


1 IT IS FURTHER ORDERED that if counsel for both parties can submit a stipulated set of facts,
2 the court would reconsider the motions for summary judgment.

3 DATED this 8th day of Aug., 2016.

4
5 
6 DISTRICT COURT JUDGE
7 NH

8 Respectfully submitted by:

9 LAW OFFICES OF
10 MICHAEL F. BOHN, ESQ., LTD.

11
12 By: 
13 MICHAEL F. BOHN, ESQ.
14 376 East Warm Springs Road, Ste. 140
Las Vegas, NV 89119
Attorney for defendant/counterclaimant



CLERK OF THE COURT

1 **NEO**
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
5 LAW OFFICES OF
6 MICHAEL F. BOHN, ESQ.
7 376 East Warm Springs Road, Ste. 140
8 Las Vegas, Nevada 89119
9 (702) 642-3113/ (702) 642-9766 FAX

6 Attorney for defendant Resources Group, LLC

7
8 DISTRICT COURT
9 CLARK COUNTY NEVADA

10 U.S. BANK NATIONAL ASSOCIATION, ND, a
11 national association

12 Plaintiff,

13 vs.

14 GEORGE R. EDWARDS, an individual; ANY AND
15 ALL PERSONS UNKNOWN, CLAIMING TO BE
16 PERSONAL REPRESENTATIVES OF GEORGE R.
17 EDWARDS ESTATE, OR DULY APPOINTED,
18 QUALIFIED, AND ACTING EXECUTOR OF THE
19 WILL OF THE ESTATE OF GEORGE R.
EDWARDS; RESOURCES GROUP, LLC, a Nevada
Limited Liability Company; GLENVIEW WEST
TOWNHOMES ASSOCIATION, a Nevada non-profit
corporation; DOES 4 through inclusive; and ROES 1
through 10 inclusive

20 Defendants.

22 RESOURCES GROUP, LLC,

23 Counter-claimant

24 vs

25 U.S. BANK NATIONAL ASSOCIATION, ND, a
26 national association

26 Counter-defendant

27
28 NOTICE OF ENTRY OF ORDER

TO: Parties above-named; and

1 TO: Their Attorney of Record

2 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an **ORDER DENYING**
3 **CROSS MOTIONS FOR SUMMARY JUDGMENT** has been entered on the 10th day of August, 2016,
4 in the above captioned matter, a copy of which is attached hereto.

5 Dated this 11th day of August, 2016.

6 LAW OFFICES OF
7 MICHAEL F. BOHN, ESQ., LTD.

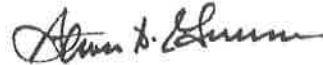
8 By: /s/ Michael F. Bohn, Esq./
9 MICHAEL F. BOHN, ESQ.
376 E. Warm Springs Rd., Ste. 140
10 Las Vegas, NV 89119
Attorney for plaintiff

11
12 **CERTIFICATE OF SERVICE**

13 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of LAW
14 OFFICES OF MICHAEL F. BOHN, ESQ., and on the 11th day of August, 2016, an electronic copy of
15 the **NOTICE OF ENTRY OF ORDER** was served on opposing counsel via the Court's electronic
16 service system to the following counsel of record:

17
18 Sherry A. Moore, Esq.
Benjamin D. Petiprin, Esq.
19 ZIEVE, BRODNAX & STEELE, LLP
3753 Howard Hughes Parkway
20 Suite 200
Las Vegas, NV 89169
21

22
23
24 /s/ Marc Sameroff /
An Employee of the LAW OFFICES OF
25 MICHAEL F. BOHN, ESQ., LTD.
26
27
28



CLERK OF THE COURT

1 **ORDD**
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
5 ADAM R. TRIPPIEDI, ESQ.
6 Nevada Bar No.: 12294
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12 (702) 642-3113/ (702) 642-9766 FAX

8 Attorney for defendant/counterclaimant Resources Group, LLC

9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12
13 U.S. BANK NATIONAL ASSOCIATION, ND, a
14 national association

15 Plaintiff,

16 vs.

17 GEORGE R. EDWARDS, an individual; ANY
18 AND ALL PERSONS UNKNOWN, CLAIMING
19 TO BE PERSONAL REPRESENTATIVES OF
20 GEORGE R. EDWARDS ESTATE, OR DULY
21 APPOINTED, QUALIFIED, AND ACTING
22 EXECUTOR OF THE WILL OF THE ESTATE
23 OF GEORGE R. EDWARDS; RESOURCES
24 GROUP, LLC, a Nevada Limited Liability
25 Company; GLENVIEW WEST TOWNHOMES
26 ASSOCIATION, a Nevada non-profit corporation;
27 DOES 4 through inclusive; and ROES 1 through
28 10 inclusive

29 Defendants.

CASE NO.: A667690
DEPT NO.: XVI

**ORDER DENYING CROSS MOTIONS
FOR SUMMARY JUDGMENT**

1 RESOURCES GROUP, LLC,

2 Counter-claimant

3 vs

4 U.S. BANK NATIONAL ASSOCIATION, ND, a
5 national association

6 Counter-defendant

7
8 The motion plaintiff U.S. Bank National Association ND for summary judgment, and the
9 opposition and counter motion for summary judgment of defendant/counterclaimant Resources Group,
10 LLC, as trustee of the Bourne Valley Court Trust, having come before the court on the 16th day of June,
11 2016, Sherry A. Moore, Esq. appearing on behalf of the plaintiff and Michael F. Bohn, Esq. and Adam
12 R. Trippiedi, Esq. appearing on behalf of Resources Group, LLC, and the court having reviewed the
13 motion and countermotion and having heard the arguments of counsel and for good cause appearing;

14 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the plaintiffs motion for
15 summary judgment is denied.

16 IT IS FURTHER ORDERED that the defendants counter motion for summary judgment is also
17 denied

18 ///

19 ///

20 ///

21 ///

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1 IT IS FURTHER ORDERED that if counsel for both parties can submit a stipulated set of facts,
2 the court would reconsider the motions for summary judgment.

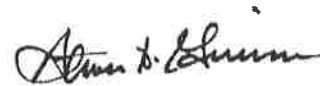
3 DATED this 8th day of Aug., 2016.

4
5 
6 DISTRICT COURT JUDGE
7 NH

8 Respectfully submitted by:

9 LAW OFFICES OF
10 MICHAEL F. BOHN, ESQ., LTD.

11
12 By: 
13 MICHAEL F. BOHN, ESQ.
14 376 East Warm Springs Road, Ste. 140
15 Las Vegas, NV 89119
16 Attorney for defendant/counterclaimant
17
18
19
20
21
22
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24
25
26
27
28


CLERK OF THE COURT

NOT
McCARTHY & HOLTHUS, LLP
Kristin A. Schuler-Hintz (NSB# 7171)
Thomas N. Beckom, Esq (NSB# 12554)
9510 West Sahara Avenue, Suite 200
Las Vegas, NV 89117
Telephone: (702) 685-0329
Facsimile: (866) 339-5691

IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

U.S. BANK NATIONAL ASSOCIATION ND, A)
NATIONAL ASSOCIATION

Case No. A-12-667690-C

Dept. No. XVI

Plaintiff,

v.

NOTICE OF DEPOSITION

GEORGE R. EDWARDS, an individual, ANY
AND ALL PERSON UNKNOWN, CLAIMING
TO BE PERSONAL REPRESENTATIVES OF
GEORGE R. EDWARDS ESTATE OR DULY
APPOINTED, QUALIFIED, AND ACTING
EXECUTOR OF THE WILL OF THE ESTATE
OF GEORGE R. EDWARDS; RESOURCES
GROUP, LLC a Nevada Limited-Liability
Company; GLENVIEW WEST TOWNHOMES
ASSOCIATION, a Nevada non-profit
corporation; DOES 4 through 10, inclusive, and
ROES 1 through 10, inclusive

Person: NRCP 30(b)(6) witness(es) for
Resources Group, LLC

Date: October 25, 2016

Time: 1:00pm.

Defendants.

And all related claims.

PLEASE TAKE NOTICE that pursuant to Nev. R. Civ. Pro 30 U.S. BANK NATIONAL
ASSOCIATION ND ("U.S. BANK"), by and through their counsel of record, Thomas Beckom,
Esq. of the law firm McCarthy & Holthus, LLP, hereby notices the deposition of the Nev. R. Civ.
Pro 30(b)(6) witness for RESOURCES GROUP, LLC ("RESOURCES"). RESOURCES is
ordered to designate one or more officers, directors, managing agents, or other persons who
consent to testify on its behalf. The person(s) you designate will be examined, and are ordered to

1 testify, on the matters set forth below that are known or reasonably available to the organization.
2 Nev. R. Civ. Pro. 30(b)(6).

3 RESOURCES is hereby direct to appoint and prepare a NRCP30(b)(6) witness(es)
4 knowledgeable in the following areas:

- 5 1) the HOA foreclosure auction of the property which is the subject of this instant action
6 to wit 4254 Rollingstone Dr., Las Vegas, NV 89103 (hereinafter "Subject Property") at
7 which RESOURCES gained their purported interest;
8 2) Any other property RESOURCES and/ or any other affiliate or parent corporation of
9 RESOURCES ¹ owns as a result of an HOA foreclosure from January 1, 2011 to present;
10 3) the Litigation History of RESOURCES from January 1, 2011 to present;
11 4) RESOURCES interactions with Alessi & Koenig, LLC, including any employee,
12 officer, director, or other affiliated party of Alessi & Koenig, LLC
13 5) the operations and/or management, generally, of RESOURCES;
14 6) any discussion, non-privileged, regarding the anticipated effect of NRS §116.3116 *et*
15 *seq*
16 7) RESOURCES business plan and/ or investment strategies from January 1, 2011 to
17 present

18 /.../.../

20 /.../.../

22 /.../.../

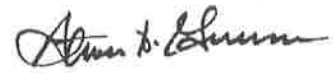
25 ¹ These include would the master LLC as well as any other series in the master LLC.

Please be advised that pursuant to Nev. R. Civ. Pro. 30(b)(6) you must produce either a witness or multiple witnesses whom are knowledgeable in ALL of these areas. Failure to produce witnesses knowledgeable in all of these areas may result in adverse court action. The deposition will be held on 25th day, October, 2016 at 1:00 p.m. at Depo International 703 S. 8th Street Las Vegas, Nevada 89101. This deposition shall be recorded by sounds, sound-and-visual, or stenographic means.

DATED: September 20, 2016

McCarthy & Holthus, LLP

By: /s/ Thomas Beckom Esq
Thomas N. Beckom, Esq.



CLERK OF THE COURT

1 **NOT**
2 **McCarthy & Holthus, LLP**
3 Kristin A. Schuler-Hintz, Esq., Nevada SBN 7171
4 Thomas N. Beckom, Esq Nevada SBN 12554
5 McCarthy & Holthus, LLP
6 9510 W. Sahara, Suite 200
7 Las Vegas, NV 89117
8 Phone (702) 685-0329
9 Fax (866) 339-5691
10 KHintz@mccarthyholthus.com
11 TBeckom@mccarthyholthus.com
12 Attorneys for Plaintiff,

7 **IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF CLARK**

9
10 **U.S. BANK NATIONAL ASSOCIATION ND, A**
11 **NATIONAL ASSOCIATION**

12 Plaintiff,

13 v.

14 **GEORGE R. EDWARDS, an individual, ANY**
15 **AND ALL PERSON UNKNOWN, CLAIMING**
16 **TO BE PERSONAL REPRESENTATIVES OF**
17 **GEORGE R. EDWARDS ESTATE OR DULY**
18 **APPOINTED, QUALIFIED, AND ACTING**
19 **EXECUTOR OF THE WILL OF THE ESTATE**
20 **OF GEORGE R. EDWARDS; RESOURCES**
21 **GROUP, LLC a Nevada Limited-Liability**
22 **Company; GLENVIEW WEST TOWNHOMES**
23 **ASSOCIATION, a Nevada non-profit**
24 **corporation; DOES 4 through 10, inclusive, and**
25 **ROES 1 through 10, inclusive**

Defendants.

20
21 **AND ALL RELATED CLAIMS.**

22 **THE STATE OF NEVADA SENDS GREETINGS TO**

23 Glenview West Townhomes Association
24 c/o Marquis Aubach Coffing P.C.
25 10001 Park Run Dr.
Las Vegas, NV 89145

Case No. A-12-667690-C

Dept. No. XVI

SUBPOENA

Date: October 27, 2016

Time: 1:00pm

McCARTHY & HOLTHUS, LLP
ATTORNEYS AT LAW
9510 WEST SAHARA AVENUE, SUITE 200
LAS VEGAS, NV 89117
TELEPHONE (702) 685-0329/Facsimile (866) 339-5981

1 **YOU ARE HEREBY COMMENDED** that all singular, business, and excuses set aside
2 you appear for a deposition please be advised that pursuant to Nev. R. Civ. Pro 30(b)(6) Please
3 produce a witness and/ or multiple witnesses whom are knowledge in all of the
4 aforementioned areas on October 27, 2016 at 1:00pm at the Offices of Depo International,
5 703 S. 8th St., Las Vegas, NV 89101. These areas individual:

- 6 1. Any and all information in your possession relating to the real property
7 commonly known as 4254 Rollingstone Dr., Las Vegas, NV 89103
8 from January 1, 2010 to present.
- 9 2. The foreclosure auction of 4254 Rollingstone Dr., Las Vegas, NV
10 89103; including the number of bidders and or what was cried at the
11 auction if you know.
- 12 3. Any and all communications between you and ALESSI & KOENIG
13 from January 1, 2010 to present. "Communications" is be construed as
14 broadly as possible and includes, but is not limited to, emails, letters,
15 phone records, written bids, Facebook and/ or text messages.
- 16 4. Books, records, and other tangible things which demonstrate an
17 accounting of the purported unpaid debt on the real property commonly
18 known as 4254 Rollingstone Dr., Las Vegas, NV 89103 from January 1,
19 2010 to present including the nature of the assessments, fines, and
20 penalties which make up this amount.
- 21 5. An accounting of the proceeds from the January 25, 2012 sale including
22 an accounting of what happened to the excess proceeds from the sale.
- 23 6. Your CC&R's which were operable at the time of the HOA foreclosure
24 in question.
- 25 7. Any and all communications with any entity and/ or person regarding
 4254 Rollingstone Dr., Las Vegas, NV 89103. "Communications" is be
 construed as broadly as possible and includes, but is not limited to,
 emails, letters, phone records, written bids, Facebook and/ or text
 messages.

22 /.../...

23 /.../...

25 /.../...

1 If you fail to attend and/ or produce documents you may be deemed guilty of contempt of
2 Court and liable to pay all losses and damages caused by your failure to appear. Please see
3 Exhibit "A" attached hereto for information regarding the right of the person subject to this
4 Subpoena.
5

6 DATED: October 11, 2016.
7

8 McCarthy & Holthus, LLP

9 By: /s/ Thomas N. Beckom, Esq
10 Thomas N. Beckom, Esq
11
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EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) Protection for Person Subject to Subpoena

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earning and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If object has been made, the party servicing the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) Fails to allow reasonable time for compliance;
- (ii) Requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (iii) Requires disclosure of privileged or other protected matter and no exception of waiver applies, or
- (iv) Subjects a person to undue burden

(B) If a subpoena

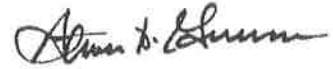
- (i) requires disclosure of a trade secret or other confidential information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party.

The court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.



CLERK OF THE COURT

1 NOT

2 McCarthy & Holthus, LLP

Kristin A. Schuler-Hintz, Esq., Nevada SBN 7171

3 Thomas N. Beckom, Esq Nevada SBN 12554

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6 Attorneys for Plaintiff,

7 IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF CLARK

9
10 U.S. BANK NATIONAL ASSOCIATION ND, A
NATIONAL ASSOCIATION

11 Plaintiff,

12 v.

13 GEORGE R. EDWARDS, an individual, ANY
14 AND ALL PERSON UNKNOWN, CLAIMING
15 TO BE PERSONAL REPRESENTATIVES OF
16 GEORGE R. EDWARDS ESTATE OR DULY
17 APPOINTED, QUALIFIED, AND ACTING
18 EXECUTOR OF THE WILL OF THE ESTATE
OF GEORGE R. EDWARDS; RESOURCES
GROUP, LLC a Nevada Limited-Liability
Company; GLENVIEW WEST TOWNHOMES
ASSOCIATION, a Nevada non-profit
corporation; DOES 4 through 10, inclusive, and
ROES 1 through 10, inclusive

19 Defendants.

20
21 AND ALL RELATED CLAIMS.

22 THE STATE OF NEVADA SENDS GREETINGS TO

23 Alessi & Koenig, LLC
24 c/o Robert A. Koenig
9500 W. Flamingo Rd. Unit 101
Las Vegas, NV 89147

Case No. A-12-667690-C

Dept. No. XVI

SUBPOENA

Date: October 27, 2016

Time: 10:00 am

McCARTHY & HOLTHUS, LLP
ATTORNEYS AT LAW
9510 WEST SAHARA AVENUE, SUITE 200
LAS VEGAS, NV 89117
TELEPHONE (702) 685-0329/Facsimile (866) 339-5961

1 conclusive recital statute in NRS 116.31166 must provide “proof of some element of fraud, unfairness,
2 or oppression as accounts for and brings about the inadequacy of price.” 366 P.3d at 1111.

3 Plaintiff argues that “[t]he first and most plausible reading is that any association sale where the
4 property sells for less than 20% of its fair market value is absolutely void because of a ‘gross inadequacy’
5 in the sales price.” If plaintiff’s argument were true, then there would be no need for Section B of the
6 Shadow Wood opinion to exist, and the Court would not have adopted the rule in Golden v. Tomiyasu
7 79 Nev. 503, 387 P.2d 989 (1963), which expressly rejected the argument that inadequate price alone can
8 justify setting aside a foreclosure sale.

9 At page 4 of its reply, plaintiff argues that the standard in Golden v. Tomiyasu is satisfied because
10 the foreclosure notices failed to “indicate anywhere that the Sale was that of a super-priority lien, **which**
11 **almost certainly depressed bidding** and consequently resulted in the grossly inadequate price in the first
12 place.” Plaintiff has produced no evidence proving this assertion. In SFR Investments Pool 1, LLC v.
13 U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408 (2014), the Nevada Supreme Court held that “it
14 was appropriate to state the total amount of the lien” (334 P.3d at 418) and that a mortgage savings clause
15 in the CC&Rs could not affect the HOA’s super priority lien rights (334 P.3d at 419). Yet, plaintiff
16 claims that these perfectly appropriate actions by the HOA are the “additional ‘slight’ evidence that is
17 required to justify setting aside the sale under both commercial unreasonableness and general equity
18 principles.” This is not the standard adopted by the Nevada Supreme Court in Shadow Wood.

19 **3. The foreclosure process in NRS Chapter 116 does not violate due process.**

20 At page 5 of its reply, plaintiff cites Barry Properties v. Fick Bros. Roofing Co., 353 A.2d 222,
21 232 (Md. App. 1976), where the court stated: “We think it is clear that mechanics’ liens involve state
22 action since they are created, regulated and enforced by the State.” On the other hand, no “state actor”
23 participates in the nonjudicial enforcement of an HOA assessment lien pursuant to NRS 116.31162 to
24 116.31168, and by incorporation, NRS 107.090.

25 At the bottom of page 5 of its reply, plaintiff cites U.S. Bank, N.A. v. SFR Investments Pool 1,
26 LLC, 124 F. Supp. 3d 1063 (D. Nev. 2015), as authority that “speculators-investors invoking the court’s
27 jurisdiction to avoid security in real property implicates due process.” The district court, however, relied
28

1 on expanding the concept of “substantive due process” well beyond the scope of the decision in
2 Obergefell v. Hodges, 135 S. Ct. 2584 (2015). The decision also relied on Shelley v. Kramer, 334 U.S.
3 1 (1948), that reversed a lower court’s order enforcing a restrictive covenant based on race. As stated by
4 the United States Supreme Court in Washington v. David, 426 U.S. 229, 239 (1976), “[t]he central
5 purpose of the Equal Protection Clause of the Fourteenth Amendment is the prevention of official conduct
6 discriminating on the basis of race.” The present case does not involve any claim of racial discrimination.

7 At the bottom of page 6 of its reply, plaintiff argues that courts have invalidated lien statutes that
8 “conferred power on private actors to impair other persons’ property rights without notice, without a
9 hearing, or both.” In Melara v. Kennedy, 541 F.2d 802, 804 (9th Cir. 1976), however, the court of
10 appeals stated that “[t]he authorization by statute of the challenged conduct does not by itself require a
11 finding of state action.” Because no “state actor” participates in the nonjudicial foreclosure process
12 provided by NRS 116.31162 to NRS 116.31168, and by incorporation, NRS 107.090, due process is not
13 an issue in this case.

14 Furthermore, NRS 107.090(3)(b) and NRS 107.090(4), which are expressly incorporated by NRS
15 116.31168(1), require that copies of the notice of default and the notice of sale be mailed to holders of
16 “subordinate” interests. The HOA’s foreclosure agent timely mailed the required notices to the plaintiff.
17 Plaintiff’s only objection is that the notice of default was mailed to an incorrect address. No such
18 objection was made regarding the notice of trustee’s sale that was mailed to plaintiff on October 20, 2011.
19 (Exhibit I to countermotion)

20 **4. Plaintiff’s inaction must be considered by the Court.**

21 At the bottom of page 7 of its reply, plaintiff quotes from Shadow Wood and argues that “Shadow
22 Wood ruled that the sale in that matter was not commercially unreasonable because the Property sold for
23 more than 20% of the fair market value and that the notices and recitals contained therein were
24 sufficient.” Plaintiff then claims at page 8 that “no notice of the super-priority was given and Plaintiff
25 was not in default to the HOA because it was not yet the record owner of the Property at the time of the
26 HOA sale.”

27 In SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408
28

(2014), on the other hand, the Court held that it was appropriate for the HOA to state the total amount of the lien, and the Court cited In re Medaglia, 52 F.3d 451 (2d Cir. 1995), as authority that “due process is not offended by requiring a person with actual, timely knowledge of an event that may affect a right to exercise due diligence and take necessary steps to preserve that right.”

In Section D of its opinion in Shadow Wood, the Court specifically directed that in considering whether to grant equitable relief from the conclusive foreclosure deed, a court must “consider the entirety of the circumstances that bear upon the equities.” 366 P.3d at 1114. The Court also stated:

When a trustee forecloses on and sells a property pursuant to a power of sale granted in a deed of trust, it terminates the owner’s legal interest in the property. Charmicor, Inc. v. Bradshaw Fin. Co., 92 Nev. 310, 313, 550 P.2d 413, 415 (1976). This principle equally applies in the HOA foreclosure context because NRS Chapter 116 grants associations the authority to foreclose on their liens by selling the property and thus divest the owner of title. *See* NRS 116.31162(1) (providing that “the association may foreclose its lien by sale” upon compliance with the statutory notice and timing rules); NRS 116.31164(3)(a) (stating the association’s foreclosure sale deed “conveys to the grantee all title of the unit’s owner to the unit”). **And if the association forecloses on its superpriority lien portion, the sale also would extinguish other subordinate interests in the property.** SFR Invs., 334 P.3d at 412–13. So, when an association’s foreclosure sale complies with the statutory foreclosure rules, as evidenced by the recorded notices, such as is the case here, and without any facts to indicate the contrary, the purchaser would have only “notice” that the former owner had the ability to raise an equitably based post-sale challenge, the basis of which is unknown to that purchaser. (emphasis added)

366 P.3d at 1116.

The Court made it clear that a lender like plaintiff has a duty to action to prevent the property from being sold to a bona fide purchaser pursuant to the HOA’s superpriority lien. Because plaintiff took no such action, plaintiff cannot now obtain equitable relief to reverse the extinguishment of its “subordinate” deed of trust.

5. Plaintiff has produced no evidence that the HOA’s foreclosure agent acted without authority.

At page 14 of its reply, plaintiff argues that there is no admissible evidence that the HOA authorized its foreclosure agent to execute the lien, the notice of default, the notice of sale, the trustee’s deed, “or otherwise conduct the foreclosure on its behalf.” Plaintiff, however, has produced no evidence that Alessi & Koenig acted without authority. Resources has attached as Exhibit A the authorization form signed by the HOA on November 23, 2011. This document was produced as part of plaintiff’s

1 supplemental disclosures that were electronically served on December 1, 2015.

2 At the bottom of page 15 and top of page 16 of its reply, plaintiff argues that according to the
3 definition of the word "description" that appears in Black's Law Dictionary, "the notice of default must
4 describe the quality of the deficiency in payment including whether the deficiency was for assessments
5 adopted pursuant to a periodic budget pursuant to the provisions of NRS 116.3115." The Nevada
6 Supreme Court instead held in SFR Investments Pool 1, LLC v. U.S. Bank, N.A., that it was appropriate
7 for the notices "to state the total amount of the lien." 334 P.3d at 418.

8 **CONCLUSION**

9 By reason of the foregoing, Resources Group, LLC respectfully requests that the court enter an
10 order denying plaintiff's motion for summary judgment and granting Resource's counter-motion for
11 summary judgment.

12 DATED this 13th day of June, 2016.

13 LAW OFFICES OF
14 MICHAEL F. BOHN, ESQ., LTD.

15 By: /s/ Michael F. Bohn, Esq./
16 Michael F. Bohn, Esq.
17 376 East Warm Springs Road, Ste. 140
18 Las Vegas, Nevada 89119
19 Attorney for counter-claimant,
20 Resources Group, LLC
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law Offices of Michael F. Bohn., Esq., and on the 13th day of June, 2016, an electronic copy of the foregoing REPLY IN SUPPORT OF RESOURCE GROUP, LLC'S COUNTERMOTION FOR SUMMARY JUDGMENT was served on opposing counsel via the Court's electronic service system and/or deposited for mailing in the U.S. Mail, postage prepaid to the following:

Sherry A. Moore, Esq.
Benjamin D. Petiprin, Esq.
ZIEVE, BRODNAX & STEELE, LLP
3753 Howard Hughes Parkway
Suite 200
Las Vegas, NV 89169

/s/ /Maurice Mazza /
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

EXHIBIT A

EXHIBIT A



A Multi-Jurisdictional Law Firm

9500 West Flamingo Road, Suite 205
Las Vegas, Nevada 89147
Telephone: 702-222-4033
Facsimile: 702-222-4043
www.alessikoenig.com

ADDITIONAL OFFICES

AGOURA HILLS, CA
PHONE: 818-735-5600

RENO NV
PHONE: 775-426-2323

DIAMOND BAR CA
PHONE: 909-843-6590

DAVID ALESSI*
THOMAS BAYARD*
ROBERT KOENIG**
RYAN KERBOV***
HUONG LAM***

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bar

*** Admitted to the Nevada Bar

**** Admitted to the Nevada and California Bar

AUTHORIZATION TO CONCLUDE NON-JUDICIAL FORECLOSURE AND CONDUCT TRUSTEE SALE

Dear Board of Directors and Management:

Alessi & Koenig, LLC is processing the posting and publication of a Notice of Trustee Sale for the below referenced property. Prior to the sale taking place, Alessi & Koenig requests a member of the Board of Directors, or a managing agent of the Board of Directors, sign this authorization.

If there are no bidders at the trustee sale, the property will revert to the homeowners association (HOA); and the HOA will acquire ownership of the property. Alessi & Koenig will record a Trustee's Deed Upon Sale on behalf of the HOA and advance the real property transfer tax.

Should the property revert to the HOA, Alessi & Koenig will provide an invoice for foreclosure fees and reimbursement of costs; including transfer tax and title insurance. Alessi & Koenig fees approximate \$2,500 to \$2,950.

Delinquent homeowner's name(s): **EDWARDS GEORGE R TRUST**

Homeowner Association name: **Glenview West Townhomes Association**

Delinquent homeowner's property address: **4254 ROLLINGSTONE DR, LAS VEGAS, NV 89103**

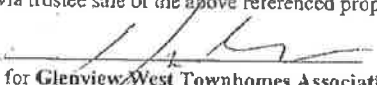
Estimated Trustee Sale Date: **November 16, 2011**

Approximate amount owed bank (1st mortgage): **\$50,000.00*** Approx Equity:

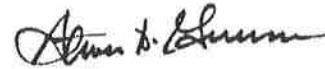
Approximate Amount owed HOA (delinquent assessment): **\$2,110.00**

Bank Foreclosing:

The undersigned has been authorized to execute this agreement on behalf of the above referenced Homeowners Association. Execution of this agreement authorizes Alessi & Koenig to conduct a public auction via trustee sale of the above referenced property.

Signed: 
AGENT for **Glenview West Townhomes Association**

Dated: **11/23/11**



CLERK OF THE COURT

1 **McCARTHY & HOLTHUS, LLP**
Kristin A. Schuler-Hintz (NSB# 7171)
2 Thomas N. Beckom (NSB# 12554)
9510 West Sahara Avenue, Suite 200
3 Las Vegas, NV 89117
Telephone: (702) 685-0329
4 Facsimile: (866) 339-5691
Attorneys for Defendant

5
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF CLARK**

8 **U.S. BANK NATIONAL ASSOCIATION ND,**
9 **A NATIONAL ASSOCIATION**

Case No. A-12-667690-C

Dept. No. XVI

10 Plaintiff,

11 v.

**NOTICE OF ASSOCIATION OF
COUNSEL**

12 **GEORGE R. EDWARDS, an individual, ANY**
13 **AND ALL PERSON UNKNOWN,**
14 **CLAIMING TO BE PERSONAL**
15 **REPRESENTATIVES OF GEORGE R.**
16 **EDWARDS ESTATE OR DULY**
17 **APPOINTED, QUALIFIED, AND ACTING**
18 **EXECUTOR OF THE WILL OF THE**
19 **ESTATE OF GEORGE R. EDWARDS;**
20 **RESOURCES GROUP, LLC a Nevada**
21 **Limited-Liability Company; GLENVIEW**
22 **WEST TOWNHOMES ASSOCIATION , a**
23 **Nevada non-profit corporation; DOES 4**
24 **through 10, inclusive, and ROES 1 through 10,**
25 **inclusive**

26 Defendants.

27 **RESOURCES GROUP, LLC**

28 Counter Plaintiff,

v.

**U.S. BANK N.A., ND, A NATIONAL
ASSOCIATION**

Counter Defendant

McCARTHY & HOLTHUS, LLP

ATTORNEYS AT LAW

9510 WEST SAHARA AVENUE, SUITE 200

LAS VEGAS, NV 89117

TELEPHONE (702) 685-0329/Facsimile (866) 339-5691

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PLEASE TAKE NOTICE that Thomas N. Beckom, Esq of the law firm of
McCarthy Holthus hereby associates in as co-counsel for the Plaintiff U.S. Bank in this matter.
Please forward all pleadings and other correspondence to the under signed on this matter.

DATED this 29th day of June, 2016.

MCCARTHY & HOLTHUS, LLP

/s/ Thomas N. Beckom, Esq

KRISTIN A. SCHULER-HINTZ, ESQ.

Nevada Bar No. 7171

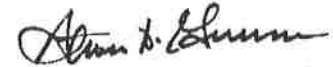
THOMAS N. BECKOM, ESQ.

Nevada Bar No. 12554

9510 W. Sahara Avenue, Suite 200

Las Vegas, Nevada 89117

Attorneys for U.S. Bank



CLERK OF THE COURT

1 ACNJ

2
3
4
5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

7 U.S. BANK NATIONAL ASSOCIATION, ND,)
8 a national association)

9 Plaintiff,)

10 vs.)

Case No. A-12-667690-C
Dept No. XVI

11 GEORGE R. EDWARDS, an individual; ANY)
12 AND ALL PERSONS UNKNOWN,)
13 CLAIMING TO BE PERSONAL)
14 REPRESENTATIVES OF GEORGE R.)
15 EDWARDS ESTATE, OR DULY)
16 APPOINTED, QUALIFIED, AND ACTING)
17 EXECUTOR OF THE WILL OF THE ESTATE)
18 OF GEORGE R. EDWARDS; RESOURCES)
19 GROUP, LLC, a Nevada Limited Liability)
20 Company; GLENVIEW WEST TOWNHOMES)
21 ASSOCIATION, a Nevada non-profit)
22 corporation; DOES 4 through inclusive; and)
23 ROES 1 through 10 inclusive)

24 Defendants,)

25 RESOURCES GROUP, LLC,)

26 Counter-claimant)

27 vs)

28 U.S. BANK NATIONAL ASSOCIATION, ND,)
a national association)
Counter-defendant)

2ND AMENDED ORDER SETTING CIVIL NON-JURY TRIAL,

PRE-TRIAL/CALENDAR CALL

IT IS HEREBY ORDERED THAT:

A. The above entitled case is set to be tried on a five-week stack to begin, on the
6th day of March, 2017, at 9:30 o'clock A.M.

1 B. A Pre-Trial/Calendar Call with the designated attorney and/or parties in proper
2 person will be held on the 16th day of February, 2017, at 10:30 o'clock A.M.

3 C. The joint Pre-trial Memorandum must be filed prior to the Pre-Trial/Calendar
4 Call, with a courtesy copy delivered to Department XVI Chambers. All parties, (Attorneys
5 and parties in Proper Person) MUST comply with All REQUIREMENTS of E.D.C.R. 2.67,
6 2.68 and 2.69.

7 Counsel should include in the Memorandum an identification of orders on all motions
8 in limine or motions for partial summary judgment previously made, a summary of any
9 anticipated legal issues remaining, a brief summary of the opinions to be offered by any
10 witness to be called to offer opinion testimony as well as any objections to the opinion
11 testimony.

12 D. All discovery deadlines, deadlines for filing dispositive motions and motions
13 to amend the pleadings or add parties are controlled by the previously issued Scheduling
14 Order and/or any amendments or subsequent orders.

15 E. Pursuant to EDCR 2.35, a motion to continue trial due to any discovery issues
16 or deadlines must be made before the Discovery Commissioner.

17 F. Exhibits: Counsel (or a party in proper person) should contact the Court Clerk
18 a few days prior to trial to make arrangements to bring Exhibits in to be marked (Court
19 Clerk, Lorna Shell: 671-0683).

20 G. Proposed Findings of Fact and Conclusions of Law: Each side shall provide
21 the Court, two (2) working days prior to the start of trial, a detailed, proposed Findings of
22 Fact and Conclusions of Law. The detailed, proposed Findings of Fact and Conclusions of
23 Law shall include all elements of each Cause of Action alleged by Plaintiff and the basis for
24 Defendant's Affirmative Defense. This is **not** filed with the clerk – send the original to
25 chambers. Also provide an electronic version (Word format) of your Findings of Fact and
26 Conclusions of Law via email to Dept 16 JEA, Lynn Berkheimer, at
27 Berkheimerl@clarkcountycourts.us.


28 Failure of the designated trial attorney or any party appearing in proper person to

1 appear for any court appearances or to comply with this Order shall result in any of the
2 following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4)
3 vacation of trial date; and/or any other appropriate remedy or sanction.

4 *Counsel is asked to notify the Court Reporter at least two (2) weeks in advance if*
5 *they are going to require daily copies of the transcripts of this trial. Failure to do so may*
6 *result in a delay in the production of the transcripts.*

7 Counsel must advise the Court immediately when the case settles or is otherwise
8 resolved prior to trial. A Stipulation which terminates a case by dismissal shall also indicate
9 whether a Scheduling Order has been filed and if a trial date has been set, and the date of that
10 trial. A copy should be given to Chambers.

11 DATED: July 15, 2016

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14 TIMOTHY C. WILLIAMS
15 District Court Judge, Dept. XVI
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1
2 **CERTIFICATE OF SERVICE**
3

4 I hereby certify that on or about the date e-filed, this document was electronically
5 served to all registered parties for case number INSERT as follows:

6 **Law Offices of Michael F. Bohn, Esq.**

7 **Name**

Eserve Contact

Michael F Bohn Esq

Email

office@bohnlawfirm.com

mbohn@bohnlawfirm.com

8 **Les Zieve Law Office**

9 **Name**

Benjamin D. Petiprin, Esq.

Email

bpetiprin@zlevelaw.com

10 **McCarthy & Holthus, LLP.**

11 **Name**

Kristin Schuler-Hintz

Email

dcnv@mccarthyholthus.com

12 **McCarthy Holthus LLP**

13 **Name**

Michael Plank

Email

mplank@mccarthyholthus.com

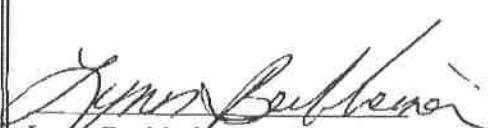
14 **McCarty & Holthus, LLP.**

15 **Name**

Thomas N. Beckom

Email

tbeckom@mccarthyholthus.com

16
17 
18 **Lynn Berkheimer**

19 **Judicial Executive Assistant**
20
21
22
23
24
25
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27
28



CLERK OF THE COURT

1 **McCARTHY & HOLTHUS, LLP**
2 Kristin A. Schuler-Hintz (NSB# 7171)
3 Thomas N. Beckom (NSB# 12554)
4 9510 West Sahara Avenue, Suite 200
5 Las Vegas, NV 89117
6 Telephone: (702) 685-0329
7 Facsimile: (866) 339-5691
8 Attorneys for Defendant

9
10 **IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA**
11 **IN AND FOR THE COUNTY OF CLARK**

12 **U.S. BANK NATIONAL ASSOCIATION ND,**
13 **A NATIONAL ASSOCIATION**

Case No. A-12-667690-C

Dept. No. XVI

14 Plaintiff,

15 v.

**STIPULATION AND ORDER TO RE-
OPEN DISCOVERY, VACATE TRIAL,
AND EXTEND THE 5 YEAR RULE
PURSUANT TO NEV. R. CIV. PRO 41(e).**

16 **GEORGE R. EDWARDS, an individual, ANY**
17 **AND ALL PERSON UNKNOWN,**
18 **CLAIMING TO BE PERSONAL**
19 **REPRESENTATIVES OF GEORGE R.**
20 **EDWARDS ESTATE OR DULY**
21 **APPOINTED, QUALIFIED, AND ACTING**
22 **EXECUTOR OF THE WILL OF THE**
23 **ESTATE OF GEORGE R. EDWARDS;**
24 **RESOURCES GROUP, LLC a Nevada**
25 **Limited-Liability Company; GLENVIEW**
26 **WEST TOWNHOMES ASSOCIATION, a**
27 **Nevada non-profit corporation; DOES 4**
28 **through 10, inclusive, and ROES 1 through 10,**
inclusive

Defendants.

RESOURCES GROUP, LLC

Counter Plaintiff,

v.

U.S. BANK N.A., ND, A NATIONAL
ASSOCIATION

Counter Defendant

IT IS HEREBY STIPULATED AND AGREED, pursuant to EDCR 2.35 as well as NRCP 41(e), by and between the parties, U.S. BANK N.A. ("U.S. BANK"); and RESOURCES GROUP, LLC through their undersigned counsels of record, that discovery be re-opened, trial be re-set, and that the timeline to bring the action to trial be extended past 5 years.

I. DESCRIPTION OF THE ACTION AND PROCEDURAL HISTORY

This matter involves disputed title to the real property located at 4154 Rollingstone Dr., Las Vegas, NV 89103 (the "Property"), which was sold at an HOA foreclosure sale. Resources purchased the Property at the sale and claims to own the Property free and clear of any first deed of trust. U.S. Bank contends to be the current beneficiary of a first deed of trust still encumbering the Property.

On August 30, 2012, U.S. Bank filed a complaint for judicial foreclosure under a Deed of Trust. Resources Group, LLC ("Resources") filed its answer to the complaint on July 16, 2014, which included counterclaims against U.S. Bank. U.S. Bank filed an answer to the Counterclaim on February 20, 2015.

An Early Case Conference was held. A joint case conference report was filed on April 15, 2015 and a scheduling order was entered on May 18, 2015. On November 30, 2015; the parties extended discovery. Pursuant to this scheduling order, the current discovery timeline is as follows:

1. Discovery cut-off-- April 15, 2016
2. Motions to amend pleadings/add parties -- August 14, 2015
3. Initial expert disclosures -- August 14, 2015
4. Rebuttal expert disclosures -- September 14, 2015
5. Dispositive motions -- May 16, 2016

Moreover, an order setting civil jury trial was entered on June 5, 2015. This order was amended on November 25, 2015.

As detailed further below, the parties have complied with the requirements of EDCR 2.35 and good cause exists for the requested extension.

1 **II. DISCOVERY COMPLETED TO DATE**

- 2 1. Rule 16.1 early case conference.
3 2. Resources served its initial disclosures.
4 3. U.S. Bank served its initial disclosures.
5 4. Propounded written discovery on U.S. Bank, which U.S. Bank answered.
6 5. U.S. Bank subpoenaed the HOA as well as the collection company and disclosed
7 these responses.
8

9 **III. DISCOVERY THAT REMAINS TO BE COMPLETED**

- 10 1. Depose Resources
11 2. Depose Alessi & Koenig
12 3. Disclose a valuation expert
13

14 **IV. THE REASON WHY DISCOVERY WAS NOT COMPLETED WITHIN THE
15 TIME LIMIT SET BY THE DISCOVERY PLAN**

16 U.S. Bank has opted to change counsel and the parties agree that additional discovery as
17 well as renewed motions may result in dealing with this matter on Summary grounds. As such the
18 parties agree that discovery should be re-opened on the following terms.

19 **V. PROPOSED SCHEDULE FOR COMPLETING ALL DISCOVERY**

20 Based upon their agreement, the parties propose the following amended discovery plan
21 and applicable deadlines reflecting an extension as follows:

- 22 1. Discovery cut-off – November 1, 2016
23 2. Motions to amend pleadings/add parties – August 1, 2016
24 3. Initial expert disclosures – August 1, 2016
25 4. Rebuttal expert disclosures – August 31, 2016
26 5. Dispositive motions – December 1, 2016

27 **VI. CURRENT TRIAL DATE**

28 The case is set to be tried on August 4 & 5, 2016. The parties are desirous to have trial re-

set to a time and date convenient for the Court sometime at the beginning of 2017.

VII. FIVE YEAR RULE


This case was filed on August 30, 2012 and will be five (5) years old on August 30, 2017. To the extent any scheduling runs up against the 5 year deadline, the parties hereby stipulate to waive the five year rule pursuant to Nev. R. Civ. Pro 41(e).


DATED this 3rd day of June, 2016.

DATED this 7th day of June, 2016.

LAW OFFICES OF MICHAEL F. BOHN, ESQ

MCCARTHY & HOLTHUS, LLP


MICHAEL F. BOHN, ESQ.
Nevada Bar No. 1641
376 E. WARM SPRINGS RD.
Las Vegas, NV 89119
Attorney for Resources Group, LLC


KRISTIN A. SCHULER-HINTZ, ESQ.
Nevada Bar No. 7171
THOMAS N. BECKOM, ESQ.
Nevada Bar No. 12554
9510 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Attorneys for U.S. Bank

ORDER

IT IS SO ORDERED this 15th day of July, 2016. *As Amended*

Trial Order will be issued.


DISTRICT COURT JUDGE



CLERK OF THE COURT

1 **McCarthy & Holthus, LLP.**

2 Kristin A. Schuler-Hintz, Esq. Nevada State Bar No. 7171

3 Thomas N. Beckom, Esq. Nevada State Bar No. 12554

4 9510 West Sahara Avenue, Suite 200

5 Las Vegas, NV 89117

6 Telephone: (702) 685-0329

7 Facsimile: (866) 339-5691

8 Attorneys for Plaintiff/Counter Defendant U.S. Bank National Association

9 **IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA**
10 **IN AND FOR THE COUNTY OF CLARK COUNTY**

11 **U.S. BANK N.A., NO, A NATIONAL**
12 **ASSOCIATION**

13 Plaintiff,

14 v.

15 **CANYON GATE MASTER ASSOCIATION;**
16 **and Does 1 through 50 inclusive; Roe**
17 **Corporations 1-50 inclusive.**

18 Defendants.

19 **RESOURCES GROUP, LLC**

20 Counter Plaintiff

21 v.

22 **U.S. BANK N.A., NO, A NATIONAL**
23 **ASSOCIATION**

24 Counter Defendant

Case No. A-2-667690-C

Dept No. XVI

NOTICE OF ENTRY OF STIPULATION
AND ORDER TO REOPEN
DISCOVERY, VACATE TRIAL AND
EXTEND THE 5 YEAR RULE
PURSUANT TO NEV R. CIV. PRO 41 (e)

25 **YOU AND ALL OF YOU PLEASE TAKE NOTICE** that the following Notice of
26 Entry of Stipulation and Order to Re-Open Discovery, Vacate Trial, and Extend the 5 Year
27 Rule Pursuant to NEV. R. CIV. PRO 41(e) was entered on July 20, 2016 for the above
28 captioned matter. A true and correct copy of said Order is attached hereto.

Dated: July 22, 2016

McCarthy & Holthus, LLP

By: 

Thomas N. Beckom, Esq.

CERTIFICATE OF MAILING

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on July 26, 2016, I caused the foregoing document entitled: **Notice of Entry of Stipulation and Order to Re-Open Discovery, Vacate Trial, and Extend the 5 Year Rule Pursuant to NEV. R. CIV. PRO 41(e)**

☒ Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or;

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

☐ Pursuant to EDCR 7.26, to be sent via facsimile; and/or

☐ hand-delivered to the attorney(s) listed below at the address indicated below;

☐ to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee(s); and or;

☐ by electronic mailing to:

Law Offices of Michael F. Bohn, Esq.

Name	Email	Select
Eserve Contact	office@bohnlawfirm.com	<input checked="" type="checkbox"/>
Michael F Bohn Esq	mbohnlawfirm.com	<input checked="" type="checkbox"/>

Les Zieve Law Office

Name	Email	Select
Benjamin D. Petiprin, Esq.	bpstiprin@zievelaw.com	<input checked="" type="checkbox"/>

McCarthy & Holthus, LLP.

Name	Email	Select
Kristin Schuler-Hintz	kshintz@mccarthyholthus.com	<input checked="" type="checkbox"/>

McCarthy & Holthus, LLP.

Name	Email	Select
Thomas N. Beckom	tbeckom@mccarthyholthus.com	<input checked="" type="checkbox"/>


Joni Rispalje
An employee of McCarthy & Holthus, LLP


CLERK OF THE COURT

McCARTHY & HOLTHUS, LLP

ATTORNEYS AT LAW
9510 WEST SAHARA AVENUE, SUITE 200
LAS VEGAS, NV 89117
TELEPHONE: (702) 685-0329 FAX: (702) 685-0329

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8 Attorneys for Defendant

6 **IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF CLARK**

8 **U.S. BANK NATIONAL ASSOCIATION ND,**
9 **A NATIONAL ASSOCIATION**

10 Plaintiff,

11 v.

12 **GEORGE R. EDWARDS, an individual, ANY**
13 **AND ALL PERSON UNKNOWN,**
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16 **EDWARDS ESTATE OR DULY**
17 **APPOINTED, QUALIFIED, AND ACTING**
18 **EXECUTOR OF THE WILL OF THE**
19 **ESTATE OF GEORGE R. EDWARDS;**
20 **RESOURCES GROUP, LLC a Nevada**
21 **Limited-Liability Company; GLENVIEW**
22 **WEST TOWNHOMES ASSOCIATION, a**
23 **Nevada non-profit corporation; DOES 4**
24 **through 10, inclusive, and DOES 1 through 10,**
25 **inclusive**

19 Defendants.

21 **RESOURCES GROUP, LLC**

22 Counter Plaintiff,

23 v.

24 **U.S. BANK N.A., ND, A NATIONAL**
25 **ASSOCIATION**

26 Counter Defendant

Case No. A-12-667690-C
Dept. No. XVI

**STIPULATION AND ORDER TO RE-
OPEN DISCOVERY, VACATE TRIAL,
AND EXTEND THE 5 YEAR RULE
PURSUANT TO NEV. R. CIV. PRO 41(e).**

1 IT IS HEREBY STIPULATED AND AGREED, pursuant to EDCR 2.35 as well as NRCP
2 41(e), by and between the parties, U.S. BANK N.A. ("U.S. BANK"); and RESOURCES GROUP,
3 LLC through their undersigned counsels of record, that discovery be re-opened, trial be re-set,
4 and that the timeline to bring the action to trial be extended past 5 years.

5 **I. DESCRIPTION OF THE ACTION AND PROCEDURAL HISTORY**

6 This matter involves disputed title to the real property located at 4154 Rollingstone Dr.,
7 Las Vegas, NV 89103 (the "Property"), which was sold at an HOA foreclosure sale. Resources
8 purchased the Property at the sale and claims to own the Property free and clear of any first deed
9 of trust. U.S. Bank contends to be the current beneficiary of a first deed of trust still encumbering
10 the Property.

11 On August 30, 2012, U.S. Bank filed a complaint for judicial foreclosure under a Deed of
12 Trust. Resources Group, LLC ("Resources") filed its answer to the complaint on July 16, 2014,
13 which included counterclaims against U.S. Bank. U.S. Bank filed an answer to the Counterclaim
14 on February 20, 2015.

15 An Early Case Conference was held. A joint case conference report was filed on April 15,
16 2015 and a scheduling order was entered on May 18, 2015. On November 30, 2015; the parties
17 extended discovery. Pursuant to this scheduling order, the current discovery timeline is as
18 follows:

- 19 1. Discovery cut-off – April 15, 2016
- 20 2. Motions to amend pleadings/add parties – August 14, 2015
- 21 3. Initial expert disclosures – August 14, 2015
- 22 4. Rebuttal expert disclosures – September 14, 2015
- 23 5. Dispositive motions – May 16, 2016

24 Moreover, an order setting civil jury trial was entered on June 5, 2015. This order was
25 amended on November 25, 2015.

26 As detailed further below, the parties have complied with the requirements of EDCR 2.35
27 and good cause exists for the requested extension.

1 **II. DISCOVERY COMPLETED TO DATE**

- 2 1. Rule 16.1 early case conference.
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5 4. Propounded written discovery on U.S. Bank, which U.S. Bank answered.
6 5. U.S. Bank subpoenaed the HOA as well as the collection company and disclosed
7 these responses.
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9 **III. DISCOVERY THAT REMAINS TO BE COMPLETED**

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11 2. Depose Alessi & Koenig
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14 **IV. THE REASON WHY DISCOVERY WAS NOT COMPLETED WITHIN THE
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19 **V. PROPOSED SCHEDULE FOR COMPLETING ALL DISCOVERY**

20 Based upon their agreement, the parties propose the following amended discovery plan
21 and applicable deadlines reflecting an extension as follows:

- 22 1. Discovery cut-off -- November 1, 2016
23 2. Motions to amend pleadings/add parties -- August 1, 2016
24 3. Initial expert disclosures -- August 1, 2016
25 4. Rebuttal expert disclosures -- August 31, 2016
26 5. Dispositive motions -- December 1, 2016

27 **VI. CURRENT TRIAL DATE**

28 The case is set to be tried on August 4 & 5, 2016. The parties are desirous to have trial re-

set to a time and date convenient for the Court sometime at the beginning of 2017.

VII. FIVE YEAR RULE

This case was filed on August 30, 2012 and will be five (5) years old on August 30, 2017. To the extent any scheduling runs up against the 5 year deadline, the parties hereby stipulate to waive the five year rule pursuant to Nev. R. Civ. Pro. 41(e).

DATED this 30th day of June, 2016.

DATED this 1 day of July, 2016.

LAW OFFICES OF MICHAEL F. BOHN, ESQ

McCarthy & Holthus, LLP

Michael F. Bohn, Esq.
MICHAEL F. BOHN, ESQ.
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Nevada Bar No. 12554
9510 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Attorneys for U.S. Bank

ORDER

IT IS SO ORDERED this 15th day of July, 2016. for amended

Final Order will be issued.

J. P. O'S
DISTRICT COURT JUDGE


CLERK OF THE COURT

McCARTHY & HOLTHUS, LLP
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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

U.S. BANK NATIONAL ASSOCIATION ND,
A NATIONAL ASSOCIATION

Case No. A-12-667690-C
Dept. No. XVI

Plaintiff,

v.

**PLAINTIFF'S MOTION TO AMEND
THEIR ANSWER TO THE
COUNTERCLAIM**

GEORGE R. EDWARDS, an individual, ANY
AND ALL PERSON UNKNOWN,
CLAIMING TO BE PERSONAL
REPRESENTATIVES OF GEORGE R.
EDWARDS ESTATE OR DULY
APPOINTED, QUALIFIED, AND ACTING
EXECUTOR OF THE WILL OF THE
ESTATE OF GEORGE R. EDWARDS;
RESOURCES GROUP, LLC a Nevada
Limited-Liability Company; GLENVIEW
WEST TOWNHOMES ASSOCIATION, a
Nevada non-profit corporation; DOES 4
through 10, inclusive, and ROES 1 through 10,
inclusive

Defendants.

And All Related Claims

Plaintiff/ Counter Defendant, U.S. BANK NATIONAL ASSOCIATION ND, A
NATIONAL ASSOCIATION, (hereinafter "U.S. Bank"), by and through their attorney of record
Thomas N. Beckom, Esq of the law firm of McCarthy Holthus LLP hereby files Motion to
Amend their Answer

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring MOTION TO AMEND on for a hearing on the 1st day of September, 2016 at 9:00 am, in Department VII of the above-entitled Court, or as soon thereafter as counsel may be heard.

By: /s/ Thomas N. Beckom Esq
Thomas N. Beckom, Esq
Nevada Bar No. 12554

I. INTRODUCTION

On May 8, 2013; BONY filed suit for *inter alia* a judicial foreclosure of real property commonly known as 4254 Rollingstone Dr., Las Vegas, NV. U.S. Bank sued *inter alia* the 1659 Resources as well as the borrowers George Edwards. On July 16, 2014; the Resources Group filed an answer to the judicial foreclosure complaint and further alleged that they had a deed which was free and clear of BONY's security interest based on a January 31, 2012 foreclosure sale.

BONY answered the counter claim on February 20, 2015. Much has happened in the world of HOA foreclosures since that time. To place the Resources Group on fair notice, U.S. Bank wishes to amend the answer to add case specific affirmative defenses commonly known in this jurisdiction and commonly known to the Resources Group.

II. LAW AND ARGUMENT

A. STANDARD FOR A MOTION TO AMEND

U.S. Bank respectfully requests that they be allowed to assert additional affirmative defenses in this matter and further put all parties on notice as to what they intend to do. Given the liberal

1 standard of allowing amendments, U.S. Bank should be allowed to amend as they have done so
2 promptly and all of the amendments as pled are potentially meritorious.

3 Nev. R. Civ Pro 15(a) states in pertinent part that:

4 “a party may amend the party’s pleading only by leave of court or by written consent of
5 the adverse party; and leave shall be freely given when justice so requires.”

6 Leave to amend historically has been left properly to the discretion of the District Court
7 Judges in this district however; the Rule specifically requires that leave shall be freely given
8 absent some enumerated reason such as undue delay, bad faith, or dilatory motive on the part of
9 the movant. *Stephens v. Southern Nev. Music Co.* 89 Nev. 104 (1973). In this respect, leave to
10 amend is indeed discretionary; however the discretion is innately limited by certain factors and
11 the preference for freely given amendments.

12 Dilatory Motive is typically defined in relation to the procedural posture as it relates to the
13 inevitable trial. *Kantor v. Kantor* 116 Nev. 886 (2000). If a Motion to Amend is brought to close
14 to the trial date, it can be denied because the parties have relied on the position of the original
15 pleadings when preparing their case. *Id.*

16 The Nevada Supreme Court has commented on the meaning of “undue delay” in that again
17 it mainly has to with the procedural posture of the case as it relates to trial. *Garmong v. Roney &*
18 *Sons Constr.*, 2011 Nev. Unpub LEXIS 863. In *Garmong* the trial court found that adding 31 new
19 claims a few months before trial would have caused “undue delay” in that it would have resulting
20 in postponing a trial in order to allow the Defendants time to prepare the defense for the new
21 claims. *Id.* Again the theme of procedural posture as it relates to trial is prevalent in this setting.

22 U.S. Bank has timely brought this motion with the deadlines to amend the complaint and as
23 such no prejudice will attach to any party. Additionally, U.S. Bank finds it hard to believe that
24 these amendments are any great shock to any party or their attorneys .

25 As delineated below, U.S. Bank wishes to add the following affirmative defenses:

1 1. The HOA foreclosure sale was/ is Voidable Under NRS Chapter 112;

2 2. The Sale has an unfair purchase price and is the result of Fraud, Unfairness, and
3 Oppression

4 3. Various Constitutional Claims

5 While the Court need not make a decision on these claims on a dispositive basis now, U.S.
6 Bank should be allowed to assert these additional defenses so that U.S. Bank can put the parties
7 on notice and a complete record can be compiled.

8 **B. NEVADA'S UNIFORM FRAUDULEN TRANSFER ACT (NRS CHAPTER 112)**
9 **APPLIES TO THIS INSTANT TRANSACTION**

10 **1. The Transfer is Voidable Pursuant to NRS §112.190(1)**

11 A claim under NRS §112.190 (hereinafter "UFTA" or "NUFTA") is not futile for purposes of
12 amending the complaint. In describing why states should adopt fraudulent transfer law the
13 Uniform Law Commission has made the following statement:

14 "Credit is essential to the economic life of this country. Consumer credits, commercial credit,
15 secured and unsecured credit enter into our lives everyday. Credit remains available so long
16 as those who extend it are given certain assurances about their rights at default¹."

17 The UFTA , as adopted through NRS Chapter 112, is intended to provide these assurances.
18 NRS §112.190(1) which states in pertinent part that a transfer of an asset of a debtor is voidable if
19 the creditor's claim arose before the transfer and the debtor received less than reasonably
20 equivalent value at a time when he or she was insolvent and/or became insolvent thereafter. The
21 Nevada Supreme Court has stated that the underlying policy behind the UFTA is to "preserve the
22 debtor's assets for the benefit of creditors." *Herup v. First Boston Fin., LLC* 123 Nev. 228 at FN
23 15 (2007)². A claim under NRS §112.190(1) is very straight forward. It does not require proof of
24 intent to defraud and all a creditor must prove is that (1) their claim arose before the transfer,

25 ¹ Available at [http://www.uniformlaws.org/Narrative.aspx?title=Why States Should Adopt UFTA](http://www.uniformlaws.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%20UFTA)

² For clarity to the Court, this pleading periodically references Bankruptcy law. In Nevada Bankruptcy law is *in pari*
material to the UFTA and therefore this is proper. *Herup v. First Boston Fin., LLC* 123 Nev. 228 at FN 15 (2007)

(2)there was a lack of reasonably equivalent value in the exchange, and (3) the debtor was insolvent at the time of making the transfer or became insolvent afterwards. *Sportsco Enters v. Morris* 112 Nev. 625, 631(1996).

As outlined in greater depth below, the Fraudulent Transfer Claim is not a futile amendment and in light of the liberal standard for amendments leave to amend should be granted.

i. The HOA Foreclosure was a Covered Transfer under the Act

Under the UFTA any transfer with greatly reduces the value of assets available to creditors is considered a covered transfer under the act. In interpreting the state of Washington's UFTA, a federal court in Washington has noted that "any transaction that greatly reduces the value of a debtor's estate may be a transfer." *Aqua-Chem, Inc v. Marine Sys.* 2014 U.S. Dist. LEXIS (2014) A Florida Bankruptcy Court has echoed this sentiment in that a transfer is to be construed as broadly as possible and that "all technicality and narrowness of meaning is precluded." *In re Thrift Dutchman, Inc* 97 B.R. 101 (Fl 1988). The Nevada Bankruptcy Court has noted that the term transfer is to be construed as broadly as possible as fraudulent transfer law was intended to provide the maximum protection of creditors. *Lehtonen v. Time Warner Inc.* 332 B.R. 417 (D.Nev 2005). Additionally, NRS §112.150(12) clarifies what is considered a transfer and specifically states that transfer means "every mode" and goes on to state that involuntary disposition or parting with an asset is considered a transfer³.

The statute is clear on its face that every mode, including the involuntary disposition of an asset, is subject to the UFTA. There can be no argument that this is not a transfer.

³ "Transfer" means **every mode**, direct or indirect, absolute or conditional, voluntary or **involuntary**, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease and creation of a lien or other encumbrance." NRS §112.150(12) (Emphasis Added).

1 ii. The Relevant Transfer Date is the Date the Deed was Recorded.

2 U.S. Bank Claims their interest via a Deed of Trust On this basis, U.S. Bank should be
3 covered under NRS §112.190(1). This amendment is not futile on this basis.

4 In this instant case, the transfer being challenged is not the creation of the HOA lien, but
5 rather the HOA's foreclosure sale of the Property which involuntarily disposed of the Borrower's
6 interest in the property. Numerous courts have held that the relevant transfer date is not the date
7 of the creation of the lien, but the date of the foreclosure sale itself. *CF Realty Trust v. Town of*
8 *Hampstead* 160 B.R. 461 (1993)(rejecting the town's argument that the transfer occurred on the
9 date the town recorded the tax collector's lien and holding that the transfer occurred on the date
10 the deed was recorded because that's the date when the interest of the debtor is transferred); *see*
11 *also Butler v. Lomas & Nettleton Co.*, 862 F.2d 1015 (Bankr. Ct. App. 3rd Cir 1988)(holding that
12 the time of the transfer in determining whether a fraudulent conveyance occurred is the time of
13 the sheriff's sale); *In re Brown* 104 B.R. 609 (Bankr. S.D.N.Y 1989)(a transfer under the
14 fraudulent conveyance statute occurs at the time of the foreclosure sale); *Skagit Valley Publ. Co.*
15 *v. Kajac, Inc* 1997 Wash App. LEXIS 531 (1997) (holding that under the UFTA, the transfer date
16 is the date of the foreclosure sale).

17 Under the case law as long as BONY's deed of trust encumbered the property at the time of
18 the transfer, the HOA transfer is subject to the provisions of NRS §112.190(1). Additionally by
19 the plain language of NRS §116.3116 the Association only has a lien when fines, assessment, or
20 construction penalties become due. They do not have a lien and enforceable debt in perpetuity⁴.
21 Therefore the HOA does not have a lien in perpetuity and as such the HOA foreclosure was a
22 covered transfer. This favors leave to amend.

23
24
25 ⁴ The association has a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to
NRS 116.310305, any assessment levied against that unit or any fines imposed against the unit's owner from the
time the construction penalty, assessment or fine becomes due. NRS §116.3116(1)(Emphasis Added).

1 iii. An HOA foreclosure does not provide reasonably equivalent value
2 in Nevada.

3 NRS §112.170 does exempt certain foreclosures from the act, yet actually **excludes** the HOA
4 foreclosure. NRS §112.170 states in pertinent part that:

5 “a person gives a reasonably equivalent value if the person acquires an interest of the
6 debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or
7 execution of a power of sale for the acquisition or disposition of the interest of the debtor
8 upon default **under a mortgage, deed of trust or security agreement.**”

9 The Nevada UFTA expressly delineates between a lien created by agreement and a
10 statutory lien. NRS §112.150(8). Yet the term “statutory lien” is nowhere to be found in NRS
11 §112.170(2). The HOA super-priority lien is clearly a statutory lien in direct derogation to the
12 common law.

13 When construing a statute Courts must first inquire whether an ambiguity exists in the
14 language of the statute. *State v. Quinn* 117 Nev. 709, 718 (2001). If the words of the statute have a
15 definite and ordinary meaning, Courts should not look beyond the plain language of the statute
16 unless it is clear that the meaning was not intended. *Id.* On this analysis, the language in NRS
17 Chapter 112 is plain on its face that a statutory HOA lien is not included as receiving reasonably
18 equivalent value under state law. This places the HOA lien outside of the purview and protections
19 of NRS §112.170

20 The Nevada Supreme Court has additionally noted that when a statute, such as NRS §112.170
21 includes a list of items to be included, the anything not included on the list is to be expressly
22 excluded. *Galloway v. Truesdell* 83 Nev. 13 (1967)(the maxim *Expressio Unius Est Exclusio*
23 *Alterius* states the expression of one thing leads to the exclusion of other) *see also SFR Invs. Pool*
24 *1, LLC v. U.S. Bank N.A.* 334 P.3d 408 (Nev. 2014)(stating that under the maxim *Expressio*
25 *Unius Est Exclusio Alterius* the only enumerated restriction in NRS 116 on an HOA foreclosure
 was institution of a foreclosure mediation and that therefore this excluded the requirement for a
 judicial foreclosure). The term statutory lien and/ or HOA lien is not included in NRS §112.170.

1 Under *Truesdell* this draws a negative inference that an HOA foreclosure was never intended to
2 be included under the protections of NRS §112.170.

3 NRS §112.170 does not say “HOA foreclosure” or “foreclosure under NRS Chapter 116.”
4 Under NRS §112.170 this type of foreclosure is excluded from the statute. This makes logical
5 pragmatic sense in that a foreclosure under a mortgage, deed of trust, or security agreement
6 respect the common law “first in time first in right” laws of attachment while this statutory lien
7 completely circumvents these requirements. Additionally these types of commercial loans have a
8 loan to value component to them while the HOA lien is typically for a de minimus amount. All
9 of this protects the parties to the transaction in a manner that a foreclosure under NRS §116.3116
10 *et seq* does not. On it’s face the statute is clear. An HOA foreclosure does not provide reasonably
11 equivalent value as a matter of law. As such on this basis, amending the complaint to assert a
12 claim under NRS §112.190(1) is not futile.

13 **iv. U.S. Bank’s Mortgage Must Now Be Included in the Insolvency**
14 **Analysis.**

15 The dissent in the *SFR* Court noted that once the HOA foreclosure takes place, the first deed
16 of trust becomes entirely unsecured and the borrower is still obligated on the debt. *SFR Invs. Pool*
17 *I LLC v. U.S. Bank N.A.* 334 P.3d 408, 422(2014)⁵ NRS §112.160(5) thereafter states that “debts
18 under this section do not include an obligation to the extent it is secured by a valid lien” yet it
19 cannot be disputed that post-*SFR* if the sale stands U.S. Bank does not have a valid lien. In this
20 vein, U.S. Bank must now be included in the insolvency analysis under NRS §112.160.

21 Under NRS §112.160(2) all BONY need do it demonstrate that the Homeowner was not
22 paying his debts as they came due. The Official Comments to the Uniform Act state that “the
23 presumption imposes on the party against whom the presumption is direct the burden of proving
24 the nonexistence of insolvency.” Additionally the official comment to the act indicates that U.S.

25 ⁵ “After the first deed of trust loses its security in the property pursuant to the association’s foreclosure of its
superpriority lien, the former homeowner will generally be liable for the amount still owed on the debt.”

1 Bank would not need to prove nonpayment on a majority of debts in order to proof general
2 nonpayment.

3 The Complaint itself alleges that the Homeowner was not paying his mortgage and his HOA
4 dues. This in of itself states a claim under NRS §112.190(1). In light of the liberal standard for
5 amendments, and the case law cited *supra* an amendment to allow a claim under NRS
6 §112.190(1) must be allowed. This claim is not futile.

7 **C. INSUFFICIENT PRICE PLUS SOME ELEMENT OF FRAUD, UNFAIRNESS,
8 AND OPPRESSION CLEARLY IS A BASIS TO SET ASIDE THE SALE UNDER
9 NEVADA LAW.**

10 Finally there can be no argument that under *Shadow Wood Homeowners Ass'n v. New York*
11 *Cnty. Bancorp* that an insufficient price plus some element of fraud, unfairness, or oppression can
12 set aside this sale. 366 P.3d 1105 (Nev. 2016). Here the recording of an HOA credit bid, which
13 essentially is an exchange for zero money, and the immediate credit bid are suspect and a fertile
14 ground for a finding of fraud, unfairness, and oppression. On this basis the amendment should be
15 granted.

16 **III. CONCLUSION**

17 In light of the liberal standard for granting amendments in Nevada, this Honorable Court
18 should allow U.S. Bank to Amend their complaint in order to assert the claims as delineated
19 *supra*. For these reasons stated above these are not futile amendment and the Amended
20 Complaint states a claim and is not futile under Nev. R. Civ. Pro 15

21 DATED: August 1, 2016.

22 McCarthy & Holthus, LLP

23 By: /s/ Thomas N. Beckom, Esq
24 Thomas N. Beckom, Esq
25

McCARTHY & HOLTHUS, LLP
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Attorneys for *U.S. BANK*

**IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF CLARK**

U.S. BANK NATIONAL ASSOCIATION ND,
 A NATIONAL ASSOCIATION

Plaintiff,

v.

GEORGE R. EDWARDS, an individual, ANY
 AND ALL PERSON UNKNOWN,
 CLAIMING TO BE PERSONAL
 REPRESENTATIVES OF GEORGE R.
 EDWARDS ESTATE OR DULY
 APPOINTED, QUALIFIED, AND ACTING
 EXECUTOR OF THE WILL OF THE
 ESTATE OF GEORGE R. EDWARDS;
 RESOURCES GROUP, LLC a Nevada
 Limited-Liability Company; GLENVIEW
 WEST TOWNHOMES ASSOCIATION, a
 Nevada non-profit corporation; DOES
 through 10, inclusive, and ROES 1 through 10,
 inclusive

Defendants.

Case No. A-12-667690-C

Dept. No. XVI

**FIRST AMENDED ANSWER TO THE
 COUNTERCLAIM**

COMES NOW U.S. BANK NATIONAL ASSOCIATION ND, A NATIONAL
 ASSOCIATION ("U.S. BANK") by and through its attorney of record Thomas N. Beckom, Esq
 and Kristin A. Schuler-Hintz, Esq of the law firm of McCarthy Holthus LLP and hereby files this
 answer to the counterclaim

1. This answering Defendant DENIES the allegations in paragraph 1.
2. This answering Defendant does not have sufficient information to either admit or deny the and on this basis DENIES the allegations in paragraph 2.
3. This answering Defendant is without sufficient information to either admit or deny the allegations contained in paragraph 3 and therefore DENIES the allegations contained in paragraph 3.
- [sic] 6. The answering Defendant DENIES the allegations in paragraph 6.
7. This answering Defendant DENIES the allegations in paragraph 7.
8. This answering Defendant DENIES the allegations in paragraph 8.

SECOND CLAIM FOR RELIEF

9. This answering Defendant incorporates it's answers to paragraphs 1 through 8 as if fully set forth herein.
10. This answering Defendant DENIES the allegations in paragraph 10.
11. This answering Defendant DENIES the allegations in paragraph 11.

AFFIRMATIVE DEFENSES

U.S. Bank asserts the following additional defenses. Discovery and investigation of this case is not yet complete, and U.S. Bank reserves the right to amend this Answer by adding, deleting, or amending defenses as may be appropriate. Any allegations not specifically admitted are denied. U.S. Bank further expressly incorporates all affirmative defenses delineated in Nev. R. Civ. Pro 8. In further answer to the Complaint, and by way of additional defenses U.S. Bank avers as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to state facts sufficient to constitute any cause of action against U.S. Bank.

SECOND AFFIRMATIVE DEFENSE

To the extent that Plaintiff's interpretation of NRS 116.3116 is accurate, the statute, and Chapter 116 are void for vagueness as applied to this matter.

THIRD AFFIRMATIVE DEFENSE

The super-priority lien was satisfied prior to the homeowners' association foreclosure under the doctrines of tender, estoppels, laches, or waiver.

FOURTH AFFIRMATIVE DEFENSE

The homeowners' association foreclosure sale was not commercially reasonable and the circumstances of sale of the property violated the homeowners' association's obligation of good faith under NRS §116.1113 and duty to act in a commercially reasonable manner.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because of its failure to take reasonable steps to mitigate its damages, if any.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiff lacks standing to bring some or all of their claims and causes of action.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff has cited no rule and/ or statute to override the American Rule regarding attorney fee shifting.

EIGHTH AFFIRMATIVE DEFENSE

The sale of the property is unconstitutional pursuant to Federal Law, the due process clause of the 14th amendment of the United States Constitution, and Article 1 Sec. 8 of the Nevada Constitution.

NINTH AFFIRMATIVE DEFENSE

The Plaintiff received a deed which was void and/ or voidable pursuant to NRS Chapter 112.

TENTH AFFIRMATIVE DEFENSE

U.S. Bank avers the affirmative defense of unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

U.S. Bank denies that the Plaintiff is entitled to any relief for which it prays.

TWELETH AFFIRMATIVE DEFENSE

U.S. Bank avers the affirmative defense of failure to do equity.

THIRTEENTH AFFIRMATIVE DEFENSE

The homeowners' association did not provide proper notice of the "superpriority" assessment amount and the homeowners' association foreclosure sale, and any such notice failed to comply with the statutory and common law requirements of Nevada and with state and federal constitutional law.

FOURTEENTH AFFIRMATIVE DEFENSE

The homeowner's association foreclosure sale is void for failure to comply with the provisions of NRS Chapter 116, and other provisions of law.

FIFTEENTH AFFIRMATIVE DEFENSE

U.S. Bank is entitled to an offset of some, if not all, of the Plaintiffs alleged damages, if any.

SIXTEENTH AFFIRMATIVE DEFENSE

The Plaintiff assumed the risk in taking the actions they now aver caused them damage.

SEVENTEETH AFFIRMATIVE DEFENSE

NRS 116.3116 *et seq* violates the 5th amendment takings clause.

EIGHTEENTH AFFIRMATIVE DEFENSE

NRS 116.3116 *et seq* violates U.S. Bank's Substantive Due Process Right and Fundamental rights under the Nevada and Federal Constitution

NINETEENTH AFFIRMATIVE DEFENSE

The foreclosure sale price is low, the sale is the result of oppression, fraud, and unfairness, and further the Plaintiff is not a bona fide purchaser.

TWENTIETH AFFIRMATIVE DEFENSE

This entire action is barred by the statute of limitations.

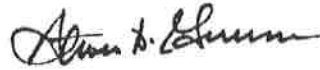
WHEREFORE the Counter Plaintiff prays to this Honorable Court that the Court:

1. Void the Sale under NRS Chapter 112;
2. In the alternative, enter judgment against LVRR #77 in an amount equal to U.S. Bank's interest in the property.
3. In the alternative, Quiet Title in the name of the Homeowner;
4. Issue a order an order declaring that the HOA sale did not comply with NRS Chapter 116 and is void or voidable;
5. Use the Equitable Powers of this Court to Void the Sale
6. Issue an order declaring the sale unconstitutional under the United States Constitution;
7. Any other relief which is just and proper.

DATED: August 1, 2016

McCarthy & Holthus, LLP

By: /s/ Thomas N. Beckom, Esq
Thomas N. Beckom, Esq



CLERK OF THE COURT

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8 Attorney for defendant/counterclaimant Resources Group, LLC

9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

13 U.S. BANK NATIONAL ASSOCIATION, ND, a
14 national association

15 Plaintiff,

16 vs.

17 GEORGE R. EDWARDS, an individual; ANY
18 AND ALL PERSONS UNKNOWN, CLAIMING
19 TO BE PERSONAL REPRESENTATIVES OF
20 GEORGE R. EDWARDS ESTATE, OR DULY
21 APPOINTED, QUALIFIED, AND ACTING
22 EXECUTOR OF THE WILL OF THE ESTATE
23 OF GEORGE R. EDWARDS; RESOURCES
24 GROUP, LLC, a Nevada Limited Liability
25 Company; GLENVIEW WEST TOWNHOMES
26 ASSOCIATION, a Nevada non-profit corporation;
27 DOES 4 through inclusive; and ROES 1 through
28 10 inclusive

23 Defendants.

CASE NO.: A667690
DEPT NO.: XVI

**ORDER DENYING CROSS MOTIONS
FOR SUMMARY JUDGMENT**

1 RESOURCES GROUP, LLC,

2 Counter-claimant

3 vs

4 U.S. BANK NATIONAL ASSOCIATION, ND, a
5 national association

6 Counter-defendant

7
8 The motion plaintiff U.S. Bank National Association ND for summary judgment, and the
9 opposition and counter motion for summary judgment of defendant/counterclaimant Resources Group,
10 LLC, as trustee of the Bourne Valley Court Trust, having come before the court on the 16th day of June,
11 2016, Sherry A. Moore, Esq. appearing on behalf of the plaintiff and Michael F. Bohn, Esq. and Adam
12 R. Trippiedi, Esq. appearing on behalf of Resources Group, LLC, and the court having reviewed the
13 motion and countermotion and having heard the arguments of counsel and for good cause appearing;

14 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the plaintiffs motion for
15 summary judgment is denied.

16 IT IS FURTHER ORDERED that the defendants counter motion for summary judgment is also
17 denied

18 ///

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trap for the unwary, and often to be Draconian in its consequences. See, e.g., *Security Pacific National Bank v. Wozab*, 800 P.2d 557 (Cal. 1990); *Conley*, The Sanction for Violation of California's One-Action Rule, 79 Cal. L. Rev. 1601 (1991); *Hetland & Hanson*, The "Mixed Collateral" Amendments to California's Commercial Code—Covert Repeal of California Real Property Foreclosure and Anti-deficiency Provisions or Exercise in Futility?, 75 Cal. L. Rev. 185 (1987); *Hirsh, Arnold, Rabin & Sigman*, The U.C.C. Mixed Collateral Statute—Has Paradise Really Been Lost?, 36 U.C.L.A. L. Rev. 1, 6, 10 (1988); *Munoz & Rabin*, The Sequel to *Bank of America v. Daily*: *Security Pac. Nat'l Bank v. Wozab*, 12 Real Prop. L. Rep. 204 (1989).

For a consideration of the characteristics of judicial and power of sale foreclosure, see 1 G. Nelson & D. Whitman, *Real Estate Finance Law* §§ 7.11–7.14, 7.19–7.30 (3d ed. 1993).

Limitations on mortgagee's remedies, *Comment b*. Some states permit the mortgagee to sue on the mortgage obligation and simultaneously to bring a judicial foreclosure action or power of sale proceeding. See, e.g., *Hartford National Bank & Trust Co. v. Kotkin*, 441 A.2d 593 (Conn.1981); *Eastern Illinois Trust & Sav. Bank v. Vickery*, 517 N.E.2d 604 (Ill. App. Ct. 1987); *First Indiana Federal Sav.*

Bank v. Hartle, 567 N.E.2d 834 (Ind. Ct.App.1991); *Kepler v. Slade*, 896 P.2d 482 (N.M.1995); *Elmwood Federal Savings Bank v. Parker*, 666 A.2d 721 n.6 (Pa. Super. Ct. 1995); *In re Gayle*, 189 B.R. 914 (Bankr. S.D.Tex.1995). This section prohibits such a course of action. This reflects a policy of judicial economy and against harassment of the mortgagor by forcing him or her to defend two proceedings at once. This approach is supported by legislation in over a dozen states. See *Alaska Stat.* § 09.45.200; *Ariz. Rev. Stat.* § 33-722; *Fla. Stat. Ann.* § 702.06; *Idaho Code* § 45-1505(4); *Iowa Code Ann.* § 654.4; *Mich. Comp. Laws Ann.* §§ 600.3105(1), (2), 3204(2); *Minn. Stat. Ann.* § 580.02; *Neb. Rev. Stat.* §§ 25-2140, -2143; *N.Y. Real Prop. Acts. & Proc. L.* §§ 1301, 1401(2); *N.D. Cent. Code* § 32-19-05; *Or. Rev. Stat.* §§ 86.735(4), 88.040; *S.D. Comp. Laws Ann.* §§ 21-47-6, -48-4; *Wash. Rev. Code Ann.* § 61.12.120; *Wyo. Stat.* § 34-4-103.

For authority that an election of remedies statute similar to the language of this section does not prohibit a mortgagee from foreclosing on a guarantor's real estate after having obtained a judgment against the principal debtor, see *Ed Herman & Sons v. Russell*, 535 N.W.2d 803 (Minn. 1995).

§ 8.3 Adequacy of Foreclosure Sale Price

(a) A foreclosure sale price obtained pursuant to a foreclosure proceeding that is otherwise regularly conducted in compliance with applicable law does not render the foreclosure defective unless the price is grossly inadequate.

(b) Subsection (a) applies to both power of sale and judicial foreclosure proceedings.

Cross-References:

Section 7.1, Effect of Mortgage Priority on Foreclosure; § 8.4, Foreclosure: Action for a Deficiency; § 8.5, The Merger Doctrine Inapplicable to Mortgages.

Comment:

a. *Introduction.* Many commentators have observed that the foreclosure process commonly fails to produce the fair market value for foreclosed real estate. The United States Supreme Court recently emphasized this widely perceived dichotomy between "foreclosure sale value" and fair market value:

An appraiser's reconstruction of "fair market value" could show what similar property would be worth if it did not have to be sold within the time and manner strictures of state-prescribed foreclosure. But property that *must* be sold with these strictures is simply *worth* less. No one would pay as much to own such property as he would pay to own real estate that could be sold at leisure and pursuant to normal marketing techniques. And it is no more realistic to ignore that characteristic of the property (the fact that state foreclosure law permits the mortgagee to sell it at a forced sale) than it is to ignore other price-affecting characteristics (such as the fact that state zoning law permits the owner of the neighboring lot to open a gas station).

BFP v. Resolution Trust Corp., 511 U.S. 531, 539, 114 S.Ct. 1757, 1762, 128 L.Ed.2d 556 (1994).

There are several reasons for low bids at foreclosure sales. First, because the mortgage lender can "credit bid" up to the amount of the mortgage obligation without putting up new cash, it has a distinct bidding advantage over a potential third party bidder. Second, while foreclosure legislation usually requires published notice to potential third party purchasers, this notice, especially in urban areas, is frequently published in the classified columns of legal newspapers with limited circulation. Moreover, because the publication is usually highly technical, unsophisticated potential bidders have little idea as to the nature of the real estate being sold. Third, many potential third party purchasers are reluctant to buy land at a foreclosure sale because of the difficulty in ascertaining whether the sale will produce a good and marketable title and the absence of any warranty of title or of physical quality from the foreclosing mortgagee. Finally, when a mortgagee forecloses on improved real estate, potential bidders may find it difficult to inspect the premises prior to sale. Even though it may be in the self-interest of the mortgagor to allow such persons to inspect the premises, mortgagors who are about to lose their real estate through a foreclosure sale understandably are frequently reluctant to cooperate.

Given the nature of the foreclosure sale process, courts have consistently been unwilling to impose a "fair market value" standard on the price it produces. Courts are rightly concerned that an increased willingness to invalidate foreclosure sales because of price inadequacy will make foreclosure titles more uncertain. When a foreclosure sale is set aside, the court may upset third party expectations. A third party may have acquired title to the foreclosed real estate by purchase at the sale or by conveyance from the mortgagee-purchaser. Thus, a general reluctance to set aside the sale is understandable and sensible. This reluctance may be especially justifiable when price inadequacy is the only objection to the sale. Consequently, the end result of additional judicial activism on this issue might well be further exacerbation of the foreclosure price problem. This section largely reflects this judicial concern.

However, close judicial scrutiny of the sale price is more justifiable when the price is being employed to calculate the amount of a deficiency judgment context. This is especially the case where the mortgagee purchases at the sale and, in addition, seeks a deficiency judgment. The potential for unjust enrichment of the mortgagee in this situation may well demand closer judicial scrutiny of the sale price. Moreover, the interests of third parties are not prejudiced by judicial intervention in an action for a deficiency judgment. Because a deficiency proceeding is merely an *in personam* action against the mortgagor for money, the title of the foreclosure purchaser is not placed at risk. Consequently, a more intensive examination of the foreclosure price in the deficiency context is appropriate. This view is reflected in § 8.4 of this Restatement.

Ultimately, however, price inadequacy must be addressed in the context of a fundamental legislative reform of the entire foreclosure process so that it yields a price more closely approximating "fair market value." In order to ameliorate the price-suppressing tendency of the "forced sale" system, such legislation could incorporate many of the sale and advertising techniques found in the normal real estate marketplace. These could include, for example, the use of real estate brokers and commonly used print and pictorial media advertising. While such a major restructuring of the foreclosure process is desirable, it is more appropriate subject for legislative action than for the Restatement process.

b. *Application of the standard.* Section 8.4 deals with the question of adequacy of the foreclosure price in the deficiency judgment context. This section, on the other hand, applies to actions to nullify the foreclosure sale itself based on price inadequacy. This issue may arise in any of several different procedural contexts, depending on whether the mortgage is being foreclosed judicially or by power of

sale. Where the foreclosure is by judicial action, the issue of price typically will arise when the mortgagee makes a motion to confirm the sale.

On the other hand, where foreclosure is by power of sale, judicial confirmation of the sale is usually not required and the issue of price inadequacy will therefore arise only if the party attacking the sale files an independent judicial action. Typically this will be an action to set aside the sale; it may be brought by the mortgagor, junior lienholders, or the holders of other junior interests who were prejudiced by the sale. If the real estate is unavailable because title has been acquired by a bona fide purchaser, the issue of price inadequacy may be raised by the mortgagor or a junior interest holder in a suit against the foreclosing mortgagee for damages for wrongful foreclosure. This latter remedy, however, is not available based on gross price inadequacy alone. In addition, the mortgagee must be responsible for a defect in the foreclosure process of the type described in Comment c of this section.

This section articulates the traditional and widely held view that a foreclosure proceeding that otherwise complies with state law may not be invalidated because of the sale price unless that price is grossly inadequate. The standard by which "gross inadequacy" is measured is the fair market value of the real estate. For this purpose the latter means, not the fair "forced sale" value of the real estate, but the price which would result from negotiation and mutual agreement, after ample time to find a purchaser, between a vendor who is willing, but not compelled to sell, and a purchaser who is willing to buy, but not compelled to take a particular piece of real estate. Where the foreclosure is subject to senior liens, the amount of those liens must be subtracted from the unencumbered fair market value of the real estate in determining the fair market value of the title being transferred by the foreclosure sale.

"Gross inadequacy" cannot be precisely defined in terms of a specific percentage of fair market value. Generally, however, a court is warranted in invalidating a sale where the price is less than 20 percent of fair market value and, absent other foreclosure defects, is usually not warranted in invalidating a sale that yields in excess of that amount. See Illustrations 1-5. While the trial court's judgment in matters of price adequacy is entitled to considerable deference, in extreme cases a price may be so low (typically well under 20% of fair market value) that it would be an abuse of discretion for the court to refuse to invalidate it.

Foreclosures subject to senior liens can sometimes pose special problems in assessing price adequacy. For example, where one or

more senior liens are also in default and their amount substantial or controverted, a court may properly recognize the added uncertainties facing the foreclosure purchaser and refuse to invalidate a sale even though it produces a price that is less than 20 percent of the fair market value of the mortgagor's equity. This problem may be particularly acute where a senior mortgage has a substantial prepayment fee or if it is uncertain whether the senior mortgage is prepayable at all. See Illustration 6.

Moreover, courts can properly take into account the fact that the value shown on a recent appraisal is not necessarily the same as the property's fair market value on the foreclosure sale date, and that "gross inadequacy" cannot be precisely defined in terms of a specific percentage of appraised value. This is particularly the case in rapidly rising or falling market conditions. Appraisals are time-bound, and in such situations are often prone to error to the extent that they rely on comparable sales data, for such data are by definition historical in nature and cannot possibly reflect current market conditions with complete precision. For this reason, a court may be justified in approving a foreclosure price that is less than 20 percent of appraised value if the court determines that market prices are falling rapidly and that the appraisal does not take adequate account of recent declines in value as of the date of the foreclosure. See Illustration 7. Similarly, a court may be warranted in refusing to confirm a sale that produces more than 20 percent of appraised value if the court finds that market prices are rising rapidly and that the appraisal reflects an amount lower than the current fair market value as of the date of foreclosure. See Illustration 8.

Illustrations:

1. Mortgagee forecloses a mortgage on Blackacre by judicial action. The mortgage is the only lien on Blackacre. Blackacre is sold at the foreclosure sale for \$19,000. The fair market value of Blackacre at the time of the sale is \$100,000. The foreclosure proceeding is regularly conducted in compliance with state law. A court is warranted in finding that the sale price is grossly inadequate and in refusing to confirm the sale.
2. The facts are the same as Illustration 1, except the foreclosure proceeding is by power of sale and Mortgagor files a judicial action to set aside the sale based on inadequacy of the sale price. A court is warranted in finding that the sale price is grossly inadequate and in setting aside the sale, provided that the property has not subsequently been sold to a bona fide purchaser.
3. The facts are the same as Illustration 2, except that the Mortgagee is responsible for conduct that chills bidding at the

sale. Blackacre is purchased at the foreclosure sale by a bona fide purchaser. Mortgagor files a suit against the Mortgagee to recover damages for wrongful foreclosure. A court is warranted in finding that the sale price is grossly inadequate and in awarding damages to Mortgagor.

4. Mortgagee forecloses a mortgage on Blackacre by judicial action. The foreclosure is subject to a senior lien in the amount of \$50,000. Blackacre is sold at the foreclosure sale for \$19,000. The fair market value of Blackacre free and clear of liens at the time of the sale is \$150,000. The foreclosure proceeding is regularly conducted in compliance with state law. A court is warranted in finding that the sale price is grossly inadequate and in refusing to confirm the sale.

5. The facts are the same as Illustration 1, except that Blackacre has a fair market value of \$60,000 at the time of the foreclosure sale. The court is not warranted in refusing to confirm the sale.

6. Mortgagee forecloses a mortgage on Blackacre by power of sale. The foreclosure is subject to a large (in relation to market value) senior lien that is in default, carries an above market interest rate, and provides for a substantial prepayment charge. At the time of the foreclosure sale, the current balance on the senior lien is \$500,000. Blackacre is sold at the foreclosure sale for \$10,000. The fair market value of Blackacre free and clear of liens at the time of the sale is \$600,000. The foreclosure proceeding is regularly conducted in compliance with state law. Mortgagor files suit to set aside the sale. A court is warranted in refusing to set the sale aside.

7. Mortgagee forecloses a mortgage on Blackacre, a vacant lot, by judicial action. The mortgage is the only lien on Blackacre. Blackacre is sold at the foreclosure sale for \$10,000. The appraised value of Blackacre, based on an appraisal performed shortly before the sale, is \$100,000. The foreclosure proceeding is regularly conducted in compliance with state law. The real estate market in the vicinity of Blackacre has been declining rapidly, and this is especially the case with respect to raw land. If the court finds that, notwithstanding the appraisal, the actual fair market value of Blackacre at the date of sale was \$50,000 or less, the court is warranted in confirming the sale.

8. Mortgagee forecloses a mortgage on Blackacre, a residential duplex, by judicial action. The mortgage is the only lien on Blackacre. Blackacre is sold at the foreclosure sale for \$35,000. The appraised value of Blackacre, based on an appraisal per-

formed shortly before the sale, is \$100,000. The foreclosure proceeding is regularly conducted in compliance with state law. The real estate market in the vicinity of Blackacre has been rising rapidly, and this is especially the case with respect to residential rental real estate. If the court finds that, notwithstanding the appraisal, the actual fair market value of Blackacre at the date of sale was \$175,000 or more, the court is warranted in refusing to confirm the sale.

c. *Price inadequacy coupled with other defects.* Even where the foreclosure price for less than fair market value cannot be characterized as "grossly inadequate," if the foreclosure proceeding is defective under local law in some other respect, a court is warranted in invalidating the sale and may even be required to do so. Such defects may include, for example, chilled bidding, an improper time or place of sale, fraudulent conduct by the mortgagee, a defective notice of sale, or selling too much or too little of the mortgaged real estate. For example, even a slight irregularity in the foreclosure process coupled with a sale price that is substantially below fair market value may justify or even compel the invalidation of the sale. See Illustrations 9 and 10. On the other hand, even a sale for slightly below fair market value may be enough to require invalidation of the sale where there is a major defect in the foreclosure process. See Illustration 11.

Illustrations:

9. Mortgagee forecloses a mortgage on Blackacre by judicial action. The mortgage is the only lien on Blackacre. Blackacre is sold at the foreclosure sale for \$15,000. The fair market value of Blackacre at the time of the sale is \$50,000. The foreclosure proceeding is regularly conducted in compliance with state law except that at the foreclosure sale the sheriff fails to read the foreclosure notice aloud as required by the applicable statute. A court is warranted in refusing to confirm the sale.

10. The facts are the same as Illustration 9, except that the foreclosure is by power of sale. The foreclosure proceeding is regularly conducted in compliance with state law except that notice of the sale is published only 16 times rather than 20 times as required by the applicable statute. Mortgagor files suit to set aside the sale. A court is warranted in setting the sale aside.

11. Mortgagee forecloses a deed of trust on Blackacre by power of sale. Blackacre is sold at the foreclosure sale for \$85,000. The fair market value of Blackacre as of the time of the sale is \$100,000. Although the foreclosure proceeding is otherwise regu-

larly conducted in compliance with state law, the trustee at the sale fails to recognize a higher bid from a junior lienor who is present at the sale. Mortgagor files suit to set aside the sale. The sale should be set aside.

REPORTERS' NOTE

Introduction, Comment a. Numerous commentators point out that foreclosure sales normally do not generally produce fair market value for the foreclosed real estate. See, e.g., Goldstein, *Reforming the Residential Foreclosure Process*, 21 Real Est. L.J. 286 (1993); Johnson, *Critiquing the Foreclosure Process: An Economic Approach Based on the Paradigmatic Norms of Bankruptcy*, 79 Va. L. Rev. 959 (1993) (observing that there is a "disparity in values between the perceived fair market value of the foreclosed premises prior to foreclosure and amount actually realized upon foreclosure"); Ehrlich, *Avoidance of Foreclosure Sales as Fraudulent Conveyances: Accommodating State and Federal Objectives*, 71 Va. L. Rev. 933 (1985) ("contemporary foreclosure procedures are poorly designed to maximize sales price"); Washburn, *The Judicial and Legislative Response to Price Inadequacy in Mortgage Foreclosure Sales*, 53 S. Cal. L. Rev. 843 (1980); G. Nelson & D. Whitman, *Real Estate Finance Law* § 8.8 (3d ed. 1994). In an empirical study of judicial foreclosure prices and resales in one New York county, Professor Wechsler has gone so far to conclude that

foreclosure by sale frequently operated as a meaningless charade, producing the functional equivalent of strict foreclosure, a process abandoned long ago. Mortgagees acquired properties at foreclosure sales and resold them at a significant profit in a large number of

cases.... In short, ... foreclosure by sale is not producing its intended results, and in many cases is yielding unjust and inequitable results.

Wechsler, *Through the Looking Glass: Foreclosure by Sale as De Facto Strict Foreclosure—An Empirical Study of Mortgage Foreclosure and Subsequent Resale*, 70 Cornell L. Rev. 850, 896 (1985). See *Resolution Trust Corp. v. Carr*, 13 F.3d 425 (1st Cir. 1993) ("It is common knowledge in the real world that the potential price to be realized from the sale of real estate, particularly in a recessionary period, usually is considerably lower when sold 'under the hammer' than the price obtainable when it is sold by an owner not under distress and who is able to sell at his convenience and to wait until a purchaser reaches his price.").

For a consideration of why foreclosure sales do not normally bring fair market value, see Nelson, *Deficiency Judgments After Real Estate Foreclosures in Missouri: Some Modest Proposals*, 47 Mo. L. Rev. 151, 152 (1982); Johnson, *Critiquing the Foreclosure Process: An Economic Approach Based on the Paradigmatic Norms of Bankruptcy*, 79 Va. L. Rev. 959, 966-72 (1993); Washburn, *The Judicial and Legislative Response to Price Inadequacy in Mortgage Foreclosure Sales*, 53 So. Cal. L. Rev. 843, 848-851 (1980); *Carteret Savings & Loan Ass'n v. Davis*, 521 A.2d 831, 835 (N.J.1987) ("[I]t is likely that the

low turnout of third parties who actually buy property at foreclosure sales reflects a general conclusion that the risks of acquiring an imperfect title are often too high").

Until recently, claims of foreclosure price inadequacy commonly arose in the context of mortgagor bankruptcy proceedings. Debtors in possession and bankruptcy trustees frequently challenged pre-bankruptcy foreclosure sales as constructively fraudulent transfers under § 548 of the Bankruptcy Code. See 11 U.S.C. § 548. Under the latter section, a trustee or a debtor in possession may avoid a transfer by a debtor if it can be established that (1) the debtor had an interest in property; (2) the transfer took place within a year of the bankruptcy petition filing; (3) the debtor was insolvent at the time of the transfer or the transfer caused insolvency; and (4) the debtor received "less than a reasonably equivalent value" for the transfer. 11 U.S.C. § 548(a)(2)(A). In *Durrett v. Washington National Ins. Co.*, 621 F.2d 201 (5th Cir.1980), a controversial decision by the United States Court of Appeals for the Fifth Circuit, the court used the predecessor to § 548(a) to find, for the first time, that a foreclosure proceeding that otherwise complied with state law could be set aside if the sale price did not represent "reasonably equivalent value." In dictum the court suggested that a foreclosure price of less than 70 percent of fair market value failed to meet the "fair equivalency" test. Several other federal courts adopted *Durrett*. See, e.g., *In re Hulm*, 738 F.2d 323 (8th Cir.1984); *First Federal Savings & Loan Ass'n of Warner Robbins v. Standard Building Associates, Ltd.*, 87 B.R. 221 (N.D.Ga.1988); *I G. Nelson & D. Whitman, Real*

Estate Finance Law § 8.17 & notes 10-17 (3d ed. 1993).

Other courts, while rejecting a "bright line" 70 percent test, endorsed *Durrett* as a general principle, but adopted the view that "in defining reasonably equivalent value, the court should neither grant a conclusive presumption in favor of a purchaser at a regularly conducted, noncollusive foreclosure sale, nor limit its inquiry to a simple comparison of the sale price to the fair market value. Reasonable equivalence should depend on all the facts of each case." *Matter of Bundles*, 856 F.2d 815, 824 (7th Cir. 1988). *Durrett* was the subject of significant scholarly commentary. See, e.g., Baird & Jackson, *Fraudulent Conveyance Law and Its Proper Domain*, 38 Vand. L. Rev. 829 (1985); Henning, *An Analysis of Durrett and Its Impact on Real and Personal Property Foreclosures: Some Proposed Modifications*, 63 N.C. L. Rev. 257 (1984); Zinman, *Noncollusive Regularly Conducted Foreclosure Sales: Involuntary Nonfraudulent Transfers*, 9 Cardozo L. Rev. 581 (1987). The Ninth Circuit, however, rejected *Durrett* and its variations and held, in a case where the foreclosure price was allegedly less than 60 percent of the real estate's fair market value, "that the price received at a noncollusive, regularly conducted foreclosure establishes irrebutably reasonably equivalent value" under § 548. *In re BFP*, 974 F.2d 1144 (9th Cir.1992). See also *Matter of Winshall Settlor's Trust*, 758 F.2d 1136 (6th Cir.1985).

The United States Supreme Court, in a 5-4 decision, affirmed the Ninth Circuit and rejected *Durrett* and its progeny:

[W]e decline to read the phrase "reasonably equivalent value" ...

to mean, in its application to foreclosure sales, either "fair market value" or "fair foreclosure price" (whether calculated as a percentage of fair market value or otherwise). We deem, as the law has always deemed, that a fair and proper price, or a "reasonably equivalent value," for foreclosed property, is the price in fact received at the foreclosure sale, so long as all the requirements of the State's foreclosure law have been complied with.

BFP v. Resolution Trust Corp., 511 U.S. 531, 545, 114 S.Ct. 1757, 1765, 128 L.Ed.2d 556 (1994). As a result, § 548 of the Bankruptcy Code now provides no basis for invalidating state foreclosure sales based on inadequacy of the price.

The *Durrett* principle has been rejected in another important context, the Uniform Fraudulent Transfer Act (UFTA), promulgated by the National Conference of Commissioners on Uniform State Laws in 1984. Because of a fear that bankruptcy judges and state courts would interpret state fraudulent conveyance law as incorporating *Durrett* principles, the UFTA provides that "a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale ... under a mortgage, deed of trust or security agreement." U.F.T.A. § 3(b). The UFTA has been adopted by at least 30 states. See 7A Uniform Laws Ann. 170 (1993 Supp.).

For suggestions for statutory reform of the foreclosure process, see Goldstein, *Reforming the Residential Foreclosure Process*, 21 Real Est. L. J. 286 (1993); Johnson, *Critiquing the Foreclosure Process: An Economic*

Approach Based on the Paradigmatic Norms of Bankruptcy, 79 Va. L. Rev. 959 (1993); Nelson, *Deficiency Judgments After Real Estate Foreclosures in Missouri: Some Modest Proposals*, 47 Mo. L. Rev. 151 (1982).

The United States Supreme Court has yet to resolve whether an inadequate foreclosure sale price may under some circumstances be the basis for a preference attack under § 547 of the Bankruptcy Code. At least four cases hold that, assuming the mortgagor was insolvent at the time of foreclosure, a mortgagee foreclosure purchase for the amount of the mortgage obligation or less within 90 days of a mortgagor bankruptcy petition is a voidable preference to the extent that real estate was worth more than the mortgage obligation at the time of the foreclosure sale. See *In re Park North Partners, Ltd.*, 80 B.R. 551 (N.D.Ga.1987); *In re Winters*, 119 B.R. 283 (Bankr.M.D.Fla.1990); *In re Wheeler*, 34 B.R. 818 (Bankr.N.D.Ala. 1983); *Matter of Fountain*, 32 B.R. 965 (Bankr.W.D.Mo.1983). Cf. *In re Quinn*, 69 B.R. 776 (Bankr.W.D.Tenn. 1986) (foreclosure sale not a preference because mortgagor was not insolvent at time of the foreclosure sale). On the other hand, the United States Court of Appeals for the Ninth Circuit and at least one other court have rejected this use of § 547. See *In re Ehring*, 900 F.2d 184 (9th Cir. 1990); *First Federal Savings & Loan Assoc. of Warner Robbins v. Standard Building Associates, Ltd.*, 87 B.R. 221 (D.Ga.1988). See generally 1 G. Nelson & D. Whitman, *Real Estate Finance Law* 785-788 (3d ed. 1993). For criticism of the use of the preference approach in this context, see Kennedy, *Involuntary Fraudulent Transfer*, 9 Cardozo L. Rev. 531, 563-564 (1987).

Application of the standard, Comment b. An action to set aside a power of sale foreclosure may be brought not only by the mortgagor or other holder of the equity of redemption, but also by junior lienors. See generally 1 G. Nelson & D. Whitman, *Real Estate Finance Law* 537-540 (3d ed. 1993). This is also true with respect to actions for damages for wrongful foreclosure. *Id.* at 540-544.

All jurisdictions take the position that mere inadequacy of the foreclosure sale price, not accompanied by other defects in the foreclosure process, will not automatically invalidate a sale. See, e.g., *Security Savings & Loan Ass'n v. Fenton*, 806 P.2d 362 (Ariz.Ct.App.1990); *Gordon v. South Central Farm Credit, ACA*, 446 S.E.2d 514 (Ga.Ct.App.1994); *Boatmen's Bank of Jefferson County v. Community Interiors, Inc.*, 721 S.W.2d 72 (Mo.Ct.App.1986); *Greater Southwest Office Park, Ltd. v. Texas Commerce Bank, N.A.*, 786 S.W.2d 386 (Tex. Ct. App. 1990); *Kurtz v. Ripley County State Bank*, 785 F.Supp. 116 (E.D.Mo.1992).

In general, courts articulate two main standards for invalidating a foreclosure sale based on price. First, many courts require that, in the absence of some other defect or irregularity in the foreclosure process, the price be "grossly inadequate" before a sale may be invalidated. See, e.g., *Estate of Yates*, 32 Cal.Rptr.2d 53 (Cal. Ct. App. 1994); *Moody v. Glendale Federal Bank*, 643 So.2d 1149 (Fla.Dist.Ct.App.1994); *Gordon v. South Central Farm Credit, ACA*, 446 S.E.2d 514 (Ga.Ct.App.1994); *Union National Bank v. Johnson*, 617 N.Y.S.2d 993 (N.Y.App.Div.1994); *United Oklahoma Bank v. Moss*, 793 P.2d 1359 (Okla. 1990); *Vend-A-Matic, Inc. v. Frankford Trust Co.*, 442

A.2d 1158 (Pa. Super. Ct. 1982). Second, other courts require a disparity between the sale price and fair market value so gross as to "shock the conscience of the court or raise a presumption of fraud or unfairness." See, e.g., *Allied Steel Corp. v. Cooper*, 607 So.2d 113 (Miss.1992); *Armstrong v. Csurilla*, 817 P.2d 1221 (N.M.1991); *Crown Life Insurance Co. v. Candlewood, Ltd.*, 818 P.2d 411 (N.M.1991); *Trustco Bank New York v. Collins*, 623 N.Y.S.2d 642 (N.Y.App.Div.1995); *Key Bank of Western New York, N.A. v. Kessler Graphics Corp.*, 608 N.Y.S.2d 21 (N.Y.App.Div.1993); *Bascom Construction, Inc. v. City Bank & Trust*, 629 A.2d 797 (N.H.1993); *Crossland Mortgage Corp. v. Frankel*, 596 N.Y.S.2d 130 (N.Y.App.Div.1993); *Vereux Assurance, Inc. v. AABREC, Inc.*, 436 N.W.2d 876 (Wis.Ct.App.1989). A few courts seem to conflate the foregoing standards by holding that a sale will be set aside only where the price is so "grossly inadequate as to shock the conscience." *United Oklahoma Bank v. Moss*, 793 P.2d 1359 (Okla.1990).

At least one jurisdiction takes the position that "[i]f the fair market value of the property is over twice the sales price, the price is considered to be grossly inadequate, shocking 'the conscience of the court' and justifying the setting aside of the sale." *Burge v. Fidelity Bond & Mortgage Co.*, 648 A.2d 414, 419 (Del.1994). At the other extreme, one state supreme court, in dealing with a price that was "shockingly inadequate" abandoned the "conscience shocking" standard as "impractical" and instead held that "[i]f a foreclosure sale is legally held, conducted and consummated, there must be some evidence of irregularity, misconduct, fraud, or unfairness

on the part of the trustee or mortgagee that caused or contributed to an inadequate price, for a court of equity to set aside the sale." *Holt v. Citizens Central Bank*, 688 S.W.2d 414, 416 (Tenn.1984). See also *Security Savings & Loan Ass'n v. Fenton*, 806 P.2d 362 (Ariz.Ct.App.1990).

It is unlikely that the "grossly inadequate" and "shock the conscience" standards differ materially. However, this section adopts the former standard on the theory that in form, if not in substance, it may afford a court somewhat greater flexibility in close cases to invalidate a foreclosure sale than does its "shock the conscience" counterpart.

Illustrations 1-4 establish that only rarely will a court be justified in invalidating a foreclosure sale based on substantial price disparity alone. Courts routinely uphold foreclosure sale prices of 50 percent or more of fair market value. See, e.g., *Danbury Savings & Loan Ass'n v. Hovi*, 569 A.2d 1143 (Conn. App. Ct. 1990); *Moody v. Glendale Federal Bank*, 643 So.2d 1149 (Fla.Dist.Ct.App.1994); *Guerra v. Mutual Federal Savings & Loan Ass'n*, 194 So.2d 15 (Fla.Ct.App. 1967); *Union National Bank v. Johnson*, 617 N.Y.S.2d 993 (N.Y.App.Div. 1994); *Long Island Savings Bank v. Valiquette*, 584 N.Y.S.2d 127 (N.Y.App.Div.1992); *Glenville & 110 Corp. v. Tortora*, 524 N.Y.S.2d 747 (N.Y.App.Div.1988); *Zisser v. Noah Industrial Marine & Ship Repair, Inc.*, 514 N.Y.S.2d 786 (N.Y.App.Div. 1987); *S & T Bank v. Dalessio*, 632 A.2d 566 (Pa. Super. Ct. 1993); *Cedrone v. Warwick Federal Savings & Loan Ass'n*, 459 A.2d 944 (R.I.1983); *Federal Deposit Ins. Corp. v. Villemaire*, 849 F.Supp. 116 (D.Mass. 1994); *Kurtz v. Ripley County State Bank*, 785 F.Supp. 116 (E.D.Mo.

1992). But see *Murphy v. Financial Development Corp.*, 495 A.2d 1245 (N.H.1985) (sale price of 59% of fair market value indicated failure of due diligence on part of foreclosing mortgagee in exercising power of sale).

Moreover, courts usually uphold sales even when they produce significantly less than 50 percent. See, e.g., *Hurlock Food Processors Investment Associates v. Mercantile-Safe Deposit & Trust Co.*, 633 A.2d 438 (Md.Ct. App.1993) (35% of fair market value (FMV)); *Frank Buttermark Plumbing & Heating Corp. v. Sagarese*, 500 N.Y.S.2d 551 (N.Y.App.Div.1986) (30% of FMV); *Shipp Corp., Inc. v. Charpiloz*, 414 So.2d 1122 (Fla.Dist. Ct.App.1982) (33% of FMV); *Moeller v. Lien*, 30 Cal.Rptr.2d 777 (Cal.Ct. App.1994) (25% of FMV). See generally *Dingus, Mortgages—Redemption After Foreclosure Sale in Missouri*, 25 Mo. L. Rev. 261, 262-63 (1960).

On the other hand, there are cases holding that a trial court is warranted in invalidating a foreclosure sale that produces a price of 20 percent of fair market value or less. See *United Oklahoma Bank v. Moss*, 793 P.2d 1359 (Okla.1990) (approximately 20% of FMV); *Crown Life Insurance Co. v. Candlewood, Ltd.*, 818 P.2d 411 (N.M.1991) (15% of FMV); *Rife v. Woolfolk*, 289 S.E.2d 220 (W.Va.1982) (14% of FMV); *Ballentyne v. Smith*, 205 U.S. 285, 27 S.Ct. 527, 51 L.Ed. 803 (1907) (14% of FMV); *Polish National Alliance v. White Eagle Hall Co., Inc.*, 470 N.Y.S.2d 642 (N.Y.App. Div.1983) ("foreclosure sales at prices below 10% of value have consistently been held unconscionably low"). According to the New Mexico Supreme Court, when the price falls into the 10-40 percent range, it should not be confirmed "absent good reasons why it should be." *Armstrong v. Csurilla*,

817 P.2d 1221, 1234 (N.M.1991). A Mississippi decision takes the position that a sale for less than 40 percent of fair market value "shocks the conscience." *Allied Steel Corp. v. Cooper*, 607 So.2d 113, 120 (Miss.1992). One commentator maintains that there "is general agreement at the extremes as to what constitutes gross inadequacy. Sale prices less than 10 percent of value are generally held grossly inadequate, whereas those above 40 percent are held not grossly inadequate." Washburn, *The Judicial and Legislative Response to Price Inadequacy in Mortgage Foreclosure Sales*, 53 So. Cal. L. Rev. 843, 866 (1980).

On rare occasions, a trial court may abuse its discretion in confirming a grossly inadequate price. See *First National Bank of York v. Critel*, 555 N.W.2d 773 (Neb.1996) (reversing trial court's confirmation of a foreclosure sale that yielded 14% of appraised value).

Illustration 6 takes the position that a court may properly take into account that senior liens under some circumstances may make bidding at a junior foreclosure sale an especially precarious enterprise, and may thus be warranted in upholding the sale of the mortgagor's equity for an amount that would otherwise be deemed grossly inadequate. Support for this approach is found in *Allied Steel Corp. v. Cooper*, 607 So.2d 113, 120 (Miss.1992). See also *Deibler v. Atlantic Properties Group, Inc.*, 652 A.2d 553, 558 (Del.1995); *Briehler v. Poseidon Venture, Inc.*, 502 A.2d 821, 822 (R.I.1986).

The "grossly inadequate" standard applied by this section is measured by reference to the fair market value of the mortgaged real estate at the time of the foreclosure sale. The definition of fair market value is derived

from *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 537-538, 114 S.Ct. 1757, 1761, 128 L.Ed.2d 556 (1994), which itself relies on Black's Law Dictionary 971 (6th ed. 1990):

The market value of . . . a piece of property is the price which it might be expected to bring if offered for sale in a fair market; not the price which might be obtained on a sale at public auction or a sale forced by the necessities of the owner, but such a price as would be fixed by negotiation and mutual agreement, after ample time to find a purchaser, as between a vendor who is willing (but not compelled) to sell and a purchaser who desires to buy but is not compelled to take the particular . . . piece of property.

The formulation of "fair market value" used in this section also finds support in the definition used by the Internal Revenue Service. Under this approach, "fair market value" is defined as:

the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. The fair market value of a particular item of property . . . is not to be determined by a forced sale price. Nor is the fair market value . . . to be determined by the sale price of the item in a market other than that which such item is most commonly sold to the public.

Treas. Reg. § 20.2031-1(b).

Price inadequacy coupled with other defects, Comment c. Even if the price is not so low as to be deemed "grossly inadequate," the foreclosure sale may nevertheless be invalidated if it is otherwise defective under state

law. See, e.g., *Rosenberg v. Smidt*, 727 P.2d 778 (Alaska 1986) (sale for 28% of fair market value set aside where trustee failed to use due diligence to determine last known address of mortgagor); *Bank of Seoul & Trust Co. v. Marcione*, 244 Cal.Rptr. 1 (Cal.Ct.App.1988) (sale set aside where foreclosure price was for one third of fair market value and trustee refused to recognize a higher bid from a junior lienholder who was present at the sale); *Estate of Yates*, 32 Cal.Rptr.2d 53 (Cal. Ct. App. 1994) (sale for 12% of fair market value set aside where trustee failed to mail notice of default to executor); *Whitman v. Transtate Title Co.*, 211 Cal.Rptr. 582 (Cal.Ct.App.1985) (sale for 20% of FMV set aside where trustee refused request for one-day postponement of sale); *Federal National Mortgage Ass'n v. Brooks*, 405 S.E.2d 604 (S.C.Ct.App.1991) (sale for 3% of FMV set aside where improper information supplied to bidders); *Kouros v. Sewell*, 169 S.E.2d 816 (Ga.1969) (sale for 3% of FMV set aside where mortgagee gave mortgagor incorrect sale date). Conversely, more than nominal price inadequacy must exist notwithstanding other defects in the sale process in order to establish the requisite prejudice to sustain an attack on the sale. See *Cragin Federal Bank For Savings v. American National Bank & Trust Co. of Chicago*, 633 N.E.2d 1011 (Ill. App. Ct. 1994).

Illustration 11 is based in part on *Bank of Seoul & Trust Co. v. Marcione*, 244 Cal.Rptr. 1 (Cal.Ct.App. 1988).

It is not uncommon for the mortgagee, rather than the mortgagor or a junior lienor, to attempt to set aside a sale based on an inadequate price. Note that in this setting, the real estate not only will be sold for less

than fair market value, but usually, though not always, for a price that will not qualify as "grossly inadequate." Moreover, the foreclosure proceeding itself is normally not defective under state law. Rather, the mortgagee intends to enter a higher bid at the sale, but because of mistake or negligence on its part, actually makes a lower bid and a third party becomes the successful purchaser. Courts are deeply divided on this issue. Some take the position that mistake or negligence on the mortgagee's part should be treated as the functional equivalent of a defect under state law. As a result, these courts reason, the inadequate price plus the mistake or negligence are sufficient to justify setting aside the sale. See *Burge v. Fidelity Bond & Mortgage Co.*, 648 A.2d 414 (Del. 1994) (sale for 71% to 80% of FMV set aside based on mistaken bid by mortgagee); *Alberts v. Federal Home Loan Mortgage Corp.*, 673 So.2d 158 (Fla.Dist.Ct.App.1996) (affirming trial court that set aside a foreclosure sale after mortgagee's agent, through a mistake in communications, entered a bid of \$18,995, instead of \$118,995 and property was sold to third party for a grossly inadequate \$19,000); *RSR Investments, Inc. v. Barnett Bank of Pinellas County*, 647 So.2d 874 (Fla.Dist.Ct.App.1994) (sale for 6% of FMV set aside because mortgagee inadvertently failed to appear at the sale); *Crown Life Insurance Co. v. Candlewood, Ltd.*, 818 P.2d 411 (N.M.1991) (sale for 15% to 23% of FMV set aside based on mistaken bid by mortgagee). Other courts, however, have less sympathy for the mortgagee in this setting. See *Wells Fargo Credit Corp. v. Martin*, 605 So.2d 531 (Fla.Dist.Ct.App.1992) (trial court refusal to set aside sale affirmed even though mortgagee's agent, through a

misunderstanding, entered bid of \$15,500 instead of \$115,000 and property was sold to another for the grossly inadequate amount of \$20,000); *Mellon Financial Services Corp. #7 v. Cook*, 585 So.2d 1213 (La.Ct.App.1991) (sale upheld even though attorney for mortgagee, who was deaf in his right ear, failed to bid higher against a third party because he "contributed to the problem by not positioning himself in a more favorable position, considering his hearing disability."); *Crossland Mortgage Corp. v. Frankel*, 596 N.Y.S.2d 130 (N.Y.App.Div.1993) (sale to mortgagor's father for 28% to 34% of FMV upheld even though erroneous bidding instructions to mortgagee's agent caused him to cease bidding prematurely). According to the *Crossland* court, "[mortgagee's] mistake was unfortunate, [but] it did not pro-

vide a basis to invalidate the sale which was consummated in complete accord with lawful procedure ... since the mistake was unilateral on [mortgagee's] part." *Id.* at 131.

On balance, the latter approach to mortgagee mistake seems preferable. In general, third party bidding should be encouraged, and this section reflects that policy by making it extremely difficult to invalidate foreclosure sales based on price inadequacy alone. Where the foreclosure process itself complies with state law and the other parties to the process have not engaged in fraud or similar unlawful conduct, courts should be especially hesitant to upset third party expectations. This is especially the case where, as here, mortgagees can easily protect themselves by employing simple common-sense precautions.

§ 8.4 Foreclosure: Action for a Deficiency

(a) If the foreclosure sale price is less than the unpaid balance of the mortgage obligation, an action may be brought to recover a deficiency judgment against any person who is personally liable on the mortgage obligation in accordance with the provisions of this section.

(b) Subject to Subsections (c) and (d) of this section, the deficiency judgment is for the amount by which the mortgage obligation exceeds the foreclosure sale price.

(c) Any person against whom such a recovery is sought may request in the proceeding in which the action for a deficiency is pending a determination of the fair market value of the real estate as of the date of the foreclosure sale.

(d) If it is determined that the fair market value is greater than the foreclosure sale price, the persons against whom recovery of the deficiency is sought are entitled to an offset against the deficiency in the amount by which the fair market value, less the amount of any liens on the real estate that were not extinguished by the foreclosure, exceeds the sale price.

EXHIBIT K

EXHIBIT K

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARTIN CENTENO,
Appellant,
vs.
JP MORGAN CHASE BANK, N.A.,
Respondent.

No. 67365

FILED

MAR 18 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER VACATING AND REMANDING

This is a pro se appeal from a district court order denying a motion for a preliminary injunction in a quiet title action. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

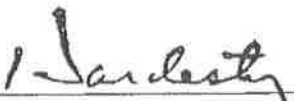
The district court denied appellant's request for a preliminary injunction, reasoning that appellant lacked a likelihood of success on the merits of his quiet title claim because (1) the Supremacy Clause prevented the HOA foreclosure sale from extinguishing respondent's deed of trust, which secured a federally insured loan; and (2) the purchase price at the HOA sale was commercially unreasonable.


Having considered the parties' arguments that were made in district court, *see Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981), we conclude that the district court underestimated appellant's likelihood of success on the merits and therefore abused its discretion in denying injunctive relief.¹ *See Boulder Oaks Cmty. Ass'n v. B & J Andrews Enters., LLC*, 125 Nev. 397, 403, 215 P.3d 27, 31 (2009) (recognizing that a district court may abuse its discretion in denying

¹We disagree with respondent's suggestion that this appeal is moot, as appellant's request for injunctive relief sought more than to simply prevent respondent from selling the subject property at foreclosure.

injunctive relief if its decision is based on an error of law). In particular, the district court summarily based its Supremacy Clause analysis on non-binding, non-uniform precedent. Compare *Washington & Sandhill Homeowners Ass'n v. Bank of Am.*, 2014 WL 4798565, at *6 (D. Nev. Sept. 25, 2014), with *Freedom Mortg. Corp. v. Las Vegas Dev. Grp.*, 106 F. Supp. 3d 1174, 1183-86 (D. Nev. 2015).² Similarly, this court's reaffirmation in *Shadow Wood Homeowners' Ass'n v. New York Community Bancorp, Inc.*, 132 Nev., Adv. Op. 5, ___ P.3d ___ (2016), that a low sales price is not a basis for voiding a foreclosure sale absent "fraud, unfairness, or oppression," undermines the second basis for the district court's decision. Accordingly, we

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.


Hardesty, J.
Hardesty


Saitta, J.
Saitta



Pickering, J.
Pickering

cc: Hon. Kathleen E. Delaney, District Judge
Martin Centeno
Smith Larsen & Wixom
Ballard Spahr, LLP
Eighth District Court Clerk

²We recognize that the *Freedom Mortgage* decision was not issued until after the district court entered the order being challenged in this appeal.

RPLY

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CLERK OF THE COURT

Attorney for plaintiff, U.S. Bank National Association as successor by merger to U.S. Bank National Association ND

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

U.S. BANK NATIONAL ASSOCIATION
ND, a national association,

Plaintiff,

vs.

GEORGE R. EDWARDS, an individual; ANY
AND ALL PERSONS UNKNOWN,
CLAIMING TO BE PERSONAL
REPRESENTATIVES OF GEORGE R.
EDWARDS ESTATE, OR DULY
APPOINTED, QUALIFIED, AND ACTING
EXECUTOR OF THE WILL OF THE
ESTATE OF GEORGE R. EDWARDS;
RESOURCES GROUP, LLC, a Nevada
limited-liability company; GLENVIEW WEST
TOWNHOMES ASSOCIATION, a Nevada
non-profit corporation; DOES 4 through 10,
inclusive, and ROES 1 through 10, inclusive.

Defendants,

RESOURCES GROUP, LLC,

Counter-claimant,

vs.

U.S. BANK NATIONAL ASSOCIATION,
ND, a national association,

Counter-defendant

CASE NO.: A-12-667690-C

DEPT. NO.: XVI

**U.S. BANK NATIONAL
ASSOCIATION, ND'S REPLY IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT AND
OPPOSITION TO RESOURCES
GROUP, LLC'S COUNTERMOTION
FOR SUMMARY JUDGMENT**

1 COMES NOW Plaintiff, U.S. Bank National Association as successor by merger to U.S.
2 Bank National Association ND ("U.S. Bank"), who submits the following Reply in Support of its
3 Motion for Summary Judgment and Opposition to Resources Group, LLC's ("Resources
4 Group") Countermotion for Summary Judgment.

5
6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. LEGAL ARGUMENT**

8 **A. RESOURCES GROUP'S OPPOSITION TO PLAINTIFF'S MOTION FOR**
9 **SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY**
10 **JUDGMENT IS UNTIMELY AND SHOULD NOT BE CONSIDERED**

11 Resources Group has filed its Opposition and Countermotion for Summary Judgment
12 well beyond the dispositive motion deadline of May 16, 2016 per the Stipulation and Order to
13 Extend Deadlines entered into between the parties on November 30, 2015. Pursuant to NRCP
14 16(e), the Scheduling Order "shall control the subsequent course of the action unless modified by
15 a subsequent order" and "shall be modified only to prevent manifest injustice." The Scheduling
16 Order may be modified only upon a showing of good cause. NRCP 16(b).

17 Because the Opposition and Countermotion is untimely, the Court should not consider it
18 and strike it from the record. *See Guarino v. Las Vegas Metropolitan Police Dept.*, 2015 WL
19 3724336, at *6 (D. Nev. June 12, 2015) (striking Plaintiff's countermotion for summary
20 judgment, as it was filed beyond the dispositive motion deadline); *U.S. ex rel. Intern. Business*
21 *Corp. v. Hartford Fire Ins. Co.*, 112 F.Supp.2d 1023, 1028 (Haw. 2000) (Court denied cross-
22 motion for summary judgment filed after the dispositive motion deadline because "Defendant
23 was well aware of the deadlines imposed by the Scheduling Order, it did not specifically request
24 that the court modify its Scheduling Order, nor did it seek relief from the Scheduling Order.");
25 *U.S. Dominator, Inc. v. Factory Ship Robert E. Resoff*, 768 F.2d 1099, 1104 (9th Cir.1985)
26 (court may deny as untimely a motion filed after the scheduling order cut-off date where no
27 request to modify the order has been made).

28 Here, the parties had already stipulated to the extension of discovery and the dispositive
motion deadlines in this case, which has been pending since 2012. Yet Plaintiff failed to bring

1 its own motion for summary judgment by the dispositive motion deadline or otherwise seek an
2 additional extension to the deadline to bring such a motion, instead waiting on U.S. Bank to do
3 so in an effort to sneak its own motion in beyond the deadline. Nor did Resources Group “set
4 forth any explanation for its untimely motion.” *Harford Fire*, 112 F.Supp.2d at 1028. To allow
5 consideration of this untimely Motion when Resources Group has failed to exercise due
6 diligence in filing the motion before the deadline or seeking an extension to the deadline would
7 result in severe prejudice to U.S. Bank.

8 **B. THE SALE IS VOID PER *SHADOW WOOD* AND THE RESTATEMENT**
9 **(THIRD) OF PROPERTY, AS THE SALES PRICE WAS GROSSLY**
10 **INADEQUATE AND THE LACK OF PROPER NOTICE CONSTITUTED**
11 **FRAUD, OPPRESSION AND/OR UNFAIRNESS WARRANTING THE SETTING**
12 **ASIDE OF THE SALE. ALTERNATIVELY, THE SALE IS VOID UNDER**
13 **GENERAL EQUITY PRINCIPLES**

14 Through the recent Nevada Supreme Court decision in *Shadow Wood Homeowners*
15 *Ass’n, Inc. v. N.Y. Cnty. Bancorp.*, 132 Nev. Adv. Op. 5 (2016), the Court finally provided
16 much-needed guidance on what constitutes a commercial unreasonability for purposes of setting
17 aside a sale: if the sales price obtained at a trustee’s foreclosure sale is 20% or less of the
18 property’s rough fair market value, it is considered “grossly inadequate” and void. Here, the
19 Property sold for less than 10% of its fair market value of the Property.

20 In its Opposition and Countermotion, Resources Group glosses over the fact that there are
21 two readings of *Shadow Wood* as outlined in Plaintiff’s Motion. The first and most plausible
22 reading is that any association sale where the property sells for less than 20% of its fair market
23 value is absolutely void because of a “gross inadequacy” in the sales price. Under this reading,
24 Plaintiff need not show that there was something other than a grossly inadequate price: the price
25 is inadequate on its face to justify setting aside the sale. While Resources Group cites to the
26 recent, unpublished Nevada Supreme Court holding in *Centeno v. JP Morgan Chas Bank, N.A.*,
27 No. 67365 (March 18, 2016) (**Exh. K to Countermotion**), the Court noted only that a “low
28 sales price” absent a showing of fraud, unfairness, or oppression is insufficient to void a sale.

1 However, *Shadow Wood* distinguishes between a low price (one 20% of fair market value and
2 above) and a grossly inadequate price (those sales below 20%). While the former requires a
3 showing of “something more” than a low price, the latter requires only a showing of the grossly
4 inadequate price itself to justify the invalidation of a sale.

5 The second reading of *Shadow Wood* is that in addition to evidencing a “grossly
6 inadequate” sales price, the party seeking to void the sale must also show “proof of some
7 element of fraud, unfairness, or oppression as accounts for and brings about the inadequacy of
8 price.” *Shadow Wood* at 13 (citing *Golden v. Tomiyasu*, 79 Nev. 503, 514 (1963)). Assuming
9 the Court reads *Shadow Wood* this second way, which would make little sense considering that
10 the *Golden* case already allowed for this interpretation, U.S. Bank only needs to show very slight
11 evidence of unfairness or oppression because the sales price is so grossly inadequate. “[I]t is
12 universally recognized that inadequacy of price is a circumstance of greater or less weight to be
13 considered in other circumstances impeaching the fairness of the transaction as a cause of
14 vacating it, and that, where the inadequacy is palpable and great, very slight additional evidence
15 of unfairness or irregularity is sufficient to authorize the granting of the relief sought”
16 *Golden*, 79 Nev. at 514 (citing *Odell v. Cox*, 151 Cal. 70 (1907)(emphasis added); see also *Smith*
17 *v. Kessler*, 43 Cal.App. 3d 26, 117 (1974) (any evidence of unfairness or taking undue advantage
18 is enough to interpose court equity when combined with a grossly inadequate sales price).

19 The foreclosure notices fail to indicate anywhere that the Sale was that of a super-priority
20 lien, which almost certainly depressed bidding and consequently resulted in the grossly
21 inadequate price in the first place. While Plaintiff relies on *SFR Investments* in claiming that the
22 HOA was not required to provide notice of the super-priority amount and that the mortgage
23 savings clause in the CC&R’s do not trump NRS 116.3116’s statutory mandates, the lack of
24 proper notice of the super-priority amount coupled with the grossly inadequate price and the
25 mortgage-savings clause comprises the additional “slight” evidence that is required to justify
26 setting aside the sale under both commercial unreasonableness and general equity principles. So
27 even if this Court interprets *Shadow Wood* as adopting the *Golden* rule even in those cases where
28 the sale is substantially less than the 20% benchmark, the Sale must still be void because the

1 sales price itself is on-its-face, coupled with lack of proper notice, evidences that the Sale was
2 conducted with irregularities which led to the depressed bidding and purchase price.

3 **C. NRS 116.3116 IS UNCONSTITUTIONAL BECAUSE IT DOES NOT PROVIDE**
4 **PRIOR NOTICE OR A HEARING TO THE PARTY WHOSE PROPERTY**
5 **RIGHTS ARE IMPAIRED BY THE FORECLOSURE OF THE LATER-**
6 **RECORDED HOA LIEN. MOREOVER, SUFFICIENT STATE ACTION IS**
7 **INVOLVED TO IMPLICATE DUE PROCESS**

8 A line of cases holding lien statutes unconstitutional for lack of notice and a chance to be
9 heard makes very clear that NRS116.3116 is unconstitutional. For example, Maryland's highest
10 court struck down the nation's oldest mechanic's lien law (dating to 1791) because the statute
11 created liens that "temporarily deprive[d] a debtor of a significant property interest" without
12 actual notice to the party whose rights were impaired or a prior hearing. *Barry Properties v. Fick*
13 *Bros.*, 242 A.2d 222, 232 (Md. 1976). Deprivation of a property interest without notice or a
14 hearing meant the lien statute violated the Due Process Clause, and was unconstitutional. *Id.*
15 The *Barry* court was clear that there was state action implicating the Due Process Clause: "[w]e
16 think it clear that mechanics' liens involve state action since they are created, regulated and
17 enforced by the State." *Id.* (citations omitted). So the result must be here. NRS 116.3116 does
18 not temporarily deprive U.S. Bank of a property interest: it extinguishes it forever. NRS
19 116.3116 does not require notice or a hearing before extinguishment, as Due Process requires.
20 And it is clear that the HOA failed to serve the Notice of Default on U.S. Bank, or give proper
21 notice of the super-priority lien prior to the Sale. So as applied in this case, if NRS 116.3116
22 authorized what the HOA did in selling the Property and extinguishing U.S. Bank's property
23 interest, it is unconstitutional.

24 While a homeowner's association is not necessarily an arm of the government simply
25 because it conducts non-judicial sales, the real issue is not whether NRS 116.3116 by itself
26 implicates due process, but whether speculator-investors invoking the court's jurisdiction to
27 avoid security in real property implicates due process, and it does. "When a state permits a
28 private actor to use the machinery of government to deprive another actor of his constitutional

1 rights, the first actor may in some cases be treated as a state actor for the purpose of the
2 Fourteenth Amendment.” *U.S. Bank, N.A. v. SFR Investments Pool I, LLC*, 2015 WL 5023450,
3 *10 (D. Nev. Aug. 26, 2015) (Order Granting and Denying Motions to Dismiss); *Barry*, 242
4 A.2d at 228; *Stop the Beach Renourishment, Inc. v. Florida Dep’t of Env’tl. Prot.*, 560 U.S. 702,
5 715 (2010) (“But the particular state actor is irrelevant. If a legislature or a court declares that
6 what was once an established right of private property no longer exists, it has taken that property
7 . . .”).

8 In *Shelley v. Kraemer*, 334 U.S. 1 (1948), the Supreme Court ruled that the judicial
9 enforcement of a racially restrictive covenant by a homeowner’s association constituted state
10 action. The Court first noted that the Equal Protection Clause of the Fourteenth Amendment
11 spoke to the constitutional issue of race discrimination. *See id.* at 10. Here, the Due Process
12 Clause of the Fifth Amendment speaks to the constitutional issue of notice. Second, the Court
13 noted that in the case before it, as here, the rule had not been imposed by the state or municipal
14 legislature, but by a private homeowner’s association. *See id.*, 334 U.S. at 12-13. The Court ruled
15 that “the restrictive agreements standing alone cannot be regarded as a violation of any rights
16 guaranteed . . . by the Fourteenth Amendment . . . But here there was more.” *Id.* at 13. That
17 “something more” was the judicial enforcement of the restrictions. *See id.* at 13-14. The same is
18 true here with respect to Resources Group’s claim for quiet title. A plain reading of *Shelley*
19 compels the Court to apply it against the quiet title claim, and Due Process is therefore
20 implicated.

21 Many other courts have likewise invalidated lien statutes that, like NRS 116.3116,
22 conferred power on private actors to impair other persons’ property rights without notice,
23 without a hearing, or both. Where Connecticut passed a law under which mechanic’s liens could
24 be filed and perfected “without authorization, supervision, or control by a judicial officer,” and
25 provided no right to hearing to the party whose property interest was affected, that law violated
26 the Due Process Clause. *Roundhouse Const. Corp. v. Telesco Masons Supplies Co.*, 365 A.2d
27 393, 394 (Conn. 1976). Nevada’s landlord lien law was held unconstitutional to the extent it
28 allowed deprivation of property by a landlord against a tenant without notice or a hearing.

1 *Adams v. Joseph F. Sanson Inv. Co.*, 376 F. Supp. 61, 68-69 (D. Nev. 1974). California's
2 Innkeeper's Lien Law proved unconstitutional under the Due Process where it permitted a
3 private party to create a lien without a hearing before the lien was imposed. *Klim v. Jones*, 315
4 F. Supp. 109, 122 (N.D. Cal. 1970). *Klim* emphasized the state action in fashioning this private
5 lien, calling it "action encouraged, indeed only made possible, by explicit state action." *Id.* at
6 114. Finally, Georgia's statute authorizing all liens on personalty was held unconstitutional
7 because it did not require notice or a hearing before the lienor deprived someone of his interest in
8 his property, and thus did not provide due process. *Mason v. Garris*, 360 F. Supp. 420, 423
9 (N.D. Ga.) amended, 364 F. Supp. 452 (N.D. Ga. 1973).

10 In contrast, drafting a lien statute that does not violate the Due Process Clause is a
11 straightforward endeavor. All that is required to do so is to provide notice and a chance to be
12 heard that all the foregoing invalid statute lacked. And it is important to note that Nevada's
13 Legislature unanimously repealed the features of the Statute that made it violate the Due Process
14 Clause in its first session after the Nevada Supreme Court issued *SFR Investments*, underscoring
15 that NRS 116.3116 was being used in a way that violates constitutional and national norms of
16 due process.

17 **D. THE *SHADOW WOOD* COURT ALSO OPINED THAT THE DEED RECITALS**
18 **ARE NOT AUTOMATICALLY ENTITLED TO A CONCLUSIVE**
19 **PRESUMPTION THAT THE SALE WAS CONDUCTED IN ACCORDANCE**
20 **WITH NRS 116.3116 AND IN A COMMERCIALLY REASONABLE MATTER**

21 Resources Group relies on the foreclosure recitals as constituting irrefutable proof that
22 the HOA sale was conducted in accordance with NRS 116.3116. In support of this assertion, it
23 cites to nonbinding case law, NRS 116.3116, and *SFR Investments*. However, in *Shadow Wood*,
24 which obviously postdates the cases upon which Resources Group relies, the Court ruled that the
25 recitals in the Foreclosure Deed are not conclusive proof that the sale was conducted properly.
26 *Shadow Wood* at 2. ("[Appellants] argue that NRS 116.3116 (2013), which says that certain
27 recitals in an HOA trustee's sale deed are 'conclusive proof of the matters recited,' renders such
28 deeds unassailable. We disagree."). While *Shadow Wood* ruled that the sale in that matter was

1 not commercially unreasonable because the Property sold for more than 20% of the fair market
2 value and that the notices and recitals contained therein were sufficient, the Court also noted that
3 NYCB did not dispute that it defaulted on the super-priority portion, nor did NYCB dispute that
4 *Shadow Wood* complied with the NRS 116.3116 notice and publication requirements. *See*
5 *Shadow Wood* at 10. Unlike NYCB in *Shadow Wood*, Plaintiff contends that no notice of the
6 super-priority was given and Plaintiff was not in default to the HOA because it was not yet
7 record owner of the Property at the time of the HOA sale. Because Plaintiff was not yet the
8 record owner, it was required to pay only the super-priority amount to stop the sale, which it was
9 unable to do because no notice of this amount was given. Hence, the *Shadow Wood* Court's
10 finding that the foreclosure notices were conclusive proof of compliance with NRS 116.3116 in
11 that case is distinguishable here, where Plaintiff is in fact disputing that the HOA complied with
12 the NRS 116.3116 notice and publication requirements.

13 Resources Group also argues that there is no authority that mandates that an HOA act in
14 good faith by conducting the sale in a commercially reasonable manner by because the HOA is
15 not a "merchant" under NRS 104.2103(1)(b). This argument is absurd because it ignores
16 *Shadow Wood*, wherein the Court opined a sale may be set aside, notwithstanding the generally
17 conclusive Foreclosure Deed recitals, if that sale is unreasonable, either from a commercial
18 standpoint or under a general equity standard. Therefore, *Shadow Wood* affirms the HOA's duty
19 as outlined in NRS 116.1113's to act in good faith in conducting these sales to ensure that the
20 best possible price is secured to afford maximum recovery to subordinate lienholders whose
21 interests are potentially extinguished by such sales.

22 Here, the super-priority amount was not provided in the various foreclosure notices
23 which led to the depressed bidding process and the grossly inadequate sales price. This
24 combined with the inadequate sales price, and the facial unconstitutionality of the statute
25 requiring a lender to "opt in" to receive notice, constitutes sufficient proof that the sale was not
26 conducted in accordance with NRS 116.3116. Therefore, equity demands that the sale be set
27 aside due to being conducted in a commercially unreasonable manner.
28

1 **E. THE HOA SALE IS VOID BECAUSE NRS 116.3116 AND NRS 107.090**
2 **MANDATE THAT THE HOA SERVE BOTH THE NOTICE OF DEFAULT AND**
3 **THE NOTICE OF SALE**

4 Resources Group contends that the sale cannot be set aside due to the low sales price
5 alone because there is no demonstration of fraud, oppression or unfairness. Additionally,
6 Resources Group alleges that the mailings show that the Notice of Default was mailed to U.S.
7 Bank. However, U.S. Bank has demonstrated fraud, oppression or unfairness in this matter, as
8 the HOA Trustee failed to comply with the notice provisions of NRS 116.3116 and NRS 107.090
9 in failing to serve the Notice of Default on U.S. Bank, the subordinate lienholder. Again, the
10 mailings show that US Recordings, rather than U.S. Bank, was served, an entity listed on the
11 Deed of Trust. However, this entity is 1) clearly not U.S. Bank and is thus, not the real party in
12 interest and 2) the address for US Recordings is different from the two addresses listed in the
13 Deed of Trust for U.S. Bank, the same addresses to which the HOA Trustee allegedly served the
14 Notice of Sale. The HOA Trustee's attempt to serve the Notice of Sale on U.S. Bank at the
15 correct addresses demonstrates that it knew its prior service of the Notice of Default was
16 improper. However, this attempt does not save the HOA sale because the NRS 116.3116 and
17 NRS 107.090 statutory service provisions have not met.

18 Resources Group itself admits that NRS 116.090 provides that all subordinate lienholders
19 must be mailed both the Notice of Sale AND Notice of Default. *See* Opposition and
20 Countermotion, p. 10, paragraph 5 (NRS 107.090 "require[s] that copies of both the notice of
21 default and the notice of sale be mailed to holders of 'subordinate' interests"); *id.*, p. 12, ll. 5-6
22 ("[c]onsequently, the provisions of NRS 107.090 requiring that copies of **both** the notice of
23 default **and** the notice of sale be mailed to holders of interests 'subordinate' to the HOA's
24 lien...") (emphasis in original). But prior to this, Resources Group argues that the alleged
25 service of just the Notice of Sale to U.S. Bank in effect cures this prior deficiency (*see id.*, p. 7,
26 ll. 17-19: "Regarding the notice of trustee's sale, on the other hand, plaintiff does not dispute
27 that the notice was timely mailed to and received by plaintiff at its addressed listed in the deed of
28 trust"). This is Resources Group wanting it both ways.

1 Additionally, Resources Group flat out mischaracterizes Plaintiff's argument in relation
2 to the Notice of Sale: Plaintiff stated in its Motion that while the certified mailings on their face
3 may appear to show that the Notice of Sale was mailed, these mailings are still insufficient to
4 demonstrate that they were in fact properly mailed. However, even if the Notice of Sale were
5 properly mailed, or U.S. Bank received actual notice of the sale¹, this is irrelevant, as the sale is
6 still void because the Notice of Default was not served in accordance with NRS 107.090. Since
7 the Notice of Sale stems from the Notice of Default, the any defect relating to the Notice of
8 Default also taints and invalidates the Notice of Sale and thus, the Sale.

9 Despite Resources Group's contention that Plaintiff's valuation is inadmissible, this is
10 inaccurate, as it was authenticated by affidavit as a business record that was received and kept in
11 the ordinary course and business. Resources Group offers no affidavit or other admissible
12 evidence refuting U.S. Bank's valuation and cites to no law that states an exterior valuation is not
13 a proper determination of the fair market value of a property. *McPeck v. Harrah's Imperial*
14 *Palace Corp.*, 2015 WL 5286794, at *2 (D. Nev. Sep. 9, 2015) ("If the moving party satisfies
15 Rule 56 by demonstrating the absence of any genuine issue of material fact, the burden shifts to
16 the party resisting summary judgment to 'set forth specific fact showing that there is a genuine
17 issue for trial. . . The court only considers properly authenticated admissible evidence in deciding
18 a motion for summary judgment") (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256
19 (1986); *Celote Corp. v. Catrett*, 477 U.S. 317, 323 (1986)).

20 It is industry standard for lenders to order and rely upon exterior valuations to evaluate a
21 property's fair market value. See Nevada Foreclosure Mediation Rule 13(3) ("The mediator may
22 accept a BPO in addition to **or in lieu of the appraisal.**") (emphasis added); NRS 645.2515(2)
23 (indicating that the purposes of a BPO is for "an existing or potential seller for the purposes of
24 listing and **selling** a parcel of real property" or "an existing or potential buyer of a parcel of real
25 property," or "a third party making decisions or performing due diligence related to the potential
26

27 ¹ U.S. Bank does not concede that notice is unimportant, but it is for determining statutory compliance. Nor has
28 U.S. Bank conceded to having received actual notice of the Notice of Trustee Sale. Resources Group implies such
concession by the absence of any affirmative statement in the Affidavit of Julie Lor indicating that the Notice of
Sale was not received. Absence of a statement is not admission that the Notice of Sale was properly served in
accordance with NRS 116.3116 and NRS 107.090.

1 listing, offering, **sale**, exchange, option, lease or acquisition price of real property.”) (emphasis
2 added).

3 Here, because the sale price was grossly inadequate, the failure of the HOA to serve the
4 Notice of Default on U.S. Bank (a fact Resources Group does not dispute), and the foreclosure
5 notices were defective in putting the subordinate lienholders on notice that the sale was that of a
6 super-priority portion of the HOA’s lien, Resources Group was not a bona fide purchaser and
7 equity principles mandate that the sale should be set aside.

8 **F. RESOURCES GROUP FAILS TO DEMONSTRATE THAT THE HOA SALE**
9 **SATISFIED NRS 116.3116’S AND NRS 107.090’S MAILING AND NOTICE**
10 **REQUIREMENTS**

11 The Nevada Supreme Court in *SFR* held that NRS 116.3116 requires proof, or statements
12 of compliance with the mailing and notice provisions of NRS 116.3116 et seq. *See SFR*
13 *Investments*, 334 P.3d at 411. Resources Group does not offer any admissible evidence that the
14 HOA sale complied with applicable notice and mailing requirements, other than by reliance on
15 and reference to the conclusory deed recitals and *SFR Investments*.

16 In order to invoke the NRS 116.31166 presumptions, the Trustee’s Deed Upon Sale must
17 actually contain those recitals. The Trustee’s Deed doesn’t contain those recitals, and a generous
18 reading indicates it contains at best conclusory statements that fail to describe what the HOA or
19 its trustee actually did to foreclose its lien. In *Albice v. Premier Mortg. Services of Washington,*
20 *Inc.*, 157 Wash.App.912, 239 P.3d 1148 (2010) *aff’d*, 174 Wash. 2d 560, 276 P.3d 1277 (2012),
21 the Court of Appeals of Washington considered a very similar deed that recited “information
22 about the underlying debt obligation, the failure to cure the default, the lender’s request to sell
23 the property, and the fulfillment of notice requirements prior to the sale.” *Id.* at 922. The court
24 declined to apply a conclusive presumption prescribed by statute because “the deed contains
25 legal conclusions but not factual recitals that establish compliance” with the law. *Id.* at 925-26.
26 Likewise, the Supreme Court of Alaska, in considering a very similar matter, stated “[w]e are
27 persuaded that what is required is a recital of fact specifying what the trustee has done, not a
28 mere conclusory statement that the trustee has complied with the law.” *Rosenberg v. Smidt*, 727

1 P.2d 778, 785 (Alaska 1986). Here, neither the HOA nor Alessi & Koenig, its Trustee, states to
2 whom the notices were allegedly mailed or when. These bare conclusory statements therefore do
3 not rise to the level required to invoke the conclusive presumptions in NRS 116.31166. The
4 HOA's purported agent for the association has not included many of the recitals that would
5 justify the application of the conclusive presumption by failing to recite facts that can actually be
6 used to create such a presumption.. Rather, the purported agent has simply provided generic
7 conclusions about what it allegedly did when specifics are required. If courts do not give such
8 conclusions any presumption of truth under NRCP 12(b)(5) even though they must accept factual
9 allegations as true (*see Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949-50 (2009)
10 (interpreting the federal counterpart to NRCP 12(b)(5)), then, by analogy, courts should not give
11 such legal conclusions any conclusive presumption under NRS 116.31166. In the end, there is
12 an enormous evidentiary shortcoming in the Countermotion because Resources Group has failed
13 to provide admissible evidence establishing a valid foreclosure sale under a NRS 116 super-
14 priority lien.

15 A quiet title action may be brought "by any person against another who claims an estate
16 or interest in real property, adverse to the person bringing the action, for the purpose of
17 determining such adverse claim." NRS 40.010. "In a quiet title action, the burden of proof rests
18 with Plaintiff to prove good title in himself." *Brelant v. Preferred Equities Corp.*, 112 Nev. 663,
19 918 P.2d 314, 318 (1996); *see also Wensley v. First Nat. Bank of Nevada*, 2012 WL 1971773 (D.
20 Nev. 2012). This means Resources Group has the burden to establish good title in itself.

21 Contrary to Resources Group's over-reading of *SFR*, that decision declined to resolve
22 questions involving facts that had not yet been established. *SFR Investments* reversed the
23 granting of a motion to dismiss, accepting as true for purposes of reviewing the district court's
24 decision to grant the motion to dismiss, the complaint's allegations that the HOA sale complied
25 with the Statute. It did not find those allegations to be true as a matter of law. Here, Resources
26 Group does not provide any admissible evidence demonstrating compliance with NRS 116.3116
27 and NRS 107.090. Instead, Resources Group relies on mere certified mailing receipts obtained
28 from the HOA, with no certifying Affidavit of Mailing indicating that the notice of sale was in

1 fact served on U.S. Bank. *See Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 2016
2 WL 1718374, at *5 (D. Nev. 2016) (noting that while certified mailings may allow a jury or
3 factfinder to infer notice, those mailings do not mandate that a jury or factfinder must find
4 notice).

5 Even in *SFR v. U.S. Bank*, the Court held only that a foreclosure deed provided sufficient
6 basis to withstand a defendant's motion to dismiss before remanding the matter for further
7 proceedings. 334 P.3d at 418. The Court never held that, as a matter of law, the foreclosure
8 deed was conclusive proof that all third-party purchasers from an HOA sale have clear title and
9 an HOA sale extinguishes a first deed of trust. That is absurd. Moreover, if *SFR v. U.S. Bank*
10 did in fact support Resources Group's contention, then the Court would have entered judgment
11 in favor of SFR rather than remanded.

12 Finally, the Nevada Legislature's recent amendment of NRS 116.3116 and *Shadow Wood*
13 underscore the unreasonableness of granting summary judgment in favor of Resources Group.
14 Apparently appreciating the concerns of both the public and litigating stakeholders who are
15 disenfranchised by the Statute, the Legislature amended NRS 116.3116 to require notice to
16 lenders before a HOA super-priority lien sale, and to provide lenders an opportunity to redeem
17 until 60 days after sale, merely by paying the amount of the HOA lien. SB 306. These
18 significant changes to NRS 116.3116 underline how unreasonable it is to grant summary
19 judgment in favor of Resources Group.

20 Therefore, Resources Group cannot establish as a matter of law that it is entitled to relief
21 in the form of an order quieting title to the Property to itself. Therefore, U.S. Bank's Motion for
22 Summary Judgment should be granted and Resources Group's countermotion for summary
23 judgment should be denied.

24 **G. TRIABLE ISSUES OF FACT EXIST CONCERNING WHETHER THE**
25 **ASSOCIATION AUTHORIZED THE TRUSTEE TO FORECLOSE ON ITS**
26 **BEHALF**

27 NRS 116.3116(1) requires satisfactions of many conditions before an "association may
28 foreclose its lien by sale." One such condition is that "[t]he notice of default and election to sell

1 must be signed by the person designated in the declaration or by the association for that purpose
2 or, if no one is designated, by the president of the association.” *Id.* 116.31162(2). Here, there is
3 a triable issue of whether an appropriate person signed association’s Notice of Default.

4 There is no admissible evidence in the record showing that the Declaration (i.e., the
5 CC&Rs) designated the HOA Trustee to execute Notice of Default or that the association
6 designated the trustee as its agent for that purpose. And there is no dispute that the president of
7 the association did not execute Notice of Default. When viewing all evidence, including its
8 inferences, in Resources Group’s favor, the foreclosure of the Property was unauthorized under
9 the plain language of NRS 116.31162.

10 In addition, there is no admissible evidence in the record that the Association authorized
11 its trustee to execute the Lien for Delinquent Assessments (**Exh. E to Countermotion**), the
12 Notice of Default (**Exh. F to Countermotion**), the Notice of Sale, the Trustee’s Deed (**Exh. B to**
13 **Countermotion**), or otherwise conduct the foreclosure on its behalf. And this Court cannot
14 assume such authority, especially when Resources Group bears the burden of proof and when
15 this Court must view “the evidence, and any reasonable inferences drawn from it, ... in a light
16 most favorable to [the non-moving party].” *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729-732,
17 121 P.3d 1026, 1029-31 (2005) (summary judgment cannot be based upon “gossamer threads of
18 whimsy, speculation, and conjecture”). Therefore, U.S. Bank has rebutted any presumption
19 created by NRS 47.250(17).

20 To the extent that Resources Group relies on inadmissible hearsay in the Notice of
21 Assessment Lien, the Notice of Default, the Notice of Sale, or the Trustee’s Deed to show an
22 agency relationship between the association and its trustee, courts have consistently required
23 admissible evidence beyond the language in the instrument executed by the purported agent.
24 *See, e.g., Berhe v. Fed. Nat. Mortgage Ass’n*, No. 2:13-CV-00552-RCJ, 2013 WL 3491272, at *2
25 (D. Nev. July 9, 2013); *Mathison v. Countrywide Home Loans, Inc.*, No. 3:11-CV-479-RCJ-
26 WGC, 2012 WL 3205854, at *3 (D. Nev. Aug. 3, 2012) (holding that there is a triable issue of
27 “whether First American truly was an agent of ReconTrust when it executed the notice of
28 default”); , No. 3:11-CV-00871-RCJ, 2012 WL 1739721, at *1 (D. Nev. May 11, 2012) (finding

1 potential defects with a foreclosure in part because, although First American Title Co. filed a
2 notice of default as agent for a trustee, “there is no extrinsic evidence of its agency on behalf of
3 [the trustee] other than First American [Title Co.]’s own say-so on the [notice]”). *Berhe v.*
4 *Federal National Mortgage Association* is instructive.

5 In that case, the court found the nonjudicial foreclosure at issue to be defective. *Berhe*,
6 2013 WL 3491272, at *2.

7 [T]he Substitution of QLS as trustee was executed by an entity (non-party
8 Seterus, Inc.) purporting to be an agent of the beneficiary (GTS), but there is no
9 evidence that it was in fact an agent of GTS apart from Seterus’s own claim of
10 agency on the Substitution. Where this is the case, the Court has required
defendants to provide evidence of the agency at the summary judgment stage.

11 *Id.*

12 Likewise, there is a requirement for Resources Group to submit extrinsic evidence of the
13 association designating the trustee as its agent for purposes of foreclosing on the Property. And
14 as explained above, Resources Group has failed to satisfy this requirement.

15 **H. TRIABLE ISSUES OF FACT EXIST AS TO WHETHER THE FORECLOSURE**
16 **NOTICES SUFFICIENTLY DESCRIBE THE CONDITIONS PRECEDENT TO**
17 **THE CREATION OF SUPER-PRIORITY LIEN RIGHTS**

18 NRS 116.31162(b)(1) provides that the notice of default must “[d]escribe the deficiency
19 in payment.” The language in this subsection is distinct from either the statute governing a notice
20 of delinquent assessment, NRS 116.31162(1), or the statute governing the notice of sale, NRS
21 116.311635. The Notice of Delinquent Assessment statute and the Notice of Sale statute call for
22 the association to provide an “amount.” However, NRS 116.31162 requires the association to
23 “describe.” Black’s Law Dictionary defines “[d]escribe” as “[t]o narrate, express, explain, set
24 forth, relate recount, narrate, depict, delineate, portray.” Black’s Law Dictionary 400 (5th ed.
25 1979). Moreover, Black’s Law Dictionary defines “[d]escription” as “[a] delineation or account
26 of a particular subject by the recital of its characteristic accidents and qualities.” *Id.* As a result,
27 the notice of default must describe the quality of the deficiency in payment including whether the
28 deficiency was for assessments adopted pursuant to a periodic budget pursuant to the provisions

1 of NRS 116.3115. Anything short of such a description would render the entire non-judicial
2 foreclosure statute constitutionally infirm for failure to give notice of the conditions precedent to
3 the deprivation of property rights of a first deed of trust holder.

4 In the present case, there is no recital in the Notice of Default, or any document for that
5 matter, that the Association complied with the provisions of NRS 116.3115. Accordingly, as a
6 matter of law, there is a triable issue of whether the Association complied with statutory
7 requirements to create a super-priority lien. Alternatively, this Court must find that the
8 provisions of NRS 116.31162 et seq. are constitutionally infirm.

9 The adverse impact of this omission on a notice of delinquent assessment, notice of
10 default, or notice of foreclosure sale cannot be understated. For example, the role of the
11 foreclosure auctioneer has always been to maximize the value of the asset by providing clear
12 information about the property being sold. *See Hatch v. Collins*, 225 Cal. App. 3d 1104, 1112,
13 275 Cal. Rptr. 476, 480 (1990) (“[A] trustee has a general duty to conduct the sale ‘fairly,
14 openly, reasonably and with due diligence,’ exercising sound discretion to protect the rights of
15 the mortgagor and others”). More information provides greater certainty in bidding and
16 encourages vigorous bidding. Without a recitation that the super-priority conditions have been
17 satisfied, bidders are taking risks by bidding in at the sale. The risk that the super-priority
18 conditions have not been satisfied and that the lien was junior to a first deed of trust would
19 severely dampen bidding interest. The lack of disclosure could encourage illicit information
20 gathering from the associations and their collection agents. Further, it would allow for
21 manipulation of bidding by parties who had obtained the undisclosed information. In the end, it
22 is the borrower who would pay the price from suppressed bidding. Furthermore, it is not
23 reasonable to expect that a lender would be required to investigate the existence of a super-
24 priority lien when that may be contained in a notice of default or a notice of foreclosure sale to
25 determine if its rights are affected when there is no recital that the conditions to super-priority
26 even exist. The problems with the notice are also reflected in the fact that the purchasers will
27 never be able to obtain title insurance.

28 ///

1 In *SFR Investments*, the Nevada Supreme Court identified two distinct parts to an
2 association's lien. 334 P.3d at 411. Each part has its own size, scope, and priority. Further, the
3 super-priority portion is dependent upon the association complying with the proper budget
4 adoption provisions of NRS 116.3115. Specifically, NRS 116.3116(2) provides that one of the
5 conditions precedent to a super-priority lien is that it is only "to the extent of the assessments for
6 common expenses based on the periodic budget adopted by the association pursuant to [NRS]
7 116.3115...." Accordingly, to the extent that the Association has not complied with NRS
8 116.3115 in this case, there is no super-priority lien.

9 The notices in this case do not provide any language that the Association complied with
10 the provisions of the super-priority lien. The notice statute indicates that this notice must be
11 provided. NRS 116.31162(1)(b) (emphasis added) provides:

12 Not less than 30 days after mailing the notice of delinquent assessment pursuant
13 to paragraph (a), the association or other person conducting the sale has executed
14 and caused to be recorded, with the county recorder of the county in which the
15 common-interest community or any part of it is situated, a notice of default and
16 election to sell the unit to satisfy the lien which must contain the same
17 information as the notice of delinquent assessment and which must also comply
18 with the following:

19 (1) Describe the deficiency in payment.

20 (2) State the name and address of the person authorized by the association to
21 enforce the lien by sale....

22 In light of the fact that an association's lien has two pieces, as recognized by the Nevada
23 Supreme Court, the notice requires that the deficiency be adequately described. *SFR Investments*
24 *Pool I*, 334 P.3d at 411. The broader language of "description" is necessary to ensure that all
25 parties are equipped with the knowledge necessary to ensure protection of their constitutional
26 rights. This is especially important here because judicially noticeable facts show a triable issue
27 concerning the deficiency in payment. Since the notices in this case failed to contain any
28 information or description that would demonstrate compliance with NRS 116.31162(1)(b), there
is no admissible evidence that a super-priority lien was ever created and that the Deed of Trust
was ever extinguished.

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II. CONCLUSION

Due to the foregoing, Resources Group's Opposition and counter-motion are untimely, contrary to law and consequently, without merit, and U.S. Bank's Motion for Summary Judgment should be granted in its entirety.

DATED: June 9, 2016

ZIEVE, BRODNAX & STEELE, LLP

By: /s/ Sherry A. Moore

Sherry A. Moore, Esq.

Benjamin D. Petiprin, Esq.

Attorneys for Plaintiff

U.S. Bank National Association as successor
by merger to U.S. Bank National
Association ND

1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Les Zieve, and not
3 a party to nor interested in the within matter; that on the 9th day of June 2016 service of the
4 U.S. BANK NATIONAL ASSOCIATION, ND'S REPLY IN SUPPORT OF MOTION
5 FOR SUMMARY JUDGMENT AND OPPOSITION TO RESOURCES GROUP, LLC'S
6 COUNTERMOTION FOR SUMMARY JUDGMENT was made:

7 (X) by serving the following parties electronically through CM/ECF/WIZNET as set forth
8 below;

9
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26
27
28
/s/ Jenny Humphrey

Jenny Humphrey, an employee of
Law Offices of Les Zieve



CLERK OF THE COURT

1 **RIS**
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
5 LAW OFFICES OF
6 MICHAEL F. BOHN, ESQ., LTD.
7 376 East Warm Springs Road, Ste. 140
8 Las Vegas, Nevada 89119
9 (702) 642-3113/ (702) 642-9766 FAX
10 Attorney for Resources Group, LLC

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 U.S. BANK NATIONAL ASSOCIATION, ND,
14 a national association

CASE NO.: A-12-667690-C
DEPT NO.: XVI

15 Plaintiff,

16 vs.

17 GEORGE R. EDWARDS, an individual; ANY
18 AND ALL PERSONS UNKNOWN,
19 CLAIMING TO BE PERSONAL
20 REPRESENTATIVES OF GEORGE R.
21 EDWARDS ESTATE, OR DULY
22 APPOINTED, QUALIFIED, AND ACTING
23 EXECUTOR OF THE WILL OF THE ESTATE
24 OF GEORGE R. EDWARDS; RESOURCES
25 GROUP, LLC, a Nevada Limited Liability
26 Company; GLENVIEW WEST TOWNHOMES
27 ASSOCIATION, a Nevada non-profit
28 corporation; DOES 4 through inclusive; and
ROES 1 through 10 inclusive

Defendants.

RESOURCES GROUP, LLC,

Counter-claimant

vs

U.S. BANK NATIONAL ASSOCIATION, ND,
a national association

Counter-defendant

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 74575

U.S. BANK N.A. N.D. a foreign Corporation

Plaintiff and Appellant

v.

RESOURCES GROUP LLC, a Nevada limited liability company

Defendant and Respondent

**Appeal from a Judgment
Of the Eighth Judicial District Court, County of Clark
Hon. Timothy Williams**

**APPELLANT'S APPENDIX VOL. 2
PART 2**

Kristin A. Schuler-Hintz, Esq (NSB#7171)
Thomas N. Beckom, Esq (NSB#12554)
McCARTHY HOLTHUS LLP
9510 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Phone No. (702) 685-0329
Attorney for Appellant

Electronically Filed
Apr 05 2018 02:31 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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1 prior to the association's notice of default." At page 22 of its motion, plaintiff claims that Section 11 in
2 Article VI of the CC&Rs (Exhibit 7 to plaintiff's motion, pg. USB0164) contains such a provision. In
3 SFR Investments Pool 1, LLC v. U.S. Bank, N.A., however, the Nevada Supreme Court expressly held
4 that NRS 116.1104 prevents a savings clause in CC&R's from waiving the HOA's superpriority lien
5 rights. 334 P.3d at 419. In addition, the decision in ZyzzX2 v. Dizon was not based solely on language
6 in the CC&Rs. The court stated that "[t]he association sent a letter to Wells Fargo and other interested
7 parties stating that its foreclosure would not affect the senior lender/mortgage holder's lien." 2016 WL
8 118666 at *5. No such letter exists in the present case.

9 At the bottom of page 22, plaintiff argues that courts in California "routinely hold that when the
10 sales price obtained at a foreclosure is grossly inadequate, that may in itself furnish satisfactory evidence
11 of fraud or misconduct on the part of the trustee or purchaser, and justify vacating the sale."

12 Odell v. Cox, 151 Cal. 70, 90 P. 194 (1970), involved an execution sale of corporation stock and
13 not real property. Notice of the sheriff's sale was posted on three doors of the county courthouse in the
14 city of Los Angeles, no one notified Odell of the sale, and Cox was the only bidder at the sale. 151 Cal.
15 at 72, 90 P. at 195. Cox bid \$26.50 for stock having a cash value of \$2,000 in the market. 151 Cal. at 73,
16 90 P. at 195. The trial court vacated the sale, and Cox appealed. In affirming the trial court, the court
17 of appeals stated that "we have absolute lack of knowledge on the part of the owner of the property of any
18 levy or proposed sale" and that "[t]his lack of knowledge on his part was entirely excusable" because all
19 notices "were posted in a large city, at a point over 20 miles away from the legal situs of the property and
20 the home of the parties." 151 Cal. at 75-76, 90 P. at 196-197.

21 Haish v. Hall, 90 Cal. App. 547, 265 P. 1030 (1928), involved an execution sale of 30 shares of
22 corporate stock worth \$1,290 that were sold for \$23.60 to the plaintiff who was the only bidder at the sale.
23 Relying on the decision in Odell v. Cox, the court of appeals affirmed the trial court's order setting aside
24 the sale.

25 In Young v. Barker, 83 Cal App. 2d 654 (1948), the court recognized that the plaintiff was the sole
26 bidder at the sheriff's sale, that a deed was issued to the plaintiff on January 13, 1944, but the deed was
27 not recorded until November 21, 1944, that the summons and complaint in the municipal court action

1 were never served on the defendant, that the levy of execution was not made as required by law, that no
2 notice was posted on the property, and defendant received no notice of the levy. (Id. at 656-657)

3 In the present case, the HOA and its foreclosure agent followed the statutory procedure in NRS
4 116.31162 to NRS 116.31168, and by incorporation, NRS 107.090, and provided notice by mail, posting,
5 and publication, and the property was sold not to the HOA, but to a third party bidding at a public auction.
6 The only defect identified by plaintiff is that the notice of default was mailed to the address listed in the
7 upper left hand corner of the deed of trust instead of the address listed for plaintiff in the body of the deed
8 of trust. This claimed defect was not repeated with the notice of trustee's sale that was mailed to the
9 plaintiff's address found in the body of the deed of trust. (Exhibit I)

10 **9. An HOA foreclosure sale is not required to be "commercially reasonable."**

11 At page 23 of its motion, plaintiff cites NRS 116.1113 as authority that "associations must act in
12 good faith." Although the comment to Section 1-113 of the UCIOA states that the definition of "good
13 faith" contained in Section 1-113 of the UCIOA is derived from and used in the same manner as in
14 Sections 2-103(i)(b) and 7-404 of the Uniform Commercial Code," the definition adopted in the comment
15 does not include the word "commercial."

16 The amendment to NRS Chapter 104 made in 2005 placed the current definition of "good faith"
17 in Nevada's Uniform Commercial Code in NRS 104.1201(2)(i). NRS 104.1102 expressly provides that
18 Article 1 of the Uniform Commercial Code "applies to a transaction to the extent that is governed by
19 another Article of the Uniform Commercial Code." No provision of the Uniform Commercial Code
20 purports to govern an HOA foreclosure sale.

21 Prior to the 2005 amendment, the definition of "good faith" contained in NRS 104.2103(1)(b)
22 stated: "'Good faith' in the case of a merchant means honesty in fact and the observance of reasonable
23 commercial standards of fair dealing in the trade." (emphasis added) The HOA is not a "merchant," so
24 the former definition of "good faith" in NRS 104.2103(1)(b) could not apply to it.

25 In addition, NRS 104.9109(4)(k) that expressly provides that the provisions of Article 9 of the
26 Uniform Commercial Code do not apply to a "lien on real property" except in four instances. An HOA
27 assessment lien is not one of the four instances. NRS 116.1108 supplements NRS Chapter 116 with the

1 “law of real property,” but not with any provisions in the Uniform Commercial Code.

2 At page 23 of its motion, plaintiff cites Levers v. Rio King Land & Investment Co., 93 Nev. 95,
3 98-99, 560 P.2d 917, 920 (1977), where the Court applied the language in NRS 104.9504(3) that now
4 appears in NRS 104.9610(2) to a secured party that mailed a letter to the debtor only 8 days before a sale
5 that was attended only by the secured party and a former employee. There was no evidence that the sale
6 was publicized in any manner, and the secured party purchased the collateral for \$100 at the sale and re-
7 sold the collateral to a third party for \$10,000. Although the Nevada Supreme Court found that the sale
8 in Levers was not commercially reasonable, the Court reversed the district court’s judgment setting aside
9 the sale and held that it was enough that the secured party’s judgment be reduced by the \$10,000 fair
10 market value of the collateral.

11 In Dennison v. Allen Group Leasing Corp., 110 Nev. 181, 871 P.2d 288 (1994), the Court applied
12 California law to the repossession and sale of two pieces of automobile equipment, and the court found
13 that due to an error in the notice of sale, “it is possible that the equipment sold at public sale by Allen was
14 not the same equipment leased to Dennison.” 871 P.2d at 291. In the present case, plaintiff has not
15 identified any error in the notice of trustee’s sale. (Exhibit H)

16 At page 24 of its motion, plaintiff quotes from the decision in Will v. Mill Condominium Owners’
17 Association, 176 Vt. 380, 848 A.2d 336 (2004), but unlike the nonjudicial foreclosure process provided
18 in NRS 116.31162 to 116.31168, 27A V.S.A. § 3-116(j) in Vermont’s version of the UCIOA requires
19 that an association’s lien be judicially foreclosed pursuant to 12 V.S.A. chapter 172 or subsection (o) of
20 27A V.S.A. § 3-116. 27A V.S.A. § 3-116(p) expressly provides that “[e]very aspect of a foreclosure,
21 sale, or other disposition under this section, including the method, time, date, place, and terms, must be
22 commercially reasonable.” Nevada’s version of the UCIOA contains no such language.

23 At page 24 of its motion, plaintiff argues that the “Exterior BPO Form” prepared by Craig Tann,
24 LTD on February 6, 2012 (Exhibit 3A to the affidavit of Julie Lor) proves that the fair market value of
25 the Property “around the time of sale” was \$62,500.00. On the other hand, the following language
26 appears at the bottom of page 3 of Exhibits 3A: “The attached Broker Price Opinion (BPO) has been
27 completed outside of The Uniform Standards of Professional Appraisal Practice (USPAP). The BPO is

1 an evaluation tool and is **not considered an appraisal of the market value of the property** – it is an
2 opinion of the probable sales price.” (emphasis added) Consequently, plaintiff has not provided
3 admissible evidence supporting its claim that “the Property sold for less than the 10% percent of the fair
4 market value, which is naturally well below the 20% threshold.”

5 **CONCLUSION**

6 Here, there is no evidence of fraud, oppression or unfairness in regards to the foreclosure sale.
7 Copies of both the notice of default and the notice of foreclosure sale were mailed to the plaintiff at the
8 addresses in the plaintiff’s deed of trust, and plaintiff took no action to protect its “subordinate” deed of
9 trust from being extinguished.

10 Resources Group, LLC respectfully requests that the court enter an order denying plaintiff’s
11 motion for summary judgment and granting Resource’s countermotion for summary judgment.

12 DATED this 2nd day of June, 2016

13 LAW OFFICES OF
14 MICHAEL F. BOHN, ESQ., LTD.

15 By: /s/ Michael F. Bohn, Esq./
16 Michael F. Bohn, Esq.
17 376 East Warm Springs Road, Ste. 140
18 Las Vegas, Nevada 89119
19 Attorney for counter-claimant,
20 Resources Group, LLC
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1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law
3 Offices of Michael F. Bohn., Esq., and on the 2nd day of June, 2016, an electronic copy of the foregoing
4 OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND RESOURCE
5 GROUP, LLC'S COUNTERMOTION FOR SUMMARY JUDGMENT was served on opposing counsel
6 via the Court's electronic service system and/or deposited for mailing in the U.S. Mail, postage prepaid
7 to the following:

8 Sherry A. Moore, Esq.
9 Benjamin D. Petiprin, Esq.
10 ZIEVE, BRODNAX & STEELE, LLP
11 3753 Howard Hughes Parkway
12 Suite 200
13 Las Vegas, NV 89169

14 /s/ /Maurice Mazza /
15 An Employee of the LAW OFFICES OF
16 MICHAEL F. BOHN, ESQ., LTD.
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EXHIBIT A

EXHIBIT A

APN: 163-24-111-021
RECORDING REQUESTED BY:

**When Recorded Mail Document
and Tax Statement To:**

Bourne Valley Court Trust
900 S. Las Vegas Blvd #810
Las Vegas, NV 89101

RPTT: \$ EXEMPT 7

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That Resources Group LLC, a Nevada Limited Liability Company, Trustee of the Rollingstone Drive Trust dated 01/25/2012 who acquired title as Rollingstone Drive Trust

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do(es) hereby Grant, Bargain, Sell and

Convey to Resources Group LLC, a Nevada Limited Liability Company as Trustee of the Bourne Valley Court Trust dated 05/04/2012

all that real property situated in Clark County, State of Nevada, bounded and described as follows:

PARCEL I:

LOT NINETEEN (19) OF GLENVIEW WEST TOWNHOMES, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 30 OF PLATS, PAGE 65, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL II:

AN EASEMENT FOR INGRESS AND EGRESS OVER THE COMMON AREA AND PRIVATE STREETS AS SHOWN BY MAP THEREOF ON FILE IN BOOK 30 OF PLATS, PAGE 65, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

SUBJECT TO: 1. Taxes for the fiscal year 2011-2012

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

Together with all and singular tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

DATED: May 29, 2012

Inst #: 201205290002144
Fees: \$18.00 N/C Fee: \$0.00
RPTT: \$0.00 Ex: #007
05/29/2012 02:44:44 PM
Receipt #: 1178391
Requestor:
RESOURCE GROUP LLC
Recorded By: SCA Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

STATE OF NV

COUNTY OF CLARK

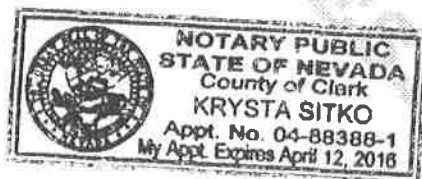
I, KRYSTA SITKO, a Notary Public of the
County and State first above written, do hereby
certify that lyad Haddad personally appeared
before me this day and acknowledged the due
execution of the foregoing instrument.

Witness my hand and official seal, this the
29th OF May 2012

Notary Public KRYSTA SITKO

My Commission Expires: 4/12/16

(SEAL)



Rollingstone Drive Trust dated 01/25/2012

By: Resources Group LLC, a Nevada Limited
Liability Company

BY: [Signature]
lyad Haddad, Manager

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

- a) 163-24-111-021
b) _____
c) _____
d) _____

2. Type of Property:

- | | | | |
|-----------------------------|-----------------|--|------------------|
| a) <input type="checkbox"/> | Vacant Land | b) <input checked="" type="checkbox"/> | Single Fam. Res. |
| c) <input type="checkbox"/> | Condo/Townhouse | d) <input type="checkbox"/> | 2-4 Plex |
| e) <input type="checkbox"/> | Apt. Bldg. | f) <input type="checkbox"/> | Comm'l/Ind'l |
| g) <input type="checkbox"/> | Agricultural | h) <input type="checkbox"/> | Mobile Home |
| i) <input type="checkbox"/> | Other | | |

FOR RECORDERS OPTIONAL USE ONLY

Book: _____ Page: _____
Date of Recording: _____
Notes: _____

Cert of Trust

3. a) Total Value/Sales Price of Property \$ _____
b) Deed in Lieu of Foreclosure Only (value of property) \$ _____
c) Transfer Tax Value: \$ _____
d) Real Property Tax Due \$ 0.00

4. If Exemption Claimed:

- a) Transfer Tax Exemption, per NRS 375.090, Section: 7
b) Explain Reason for Exemption: TRUST TO TRUST
WITHOUT CONSIDERATION

5. Partial Interest: Percentage being transferred: 100.00%

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

Signature: _____

Capacity: Grantor

Signature: _____

Capacity: Grantee

SELLER (GRANTOR) INFORMATION

BUYER (GRANTEE) INFORMATION

(Required)

(Required)

Print Name: Rollingstone Drive Trust dated
01/25/2012

Print Name: Bourne Valley Court Trust

Address: 900 S. Las Vegas Blvd #810

Address: 900 S. Las Vegas Blvd #810

City, State, Zip: Las Vegas, NV 89101

City, State, Zip: Las Vegas, NV 89101

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

Fidelity National Title Agency of Nevada, Inc.

Escrow #: FT13-FT00000442-LC

3100 W Sahara Avenue #115

Las Vegas, NV 89102

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

EXHIBIT B

EXHIBIT B

Inst #: 201201310001704

Fees: \$17.00 N/C Fee: \$0.00

RPTT: \$28.05 Ex: #

01/31/2012 09:09:48 AM

Receipt #: 1052023

Requestor:

ALESSI & KOENIG LLC (JUNES

Recorded By: DXI Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
4254 Rolling Stone Dr Trust
PO Box 36208
Las Vegas, NV 89133

A.P.N. No. 163-24-111-021

TS No. 24230-4254

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: 4254 Rolling Stone Dr Trust

The Foreclosing Beneficiary herein was: Glenview West Townhomes Association

The amount of unpaid debt together with costs (Real Property Transfer Tax Value): \$5,331.00

The amount paid by the Grantee (Buyer) at the Trustee's Sale: \$5,331.00

The Documentary Transfer Tax: \$28.05

Property address: 4254 ROLLINGSTONE DR, LAS VEGAS, NV 89103

Said property is in [] unincorporated area: City of LAS VEGAS

Truster (Former Owner that was foreclosed on): EDWARDS GEORGE R TRUST

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded January 4, 2011 as instrument number 0005412, in Clark County, does hereby grant, without warranty expressed or implied to: 4254 Rolling Stone Dr Trust (Grantee), all its right, title and interest in the property legally described as: LOT 19, as per map recorded in Book 30, Pages 65 as shown in the Office of the County Recorder of Clark County Nevada.

TRUSTEE STATES THAT:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on January 25, 2012 at the place indicated on the Notice of Trustee's Sale.

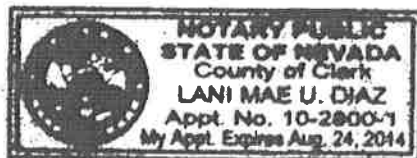
Ryan Kerbow, Esq

Signature of AUTHORIZED AGENT for Glenview West Townhomes Association

State of Nevada)
County of Clark)

SUBSCRIBED and SWORN to before me Jan. 27, 2012

WITNESS my hand and official seal.
(Seal)



(Signature)

#APP
* 10-2800-1

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a. 163-24-111-021
b. _____
c. _____
d. _____

2. Type of Property:

- | | |
|---|--|
| a. <input type="checkbox"/> Vacant Land | b. <input type="checkbox"/> Single Fam. Res. |
| c. <input checked="" type="checkbox"/> Condo/Twnhse | d. <input type="checkbox"/> 2-4 Plex |
| e. <input type="checkbox"/> Apt. Bldg | f. <input type="checkbox"/> Comm'l/Ind'l |
| g. <input type="checkbox"/> Agricultural | h. <input type="checkbox"/> Mobile Home |
| <input type="checkbox"/> Other | |

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

- 3.a. Total Value/Sales Price of Property \$ 5,331.00
b. Deed in Lieu of Foreclosure Only (value of property (_____)
c. Transfer Tax Value: \$ 5,331.00
d. Real Property Transfer Tax Due \$ 28.05

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section _____
b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100.00 %

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

Signature  Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION

(REQUIRED)

Print Name: Alessi&Koenig, LLC
Address: 9500 W Flamingo # 205
City: Las Vegas
State: NV Zip: 89147

BUYER (GRANTEE) INFORMATION

(REQUIRED)

Print Name: 4254 Rolling Stoone Dr Trust
Address: PO Box 36208
City: Las Vegas
State: NV Zip: 89133

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

Print Name: Alessi&Koenig, LLC
Address: 9500 W Flamingo # 205
City: Las Vegas

Escrow # N/A Foreclosure
State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT C

EXHIBIT C

18

20090326-0003747

Prepared By:
Southwest Financial Services, Ltd.
537 E Pete Rose Way, STE 300
Cincinnati, OH 45202



014560224-000028152

Return To (name and address):
US Recordings
2925 Country Drive STE 201
St. Paul, MN 55117

Assessor's Parcel Number: .163-24-111-021.EA

Fee: \$21.00
N/C Fee: \$25.00
03/26/2009 16:35:04
T20090104864

Requestor:
US RECORDINGS INC
Debbie Conway STN
Clark County Recorder Pgs: 8

State of Nevada Space Above This Line For Recording Data

75536829-NBC
3-12-08

DEED OF TRUST
(With Future Advance Clause)

☐ Master Mortgage

Recorded By

By

By
(Signature) (Date)

1. **DATE AND PARTIES.** The date of this Deed of Trust (Security Instrument) is ...03/03/2009...
..... The parties and their addresses are:

GRANTOR:
GEORGE R. EDWARDS, UNMARRIED

163-24-111-021, ENTIRE PROPERTY
☐ If checked, refer to the attached Addendum incorporated herein, for additional Grantors,
their signatures and acknowledgments.

TRUSTEE:
U.S. Bank Trust Company, National Association,
a national banking association organized under the laws of the United States
111 SW Fifth Avenue
Portland, OR 97204

LENDER:
U.S. Bank National Association ND,
a national banking association organized under the laws of the United States
4325 17th Avenue SW
Fargo, ND 58103

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined on page 2) and Grantor's performance under this Security Instrument, Grantor irrevocably grants, bargains, conveys and sells to Trustee, in trust for the benefit of Lender, with power of sale, the following described property *(if property description is in metes and bounds the name and mailing address of the person who prepared the legal description must be included)* :
See attached Exhibit "A"

The property is located in ..CLARK COUNTY..... at
(County)
..4254.ROLLINGSTONE DR ..LAS.VEGAS..... Nevada ..89103-3407...
(Address) (City) (ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time shall not exceed \$..50,000.00..... This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument.

4. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:

A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. *(You must specifically identify the debt(s) secured and you should include the final maturity date of such debt(s).)*
Borrower(s): GEORGE R. EDWARDS
Principal/Maximum Line Amount: 50,000.00
Maturity Date: 03/02/2034
Note Date: 03/03/2009

B. All future advances from Lender to Grantor or other future obligations of Grantor to Lender under any promissory note, contract, guaranty, or other evidence of debt executed by Grantor in favor of Lender after this Security Instrument whether or not this Security Instrument is specifically referenced. If more than one person signs this Security Instrument, each Grantor agrees that this Security Instrument will secure all future advances and future obligations that are given to or incurred by any one or more Grantor, or any one or more Grantor and others. **Future advances are contemplated and are governed by the provisions of NRS 106.300 to 106.400, inclusive.** All future advances and other future obligations are secured by this Security Instrument even though all or part may not yet be advanced. All future advances and other future obligations are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.

(page 2 of 7)

C. All other obligations Grantor owes to Lender, which may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Grantor and Lender.

D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

In the event that Lender fails to provide any required notice of the right of rescission, Lender waives any subsequent security interest in Grantor's principal dwelling that is created by this Security Instrument.

5. **DEED OF TRUST COVENANTS.** Grantor agrees that the covenants in this section are material obligations under the Secured Debt and this Security Instrument. If Grantor breaches any covenant in this section, Lender may refuse to make additional extensions of credit and reduce the credit limit. By not exercising either remedy on Grantor's breach, Lender does not waive Lender's right to later consider the event a breach if it happens again.

Payments. Grantor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.

Prior Security Interests. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Grantor agrees to make all payments when due and to perform or comply with all covenants. Grantor also agrees not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written approval.

Claims Against Title. Grantor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Grantor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Grantor's payment. Grantor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Grantor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Grantor may have against parties who supply labor or materials to maintain or improve the Property.

Property Condition, Alterations and Inspection. Grantor will keep the Property in good condition and make all repairs that are reasonably necessary. Grantor shall not commit or allow any waste, impairment, or deterioration of the Property. Grantor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Grantor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Grantor will notify Lender of all demands, proceedings, claims, and actions against Grantor, and of any loss or damage to the Property. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Grantor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Grantor will in no way rely on Lender's inspection.

Authority to Perform. If Grantor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Grantor appoints Lender as attorney in fact to sign Grantor's name or pay any amount necessary for performance. Lender's right to perform for Grantor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument.

Leaseholds; Condominiums; Planned Unit Developments. Grantor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the Property includes a unit in a condominium or a planned unit development, Grantor will perform all of Grantor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

Condemnation. Grantor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Grantor authorizes Lender to intervene in Grantor's name in any of the above described actions or claims. Grantor assigns to Lender the proceeds of any

(page 3 of 7)

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award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

Insurance. Grantor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Grantor subject to Lender's approval, which shall not be unreasonably withheld. If Grantor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Grantor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Grantor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Grantor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Grantor.

Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Grantor. If the Property is acquired by Lender, Grantor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

Financial Reports and Additional Documents. Grantor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Grantor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Grantor's obligations under this Security Instrument and Lender's lien status on the Property.

6. **WARRANTY OF TITLE.** Grantor warrants that Grantor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to irrevocably grant, bargain, convey and sell the Property to Trustee, in trust, with power of sale. Grantor also warrants that the Property is unencumbered, except for encumbrances of record.
7. **DUE ON SALE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, a transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.
8. **DEFAULT.** Grantor will be in default if any of the following occur:

Fraud. Any Consumer Borrower engages in fraud or material misrepresentation in connection with the Secured Debt that is an open end home equity plan.

Payments. Any Consumer Borrower on any Secured Debt that is an open end home equity plan fails to make a payment when due.

Property. Any action or inaction by the Borrower or Grantor occurs that adversely affects the Property or Lender's rights in the Property. This includes, but is not limited to, the following: (a) Grantor fails to maintain required insurance on the Property; (b) Grantor transfers the Property; (c) Grantor commits waste or otherwise destructively uses or fails to maintain the Property such that the action or inaction adversely affects Lender's security; (d) Grantor fails to pay taxes on the Property or otherwise fails to act and thereby causes a lien to be filed against the Property that is senior to the lien of this Security Instrument; (e) a sole Grantor dies; (f) if more than one Grantor, any Grantor dies and Lender's security is adversely affected; (g) the Property is taken through eminent domain; (h) a judgment is filed against Grantor and subjects Grantor and the Property to action that adversely affects Lender's interest; or (i) a prior lienholder forecloses on the Property and as a result, Lender's interest is adversely affected.

(page 4 of 7)

Executive Officers. Any Borrower is an executive officer of Lender or an affiliate and such Borrower becomes indebted to Lender or another lender in an aggregate amount greater than the amount permitted under federal laws and regulations.

9. **REMEDIES ON DEFAULT.** In addition to any other remedy available under the terms of this Security Instrument, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Grantor is in default. In some instances, federal and state law will require Lender to provide Grantor with notice of the right to cure, or other notices and may establish time schedules for foreclosure actions.

At the option of the Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. Lender shall be entitled to, without limitation, the power to sell the Property.

If there is a default, Trustee shall, at the request of Lender, advertise and sell the Property as a whole or in separate parcels at public auction to the highest bidder for cash and convey absolute title free and clear of all right, title and interest of Grantor at such time and place as Trustee designates. Trustee shall give notice of sale, including the time, terms and place of sale and a description of the Property to be sold as required by the applicable law.

Upon the sale of the Property and to the extent not prohibited by law, Trustee shall make and deliver a deed to the Property sold which conveys absolute title to the purchaser, and after first paying all fees, charges, and costs, shall pay to Lender all moneys advanced for repairs, taxes, insurance, liens, assessments and prior encumbrances and interest thereon, and the principal and interest on the Secured Debt, paying the surplus, if any, to Grantor. Lender may purchase the Property. The recitals in any deed of conveyance shall be prima facie evidence of the facts set forth therein.

The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Grantor's default, Lender does not waive Lender's right to later consider the event a default if it happens again.

10. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION**

COSTS. If Grantor breaches any covenant in this Security Instrument, Grantor agrees to pay all expenses Lender incurs in performing such covenants or protecting its security interest in the Property. Such expenses include, but are not limited to, fees incurred for inspecting, preserving, or otherwise protecting the Property and Lender's security interest. These expenses are payable on demand and will bear interest from the date of payment until paid in full at the highest rate of interest in effect as provided in the terms of the Secured Debt. Grantor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, attorneys' fees, court costs, and other legal expenses. To the extent permitted by the United States Bankruptcy Code, Grantor agrees to pay the reasonable attorneys' fees Lender incurs to collect the Secured Debt as awarded by any court exercising jurisdiction under the Bankruptcy Code. This Security Instrument shall remain in effect until released. Grantor agrees to pay for any recordation costs of such release.

11. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law.

(page 5 of 7)

[Signature]

Grantor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.
 - B. Except as previously disclosed and acknowledged in writing to Lender, Grantor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
 - C. Grantor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Grantor shall take all necessary remedial action in accordance with any Environmental Law.
 - D. Grantor shall immediately notify Lender in writing as soon as Grantor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.
12. **ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Grantor will not be required to pay to Lender funds for taxes and insurance in escrow.
13. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Grantor signs this Security Instrument but does not sign an evidence of debt, Grantor does so only to mortgage Grantor's interest in the Property to secure payment of the Secured Debt and Grantor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Grantor, Grantor agrees to waive any rights that may prevent Lender from bringing any action or claim against Grantor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Grantor and Lender.
14. **SEVERABILITY; INTERPRETATION.** This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
15. **SUCCESSOR TRUSTEE.** Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee without any other formality than the designation in writing. The successor trustee, without conveyance of the Property, shall succeed to all the title, power and duties conferred upon Trustee by this Security Instrument and applicable law.
16. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one grantor will be deemed to be notice to all grantors.
17. **WAIVERS.** Except to the extent prohibited by law, Grantor waives all appraisalment and homestead exemption rights relating to the Property.
18. **LINE OF CREDIT.** The Secured Debt includes a revolving line of credit. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.

(page 6 of 7)

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19. **APPLICABLE LAW.** This Security Instrument is governed by the laws as agreed to in the Secured Debt, except to the extent required by the laws of the jurisdiction where the Property is located, and applicable federal laws and regulations.
20. **RIDERS.** The covenants and agreements of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument.
[Check all applicable boxes]
☐ Assignment of Leases and Rents ☐ Other
21. ☐ **ADDITIONAL TERMS.**

SIGNATURES: By signing below, Grantor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Grantor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

George R. Edwards 3/3/09
(Signature) GEORGE R. EDWARDS (Date) (Signature) (Date)

ACKNOWLEDGMENT: Nevada, COUNTY OF Clark
STATE OF, COUNTY OF
This instrument was acknowledged before me this 9th day of March, 2009
(Individual) by GEORGE R. EDWARDS, UNMARRIED

My commission expires: Sept. 19, 2012
Debra A. Grusman
(Notary Public)
Customer Service Manager
(Title and Rank)

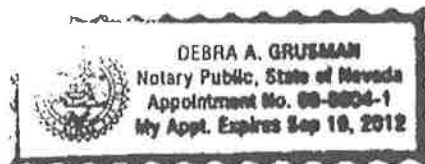


EXHIBIT "A" LEGAL DESCRIPTION

Account #: 14560224
Order Date : 02/27/2009
Reference : 20090581626510
Name : GEORGE R. EDWARDS
Deed Ref : 20020712928

Index #:
Parcel #: 163-24-111-021

SITUATED IN THE STATE OF NEVADA, COUNTY OF CLARK:

**LOT NINETEEN (19) OF GLENVIEW WEST TOWNHOME, AS SHOWN BY MAP THEREOF ON
FILE IN BOOK 30 OF PLATS, PAGE 65, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK
COUNTY, NEVADA.**

**SUBJECT TO ALL EASEMENTS, COVENANTS, CONDITIONS, RESERVATIONS, LEASES AND
RESTRICTIONS OF RECORD, ALL LEGAL HIGHWAYS, ALL RIGHTS OF WAY, ALL ZONING,
BUILDING AND OTHER LAWS, ORDINANCES AND REGULATIONS, ALL RIGHTS OF TENANTS IN
POSSESSION, AND ALL REAL ESTATE TAXES AND ASSESSMENTS NOT YET DUE AND PAYABLE.**

**BEING THE SAME PROPERTY CONVEYED BY DEED RECORDED IN DOCUMENT NO. 20020712928,
OF THE CLARK COUNTY, NEVADA RECORDS.**

EXHIBIT D

EXHIBIT D

DAVID ALESSI*
THOMAS BAYARD**
ROBERT KOENIG***
RYAN KERHOW***

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bars

*** Admitted to the Nevada and California Bars

ALESSI & KOENIG
A Multi-Jurisdictional Law Firm

9500 W. Flamingo Road, Suite 100
Las Vegas, Nevada 89147
Telephone: 702-222-4033
Facsimile: 702-222-4043
www.alessikoenig.com

ADDITIONAL OFFICES

AGOURA HILLS CA
PHONE: 818-735-9600

RENO NV
PHONE: 775-626-2223

DIAMOND BAR CA
PHONE: 909-861-8300

December 20, 2010

LIEN LETTER
VIA REGULAR AND CERTIFIED MAIL

EDWARDS GEORGE R TRUST
4254 ROLLINGSTONE DR
LAS VEGAS, NV 89103

Re: Glenview West Townhomes Association/4254 ROLLINGSTONE DR/TIO #24230

Dear EDWARDS GEORGE R TRUST:

Our office has been retained by Glenview West Townhomes Association to collect the past due assessment balance on your account. Please find the enclosed Notice of Delinquent Assessment (Lien), signed and dated on behalf of Glenview West Townhomes Association on December 20, 2010. The total amount due by January 24, 2011 is \$2,460.00. Please note that the total amount due may differ from the amount shown on the enclosed lien. Please submit payment to our Nevada mailing address listed above by January 24, 2011. Payment must be in the form of a cashier's check or money order and made payable to Alessi & Koenig.

Unless you, within thirty days after receipt of this notice, dispute the validity of this debt, or any portion thereof, our office will assume the debt is valid. If you notify our office in writing within the thirty-day period that the debt, or any portion thereof, is disputed, we will obtain verification of the debt and a copy of such verification will be mailed to you. Upon receipt of your written request within the thirty-day period, we will provide you with the name and address of the original creditor, if different from the current creditor. Please note the law does not require me to wait until the end of the thirty-day period before proceeding to the next step in the collection process. If, however, you request proof of the debt or the name and address of the original creditor within the thirty-day period that begins to suspend my efforts to collect the debt until I mail to you have the right to inspect the association records.

In the event Alessi & Koenig, LLC does not receive costs of \$2,460.00 by January 24, 2011, a Notice of E-Recorder, resulting in additional fees and costs. Should ownership of your property.

ALESSI & K

Please be advised that Alessi & Koenig, J.C. is a debt collection obtained will be us

U.S. Postal Service	
CERTIFIED MAIL - RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage \$	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage	
EDWARDS GEORGE R TRUST	
4254 ROLLINGSTONE DR.	
LAS VEGAS, NV 89103	
Send To	
Street, Apt. # or PO Box #	
City, State, ZIP	

A&K000016

EDWARD APPENDIX 48

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 100
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 163-24-111-021

Trustor Sale # 24230-4254

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of Clark County, Nevada, **Glenview West Townhomes Association** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **4254 ROLLINGSTONE DR, LAS VEGAS, NV 89103** and more particularly legally described as: **LOT 19 Book 30 Page 65** in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are): **EDWARDS GEORGE R TRUST**

The mailing address(es) is: **4254 ROLLINGSTONE DR, LAS VEGAS, NV 89103**

The total amount due through today's date is: **\$2,330.00**. Of this total amount **\$2,280.00** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$50.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **December 20, 2010**

By:

Mary Indalecio - Legal Assistant

Alessi & Koenig, LLC on behalf of **Glenview West Townhomes Association**

State of Nevada

County of Clark

SUBSCRIBED and SWORN before me December 20, 2010

(Seal)

(Signature)

NOTARY PUBLIC

A&K000016

EDWARD ALESSI & KOENIG 299
USB0047

EXHIBIT E

EXHIBIT E

Inst #: 201101040005412
Fees: \$14.00
N/C Fee: \$0.00
01/04/2011 09:46:04 AM
Receipt #: 631834
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: BGN Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 100
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 163-24-111-021

Trustee Sale # 24230-4254

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of **Clark County, Nevada, Glenview West Townhomes Association** has a lien on the following legally described property.

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The owner(s) of record as reflected on the public record as of today's date is (are): **EDWARDS GEORGE R TRUST**

The mailing address(es) is: **4254 ROLLINGSTONE DR, LAS VEGAS, NV 89103**

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Date: **December 20, 2010**

By:


Mary Indalecio - Legal Assistant

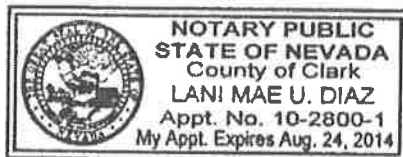
Alessi & Koenig, LLC on behalf of **Glenview West Townhomes Association**

State of Nevada

County of Clark

SUBSCRIBED and SWORN before me ²⁶December 20, 2010

(Seal)



(Signature)


NOTARY PUBLIC

EXHIBIT F

EXHIBIT F

Inst #: 201103290002690

Fees: \$14.00

N/C Fee: \$0.00

03/29/2011 09:54:46 AM

Receipt #: 720898

Requestor:

ALESSI & KOENIG LLC (JUNES

Recorded By: EAH Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 100
Las Vegas, Nevada 89147
Phone: 702-222-4033

A.P.N. 163-24-111-021

Trustee Sale No. 24230-4254

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is **\$3,800.00** as of **March 2, 2011** and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **Glenview West Townhomes Association, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 100, Las Vegas, NV 89147.**

THIS NOTICE pursuant to that certain Assessment Lien, recorded on **January 4, 2011** as document number **0005412**, of Official Records in the County of **Clark**, State of Nevada. Owner(s): **EDWARDS GEORGE R TRUST**, of **LOT 19**, as per map recorded in Book **30**, Pages **65**, as shown on the Plan, Recorded on as document number as shown on the Subdivision map recorded in Maps of the County of **Clark**, State of Nevada. PROPERTY ADDRESS: **4254 ROLLINGSTONE DR, LAS VEGAS, NV 89103**. If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated **January 4, 2011**, executed by **Glenview West Townhomes Association** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated: **March 2, 2011**

Mary Indalecio, Alessi & Koenig, LLC on behalf of **Glenview West Townhomes Association**

EXHIBIT G

EXHIBIT G

EDWARDS GEORGE R TRUST
4254 ROLLINGSTONE DR
LAS VEGAS, NV 89103

REPUBLIC SERVICES
ACCT# [REDACTED] 308
PO BOX 98506
LAS VEGAS, NV 89193-8506

US RECORDINGS
2925 COUNTRY DRIVE STE. 201
ST. PAUL, MN 55117

ROBERT HAZELL
14983 MAMMOTH PL
FONTANA, CA 92338

LAW OFFICE OF AJ KUN, LTD
1020 GARCES AVE, STE 200
LAS VEGAS, NV 89101

U.S. Postal Service
CERTIFIED MAIL... RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information, visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

7010 3670 0002 4330 7092

EDWARDS GEORGE R TRUST
4254 ROLLINGSTONE DR
LAS VEGAS, NV 89103

W. FLAMMERS ROAD 88147
APR - 5 2011
POE

A&K000044

EDWARD APPENDIX 998
USB0073

A&K K O I G
9500 W. Flamingo Rd. Suite 100
Las Vegas, NV 89147

ROBERT HAZELL
14983 NAWMOTH PL
FONTANA CA 92336



A&K K O I G
9500 W. Flamingo Rd. Suite 100
Las Vegas, NV 89147

US RECORDINGS
2025 COUNTRY DRIVE STE. 201
ST. PAUL, MN 55117



Inst #: 201103290002690
Fees: \$14.00
N/C Fee: \$0.00
03/29/2011 09:54:46 AM
Receipt #: 720888
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: EAH Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 100
Las Vegas, Nevada 89147
Phone: 702-222-4033

A.P.N. 163-24-111-021

Trustee Sale No. 24230-4254

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is \$3,800.00 as of March 2, 2011 and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: Glenview West Townhomes Association, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 100, Las Vegas, NV 89147.

THIS NOTICE pursuant to that certain Assessment Lien, recorded on January 4, 2011 as document number 0005412, of Official Records in the County of Clark, State of Nevada. Owner(s): EDWARDS GEORGE R TRUST, of LOT 19, as per map recorded in Book 30, Pages 65, as shown on the Plan, Recorded on as document number as shown on the Subdivision map recorded in Maps of the County of Clark, State of Nevada. PROPERTY ADDRESS: 4254 ROLLINGSTONE DR, LAS VEGAS, NV 89103. If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated January 4, 2011, executed by Glenview West Townhomes Association to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated: March 2, 2011

Mary Indalecio, Alessi & Koenig, LLC on behalf of Glenview West Townhomes Association

A&K000046

EDWARD USB0077



9500 W. Flamingo Rd. Suite 100
Las Vegas, NV 89147

REPUBLIC SERVICES
ACC# 308
PO BOX 98508
LAS VEGAS, NV 89130-8508



9500 W. Flamingo Rd. Suite 100
Las Vegas, NV 89147



LAW OFFICE OF AJ KUN, LTD
1000 GARCIA AVE, STE 200
LAS VEGAS, NV 89101

A&K000047

EDWARD ARSENOW
USB0078

EXHIBIT H

EXHIBIT H

When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 205
Las Vegas, NV 89147
Phone: 702-222-4033

APN: 163-24-111-021

TSN 24230-4254

Inst #: 201110130001535

Fees: \$14.00

N/C Fee: \$0.00

10/13/2011 09:49:20 AM

Receipt #: 945329

Requestor:

ALESSI & KOENIG LLC (JUNES

Recorded By: OSA Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL The Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

NOTICE IS HEREBY GIVEN THAT:

On November 16, 2011, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on January 4, 2011, as instrument number 0005412, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 4:00 P.M. at 930 S. 4th Street, Las Vegas Nevada 89101.

The street address and other common designation, if any, of the real property described above is purported to be: 4254 ROLLINGSTONE DR, LAS VEGAS, NV 89103. The owner of the real property is purported to be: EDWARDS GEORGE R TRUST

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$5,370.00. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: September 16, 2011



By: Ryan Kerbow, Esq on behalf of Glenview West Townhomes Association

EXHIBIT I

EXHIBIT I

24230

GEORGE R. EDWARDS, TRUSTEE, GEOR
4254 ROLLINGSTONE DR

LAS VEGAS, NV 89103-3407

REPUBLIC SERVICES
ACCT# 620-2221308
PO BOX 98508
LAS VEGAS, NV 89193-8508

LAW OFFICES OF LES ZIEVE
T.S. NO. 10-11871
18377 BEACH BLVD, SUITE 210

HUNTINGTON BEACH, CA 92648

U.S. BANK TRUST COMPANY, NATIONAL
CLARK CO.NV INST NO. 20090326-
111 SW FIFTH AVE

PORTLAND, OR 97204

US RECORDINGS
CLARK CO.NV INST NO. 20090326-
2925 COUNTRY DRIVE STE. 201

ST. PAUL, MN 55117

LAW OFFICE OF AJ KUN, LTD
1020 GARCES AVE, STE 200

LAS VEGAS, NV 89101

SOUTHWEST FINANCIAL SERVICES LTD
CLARK CO.NV INST NO. 20090326-
537 E. PETE ROSE WAY, SUITE 300

CINCINNATI, OH 45202

OMBUDSMANS OFFICE
251 E. SAHARA AVE #205
LAS VEGAS NV 89104
RE: GORDAN MILDEN

ROBERT HAZELL
14983 MAMMOTH PL

FONTANA, CA 92336

GEORGE R. EDWARDS
4254 ROLLINGSTONE DR

LAS VEGAS, NV 89103-3407

U.S. BANK NATIONAL ASSOCIATION ND
CLARK CO.NV INST NO. 20090326-
4325 17TH AVENUE, SW

FARGO, ND 58103


NOTS MAILINGS

7011 1570 0002 4887 1444

U.S. Postal Service[™]
CERTIFIED MAIL[™] RECEIPT
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For delivery information visit our website at www.usps.com.

OFFICIAL USE

Postage \$	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Total Postage: **GEORGE R. EDWARDS, TRUSTEE, GEOR**
4254 ROLLINGSTONE DR
 Sent To
 Street, Apt. No., or PO Box No. **LAS VEGAS, NV 89103-3407**
 City, State, ZIP+4


PS Form 3800, August 2006 See Reverse for Instructions

7011 1570 0002 4887 1406

U.S. Postal Service[™]
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Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Total Postage & **US RECORDINGS**
 Sent To **CLARK CO. NV INST NO. 20090326-**
2925 COUNTRY DRIVE STE. 201
 Street, Apt. No., or PO Box No.
 City, State, ZIP+4 **ST. PAUL, MN 55117**

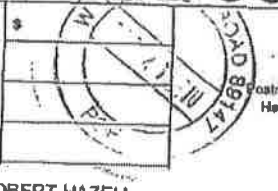
PS Form 3800, August 2006 See Reverse for Instructions

7011 0470 0001 1671 2458

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Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Total Postage & **ROBERT HAZELL**
 Sent To **14983 MAMMOTH PL**
 Street, Apt. No., or PO Box No. **FONTANA, CA 92336**
 City, State, ZIP+4

PS Form 3800, August 2006 See Reverse for Instructions

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Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Total Postage & **REPUBLIC SERVICES**
 Sent To **ACCT# 820-2221308**
PO BOX 98508
 Street, Apt. No., or PO Box No. **LAS VEGAS, NV 89193-8508**
 City, State, ZIP+4

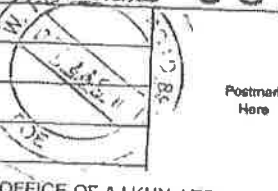
PS Form 3800, August 2006 See Reverse for Instructions

7011 1570 0002 4887 1390

U.S. Postal Service[™]
CERTIFIED MAIL[™] RECEIPT
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OFFICIAL USE

Postage \$	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Total Postage & **LAW OFFICE OF AJ KUN, LTD**
 Sent To **1020 GARCES AVE, STE 200**
 Street, Apt. No., or PO Box No. **LAS VEGAS, NV 89101**
 City, State, ZIP+4

PS Form 3800, August 2006 See Reverse for Instructions