortgage loan or acquired property, as applicable.

The mortgage loan origination file consists of all documents, records, and reports used to support the underwriting decision required by the Lender Contract or any documentation required by Fannie Mae or by law relating to the mortgage loan arising from or related to the origination, closing, sale, securitization, and/or delivery of a mortgage loan, including, but not limited to, those that are required as part of the post-closing mortgage loan file documentation requirements in the *Selling Guide*.

The mortgage loan custodial file consists of the custodial documents and any and all documents, books, records, and reports, in any format, required to be retained by the document custodian pursuant to the *Servicing Guide* or other Fannie Mae requirements.

The mortgage loan servicing file (including the file maintained with respect to an acquired property) consists of all documents, books, records, reports, and payment and escrow histories, in any format, arising from or related to the servicing of the mortgage loan or acquired property by the current servicer or any prior servicer, including, but not limited to, those required at any time

by the Lender Contract or an insurer, including, but not limited to, those set forth in the *Servicing Guide*.

Individual mortgage loan files and records that may be required to be sent to Fannie Mae include:

- mortgage origination files,
- mortgage loan custodial files,
- individual mortgage loan files (including the mortgage loan servicing file),
- permanent mortgage account records, and
- accounting system reports.

The seller/servicer is responsible for maintaining these files and records, as well as borrower payment records. The responsibility for the physical possession of the mortgage loan documents may vary depending on whether the mortgage loan is a portfolio or MBS mortgage loan. See A2-6-01, Custodial Documents for additional information.

The seller/servicer must establish the individual mortgage loan file when it originates a mortgage loan. If the seller/servicer does not service the mortgage loan, it must transfer the files and records to the servicer to ensure that the servicer will have complete information about the mortgage loan in its records.

The accounting records relating to mortgage loans serviced for Fannie Mae must be maintained in accordance with sound and generally accepted accounting principles and in such a manner as will permit Fannie Mae's representatives to examine and audit such records at any time.

State and federal laws now recognize electronic records as being equivalent to paper documents for legal purposes. Therefore, Fannie Mae's requirements for record accessibility and retention apply equally to paper and electronic records.

The servicer must implement appropriate measures designed to

- ensure the accuracy, security, integrity, and confidentiality of files and records;
- protect against any anticipated threats or hazards to the security or integrity of files and records; and
- protect against unauthorized access to or use of files and records and is responsible for requiring, by contract, that any subservicers or other third parties that access mortgage files and records also implement these measures.

Contents of the Individual Mortgage Loan File

The individual mortgage loan file must include, but is not limited to, the following:

- copy of the Participation Certificate, if applicable;
- copy of the related Schedule of Mortgages for a mortgage loan if an MBS mortgage loan;
- originals of the recorded mortgage or deed of trust, any applicable rider, and any other documents changing the mortgage loan terms or otherwise affecting Fannie Mae's legal or contractual rights;
- copy of the mortgage or deed of trust note and any related addenda;
- copy of either the unrecorded assignment to Fannie Mae (or the recorded assignment, when applicable), or the original assignment to MERS, if the mortgage loan is registered with MERS and MERS is not named as nominee for the beneficiary, and copies of all required intervening assignments;
- copy of the FHA mortgage insurance certificate, VA mortgage loan guaranty certificate, RD mortgage loan note guarantee certificate, HUD Indian mortgage loan guarantee certificate, or conventional mortgage insurance certificate, if applicable;
- copy of the underwriting documents, including any Desktop Underwriter® reports;
- copy of the title policy, hazard insurance policy, flood insurance policy (if required), and any other documents that might be of interest to a prospective purchaser or servicer of the mortgage loan or might be required to support title or insurance claims at some future date (for example, FEMA flood hazard determination form, title evidence, or survey);
- copy of the final HUD-1 Settlement Statement (or HUD-1A if applicable) or other closing statement evidencing all settlement costs paid by the borrower and seller, executed by the borrower and seller (if applicable);

  Note: In escrow states, if the seller/servicer is unable to have the final HUD-1 signed by the borrower and seller, the seller/servicer may supplement the final HUD-1 signed by the escrow officer with either

  – the estimated HUD-1 (or multiple matching documents) signed by the borrower and seller, or

  – the final Escrow Instructions (or multiple matching documents) signed by the borrower and seller;

- copies of all documents or records that are used to evaluate a borrower and the property condition when determining the eligibility for a workout option; and

- copies of property inspection orders and reports.

In all instances, the servicer must document its compliance with all Fannie Mae policies and procedures, including but not limited to, timelines that are required within the *Servicing Guide*. The servicer must maintain in the individual mortgage loan file all documents and system records that preserve Fannie Mae's ownership interest in the mortgage loan. Refer to F-1-05, Examples of Documentation Required in the Mortgage Loan Servicing File, which includes some (but not all) of the types of documentation that is required to be in the individual mortgage loan file.

Special Individual Mortgage Loan File Requirements for Bifurcated Mortgage Loans

The servicer and the responsible party must keep all of the individual mortgage loan records, including, but not limited to those identified in *Selling Guide, E-2-07, Post-Closing Mortgage Loan File Documentation* and any and all servicing records for the time it serviced the bifurcated mortgage loan.

Identifying Manufactured Home Mortgage Loans

Examples of the collateral document(s) for a manufactured home that are required for a mortgage loan for which an application was taken on or after August 24, 2003 include:

- documentation (if it is available) indicating that no certificate of title (or similar ownership document) was ever issued in states where a manufactured home can become real property without first being titled as personal property,

- documentation evidencing such surrender or retirement in states where the certificate of title (or similar ownership document) can be surrendered or retired when the home becomes real property,

- the certificate of title (or similar ownership document) if it has not been or cannot be surrendered,

- any UCC financing statement (or similar notice of lien) that was filed pursuant to applicable law, or

- a security agreement that creates a lien on the manufactured home in addition to the mortgage loan or deed of trust.

Servicers that have collateral documents for manufactured home loans prior to August 24, 2003, must retain any such documents, but they are not required to seek these documents for such mortgage loans.

In order to be prepared to meet special servicing and default management requirements for mortgage loans secured by manufactured homes, servicers must ensure that all mortgage loans that are secured by manufactured homes are so identified on their internal systems.

If it comes to the attention of the servicer that it is servicing a mortgage loan secured by a manufactured home that was delivered to Fannie Mae without notation of Special Feature Code 235 (which is required to identify that property type), the servicer must follow the process documented in F-1-11, Manufactured Home Post-Purchase Adjustments.

Chapter A2-8, Mortgage Electronic Registration System

Mortgage Electronic Registration System

Introduction

This chapter contains information on the Mortgage Electronic Registration System.

In This Chapter

This chapter contains the following topic:

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A2-8-01, Mortgage Electronic Registration System (11/12/2014)

Introduction

MERS is an electronic system that assists in the tracking of mortgage loans, servicing rights, and security interests. To initiate the electronic tracking, a seller/servicer assigns a special MERS MIN to the mortgage loan, registers the mortgage loan in MERS and the either

- originates the mortgage loan with MERS appearing in the security instrument as nominee for the beneficiary and its successors and assigns, or
- records an assignment of the mortgage loan to MERS (thus making MERS the mortgagee of record).

This topic contains the following:

- Registration of a Mortgage Loan to MERS
- Naming MERS as the Nominee for the Beneficiary in the Security Instrument
- Termination of the Use of MERS

Registration of a Mortgage Loan to MERS

When a MERS-registered mortgage loan is delivered to Fannie Mae, the seller/servicer reports the MIN on the Loan Schedule (*FRM/GEM Loan Schedule* (Form 1068) or *ARM/GPARM Loan Schedule* (Form 1069)) or on the *Schedule of Mortgages* (Form 2005)

The following table outlines the steps that must be taken when a mortgage loan is registered with MERS.

If the mortgage loan is…	Then…
registered with MERS before Fannie Mae purchases it	Fannie Mae will notify MERS to ensure that its records are updated to reflect Fannie Mae's ownership interest in the mortgage loan.
not registered with MERS until after Fannie Mae purchases it	the seller/servicer must report Fannie Mae's ownership when it registers the mortgage loan.

If the seller/servicer encounters a situation where Fannie Mae is the owner of record for a mortgage loan because the original assignment of the mortgage loan to Fannie Mae was recorded in the public records, the seller/servicer must correct the error before it completes the MERS registration by

- preparing an assignment of the mortgage loan from Fannie Mae to MERS,
- sending the assignment to Fannie Mae for execution, and
- recording the assignment in the public records.

Naming MERS as the Nominee for the Beneficiary in the Security Instrument

MERS will have no beneficial interest in the mortgage loan, even if it is named as the nominee for the beneficiary in the security instrument. In addition, the failure of MERS to perform any obligation with respect to a MERS-registered mortgage loan does not relieve the seller/servicer from its responsibility for performing any obligation required by the terms of its Lender Contract.

The following table describes the requirements of the seller/servicer.

✓	The seller/servicer must…
	Accurately and timely prepare and record security instruments, assignments, lien releases, and other documents relating to MERS-registered mortgage loans;

✓	**The seller/servicer must…**
	Take all reasonable steps to ensure that the information on MERS is updated and accurate at all times; and
	Be solely responsible any failure to comply with the provisions of the MERS Member Agreement, Rules, and Procedures and for any liability that it or Fannie Mae incurs as a result of the registration of mortgage loans with MERS or any specific MERS transaction.

Registration of Fannie Mae mortgage loans in MERS (as either assignee or the nominee of the original mortgagee) does not change the seller/servicer's responsibility for complying with all applicable provisions of

- the MSSC;
- Fannie Mae's Guides, as they may be amended from time to time;
- the seller/servicer's Master Agreement;
- any negotiated contract that it has with Fannie Mae, unless Fannie Mae specifies otherwise; or
- any other agreements that are part of the Lender Contract.

Termination of the Use of MERS

If the seller/servicer decides to discontinue the use of MERS, the seller/servicer must request from MERS the mortgage loan to be "deactivated" in MERS. MERS will notify Fannie Mae about the deactivation of any mortgage loan in which it has an interest.

If the seller/servicer's membership in MERS is terminated, the seller/servicer must promptly notify Fannie Mae.

For each MERS-registered mortgage loan that it is servicing for Fannie Mae, the seller/servicer must perform the functions outlined in the following table.

✓	**The seller/servicer must…**
	Prepare an assignment of the mortgage loan from MERS to itself.
	Have the assignment executed.
	Record the executed assignment in the public land records.
	Prepare in (recordable form) an unrecorded assignment of the mortgage loan from itself to Fannie Mae.

✓	**The seller/servicer must…**
	Submit the original of that assignment to Fannie Mae's DDC or the applicable document custodian.

Section E0-1.3, Handling Non-Routine Litigation

E-1.3-01, General Servicer Responsibilities for Non-Routine Matters (11/12/2014)

"Non-routine" litigation generally consists of an action that, regardless of whether Fannie Mae is a party to the proceeding

- seeks monetary damages against Fannie Mae, its officers, directors, or employees;
- challenges the validity, priority, or enforceability of a Fannie Mae mortgage loan or seeks to impair Fannie Mae's interest in an acquired property and the handling of which is not otherwise addressed in the *Servicing Guide*; or
- presents an issue that may pose a significant legal or reputational risk to Fannie Mae.

The following table describes the servicer's responsibilities related to non-routine litigation.

✓	**The servicer must...**
	Appropriately handle legal matters affecting Fannie Mae mortgage loans.
	Notify Fannie Mae's Legal department (see F-4-03, List of Contacts) of any non-routine litigation. **Note:** Fannie Mae reserves the right to direct and control all litigation involving a Fannie Mae mortgage loan, and the servicer and any law firm handling the litigation must cooperate fully with Fannie Mae in the prosecution, defense, or handling of the matter.
	Obtain Fannie Mae's prior written approval before either • removing a case to federal court based on Fannie Mae's Charter, or • appealing or otherwise challenging judgment in any foreclosure or bankruptcy proceeding.

✓	**The servicer must...**
	Note: The servicer must also notify Fannie Mae's Legal department (see F-4-03, List of Contacts) via email if a borrower files an appeal or seeks other post-judgment relief in a foreclosure or bankruptcy proceeding.
	Periodically update Fannie Mae on the progress of non-routine litigation as necessary and appropriate.
	Provide Fannie Mae with sufficient opportunity in advance of any deadline or due date to review and comment upon proposed substantive pleadings, including • motions, • responses, • replies, and • briefs.
	Notify retained counsel of its proposal to offer any mortgage loan modification and provide counsel with sufficient opportunity in advance of the solicitation to review and provide comments in connection with any solicitation materials. See also *Determining Eligibility for a Fannie Mae Streamlined Modification* in D2-3.2-08, Fannie Mae Streamlined Modification, *Determining Eligibility for a Fannie Mae Streamlined Modification Post Disaster Forbearance* in D2-3.2-09, Fannie Mae Streamlined Modification Post Disaster Forbearance, and *Determining Eligibility for a Fannie Mae Cap and Extend Modification for Disaster Relief* in D2-3.2-10, Fannie Mae Cap and Extend Modification for Disaster Relief, for eligibility requirements.

Not all contested matters constitute non-routine litigation. The following represent examples that are considered routine litigation and need not be reported to Fannie Mae:

- a contested foreclosure action in which the borrower alleges a case-specific procedural or technical defect in the foreclosure, or
- a contested foreclosure action in which the borrower alleges a case specific payment application claim.

In contrast, a contested foreclosure or bankruptcy action in which a borrower challenges the servicer's ability to conduct a foreclosure or seek relief from stay based on a legal argument which, if upheld, could have broader application to other Fannie Mae mortgage loans is non-routine litigation because of the potential for negative legal precedent to extend beyond the immediate case.

In order to assist the servicer in identifying non-routine litigation, the following table lists the categories of non-routine litigation and provides examples of matters that must be reported to Fannie Mae as non-routine litigation. Given the evolving nature of default-related litigation, it is not possible to provide an exhaustive list.

Non-Routine Category	**Examples**
Actions that seek monetary relief against Fannie Mae.	Any claim (including counterclaims, cross-claims, or third-party claims in foreclosure or bankruptcy actions) for damages against Fannie Mae or its officers, directors, or employees.
Actions that challenge the validity, priority, or enforceability of a Fannie Mae mortgage loan or seek to impair Fannie Mae's interest in an acquired property.	An action seeking to demolish a property as a result of a code violation; An action seeking to avoid a lien based on a failure to comply with a law or regulation; An attempt by another lienholder to assert priority over Fannie Mae's lien or extinguish Fannie Mae's interests; A quiet title action seeking to declare Fannie Mae's lien void; or An attempt by a borrower to effect a cramdown of a mortgage in bankruptcy as to which Fannie Mae has not delegated authority to the servicer or law firm to address.
Actions that present an issue that may pose significant legal or reputational risk to Fannie Mae.	Any issue involving Fannie Mae's conservatorship, its conservator FHFA, Fannie Mae's status as a federal instrumentality, or an interpretation of Fannie Mae's Charter; Any contention that Fannie Mae is a federal agency or otherwise part of the United States Government; Any “due process” or other constitutional challenge;

Non-Routine Category	Examples
	Any challenge to the methods by which Fannie Mae does business; Any putative class action involving a Fannie Mae mortgage loan; A challenge to the standing of the servicer to conduct foreclosures or bankruptcies which, if successful, could create negative legal precedent with an impact beyond the immediate case; A challenge to the methods by which MERS does business or to its ability to act as nominee under a mortgage; Any "show cause orders" or motions for sanctions relating to a Fannie Mae mortgage loan, whether against Fannie Mae, the servicer, a law firm, or a vendor of the servicer or law firm; Any foreclosure on Indian tribal lands; Any environmental litigation relating to a Fannie Mae loan; A need to foreclose judicially in a state where non-judicial foreclosures predominate; Any claim invoking HAMP as a basis to challenge a foreclosure; Any cross-border insolvency proceeding under Chapter 15 of the Bankruptcy Code; Any claim of predatory lending or discrimination in loan origination or servicing; or

Non-Routine Category	Examples
	Any claim implicating the interpretation of the terms of the Fannie Mae/Freddie Mac Uniform Mortgage Instruments.

E-1.3-02, Reporting Non-Routine Litigation to Fannie Mae (11/12/2014)

Non-routine litigation must be reported to Fannie Mae within two business days of the servicer receiving notice of the litigation, except with respect to the following three categories of loan-level challenges

- a challenge to the standing of the servicer to conduct foreclosures or bankruptcies which, if successful, could create negative legal precedent with an impact beyond the immediate case;
- a challenge to the methods by which MERS does business or its ability to act as nominee under a mortgage; or
- any claim invoking HAMP as a basis to challenge a foreclosure.

With respect to these three categories of loan-level challenges, it is not necessary for the servicer to notify Fannie Mae until

- the borrower seeks summary judgment on such a challenge;
- briefing is required in response to such a challenge; or
- the issue is expected to be raised at a scheduled trial.

E-1.3-03, Reporting “Legal Filings” to MERS (11/12/2014)

Rule 14 of the MERS System Rules of Membership imposes notification requirements concerning “Legal Filings” that raise certain MERS-related challenges. The servicer is responsible for ensuring any notification required under MERS Rule 14 is provided to

Section E0-3.1, Foreclosure Proceedings in General

E-3.1-01, General Servicing Requirements Related to Foreclosure Proceedings (11/12/2014)

This chapter provides Fannie Mae's requirements and policies for conducting foreclosure proceedings for Fannie Mae mortgage loans.

Fannie Mae sets out those instances when its requirements vary for any particular

- lien type,
- amortization method,
- remittance type,
- servicing option,
- mortgage loan type, or
- ownership interest.

Absent any restrictive language, the same policy or requirement applies for all mortgage loans Fannie Mae has purchased or securitized as standard transactions.

Occasionally, Fannie Mae may address the need for a special servicing option MBS mortgage loan to be handled in a different manner than other mortgage loans serviced for Fannie Mae. Under no circumstances should the servicer of a regular servicing option MBS mortgage loan interpret the content of this chapter as relieving it of its responsibilities and obligations for conducting the foreclosure proceedings and disposing of the acquired property, including the absorption of all costs and any related losses.

Accepting a Partial Reinstatement During Foreclosure

The servicer may accept a borrower's proposal for a partial reinstatement during foreclosure under the circumstances shown in the following table.

✓	Requirements for accepting a partial reinstatement
	The servicer believes the borrower is acting in good faith and that the mortgage loan can be brought current within a reasonable time frame.
	The proposed plan is submitted in writing.
	The repayment plan must clearly state the action the servicer may take to resume the foreclosure action if the borrower does not meet the agreed-upon terms. See D2-3.2-04, Repayment Plan for additional information.

See also C-3-01, Responsibilities Related to Remitting P&I Funds to Fannie Mae for additional information. The servicer must follow the procedures in F-1-31, Remitting and Accounting to Fannie Mae.

Servicer Requirements After the Mortgage Loan is Partially or Fully Reinstated During Foreclosure

After a mortgage loan is either partially or fully reinstated, the servicer must return the original mortgage note to the document custodian if the servicer took physical possession of the original note for the foreclosure action. The servicer must return the note to the document custodian by submitting a *Request for Release/Return of Documents* (Form 2009). The servicer also must follow the procedures in F-1-32, Reporting a Delinquent Mortgage Loan via HomeSaver Solutions Network, to report the reinstatement to Fannie Mae.

E-3.2-09, Conducting Foreclosure Proceedings (11/12/2014)

Introduction

This topic contains the following:

- Conducting Foreclosure Proceedings When Fannie Mae Is the Mortgagee of Record
- Conducting Foreclosure Proceedings When the Servicer Is the Mortgagee of Record
- Conducting Foreclosure Proceedings When MERS Is the Mortgagee of Record

Conducting Foreclosure Proceedings When Fannie Mae Is the Mortgagee of Record

The servicer must conduct the foreclosure in Fannie Mae's name when Fannie Mae is the mortgagee of record for all mortgage loans except for MBS mortgage loans serviced under the regular servicing option that are secured by properties located in Utah or Mississippi. For these mortgage loans, the servicer must request that Fannie Mae reassign the mortgage loan to it so the foreclosure can be completed in the servicer's name.

The servicer must execute any required substitutions of trustees when Fannie Mae has granted the servicer its limited power of attorney to do so on Fannie Mae's behalf. However, if state law or customary practice prohibits an attorney-in-fact from executing substitutions of trustees, the servicer must submit the substitution of trustee documents to Fannie Mae for execution before the foreclosure proceedings begin.

Conducting Foreclosure Proceedings When the Servicer Is the Mortgagee of Record

When the servicer is the mortgagee of record for a mortgage loan, the jurisdiction in which the security property is located will affect how the foreclosure proceedings are conducted or initiated.

In most states, the law firm must initiate the proceedings in the servicer's name when the servicer is the mortgagee of record or in the participating lender's name when the servicer is not the mortgagee of record for a participation pool mortgage loan. The law firm must subsequently have title vested in Fannie Mae's name in a manner that will not result in the imposition of a transfer tax.

The servicer and the law firm must determine the most appropriate method to use in each jurisdiction.

In any state or jurisdiction in which the foreclosure proceedings must be conducted in Fannie Mae's name to prevent the imposition of a transfer tax (such as Rhode Island; New Hampshire; Maine; or Orleans Parish, Louisiana), an assignment of the mortgage or deed of trust to Fannie Mae must be prepared and recorded in a timely manner to avoid any delays in the initiation of the foreclosure proceedings. If the servicer believes that a foreclosure proceeding must be conducted in Fannie Mae's name in any other jurisdiction to prevent the imposition of a transfer tax, the servicer must contact Fannie Mae's Legal department (see F-4-03, List of Contacts) for permission to do so.

When Fannie Mae's DDC or third-party document custodian has custody of an original unrecorded assignment of the mortgage to Fannie Mae, the servicer may either

- request return of that document so it can be recorded, or
- prepare a new assignment if doing so will expedite the process.

Once the assignment to Fannie Mae has been recorded, the foreclosure proceedings must be conducted in Fannie Mae's name.

Conducting Foreclosure Proceedings When MERS Is the Mortgagee of Record

The servicer must not name MERS as a plaintiff or foreclosing party in any foreclosure action on a Fannie Mae mortgage loan. When MERS is the mortgagee of record, the servicer must prepare an assignment from MERS to the servicer and bring the foreclosure in its own name unless Fannie Mae specifically allows the foreclosure to be brought in the name of Fannie Mae. In that event, the assignment must be from MERS to Fannie Mae, in care of the servicer at the servicer's address for receipt of notices. The assignment must be prepared and provided to the law firm in the referral package.

Fannie Mae will not reimburse the servicer for any expense incurred in preparing or recording an assignment of the mortgage loan from MERS to the servicer or to Fannie Mae. If the borrower reinstates the mortgage loan prior to completion of the foreclosure proceedings, re-assigning and re-registering the mortgage loan with MERS will be at the discretion and expense of the servicer.

The servicer must consult with the law firm to determine if any other legal requirements apply when conducting foreclosures of mortgage loans in which MERS is the prior mortgagee of record. See *Additional Required Foreclosure Referral Documents* in E-1.1-02, Required Referral Documents for additional information regarding MERS and proper assignments.

E-3.2-10, Paying Certain Expenses During the Foreclosure Process (11/12/2014)

The servicer must use any funds remaining in the borrower's escrow deposit account to pay taxes and insurance premiums that come due during the foreclosure process. The servicer also may use escrow funds to pay costs for the protection of the security and related foreclosure costs as long as state or local laws, government regulations, or the requirements of the mortgage insurer or guarantor do not preclude the use of escrow funds for these purposes. If the escrow balance is not sufficient to cover these expenses, the servicer must advance its own funds. See also *Advancing*

Document Ownership	Document Execution Submission Without LPOA or Servicer Unable to Execute	For Inquiries OR If Required Delivery Method is Email	Delivery Address when an Original is Required to be Mailed
	• All other documents		
NSO — Loss Mitigation	Partial Release of Security	partial_releases@fanniemae.com	Fannie Mae NSO, Loss Mitigation 14221 Dallas Parkway Suite 1000 Dallas, TX 75254

F-1-14, Post-Delivery Servicing Transfers (11/12/2014)

Introduction

This Servicing Guide Procedure includes the following:

- Requesting Fannie Mae Approval
- Special Notifications to the Transferee Servicer
- Notifying Third Parties
- Transfer of Individual Mortgage Loan Files and Portfolio Information
- Submission of Final Accounting Reports/Remittances
- Preparing Mortgage Loan Assignments
- Transfer of Custodial Documents

Requesting Fannie Mae Approval

Transfer of Mortgage Loans

As required in *Requesting Fannie Mae Approval* in A2-7-03, Post-Delivery Servicing Transfers, the servicer must submit the appropriate information to request Fannie Mae's approval of the transfer of servicing, including servicing transfers involving a subservicer.

When requesting approval to transfer servicing, the transferor or transferee servicer or subservicer must submit the information in the following table to Fannie Mae.

✓	**The transferor or transferee servicer or subservicer must submit to Fannie Mae...**
	A fully completed *Request for Approval of Servicing or Subservicing Transfer* (Form 629) in an electronic format to Servicing Transfers Group at servicing_transfers@fanniemae.com at least 60 days before the proposed transfer date.
	A check for a nonrefundable $500 processing fee to the address referenced on Form 629 noting the names of the transferor and transferee servicers, and subservicer, and the proposed transfer date.

The transfer and sale dates must be included on Form 629 . The transfer date refers to the date on which the physical transfer of the servicing (or subservicing) responsibilities from the transferor servicer (or subservicer, as the case may be) to the transferee servicer (or subservicer) occurs. It may not necessarily be the same date as the sale date identified in a servicing transfer agreement. The sale date is the date on which the ownership of the servicing rights and the legal liability for the servicing of the Fannie Mae mortgage loans transfer from one servicer to another.

Note: While Fannie Mae requires the transferring parties to identify the sale date associated with a servicing transfer, Fannie Mae's approval will only be issued as to the transfer date.

Mortgage Loans in a Fannie Mae Majors

As required in *Requesting Fannie Mae Approval* in A2-7-03, Post-Delivery Servicing Transfers, the servicer must submit the appropriate information to request Fannie Mae's approval of the transfer of servicing.

The transferee servicer must take the actions described in the following table for reporting on the transferred mortgage loans if any of the mortgage loans for which servicing is to be transferred are in MBS pools that are part of a Fannie Mae Majors multiple pool and the transferee servicer is already servicing mortgage loans in the same Majors pool.

If the mortgage loan being transferred...	**Then the transferee servicer...**
has the same remittance type and date	may report the transferred mortgage loans under the same nine-digit Fannie Mae lender identification number that it currently uses.
has a different remittance type or date	must contact its Fannie Mae Servicing Representative (see F-4-03, List of Contacts) to request a new branch lender identification number.

Special Notifications to the Transferee Servicer

As required in *Obligations of the Transferor and Transferee Servicers* and *Special Notifications to the Transferee Servicer* in A2-7-03, Post-Delivery Servicing Transfers, the transferor servicer must provide special notification to the transferee servicer when a transfer of servicing include a mortgage loan

- modified under HAMP and/or 2MP,
- an eMortgage, or
- a mortgage loan subject to resale restrictions regardless of whether the restrictions survive foreclosure or acceptance of a Mortgage Release (deed-in-lieu of foreclosure).

When a Servicing Transfer Includes a Mortgage Loan Modified Under HAMP, 2MP or an eMortgage

For a mortgage loan modified under HAMP/2MP or an eMortgage, the transferor servicer must take the actions described in the following table.

✓	**The transferor servicer must...**
	Advise the transferee servicer that a mortgage loan modified under HAMP/2MP or an eMortgage is part of the portfolio being transferred.
	Confirm that the transferee servicer • is aware of the special requirements for these mortgage loans, and • agrees to assume the additional responsibilities associated with servicing these mortgage loans.

When a Servicing Transfer Includes a Mortgage Loan Subject to Resale Restrictions

For a mortgage loan subject to resale restrictions, the transferor servicer must take the actions described in the following table.

✓	**The transferor servicer must...**
	Identify each mortgage loan subject to resale restrictions on the Form 629
	Confirm that the transferee servicer is aware of its duties and obligations related to the servicing of a mortgage loan subject to resale restrictions.

Notifying Third Parties

As described in *Notifying Third Parties* in A2-7-03, Post-Delivery Servicing Transfers, the transferor and transferee servicers must take certain actions to ensure that all servicing functions that involve third parties will continue uninterrupted (or discontinued, if appropriate) after the transfer of servicing.

The following table describes the actions the transferor or transferee servicer must take to ensure that all servicing functions that involve third parties will continue uninterrupted (or discontinued, if appropriate) after the transfer of servicing.

✓	**The transferor or transferee servicer must...**
	Fulfill all requirements of each mortgage insurance policy that insures any conventional mortgage loans included in the transfer — including, but not limited to, the requirements for providing timely notification or requesting prior approval — to ensure the continuation of the MI coverage. If the current mortgage insurer will not provide continuing coverage following the servicing transfer, the transferee servicer must find another mortgage insurer to provide MI coverage that is equivalent to the previous coverage — at no increased cost to the borrower or Fannie Mae — and obtain that mortgage insurer's written commitment to provide the required coverage.
	Fulfill all requirements of FHA, VA, RD, or HUD — including, but not limited to, providing timely notification or requesting prior approval — to ensure the continuation of the mortgage insurance or mortgage loan guaranty, if applicable.
	Notify the hazard, flood, earthquake, other property insurance carriers, as applicable, to request a policy endorsement to substitute the transferee servicer's name in the mortgagee clause and to change the premium billing address to that of the transferee servicer (unless the borrower pays the premium directly).
	Notify any tax or flood service provider and any optional insurance provider (or other products that are providing coverage) that the transferor servicer used for any of the mortgage loans that are being transferred to indicate whether the transferee servicer will continue using its services.
	Send appropriate notices of the transfer of servicing (providing the transferee servicer's name and address) to taxing authorities, holders of leaseholds, HOAs, and other lien holders. Any public utilities that levy mandatory assessments for which funds are being escrowed also must be notified.

✓	**The transferor or transferee servicer must...**
	Notify any law firm involved in the management of foreclosure or other legal action in connection with the mortgage loans or acquired properties.
	Notify the current document custodian of the pending transfer of servicing and make arrangements for the prompt and safe transfer of the custodial documents to the document custodian designated by the transferee servicer, in accordance with requirements in the *Servicing Guide.*

Transfer of Individual Mortgage Loan Files and Portfolio Information

As described in *Transfer of Individual Mortgage Loan Files and Portfolio Information* in A2-7-03, Post-Delivery Servicing Transfers, the transferor servicer must deliver the following specific information to the transferee servicer.

The following table describes the information that must be delivered to the transferee servicer.

✓	**The transferor servicer must deliver to the transferee servicer...**
	Documentation evidencing each mortgage insurer's approval of the servicing transfer or its commitment to insure the transferred mortgage loans, or a copy of the mortgage insurer's master policy evidencing that it is permissible to transfer servicing of insured mortgage loans without the mortgage insurer's prior approval.
	A list of any conventional mortgage loans that have borrower-paid or lender-purchased MI (identifying the applicable premium rates and the due date of the next premium payment) and an explanation of the premium payment obligations and claim payment procedures that apply to them.
	A list of any eMortgages that are part of the portfolio being transferred.
	Copies of any tax or flood service contracts that will remain in effect, or notification that the contracts will be transferred to the transferee servicer by a tape process.
	A list of tax bills, assessments, property insurance premiums, mortgage insurance premiums, etc. that are due to be paid by the servicer, but that are still unpaid as of the transfer date.
	A list of the expiration dates and premium payment frequencies for property insurance, and MI policies, as applicable, related to each mortgage loan being transferred, whether or not premiums for these policies are escrowed.
	A list of mortgage loans that have optional insurance and other insurance products that will remain in effect.

✓	**The transferor servicer must deliver to the transferee servicer...**
	A list of mortgage loans that are subject to automatic drafting of the monthly payments.
	A list of ARM loans, showing the plan identification and parameters, the index used, the next interest rate change date, the next payment change date, the dates on which any fixed rate conversion option may be exercised, and the current status of any changes in process.
	Transaction and payment histories for the life of the mortgage loans
	Trial balances, as of the close of business on the day immediately preceding the transfer date showing • the remittance type for each mortgage loan (actual/actual, scheduled/actual, or scheduled/scheduled); • the remittance cycle for each MBS mortgage loan (standard, Rapid Payment Method, or MBS Express); • Fannie Mae's applicable ownership interest if it holds only a participation percentage in the mortgage loan; • applicable pool number for MBS mortgage loans; • delinquencies, foreclosure, bankruptcies, and acquired properties; • transfers of ownership, payoffs, and other exception transactions that are in process, including mortgage loan modification-related transactions; • escrow balances, escrow advances, curtailments, unapplied funds, loss drafts; and • buydown account balances for mortgage loans subject to temporary interest rate buydown plans.
	A copy of the custodial bank reconciliation for each custodial bank account maintained as of the cutoff date (if the transferor servicer is unable to complete this reconciliation by the transfer date, it should complete the reconciliation as promptly as possible and send it to the transferee servicer within 5 business days after the transfer date).
	Copies of all investor accounting reports that were filed with Fannie Mae for the 3 months that immediately precede the cutoff date.

✓	**The transferor servicer must deliver to the transferee servicer...**
	A reconciliation of any outstanding shortage/surplus balance and over/under collateralized MBS pools, if applicable, related to the mortgage loans being transferred as of the last reporting period of Fannie Mae's investor reporting system.
	Definitions of codes used in ledger records, trial balances, or any other documents that are being forwarded to the transferee servicer.
	Escrow Analyses.
	All information relating to delinquency management and default prevention.
	Copies of all documents including items held by a document custodian, and all other documents pertinent to servicing the mortgage loans including mortgage loan modification agreements.
	All customer correspondence and responses, including borrower complaints and escalated cases.
	The title policies or alternative title products.
	A list of each mortgage loan that is in the process of foreclosure or for which the borrower has filed bankruptcy, including the Fannie Mae loan number and the name and address of the law firm handling the foreclosure or bankruptcy.
	Information and records for any mortgage loans that are in foreclosure, bankruptcy, or a workout status and for any properties that Fannie Mae acquired by foreclosure or acceptance of a Mortgage Release [(deed-in-lieu of foreclosure) (if Fannie Mae has not sold them by the transfer date)]. **Note:** If the original mortgage loan custodial documents are not part of the individual mortgage loan file that is being transferred, the transferor servicer must provide a list showing the name of the party that is in possession of the original mortgage note.
	All pertinent information related to the status of any mortgage loan for which a workout option is being pursued.
	A list of any acquired properties for which it is performing administrative functions — such as paying taxes or performing property maintenance if the responsibilities for these functions will be transferred to the transferee servicer. The list must identify each property by the Fannie Mae loan number and include a history of the transferor servicer's actions from the date the property was acquired (including information about expenditures, receipts, and management and marketing activities) and provide the appropriate documentation.

✓	**The transferor servicer must deliver to the transferee servicer...**
	Information on any mortgage loan or acquired property being transferred that is the subject of litigation at the time of the transfer, including all records pertaining to such litigation (including court filings, disclosure requests and responses, and preliminary rulings).

Transfer of P&I and T&I Funds

As required in A4-1-02, Establishing Custodial Bank Accounts, the servicer is responsible for the safekeeping of custodial funds at all times. The transferor servicer must forward to the transferee servicer all P&I and T&I custodial account balances including, but not limited to,

- unremitted P&I collections;
- escrow funds;
- unapplied funds;
- loss drafts;
- accruals on deposit — for example, for the payment of future renewal premiums for lender-purchased mortgage insurance; and
- buydown funds.

If the transferor servicer has advanced delinquent interest or scheduled P&I to Fannie Mae, the transferee servicer must reimburse the transferor servicer once it receives a final accounting of all monies from the transferor servicer.

All new amounts owed must be paid to the appropriate party promptly, as agreed by the parties.

Submission of Final Accounting Reports/Remittances

As described in *Submission of Final Accounting Reports/Remittances* in A2-7-03, Post-Delivery Servicing Transfers, the transferor servicer must submit the monthly LAR for the month that includes the transfer date.

When the servicing is transferred for individual mortgage loans in an MBS pool, the pool will be subdivided, with the mortgage loans transferred to the transferee servicer being grouped into a new supplemental pool and the mortgage loans that were not transferred remaining in

the original pool. In the month of the transfer date, the transferor servicer will be contractually responsible for

- reporting the monthly LAR for all mortgage loan activity processed on the mortgage loans in the original pool,
- reporting that month's MBS pool security balances if any of the transferred mortgage loans are in MBS pools, and
- ensuring that sufficient funds to satisfy that month's remittance obligation (including MBS pool guaranty fees) are available for drafting on the scheduled remittance date for the pool. However, the transferor and transferee servicers may agree that the transferee servicer will make the actual remittance to Fannie Mae.

In the month following the transfer date, the transferor servicer will be responsible for reporting the monthly LAR applicable to mortgage loans remaining in the original MBS pool after the transfer, and the transferee servicer will be responsible for reporting the monthly LAR applicable to the transferred mortgage loans in the newly created supplemental MBS pool. Each of the servicers will be responsible for reporting that month's MBS pool security balances for their respective share of the original MBS pool(s).

The transferor servicer must provide the transferee servicer with copies of its Fannie Mae investor reporting system shortage/surplus reconciliations and the pool-to-security balance reconciliations for the final monthly accounting period for all mortgage loans and MBS pools included in the servicing transfer. The two servicers should agree on how to resolve any differences and reconcile items or funds that are owned Fannie Mae and security holders. (Any questions regarding these issues must be directed to the transferor servicer's Fannie Mae Investor Reporting Representative.)

If, after reconciling the final shortage/surplus balance, the transferor servicer determines that Fannie Mae needs to process a shortage/surplus adjustment, the transferor servicer must send to its Fannie Mae Investor Reporting Representative (see F-4-03, List of Contacts) a copy of the final shortage/surplus reconciliation along with adequate documentation to support the requested adjustment. The adjustment must be requested within 30 days after the transfer date. The transferee servicer will be responsible for any Fannie Mae investor reporting system shortages or MBS security balance deficiencies related to mortgage loans or pools included in the transfer that are not promptly resolved by the transferor servicer.

Preparing Mortgage Loan Assignments

As described in *Preparing Mortgage Assignments* in A2-7-03, Post-Delivery Servicing Transfers, the transferee servicer must prepare and deliver a recorded mortgage assignment to the

applicable document custodian for all mortgage loans subject to a transfer of servicing within six months of the transfer date.

Any required assignment that is submitted to the document custodian(s) must be identified by the applicable Fannie Mae loan number and submitted under cover of a transmittal letter than includes the following information:

- the name of the transferor servicer;
- the name of the transferee servicer;
- the number of mortgage loans included in the transfer, as well as the number of mortgage loans for which recordable (but unrecorded) assignments to Fannie Mae have been executed;
- the transfer date; and
- a trial balance of the transferred mortgage loans, which identifies the mortgage loans for which assignments to Fannie Mae are being provided (or, if only a few mortgage loans are being transferred, a list of the transferred mortgage loans for which assignments are being provided).

Fannie Mae is the Owner of Record

A new mortgage loan assignment does not need to be prepared if the assignment to Fannie Mae has been recorded. A mortgage loan for which Fannie Mae is the owner of record would be one of the following:

- a mortgage loan that was delivered to Fannie Mae before it converted to the Fannie Mae investor reporting system in 1984 (regardless of the location of the security property);
- a mortgage loan that is secured by a property located in Mississippi or Utah, if the mortgage loan was delivered to Fannie Mae during the period that Fannie Mae required recorded assignments for a Mississippi mortgage loan (after September 1, 1988, until June 7, 1989) or for a Utah mortgage loan (after September 1, 1988, until October 31, 1991); or
- a mortgage loan for which Fannie Mae requested recordation of the assignment (for any reason) after it purchased or securitized the mortgage loan.

Fannie Mae is Not the Owner of Record and the Mortgage Loan is Not Registered with MERS

An assignment from the transferor servicer to the transferee servicer must be prepared and recorded if an assignment to Fannie Mae has not been recorded for a mortgage loan that is not registered with the MERS. The transferor servicer has full responsibility for recording an

assignment from the transferor servicer to the transferee servicer. (Blanket assignments may be used for the assignment, as long as the coverage for each blanket assignment is restricted to a single recording jurisdiction.) Fannie Mae will hold both the transferor servicer and the transferee servicer accountable for ensuring all assignments are prepared and recorded appropriately. An assignment from the transferee servicer to Fannie Mae must be prepared (in recordable form, but not recorded) to replace the one Fannie Mae had originally received from the transferor servicer. This unrecorded assignment from the transferee servicer to Fannie Mae must be an individual assignment. The unrecorded assignment to Fannie Mae must be delivered to the applicable document custodian within six months of the transfer date.

> **Note:** Generally, when a transferred mortgage loan is secured by a property located in Puerto Rico, neither an assignment of the mortgage loan from the transferor servicer to the transferee servicer nor an unrecorded assignment from the transferee servicer to Fannie Mae will need to be prepared and recorded.

Fannie Mae is Not the Owner of Record and the Mortgage Loan is Registered with MERS

Generally, when the servicing of a MERS-registered mortgage loan is transferred to a servicer that is not a MERS member (or to a servicer that elects not to continue the MERS registration for the mortgage loan), Fannie Mae requires

- the transferor servicer to prepare an assignment of the mortgage loan from MERS to the transferee servicer and have it executed and recorded,
- the transferor servicer to "deactivate" the Mortgage Identification Number (MIN) in the MERS system for reason: "Transfer to Non-MERS Status", and
- the transferee servicer to prepare a recordable (but unrecorded) assignment of the mortgage loan from itself to Fannie Mae and to deliver it to the applicable document custodian.

Transfer of Custodial Documents

If the transferee servicer continues to store the custodial documents with the existing document custodian, it must execute the *Master Custodial Agreement* (Form 2003) , in accordance with *Documentation of the Document Custodian Relationship* in A2-6-02, Document Custodians. If the transferee servicer already has a master custodial agreement on file with that document custodian, the transferee servicer must obtain an *MBS Custodian Recertification* (Form 2002) in connection with the servicing transfer within six months of the transfer date.

If Fannie Mae's DDC is already holding the custodial documents for the mortgage loans that are being transferred, Fannie Mae will update its records to reflect the new servicer and accept any

new unrecorded assignment of the mortgage loan to Fannie Mae from the transferee servicer, if applicable, without charging any additional fees.

The transferee servicer and the transferor servicer must work out appropriate arrangements for paying the costs of transferring the documents and obtaining the required pool recertification in an expeditious manner. MBS pool documents that will be held by a new document custodian or by the transferee servicer must be recertified, and a Form 2002 must be completed and submitted to the transferee servicer's lead Fannie Mae office within six months of the transfer date.

When Fannie Mae's DDC Transfers Custodial Documents to a New Document Custodian

If Fannie Mae's DDC will need to transfer custodial documents for MBS mortgage loans that it is holding to a new document custodian, the transferee servicer must notify Fannie Mae at least 45 days before the date that it wants to physically transfer the documents. The notification must

- state its intent to transfer the documents to a new custodian as the result of a transfer of servicing,
- specify the approximate number of mortgage loans for which documents will be transferred,
- indicates the desired date for shipping the documents to the new custodian, and
- provide the names and telephone numbers of the contact persons for the transferee servicer and the new document custodian

This advance notification must be sent to Fannie Mae's Bulk-Out Transfer division, 13150 Worldgate Drive, Herndon, VA 20170.

Fannie Mae will provide additional instructions for handling these "bulk-out" transfers — including the format for electronic requests for document release — after it has reviewed the servicer's advance notification.

When Fannie Mae's DDC Will be Receiving Custodial Documents

If Fannie Mae's DDC will be receiving documents from an existing document custodian, the transferee servicer must notify Fannie Mae at least 30 days before the date that it wants to physically transfer the documents. The notification must

- state its intent to transfer the documents to the DDC as a result of a transfer of servicing,
- specify whether the transfer relates to an entire servicing portfolio or to only certain individual mortgage loans,

- indicate the desired date for delivering the documents to the DDC, and
- provide the names and telephone numbers of the contact person for the transferee servicer and the current document custodian.

This advance notification must be sent to Fannie Mae, Region Code (A, C, D, L, or P, as required to identify the transferee servicer's lead Fannie Mae regional office, MBS Bulk-In Transfer, 13150 Worldgate Drive, Herndon, VA 20170. Fannie Mae will provide additional instructions for handling these "bulk-in" transfers — including the record layout for the electronic transfer tape — after it has reviewed the servicer's advance notification.

Custodial Documents for Participation Pool Mortgage Loans

For participation pool mortgage loans that Fannie Mae holds in its portfolio, any original mortgage notes that the transferor servicer has in its possession must be transferred to Fannie Mae's DDC for permanent retention no later than 30 days after the transfer date. To ensure that the transferred documents are appropriately identified, a label showing the Fannie Mae loan number must be affixed to the notes. The documents that are being turned over to Fannie Mae for custody also must be annotated on the trial balance that is submitted to Fannie Mae in connection with the servicing transfer.

F-1-15, Preparing to Implement a Workout Option (11/12/2014)

Introduction

This Servicing Guide Procedure contains the following:

- Evaluating the Borrower Using Imminent Default Indicator
- Processing the IRS Form 4506T-EZ or IRS Form 4506–T
- Notifying Fannie Mae of Lead-Based Paint Citations

Evaluating the Borrower Using Imminent Default Indicator

The servicer must evaluate a borrower using the imminent default evaluation in accordance with D2-1-02, Using Freddie Mac's Imminent Default Indicator.

EXHIBIT “C”

EXHIBIT “C”

Lender Letter LL-2015-04

September 16, 2015

To: All Fannie Mae Single-Family Servicers

Nevada HOA Litigation

Servicer Reliance on HERA: Nevada Properties

On September 18, 2014, the Nevada Supreme Court held that a homeowners association's non-judicial foreclosure of a "super-priority" lien could extinguish an existing first deed of trust. *See SFR Investments v. U.S. Bank* (Nev. 2014). In response, the Federal Housing Finance Agency (FHFA), Fannie Mae, Freddie Mac, and various GSE servicers have asserted in litigation that the Housing and Economic Recovery Act of 2008 (HERA), prohibits the extinguishment of GSE liens absent FHFA's consent as conservator of the GSEs.

FHFA's Statement on Servicer Reliance on HERA

For reference, attached is the Servicer Reliance on HERA in Foreclosures Involving Homeownership Associations statement issued by FHFA on August 28, 2015, regarding servicers' reliance on HERA in connection with Nevada "super-priority" lien foreclosures and related HOA litigation.

Servicer Obligation to Escalate All Non-Routine Litigation

Fannie Mae reminds the servicer to escalate via submission of the *Non-Routine Litigation Form* (Form 20) as specified in *Servicing Guide* E-1.3-01, General Servicer Responsibilities for Non-Routine Matters all non-routine litigation involving actions that challenge the validity, priority, or enforceability of a Fannie Mae mortgage loan or that seek to impair Fannie Mae's interest in an acquired property.

Additionally, *Servicing Guide* E-1.3-02, Reporting Non-Routine Litigation to Fannie Mae specifies servicers must report non-routine litigation to Fannie Mae within two business days of the servicer receiving notice of the litigation.

*****

The servicer should contact its Servicing Consultant, Portfolio Manager, or Fannie Mae's Credit Portfolio Management's Servicer Support Center at 1-888-FANNIE5 (1-888-326-6435) with any questions regarding this Lender Letter.

Malloy Evans
Vice President
Credit Portfolio Management

Federal Housing Finance Agency

August 28, 2015

Servicer Reliance on the Housing and Economic Recovery Act of 2008 in Foreclosures Involving Homeownership Associations

As noted in the December 22, 2014 and April 21, 2015 statements on certain super-priority liens, the Federal Housing Finance Agency has an obligation to protect Fannie Mae's and Freddie Mac's property rights. FHFA will aggressively do so by bringing or supporting actions to contest common ownership association (commonly known as HOAs) foreclosures that purport to extinguish Enterprise property interests in a manner that contravenes federal law.

This statement confirms that FHFA supports the reliance on Title 12 United States Code Section 4617(j)(3) in litigation by authorized servicers of the Enterprises to preclude the purported involuntary extinguishment of an Enterprise's property interest by an HOA foreclosure sale.

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency

EXHIBIT “D”

EXHIBIT “D”

Inst #: 20150112-0002436
Fees: $17.00
N/C Fee: $0.00
01/12/2015 01:18:02 PM
Receipt #: 2279330
Requestor:
FIRST PRIORITY TITLE SERVIC
Recorded By: ANI Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN # 176-05-414-199
N77113

NOTICE OF DELINQUENT ASSESSMENT LIEN

In accordance with Nevada Revised Statutes and the Association's declaration of Covenants Conditions and Restrictions (CC&Rs), recorded on October 31, 2002, as instrument number 04692 Book 20021031, of the official records of Clark County, Nevada, and as amended, the The Falls Condominiums(aka The Falls @ Rhodes Ranch) has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as 9050 W. Warm Springs Road #2079 Las Vegas, NV 89148 particularly legally described as: APACHE SPRINGS CONDO AMD, PLAT BOOK 107, PAGE 37, UNIT 2079, BLDG 25 in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are):
James P Markey

Mailing address(es):
C/O John Voican 998 Prescot NW Massillon, OH 44646

*Total amount due as of today's date is $1,616.35.

This amount includes late fees, collection fees and interest in the amount of $791.42

* Additional monies will accrue under this claim at the rate of the claimant's regular assessments or special assessments, plus permissible late charges, any other permissible charges, costs of collection and interest, accruing after the date of the notice.

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

Dated: January 10, 2015

By Megan Molina, of Nevada Association Services, Inc., as agent for The Falls Condominiums(aka The Falls @ Rhodes Ranch)

When Recorded Mail To:
Nevada Association Services
TS # N77113
6224 W. Desert Inn Rd, Suite A
Las Vegas, NV 89146
Phone: (702) 804-8885 Toll Free: (888) 627-5544

EXHIBIT “E”

EXHIBIT “E”

Inst #: 20150421-0003050
Fees: $18.00
N/C Fee: $0.00
04/21/2015 03:12:46 PM
Receipt #: 2393339
Requestor:
FIRST PRIORITY TITLE SERVIC
Recorded By: LEX Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN # 176-05-414-199
NAS # N77113
First Priority Title Service # 735337
Property Address: 9050 W. Warm Springs Road #2079

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

IMPORTANT NOTICE

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

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

This amount is $2,374.63 as of April 20, 2015 and will increase until your account becomes current.

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

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

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

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

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

NAS # N77113

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

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

NOTICE IS HEREBY GIVEN THAT NEVADA ASSOCIATION SERVICES, INC.

is the duly appointed agent under the previously mentioned Notice of Delinquent Assessment Lien, with the owner(s) as reflected on said lien being James P Markey, dated January 10, 2015, and recorded on January 12, 2015 as instrument number 0002436 Book 20150112 in the official records of Clark County, Nevada, executed by The Falls Condominiums(aka The Falls @ Rhodes Ranch), and as amended, hereby declares that a breach of the obligation for which the Covenants Conditions and Restrictions, recorded on October 31, 2002, as instrument number 04692 Book 20021031, as security has occurred in that the payments have not been made of homeowner's assessments due from 7/1/2014 and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, trustee's fees and costs, attorney's fees and costs and Association fees and costs.

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

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

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

Legal_Description: APACHE SPRINGS CONDO AMD, PLAT BOOK 107, PAGE 37, UNIT 2079, BLDG 25 in the County of Clark

Dated: April 20, 2015

Pearl Agustin

By: Pearl Agustin, of Nevada Association Services, Inc.
on behalf of The Falls Condominiums(aka The Falls @ Rhodes Ranch)

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

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose. Please be advised that this document constitutes neither a demand for payment of the referenced debt nor a notice of personal liability to any recipient hereof who might have received a discharge of such debt in accordance with applicable bankruptcy laws or who might be subject to the automatic stay of Section 362 of the United States Bankruptcy Code. This notice is being sent to any such parties merely to comply with applicable state law governing foreclosure of liens pursuant to Chapter 116 of Nevada Revised Statutes.

EXHIBIT “F”

EXHIBIT “F”

Inst #: 20150909-0001506
Fees: $18.00
N/C Fee: $0.00
09/09/2015 01:19:50 PM
Receipt #: 2548557
Requestor:
FIRST PRIORITY TITLE SERVIC
Recorded By: TAH Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only and avoid printing in the 1" margins of document)

APN# 176-05-414-199

(11 digit Assessor's Parcel Number may be obtained at: http://redrock.co.clark.nv.us/assrealprop/ownr.aspx)

TITLE OF DOCUMENT
(DO NOT Abbreviate)

Notice of Foreclosure Sale

Document Title on cover page must appear EXACTLY as the first page of the document to be recorded.

RECORDING REQUESTED BY:

Nevada Association Services

RETURN TO: Name Nevada Association Services

Address 6224 W. Desert Inn Road

City/State/Zip Las Vegas, NV 89146

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name

Address

City/State/Zip

This page provides additional information required by NRS 111.312 Sections 1-2.
An additional recording fee of $1.00 will apply.
To print this document properly—do not use page scaling.

APN # 176-05-414-199 NAS # N77113
The Falls Condominiums(aka The Falls @ Rhodes Ranch)

NOTICE OF FORECLOSURE SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL NEVADA ASSOCIATION SERVICES, INC. AT (702) 804-8885. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

YOU ARE IN DEFAULT UNDER A DELINQUENT ASSESSMENT LIEN, January 10, 2015. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE IS HEREBY GIVEN THAT on 10/9/2015 at 10:00 am at the front entrance to the Nevada Legal News, 930 So. Fourth Street, Las Vegas, Nevada, under the power of sale pursuant to the terms of those certain covenants conditions and restrictions recorded on October 31, 2002 as instrument number 04692 Book 20021031 of official records of County of Clark County, and as amended, Nevada Association Services, Inc., as duly appointed agent under that certain Delinquent Assessment Lien, recorded on January 12, 2015 as document number 0002436 Book 20150112 of the official records of said county, will sell at public auction to the highest bidder, for lawful money of the United States, all right, title, and interest in the following commonly known property known as: 9050 W. Warm Springs Road #2079, Las Vegas, NV 89148. Said property is legally described as: APACHE SPRINGS CONDO AMD, PLAT BOOK 107, PAGE 37, UNIT 2079, BLDG 25, official records of County of Clark County, Nevada.

The owner(s) of said property as of the date of the recording of said lien is purported to be: James P Markey

The undersigned agent disclaims any liability for incorrectness of the street address and other common designations, if any, shown herein. The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, or encumbrances, or obligations to satisfy any secured or unsecured liens. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is $3,259.91. Payment must be in cash or a cashier's check drawn on a state or national bank, check drawn on a state or federal savings and loan association, savings association or savings bank and authorized to do business in the State of Nevada. The Notice of Default and Election to Sell the described property was recorded on 4/21/2015 as instrument number 0003050 Book 20150421 in the official records of County of Clark County.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose. Please be advised that this document constitutes neither a demand for payment of the referenced debt nor a notice of personal liability to any recipient hereof who might have received a discharge of such debt in accordance with applicable bankruptcy laws or who might be subject to the automatic stay of Section 362 of the United States Bankruptcy Code. This notice is being sent to any such parties merely to comply with applicable state law governing foreclosure of liens pursuant to Chapter 116 of Nevada Revised Statutes.

September 4, 2015

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

When Recorded Mail To:
Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146

By: Elissa Hollander, Agent for Association and employee of Nevada Association Services, Inc.

EXHIBIT “G”

EXHIBIT “G”

Inst #: 20151123-0001792
Fees: $19.00
N/C Fee: $0.00
11/23/2015 11:58:26 AM
Receipt #: 2616731
Requestor:
FIRST PRIORITY TITLE SERVIC
Recorded By: ECM Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:
Nevada Association Services, Inc.
6224 W. Desert Inn Road
Las Vegas, Nevada 89146

SPACE ABOVE LINE FOR RECORDER'S USE

APN#: 176-05-414-199 Property Address: 9050 W. Warm Springs Road #2079, Las Vegas, NV 89148

CERTIFICATE OF FORECLOSURE SALE SUBJECT TO REDEMPTION

The undersigned trustee declares:
1) The successful bidder at foreclosure was: **Saticoy Bay LLC Series 9050 W. Warm Springs 2079.**
2) The amount of the unpaid debt and initial price bid together with costs was: **$4,364.23.**
3) The amount paid by the successful bidder at the trustee sale was: **$48,600.00.**
4) The County of Clark County, Nevada

And Nevada Association Services, Inc.(herein called Trustee), as the duly appointed Trustee of **The Falls Condominiums aka The Falls @ Rhodes Ranch** (herein called the HOA) and under the Notice of Delinquent Assessment hereinafter described, has sold at public foreclosure auction on **November 20, 2015**, subject to redemption, but without covenant or warranty, express or implied, to: **Saticoy Bay LLC Series 9050 W. Warm Springs 2079** (herein called Purchaser), all of its right, title and interest in and to that certain property situated in the County of Clark, State of Nevada, commonly known as:

9050 W. Warm Springs Road #2079, Las Vegas, NV 89148

and legally described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

RECITALS:

This foreclosure sale is subject to a sixty day right of redemption from the Date of Sale of the foreclosure auction and was pursuant to the powers granted to the HOA and conferred upon an appointed trustee by the provisions of the Declaration of Covenants, Conditions, and Restrictions recorded on **October 31, 2002** as **Instrument no. 04692 Book no. 20021031** of Official Records in the Office of the Recorder of Clark County, Nevada and pursuant to Nevada Revised Statutes chapter 116 and that certain Notice of Delinquent Assessment Lien dated **January 10, 2015** and recorded on **January 12, 2015** as **Instrument no. 0002436 Book no. 20150112** of Official Records in the office of the Recorder of Clark County, State of Nevada, after fulfillment of the conditions specified in Nevada law, the above-described Declaration and said Notice of Delinquent Assessment authorizing foreclosure sale.

Said property was sold by said Trustee at public auction on the Date listed above at the place named in the Notice of Sale, in the County of Clark, Nevada, in which the property is situated. The Purchaser, being the highest bidder at

such sale became the Purchaser of said property, subject to a sixty-day right of redemption, and paid therefore to said trustee the amount bid, being **$48,600.000**, in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by said Notice of Delinquent Assessment.

Dated this day: **November 20, 2015**

Nevada Association Services, Inc.

By: _____
Elissa Hollander, TRUSTEE SALE OFFICER

STATE OF NEVADA
COUNTY OF CLARK

On NOV. 20, 2015 before me, a Notary Public, personally appeared, Elissa Hollander who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

_____

Y. K. ERSKINE
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 11-5-2017
Certificate No: 10-1051-1

EXHIBIT "A"

PARCEL NO. 1:

LIVING UNIT 2079, IN PHASE 10-BUILDING 25, AS SHOWN ON THE FINAL MAP FOR APACHE SPRINGS CONDOMINIUMS (A CONDOMINIUM DEVELOPMENT AND COMMON INTEREST COMMUNITY), RECORDED IN BOOK 105 OF PLATS, PAGE 25 AND AS AMENDED BY THAT CERTAIN AMENDED FINAL MAP FOR APACHE SPRINGS CONDOMINIUMS RECORDED IN BOOK 107 OF PLATS, PAGE 37, AND THEREAFTER CERTIFICATE OF AMENDMENT RECORDED IN BOOK 20030324 AS INSTRUMENT NO. 0670 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL NO. 2:

AN UNDIVIDED 1/360TH INTEREST INTO THAT PORTION OF THE COMMON AREA (CA) SHOWN AS PHASE 10 ON THE FINAL MAP FOR APACHE SPRINGS CONDOMINIUMS (A CONDOMINIUM DEVELOPMENT AND COMMON INTEREST COMMUNITY) RECORDED IN BOOK 105 OF PLATS, PAGE 25 ·AND AS AMENDED BY THAT CERTAIN AMENDED FINAL MAP FOR APACHE SPRINGS CONDOMINIUMS RECORDED IN BOOK 107 OF PLATS, PAGE 37, AND THEREAFTER CERTIFICATE OF AMENDMENT RECORDED IN BOOK 20030324 AS INSTRUMENT NO. 0670 AND AS SET FORTH IN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE FALLS CONDOMINIUMS RECORDED OCTOBER 31, 2002, IN BOOK 20021031 AS INSTRUMENT NO. 4692 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

EXHIBIT “H”

EXHIBIT “H”

Search Results Print

You searched under: **Parcel Number** for: **176-05-414-199** with the document types of: **ALL DOCUMENTS** between: **1/1/1900** and **6/13/2017**

Records found: 18

Refresh |

First Party Name	First Cross Party Name	Instrument #	Document Type	Modifier	Record Date	Parcel #	Remarks	Total Value
RHODES RANCH GENERAL PARTNERSHIP	RHODES DESIGN AND DEVELOPMENT CORP	200406150004597	NOTICE	COMPLETION	6/15/2004 1:58:36 PM	176-05-414-199		
RHODES RANCH GENERAL PARTNERSHIP	MARKEY, JAMES P	200406150004598	DEED		6/15/2004 1:58:36 PM	176-05-414-199		147520.0000
MARKEY, JAMES P	MARKEY, JAMES P	200406150004599	DEED		6/15/2004 1:58:36 PM	176-05-414-199		
MARKEY, JAMES P	COUNTRYWIDE HOME LOANS INC	200406150004600	DEED OF TRUST		6/15/2004 1:58:36 PM	176-05-414-199		
MARKEY, DEBORAH	MARKEY, JAMES P	200508100002193	DEED		8/10/2005 1:27:23 PM	176-05-414-199		
MARKEY, JAMES P	COUNTRYWIDE HOME LOANS INC	200508100002194	DEED OF TRUST		8/10/2005 1:27:23 PM	176-05-414-199		
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC	MARKEY, JAMES P	200508260000911	SUBSTITUTION/RECONVEYANCE		8/26/2005 9:14:15 AM	176-05-414-199		
MARKEY, DEBORAH	MARKEY, JAMES P	200510040003355	DEED		10/4/2005 1:37:46 PM	176-05-414-199		
MARKEY, JAMES P	COUNTRYWIDE HOME LOANS INC	200510040003356	DEED OF TRUST		10/4/2005 1:37:46 PM	176-05-414-199		
COUNTRYWIDE HOME LOANS INC	MARKEY, JAMES P	201302190000598	SUBSTITUTION/RECONVEYANCE		2/19/2013 8:08:46 AM	176-05-414-199		0.0000
MARKEY, JAMES P	QUICKEN LOANS INC	201304120000455	DEED OF TRUST		4/12/2013 8:05:15 AM	176-05-414-199		0.0000
COUNTRYWIDE HOME LAONS INC	QUICKEN LOANS INC	201307090001670	AGREEMENT	SUBORDINATE	7/9/2013 10:32:30 AM	176-05-414-199		0.0000
MARKEY, JAMES P	FALLS CONDOMINIUMS THE	201501120002436	LIEN		1/12/2015 1:18:02 PM	176-05-414-199		0.0000
MARKEY, JAMES P	FALLS CONDOMINIUMS THE	201504210003050	DEFAULT		4/21/2015 3:12:46 PM	176-05-414-199		0.0000

Refresh |

First Party Name	First Cross Party Name	Instrument #	Document Type	Modifier	Record Date	Parcel #	Remarks	Total Value
MARKEY, JAMES P	NEVADA ASSOCIATION SERVICES INC AGT	201509090001506	NOTICE	SALE	9/9/2015 1:19:50 PM	176-05-414-199		0.0000
FALLS CONDOMINIUMS THE	SATICOY BAY LLC SERIES 9050 W WARM SPRINGS 2079	201511230001792	CERTIFICATE	SALE	11/23/2015 11:58:26 AM	176-05-414-199		0.0000
QUICKEN LOANS INC	DITECH FINANCIAL LLC	201604280003296	ASSIGNMENT		4/28/2016 4:23:46 PM	176-05-414-199	NC: TEXT IN 1" BOTTOM RT MARGIN PGS 2-4.	0.0000
NEVADA ASSOCIATION SERVICES	SATICOY BAY LLC SERIES 9050 W WARM SPRINGS 2079	201607010002420	LIS PENDENS		7/1/2016 9:40:14 AM	176-05-414-199		0.0000

EXHIBIT “I”

EXHIBIT “I”

Brigette E. Foley

From: J.W. Thomson <johnwthomson@ymail.com>
Sent: Wednesday, June 14, 2017 3:19 PM
To: Brigette E. Foley
Subject: Fw: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

do you have all of these emails?

John W. Thomson, Esq.

LAW OFFICES OF JOHN W. THOMSON
2450 St. Rose Parkway, Suite 120
Henderson, Nevada 89074
Office: 702.478.8282
Fax: 702.541.9500

----- Forwarded Message -----
From: Chris Yergensen <chris@nas-inc.com>
To: "johnwthomson@ymail.com" <johnwthomson@ymail.com>
Sent: Wednesday, June 14, 2017 3:15 PM
Subject: FW: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

Chris Yergensen, Esq.
Nevada Association Services, Inc.
6224 W. Desert Inn Rd.
Las Vegas, NV 89146
www.nas-inc.com
702-804-8885 Office
702-804-8887 Fax

From: Chris Yergensen
Sent: Tuesday, April 11, 2017 12:36 PM
To: cadcts3889@gmail.com
Subject: Fwd: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

Sent from my iPhone

Begin forwarded message:

> **From:** John Voican <johnvoi@aol.com>
> **Date:** January 19, 2016 at 9:43:10 AM PST
> **To:** Chris Yergensen <chris@nas-inc.com>
> **Subject: Re: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079**
>
> Chris, we are unable to reach you by phone at your office. Please call me as soon as you get this. Thank you.
>
> John
> (330) 704-5997
>
> Sent from my iPhone
>
> On Jan 19, 2016, at 11:59 AM, Chris Yergensen <chris@nas-inc.com> wrote:
>
> > I have not seen the cashier's check in my office Is it being returned? Please confirm so that those interested parties can take appropriate action.
> >
> > Chris Yergensen, Esq.
> >
> > On Jan 15, 2016, at 3:04 PM, Michael Bohn <mbohn@bohnlawfirm.com> wrote:
> >
> > > The check you delivered is a check from NAS and you typed the owners name on it.
> > > The check was supposed to come from the owner, not you, and Eddie is not accepting it. He has directed me to send it back
> > >
> > > Do you wanna send over a new check that does not say NAS on it?
> > >
> > > MICHAEL F. BOHN, ESQ.
> > > Law Offices of
> > > Michael F. Bohn, Esq., Ltd.
> > > 376 East Warm Springs Road
> > > Suite 140
> > > Las Vegas, NV 89119

(702) 642-3113
(702) 642-9766 FAX
mbohn@bohnlawfirm.com

From: Chris Yergensen [mailto:chris@nas-inc.com]
Sent: Friday, January 15, 2016 2:32 PM
To: eddie haddad; Michael Bohn
Cc: O'Malley, Ryan; Markey, James
Subject: RE: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

Eddie:

Our runner delivered to Mr. Bohn's office today a cashier's check of the homeowner's funds of James Markey, the homeowner of the property referred to above. Mr. Markey had given to NAS explicit instructions to deliver the cashier's check to you as payment of the redemption price. I have a receipt that Mr. Bohn's office has received the cashier's check today.

Sincerely,

Chris Yergensen, Esq.
Nevada Association Services, Inc.
6224 W. Desert Inn Rd.
Las Vegas, NV 89146
www.nas-inc.com
702-804-8885 Office
702-804-8887 Fax

<image001.png> <image002.png> <image003.png> <image004.jpg>

From: eddie haddad [mailto:eddie@huelofts.com]
Sent: Tuesday, January 12, 2016 4:04 PM
To: Chris Yergensen <chris@nas-inc.com>; mbohn@bohnlawfirm.com
Subject: RE: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

Mickey, I don't have to accept a check from NAS. The redemption must come from either the prior owner or the bank or any other party who has an interest in the property. With that being said, if NAS would like to trust the borrower and release the surplus funds, and in turn the borrower submits the redemption payment, then so be it.
But the trustee/collection company has obligations, and one of them is not to participate in a redemption.
Once the sale takes place, the trustee washes their hands of the transaction, unless 60 days goes by with no redemption. At that point, a trustee is to issue a deed.
Please call Chris with what we had discussed last week.

Sincerely yours,
Eddie Haddad
702-491-5812

From: Chris Yergensen [mailto:chris@nas-inc.com]
Sent: Tuesday, January 12, 2016 11:19 AM
To: O'Malley, Ryan <Ryan.OMalley@BuckleyMadole.com>; eddie haddad <eddie@huelofts.com>
Cc: mbohn@bohnlawfirm.com; Benson, Candice <Candice.Benson@BuckleyMadole.com>; Gonzales, Michael <Michael.Gonzales@BuckleyMadole.com>
Subject: RE: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

Eddie:

NAS has received funds from the homeowner to redeem. NAS will have a check for you tomorrow in the amount of $49,984.15 to be picked up as the payment for the redemption.

Chris Yergensen, Esq.
Nevada Association Services, Inc.
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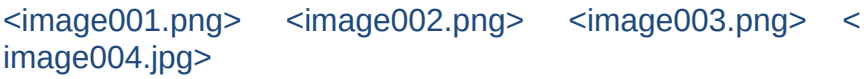
702-804-8887 Fax



From: O'Malley, Ryan [mailto:Ryan.OMalley@BuckleyMadole.com]
Sent: Tuesday, December 22, 2015 3:59 PM
To: eddie haddad <eddie@huelofts.com>
Cc: Chris Yergensen <chris@nas-inc.com>; mbohn@bohnlawfirm.com; Benson, Candice <Candice.Benson@BuckleyMadole.com>; Gonzales, Michael <Michael.Gonzales@BuckleyMadole.com>
Subject: RE: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

No worries (and I received Eddie's out of office e-mail – how dare he take Christmas week off!?).

We do need to move on this quickly, though. A month goes by fast, and we may need a little bit of time on our end to get things arranged. We'd like to have a solution in place that everyone's comfortable with, but our paramount concern is obviously protecting our client's interest. If we can't come to an agreement soon, we'll have to simply send out a payment (probably under the terms we articulated previously) and deal with any potential disagreements after-the-fact. We'd prefer to avoid that, as I'm sure you would.

Chris: Any further word on whether the borrower is seriously intending to redeem?

Ryan T. O'Malley
Associate Attorney
Buckley Madole, P.C.
1635 Village Center Circle, Suite 130
Las Vegas, Nevada 89134
(702) 425-7266 Direct
(702) 425-7269 Facsimile
Ryan.OMalley@BuckleyMadole.com
(Admitted in Nevada)

From: eddie haddad [mailto:eddie@huelofts.com]
Sent: Tuesday, December 22, 2015 3:48 PM
To: O'Malley, Ryan
Cc: Chris Yergensen; mbohn@bohnlawfirm.com; Benson, Candice; Gonzales, Michael
Subject: RE: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

I wish I had an answer, but Mickey is out on vacation.

Sincerely yours,
Eddie Haddad
702-491-5812

From: O'Malley, Ryan [mailto:Ryan.OMalley@BuckleyMadole.com]
Sent: Tuesday, December 22, 2015 3:47 PM
To: eddie haddad <eddie@huelofts.com>
Cc: Chris Yergensen <chris@nas-inc.com>; mbohn@bohnlawfirm.com; Benson, Candice <Candice.Benson@BuckleyMadole.com>; Gonzales, Michael <Michael.Gonzales@BuckleyMadole.com>
Subject: RE: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

Eddie: Circling back on this. Any update?

Ryan T. O'Malley
Associate Attorney
Buckley Madole, P.C.
1635 Village Center Circle, Suite 130
Las Vegas, Nevada 89134
(702) 425-7266 Direct
(702) 425-7269 Facsimile
Ryan.OMalley@BuckleyMadole.com
(Admitted in Nevada)

From: eddie haddad [mailto:eddie@huelofts.com]
Sent: Thursday, December 17, 2015 4:22 PM
To: O'Malley, Ryan
Cc: Chris Yergensen; mbohn@bohnlawfirm.com; Benson, Candice; Gonzales, Michael
Subject: Re: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

Fully understood. We have plenty of time

Sent from my iPhone

On Dec 17, 2015, at 4:20 PM, O'Malley, Ryan <Ryan.OMalley@BuckleyMadole.com> wrote:

Fair enough – please circle back with me after you've consulted with your attorney (or have Mickey contact me directly, if you'd prefer). We're just trying to avoid any issues with time pressure.

Ryan T. O'Malley
Associate Attorney
Buckley Madole, P.C.
1635 Village Center Circle, Suite 130
Las Vegas, Nevada 89134
(702) 425-7266 Direct
(702) 425-7269 Facsimile
Ryan.OMalley@BuckleyMadole.com
(Admitted in Nevada)

From: eddie haddad [mailto:eddie@huelofts.com]
Sent: Thursday, December 17, 2015 4:18 PM
To: O'Malley, Ryan
Cc: Chris Yergensen; mbohn@bohnlawfirm.com; Benson, Candice; Gonzales, Michael
Subject: Re: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

Not necessarily Ryan. Still reviewing with my attorney. We hope to get back to you very shortly.

Sent from my iPhone

On Dec 17, 2015, at 4:14 PM, O'Malley, Ryan <Ryan.OMalley@BuckleyMadole.com> wrote:

Eddie: Following up on the below. Does this sound acceptable to you?

Ryan T. O'Malley
Associate Attorney
Buckley Madole, P.C.
1635 Village Center Circle, Suite 130
Las Vegas, Nevada 89134
(702) 425-7266 Direct
(702) 425-7269 Facsimile
Ryan.OMalley@BuckleyMadole.com
(Admitted in Nevada)

From: O'Malley, Ryan
Sent: Wednesday, December 16, 2015 3:18 PM
To: eddie haddad
Cc: Chris Yergensen; mbohn@bohnlawfirm.com; Benson, Candice
Subject: RE: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

Thanks.

Suppose that we were send NAS a check for the amount of the lien/costs/fees, interest, and "reimbursement costs" set forth further down this e-mail chain, along with instructions to NAS to release any and all excess proceeds to you. NAS then waits for the borrower/occupant to tender a redemption. If the borrower does so, then our redemption payment will be refunded and NAS will record a certificate of redemption will be recorded in favor of the borrower/occupant. If the borrower/occupant doesn't redeem, then on day 61 NAS will record a certificate of redemption in our favor. In either case, the excess proceeds from the sale will be returned to you (which should be the entire purchase price including statutory interest).

Assuming that NAS would comply with such an arrangement, would that be an acceptable arrangement for you? We're happy to tender before the 60 days runs (and we will in fact do so), but I think NAS is worried about potentially stepping on the borrower's rights by issuing a redemption certificate before the 60 days expires. I'm trying to come up with an arrangement that appropriately protects everyone.

Ryan T. O'Malley
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(702) 425-7266 Direct
(702) 425-7269 Facsimile
Ryan.OMalley@BuckleyMadole.com
(Admitted in Nevada)

From: eddie haddad [mailto:eddie@huelofts.com]
Sent: Tuesday, December 15, 2015 12:49 PM
To: O'Malley, Ryan
Cc: Chris Yergensen; mbohn@bohnlawfirm.com; Benson, Candice
Subject: Re: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

It works the same as property taxes Ryan. If Clark County was getting ready to go to sale, you would be inclined to pay it first and then add it to your balance.

Sent from my iPhone

On Dec 15, 2015, at 12:18 PM, O'Malley, Ryan <Ryan.OMalley@BuckleyMadole.com> wrote:

Eddie: Do you have a position on this? What if the borrower intends to redeem before the 60 days ends? I'm inclined to think that the best course of action for my client is to tender a redemption payment before the 60 days and, if the borrower elects to redeem and tenders payment before the 60 days

ends, defer to the borrower and allow them to redeem (with a refund to us). I think the statute's language creates a "race" benefitting whoever redeems first, but we're disinclined to create a potential dispute with the borrower if we don't need to; better for us to just let the borrower redeem and proceed with foreclosure as usual. In any event, we don't want to be in the position of working out a settlement with you and then facing a dispute with the borrower.

Ryan T. O'Malley
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1635 Village Center Circle, Suite 130
Las Vegas, Nevada 89134
(702) 425-7266 Direct
(702) 425-7269 Facsimile
Ryan.OMalley@BuckleyMadole.com
(Admitted in Nevada)

From: Chris Yergensen [mailto:chris@nas-inc.com]
Sent: Tuesday, December 15, 2015 11:36 AM
To: eddie haddad; O'Malley, Ryan
Cc: mbohn@bohnlawfirm.com; Benson, Candice
Subject: RE: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

FYI. I received a certified letter from the homeowner of this property of his intention to redeem the property. He asked for a payoff amount, which I have provided to him via email.

Chris Yergensen, Esq.
Nevada Association Services, Inc.
6224 W. Desert Inn Rd.
Las Vegas, NV 89146
www.nas-inc.com
702-804-8885 Office
702-804-8887 Fax

From: eddie haddad [mailto:eddie@huelofts.com]
Sent: Tuesday, December 15, 2015 9:15 AM
To: O'Malley, Ryan <Ryan.OMalley@BuckleyMadole.com>; Chris Yergensen <chris@nas-inc.com>
Cc: mbohn@bohnlawfirm.com; Benson, Candice <Candice.Benson@BuckleyMadole.com>
Subject: RE: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

Please remember that if you took it to sale, you would not generate more than $75k. I'm basically offering the auction price.
And if you do get the property back, your contractor, Realtor and other costs will absorb the excess you would have gotten as well.
Just some things to think about.

Sincerely yours,
Eddie Haddad
702-491-5812

From: O'Malley, Ryan [mailto:Ryan.OMalley@BuckleyMadole.com]
Sent: Tuesday, December 15, 2015 9:08 AM
To: eddie haddad <eddie@huelofts.com>; Chris Yergensen <chris@nas-inc.com>
Cc: mbohn@bohnlawfirm.com; Benson, Candice <Candice.Benson@BuckleyMadole.com>
Subject: RE: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

Our UPB is $129,238.68. If we can recover that full amount, then we may be able to come to an agreement. It seems to me that the amount you've identified plus what I calculate the excess proceeds to be based on Chris's figures (the purchase price minus the HOA's dues/costs) is about $10,200 short of where we need to be. Chris, thoughts? I know that the borrower has expressed an interest in redeeming, which may complicate an arrangement along these lines.

Ryan T. O'Malley
Associate Attorney

Buckley Madole, P.C.
1635 Village Center Circle, Suite 130
Las Vegas, Nevada 89134
(702) 425-7266 Direct
(702) 425-7269 Facsimile
Ryan.OMalley@BuckleyMadole.com
(Admitted in Nevada)

From: eddie haddad [mailto:eddie@huelofts.com]
Sent: Tuesday, December 15, 2015 9:00 AM
To: O'Malley, Ryan; Chris Yergensen
Cc: mbohn@bohnlawfirm.com
Subject: RE: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

I'd like to be all in at $75k. depending on what the amount of the surplus funds will be, perhaps I can fund the difference to Chris and he can stipulate with you the rest of the amount.

Sincerely yours,
Eddie Haddad
702-491-5812

From: O'Malley, Ryan [mailto:Ryan.OMalley@BuckleyMadole.com]
Sent: Tuesday, December 15, 2015 8:45 AM
To: eddie haddad <eddie@huelofts.com>; Chris Yergensen <chris@nas-inc.com>
Cc: mbohn@bohnlawfirm.com
Subject: RE: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

We're always willing to listen. What do you propose?

Ryan T. O'Malley
Associate Attorney
Buckley Madole, P.C.
1635 Village Center Circle, Suite 130
Las Vegas, Nevada 89134
(702) 425-7266 Direct
(702) 425-7269 Facsimile
Ryan.OMalley@BuckleyMadole.com
(Admitted in Nevada)

From: eddie haddad [mailto:eddie@huelofts.com]
Sent: Monday, December 14, 2015 6:45 PM
To: Chris Yergensen; O'Malley, Ryan
Cc: mbohn@bohnlawfirm.com
Subject: RE: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

Good evening Ryan,
The property is not worth as much as the loan, and will need extensive work when you do eventually foreclose.
Can we stipulate to buy out your redemption rights?

Sincerely yours,
Eddie Haddad
702-491-5812

From: Chris Yergensen [mailto:chris@nas-inc.com]
Sent: Thursday, December 10, 2015 10:09 AM
To: O'Malley, Ryan <Ryan.OMalley@BuckleyMadole.com>; eddie haddad <eddie@huelofts.com>
Cc: mbohn@bohnlawfirm.com
Subject: RE: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

Here is the payoff figures in order to calculate an amount for your approval.

Purchase Price: $48,600
HOA Lien and Costs: $4,564.23
Reimburse Costs to Purchaser: $525
Interest per day: $16.20
Sale date was 11/20/2015

NAS has $44,035,77 in its trust account for this file, plus a reimbursement check to Mr. Haddad of $400 as a refund of overpayment of the purchase price.

Chris Yergensen, Esq.

Nevada Association Services, Inc.
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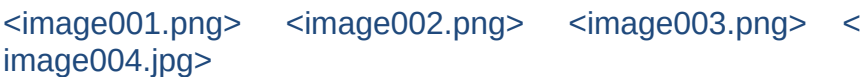
www.nas-inc.com
702-804-8885 Office
702-804-8887 Fax



From: O'Malley, Ryan [mailto:Ryan.OMalley@BuckleyMadole.com]
Sent: Wednesday, December 09, 2015 4:14 PM
To: Chris Yergensen <chris@nas-inc.com>; eddie haddad <eddie@huelofts.com>
Cc: mbohn@bohnlawfirm.com
Subject: RE: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

Can you please copy me on any amount sent to Eddie for approval? We'd like to be part of the process just in case there's any disagreement as to the amounts that are properly included in the redemption.

Thanks,

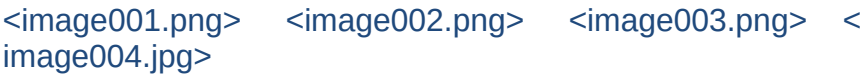
Ryan T. O'Malley
Associate Attorney
Buckley Madole, P.C.
1635 Village Center Circle, Suite 130
Las Vegas, Nevada 89134
(702) 425-7266 Direct
(702) 425-7269 Facsimile
Ryan.OMalley@BuckleyMadole.com
(Admitted in Nevada)

800-766-7751 or 1-972-643-6600 and destroy the material in its entirety, whether in electronic or hard copy format. Thank you.

From: Chris Yergensen [mailto:chris@nas-inc.com]
Sent: Wednesday, December 09, 2015 9:11 AM
To: eddie haddad; O'Malley, Ryan
Cc: mbohn@bohnlawfirm.com
Subject: RE: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

I will send to you an amount for your approval.

Chris Yergensen, Esq.
Nevada Association Services, Inc.
6224 W. Desert Inn Rd.
Las Vegas, NV 89146
www.nas-inc.com
702-804-8885 Office
702-804-8887 Fax



From: eddie haddad [mailto:eddie@huelofts.com]
Sent: Wednesday, December 09, 2015 9:07 AM
To: O'Malley, Ryan <Ryan.OMalley@BuckleyMadole.com>
Cc: Chris Yergensen <chris@nas-inc.com>; mbohn@bohnlawfirm.com
Subject: Re: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

Thanks guys.
Chris, would you like to send me payoff for approval first please.

Sent from my iPhone

On Dec 9, 2015, at 9:01 AM, O'Malley, Ryan <Ryan.OMalley@BuckleyMadole.com> wrote:

If Eddie is comfortable with us tendering a redemption payment before the 60 day period, and his position is that we've effectively redeemed the property without waiting 60

days, we'd like to tender a payment ASAP. If the borrower would also like to redeem, we can address that issue if and when it arises.

Please get us a payoff ASAP and we'll get a check sent out.

Ryan T. O'Malley
Associate Attorney
Buckley Madole, P.C.
1635 Village Center Circle, Suite 130
Las Vegas, Nevada 89134
(702) 425-7266 Direct
(702) 425-7269 Facsimile
Ryan.OMalley@BuckleyMadole.com
(Admitted in Nevada)

From: eddie haddad [mailto:eddie@huelofts.com]
Sent: Tuesday, December 08, 2015 10:31 PM
To: Chris Yergensen
Cc: O'Malley, Ryan; mbohn@bohnlawfirm.com
Subject: RE: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

Actually, I was talking about 50 days, not 1 or 2 days. if I am not mistaken, you were suggesting a payoff only after 60 days have past. That's different than the bank's instructions, 'My client will tender prompt payment'…
If we get them a payoff within 24 hours of their request, why wait till the 61st day?
If they want to redeem, get the money back promptly and let's move on.

Sincerely yours,
Eddie Haddad
702-491-5812

From: Chris Yergensen [mailto:chris@nas-inc.com]
Sent: Tuesday, December 08, 2015 10:24 PM
To: eddie haddad <eddie@huelofts.com>
Cc: O'Malley, Ryan <Ryan.OMalley@BuckleyMadole.com>; mbohn@bohnlawfirm.com

Subject: Re: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

Serious? You are going to fight over one or two days? Come on Eddie. If you are so insistent, I am sure that the bank will wire you the money on the 59th day rather than the 60th or 61st. I think there is little risk that the homeowner steps up and causes confusion in those 48 hours. But I will leave it to the bank to make that call. NAS will provide an amount to pay you back, with an interest amount per day. The bank can choose the timing of the payoff.

Chris Yergensen, Esq.

On Dec 8, 2015, at 8:54 PM, eddie haddad <eddie@huelofts.com> wrote:

> I do have concerns with this plan Chris. The money at play cannot be active for 60 + days when either secured interest holder makes a claim for redemption prior to 60 days. It is not enough to make a claim, but must act upon it as well. The action is what I am looking for, not simply a claim.
> If you can imagine a homeowner who has to raise money to redeem their property could take months.
> The cost of money is greater than what is allowed as reimbursement by the new NRS Statute.
> On the 61st day, I will not allow redemption and will fight for title. In fact, I will be at the court house to record my deed by 4:59:59 pm on the 60th day, hypothetically speaking.
> The parties who have redemption claims are intertwined and if one makes a claim of redemption, it's like the other making the claim as well. How their relationship works out between themselves is their business. It is one right of redemption given to parties who are affected, not duplicate rights or split rights.
>
> Sincerely yours,
> Eddie Haddad
> 702-491-5812
>
> ---
>
> **From:** Chris Yergensen [mailto:chris@nas-inc.com]
> **Sent:** Tuesday, December 08, 2015 9:40 AM
> **To:** eddie haddad <eddie@huelofts.com>; O'Malley, Ryan

<Ryan.OMalley@BuckleyMadole.com>
Cc: mbohn@bohnlawfirm.com
Subject: RE: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

I think so. In my opinion, the redemption by a secured interest holder may occur immediately after the 60 days allowed for the homeowner to redeem has elapsed, even if the notice of redemption is given by the secured interest holder within the 60 days.

Therefore, we will calculate the redemption amount as of the 61st day following the sale, and plan to close the redemption transaction as of that day as well.

Let me know if there are any concerns with this plan.

Chris Yergensen, Esq.
Nevada Association Services, Inc.
6224 W. Desert Inn Rd.
Las Vegas, NV 89146
www.nas-inc.com
702-804-8885 Office
702-804-8887 Fax

<image001.png> <image001.png> <image003.png> <image004.jpg>

From: eddie haddad [mailto:eddie@huelofts.com]
Sent: Monday, December 07, 2015 11:17 PM
To: Chris Yergensen <chris@nas-inc.com>; O'Malley, Ryan <Ryan.OMalley@BuckleyMadole.com>
Cc: mbohn@bohnlawfirm.com
Subject: RE: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

Do the 60 days run concurrently?

Sincerely yours,
Eddie Haddad
702-491-5812

From: Chris Yergensen [mailto:chris@nas-inc.com]
Sent: Sunday, December 06, 2015 3:32 PM
To: O'Malley, Ryan <Ryan.OMalley@BuckleyMadole.com>
Cc: eddie haddad <eddie@huelofts.com>; mbohn@bohnlawfirm.com
Subject: Re: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

I think so. We will put together an amount.

One concern is that the new law refers to a sixty day time frame. It appears this time frame is intended to give the owner time to redeem prior to the bank redeeming. Please take a look at that provision and let's discuss.

Chris Yergensen, Esq.

On Dec 6, 2015, at 3:28 PM, O'Malley, Ryan <Ryan.OMalley@BuckleyMadole.com> wrote:

> Chris: Given the information provided, do we have what we need for a demand?
>
> **Ryan T. O'Malley**
> Associate Attorney
> Buckley Madole, P.C.
> 1635 Village Center Circle, Suite 130
> Las Vegas, Nevada 89134
> (702) 425-7266 Direct
> (702) 425-7269 Facsimile
> Ryan.OMalley@BuckleyMadole.com
> (Admitted in Nevada)
>
> On Dec 6, 2015, at 3:27 PM, eddie haddad <eddie@huelofts.com> wrote:

Updates?

Sincerely yours,
Eddie Haddad
702-491-5812

From: Chris Yergensen [mailto:chris@nas-inc.com]
Sent: Tuesday, December 01, 2015 10:26 AM
To: eddie haddad <eddie@huelofts.com>; mbohn@bohnlawfirm.com
Cc: ryan.omalley@buckleymadole.com
Subject: FW: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079
Importance: High

Gentleman:

Please see below the notice received today. This is a property that was purchased by the Haddads or an entity related to the Haddads.

With your assistance, NAS will calculate the amount to be paid for redemption.

Chris Yergensen, Esq.
Nevada Association Services, Inc.

6224 W. Desert Inn Rd.
Las Vegas, NV 89146
www.nas-inc.com
702-804-8885 Office
702-804-8887 Fax

<image001.png>
<image002.png>
<image003.png>
<image004.jpg>

From: O'Malley, Ryan [mailto:Ryan.OMalley@BuckleyMadole.com]
Sent: Tuesday, December 01, 2015 9:48 AM
To: Chris Yergensen <chris@nas-inc.com>
Cc: Benson, Candice <Candice.Benson@

BuckleyMadole.com
>
Subject:
EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079
Importance: High

To Whom it May Concern:

This law firm represents Ditech Financial LLC, *fka* Green Tree Servicing LLC ("Ditech"), which is the servicer for the first Deed of Trust encumbering the property located at 9050 West Warm Springs Avenue #2079, Las Vegas, Nevada, 89148, APN 176-05-414-199 (the "Property"). My understanding is that the Property was subject to an HOA foreclosure sale conducted by Nevada Association Services ("NAS") on November 20, 2015, and that the property sold to a third party.

Through this correspondence, and pursuant to SB 306 Sec. 6(3), Ditech hereby exercises its right of redemption with respect to the

above-described Property. Please provide payoff information for the Property. My client will tender prompt payment, provided that the amounts claimed to be owed are consistent with SB 306.

Thank you for your prompt attention to this matter. Please do not hesitate to contact me if you need any further information or would like to discuss further.

Sincerely,

Ryan T. O'Malley
Associate Attorney
Buckley Madole, P.C.
1635 Village Center Circle, Suite 130
Las Vegas,
Nevada 89134
(702) 425-7266 Direct
(702) 425-7269 Facsimile
Ryan.OMalley@BuckleyMadole.com
(Admitted in Nevada)

EXHIBIT “J”

EXHIBIT “J”

Brigette E. Foley

From: O'Malley, Ryan
Sent: Tuesday, January 19, 2016 4:09 PM
To: Chris Yergensen
Subject: EXERCISE OF RIGHT OF REDEMPTION: 9050 West Warm Springs Avenue #2079

Mr. Yergensen:

As you know, I represent Ditech Financial LLC with respect to the property at 9050 West Warm Springs Avenue #2079, Las Vegas, Nevada, 89148, APN 176-05-414-199 (the "Property"). The Property was subject to a foreclosure sale administered by NAS and conducted on November 20, 2015 (the "HOA Sale").

My understanding is that James Markey, the owner/occupant of the Property at the time of the HOA sale, had tendered a payment to NAS on or about January 12, 2016 which was sufficient to cover the amount owed by Mr. Markey to the HOA. On January 15, 2016, in consideration for Mr. Markey's payment, and acting pursuant to the express instructions of Mr. Markey and Ditech, NAS tendered a payment of $50.052.16 to the buyer via a cashier's check. During our telephone conversation earlier today, you informed me that NAS learned today that the buyer refused to accept this payment and that the cashier's check had been returned.

Ditech's position is that Mr. Markey's redemption of the property was effective on January 12, 2016, and that it therefore had no claim in any proceeds from the HOA Sale. Ditech therefore never raised any objection to NAS's disbursement of funds to the buyer at the HOA Sale; those sales proceeds were appropriately tendered to the buyer at the sale in light of the redemption. However, to whatever extent my client may have an interest in the sales proceeds or any express authorization from my client is necessary, Ditech authorizes NAS to tender any sales proceeds in which it may have an interest to the buyer at the HOA sale through the end of the redemption period, provided that the buyer agrees to accept the payment as a redemption of the property for the benefit of Mr. Markey. Should the redemption period elapse, Ditech asks NAS to retain any sales proceeds until further notice.

Please let me know if you'd like to discuss, and please correct me if I'm mistaken about any of the events set forth above.

Sincerely,

Ryan T. O'Malley
Associate Attorney
Buckley Madole, P.C.
1635 Village Center Circle, Suite 130
Las Vegas, Nevada 89134
(702) 425-7266 Direct
(702) 425-7269 Facsimile
Ryan.OMalley@BuckleyMadole.com
(Admitted in Nevada)

EXHIBIT “K”

EXHIBIT “K”

Brigette E. Foley

From: Michael Bohn <mbohn@bohnlawfirm.com>
Sent: Wednesday, January 20, 2016 11:55 AM
To: Chris Yergensen; eddie haddad
Cc: johnvoi@aol.com; Markey, James; O'Malley, Ryan; Joel Just
Subject: RE: 9050 W. Warm Springs Rd #2079

Thank you for your email. I was waiting for Eddie to approve my message to you today.

Today is the 61st day after the foreclosure sale on the above referenced property. Neither the owner or the trust deed holder has properly complied with the provisions of NRS 116.3116 as amended by SB 306.

It is my client's position that the entirety of the funds paid by my client MUST come from either the unit owner or the trust holder. Specifically, neither party can use the excess proceeds, which are in actuality my client's funds, to pay my client back. I am advised that during discussions with my client you admitted that the excess proceeds were being added to the unit owner's money to redeem the property.

Assuming, arguendo, that the position taken by my client on the funds issue would not be endorsed by the courts, the unit owner and the trust deed holder failed to comply with the other provisions of the new statute. Specifically, there was no notice of redemption which was served, and there was no certified copy of the deed, trust deed or assignment of the trust deed which was served on my office or on my client.

Because you have stated that you will not be delivering the deed, I have been directed to immediately file suit for declaratory relief.

MICHAEL F. BOHN, ESQ.
Law Offices of
Michael F. Bohn, Esq., Ltd.
376 East Warm Springs Road
Suite 140
Las Vegas, NV 89119
(702) 642-3113
(702) 642-9766 FAX
mbohn@bohnlawfirm.com

From: Chris Yergensen [mailto:chris@nas-inc.com]
Sent: Wednesday, January 20, 2016 11:24 AM
To: Michael Bohn; eddie haddad

Cc: johnvoi@aol.com; Markey, James; O'Malley, Ryan; Joel Just
Subject: 9050 W. Warm Springs Rd #2079

Mr. Bohn:

Yesterday evening I received the cashier's check back from your office that was intended as the payment by the homeowner to complete the redemption of the foreclosure sale of the property referred to above. You indicated to me that the check was being returned because your client refused to accept the cashier's check.

Please take note that NAS is the "person conducting the sale" pursuant to section 6 of SB306, which creates the right of redemption. Under the language of SB306, NAS is required to take certain action with respect to the redemption. At this time, NAS is taking the legal position that the redemption by the homeowner was completed in accordance to SB306 as of January 15, 2016 when the cashier's check for $50,052.16 was delivered to your office . NAS will not make, execute or deliver a foreclosure deed to your client at this time. Furthermore, the homeowners and the first security interest holders have indicated to me their intent to seek legal determination of this matter. NAS will place the homeowner's funds into its trust account and await the legal determination of this matter.

Sincerely,

Chris Yergensen, Esq.
Nevada Association Services, Inc.
6224 W. Desert Inn Rd.
Las Vegas, NV 89146
www.nas-inc.com
702-804-8885 Office
702-804-8887 Fax

EXHIBIT “L”

EXHIBIT “L”

C (4)

Inst #: 20160428-0003296
Fees: $20.00
N/C Fee: $25.00
04/28/2016 04:23:46 PM
Receipt #: 2749001
Requestor:
DITECH FINANCIAL LLC
Recorded By: SCHIABLE Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING COVER PAGE

Must be typed or printed clearly in black ink only.

APN# 176-05-414-199

11 digit Assessor's Parcel Number may be obtained at:
http://redrock.co.clark.nv.us/assrrealprop/ownr.aspx

TITLE OF DOCUMENT (DO NOT Abbreviate)

Assignment of Deed of Trust

Title of the Document on cover page must be EXACTLY as it appears on the first page of the document to be recorded.

Recording requested by:

Angel Ramirez

Return to:

Name Ditech Financial LLC

Address 7360 South Kyrene Road T330

City/State/Zip Tempe, AZ 85283

This page provides additional information required by NRS 111.312 Sections 1-2.

An additional recording fee of $1.00 will apply.

To print this document properly—do not use page scaling.

P:\Recorder\Forms 12_2010

Prepared by and Return To:
Angel Ramirez
Ditech Financial LLC
MN AH
7360 S. Kyrene Road
Mail Stop T330
Tempe, AZ 85283
(888) 315-8733

ASSIGNMENT OF DEED OF TRUST

Nevada

Account #:	**36991461**
PIN#:	**176-05-414-199**
MERS MIN #:	**100039033108736871**
MERS Phone #:	1-888-679-6377

FOR VALUE RECEIVED, Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for **Quicken Loans Inc.**, its successors and assigns, whose address is P.O. Box 2026, Flint, MI 48501-2026, hereby assigns and transfers to **Ditech Financial LLC**, its successors and assigns, whose address is **7360 S. Kyrene Rd., T-314, Tempe, AZ 85283**, all its rights, title and interest in and to a certain Deed of Trust described below.

Deed of Trust Date:	**01/30/2013**
Deed of Trust Executed By:	**James P. Markey, a married man, as his Sole and Separate Property**
Original Principal Sum:	**$135,775.00**
Recorded Date:	**04/12/2013**
Book/Volume/Liber:	**N/A**
Instrument/Document Number:	**Instrument No. 201304120000455**
Property Street Address:	**9050 W. Warm Springs Rd., Unit 2079 Las Vegas, NV 89148**
County:	**Clark**
State:	**NV**

TO HAVE AND TO HOLD the same unto Assignee, its successor and assigns, forever, subject only to the terms and conditions of the above-described Deed of Trust.

IN WITNESS WHEREOF, the undersigned Assignor has executed this Assignment of Deed of Trust on APR 2 1 2016

Mortgage Electronic Registration Systems, Inc. ("MERS")

By: _____
Name: Angel Ramirez
Title: Assistant Vice President

Witness: Monique Rimula

Witness: Della Tazzie

State of ARIZONA

County of MARICOPA

On APR 2 1 2016, before me, the undersigned, personally appeared Angel Ramirez, Assistant Vice President for Mortgage Electronic Registration Systems, Inc., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument and that such individual made such appearance before the undersigned in the City of Tempe, State of Arizona.

Notary Public

Tami Wycoff
Notary Public
Maricopa County, Arizona
My Comm. Expires 03-04-18

EXHIBIT "A"

Tax Id Number(s): 17605414199, 176-05-414-199

Land Situated in the County of Clark in the State of NV

PARCEL ONE (1):

LIVING UNIT 2079 IN PHASE 10— BUILDING 25, AS SHOWN ON THE FINAL MAP FOR APACHE SPRINGS CONDOMINIUMS, (A CONDOMINIUM DEVELOPMENT AND COMMON INTEREST COMMUNITY), RECORDED IN BOOK 105 OF PLATS, PAGE 25, AND AS AMENDED BY THAT CERTAIN AMENDED FINAL MAP FOR APACHE SPRINGS CONDOMINIUMS RECORDED IN BOOK 107 OF PLATS, PAGE 37, AND THEREAFTER CERTIFICATE OF AMENDMENT RECORDED MARCH 24, 2003, IN BOOK 20030324, AS INSTRUMENT NO. 00670, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL TWO (2):

AN UNDIVIDED 1/360TH INTEREST INTO THAT PORTION OF THE COMMON AREA (CA) SHOWN AS PHASE 10 ON THE FINAL MAP FOR APACHE SPRINGS CONDOMINIUMS, (A CONDOMINIUM DEVELOPMENT AND COMMON INTEREST COMMUNITY), RECORDED IN BOOK 105 OF PLATS, PAGE 25, AND AS AMENDED BY THAT CERTAIN AMENDED FINAL MAP FOR APACHE SPRINGS CONDOMINIUMS RECORDED IN BOOK 107 OF PLATS, PAGE 37, AND THEREAFTER CERTIFICATE OF AMENDMENT RECORDED MARCH 24, 2003, IN BOOK 20030324, AS INSTRUMENT NO.00670 AND AS SET FORTH IN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE FALLS CONDOMINIUMS RECORDED OCTOBER 31, 2002, IN BOOK 20021031, AS INSTRUMENT NO. 04692, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

Commonly known as: 9050 W Warm Springs Rd Unit 2079 , Las Vegas, NV 89148

EXHIBIT “M”

EXHIBIT “M”

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Eighth Session
April 7, 2015

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:28 p.m. on Tuesday, April 7, 2015, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Greg Brower, Chair
Senator Becky Harris, Vice Chair
Senator Michael Roberson
Senator Scott Hammond
Senator Ruben J. Kihuen
Senator Tick Segerblom
Senator Aaron D. Ford

GUEST LEGISLATORS PRESENT:

Senator Mark Lipparelli, Senatorial District No. 6
Senator David R. Parks, Senatorial District No. 7

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Lynette Jones, Committee Secretary

OTHERS PRESENT:

Alfred Pollard, Federal Housing Finance Agency
Jennifer Gaynor, Nevada Credit Union League
Rocky Finseth, Nevada Association of Realtors; Nevada Land Title Association
Diana Cline, SFR Investments Pool 1, LLC

Steve VanSickler, Nevada Mortgage Lenders Association; Silver State Schools Credit Union
Samuel P. McMullen, Nevada Bankers Association
Garrett Gordon, Community Associations Institute; Southern Highlands Homeowners Association
Gayle Kern, Community Associations Institute
Jon Sasser, Legal Aid Center of Southern Nevada
Pamela Scott, The Howard Hughes Corporation
Marilyn Brainard
Michael Alonso, Nevada Trust Companies Association
Mark Dreschler, Premier Trust
Gregory Crawford, Nevada Trust Companies Association; Alliance Trust Company
Bob Dickerson

Chair Brower:
I will open the hearing on Senate Bill (S.B.) 306.

SENATE BILL 306: Revises provisions relating to liens on real property located within a common-interest community. (BDR 10-55)

Senator Aaron D. Ford (Senatorial District No. 11):
I will present S.B. 306. I provided the Committee a copy of a memorandum from the Real Property Law Section, State Bar of Nevada (Exhibit C). This bill is the quintessential example of compromise legislation. Work on this bill began last year. I gathered a group of individuals to address the superpriority lien issue after the Nevada Supreme Court ruled on its effectiveness relative to canceling out a first deed of trust. Senator Hammond, the cosponsor of the bill, joined the working group, and we worked in a bipartisan manner toward developing a solution to the superpriority lien issue.

Senate Bill 306 balances the interest of all parties involved when a homeowners' association (HOA) forecloses its lien on a unit to collect past-due association assessments. The foreclosure of an HOA lien has an effect on homeowners, HOAs, banks, mortgage lenders, government-sponsored entities that insure and guarantee the vast majority of mortgages in Nevada, investors who purchase foreclosed homes and the title industry. A wide swath of entities and individuals are affected when a superpriority lien is foreclosed. Senate Bill 306 seeks to do a number of things to help this situation.

The bill provides protection for homeowners who have fallen behind in their HOA dues. It enables HOAs to effectively collect the assessments necessary to preserve and maintain the community, and it allows banks and mortgage lenders to protect their lien interests in a home when the HOA proceeds with a foreclosure. The bill creates certainty about the consequences of the HOA foreclosure so that HOA home titles do not become clouded. Under law, when the HOA has a lien on a unit within its community, the HOA can foreclose the lien through a nonjudicial foreclosure process. The HOA's lien is prior to all other liens on the unit except liens recorded before the declaration curating the community, the first mortgage lien, certain taxes and governmental charges. The HOA's lien can be prior to the first mortgage lien based upon certain maintenance and abatement charges and the amount of assessments for common expenses.

The portion of the HOA's lien is referred to as the superpriority lien. The superpriority lien is intended to balance the need for the HOA to collect assessments with the need to encourage lending for the purchase of units in HOAs. In *SFR Investments Pool 1, LLC v. U.S. Bank,* 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014), the Nevada Supreme Court determined that the foreclosure of the superpriority lien by the HOA extinguishes the first mortgage lien on the unit.

I will go through the provisions of S.B. 306 that include changes in Proposed Amendment 6077 (Exhibit D).

Section 1 amends provisions governing the superpriority lien. Section 1, subsection 1 states the collection and foreclosure costs incurred by the HOA are included in the HOA's lien.

Section 1, subsection 2, paragraph (b) and section 1, subsection 5 establish a limit on the amount of collections included in the superpriority lien.

Section 1, subsection 6 states that the HOA and its community manager are not required to hire a collection agency to take certain actions early in the process of foreclosing the HOA's lien.

Section 1, subsection 2, paragraph (d) states the HOA's lien is not prior to certain charges authorized by local government or trash collection. There has

been uncertainty about whether these charges are prior to the HOA lien and this provision treats those charges in the same manner as governmental charges.

Section 1, subsection 16 states any payment of the HOA's lien by the holder of a subordinate lien becomes a debt due from the unit owner to the holder of the lien.

Sections 2 through 7 revise provisions governing procedures for the foreclosure of the HOA's lien. Because a foreclosure of the HOA's superpriority lien extinguishes the first mortgage lien on a home and other subordinate liens, it is important lienholders receive sufficient notice of the HOA foreclosure to enable lienholders to protect their interests.

Section 2, subsection 1, paragraph (b) requires additional information to be included in the notice of default and election to sell that must be recorded by the HOA or the person conducting the sale.

Section 2, subsection 5, and section 3 require the HOA to mail an actual copy of the notice to each holder of a recorded interest on the unit being foreclosed upon by the HOA, using certified mail return receipt requested. In addition, section 2, subsection 1, paragraphs (b) and (e) require additional information be recorded by the HOA in order to create certainty as to the status of the title of the property if the HOA forecloses on the lien.

Section 2 contains an important protection for homeowners by prohibiting the HOA from proceeding with a foreclosure 30 days after sending a homeowner notice of a proposed repayment plan or right to request a hearing before the executive board. This gives the homeowner a realistic opportunity to enter into a repayment plan or request a hearing.

Section 4 is a provision designed to enhance notice of the HOA foreclosure to homeowners and to lienholders, which is one of the key components of S.B. 306. Under law, there is a 90-day waiting period after the mailing of the notice of default and election to sell; the HOA must provide notice of the foreclosure sale to certain persons. Section 4 makes the notice required for the HOA foreclosure similar to the notice required for a nonjudicial bank foreclosure.

Section 5 enacts provisions governing the manner in which a home is sold at the HOA foreclosure sale. This section intends to establish a process to ensure

a fair and reasonable price is obtained. An example is a home foreclosed upon with a $500,000 first lien interest being sold at the HOA foreclosure sale for $5,000. Section 5 seeks to address these types of issues. Section 5, subsection 2 as amended in Proposed Amendment 6077 states,

> If the holder of the security interest described in paragraph (b) of subsection 2 of NRS 116.3116 satisfies the amount of the association's lien that is prior to its security interest not later than 5 days before the date of the sale, the sale may not occur unless a record of such satisfaction is recorded in the office of the county recorder of the county in which the unit is located not later than 2 days before the date of sale.

Section 5 enacts sale procedures similar to procedures for a nonjudicial bank foreclosure and requires the person conducting the sale to announce at the sale whether the superpriority lien has been satisfied. This ensures persons interested in the home know what they will be buying.

Chair Brower:
You indicated section 5 includes a provision affecting the amount of the home at a foreclosure sale. I am not finding that. Can you direct me to that section?

Senator Ford:
There is no specific provision in the bill that contains this language. The notices required under section 5 will help people ascertain the actual value of the home so they will know what they are buying. If the superpriority lien has not been paid, the potential buyer will know it must be addressed.

Chair Brower:
You provided an example about a home worth $500,000 being sold for $5,000. This scenario is not prohibited by S.B. 306.

Senator Ford:
It is not prohibited, but this bill seeks to remedy that situation through the additional notices required before a superpriority lien sale can take place. Before you get to a foreclosure sale, you will know if the payment of the superpriority lien has been made.

Senator Scott Hammond (Senatorial District No. 18):
Over the last few years, home foreclosure sales were made without notification. No one knew sales were being conducted, the time of the sale or who was initiating the sale. As a result, you had situations in which homes were being sold for $5,000. What the bill seeks to do is require thorough notification so everyone will know the location, time and place sales will be conducted. The notification process will ensure more buyers show up at sales and the sale price of homes gets closer to market value.

Senator Ford:
Section 6 enacts provisions governing the period following the HOA foreclosure sale. Section 6, subsection 1 states if the holder of the first mortgage lien satisfies the superpriority lien no later than 5 days before the date of the sale, the seller does not extinguish the first mortgage lien. The remaining provisions of section 6 establish a redemption period so that after the HOA foreclosure sale, the unit owner or a lienholder may redeem the property by paying certain amounts to the purchaser within 60 days after the sale. As originally drafted, section 6 authorized successive redemptions, which would have allowed the unit owner or another lienholder to redeem the property from the prior redeemer. Proposed Amendment 6077 removes the concept of successive redemptions and instead authorizes one redemption during the redemption period. Section 6 also contains provisions to create certainty of the status of the title of the unit after a foreclosure sale.

Section 6, subsection 8 provides that the deed recorded after the foreclosure sale is conclusive proof of the default and compliance with the provisions of law governing the foreclosure process. Section 6, subsection 10 provides that failure to comply with requirements of the foreclosure process does not affect the rights of a bona fide purchaser or bona fide encumbrancer for value.

Section 7 is an additional notice provision that authorizes a person with an interest to record a request to receive a copy of the notice of default and election to sell or notice of sale. Law refers to provisions in *Nevada Revised Statute* (NRS) 107.090 regarding this notice. Section 7 incorporates the language of NRS 107.090 into statute and conforms the language to HOA foreclosures.

Section 2, subsection 7 amends provisions governing the foreclosure of the HOA lien during the period the homeowner is eligible to participate in a

foreclosure mediation program. Under law, if a home with an HOA is subject to the foreclosure mediation program, the HOA may not foreclose its lien until the home is no longer subject to the program. Section 2, subsection 7 revises language of law to specify that the HOA may foreclose its lien on a home that is subject to the mediation program if the unit owner fails to pay association fees that accrued during the pendency of the foreclosure mediation.

Section 8 requires the trustee, under the deed of trust, to notify HOAs when a homeowner is eligible to participate in a foreclosure mediation program and when the trustee receives the required certificate from the mediation program.

Senator Harris:
How does this work with the foreclosure mediation program? An example is a homeowner who is delinquent on the HOA dues and in default. The notice of default has been filed and the lender and the homeowner agree to go into foreclosure mediation. Sometimes HOA fees have not been paid for more than 16 months. Does S.B. 306 provide that as long as the homeowner pays the HOA fees during the time he or she elects and remains in the foreclosure mediation program, which takes about 9 months, the HOA cannot foreclose? Is the homeowner protected if he or she has outstanding HOA fees but pays the fees while in the mediation program?

Senator Hammond:
Yes. This is the intent of the bill. The bill will allow your scenario to unfold as described.

Senator Harris:
If homeowners elect mediation, will there be documentation with regard to the foreclosure mediation program putting them on notice that they are now required to pay their HOA fees and keep them current?

Senator Ford:
That is not in S.B. 306, but it is something we can consider.

Senator Hammond:
I do not recall seeing this language in the bill.

Senator Harris:
This is important because most homeowners in default do not anticipate they will pay fees of any kind while in mediation. It would be bad for a person in mediation to be forced out of the program because he or she was not on notice that HOA fees had to be paid.

Senator Hammond:
We will determine if a provision in the bill provides notification to homeowners of the requirement for payment of HOA dues during their participation in the mediation program.

Senator Ford:
I believe S.B. 306 strikes a balance between the interests of homeowners, HOAs, banks, mortgage lenders, government-sponsored entities, investors and the title industry. Senate Bill 306 provides all homeowners with a realistic opportunity to enter into a repayment plan and an opportunity to redeem their units if they fall behind on their HOA dues. Homeowner associations can collect assessments needed to maintain their communities. Banks, mortgage lenders and government-sponsored entities will receive enhanced notice of HOA foreclosures and greater opportunities to protect their interests. Investors in the title industry will receive greater certainty regarding the title status of units that have been foreclosed upon by the HOA.

The process of the HOA foreclosure sale will be improved to ensure the sale is conducted in a reasonable manner. Alfred Pollard, a representative for the Federal Housing Finance Agency (FHFA), is here in support of the bill. The FHFA is one of the government-sponsored entities interested in Nevada's superpriority lien statutes. Mr. Pollard will speak about how this bill will provide better security for the federal government relative to its role in underwriting Nevada loans.

Senator Hammond:
The drafting of S.B. 306 has been a collaborative effort with many entities involved. The bill presented today is important to the housing industry and the FHFA. Questions raised by Senator Harris may be answered by those who have worked on the bill and are aware of the fine details of the notification process. The bill codifies the notification process and is a great example of a collaborative effort.

Senator Ford:
The Committee must understand the version of the bill endorsed by the sponsors and the FHFA is the one I presented that includes Proposed Amendment 6077. Subsequent amendments coming forward today have not been vetted and may not be approved by governmental entities.

Senator Harris:
Did you have an opportunity to meet with Verise Campbell, Deputy Director of the Foreclosure Mediation Program for Nevada, to discuss how this bill will impact the program?

Senator Ford:
I did not.

Senator Hammond:
No.

Chair Brower:
Since the Nevada Supreme Court decision regarding HOA superpriority liens, there has been confusion and displeasure about the situation. This bill attempts to fix the issue.

Alfred Pollard (General Counsel, Federal Housing Finance Agency):
I support S.B. 306 and I will read from my written testimony (Exhibit E).

Chair Brower:
You referred to a drastic or extraordinary remedy. Can you pinpoint for the Committee what you are referring to with respect to the bill?

Mr. Pollard:
Extinguishing a first mortgage in the hundreds of thousands of dollars is a strong remedy. The goal of the remedy is to make sure someone pays or helps pay outstanding association dues. This seems to be a broader remedy than is necessary to accomplish the goal.

Chair Brower:
The lending community has experienced heartburn from the Nevada Supreme Court case. The Supreme Court case ruled that a first mortgage may be

extinguished because of an HOA foreclosure. You stated that S.B. 306 does not do away with that possibility but helps the lender avoid this situation.

Mr. Pollard:
Yes. The bill helps avoid that possibility by providing clarity and certainty. Those are the real contributions of the bill. This is a complex provision of law, but there is sufficient clarity. It will help the HOAs get payment for outstanding dues and help unit owners in some cases.

In loan modification efforts, homeowners avoid responding to messages until told, "You can lose your home." This notice prompts homeowners to either go into mediation or go directly to the servicer for assistance.

When we look at the broad picture, we are trying to help Nevada homeowners stay in their units. When they cannot, what happens? Fannie Mae and Freddie Mac get involved in the preforeclosure process with the hope that foreclosure can be avoided. The goal is to get homeowners out of foreclosure without a disproportionate remedy looming. Senate Bill 306 can help reduce that possibility, but it is still controversial from our prospective.

Chair Brower:
This is a complicated bill and a complex area of the law. The Committee will simplify it as much as possible, but some issues are complicated and cannot be made simple.

Jennifer Gaynor (Nevada Credit Union League):
We support S.B. 306 with Proposed Amendment 6077. I am not proffering an amendment to the bill, but I understand the Nevada Bankers Association has put forth one that we support. We share many concerns of the FHFA, and we appreciate the efforts made by the bill sponsors and the working group.

Rocky Finseth (Nevada Association of Realtors; Nevada Land Title Association):
We support S.B. 306. We agree with Mr. Pollard. Our main issue is the ability for Nevadans to get loans. It is about helping homeowners get into homes. If lending stops, it will create a big problem for Realtors. In regard to the Nevada Land Title Association, I want to put on the record that regardless of whether S.B. 306 is in its original form or as amended, there is no guarantee any passage of legislation will ensure the issuance of title insurance. It is decided on

a case-by-case basis. The work of the group has gone a long way toward resolving a number of our concerns.

Diana Cline (SFR Investments Pool 1, LLC):
We are members of the working group on S.B. 306. We support the version of the bill as presented by Senator Ford. After years of litigation, the Nevada Supreme Court clarified the effect of lien foreclosures containing superpriority amounts. This clarification allowed markets to have foreclosure sales where prices were no longer $5,000 for a $200,000 property. Homes were sold at market value, the same price you would see at a bank foreclosure sale. This bill cleans up some of the notice concerns we have. I have concerns about the additional amendments being proffered today.

Steve VanSickler (Nevada Mortgage Lenders Association; Silver State Schools Credit Union):
We support S.B. 306. I will read from my written testimony (Exhibit F). Enhanced notification is not sufficient to satisfy a commercially reasonable standard such as in the example of $5,000 being paid for a home worth $500,000.

Extinguishment of the first mortgage lien, addressed by the FHFA, adds additional risk that impacts access to credit in common-interest communities. The FHFA stated the regulated agencies, Fannie Mae, Freddie Mac and federal home loan banks, will no longer buy loans for properties in common-interest communities in Nevada, especially in light of the extinguishment of the first mortgage lien. That alone will add additional risk to the underwriting even if the agencies agree with other prospective changes. This additional risk will result in Nevada homeowners being denied credit, and the cost of their loans will be higher. An inability to access credit will affect the value of homes in common-interest communities. This loss of value may be dramatic due to the additional risk involved when a first mortgage lienholder can be stripped of a lien.

Chair Brower:
Have you provided your suggested changes to the Committee in writing?

Mr. VanSickler:
I submitted my suggestions, and Marcus Conklin will make sure you receive them.

Chair Brower:
I am not sure you accurately quoted Mr. Pollard; perhaps you misstated his intent. The testimony of the FHFA is clear. The Committee will review your suggestions.

Samuel P. McMullen (Nevada Bankers Association):
We support S.B. 306, but we have proposed amendments (Exhibit G) in addition to Proposed Amendment 6077. We have aggressively promoted the bill and some of its ideas. We have wrapped the whole Association around a couple of concepts. We want this bill to be HOA-positive and allow it to be helpful for other participants in what has been a complicated and interest-ridden process. We want to resolve as many issues as possible through the promotion of a few ideas.

We do not want to change the superpriority extinguishment of loans if foreclosed upon by the HOA. A better way to help everyone is the genesis of this bill. The idea for S.B. 306 has been in process since the 77th Legislative Session.

Chair Brower:
Tell the Committee the problems the Bankers Association has with the bill as presented. What would you change?

Mr. McMullen:
I want to be positive about the bill.

Chair Brower:
I thought there was a global deal on this bill. I thought the Committee would hear a presentation of a globally resolved agreed-upon bill. It is fine if this is not the case, but I want to know what you like and do not like about the bill as presented so we can weigh the pros and cons of further changes.

Mr. McMullen:
There is a lot of agreement of this bill by the parties. Most of what we agree upon is in front of the Committee. We had conversations until 7:30 p.m. last night, which raised other issues we want to address today. Some of our proposed amendments may be disagreeable, but they are small.

Chair Brower:
Run the Committee through your proposed amendments. What do the bankers not like about the bill?

Mr. McMullen:
It is not that we do not like it.

Chair Brower:
You love the bill, but you think it could be better with a couple of changes.

Mr. McMullen:
Our role is to make sure we are standing up for what we believe but also facilitating other solutions. I will present my proposed amendments for the Committee. These concepts were the topic of our discussions.

Proposed Amendment 1 addresses how we should calculate the 9-month period for measuring the superpriority lien period back from its payment. This makes it easier for those who always looked back to calculate the time period. We want to put it into a model that fits the existing situation.

The most appropriate suggestion is to look back from the payment of the superpriority lien. There may be a need for clarification about the period that covers the postnotice of default. This is the 90-day delay before you can issue a notice of sale. This could be handled in the notice of sale or notice of default, which could define the per month fee so the lender pays off the superpriority lien in full, making it current given the 9-month situation.

Chair Brower:
The Committee has your proposed amendments. I interpret page 1 as a summary of eight proposed amendments; the following pages provide more details, referencing specific sections of the bill where the proposed amendments fit.

Mr. McMullen:
I did not consider Proposed Amendment 6077 in my document of proposed amendments. I used the original draft of S.B. 306. This is why I provided a summary on the first page.

Chair Brower:
Are any of your proposed Amendments 1 through 8 already part of the revised bill as presented by the sponsors?

Mr. McMullen:
Proposed Amendment 6077 is not incorporated into my proposed changes. If my proposed amendments conflict with Proposed Amendment 6077, they will be minor issues of textual juxtaposition. We support everything in Proposed Amendment 6077. I did not have time to cross-check my proposed amendments to determine if they may change Proposed Amendment 6077.

Chair Brower:
Can you tell the Committee what sections of Proposed Amendment 6077 need further changes?

Mr. McMullen:
My proposed amendments will be in addition to Proposed Amendment 6077.

Chair Brower:
Run the Committee through each of your proposed amendments.

Mr. McMullen:
Proposed Amendment 2 addresses an issue of additional costs incurred by the HOA when it starts the notice of sale process. This amendment clarifies if a lender does not act soon enough on the right to pay off the superpriority lien before the HOA starts a notice of sale, the lender must pay additional costs.

Proposed Amendment 3 clarifies the 3-year limitation applies only to the extinguishment of the HOA's lien by either the issuance of the notice of default or judicial proceedings.

Proposed Amendment 4 is critical to the Bankers Association. This gives the HOA the option to use any address and any method of finding an address, and the lender will pay for the associated costs. This was addressed in both the original bill and Proposed Amendment 6077. We do not want HOAs going through a process in which they did not accurately provide notice or did not have a receipt or written confirmation of the mailing in the file. We want to make sure everyone receives notice to avoid the need for additional notification. This is an important part of my proposed amendments.

Senator Harris:
I am concerned about the confirmation of receipt. I have dealt with banks for many years as a homeowner advocate, and I can tell you the No. 1 problem we have is communication with banks. I am concerned because in addition to banks having a corporate presence often outside the State, there are many branches and different locations within the State. I go online to determine whom I need to contact and deal with, but the process is convoluted and frustrating. How is an HOA to know whom they must notify? When the HOA does give notice, how do they guarantee any confirmation of receipt? I have personally submitted hundreds of documents to banks, and I have a hard time getting banks to acknowledge they received the documents. When you deal with the notification process in this context, it becomes important.

This issue is the same for the HOAs. How do they get confirmation of receipt of documents or proof they submitted those documents from banks that sometimes do not know the right hand from the left, or the banks are large with many units and different individuals responsible for mail intake? I agree the notice provisions are critical, but how do you guarantee it? How do you provide guidance to HOAs to ensure they get their notices to the right party and get the confirmations of receipt you require?

Mr. McMullen:
It is a critical and important point. This is why we propose the banks pay for every cost up to notice of default and provide a trustee sale guarantee policy. The title industry indicates this is similar to a statement of condition of title that lists lenders in existence at the time the trustee sale guarantee title policy is issued. They also get what is referred to as "dated down." We have gone the extra mile because it is so important to us. We want to give HOAs a tool, and banks will pay for it when they pay the collection costs. The HOAs will have no concern about whom they attempting to notify. We had offered them a registered agent, but the HOAs did not agree because they perceived liability in transferring the corporate name to the resident agent. I do not think we can solve that concern. You deal with banks a lot, and the experience has not been great.

Senator Harris:
That is not true. I have a complicated relationship with banks, having seen banks do frustrating things. I have also seen banks do some pretty incredible things.

Mr. McMullen:
My point is that banks are not perfect. Banks have said they need a strong, targeted notice process. We started by asking for critical time deadlines based on receipt. It is important that everyone is allowed to come in and get notice, not just the first mortgage company. I cannot make the language totally comfortable, but banks understand the importance of notification. They want it to go through a process. They will set up a process approach more like special assets, special projects and special problems.

In the early stages, we discussed allowing 30 to 60 days to respond. Now we have over 90 days. In the banks' best interest, they sign the notifications and get them back as the best confirmation for us of the HOAs' compliance. They have to make sure people can get notice. You do not want a situation in which you have not confirmed you received notice, but your business records contain a mailed notification. It is a waste of time to notify and later learn it was not done correctly. The notification process is a one-shot deal that must be done correctly; otherwise, you must unwind the process.

Senator Harris:
I do not disagree with what you said. For me to be satisfied, I will need more clarity with regard to where the notice needs to be sent because it is confusing. I would hate for someone to send a notice and receive confirmation the notice did not make it to the correct branch or bank representative with the ability to keep the process going forward. I have seen this situation go awry, and then we have a serious issue on the table with a person's home.

Mr. McMullen:
Yes. Based on your experience, you could help us ensure other alternatives. I want the Committee to know this is as far as we have gotten negotiating around the table. At some point, the Committee needs to decide on the best process. We want to prevent a situation where people can game the system by saying they are not signing the notification. This gives them control over the timing, and we cannot let them have that either.

My proposed Amendment 5 says the HOA cannot proceed to notice of sale if the superpriority lien has been paid. The HOA may not proceed with a sale unless it has confirmation of receipt and the superpriority lien has not been paid.

Proposed Amendment 6 is the back part of the bill. Banks need to have a strong record of paying superpriority liens and taking over the loan in a time-sensitive manner to avoid situations in which delinquent HOA dues are pushing people out of their homes. We want to give them another option. The proposed amendment provides if you go to a foreclosure sale with a paid superpriority lien, there is a material change in terms and the notice for the sale does not work. Requirements must exist for the sale in this case. You could have a situation in which the bank pays the superpriority lien 5 or 6 days before the sale, which then requires a document be recorded 2 days before the sale.

All those people who show up for the sale need to know that circumstances have changed, including the payment of the superpriority lien. This changes the dynamics of who might show up for the sale. When the terms of sale have changed, there should be disclosure and additional notice.

Proposed Amendment 7 builds more incentive for banks to pay the superpriority lien prior to the 90-day period. This is the waiting period after the notice of default has been sent. The HOAs cannot file a notice of sale within 90 days after filing a notice of default. If banks pay before the 90 days, an important piece of information is given to the HOAs. The HOAs must be notified that the outstanding superpriority portion of the lien no longer exists and decide whether to foreclose on the nonsuperpriority lien; they may still want to foreclose and banks want an indication of the HOAs' intent to proceed. A foreclosure at this point would affect lenders rights even when no superpriority issues are involved.

Proposed Amendment 8 clarifies any lender can come in and pay the superpriority lien, not just the first mortgage. In addition, we should change statute to make it clear a second or lower lender can pay the lien, but it must first pay off the full HOA superpriority lien and then pay the nonsuperpriority delinquency. We will continue to work this out with the interested parties.

It has been the banker's position to find a way to make S.B. 306 work. This bill provides a way for everyone to win. Banks can control the priority of liens and loans and make sure HOAs get paid off in a short period of time, compared to the 20 or 21 months the process may take now.

I want to clarify we did not say you only have one 9-month period for each loan. If the bank pays off the lien and the homeowner starts to regenerate a deficiency, the bank will count up to the next 9-month period. We estimate it

will be less than 2 months before the property is processed, but it could take longer. This is not about taking property away from homeowners.

Senator Harris:
You are anticipating the possibility, not the reality, of multiple defaults along the life of the loan.

Mr. McMullen:
Yes. Banks do not want to give the impression they are trying to get away with doing the process once. Many banks cover the costs of defaulting or delinquent homeowners. Banks may get those costs at the end of the loan as part of the additional lien.

Senator Harris:
You are in a tough spot. You can have the HOA come in after 9 months of delinquent payments and say it will take the house. The bank is unsecured and does not get its money back.

I have a concern about the concept of multiple defaults. This puts HOAs in a bad position, especially if those multiple defaults are close together. I recognize you can catch it quicker in the process, but you essentially have 9 months of default before the superpriority lien gets paid off to make the homeowner current—and then the homeowner becomes delinquent again. While we are getting some money to HOAs by paying off the superpriority lien, this notion of recurrent defaults on HOA fees does not put them in any better position. I am not saying that foreclosure on a superpriority lien is the right answer. I am saying there is little protection for HOAs.

Mr. McMullen:
This is a place in which the Committee should use judgment. We were responding in the negotiation part of this bill. We said we would not harm HOAs. We want the time period to rebase as soon as liens are paid off. This will push the nonpriority lien elements over and keep them as debts owed by the unit owners; the HOA can collect as they wish but not as superpriority. This issue has multiple sides. We also do not want to give unit owners the impression they never have to pay. We talked about the theory, and banks stepping in make the most sense. Banks that have already processed one default will maintain the rest. The HOAs are in control. They may or may not

foreclose. They may decide to work it out with the homeowners. We did not get to that stage in our discussions.

Senator Segerblom:
Can we have a punitive banker registry?

Mr. McMullen:
I know that is a serious question, and my answer is no.

Senator Segerblom:
Could you have a Website that provides instructions regarding the notification process? I have tried to find a registered agent for a bank, and it is impossible.

Mr. McMullen:
Some national banks have registered agents, but there is no requirement that Nevada banks have registered agents. We are working on this. Our main concern is giving the process attention and moving it through the correct channels.

Chair Brower:
The Committee is bringing everyone together to process S.B. 306 and get it right. Have all of your proposed amendments been proffered to the primary sponsors of the bill?

Mr. McMullen:
No. We did not have time.

Chair Brower:
That is the first step.

Mr. McMullen:
The working group represents all stakeholders, and most of them are aware of my proposed amendments. The bill sponsors may have issues with my proposed amendments, but I want a consensus before bringing it to the sponsors. This is a difficult bill, and it is a group effort.

Chair Brower:
It is a work in progress.

Mr. McMullen:
The Committee will have the proposed amendments by tomorrow.

Chair Brower:
The first step is to speak with the primary sponsors of the bill, and then we will see what progress can be made. We have now heard from the lenders with testimony from Mr. VanSickler and Mr. McMullen. We heard from the federal government with testimony from Mr. Pollard. Now we are going to hear testimony from the HOA representatives.

Garrett Gordon (Community Associations Institute; Southern Highlands Homeowners Association):
We support S.B. 306. Working off Proposed Amendment 6077 and Mr. McMullen's proposed amendments, we put together a compromise amendment for the approval of the bill sponsors. I submitted a document of my proposed amendments (Exhibit H).

Mr. McMullen:
It is my understanding that Mr. Gordon's proposed amendments are in addition to Proposed Amendment 6077.

Chair Brower:
Mr. Gordon, have your proposed amendments been submitted to the primary sponsors of the bill?

Mr. Gordon:
When we received Proposed Amendment 6077, I contacted the Bankers Association to get input before speaking with the sponsors. The bill sponsors are not aware of our proposed amendments, but during the working group, we have all consistently spoken about these issues.

Chair Brower:
Did you have a conversation with Mr. McMullen about the proposed amendments?

Mr. Gordon:
Yes.

Chair Brower:
Is it true you both agree to some but not all of the proposed amendments?

Mr. Gordon:
Yes.

Mr. McMullen:
I would like to clarify that it is not just me. We did everything in a group.

Chair Brower:
We need to narrow this group in order to go forward with S.B. 306.

Mr. Gordon:
I will address the remaining issues we have with the bill. In regard to the rolling lien, if the first security interest pays off the superpriority lien during the 9-month period, it does not stop there. The superpriority lien rolls or retriggers. We are concerned about the 9-month superpriority lien retriggering or rolling in the event it is paid off.

Our next issue relates to the doughnut hole problem. The intent is to give banks notice of default when borrowers are in arrears on their assessments and there is an opportunity to cure. Under statute, 90 days go by before the HOA has a right to give notice of sale. The bank has a 90-day cure period in which the HOA can take no action and no additional costs will be incurred. What if the bank pays 60 days after the notice of default? The doughnut hole issue relates to counting what is due—not at notice of default but at the time of payment—so we can capture 2 months of additional assessments. Mr. McMullen's proposed Amendment 1 attempts to address this issue.

My next issue relates to cost. We appreciate the bill sponsors working with us on a compromise to get collection costs into statute. We have one remaining issue. If the bank comes in and cures a notice of default, we have costs in statute that we cannot exceed and cannot expect to recover. This assumes the bank cured the notice of default. What if the bank does not cure within the 90-day window, which is the period the HOA cannot take action? If the HOA goes to notice of sale, it will incur the cost of publishing and posting. This can be expensive, $800 or $900 depending upon the publication or newspaper. We propose if the bank does not cure the notice of default until after the 90-day

period, the bank will reimburse the HOA $275 for the notice of sale and the amount the HOA paid for posting and publishing the notice.

Senator Harris:
I do not want to complicate the issue, but what happens when you have a partial cure? This happens when a 50 percent payment is made to keep the homeowner in the house longer, but it is not a full cure. Based on your proposed amendment, do we apply what has been received to the most postdated delinquency?

Mr. Gordon:
Yes. Gayle Kern, who has practiced HOA law for over 25 years, is here and she can give us some examples. In law, we must send a 60-day letter to inform homeowners who are behind in their payments that they have the opportunity to challenge this with the HOA board and the option to elect a payment plan. Senate Bill 306 says if the HOA has not filed a notice of default within 3 years, we lose our right to extinguish the first mortgage lien.

We are concerned with the 3-year period. If the HOAs are working with homeowners and it takes years for dues to get caught up, we would be forced to file the notices of default and get the banks involved. This is a disincentive for HOAs to work with homeowners over long periods of time. This outlines the notice of sale issue if we are forced to go all the way through the process to make sure HOAs get reimbursed.

The first two bullet points on page 2 of Exhibit H have been retracted.

Senate Bill 306 proposes that the HOA must record a notice of satisfaction or a notice of release once the superpriority lien has been paid. If the HOA is required to publish and record this notice and incurs costs, we propose a fair amount of reimbursement in an amount not to exceed $50. This would be included in the bill.

Another issue in the bill deals with the time period in which the bank pays the HOA. The bank must do so within 5 days before the sale; if that occurs, the HOA cannot proceed to sale for 2 days. We request the bill be amended to say 2 business days. Two days is not a lot of time to do something pretty substantial. If there is a weekend or holiday, 2 business days would be our preference.

In the case of a foreclosure, S.B. 306 contemplates a 60-day redemption period in which the bank or homeowner has the ability to satisfy the lien. We request the redeemer or the lender pay the cost the home was sold for and any lingering assessments still outstanding. For example, if there is a 60-day redemption period, the redeemer or lender must pay the HOA superpriority lien plus the additional 2 months of assessments. This will ensure revenue capture for other unit owners.

My final point relates to a situation in which the HOA must credit bid. This happens when the HOA goes forward with the foreclosure but has no buyer for the property. The HOA will credit bid what it is due and take title to the home.

The bill proposes only an investor or a third-party purchaser of the property at an HOA foreclosure sale. The redemption period makes clear that the HOA cannot get paid a second time. During the HOA foreclosure, an investor purchases the property and pays the HOA in full. The bank comes in and redeems, and the HOA does not get paid a second time, which is fair. If the HOA does a credit bid, it takes title to the property short of being paid. In this case, if the bank comes in and redeems the lien, the HOA needs to get paid the amount owed the association.

Gayle Kern (Community Associations Institute):
I have represented HOAs for over 25 years in northern Nevada. With respect to the noticing process, I agree notice is required and needed. I was appalled and surprised over concern of notice not being given. This is required by statute and must be done. I have no problem that our notice is triggered, and we give notice based upon the recorded records. If a lender records something with the Washoe County Recorder's Office and does an assignment, it shows up on our Trustee Sale Guarantee and notice is sent to all those places.

I cannot be bound by limiting my ability to proceed based on someone signing for a notice or getting a return receipt notification back from the post office. I have no control of this. I can control sending the notice and show I provided it. Sometimes the recipient does not return the receipt slip, and sometimes the post office does not return it. You also have a situation in which the lender has signed for the notice and we do not receive the receipt.

Chair Brower:
Do you agree the procedure we use in court for notification is good enough in this context?

Ms. Kern:
Yes. You can include protections to make sure notice is given to the necessary parties, but you cannot limit procedure based on confirmation the notice was received. We do not have control over receipt. I only have control over providing the notice.

Chair Brower:
Mr. Gordon and Ms. Kern, I hesitate to address this issue; however, from my perspective, we want to do several things by way of S.B. 306. We want to make sure HOAs get paid, we do not want to allow an unfair foreclosure vis-à-vis the rights of homeowners and we want to make sure the lender is treated fairly. There is another issue with respect to the lender: Why should the lender ever lose its first mortgage lien because the HOA is owed a couple of thousand dollars?

Ms. Kern:
From my standpoint, this is the proverbial hammer. I agree this should be a last resort, but when you say an association is owed a couple of thousand dollars, you must appreciate that might be a lot of money to the HOA's budget. That money gets distributed to the assessment-paying homeowners. I did not participate in or conduct an HOA foreclosure until approximately 5 years ago.

Chair Brower:
I did not know there was such a thing until a couple of sessions ago. It seemed so illogical to me when I first heard about this situation and wondered if it was right. How can the HOA foreclose on a home worth $500,000 because it is owed a few thousand dollars? I now know the state of the law, and I understand the rationale.

Ms. Kern:
I want the Committee to know when a property, such as a condominium, has an HOA, the common elements paid for with homeowner dues affects collateral. The lender only has a security interest in what we call "air space." The HOA and all the assessment-paying homeowners are paying for roofs, siding and a lot

of other things involved in that collateral. Assessments take care of more than just property values, it is far greater than that.

Chair Brower:
That makes sense. Mr. McMullen, your issue is a lender should not lose its first security interest without adequate notice and an opportunity to step in and cure the problem, even if it is not the bank's obligation to do so.

Mr. McMullen:
Yes. We have offered to pay costs associated with research needed to ensure HOAs get correct addresses for notification with a receipt for their records. This is one of the primary things we are asking for. People may not know that banks have moved significantly to put the world back in order. Another idea we had, but did not include in our proposed amendments, was service of process. We will pay the costs incurred up to the notice of default at the time we pay for the superpriority lien.

Chair Brower:
We have a lot of work to do on this bill, but the issues are narrowing.

Jon Sasser (Legal Aid Center of Southern Nevada):
I do not support S.B. 306 in its current form. I was included in the working group formed by Senators Ford and Hammond. At the first meeting of the working group, the primary focus was on the notice process, but the main issue was not being addressed. At issue are the concerns of the federal government and the ability for Nevadans to get loans. Mr. Pollard's testimony did not directly answer all my questions. First, will Nevadans have the ability to get loans if we continue to allow the first security interest to be extinguished?

Chair Brower:
Mr. Pollard said they would. He did not say Nevadans could not get loans if the bill, as presented by the sponsors, was passed.

Mr. Sasser:
I do not believe he was asked that exact question. I heard him say he did not think the extinguishment was the proper or appropriate approach. He had great reservations at the end of his testimony about the extinguishment, and it is a great concern to the FHFA. It gives pause to lenders as to whether they might lend in Nevada, and it would affect agency underwriting standards.

Chair Brower:
We can clarify that information before we move forward.

Mr. Sasser:
My suggestion is to put one line in S.B. 306 to state that the sale of an HOA nonjudicial foreclosure does not extinguish the first security interest. An amendment proposed by the mortgage bankers may be forthcoming.

Another issue is the inclusion of collection costs in the superpriority lien. Dealings between collection agencies and HOA management companies have led to a lot of the problems. The HOA management companies hand it off to collection companies with a guarantee they will get their 9 months back because of the superpriority lien. It does not matter how much it costs for collections. It could cost $5,000 to collect a $200 debt. This vague area in law has not been clarified by the Nevada Supreme Court. Choosing one side over another in statute continues the present system.

Some people ask why collection costs matter as long as the bank or investor pays them. It matters because 90 percent of the time, these cases do not go to a foreclosure sale. Either the homeowner comes up with the money after collection costs start running up or in some cases, banks steps in. Collection costs are paid by the homeowner most of the time, and only 10 percent of homes go to a foreclosure sale. If HOA collection costs remain in the bill, I cannot support it.

Pamela Scott (The Howard Hughes Corporation):
We support S.B 306 in its original form with Proposed Amendment 6077. We also support the proposed amendments discussed today. One sticking point for us is the confirmation of receipt. You cannot get that by using the postal service. In my hand are letters mailed to our office from attorneys with the green return receipt slip still attached because the post office does not always make you sign for the letter. The post office will leave these in mailboxes. I tested the process by mailing myself a letter with a return receipt request, and the post office representative left the letter without my signature. I do not see how we can be asked to do confirmation of receipt.

Marilyn Brainard:
I support S.B. 306 with the proposed amendments. I submitted my written testimony (Exhibit I). You have not yet heard from a homeowner, and we have a real stake in this fight.

Chair Brower:
Is Nevada unique in allowing the extinguishment of a first mortgage lien pursuant to an HOA foreclosure? It sounds like not all states do it that way.

Senator Ford:
No, we are not unique. Some states have adopted a uniform act that deals with this. The experts here today can answer that question. I had the idea to convene a group of individuals together to talk about how we could address this issue after watching the Nevada Supreme Court hearing. I asked Senator Hammond to cosponsor the bill. Exploring this issue has been an interesting journey. Initially, we wanted to make certain banks would not sit on their rights and take no action when given notice of unpaid dues by an HOA.

We talked to banks that indicated they were not getting proper notice, and the notice they did get did not include the amount owed. We talked about strengthening the notice provisions that require banks, within a specified amount of time, to respond. If no response is received, the superpriority lien kicks in, the Supreme Court decision applies and the bank loses the first lien.

It was never our intention to undo the superpriority lien component. This is where the working group started. What came into play was the issue of a bonafide purchaser and commercial reasonableness which avoids a $5,000 sale for a $500,000 home. The idea expanded and eventually became S.B. 306. Mr. McMullen is correct in stating that judgment by Committee will be needed. Someone needs to say "enough." I thought we were done with the bill when we got Proposed Amendment 6077 after subsequent conversations and the initial bill draft. This was the point when I reached out to FHFA to request a review of the language. The FHFA indicated if the bill was amended as suggested, the agency would support it. I presented the FHFA recommended changes to the working group and noted if the bill is amended further, we will run the risk of Mr. Sasser's concerns regarding Nevadans not receiving loans coming true. There is room for more conversation about this bill. The bill is in the hands of the Committee to decide which of these amendments will be adopted. I will offer my input, but I give the Committee the full context of the bill as it stands.

I recommend the bill be considered as is with Proposed Amendment 6077. If the Committee wants to entertain further amendments, you need to be aware of the FHFA concerns.

Senator Hammond:
One of the last things I said to the working group is we need to draft a bill and if not everyone agreed to all the amendments, they should be brought to the Committee for consideration. That is what you heard today. What you have before you are ideas. We already had Mr. Pollard telling us the FHFA is not in favor of some of the proposed amendments. You can tinker with something to the point that it is no longer what you want. I am afraid this could happen with S.B. 306. We have a bill, and we are ready to go forward with Proposed Amendment 6077.

Senator Kihuen:
Mr. Sasser was part of the working group on the bill. How do you feel about his proposed amendments?

Senator Ford:
I am not certain we can accommodate Mr. Sasser. He was involved in the working group the entire time. His changes do not take us where we want to go with this bill.

I was not in support of the redemption component we added to the bill because it defeated the purpose of having a bank come to the table early if all that was needed at the end was to give banks a right to come back and pay for a foreclosed home. I thought this would be sufficient enough incentive to address Mr. Sasser's concerns by offering an additional protection afforded homeowners that does not otherwise exist.

Chair Brower:
I will appoint myself as an ex officio member of the working group. That does not mean the working group must let me know when it meets, but I volunteer to help work on the bill over the next few days. I will close the hearing on S.B. 306 and open the hearing on S.B. 264.

SENATE BILL 264: Exempts spendthrift trusts from the application of the Uniform Fraudulent Transfer Act. (BDR 10-780)

EXHIBIT “N”

EXHIBIT “N”

M E M O R A N D U M

TO: Senators Ford and Senator Hammond and Other Members of the Senate Judiciary Committee

FROM: Members of the Real Property Section, State Bar of Nevada

DATE: 4/3/2015

RE: SB 306 – Hearing on April 7, 2015 at 1p.m.

This memorandum highlights two areas which the Senate Judiciary Committee may wish to focus in its consideration of SB 306. Our purpose is not to advocate on policy matters, but to provide information for your consideration and to bring to your attention interpretation and drafting issues.

1. **Commercial Reasonableness**. Subsection 1 of Sec. 5 of SB 306 states:

Every aspect of a sale or other disposition of a unit pursuant to NRS 116.3116 to 116.31168, inclusive, including, without limitation, the method, advertising, time, date, place and terms, must be commercially reasonable.

First, we note that each of the particular items described in the subsection are already prescribed by statute, to wit:

Method: Subsection 5 of Sec. 5 (SB 306, p. 13, line 4) requires that the sale be conducted at "public auction."

Advertising: NRS 116.31165 specifies the methods by which the sale of a unit must be advertised, including recording, posting, publishing and mailing.

Time, Date and Place: Subsection 2 of Sec 5 (SB 306, p. 12, lines 22-29) requires that the sale be between 9 and 5 and specifies the location. [*Suggestion*: Subsection 2 might be changed to prohibit sales on Saturdays, Sundays or legal holidays.]

Terms. Subsection 5 of Sec. 5 (SB 306, p. 13, line 4) requires that the sale be in "cash."

Accordingly, there is either no need to require that these items be "commercially reasonable," since the statute specifies the particulars, or the statute creates an ambiguity by requiring that the sale occur by the statutory method and be commercially reasonable, implying that the statutorily prescribed particulars may not necessarily be commercially reasonable.

The above items, however, are not the only matters to be reviewed in the light of commercial reasonableness. Subsection 1 mirrors NRS 104.9610(2) of the UCC which requires, after default, that "Every aspect of a disposition of collateral, including the method, manner, time, place and other terms, must be commercially reasonable."

In contrast to real estate foreclosures, default dispositions of personal property under the UCC may occur in a variety of ways. Indeed, as noted in Comment 2 to Section 9– 610 of the Uniform Commercial Code Official Text:

> This section encourages *private dispositions* on the assumption that they frequently will result in higher realization on collateral or the benefit of all concerned. Subsection (a) does not restrict disposition to sales; collateral may be sold, *leased, licensed or otherwise disposed*. [Emphasis added.]

With such great freedom in disposing of collateral, it is not surprising that the UCC imposes a commercial reasonableness standard. On the other hand, in areas outside of Chapter 116, disposition on default under real estate law must occur in a specified manner. A real estate foreclosure sale must be a sale and must occur in a specified manner. Thus, there is little need for the statute to prescribe commercially reasonable methods, since the sale follows the statutory procedure.

Perhaps more significantly, the concept of commercial reasonableness is not limited to the methods of the sale. As noted in *Dennison v. Allen Group Leasing Corp.*, 110 Nevada 181 (1994), "the conditions of a commercially reasonable sale should reflect a *calculated effort to promote a sales price that is equitable* to both the debtor and the secured creditor. The *quality of the publicity, the price obtained at the auction, [and] the number of bidders* in attendance are important factors to consider when analyzing the commercial reasonableness of a public sale. [Emphasis added. Citations and internal quotations omitted.]"

In other words, commercial reasonableness includes a variety of factors and may change depending on the property being foreclosed. For example, should the foreclosure of a condominium worth $1 million be conducted differently than a condominium worth $30,000? The question the Committee should consider is whether it makes sense to require an association, already suffering from the effects of unpaid assessments, to retain professionals or experts to advise it on how the association should conduct a foreclosure sale.

Section members believe there is a benefit in the creation of stable and marketable titles to real estate. The limited ability to attack a trustee's sale under a deed of trust, as set forth in NRS 107.080(5),(6) likely results in increased bidding at trustee's sales. The introduction of a commercial reasonableness standard into the Chapter 116 lien foreclosure sale, will likely reduce the stability and predictability of the foreclosure sale process. The law has long noted that real estate is "unique." Because of this, establishing a commercial reasonableness standard may require that each sale be examined in light of the unique qualities of the unit being sold, further complicating the determination of what constitutes commercially reasonable when applied to a particular property.

Sec. 6 of SB 306 introduces a right of redemption into the foreclosure sale process. It would seem that this right of redemption is a superior way to protect unit owners in the foreclosure process than to introduce a concept of commercial reasonableness, which, by nature, is not definable in advance.

2. Postponements. NRS Chapter 116 does not presently limit oral postponements of assessment foreclosure sales. In contrast, in 2005 the Legislature amended NRS chapter 107 (NRS 107.082) to require a new notice of sale after three oral postponements (recently interpreted in *JED Property LLC v. Coastline RE holdings NV Corp.*, 131 Nev., Advance Opinion No. 11, March 5, 2015). A similar approach to that found in NRS 107.082 is found in Sec. 16 of SB 355 (p. 33, lines 16-21).

Subsection 4 of Sec. 5 of SB 306 (p.12, lines 38-39) would prohibit any postponement of an association lien foreclosure sale, unless the sale is re-noticed, i.e., recording, posting, publishing and mailing etc. the notice of sale. Section members believe there is a value in permitting a limited number of oral postponements. Oral postponements give the person conducting the foreclosure sale (i.e., the association) some flexibility to address concerns of bidders and other last-minute issues. By requiring a new notice of sale, the association will be forced to incur additional expenses and collection costs without necessarily obtaining a corresponding benefit.

Section members believe that the ability to postpone the association's lien foreclosure sale for a limited number of times, in a manner similar to that provided for in trustee sales, has a benefit.

EXHIBIT “O”

EXHIBIT “O”

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Eighth Session
April 28, 2015

The Committee on Judiciary was called to order by Chairman Ira Hansen at 7:59 a.m. on Tuesday, April 28, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblyman David M. Gardner
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

Assemblywoman Olivia Diaz (excused)
Assemblywoman Michele Fiore (excused)

GUEST LEGISLATORS PRESENT:

Senator Aaron D. Ford, Senate District No. 11
Senator Becky Harris, Senate District No. 9
Senator Scott T. Hammond, Senate District No. 18

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Linda Whimple, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Mandy S. Shavinsky, representing the Common Interest Community Subcommittee, Real Property Section, State Bar of Nevada
Mark Leon, Private Citizen, Las Vegas, Nevada
Glen Proctor, Private Citizen, Las Vegas, Nevada
Garrett Gordon, representing Community Associations Institute and Southern Highlands Community Association
Jon Sasser, representing Legal Aid Center of Southern Nevada
Gayle Kern, representing Community Associations Institute
Pamela Scott, representing The Howard Hughes Corporation
Jonathan Gedde, Chairman, Board of Governors, Nevada Mortgage Lenders Association
Samuel P. McMullen, representing Nevada Bankers Association
Jennifer Gaynor, representing Nevada Credit Union League
Russell Rowe, representing One Nevada Credit Union
Randolph Watkins, Private Citizen, Las Vegas, Nevada
Erin McMullen, representing American Resort Development Association
Jonathan Friedrich, Private Citizen, Las Vegas, Nevada
Bob Robey, Private Citizen, Las Vegas, Nevada
Tim Stebbins, Private Citizen, Henderson, Nevada
George Crocco, Private Citizen, Las Vegas, Nevada
Robert Frank, Private Citizen, Las Vegas, Nevada
Catherine O'Mara, representing DK Las Vegas, LLC
Robert C. Herr, P.E., Assistant Director, Public Works and Parks and Recreation, City of Henderson
Lorne Malkiewich, representing Expedia
Jenny Reese, representing Nevada Association of Realtors and Nevada Land Title Association
Diana Cline, representing SFR Investments Pool 1, LLC

Steve VanSickler, Chief Credit Officer, Silver State Schools Credit Union, Las Vegas, Nevada
Silvia Villanueva, representing One Nevada Credit Union
George E. Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry
Marilyn Brainard, Private Citizen, Sparks, Nevada

Chairman Hansen:
[Roll was called and protocol was explained.] We have seven bills on the docket today. We will start with Senate Bill 389, which revises provisions relating to condominium hotels, and it will be presented this morning by Senator Ford.

Senate Bill 389: Revises provisions relating to condominium hotels. (BDR 10-76)

Senator Aaron D. Ford, Senate District No. 11:
Senate Bill 389 is a cleanup bill for all intents and purposes. It is a bill that the State Bar of Nevada requested I submit. I have a colleague with me from the State Bar if the Chairman would allow Mandy Shavinsky to proceed with the introduction of the bill. As I have indicated, it is a cleanup bill and nothing too controversial, but it does have some substantive changes that need to be explained by someone from the particular section of the State Bar.

Mandy S. Shavinsky, representing the Common Interest Community Subcommittee, Real Property Section, State Bar of Nevada:
I am here today speaking in support of S.B. 389 and to give some background on why we are supporting this legislation. The Common Interest Community Subcommittee of the Real Property Section of the State Bar of Nevada met on several occasions in the spring and summer of 2012 to consider changes to *Nevada Revised Statutes* (NRS) Chapter 116B, which is the Condominium Hotel Act. These changes are based on applicable provisions from the Uniform Common Interest Ownership Act (2008), the Uniform Act on which NRS Chapter 116 was based. There were also changes passed in the Nevada Legislature in 2011 with Senate Bill No. 204 of the 76th Session.

The changes in this bill are basically duplicate changes that were already made to NRS Chapter 116 with the passage of S.B. No. 204 of the 76th Session and came, for the most part, from the Uniform Common Interest Ownership Act. The participants who met in this subcommittee included Michael Buckley, Karen Dennison, and myself. As I explained, the amendments incorporate the applicable provisions of the 2008 draft of the Uniform Common Interest Ownership Act and S.B. No. 204 of the 76th Session.

Chairman Hansen:
We will close the hearing on Senate Bill 348 (1st Reprint) and open the hearing on Senate Bill 306 (1st Reprint), which revises provisions relating to liens on real property located within a common-interest community.

Senate Bill 306 (1st Reprint): Revises provisions relating to liens on real property located within a common-interest community. (BDR 10-55)

Senator Aaron D. Ford, Senate District No. 11:
I am here today with my colleague Senator Scott Hammond to present Senate Bill 306 (1st Reprint) as it was amended in the Senate. The bill represents a culmination or, as I call it, a quintessential example of compromise legislation over the interim on the homeowners' association (HOA) foreclosure issue. Senate Bill 306 (R1) makes a number of changes that we think will result in a better process for homeowners, banks, and associations.

Before I get into the bill, I think a little background is in order. As you may know, there is such a thing called a super-priority lien. Last year there was litigation which resulted in a Nevada Supreme Court opinion that ultimately states, in essence, that foreclosure on an HOA super-priority lien wipes out a first mortgage. That obviously raised a lot of antennas and caused a lot of discussion to occur. As an attorney, I happened to be watching the oral arguments during that time and took it upon myself to see if we could do something to address this issue. To my delight, Senator Hammond had already looked into doing something of this sort last session. Ultimately, I reached out to Senator Hammond and together we, in a bipartisan manner with a group that would start at about six people and grow to a lot of people, tried to come up with a solution for this.

As I understood the case and what the primary concerns were, the argument is as follows. There were HOA dues that were outstanding and were not paid. By some accounts, the banks were told about it and they would not take care of the HOA liens, so the HOAs were forced to foreclose on the property. Under the current iteration of the law, it wiped out the first mortgage—the bank's lien. The story was, well, they gave us notice, but that notice did not tell us how much was actually owed. We would pay it and they would still say that we owed more. There was a lot of confusion around what was due and owing, whether notice was proper, and whether notice was given according to the statutes. We undertook the task of attempting to address some of those issues. What you see in this hefty bill is, in fact, that effort. I will go over a few of the major provisions.

As I have indicated, the main concern was to address the notice issues and then ultimately discuss what happens in the instance of a failure after proper notice has been given of what is due and owing, what happens to the super-priority lien in that regard, and what happens to the first mortgage interest.

Starting with section 1, the bill allows the costs of collection to be included within the scope of a super-priority lien but very specifically limits what those collection costs would be. By virtue of an amendment in the Senate, the bill now also clarifies that liens for municipal waste collection have the same status as other governmental liens. Section 1 also provides that if a subordinate lienholder makes a payment to the association, it becomes a debt that is actually owed by the unit owner to the lienholder.

Section 2 adds a requirement that the notice of default and election to sell must include a detailed and itemized statement of the amounts due to the association and must be mailed to each holder of a recorded security interest. Again, this addresses the notice issue and the specificity issue that were the main contentions of disagreement. Section 2 also prevents any sale from occurring if the association has received notice that the unit is subject to the foreclosure mediation program unless the owner has not paid assessments that became due during the mediation period. The bill also requires the association to record an affidavit containing the name and address of each security holder to whom the notice of default was mailed.

Section 3 ramps up the standard for mailing a notice by requiring notices to be sent by certified or registered mail to each holder of a recorded security interest and it eliminates the current requirement that security holders must notify the association of their interest in order to receive notice.

To further enhance the efficacy of the notice, section 4 additionally requires (1) a recording of the notice of the time and place of the sale, (2) a posting in a public place typically used for such notices, and (3) publication in a newspaper.

We have inserted a requirement in section 5 that all such sales be held during normal business hours, and for more transparency, the bill also requires that sales in Clark County and Washoe County be conducted at a place designated for foreclosure sales of units subject to deeds of trust. In the other 15 counties, the sale must be held at a courthouse.

Another problem we tackled in this bill is the postponement of sales. To that end, if a sale is postponed by oral proclamation, which happens frequently, then the rescheduled sale must be held at the same time and location. If a sale is

postponed three times, then the bill requires going back through the hoops required for the original notice of the sale, which is something that echoes current practices when it comes to notice of default and election to sell. As an amendment in the Senate, we also added a requirement that an announcement be made at the sale as to whether the mortgage holder has satisfied the association's lien.

Section 6 of the bill creates a right of redemption which is a key component. This right of redemption is not something that I was initially enamored with, and still not enamored with, but as a matter of compromise has arrived in our bill. Section 6 creates a right of redemption by the unit owner or the holder of the security interest by allowing a unit owner or security holder to redeem the unit by paying certain amounts as laid out in that section. It also lays out the rights of the parties and procedures to be followed in the redemption process. If the required amounts are paid within 60 days after the sale, the unit owner or security holder—as the case may be—will gain ownership of the unit. The unit owner or the security holder receives a 60-day right of redemption period. However, after the 60-day redemption period ends, the bill makes it clear that the purchaser at the foreclosure sale has the clear title. Section 6 also provides that if the first security holder pays the amount of the super-priority lien no later than five days prior to the sale, the foreclosure will not extinguish the deed of trust.

Section 7 spells out the process for persons with an interest in the property or a related debt and to record a request for notice and the duties of the association to respond. Section 8 requires the bank to notify the HOA if the unit is subject to the foreclosure mediation program and if the bank has received a certificate from the program. Section 8.5 was added based on testimony in the Senate, and it requires banks, credit unions, and similar entities that hold residential mortgages to provide the Division of Financial Institutions of the Department of Business and Industry with a name of a person and an address to which borrowers must send documents related to financial foreclosure mediation and to which an HOA must send the notices related to foreclosures. Again, this is a provision that deals with notice and making certain that everyone who has an interest in this property should receive proper notice. This amendment was actually suggested by our colleague, Senator Becky Harris. The Division of Financial Institutions must post these addresses on its website in a prominent location so they can be easily retrieved.

That is the overview of the bill. As we know, there are many bills addressing the super-priority lien situation this legislative session, along with the other common-interest communities issues. In our view, this bill represents a collaboration—a quintessential example of compromise legislation—of many

different points of view, and we think S.B. 306 (R1), as revised by the Senate with amendments, does a better job of protecting everyone's interests in making the process more transparent and fair for everyone involved. I urge your support of this critical legislation.

Senator Scott T. Hammond, Senate District No. 18:
Two years ago, I presented a bill that was similar to this, although I think this is much more comprehensive and what we need. The bill basically addressed the idea that the original intent of a super-priority lien involved the ability of the lien of the first to be extinguished by HOAs. There was some talk that maybe that was not correct, but ultimately the bill did not get out of committee and failed to get through the first committee passage in 2013. That was left up to the courts to decide and, of course, they went back to the original intent, an intent that I had read and had been presented going back to the group in the 1970s.

Someone had presented me with some of the remarks from Carl Lisman, an attorney and graduate of Harvard Law School, who basically said yes, this was always supposed to be a hammer to get the banks to the table and the HOAs talking together. When the Supreme Court decided that case, I smiled on the day after the decision was rendered because it confirmed everything that I had said two years ago. I also knew that it would be the beginning of more talks. Senator Ford approached me one day and said that he liked what we had tried to do two years ago and was going to go back to bat, so to speak, and wanted to know if I would like to come back. I was hesitant at first because this is definitely not my wheelhouse and not what I do all the time, but with his encouragement and knowing that there was going to be a very large group of interested members, I decided to go ahead and jump back in. I will say that it has been a phenomenal experience. There have been a lot of people and stakeholders who have been involved, and we had a lot of bipartisan support in this, which I think we need here more often.

As Senator Ford reviewed the sections, you could tell it took a long time to get through the bill. There are a lot of processes we put in the bill, which involved a lot of steps—a lot of things to protect the interest of not only the banks but also the homeowner and HOAs. In my mind, this was the way to go: an HOA foreclosure method that was nonjudicial to keep the cost down as well as putting in notifications. I am very happy with the way it turned out. One of the things we were also aiming at was to make sure we were not going to stymie any of the investment that would go on in the state of Nevada. We also received the buy-in from the federal government as well. They came in the Senate and testified that this is exactly what they wanted to see and that they would support this and we could move on. It was great to see the process work this way. We had a lot of meetings and a lot of people involved.

There will be some people who come up to the table today, probably in the neutral testimony, and say they liked the process, they liked what we did, but they want to add some amendments. We know it will happen. We all came to an agreement and this is what we said we liked, but if there is anything you think needs to be added and you want to lay it at the feet of the Committee, then by all means go ahead. What we have right now is pretty much what the federal government likes. It would take a lot for us to be moved from the position we are in right now.

Senator Ford:
I want to reiterate what Senator Hammond just said. Alfred Pollard, General Counsel of the Federal Housing Finance Agency (FHFA), testified during the Senate hearing on April 7, and I believe his testimony was submitted for the record testifying in support of this bill. Previous to this version, there was an amendment made that we do not think is going to change his endorsement. The amendment is the one about posting addresses on the website of the Financial Institutions Division.

This has been a labor of love. I neglected to tell you who was involved; I said there were from 6 to 60 people. We had banks, mortgage associations, legal aid, title companies, collection agencies, HOAs, and investors involved. This was an effort to bring all of the stakeholders together. The conversations primarily began right after the Supreme Court case around September of last year when we had our first meeting. We had three meetings before the year was out, two meetings afterwards, and then we have had half a dozen meetings since the session began. What you have before you is work that has been participated in by a lot of different entities, not the least of which is the federal agency which underwrites about 70 percent of the mortgages here, buys them up and, ultimately, the notice of provisions that are within this bill satisfy the concerns they have. To be sure, it will not necessarily stop the litigation that is ongoing, but this will not add to the litigation. It will assist in those efforts and our efforts to ensure we can bring some sanity back to the housing market.

Chairman Hansen:
We have been hearing about this bill for quite a while. All of those groups you mentioned have been coming to see me about this bill that is going on in the Senate and how we are going to solve these problems. I am all for solving the problems.

Assemblyman Nelson:
Thank you, Senators, for bringing this bill. I commend you—it is fantastic legislation. I have seven cases that I am litigating right now in this very area, and I know it is a giant quagmire. You are doing a great job.

Senator Ford, you pretty much answered what I was going to ask when you were talking about the stakeholders. You mentioned that title companies came to the table also. What I found in a number of these cases is that even if it is resolved, or even if a court says yes, the purchaser has clear title, they cannot get title insurance. I am curious about what the title companies have said about your bill and what they will do going forward.

Senator Hammond:
Title companies have been one of the stakeholders. We took everyone's concerns and addressed them, but when they were in the room, we understood that that was one of the primary stakeholders we needed to make sure was satisfied. I think they will testify that they are in favor of the procedures we put into place. They like that when they get done with this, we have a bona fide purchaser. I think you are going to find their testimony, if they are here today, also testifies to their acceptance of this because if they were not in favor of this bill, they would certainly tell you. They were very accepting of this process and have been there from the second meeting on that we had.

Assemblyman Elliot T. Anderson:
I would like to echo Assemblyman Nelson's comments for all the work. It is a complicated issue and the process really needs to be good because it is a big issue. It is very important and it affects mortgage finance. I wanted to get back on the conceptual issue. You mentioned FHFA testifying. I am looking at the FHFA general counsel's testimony where he said he thought the bill moves the ball forward. I do not know if it was as much as a support notion as it was that this moves the law forward. I agree with that; it certainly does. Notice and redemption are both very good provisions that I like in this bill. On April 21, the FHFA released a statement stating that federal law prohibits foreclosure of their interest. If I recall, federally backed loans are about 80 percent of our mortgage market here. I am wondering, is that exception here under federal law going to swallow the rule? Do you think it would be cleaner if federal law prohibits 80 percent of our mortgages from being extinguished by an HOA? Does it not make sense to write that in there and maybe make the exception for the 20 percent?

Senator Ford:
To your first point about whether it was a support testimony or moving the ball forward, I will say it this way—he accompanied me to the table, sat next to me,

and offered support for the bill. In view of the fact that there is litigation out there, I think he had to be a little cautious with the way he phrased things, but there is no question in my mind that the FHFA representative supports the bill as presented to the Senate. As to the legal issue that you have addressed, as you may know, there is a lot of litigation going on right now and the FHFA is involved in some of the litigation. The litigation is not complete. A statement by a federal agency, state agency, you, or me in litigation does not win the deck. Until those court cases are culminated, we will not know what the actual state of the law is. We are operating under the premise that our state's law is accurate and a first lien can be foreclosed upon and eliminated by the foreclosure super-priority lien. If we are wrong about that, the federal court will let us know and we will take a look at that. I do not desire to legislate around statements made. I want to legislate around laws as they currently exist and we do not know what the state law is in that regard, at least in regard to the statement that we just got from the FHFA.

Assemblyman Elliot T. Anderson:
I am looking at page 13, section 5, subsection 2. It is dealing with when the sale can be postponed after a first security interest satisfies the association super-priority amount. I am wondering about the wording of this. The sale may not occur unless a record of such satisfaction is recorded. Am I reading that wrong? Satisfaction to me means that the lien was taken care of and it was recorded as such—that the super-priority amount was paid off by the first security interest. I am wondering if that is worded correctly?

Senator Ford:
I am sorry, but I am trying to find the language.

Assemblyman Elliot T. Anderson:
I am specifically looking at lines 4 and 5 on page 13. It says, if the holder of the security interest satisfies the amount of the super-priority lien five days before the date of the sale, the sale may not occur. But then it says, "the sale may not occur unless a record of such satisfaction is recorded...." I do not understand what a record of satisfaction is, because I would take that to mean that a record of satisfaction means the lien was satisfied—it was paid off. I am wondering why it is fitting into the exception to the general rule of subsection 2.

Senator Ford:
I was listening to your question, but we have a different version of page numbers. Would you give me a section, please?

Assemblyman Elliot T. Anderson:
The language is in section 5, subsection 2. The exception starts on the fourth line of subsection 2. It does not make sense to me because the plain reading of that to me is you have satisfied something; you have paid off something. It does not seem to fit like it should in the exception. It should be that if you record the satisfaction, I would think that that is when the lien is paid, at least to the outside world, and there has been notice of that fact.

Senator Ford:
I hear what your question is; I am not certain I can answer that for you just yet.

Chairman Hansen:
Senator Ford, we have Committee Counsel looking into it and he is wondering as well. We will bypass that question and come back to it, perhaps if not in the hearing then during our work session.

Assemblywoman Seaman:
I want to clarify something. The FHFA is satisfied with this bill, and I think it is a great bill. Is it true that the litigation is moving forward because they really want to do away with the super priority and extinguishing the first priority lien? They are satisfied, but was this a question they were trying to work with you on with what they are in litigation over?

Senator Ford:
I will not purport to speak on behalf of the FHFA on that particular issue. I will say that he was very careful not to intertwine litigation conversation with legislative conversation. They have litigation going on and it is clear what their positions are because they say it goes into legislation. I think the statement that Assemblyman Anderson read a moment ago from the FHFA clearly delineates what they believe should be the state of the law and they can do what they want to in that regard. I can say that the notice provisions, the specificity provisions, the redemption provisions, and the other provisions that we have placed in this bill, the FHFA supports.

Assemblyman Ohrenschall:
My question has to do with the bill's section 2, lines 28 through 32, on page 10, changing the provisions about when an association may not foreclose regarding the foreclosure mediation program. Now the association, under the proposed language, would be able to foreclose if the homeowner is in arrears during the process of foreclosure mediation. What is the thought process behind it? I would think we would want to be shielded while mediation is taking place and hopefully get the person back on their feet.

Senator Hammond:
If they are in mediation and they are still paying their assessments, they will be all right. We are looking again at making sure they are still paying their assessments and still being a part of the process as they are going through it, but if they fail to do so, they could then be foreclosed upon.

Assemblyman Ohrenschall:
Under current law, as you understand it, even if they are not keeping current in their assessments, the association would not be able to foreclose, correct?

Senator Ford:
Not during the foreclosure mediation process, but those would still become due upon the ending of the foreclosure mediation process.

Assemblyman Gardner:
Section 5, subsection 5, talks about how the association can postpone a foreclosure sale by oral proclamation at the hearing. As of right now, I have had litigation issues on this when they postpone it. They will not tell anyone except for the people who were there, so they eventually pick and choose who is going to be at these hearings because they can move it at their discretion without any notice to any of the lienholders. Why is this still in here? I thought this was one of the things that was going to be fixed. Why would we allow people to postpone based on the oral proclamation?

Senator Ford:
Frankly, that was not one of the issues that I was looking to address when I undertook this bill. As you indicated, oral proclamations have been part of this current statute. I practice tangentially as well and I understand the concerns that can arise but, frankly, it was not one of the concerns that we were looking to address with this. We have added some additional provisions under that section that deal with oral proclamations indicating that if the sale is postponed by oral proclamation, the sale must be postponed to a later date at the same time and location. If such a date has been postponed by oral proclamation three times, any new sale information must be provided by the notice as provided in another part of the *Nevada Revised Statutes* (NRS).

Senator Hammond:
This came up when the work group started talking about how to make sure we make the process correct. As part of the process of oral proclamations, we also added language that was more specific so as to not allow these secret meetings

or secret sales to go on where all of a sudden you tell one person this is when the sale is going to take place. I think because of the other provisions we put there, we are going to see that the sale of the property is commercially reasonable.

Chairman Hansen:
Are there any questions? [There were none.] Senator Ford, do you have anyone else you would like me to call up at this time to testify in favor of the bill?

Senator Ford:
No, not anyone in particular.

Chairman Hansen:
Is there anyone in Carson City or Las Vegas who would like to testify in favor of S.B. 306 (R1)?

Senator Becky Harris, Senate District No. 9:
I am here to lend my support to S.B. 306 (R1). I want to give you a quick background on section 8.5 that came out of some discussion in the Senate. The reason we added it as an amendment was to help anyone who needed a notice of bank credit, union savings bank, savings and loan, et cetera, have one place they could go to in order to find contact information for that bank so they could be assured they were contacting the right individual at that bank with regard to default. I have a lot of experience with attorneys communicating with banks and I can tell you that it is very frustrating because the contact information changes constantly. If you try to look them up online, sometimes the information is old or has been changed. This was an attempt to help with the process in a practical way and to make sure the right people at the right institutions are being notified. That came about in response to a proposed amendment that I see the Nevada Bankers Association is also submitting to your Committee. Section 8.5 is still working in conjunction with section 3 where a copy of the notice is sent by certified mail and that is deemed notice to a lending institution for purposes of default and to not require confirmation of receipt from a lender with regard to that notice of default.

I can tell you I have represented many homeowners in default and I have yet to get any kind of a confirmation receipt from a bank with regard to submission of a document, whether that is email, fax, or written notice. It was a concern for me because I practice in this area from time to time with regard to the

practicability of the communication and making sure we can notice a lender without awaiting a response. I think section 8.5 adequately addresses that concern with regard to the one location where we can find the correct contact information for the lending institutions.

Chairman Hansen:
Do we have any questions specific to section 8.5?

Assemblyman Elliot T. Anderson:
Senator Harris has a lot of experience with foreclosure mediation, so I want to dovetail on Assemblyman Ohrenschall's question. I do not know if that provision makes sense because the whole point of the foreclosure mediation program is to get them back on their feet. Why would we allow another foreclosure to happen while they are in the process of this? Theoretically, the bank could take on the arrears, bring them current, and transfer that debt as a part of the deal for the foreclosure mediation program. Would we not want to give the homeowners some space to take part in that mediation?

Senator Harris:
I have that same concern and raised that during the hearing in the Senate. Because of time constraints and the need to get this onto the Senate floor, we were not able to appropriately address the issue. I think there were some fiscal note concerns as well. I would agree there are some concerns with regard to requiring a homeowner to continue to pay those HOA fees while they are part of the foreclosure mediation program. I think at some point you start income excluding people from remedies, and I have a real problem with that. Senator Ford and I had a fairly lengthy conversation about waiving those. The lobbyists for the HOA community have been very good and said they agree and they are willing to go ahead and waive those but we were just not actually able to achieve it in the time frame we had. If that is something this Committee would like to take up, I have a lot of expertise with regard to the foreclosure mediation program. I have been an appointed mediator with them for four years and I no longer serve in that capacity because of my state Senate service. I have also represented homeowners before that committee, so I could speak particularly to my experience. Verise Campbell, who is the director of that program, would also be a great resource. I would like to see some clarity with regard to what actually happens. At the end of the day in the Senate, we decided to go with current law. Current law is that you can still proceed with foreclosure. Current practice is that you do not. In order to provide that clarity for people who are in default and if that is something you would like to take up, I would be more than pleased to be helpful.

Chairman Hansen:
Is there anyone who would like to testify in favor of S.B. 306 (R1)?

Mark Leon, Private Citizen, Las Vegas, Nevada:
I support S.B. 306 (R1) because it protects the laws of homeowners in an association by placing the burden of collection costs onto the persons who caused the problem. Regarding foreclosures by an association for unpaid assessments, it gives both the homeowner and the mortgage holder one last chance to get right with the association, even after the sale occurs.

Finally, S.B. 306 (R1) prevents abuse of the foreclosure mediation process as a delaying tactic and reduces the burden on homeowners who are diligently paying their association assessments.

Glen Proctor, Private Citizen, Las Vegas, Nevada:
I support this bill. I think it does a marvelous job of cleaning up the communication between all parties and the super-priority lien. I also think it does a wonderful job of detailing that the collection costs are part of the super-priority lien. The problem is that if they are not, those costs do not go away. They are still there. They are absorbed by the HOA, which in turn means they are absorbed by the homeowners who have been paying their assessments. That is a wonderful part of this. Based on the testimony from the banks, the mortgage lenders, and the credit unions against the escrow one, maybe they are for this one, too, because it sure does clean up a lot of language.

Jennifer Gaynor, representing Nevada Credit Union League:
We support S.B. 306 (R1). This is an important bill and we believe it takes real steps to address the issues that Nevada faces today in light of the recent Supreme Court decision and the ramifications that it has for residential lending in Nevada. We really cannot overemphasize the danger facing Nevada's residential lending market where the FHFA has made it clear that they have real concerns with HOA super-priority liens being able to extinguish their loans. We also hope the steps taken in this bill will mitigate the bad HOA foreclosures and will be sufficient to protect Nevada's lending market and satisfy FHFA concerns. We believe the protections in this bill, including improved notice and a redemption period, do help with some of our major concerns. We thank Senator Ford and Senator Hammond for spearheading this effort. Procedurally, it gets a little complicated, but we do also support the amendments that you will see brought by the Nevada Bankers Association.

Again, this was genuinely a group effort and a consensus, with the exception of two of the bullets in the amendments. One of the two I would like to specifically address, which is to require the sale of a unit to be commercially reasonable. This provision is particularly important to ensure HOAs do not proceed with foreclosure sales that are far below market value. Noncommercially reasonable sales may adversely affect the lending market in Nevada. Property owners in the surrounding area who see the market value of their homes fall because similar properties have been sold at dramatically reduced prices is an ongoing issue. Overall, we support S.B. 306 (R1) and hope that you will adopt this bill. [Jennifer Gaynor submitted written testimony (Exhibit G).]

Jenny Reese, representing Nevada Association of Realtors and Nevada Land Title Association:

The Nevada Association of Realtors is in support of this bill. We applaud Senator Ford and Senator Hammond for their efforts in getting us all together. Maintaining lending in Nevada is an important aspect of Realtors and their business. In regard to the Nevada Land Title Association, we also applaud their efforts. We wanted to clarify on the record that if this bill is passed, it is not going to guarantee that title will issue insurance. They are going to have to look at each case on a case-by-case basis as to whether or not they want your title.

Diana Cline, representing SFR Investments Pool 1, LLC:

I have been a member of the working committee for S.B. 306 (R1). We have been involved in litigation concerning the interpretation of NRS 116.3116 for years, and we support S.B. 306 (R1) in its current form because it addresses the concerns in the dissent of the *SFR v. U.S. Bank* decision [*SFR Investments Pool 1, LLC v. U.S. Bank, N.A.,* 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014)] and other practical concerns.

I have not seen all of the proposed amendments before this morning, but several of them would create some ambiguity in the statute and I have concerns about those. To address the "far below market value" prices at the sales, those days are long gone. As soon as the *SFR* decision came out back in September 2014, the next day the prices went to market. There is still ongoing litigation; purchasers at the sales have lowered the prices again but still they are nowhere near the situation of $6,000 for an $800,000 house. The statute, in its current form and in S.B. 306 (R1), would provide a process that would allow investors to go to the sales and bid up to the same amount that you would get at a bank foreclosure sale.

Steve VanSickler, Chief Credit Officer, Silver State Schools Credit Union, Las Vegas, Nevada:
The bill before us today assumes that a unit owner in a common-interest community has a lienholder obligation recorded against their home and strives to provide notice to regulated lienholders to satisfy past due obligations owed to the unit owner's HOA under NRS Chapter 116.

Today I appear before you to speak about our members and Nevada homeowners who own their common-interest community home free and clear. In a state with a Homeowner's Bill of Rights that provides for a foreclosure mediation program, no such mediation right vests to our members and Nevada homeowners who face foreclosure under NRS Chapter 116 or in this bill when they own their home debt free. *Nevada Revised Statutes* Chapter 116 provides only that they may appeal to the same HOA board that is seeking to take their home for past due assessments. Demographic and recorder's office data represents that as much or more than 70 percent of Nevada homes are in a common-interest community, and as much or more than 40 percent of those homes are free and clear.

Taking away a Nevada homeowner's most significant financial asset must come with significant protections, particularly when there is no recorded lienholder. Instilling a requirement that a super-priority lien on a free and clear home is protected under the Nevada Homeowner's Bill of Rights and that mediation is required, not elected, is a step in the right direction, but excluding a super-priority lien right, under NRS Chapter 116, for free and clear homes is a better solution. Many Nevada homeowners who own their homes free and clear are elderly or infirm and may suffer from diminished mental capacity or have other health issues. Falling behind on HOA assessments may not come with a recognition that they could lose their home.

Jonathan Gedde, Chairman, Board of Governors, Nevada Mortgage Lenders Association:
The Nevada Mortgage Lenders Association has been part of the working group since October 2014. I would like to thank Senators Ford and Hammond for their excellent work on this bill and getting many divergent groups together to try to reach some common goals. We are certainly proud of most of the compromises reached within it. We support S.B. 306 (R1) for providing the desperately needed clarity to a process that has been incredibly vague, which has led to extensive litigation. We also support this bill for introducing fairness and reasonableness to the process.

As Nevada mortgage lenders, our primary goal is to ensure continued access to affordable mortgage financing options for all Nevadans. The issue of super-priority liens has been a growing national topic garnering the attention of every federal lending agency and enterprise. It is imperative that we act to add clarity, certainty, and reasonableness to the process of super-priority lien foreclosure. While there will continue to be concerns about other sections of existing law, as evidenced by Mr. Pollard's testimony on the bill in the Senate and practices under that law, this bill is a great step in the right direction.

I would like to share with you a couple of the remarks from Mr. Pollard's testimony. He said Senate Bill 306 (R1) as amended "would improve elements of the current statute for parties in interest including unit owners and lenders in some of the majority of amendments to improve current law and current statute...The FHFA finds most provisions of S.B. 306 (R1) improve the situation from lenders and secondary participants in Nevada and support common interest communities." I would add to those comments that Nevada homeowners benefit by the changes made in this bill as well. Taking away someone's property that is worth hundreds of thousands of dollars is not a matter that should be taken lightly and there are quite a few consumer protections in this bill. We certainly support S.B. 306 (R1), but would like to stipulate to the Nevada Bankers Association's amendments that we are in support of those amendments as they will testify to shortly.

Silvia Villanueva, representing One Nevada Credit Union:
We would like to express our support for this bill and also thank Senator Hammond and Senator Ford for bringing this bill and supporting the underlying goal of addressing the HOA super-priority issue. We specifically support section 3 of the bill, which requires that notice be provided to the lender in the event of an HOA foreclosure. We also believe it would keep homeowners in their homes and allow us an opportunity to protect our interests.

Chairman Hansen:
We will now go to opposition testimony.

Jon Sasser, representing Legal Aid Center of Southern Nevada:
I like 90 percent of the bill, and with one amendment, I will be happy. I was very pleased and honored to serve on the interim working group with Senators Ford and Hammond, and I think they did a tremendous job. Again, I support 90 percent of what is in here. I think it is a step forward. I have two remaining concerns, and I have addressed those in a proposed amendment (Exhibit H).

The problem that is to be addressed by this bill I do not think is still addressed. In my Senate testimony, I called this the elephant in the room, which is the FHFA. Yes, they came to the table and said they supported the bill. Yes, they said it improves the situation in Nevada, but they were a long way from saying they will not continue to file lawsuits against everyone who buys one of these at a sale. I think there are 12 pending in Las Vegas right now. I think both the statement they put out last week about their intent to file such lawsuits and the testimony in the Senate when he gets to the part following what was read about his reservations indicates they will continue to do that. I think it is also clear in terms of underwriting loans in Nevada, that as long as we have a super-priority lien in Nevada that trumps the first, there is real danger in terms of people being able to get these loans in Nevada and for those to be packaged in other parts of the country. I propose an amendment basically borrowing the language of Assemblyman Gardner in Assembly Bill 359 (1st Reprint), which would make it clear that the first is not extinguished. I think for 80 percent of those people in Nevada who are looking to the FHFA to back their loans, that is the best for our real estate market and the best for Nevada homebuyers and consumers.

The second amendment is against the change in current law that puts the collection cost in the super-priority lien that is in the bill. I think one of the major problems with our current system is that collection agencies are basically able to go to HOAs and say, give us your account, it will not cost you a penny, we will get you your money back, and you do not have to worry about what we get out of it. As a result, accounts are turned over to them, they begin running up the cost very rapidly, and then this bill is some $1,400 that would be blessed to be put into the super-priority lien. Those are done very quickly in the process, and I think that putting those collection costs into the statutes encourages that practice to continue. Does it make a difference in terms of whether it is the investor or the bank that gets the money at the sale? Not to my clients. Our clients are concerned, however, because in 90 percent of the cases these do not go to sale. They are settled prior to sale, and I think in 50 percent of the cases, the homeowners respond within the first 60 days under the new 60-day letter we got in the last session. After that it is a combination of homeowners and banks stepping up to the plate. Once they fall behind, they are the ones who have to come up with this money, so I cannot support the bill as long as those collection costs are in there. That is in my amendment as well.

Samuel P. McMullen, representing Nevada Bankers Association:
I would like to explain that. We were a great part of this bill and its interaction to get it to this point. We started off by proposing a basic draft that I think in great part has made it here, but our understanding of the rules is that if we are

going to propose an amendment, we have to oppose. I want to commend Senator Ford and Senator Hammond and the interests of Senator Harris as well because I think we have made a lot of progress.

This bill will work only as far as it goes. What is going to happen in Nevada is we are going to have two types of loan structures for homeowners. One this will clearly apply to will be all private loans. There will be no government servicing entity, which is what the technical term is for the Federal Housing Administration (FHA) or other governmental lenders. The Federal Housing Finance Agency (FHFA) is now the organization that manages those in conservatorship. That is why you hear about this new set of letters, but it is all the same, so I am going to call them either government servicing or federal programs.

If you have a loan that has no federal program, no FHA loan, no Fannie Mae or Freddie Mac, or any of that, then this will still apply to those because everything will be as normal. If it has 80 percent of the loans in Nevada, be it 70 percent or higher—actually, Mr. Sasser is my source on this because he cares about exactly what is offered to people, and right now, FHA has a 3 percent package you can get. It is a wonderful thing for our borrowers in Nevada, but we want to make sure they get to it. I appreciate Senator Ford's testimony that Mr. Pollard spoke grandly to the bill, but after his testimony after the bill came out, there are two things we forwarded to you, a statement last week from the FHFA (Exhibit I) and then also the December 22 statement they have given (Exhibit J), he indicated that they—and he was consistent in this—still have serious concerns about the extinguishment of any federal loan. They will not countenance it, they will fire on it in court, and they have.

The last paragraph of the December 22 statement (Exhibit J) says that they will "aggressively" protect themselves "by bringing actions to void foreclosures that purport to extinguish Enterprise property interests in a manner that contravenes federal law." We are going to have a lot of litigation. What is in front of you is a hybrid system where we are going to have two types of loans with different rights that bankers are going to have to try and figure out. Even if there is a first that is a federal loan, there is probably going to be a private second. How do those interests juxtapose themselves? The interesting decision you have is whether or not you are going treat all loans the same in Nevada. The FHFA is very aggressively sending out the notice to all of us that they do not like the right of extinguishment in Nevada law. I think you are going to have to deal with whether there are going to be two types of loans and whether you are going to subject people to this kind of lawmaking by litigation.

What we do not want to do is to finish this session and then find out we did it wrong. The people who will be affected are going to be your constituents, and they are going to be the people who are relying on the ability to get an FHA loan or secondarily, which is equally important to banks and to unit owners, is that a bank will issue a loan, but then they will package the loan up and give it over to the federal agencies and if they do not take it, then all of a sudden our capital is limited for additional loans. There are a lot of implications here and this is a very hard issue for you. Again, we are fine with S.B. 306 (R1) to the extent it operates, and we think it will on a component of these. But the issue is going to be, if the first does not extinguish and the second does, how does that lender protect itself? This goes so far, but you still have a lot of other issues.

In the interest of time, I submitted an amendment that is basically about 90 percent of what I submitted to the Senate committee, but we were too late for it to be considered. We told them we would bring it over here. It may be that you delegate one of your individuals on the Committee to work with all of us about those. There is a lot of agreement in those. You will see in the amendment that I have noted the agreement of the mortgage lenders, the Realtors, and the credit unions. We do not presume to speak for the Community Associations Institute, but I think there are significant portions of those amendments that are okay with those. They are cleanup in some ways, but I do not want to take the time to go through that amendment today and I do not think you want me to either. [Samuel McMullen submitted a proposed amendment (Exhibit K).]

Chairman Hansen:
We will be working on it. We are definitely interested in the amendments, and know that the Senators were encouraging us to look into it. It is not often that I see Mr. Sasser and the bankers on the same page.

Assemblyman Elliot T. Anderson:
You talked about the costs of collection being in the super-priority lien. If we are going to write the cost of collections into the super-priority lien, would it not be good to get a handle on those and have some certainty of what the cost collections are? I believe the bill would anticipate being referred to regulation from the Commission on Common-Interest Communities and Condominium Hotels. Why is extinguishment still needed for the HOAs? I feel there was a time when the world was rocked by the foreclosure crisis and this law that was first drafted in 1991 had really never been used. We had never really seen it being used. It was priority in proceeds for a long time. Do you think—speaking for the Nevada Bankers Association—that you have your act

together now and you have some clarity about mortgage finance and all the different foreclosure happenstances that have been going on in our market? Is this really an issue where the bank is not up there protecting its interests now? Do we need to extinguish your right if you miss one?

Samuel McMullen:
We started on this process of trying to find an alternative but we knew full well that somewhere in this session the issue of the federal loans and their extinguishment was going to have to be addressed. In our opinion, for you that issue is only addressed by a statement of such significant comfort that loans will still be issued, loans will still be packaged, and litigation will not occur on those loans. Unless you have that level of comfort—which does not exist today—you also have to solve this problem. One of the things I want to say is that this really was a function of the depressed economic circumstances that we had over the last few years. Homeowners' association foreclosures are a relatively new phenomenon and the utilization of the super priority for a $6,000 sale to void $800,000 worth of loans is a business and commercial anomaly. Almost every legislator I have talked to thinks that is very unfair.

I believe that after the Assembly Committee on Government Affairs hearing tomorrow afternoon, we will probably agree to support Mr. Sasser's amendment (Exhibit H). What will still happen under NRS 116.3116 is that the level of priority for the HOA amounts that are due will still be higher than a second on the property, although Mr. Sasser's amendment would also change it. They would still have the right to foreclose; they just would not have the right to foreclose in a super-priority way with the extinguished measure loans on the property. They would have a definite super priority as to payment under Mr. Sasser's amendment, so they would be the first to get their money.

Chairman Hansen:
Mr. McMullen, we are way beyond Mr. Anderson's question. Mr. Anderson, if that did not fully satisfy your question, please meet with Mr. McMullen or Mr. Sasser afterwards.

Assemblyman Nelson:
It seems to me that what we are going to have to do is take what Assemblyman Gardner has proposed in Assembly Bill 359 (R1) and possibly find a way to compromise or to incorporate it into S.B. 306 (R1). The concern I have is that number 20 on your proposed amendment (Exhibit K), you want to put back into the bill "commercially reasonable transactions." The problem I have with that is that it eviscerates any possibility of finality, and we are

trying to get finality. If you put that back in there, it is just rife for litigation, is it not? If the banks are getting their right of redemption, do you really need that commercially reasonable transactions part in there?

Samuel McMullen:
It is an important piece, not just to us but to the mortgage lenders. I understand your point. I think finality is a very important point. The issue is driven by the fact—which is not necessarily totally correct if it were up to market value prices on these sales. I know that was testified to, but we are still at a different market level. I think the issue is trying to make sure that people get their money. One of the things I think is very important and is being missed—even by the HOAs, who are telling us that they do not really care what happens to the unit owner or the unit owner's loans and they are maximizing those payments. They just want their payments. Basically, what we are trying to do, "commercially reasonable," in one of its greatest parts, is about process, but the more important part is about price and making sure that the value is there. That value actually protects the unit owner by maximizing the money coming towards paying off their debts. If we extinguish them all, wonderful. But if we do not, they are still on the hook for a number—that is a very important point for unit owners. We will be happy to work with you, but we dumbed it down, so to speak, to just make the law "commercially reasonable transactions," which should govern anyway.

Assemblyman Nelson:
Who is going to determine that? The court?

Chairman Hansen:
You will need to take that one up after the hearing as we are up against the clock right now. We are going to go to the neutral position at this time.

George E. Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry:
I am here in the neutral position to state that although we are generally neutral with regard to S.B. 306 (R1), we have some questions and concerns regarding Amendment 442's addition of section 8.5 that prescribes an unfunded mandate for the Financial Institutions Division to establish, maintain, and publish on its website a listing of all financial institutions that are the mortgagee or beneficiary of the deed of trust under certain residential mortgage loans. Our questions are regarding the definitional intent of section 8.5 as it amends NRS Chapter 657, which is the Division of Financial Institution's general provision statute. We understand the intent of this section is to provide borrowers and unit owners in associations with a single point of contact. However, the problem

we run into is that the statutory definition of a financial institution under NRS Chapter 657 is that it is a depository institution, which only includes those institutions that accept deposits, such as banks, credit unions, and thrifts. There are approximately 61 state and federal depository institutions that operate in Nevada. There are approximately 450,000 residential real estate mortgage loans in Nevada, according to the Mortgage Bankers Association's National Delinquency Survey 2014 fourth quarter report. There is not going to be an easy way to determine what percentage of those 450,000 loans are held by depository institutions, what percentage of them are held by the expanding nondepository mortgage industries and their companies such as Quicken Loans or LendingTree, or what percentage of mortgage loans are held by the federal agencies such as Fannie Mae, Freddie Mac, FHA, and the U.S. Department of Housing and Urban Development. If the definitional intent of section 8.5 is to provide borrowers and HOAs with a point of contact for entities that may hold a Nevada residential real estate loan, then perhaps the use of a term other than financial institution is necessary to accomplish that intent.

Our concerns are regarding the regulatory authority to administer the process of gathering the information required by section 8.5 and updating that information over time, posting it to the Division website, et cetera. We respectfully request—and I have been in contact with the sponsors of the bill—in order to accomplish these technical logistics, that section 8.5 contain language similar to that in other statutes the Division is responsible for, such as information required by this section to be submitted shall be done in a manner of forms prescribed by the Commissioner of the Division of Financial Institutions.

I thank you for your time and consideration of our questions and concerns. I know they tend to be small and technical with regard to all the other issues that you are contending with in this bill; however, it will have a major impact on the Financial Institutions Division, depending on how massive this list ends up being.

Chairman Hansen:
If you would like to submit those to anyone who is on this Committee, I would definitely be interested in looking at those for purposes of an amendment.

Marilyn Brainard, Private Citizen, Sparks, Nevada:
As Senator Ford and Senator Hammond have shared, we have heard that S.B. 306 (R1) is the product of a protracted study group that came together with the understanding that no one person's interest was going to rise above another's. From my viewpoint as a homeowner, we do not hear as much from that aspect of this problem. Some detractors are concerned that permitting an association to preserve its interests by taking the extreme step of foreclosing

when all other remedies have not achieved the goal of collecting assessments owing it will create havoc in the housing market. In particular, input from one federal agency which has been mentioned today—the Federal Housing Finance Agency, which oversees Fannie Mae, Freddie Mac, and the Federal Home Loan Bank system, which does not oversee FHA, by the way—to stop securing mortgage loans in our state or, as it threatened in some other states, to raise mortgage fees. However, very recent history belies the claim made during testimony in this session by Mr. Pollard.

In April of this year, FHFA completed a year-long review of pricing for the government-sponsored enterprises (GSE) mortgage guarantee fee structure, and FHFA refused to allow the GSEs to charge higher fees in states with statutes that delay foreclosure. Fannie Mae and Freddie Mac, the enterprises or GSEs, mortgage servicers have ignored contractual obligations to preserve GSE collateral in community associations. Mr. Pollard's statement in its entirety was not vetted by the Office of Management and Budget or the Obama Administration. Accordingly, the statement does not represent the view of the federal government or the Obama Administration. The Legislature here must consider the long-term impact on homeowners and associations if the only effective remedy to correct servicer negligence is weakened or otherwise impaired. [Read from written testimony (Exhibit L).]

In 2014, Fannie Mae reported acquiring 19,094 mortgages in Nevada. While this volume does not represent a considerable percentage of Fannie's total book of business, it is unlikely the enterprise will exit the state and cease to purchase or guarantee mortgages for up to 19,000 homeowners. The FHFA's outsized influence—which we certainly heard about today—in housing policy is temporary, and much of its extraordinary authorities will expire when its conservatorship of Fannie Mae and Freddie Mac ends. Nevada lawmakers should resist sweeping, long-term changes to Nevada statutes under threat from an agency that is exercising temporary authorities.

Please be sure when you are looking at all the amendments being presented today to remember we need to achieve the goal of fairness to all affected parties, not just to one. Please do not forget the more than 3,000 common-interest associations in this state and, in particular, their one million residents, who deserve no less. Thank you for the opportunity to make a statement. [Marilyn Brainard submitted prepared testimony (Exhibit L).]

Garrett Gordon, representing Community Associations Institute and Southern Highlands Community Association:
We are in the neutral position, respecting the process that has occurred since September. I will make five points, and I look forward to working through these amendments with any subcommittee.

Regarding the amendments by the Nevada Bankers Association, I appreciate they included many of the Community Associations Institute's suggestions with little clarifications like business days and calendar days. I object strenuously to "commercially reasonable transactions." Assemblyman Nelson hit it on the head. We are going to be in litigation determining whether or not our sales are commercially reasonable. On confirmation of receipt, as Senator Becky Harris confirmed about her practice as did Senator Segerblom on the record, they are in litigation with banks all the time and never get any confirmation of receipt with anything they send, so we would object to amendments 5, 6, 17, and 20.

We strenuously object to Mr. Sasser's proposed amendment. I would say that is new. We all came to the table with our respective clients and our respective issues. I would also say that all substantive issues have been resolved including collection costs coming in at a discounted rate in exchange for redemption, in exchange for more notice. It is a huge collaboration, so I respectfully ask you to reject any big substantive amendment like Mr. Sasser's or the bankers' that changes the hard work that we have done with the sponsors over the last six months but maybe for some additional clarifications in the amendment.

Chairman Hansen:
Is there anyone else who would like to testify in the neutral position on this bill? [There was no one.]

Senator Hammond:
I understand, and I want the Committee to understand, there has been a lot of work on this. Those who came up in support, opposition, and neutral all have had a say in what the process was. Having heard Mr. McMullen, in submitting several amendments, one would get the impression that he was not part of the process at some point, and that is far from the truth. We had consensus from a lot of different stakeholders and Senator Ford listed those stakeholders. What you have before you is a consensus of what most of them brought to the table. We had agreements on major items.

I would also submit for the record that Mr. Pollard came all the way from Washington, D.C., to testify at the hearing. I would submit that what the Senator said as his understanding of support is true, and the way I understand it as well. If you were to say that this bill is not necessary, I think nothing would

be further from the truth. I think this bill is necessary. It does move the law forward, it clarifies a lot of things, and he was very satisfied with the process as far as the way lending would go. I cannot speak for the FHFA, but I am telling you that is the impression we all received when he came out here and spoke to us. He was also there when several of these amendments were brought to the table and he objected to several of them. During the testimony, he would lean over and tell us that he thought that it might muddle the issue.

As to Assemblyman Nelson's question, we thought that when you talk about commercial reasonableness, the idea of a process being put into place that allowed for a light to be shone on that process was more important than anything else—to make sure that everyone was noticed, and told where the next sale would take place. We put all those provisions into S.B. 306 (R1) to help raise the commercial reasonableness price up to what it should be, as long as you have enough participation in it. It is not necessarily what the outcome should be, and I think that will take care of the litigation. I do not want to go into litigation either, so I think that process is really important.

Sometimes in listening to Mr. McMullen, I am confused. He was at the table more often than anyone else. He was there, participated, and accepted a lot of what was going on. I am glad he was not there when I was deciding whether or not to get married because one day he would have said yes, get married, and then the next day there would have been 15 amendments on why I should not get married. That would have been very confusing to me.

Senator Ford:
In law school I took a class called Legislation, and one of the things the professor taught us was that you do not have to try to solve every single problem with one piece of legislation. What we are trying to solve is a notice of specificity issue and we have done that. We have ensured that notice is given to people who are interest holders on a home that is about to be foreclosed on and the super-priority lien process. We have provided the specificity in that notice, which was lacking according to the people who were complaining about it.

We have provided something that I was adamantly opposed to—redemption opportunities. If the notion is to try to avoid foreclosure, you should not have redemption opportunities on the back side to where all you have to do is wait anyway, but you have that opportunity as well. What you have here is an opportunity for us to move the ball forward on an issue that is important. There are other issues that are outstanding. Everyone always wants more. You have seen amendment after amendment after amendment from people who want more. This bill is limited in the sense that it wants to address the notice of

specificity requirements that must be undertaken when you deal with a super-priority lien issue. I think what you have seen is a quintessential example of compromise legislation. I am satisfied with the bill as it currently exists. I will have to leave the questions related to section 3.5 to Senator Harris. The ones as they relate to what the Commissioner indicated, we will be happy to work with him in that regard.

The final point that I will make is something that Senator Hammond has already stated. The FHFA has their position. There is no question about it. They are going to litigate and argue as they have their right to do. I cannot operate on a contingency that they will or will not. Mr. Pollard, by the way, has the authority to come up and say whether they would or would not continue to give loans if this bill would have passed. He was here to say that this bill provided the notice, the specificity, and the redemption provisions that would be satisfactory to them and, therefore, he could approve it. Ultimately, what we are asking for is approval of this particular bill. If they want to address other issues that are not addressed here, they have other vehicles that they have referenced—Assemblyman Gardner's bill, for example—and other vehicles that they can look at in that regard.

Chairman Hansen:
We will close the hearing on S.B. 306 (R1) and open it up for public comment.

Lorne Malkiewich, representing Expedia:
I learned that a bill I discussed with you—and I think I told many of you—had no fiscal impacts. We have since heard that the Office of the State Treasurer has reconsidered this and now believes there is a fiscal note. I want to assure the members of the Committee that the amendment would not have been put into the bill in the Senate had we not been assured there was no fiscal note. As of the minute I walked up to the witness stand, that was my belief. We will work with the Treasurer to try to resolve this issue. I still do not understand how an amount owing between two businesses with an ongoing relationship is subject to unclaimed property laws, but we will work with the Treasurer and try to resolve that issue.

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
I would like to clarify some points that Chairman Hansen made in regard to Assembly Bill 233 (1st Reprint) when he introduced it and some items he admitted he knew nothing about. The Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels cannot help owners if it is a dispute concerning their covenants, conditions, and restrictions (CC&R).

The Ombudsman can only deal with violations of Chapter 116 of the *Nevada Revised Statutes* (NRS). That is what the law says. The wait time for resolution by or help from the Ombudsman can be months or years, if ever. If you want the Legislature to be relieved of dealing with homeowners' association (HOA) bills, then untie the hands of the Ombudsman. Let her deal with owner-board disputes which currently make up the bulk of the bills before you. The Ombudsman can only deal with NRS Chapter 116 issues. That is what the Legislature put into NRS Chapter 116. The Office of the Ombudsman needs to be fixed by the Legislature.

As regarding the Commission for Common-Interest Communities and Condominium Hotels, it is made up of a majority of HOA industry people who do what is best for their industry. It does not deal with owner-board disputes. In my opinion, this Commission is corrupt by having violated state law. All the Commissioners were told was that adopting an advisory opinion was prohibited by state law. *Nevada Revised Statutes* 116.623 does not allow the Commission to do this. This can be found in the minutes of the Commission meeting in May and again in December 2010.

When I was a Commissioner, in December 2013, I asked the Attorney General for a decision on this matter. In a letter dated February 14, 2014, Chief Deputy Attorney General Gina Session stated that the Commission exceeded its authority and violated NRS 116.623. What the Commission did here was cost taxpayers millions of dollars. The Commission has limited authority. It can only adjudicate violations of NRS Chapter 116, write regulations, and approve educational courses. That is it.

Tyrannical boards can make up any oppressive rules they want in addition to the CC&Rs. If you violate them, you get fined. When owners seek relief, they can only find it here with you. That is why you wind up with trashcan statutes, political signage regulations, flag regulations, and anti-retaliation laws just to name a few of what Chairman Hansen spoke about on April 2, 2015. These are not frivolous matters when fines are involved. People want to live their lives without interference from overzealous and petty board members. That is why you get all these bills in the Legislature. You must understand that HOA boards have powers over owners including fining them, and fine them $100 a week they do. The Legislature can prevent this by giving the homeowners the protection they need.

Chairman Hansen:
If you have any amendments on Assembly Bill 233 (1st Reprint), I am ready to listen. You know where I want to go with it.

Jonathan Friedrich:
Actually, if you leave that bill alone, I would love it; just get the Attorney General to take care of the Office of the Ombudsman.

Chairman Hansen:
All you have to do is talk to them and get them on board.

Jonathan Friedrich:
I am in the process of doing that.

Chairman Hansen:
Is there any further business for the Committee at this time? [There was none.] This meeting is adjourned [at 11:25 a.m.].

RESPECTFULLY SUBMITTED:

_____
Linda Whimple
Committee Secretary

APPROVED BY:

_____
Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Judiciary

Date: April 28, 2015 **Time of Meeting: 7:59 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 389	C	Mandy S. Shavinsky, representing the Common Interest Community Committee, Real Property Section, State Bar of Nevada	Memorandum
S.B. 260 (R1)	D	Senator Becky Harris	Document
S.B. 260 (R1)	E	Jennifer Gaynor, representing Nevada Credit Union League	Memorandum
S.B. 174 (R1)	F	Senator Scott Hammond	Memorandum from Common Interest Community Committee, Real Property Section, State Bar of Nevada
S.B. 306 (R1)	G	Jennifer Gaynor, representing Nevada Credit Union League	Testimony
S.B. 306 (R1)	H	Jon Sasser, representing Legal Aid Center of Southern Nevada	Proposed Amendment
S.B. 306 (R1)	I	Samuel P. McMullen, representing Nevada Bankers Association	"Statement on HOA Super-Priority Lien Foreclosures, 4/21/15"
S.B. 306 (R1)	J	Samuel P. McMullen, representing Nevada Bankers Association	"Statement of the Federal Housing Finance Agency on Super-Priority Liens, 12/22/14"
S.B. 306 (R1)	K	Samuel P. McMullen, representing Nevada Bankers Association	Proposed Amendment
S.B. 306 (R1)	L	Marilyn Brainard, Private Citizen, Sparks, Nevada	Testimony