

1 the present.

2 8. Copies of any and all documents evidencing your compliance with
3 preparing and adopting a periodic budget pursuant to NRS 116.31151 from January 1,
4 2011, to the present.

5 9. Copies of any and all documents evidencing correspondence between you
6 and any mortgage lender or servicer concerning the Property from January 1, 2011, to the
7 present. This includes but is not limited to letters, emails, and transcribed telephone calls.

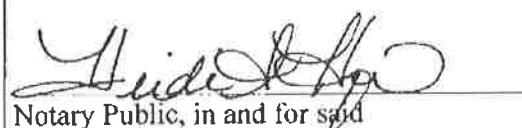
8 4. That Affiant has examined the original of those records and has made or caused to be
9 made a true and exact copy of them and that the reproduction of them attached hereto is true and
10 complete, except for those records which are subject to attorney-client privilege and/or other
11 valid privilege or objection.
12

13 5. That the original of those records was made at or near the time of the act, event,
14 condition, opinion or diagnosis recited therein by or from information transmitted by a person
15 with knowledge, in the course of a regularly conducted activity of Affiant or Alessi & Koenig,
16 LLC.
17

18 FURTHER AFFIANT SAYETH NAUGHT.
19

20
21 
22 DAVID ALESSI, ESQ.,
Affiant

23 SUBSCRIBED AND SWORN before me
24 this 19th day of November, 2015.

25
26 
27 Notary Public, in and for said
28 County and State.

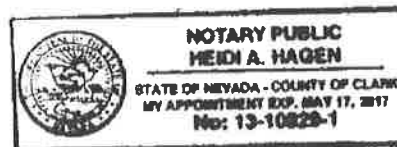


EXHIBIT 9

EXHIBIT 9

LAW OFFICES OF LES ZIEVE
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Attorneys for Plaintiff U.S. Bank National Association, ND

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CASE NO.: A-12-667690-C

DEPT. NO.: XVI

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

Plaintiff,

vs.

**RESPONSES AND OBJECTIONS OF
PLAINTIFF TO INTERROGATORIES
PROPOUNDED BY DEFENDANT
RESOURCES GROUP, LLC**

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 inclusive; and
DOES 1 through 10 inclusive

Defendants.

RESOURCES GROUP, LLC,

Counter-claimant,

vs

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

Counter-defendant.

1 **PROPOUNDING PARTY: RESOURCES GROUP, LLC**

2 **RESPONDING PARTY: U.S. BANK NATIONAL ASSOCIATION, ND**

3 **PRELIMINARY STATEMENT**

4 Pursuant to Nevada Rule of Civil Procedure Section 34, Plaintiff U.S. Bank National
5 Association, ND ("US BANK" or "Responding Party"), responds to the Defendant's First Set
6 of Interrogatories ("Request"), propounded by Resources Group, LLC ("Defendant" or
7 "Propounding Party").

8 Each response set forth herein, is subject to the stated limitations and to this Preliminary
9 Statement, and is as complete as the information reasonably available to Responding Party as
10 of the date of these responses. Responding Party's pre-trial discovery, investigation, and
11 analysis are continuing, and Responding Party may learn of additional information subsequent
12 to the date of these responses. The responses set forth herein are subject to being amended
13 with information and documents subsequently discovered, inadvertently omitted, or mistakenly
14 identified in these initial responses. Moreover, as discovery, investigation, and legal research
15 progress, new facts may be discovered and previously known facts may take on new meaning
16 or significance, thereby changing any conclusions, opinions, representations, objections, and/or
17 statements made herein.

18 All evidentiary objections shall be reserved for the time of trial and no waiver of any
19 objection is to be implied from this Response or any production made pursuant hereto. By this
20 Response and the ensuing production, Responding Party is not making any writing admissible
21 at the time of trial which would otherwise be inadmissible.

22 To the extent that this Response or any production pursuant hereto might waive,
23 whether implicitly or explicitly, any otherwise assertable objection to discovery, such waiver
24 shall be limited to this Response and to the ensuing production only, and shall not extend to
25 any further requests for production or to any discovery proceedings or to any requests or
26 subpoenas for the production of any such writings at the time of trial.

27 ///

1 To the extent that all or any of the requests seek information and/or documents subject
2 to the attorney-client privilege then the Responding Party asserts the attorney-client and/or
3 work product privileges to each of such requests as appropriate and to the extent necessary to
4 avoid a waiver of such privileges.

5 Responding Party responds to each and every discovery request subject to the
6 foregoing, and each of the foregoing statements and objections are incorporated by reference
7 into each of the following responses.

8 **INTERROGATORY NO. 1:**

9 State the name, address, and phone number for each person who you intend to call as a
10 witness in the trial in this case.

11 **RESPONSE TO INTERROGATORY NO. 1:**

12 Objection. This interrogatory is unreasonably burdensome, oppressive, and overbroad.
13 Without waiving these objections, Responding Party refers Propounding Party to the witnesses
14 identified in its 16.1 Initial Disclosures. Responding Party reserves the right to supplement this
15 response at a later date.

16 **INTERROGATORY NO. 2:**

17 For each person identified by you in interrogatory number 1, please give a brief
18 description of the testimony you anticipate that each witness will give at the trial in this case.

19 **RESPONSE TO INTERROGATORY NO. 2:**

20 See Response to Interrogatory No. 1.

21 **INTERROGATORY NO. 3:**

22 State the name, address, and phone number, and the area of expertise for each expert
23 you have consulted regarding this case.

24 **RESPONSE TO INTERROGATORY NO. 3:**

25 N/A.

26 ///

27 ///

1 **INTERROGATORY NO. 4:**

2 State the name, address, and phone number, and area of expertise for each expert you
3 have retained as a witness to testify in the trial in this case.

4 **RESPONSE TO INTERROGATORY NO. 4:**

5 N/A.

6 **INTERROGATORY NO. 5:**

7 For each expert witness identified by you in interrogatory number 4, please give a brief
8 description of the testimony you anticipate that each expert witness will give at the trial in this
9 case.

10 **RESPONSE TO INTERROGATORY NO. 5:**

11 N/A.

12 **INTERROGATORY NO. 6:**

13 Identify each document or other exhibit you intend to introduce in evidence in the trial
14 of this case.

15 **RESPONSE TO INTERROGATORY NO. 6:**

16 Responding Party refers Propounding Party to the exhibits attached to its Complaint,
17 Second Amendment to Complaint, the exhibits attached to its 16.1 Initial Disclosures, the
18 exhibits attached to its Supplemental Disclosures, its Response to Request for Production No. 1
19 served contemporaneously herewith, and any document or other exhibit Defendant Resources
20 Group, LLC shall introduce in evidence in trial. Responding Party reserves the right to
21 supplement this response at a later date.

22 **INTERROGATORY NO. 7:**

23 Please state the amount of damages you will be seeking at trial.

24 **RESPONSE TO INTERROGATORY NO. 7:**

25 Responding Party refers Propounding Party to its Complaint.

26 **INTERROGATORY NO. 8:**

27 Please explain the basis for each item of damages you will be seeking at trial.

1 **RESPONSE TO INTERROGATORY NO. 8:**

2 See Response to Interrogatory No. 7.

3 **INTERROGATORY NO. 9:**

4 Please explain what efforts, if any, you have made to mitigate your damages in this
5 case.

6 **RESPONSE TO INTERROGATORY NO. 9:**

7 N/A.

8 **INTERROGATORY NO. 10:**

9 To the extent you answered any of the Requests for Admissions served upon you
10 contemporaneously herewith, anything other than an unqualified "Admit," then for each and
11 every such answer, set forth the specific basis or grounds for your answer, whether you are
12 aware of any information, facts, writings or evidence whatsoever relating to this litigation that
13 either supports or contradicts your answer, and the identity of all persons who have any
14 knowledge or information which either supports or contradicts each of your answers which are
15 not an unqualified admission.

16 **RESPONSE TO INTERROGATORY NO. 10:**

17 Objection. This interrogatory is also unreasonably burdensome, oppressive, and
18 overbroad. Without waiving these objections, Plaintiff directs Defendant to the documents
19 produced with Plaintiff's responses to request for production of documents, the documents
20 attached as exhibits in Plaintiff's Complaint for judicial foreclosure of deed of trust, Second
21 Amendment to Complaint, the documents submitted in Plaintiff's initial disclosure of
22 witnesses and documents pursuant to NRCP 16.1, and the documents submitted in Plaintiff's
23 Supplemental Disclosures. U.S. Bank is the custodian of records for the security instruments
24 that are the subject of the instant action. U.S. Bank may be contacted through counsel the Law
25 Offices of Les Zieve.

26 **INTERROGATORY NO. 11:**

27 Identify the facts, information and evidence of which you are aware that supports each

1 affirmative defense claimed in your answer.

2 **RESPONSE TO INTERROGATORY NO. 11:**

3 First, the sale is commercially unreasonable and void because it is commercially
4 unreasonable that a sale for the amount of \$5,331.00 could extinguish a Deed of Trust in the
5 original amount of \$50,000.00. Additionally, per a Broker's Price Opinion dated as of
6 February 6, 2012, which was around the time of the HOA sale date of January 25, 2012, the
7 approximate value of the Property was at least \$62,500.00. Therefore, it is wholly
8 unreasonable that a HOA sale can extinguish a first position Deed of Trust for an amount that
9 is nowhere near the fair market value of the Property at the time of the sale.

10 Second, the sale is void because the HOA did not provide proper notice of the super-
11 priority portion of the lien to U.S. Bank.

12 Third, Defendant is not a bona fide purchaser for value because it had constructive
13 notice that U.S. Bank's security interest was still of record and did nothing to ensure U.S. Bank
14 was paid in full to effectuate a reconveyance of its security interest. Defendant also had actual
15 notice of the contentious state of the law at the time of the HOA sale, i.e. that the state of the
16 law at the time of the foreclosure sale was that a HOA sale could not extinguish a first position
17 deed of trust. Therefore, Defendant knew or should have known that the purchase of the
18 subject real property could, and actually did, result in litigation.

19 Fourth, NRS Chapter 116 is void because it is vague and thus facially unconstitutional,
20 as it does not provide for actual notice to a first position deed of trust holder prior to the
21 foreclosure of any HOA.

22 Fifth, the sale is void because the HOA has not produced any documentation in
23 response to U.S. Bank's subpoena request demonstrating that it complied with the mandatory
24 budget provisions of NRS 116.3115.

25 In support of these factual assertions, Responding Party refers Propounding Party to the
26 exhibits attached to its Complaint, Second Amendment to Complaint, the exhibits attached to
27 its 16.1 Initial Disclosures, the exhibits attached to its Supplemental Disclosures, its Response

1 to Request for Production No. 1 served contemporaneously herewith. Responding Party
2 reserves the right to supplement this response at a later date.

3 **INTERROGATORY NO. 12:**

4 Identify the facts, information and evidence of which you are aware that supports or
5 contradicts your assertion that you were not properly noticed of the Association foreclosure
6 sale.

7 **RESPONSE TO INTERROGATORY NO. 12:**

8 See Response to Interrogatory No. 11.

9 **INTERROGATORY NO. 13:**

10 Identify all communications between you and the Association and/or the Association's
11 agents regarding the Property.

12 **RESPONSE TO INTERROGATORY NO. 13:**

13 Objection. This interrogatory seeks information that is not reasonably calculated to
14 lead to the discovery of relevant or admissible evidence, as it is not Responding Party's
15 responsibility to ensure that Borrower makes all payments to the HOA and a lender need only
16 tender payment of the super-priority amount after receiving proper notice of same to protect its
17 lien interest. Due to the HOA's failure to provide proper notice of the super priority amount to
18 either Responding Party or its predecessor in interest, no action could be taken to tender
19 payment of the super-priority portion of the HOA's lien.

20 **INTERROGATORY NO. 14:**

21 Identify any pooling and servicing agreement and/or servicing guidelines applicable to
22 your security interest in the Property, including any pooling and servicing agreements for prior
23 servicers.

24 **RESPONSE TO INTERROGATORY NO. 14:**

25 Objection. This interrogatory seeks information that is not reasonably calculated to lead
26 to the discovery of relevant or admissible evidence, and seeks information that is equally
27

1 available to the Propounding Party. Responding Party reserves the right to supplement this
2 response at a later date.

3 **INTERROGATORY NO. 15:**

4 Identify all communications between you and the current and any prior servicer of your
5 loan regarding any association lien on the Property.

6 **RESPONSE TO INTERROGATORY NO. 15:**

7 Objection. This interrogatory is vague, ambiguous, is unreasonably burdensome,
8 oppressive, and overbroad. Without waiving said objection, Responding Party cannot produce
9 such communications because they do not exist.

10 **INTERROGATORY NO. 16:**

11 Please provide a list of each and every monetary payment sent to the Association or its
12 agents relating to an Association lien on the Property. For each payment, please include the
13 date of payment, amount of payment, the name and address of the person/entity to whom the
14 payment was sent, the method and manner the payment was sent, the name of the person who
15 sent the payment, and whether the payment was accepted or rejected.

16 **RESPONSE TO INTERROGATORY NO. 16:**

17 Objection. This interrogatory is vague, ambiguous, is unreasonably burdensome,
18 oppressive, and overbroad. Without waiving said objection, see Response to Interrogatory No.
19 13.

20 **INTERROGATORY NO. 17:**

21 Identify any steps you took to ensure the Association received the assessments owed in
22 relation to the Property.

23 **RESPONSE TO INTERROGATORY NO. 17:**

24 Objection. This interrogatory is vague, ambiguous, is unreasonably burdensome,
25 oppressive, and overbroad. Without waiving said objection, see Response to Interrogatory No.
26 13.

27 ///

1 **INTERROGATORY NO. 18:**

2 Describe any action you or your predecessors in interest took relating to the Association
3 lien, if any, after receiving foreclosure notices, including, but not limited to, notice of
4 delinquent assessment lien, notice of default, and notice of sale.

5 **RESPONSE TO INTERROGATORY NO. 18:**

6 Objection. This interrogatory is vague, ambiguous, is unreasonably burdensome,
7 oppressive, and overbroad. Without waiving said objection, see Response to Interrogatory No.
8 13.

9 **INTERROGATORY NO. 19:**

10 Identify all facts, information, and evidence of which you are aware that contradicts
11 Plaintiff's assertion that it was a bona fide purchaser for value at the Association foreclosure
12 sale.

13 **RESPONSE TO INTERROGATORY NO. 19:**

14 See Response to Interrogatory No. 11.

15 **INTERROGATORY NO. 20:**

16 Describe any interest that any federal government entity may have in the loan.

17 **RESPONSE TO INTERROGATORY NO. 20:**

18 N/A.

19 **INTERROGATORY NO. 21:**

20 Identify the current and all prior servicers for the loan allegedly secured to the Property
21 by the First Deed of Trust.

22 **RESPONSE TO INTERROGATORY NO. 21:**

23 U.S. Bank is the original and current beneficiary. U.S. Bank may be contacted through
24 counsel Law Offices of Les Zieve.

25 ///

26 ///

27 ///

1 **INTERROGATORY NO. 22:**

2 State the name and mailing address for any servicing agent who has serviced any loans
3 on your behalf from the time you acquired the deed of trust in question in this case until the
4 present date.

5 **RESPONSE TO INTERROGATORY NO. 22:**

6 See Response to Interrogatory No. 21.

7 **INTERROGATORY NO. 23:**

8 State each address, including post office boxes where you receive any mail from the
9 time you acquired your interest in the deed of trust until the present.

10 **RESPONSE TO INTERROGATORY NO. 23:**

11 Objection. This interrogatory is vague, ambiguous, is unreasonably burdensome,
12 oppressive, and overbroad. Without waiving said objection, Responding Party refers
13 Propounding Party to the exhibits attached to its Response to Request for Production No. 1
14 served contemporaneously herewith.

15 **INTERROGATORY NO. 24:**

16 Identify all facts, information, and evidence of which you are aware which evidences
17 any fraud, oppression or unfairness in regards to the association foreclosure sale.

18 **RESPONSE TO INTERROGATORY NO. 24:**

19 See Response to Interrogatory No. 11.

20 **INTERROGATORY NO. 25:**

21 Identify all facts, information, and evidence of which you are aware which evidences
22 that the association foreclosure sale was not properly conducted.

23 **RESPONSE TO INTERROGATORY NO. 25:**

24 See Response to Interrogatory No. 11.

25 **INTERROGATORY NO. 26:**

26 Identify all facts, information, and evidence of which you are aware which evidences
27 that the association foreclosure sale was not properly noticed.

1 **RESPONSE TO INTERROGATORY NO. 26:**

2 See Response to Interrogatory No. 11.

3 **INTERROGATORY NO. 27:**

4 Please state all amounts that you have paid for taxes or insurance on the subject
5 property since the date of the Association foreclosure sale.

6 **RESPONSE TO INTERROGATORY NO. 27:**

7 Objection. This interrogatory is vague, ambiguous, is unreasonably burdensome,
8 oppressive, overbroad, and seeks information that is not reasonably calculated to lead to the
9 discovery of relevant or admissible evidence. Therefore, Responding Party is unable to
10 respond to this Interrogatory.

11
12 DATED: January 13, 2016

LAW OFFICES OF LES ZIEVE

13
14 By: /s/ Sherry A. Moore
15 Benjamin D. Petiprin, Esq.
16 Sherry A. Moore, Esq.
17 Attorneys for Plaintiff
18 U.S. Bank National Association, ND
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26
27

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 13th day of January 2016 service of the

4 RESPONSES AND OBJECTIONS OF PLAINTIFF TO INTERROGATORIES

5 PROPOUNDED BY DEFENDANT RESOURCES GROUP, LLC was made:

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

8 () by depositing a copy in the United States Mail postage prepaid to the parties listed below:

9 Michael F. Bohn, Esq.
10 Law Offices of Michael F. Bohn
11 376 East Warm Springs Road, Ste. 140
12 Las Vegas, NV 89119
13 office@bohnlawfirm.com
mbohn@bohnlawfirm.com

14 /s/ Jenny Humphrey
15 Jenny Humphrey, an employee of
16 Law Offices of Les Zieve
17
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EXHIBIT 10

EXHIBIT 10

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); *1 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 irrebuttably 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, 123 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 1934. 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's foreclosure purchase for the amount of the mortgage obligation or less within 90 days of a mortgagor's 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 11

EXHIBIT 11

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.

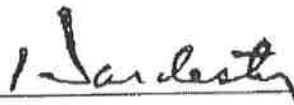
The district court denied appellant's request for a preliminary injunction, reasoning that appellant lacked a likelihood of success on the merits of his quiet title claim because (1) the Supremacy Clause prevented the HOA foreclosure sale from extinguishing respondent's deed of trust, which secured a 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

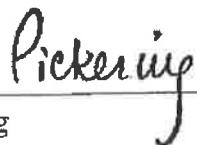
¹We disagree with respondent's suggestion that this appeal is moot, as appellant's request for injunctive relief sought more than to simply prevent respondent from selling the subject property at foreclosure.

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.


Saitta, J.


Pickering, J.

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.

EXHIBIT 12

EXHIBIT 12



August 31, 2016

Resources Group LLC,
Represented by attorney Michael F. Bohn
Law Offices of Michael F. Bohn, Esq. Ltd.
376 E. Warm Springs Rd, Suite 140, Las Vegas, NV 89119

RE: U S Bank National Association, v. George Edwards, et al
(Case #A-12-667690-C)

Dear Mr. Bohn:

Per your request, I have examined the expert appraisal report completed by George P. Holmes of Eagle Appraisal, Inc. (Holmes report or Holmes appraisal). The Holmes report is a retrospective, market value appraisal of the fee simple interest of the subject (4254 Rollingstone Drive) as of January 25, 2012. Communication is via a general-purpose residential form with numerous narrative and graphic addenda. The Holmes report contains 16 pages in total; includes development of the sales comparison approach, utilizing six comparable sales. The signing date was July 28, 2016.

Federal law and/or state law requires professional appraisers to comply with the edition of the Uniform Standards of Professional Appraisal Practice (USPAP) in effect as of the effective date of their work. The USPAP require specific professional ethics, disclosure, and performance when an appraiser is engaged to perform a service requiring his or her appraisal expertise. The USPAP are promulgated by the Appraisal Foundation and are the recognized measure of professional due diligence for all licensed or certified appraisers.

This assignment falls under the category of Appraisal Review as defined by the USPAP. It complies with the current edition of that document. This is a desktop assignment. All opinions, conclusions, and analysis are developed and communicated without advocacy or bias. They are communicated in a manner that is meaningful and not misleading within the context of the intended use, intended users, and scope of work for this assignment.

It is assumed under an Extraordinary Assumption that the factual data presented in the Holmes report is accurate. The independent opinion of value is based on the assumption that the subject was in average condition as of the retrospective effective date. Use of these assumptions is reasonable but may have affected the assignment results. In the case of conflicting data, additional research will be conducted (if necessary) to determine which information is most reliable in order to allow my report to arrive at credible assignment results.

The client for this assignment is Resources Group LLC. The Intended Use is for litigation in the case noted above. Intended Users include the Client represented by the Law Offices of Michael F. Bohn, Esq. Ltd. The Scope of Work for my assignment includes an appraisal review (as defined) of the Holmes report and an independent opinion of the retrospective disposition value. My review emphasizes compliance with the USPAP and generally accepted appraisal methodology. I have examined the techniques and methodology of the Holmes appraisal in order to determine the completeness, adequacy, relevance, appropriateness, and reasonableness of the work under review, developed in the context of the requirements applicable to that work.

The accompanying appraisal review report complies with USPAP Standards Rules 3-4, 3-5 and 3-6. It contains statements and summary discussions of the data, reasoning, and analyses that used in the process of developing my opinions. Supporting documentation concerning the data, reasoning, and analyses is in my work file.

The depth of discussion within this report is specific to the client and intended use stated below. Neither I, nor Brunson-Jiu, LLC is responsible for unauthorized use of this review.

Conclusions – Holmes Expert Appraisal Report

The risk associated with a property following an HOA foreclosure and subject to unresolved litigation is a Detrimental Condition that impairs the subject value as of the retrospective effective date. The appraisal report completed by Holmes purports to provide an opinion of the unimpaired market value. However, it does so in a manner that does not comply with professional standards or generally accepted appraisal methodology.

The report contains numerous errors, violations of the Uniform Standards of Professional Appraisal Practice, and fails to use generally recognized appraisal methodology. These errors of omission and commission cause the appraisal to lack credibility and the report to be misleading.

Moreover, Nevada is a mandatory licensing state for real estate appraisers. Nevada law indicates that licensed appraisers are precluded from conducting complex appraisal assignments.¹ By completing this assignment Mr. Holmes may have exceed the scope of his credential.

¹ NRS 645C.280.1(a)(2)

Conclusions – Independent Opinion of Value

The subject had been a distressed property since at least 1Q 2011. HOA foreclosure properties contain risks and limitations on their bundle of rights. The risk and limited rights associated with an HOA foreclosure property are a Detrimental Condition (DC) that impair its value. A foreclosure sale under NRS 116 can be classified as a Type II DC (Transactional Conditions).

The risk and limitations to the bundle of rights require a definition of value other than Market Value. They preclude the use of traditional owner-equity sales in an analysis of value. They limit the use of non-traditional sales (REO, short sales, or 107 foreclosure sales) in an analysis of value. Similar HOA foreclosure sales and consideration of “current” market conditions provide the best measure of value for this type of transaction.

As an HOA foreclosure property, affected by a Class II detrimental condition, the fee simple impaired value as of January 25, 2012 was:

\$5,300

Five Thousand Three Hundred Dollars (rounded)

Specific findings in support of these conclusions appear in the individual sections of the report that follows this letter. Readers of this report should refer to appropriate versions of the USPAP or relevant cited documents for proper understanding of this appraisal review report. I invite your attention to the accompanying report, from which the above opinions were derived.

Documents relevant to my opinions and conclusions, including but not limited to the workfile for the Holmes report, have not been produced. While I can properly review the report, I cannot fully evaluate whether the analyses, opinions, and conclusions were properly *developed*. Additional findings may apply once the workfile is made available. Future stages of the assignment may include additional valuation services, including but not limited to an independent retrospective appraisal. I reserve my right to amend my findings based on future production of relevant documents.

Respectfully submitted,



Michael L. Brunson, MNAA, SRA

AQB Certified USPAP Instructor / Nevada Certified General Appraiser #A.0207222-CG

August 31, 2016

Assumptions and Limiting Conditions

The submitted report is subject to underlying assumptions and limiting conditions qualifying the information it contains as follows:

1. Possession of this review or copy thereof does not carry with it the right of publication.
2. The purpose of the assignment is to review the appropriateness of the conclusions and the compliance with the USPAP determined within the submitted report.
3. This review is intended solely for the use of the identified Client and Intended User(s). Neither all nor any part of the contents of this review shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent of the reviewer.
4. Unless stated otherwise in the review, the analyses, opinions, and conclusions in this review are based solely on the data, analyses, and conclusions contained in the appraisal report, appraisal review report, and/or the workfile under review.
5. All analyses, opinions, and conclusions expressed by the reviewer are limited by the scope of the review process as defined herein.
6. The conclusions apply only to the property specifically identified and described herein and in the reviewed, appraisal review reports, appraisal reports, and/or associated workfiles.
7. The reviewer has made no legal survey, nor has he commissioned one to be prepared; therefore, reference to a sketch, plat, diagram or previous survey appearing in the report is only for the purpose of assisting the reader to visualize the property.
8. No responsibility is assumed for legal matters existing or pending outside of the existing case.
9. Disclosure of the contents of this review is governed by the Nevada Commission of Appraisers and the USPAP.
10. The compensation received for this assignment is in no manner contingent upon the conclusion of the review.
11. Reviewer Competency: Michael L. Brunson is an AQB Certified USPAP Instructor and is fully competent regarding the proper interpretation and application of the USPAP. He is also a Certified General Appraiser in Nevada and has the geographic competency to appraise the subject and similar properties within the Southern Nevada area.

Appraiser Certification

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the properties that are the subject of the work under review and no personal interest with respect to the parties involved.
- I have performed no other services, as an appraiser or in any other capacity, regarding the property that is the subject of the work under review within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the properties that are the subject of the work under review or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review or from its use.
- My compensation for completing this assignment is not contingent upon the development or reporting of predetermined assignment results or assignment results that favors the cause of the client, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal review.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- I have made no inspection of the subject of the work under review.
- William Slivinski (NV Lic #A.0003887-RES) provided significant professional appraisal review assistance to the person signing this certification.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, I have completed the continuing education program for Designated Members of the Appraisal Institute.



Michael L. Brunson, MNAA, SRA
AQB Certified USPAP Instructor
NV Certified General Appraiser # A.0207222-CG
August 31, 2016

DEFINITIONS

For the purpose of this report, the following definitions apply:

Appraisal²

(noun) The act or process of developing an opinion of value; an opinion of value.
(adjective) of or pertaining to appraising and related functions such as appraisal practice or appraisal services.

Comment: An appraisal must be numerically expressed as a specific amount, as a range of numbers, or as a relationship (e.g., not more than, not less than) to a previous value opinion or numerical benchmark (e.g., taxable value, collateral value).

Appraisal Review³

The act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal or appraisal review assignment.

Comment: The subject of an appraisal review assignment may be all or part of a report, workfile, or a combination of these.

Assessment Stage⁴

The first stage of a detrimental condition analysis. It includes all costs and losses of income.

Assumption⁵

That which is taken to be true.

Class II Detrimental Condition – Transactional Conditions⁶

Class II transactional conditions relate to situations in which some particular and unique issue impacted a specific transaction. This classification includes transactions in which a buyer pays more than necessary to acquire a property or a seller disposes of a property at a discount.

² USPAP 2016-2017 Edition, the Appraisal Foundation.

³ Ibid.

⁴ Randall Bell, PhD, MAI, Real Estate Damages: Applied Economics and Detrimental Conditions, 3rd ed. (Chicago: Appraisal Institute, 2016), p. 456.

⁵ USPAP 2016-2017 Edition, the Appraisal Foundation.

⁶ Randall Bell, PhD, MAI, Real Estate Damages: Applied Economics and Detrimental Conditions, 3rd ed. (Chicago: Appraisal Institute, 2016), p. 73.

Credible⁷

Worthy of belief.

Comment: Credible assignment results require support, by relevant evidence and logic, to the degree necessary for the intended use.

Detrimental Condition⁸

Any issue or condition that may cause a diminution in value to real estate.

Disposition Value⁹

The most probable price that a specified interest in real property should bring under the following conditions:

1. Consummation of a sale within a future exposure time specified by the client.
2. The property is subjected to market conditions prevailing as of the date of valuation.
3. Both the buyer and seller are acting prudently and knowledgeably.
4. The seller is under compulsion to sell.
5. The buyer is typically motivated.
6. Both parties are acting in what they consider to be their best interests.
7. An adequate marketing effort will be made during the exposure time specified by the client.
8. Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto.
9. The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Extraordinary Assumption¹⁰

An assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions.

Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

⁷ USPAP 2016-2017 Edition, the Appraisal Foundation.

⁸ Randall Bell, PhD, MAI, Real Estate Damages: Applied Economics and Detrimental Conditions, 3rd ed. (Chicago: Appraisal Institute, 2016), p. 458.

⁹ The Dictionary of Real Estate Appraisal, 6th Edition, (Chicago: Appraisal Institute, 2015).

¹⁰ USPAP 2016-2017 Edition, the Appraisal Foundation.

Fee Simple Estate¹¹

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

Highest and Best Use¹²

The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.

Hypothetical Condition¹³

That which is contrary to what exists but is supposed for the purpose of analysis.

Comment: Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

Impaired Value¹⁴

The indicated value of a property with a detrimental condition reached upon the application of one or more of the three approaches to value.

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and each is acting in what they consider their own best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and,
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

¹¹ The Dictionary of Real Estate Appraisal, 6th Edition, (Chicago: Appraisal Institute, 2015).

¹² Ibid.

¹³ USPAP 2016-2017 Edition, the Appraisal Foundation.

¹⁴ Randall Bell, PhD, MAI, Real Estate Damages: Applied Economics and Detrimental Conditions, 3rd ed. (Chicago: Appraisal Institute, 2016), p. 461.

1 The second reference reaffirms the court's equitable power to set aside a foreclosure sale in the
2 limited instances when an inadequate price is accompanied by fraud, oppression or unfairness, and cites
3 the Nevada and California case law that discusses these requirements:

4 While not directly addressing the preemption argument Shadow Wood and Gogo Way
5 make as to NRS 116.31166, our post-NRS 107.030(8) cases reaffirm that courts retain the
6 power, in an appropriate case, to set aside a defective foreclosure sale on equitable
7 grounds. *See Golden v. Tomiyasu*, 79 Nev. at 514, 387 P.2d at 995 (adopting the
8 California rule that "inadequacy of price, however gross, is not in itself a sufficient
9 ground for setting aside a trustee's sale legally made; there must be in addition proof
10 of some element of fraud, unfairness, or oppression as accounts for and brings about
11 the inadequacy of price" (quoting *Oller v. Sonoma Cty. Land Title Co.*, 137 Cal.App.2d
12 633, 290 P.2d 880, 882 (Cal.Ct.App.1955))); *McLaughlin v. Mut. Bldg. & Loan Ass'n*, 57
13 Nev. 181, 191, 60 P.2d 272, 276 (1936) (noting that, in the context of an action to recover
14 possession of a property after a trustee sale, "[h]ad the conduct of the trustee and
15 respondent, in connection with the sale, been accompanied by any actual fraud, deceit, or
16 trickery, a more serious question would be presented"); *see also Nev. Land & Mortg. Co.*
17 *v. Hidden Wells Ranch, Inc.*, 83 Nev. 501, 504, 435 P.2d 198, 200 (1967) ("In the proper
18 case, the trial court may set aside a trustee's sale upon the grounds of fraud or
19 unfairness."). And, cases elsewhere to have addressed comparable conclusive-or
20 presumptive-effect recital statutes confirm that such recitals do not defeat equitable relief
21 in a proper case; rather, such recitals are "conclusive, in the absence of grounds for
22 equitable relief." *Holland v. Pendleton Mortg. Co.*, 61 Cal.App.2d 570, 143 P.2d 493, 496
23 (Cal.Ct.App.1943) (emphasis added); *see Bechtel v. Wilson*, 18 Cal.App.2d 331, 63 P.2d
24 1170, 1172 (Cal.Ct.App.1936) (distinguishing between a challenge to the sufficiency of
25 pre-sale notice, which was precluded by the conclusive recitals in the deed, and an
26 equity-based challenge based upon the alleged unfairness of the sale); compare 1 Grant
27 S. Nelson, *Real Estate Finance Law*, *supra*, § 7:23, at 986–87 ("After a defective power
28 of sale foreclosure has been consummated, mortgagors and junior lienholders in virtually
every state have an equitable action to set aside the sale.") (footnotes omitted), with *id.* §
7:22, at 980–82 (noting that "[m]any states have attempted to enhance the stability of
power of sale foreclosure titles by enacting a variety of presumptive statutes"), and 6
Baxter Dimaway, *Law of Distressed Real Estate*, § 64:161 (2015) (noting that a trustee's
deed recital can be overcome on a showing of actual fraud).

366 P.3d at 1110.

20 The third reiteration of the standard is in the paragraph immediately before the reference to the
21 Restatement. The court, having twice stated the standards of an inadequate price as the result of fraud,
22 oppression and unfairness, therein begins its review of these standards. The first element reviewed is the
23 standard for inadequate price, which contains a limited reference to the Restatement. The reference to the
24 Restatement must therefore be read in context with the prior paragraph which is the beginning of the
25 court's analysis of each of the elements required for the court to invoke its equitable powers. The full,
26 two paragraph citation reads:

1 The question remains **whether NYCB demonstrated sufficient grounds** to justify the
2 district court in setting aside Shadow Wood's foreclosure sale on NYCB's motion for
3 summary judgment. Breliant v. Preferred Equities Corp., 112 Nev. 663, 669, 918 P.2d
4 314, 318 (1996) (stating the burden of proof rests with the party seeking to quiet title in
5 its favor). **As discussed above, demonstrating that an association sold a property at
6 its foreclosure sale for an inadequate price is not enough to set aside that sale; there
7 must also be a showing of fraud, unfairness, or oppression.** Long, 98 Nev. at 13, 639
8 P.2d at 530.

9 **NYCB failed to establish that the foreclosure sale price was grossly inadequate as a
10 matter of law.** NYCB compares Gogo Way's purchase price, \$11,018.39, to the amount
11 NYCB bought the property for at its foreclosure sale, \$45,900.00. Even using NYCB's
12 purchase price as a comparator, and adding to that sum the \$1,519.29 NYCB admits
13 remained due on the superpriority lien following NYCB's foreclosure sale, Gogo Way's
14 purchase price reflects 23 percent of that amount and is therefore not obviously
15 inadequate. *See Golden*, 79 Nev. at 511, 387 P.2d at 993 (noting that even where a
16 property was "sold for a smaller proportion of its value than 28.5%," it did not justify
17 setting aside the sale); *see also Restatement (Third) of Prop.: Mortgages* § 8.3 cmt. b
18 (1997) (stating that while "[g]ross inadequacy cannot be precisely defined in terms
19 of a specific percentage of fair market value[, g]enerally ... a court is warranted in
20 invalidating a sale where the price is less than 20 percent of fair market value and,
21 absent other foreclosure defects, is usually not warranted in invalidating a sale that
22 yields in excess of that amount"). (emphasis added)

23 366 P.3d at 1112

24 A examination of the Restatement shows that the entirety of comment b to section 8.3 actually
25 favors the purchaser's position because it is specific to legal proceedings occurring post foreclosure when
26 a bona fide purchaser acquires title to the real property.

27 A portion of comment a to Section 8.3 notes that "close judicial scrutiny of the sale price is more
28 justifiable when the price is being employed to calculate the amount of a deficiency judgment context."

The "Reporters' Note" portion of the Restatement contained on page 590 states in part:

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. (case citations omitted)

The Shadow Wood case cites to the case of Golden v. Tomiyasu 79 Nev. 503, 387 P.2d 989 (1963). The Golden case and the Shadow Wood case both cite to the case of Oller v. Sonoma County Land Title Company 137 Cal. App 2d 633, 290 P.2d 880 (1955). Both the Golden case and the Oller case cite to the case of Schroeder v. Young, 161 U.S. 334, 16 S. Ct. 512, 40 L. Ed 721 (1896). The U.S. Supreme Court cited examples of irregularities which may affect the sale. The court stated:

1 'While mere inadequacy of price has rarely been held sufficient in itself to justify setting
2 aside a judicial sale of property, courts are not slow to seize upon other circumstances
3 impeaching the fairness of the transaction as a cause for vacating it, especially if the
4 inadequacy be so gross as to shock the conscience. If the sale has been attended by any
5 irregularity, as if several lots have been sold in bulk where they should have been sold
6 separately, or sold in such manner that their full value could not be realized; if bidders
have been kept away; if any undue advantage has been taken to the prejudice of the owner
of the property, or he has been lulled into a false security; or if the sale has been
collusively or in any other manner conducted for the benefit of the purchaser, and the
property has been sold at a greatly inadequate price, the sale may be set aside, and the
owner may be permitted to redeem.'

7 The requirements for relief from a foreclosure sale when the property has been purchased by a
8 third party in the Restatement, as well as Shadow Wood, Long and Golden is inadequacy of the price, and
9 fraud, oppression and unfairness causing the inadequacy of price. At no time in the Shadow Wood
10 opinion did court use any language to question the validity of the standards or overturn the court's prior
11 rulings.

12 Many bank attorneys are selectively citing the 20% language of the Restatement cited by the court
13 in Shadow Wood to argue that sales price alone is sufficient to set aside the sale. However, on March
14 18, 2016, the Supreme Court issued an unpublished decision in the case of Centeno v. JPMorgan Chase
15 Bank, docket no. 67365. A copy of the decision is attached as Exhibit 11. The case involved the denial
16 of an injunction based on the Supremacy Clause and because of a commercially unreasonable sales price.
17 The Supreme Court addressed the commercially reasonable argument, stating:

18Similarly, this court's reaffirmation in Shadow Wood Homeowners Association v. New
19 York Community Bank, 132 Nev. Ad. Op. 5, ____ P.3d ____ (2016), that a low sales
20 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.

21 BrunsonJiu is a Las Vegas Valuation, Consulting, and Real Estate Damage Analytics firm.
22 Michael L. Junson of this firm reviewed the appraisal report presented by Plaintiff and found it to lack
23 credibility and to be misleading. Whereas Plaintiff's appraisal found a value of \$48,000.00, the
24 BrunsonJiu report sets forth numerous reasons why a valuation at the time of the sale of \$5,300.00 was
25 more probable. A copy of BrunsonJiu's appraisal review setting forth the reasons for this conclusion,
26 including Plaintiff's appraisal failing to take into account the nature of the sale, is Exhibit 12.

1 Here, the plaintiff has failed to show any instances of fraud, oppression or unfairness in regard
2 to the foreclosure sale. Absent any showing of fraud, oppression or unfairness, there are no grounds to
3 set aside the foreclosure sale or declare that the deed of trust has survived the sale. The motion for
4 summary judgment should be granted in favor defendant/counterclaimant Resources Group, LLC.

5 **H. The claim for fraudulent transfer should be dismissed**

6 The HOA foreclosure sale cannot be a fraudulent transfer as a matter of law because the Property
7 in this case is not an “asset” as defined by NRS 112.150(2).

8 NRS 112.190(1) provides: “A **transfer** made or obligation incurred by a debtor is fraudulent as
9 to a creditor whose claim arose before the **transfer** was made or the obligation was incurred if the debtor
10 made the **transfer** or incurred the obligation without receiving a reasonably equivalent value in exchange
11 for the **transfer** or obligation and the debtor was insolvent at that time or the debtor became insolvent
12 as a result of the **transfer** or obligation.” (emphasis added)

13 NRS 112.150(12) defines “transfer” as “every mode, direct or indirect, absolute or conditional,
14 voluntary or involuntary, of disposing of or parting with an **asset** or an interest in an **asset**, and includes
15 payment of money, release, lease and creation of a lien or other encumbrance.” (emphasis added)

16 NRS 112.150(2) defines the word “asset” and provides:

17 2. “Asset” means property of a debtor, **but the term does not include:**

- 18 (a) **Property to the extent it is encumbered by a valid lien;**
19 (b) **Property to the extent it is generally exempt under nonbankruptcy law;**
20 or
21 © An interest in property held in tenancy by the entireties or as community
22 property to the extent it is not subject to process by a creditor holding a claim
23 against only one tenant. (emphasis added)

24 Here, the Property does not constitute an “asset” under NRS 112.150 because at the time of the
25 HOA foreclosure sale, the Property was encumbered by valid liens.

26 NRS 21.090(1)(l) exempts from execution “[t]he homestead as provided for by law,” and
27 NRS 115.010(1) provides that “[t]he homestead is not subject to forced sale on execution or any final
28 process from any court, except as provided by subsections 2, 3 and 5, and NRS 115.090 and except as
otherwise required by federal law.” In the case of Savage v. Pierson, 123 Nev. 86, 157 P.3d 697 (2007),

1 the Nevada Supreme Court recognized that “Nevada’s Constitution provides for a homestead exemption”
2 and that “[t]he Legislature enacted what is now NRS 21.090 to fulfill the mandate set forth in Nevada’s
3 Constitution.” The Court also stated that “the exemptions set forth in NRS 21.090 are ‘absolute and
4 unqualified,’ with few exceptions, ‘and [their] effect is to remove the property beyond the reach of legal
5 process.”

6 NRS 115.010(2) provides that the homestead exemption “extends only to that amount of equity
7 in the property held by the claimant which does not exceed \$550,00 in value” In the present case,
8 defendant cannot prove that George R. Edwards held equity in the property that exceeded the amount of
9 \$550,000 even if defendant’s extinguished deed of trust is not counted as a lien against the property.
10 Consequently, the property sold at the HOA foreclosure sale was not an “asset” as provided by NRS
11 112.150(2)(b).

12 Comment (2) to section 1 of the Uniform Fraudulent Transfer Act discusses the definition of the
13 word “asset” and recognizes:

14 Subparagraphs (I), (ii), and (iii) provide clarification by excluding from the term not only
15 generally exempt property but also an interest in a tenancy by the entirety in many states
16 and an interest **that is generally beyond reach by unsecured creditors because subject**
17 **to a valid lien.** This Act, like its predecessor and the Statute of 13 Elizabeth, declares
18 rights and provides remedies for unsecured creditors against transfers that impede them
19 in the collection of their claims. The laws protecting valid liens against impairment by
20 levying creditors, **exemption statutes,** and the rules restricting levyability of interest in
21 entireties property **are limitations on the rights and remedies of unsecured creditors,**
22 **and it is therefore appropriate to exclude property interests that are beyond the**
23 **reach of unsecured creditors from the definition of “asset” for the purposes of this**
24 **Act.** (emphasis added)

25 As revealed by this comment, the clear intent of the Uniform Fraudulent Transfer Act is to protect
26 “unsecured” creditors from having a debtor place **nonexempt** assets beyond their reach. No part of the
27 Act is intended to protect a “secured” creditor from losing its security when it allows a senior interest to
28 be foreclosed. Here, because the plaintiff is or was a secured creditor, the statutes do not apply to the
plaintiff, and the claim for fraudulent transfer should be dismissed.

The Nevada Supreme Court has repeatedly held that foreclosure of a senior lien extinguishes all
subordinate liens. McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC, 121 Nev. 812, 818, 123
P.3d 748 (2005); Brunzell v. Lawyers Title Ins. Co., 101 Nev. 395, 705 P.2d 642 (1985); Aladdin

1 Heating Corp. v. Trustees of Central States, 93 Nev. 257, 563 P.2d 82 (1977); Erickson Construction Co.
2 v. Nevada National Bank, 89 Nev. 359, 513 P.2d 1236 (1973). The Nevada Supreme Court applied this
3 same rule in SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408,
4 419 (2014), when it held that “NRS 116.3116(2) gives an HOA a true superpriority lien, proper
5 foreclosure of which will extinguish a first deed of trust.” No provision in the Uniform Fraudulent
6 Transfer Act leads to a different result.

7 NRS 116.31166 provides this exact protection for purchasers at HOA foreclosure sales. NRS
8 116.31166(2) states that the foreclosure deed is “conclusive against the unit’s former owner, his or her
9 heirs and assigns, **and all other persons.**” (emphasis added) “All other persons” necessarily includes
10 unsecured creditors asserting that the HOA foreclosure sale was a fraudulent transfer.

11 NRS 116.31166(3) states that the title of the unit’s owner vests in the purchaser “without equity
12 or right of redemption.” This same language is used in NRS 107.080(5) to describe the title received by
13 a purchaser at a deed of trust foreclosure sale. As noted by the Nevada Supreme Court in Golden v.
14 Tomiyasu, 79 Nev. 503, 387 P.2d 989 (1963), cert. denied, 382 U.S. 844 (1965), a mortgagor or trustor
15 cannot unilaterally create a right of redemption by disputing the price paid at a nonjudicial foreclosure
16 sale. The same rule applies to the plaintiff in this case.

17 The Nevada Supreme Court has stated that a provision which specifically applies to a given
18 situation will take precedence over one that only applies generally. Nevada Power Co. v. Haggerty, 115
19 Nev. 353, 364, 989 P.2d 870, 877 (1999); SIIS v. Surman, 103 Nev. 366, 368, 741 P.2d 1357, 1359
20 (1987); Sierra Life Ins. Co. v. Rottman, 95 Nev. 654, 656, 601 P.2d 56, 57-58 (1979); W.R. Co. v. City
21 of Reno, 63 Nev. 330, 172 P.2d 158 (1946). To allow plaintiff to collaterally attack the “conclusive”
22 HOA foreclosure deed based on general provisions in the Uniform Fraudulent Transfer Act would violate
23 this rule of statutory construction by reading the specific protections in NRS 116.31166 out of the

24 CONCLUSION

25 The HOA’s foreclosure sale extinguished both the plaintiff’s deed of trust, and its interest in the
26 subject property. As conclusively evidenced by the recitals in the foreclosure deed, the HOA’s
27 foreclosure sale complied with all requirements of Nevada law. The recitals are supported by

1 documentation to show the notices went out. The plaintiff has not produced any evidence to show that
2 Resources Group is not a bona fide purchaser, and has failed to demonstrate any fraud, oppression or
3 unfairness to justify setting aside the foreclosure sale.

4 Accordingly, it is respectfully requested that this Court enter an order granting the
5 defendant/counterclaimant's motion for summary judgment and quieting title to the Property in the name
6 of Resources Group, free and clear of all liens and encumbrances and forever enjoining plaintiff from
7 asserting any estate, title, right, interest, or claim to the property adverse to the defendant/counterclaimant,
8 and dismissing the plaintiff's complaint.

9 DATED this 3rd day of January, 2017

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

12
13 By: / s / Michael F. Bohn, Esq. /
14 Michael F. Bohn, Esq.
15 376 E. Warm Springs Road, Ste. 140
16 Las Vegas, Nevada 89119
17 Attorney for Resources Group
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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 3rd day of January, 2017, an electronic copy of the
4 **MOTION FOR SUMMARY JUDGMENT** was served on opposing counsel via the Court's electronic
5 service system to the following counsel of record:

6 Kristin A. Schuler-Hintz, Esq.
7 Thomas N. Beckom, Esq.
8 McCarthy & Holthus, LLP
9 9510 W. Sahara Ave., Ste. 200
10 Las Vegas, NV 89117

11 Attorney for plaintiff/counterdefendant

12 /s/ Marc Sameroff
13 An Employee of the LAW OFFICES OF
14 MICHAEL F. BOHN, ESQ., LTD.
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1 AFFT

MICHAEL F. BOHN, ESQ.

2 Nevada Bar No.: 1641

mbohn@bohnlawfirm.com

3 ADAM R. TRIPPEDI, ESQ.

Nevada Bar No. 12294

4 atrippedi@bohnlawfirm.com

LAW OFFICES OF

5 MICHAEL F. BOHN, ESQ., LTD.

376 East Warm Springs Road, Ste. 140

6 Las Vegas, Nevada 89119

(702) 642-3113/ (702) 642-9766 FAX

7 Attorney for defendant-counter claimant, Resources Group, LLC

8
9 DISTRICT COURT

10 CLARK COUNTY NEVADA

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

13 Plaintiff,

14 vs.

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

21 Defendants.

22
23 RESOURCES GROUP, LLC,

24 Counter-claimant

25 vs

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

28 Counter-defendant

CASE NO.: A667690
DEPT NO.: XVI

1 AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

2 STATE OF NEVADA)
3) ss:
4 ~~COUNTY OF CLARK~~)

5 IYAD HADDAD being first duly sworn, deposes and says;

6 1. Affiant is the person most knowledgeable for Resources Group, LLC, the defendant-counter
7 claimant herein, and makes this affidavit based on personal knowledge.

8 2. Defendant-Counter Claimant, Resources Group, LLC, is the owner of the real property
9 commonly known as 4254 Rollingstone Dr., Las Vegas, Nevada.

10 3. 4254 Rolling Stone Dr Trust acquired title to the property at foreclosure sale conducted on
11 January 25, 2012 as evidenced by the foreclosure deed recorded on January 31, 2012.

12 4. The foreclosure deed reflects that valuable consideration in the sum of \$5,331.00 was paid for
13 the property.

14 5. On May 29, 2012, 4254 Rollingstone Drive Trust recorded a Grant, Bargain, Sale Deed,
15 transferring the Property to Bourne Valley Court Trust.

16 6. The defendant-counter claimant's title stems from a foreclosure deed arising from a
17 delinquency in assessments due from the former owner to the Glenview West Townhomes Association
18 pursuant to NRS Chapter 116.

19 7. Prior to and at the time of the foreclosure sale, there was nothing recorded in the public record
20 to put me on notice of any claims or notices that any portion of the lien had been paid.

21 8. Prior to and at the time of the foreclosure sale, there is no way for myself or any other potential
22 bidder at the foreclosure sale to research if the notices were sent to the proper parties at the proper
23 address. I, and other potential bidders are forced to rely only on the professional foreclosure agent to have
24 obtained a trustee's sale guarantee issued by a local title and escrow company and to serve the notices
25 upon the parties who are entitled to notice.

26 9. As a result of the limited information available to myself and other potential bidders, I, on
27 behalf of the defendant-counter claimant, am a bona fide purchaser of the property, for value, without
28

1 notice of any claims on the title to the property.

2 10. At no time prior to the foreclosure sale did I receive any information from the HOA or the
3 foreclosure agent about the property or the foreclosure sale.

4 11. Neither myself or anyone associated with defendant-counter claimant, Resources Group, LLC,
5 have any affiliation with the HOA board or the foreclosure agent.

6 12. If called upon to testify to the above facts, affiant could do so competently.

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IVAD HADDAD

11 SUBSCRIBED and SWORN to before me
12 this 22 day of December, 2016.

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NOTARY PUBLIC in and for said
County and State

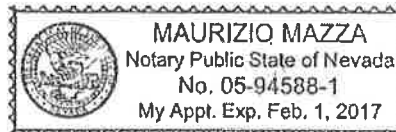


EXHIBIT 1

EXHIBIT 1

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**
Trustor (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:

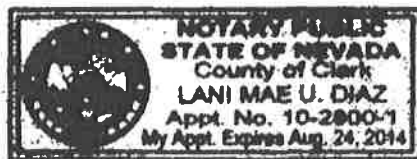
This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. 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)

#APPT
* 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

Escrow # N/A Foreclosure

Address: 9500 W Flamingo # 205

City: Las Vegas

State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT 2

EXHIBIT 2

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

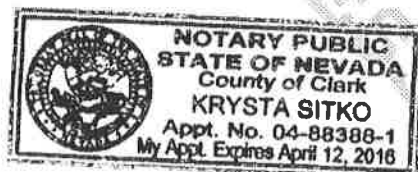
I, KRYSTA SITKO, a Notary Public of the
County and State first above written, do hereby
certify that Iyad Haddad personally appeared
before me this day and acknowledged the due
execution of the foregoing instrument.

Witness my hand and official seal, this the
29th day 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: Iyad 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) ☐ Vacant Land b) ☒ Single Fam. Res.
c) ☐ Condo/Townhouse d) ☐ 2-4 Plex
e) ☐ Apt. Bldg. f) ☐ Comm'l/Ind'l
g) ☐ Agricultural h) ☐ Mobile Home
i) ☐ Other

FOR RECORDERS OPTIONAL USE ONLY

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

Cent of Trust sc

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

(Required)

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

Address: 900 S. Las Vegas Blvd #810

City, State, Zip: Las Vegas, NV 89101

BUYER (GRANTEE) INFORMATION

(Required)

Print Name: Bourne Valley Court Trust

Address: 900 S. Las Vegas Blvd #810

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 3

EXHIBIT 3

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

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bar

*** Admitted to the Nevada and California Bar



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: 775-626-2323

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/HO #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 th

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.

Sincerely,

ALESSI & K

Please be advised that Alessi & Koenig, LLC is a debt collection agency and the information obtained will be used for that purpose.

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

Sent to
Address
or PO Box
City, State, ZIP



A&K000015

EDWARDS GEORGE R TRUST
USB0046

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.

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 ARSENAULT
USB0047

EXHIBIT 4

EXHIBIT 4

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.

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**.

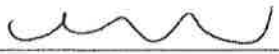
The owner(s) of record as reflected on the public record as of today's date is (are): **EDWARDS GEORGE R TRUST**

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

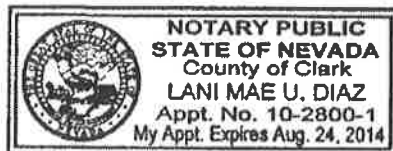
Alessi & Koenig, LLC on behalf of **Glenview West Townhomes Association**

State of Nevada

County of Clark

SUBSCRIBED and SWORN before me ²⁶December 20, 2010

(Seal)



(Signature)


NOTARY PUBLIC

EXHIBIT 5

EXHIBIT 5

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

REPUBLIC SERVICES
ACCT# [REDACTED] 308
PO BOX 98500
LAS VEGAS, NV 89193-8508

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

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

ROBERT HAZELL
14983 MAMMOTH PL
FONTANA, CA 92335

2602 DECEMBER 2000 0247 0102

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
<i>(Domestic Mail Only: No Insurance Coverage Provided)</i>	
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)	
To: EDWARDS GEORGE R TRUST 4254 ROLLINGSTONE DR LAS VEGAS, NV 89103	

W. FLAMMARD ROAD 89117
APR 25 2011
POE

A&K000044

EDWARD ARBON
USB0075

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

ROBERT HAZELL
14983 MANAOTH PL
FONTANA, CA 92336



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

US RECORDINGS
2922 COUNTRY DRIVE STE. 201
ST. PAUL, MN 55117



A&K000045
EDWARD
USB0076

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**



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

REPUBLIC SERVICES

ACC ~~XXXXXXXXXX~~ 908

PO BOX 84508

LAS VEGAS, NV 89183-8508



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



LAW OFFICE OF AJ KORN LTD
1020 GARCES AVE STE 200

LAS VEGAS, NV 89101

A&K000047

EDWARD J. KORN
USB0078

**See*

www.appraisal.com

A&K000048

EDWARD A. ROSENBERG
USB0079

EXHIBIT 6

EXHIBIT 6

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 7

EXHIBIT 7

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

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 \$3,370.00. 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

A&K000049

EDWARD J. BROWN
USBN0080

24230

GEORGE R. EDWARDS, TRUSTEE, GEOR
4254 ROLLINGSTONE DR

LAS VEGAS, NV 89103-3407

REPUBLIC SERVICES
ACCT# 1308
PO BOX 98608
LAS VEGAS, NV 89183-8608

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. 20090328-
111 SW FIFTH AVE

PORTLAND, OR 97204

US RECORDINGS
CLARK CO. NV INST NO. 20090328-
2925 COUNTRY DRIVE STE. 201

ST. PAUL, MN 55117

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

LAS VEGAS, NV 89101

SOUTHWEST FINANCIAL SERVICES LTD
CLARK CO. NV INST NO. 20090328-
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. 20090328-
4325 17TH AVENUE, SW

FARGO, ND 58103

NOTS MAILINGS

A&K000050

EDWARD J. SPENCER
USB00871

7011 1570 0002 4887 1444

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 \$

Sent To: **GEORGE R. EDWARDS, TRUSTEE, GEOR**
4254 ROLLINGSTONE DR
LAS VEGAS, NV 89103-3407

Street, Apt. No.,
 or PO Box No.
 City, State, ZIP+4

PS Form 3800, August 2004

7011 1570 0002 4887 1406

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 \$

Sent To: **US RECORDINGS**
CLARK CO. NV INST NO. 20090328
2925 COUNTRY DRIVE STE. 201
ST. PAUL, MN 55117

Street, Apt. No.,
 or PO Box No.
 City, State, ZIP+4

PS Form 3800, August 2004

7011 0470 0001 1871 2468

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 \$

Sent To: **ROBERT HAZELL**
14993 MAMMOTH PL
FONTANA, CA 92338

Street, Apt. No.,
 or PO Box No.
 City, State, ZIP+4

PS Form 3800, August 2004

7011 1570 0002 4887 1437

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 \$

Sent To: **REPUBLIC SERVICES**
ACCT# 308
PO BOX 98508
LAS VEGAS, NV 89193-8508

Street, Apt. No.,
 or PO Box No.
 City, State, ZIP+4

PS Form 3800, August 2004

7011 1570 0002 4887 1340

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 \$

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

Street, Apt. No.,
 or PO Box No.
 City, State, ZIP+4

PS Form 3800, August 2004

A&K000051

EDWARD USB0082

7011 0470 0001 1871 2451

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 & **GEORGE R. EDWARDS**
4284 ROLLINGSTONE DR
LAS VEGAS, NV 89103-3407

Sent To
 Street, Apt. No., or PO Box No.
 City, State, ZIP+4

Postmark Here

PS Form 3800, August 2006

7011 1570 0002 4887 1420

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 & **LAW OFFICES OF LES ZIEVE**
T.S. NO. 10-11871
18377 BEACH BLVD, SUITE 210
HUNTINGTON BEACH, CA 92640

Sent To
 Street, Apt. No., or PO Box No.
 City, State, ZIP+4

Postmark Here

PS Form 3800, August 2006

7011 0470 0001 1871 2475

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 & **SOUTHWEST FINANCIAL SERVICES LTD**
CLARK CO. NV INST NO. 20090326
537 E. PETE ROSE WAY, SUITE 300
CINCINNATI, OH 45202

Sent To
 Street, Apt. No., or PO Box No.
 City, State, ZIP+4

Postmark Here

PS Form 3800, August 2006

7011 0470 0001 1871 2462

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 & **U.S. BANK NATIONAL ASSOCIATION ND**
CLARK CO. NV INST NO. 20090326
4326 17TH AVENUE, SW
FARGO, ND 58103

Sent To
 Street, Apt. No., or PO Box No.
 City, State, ZIP+4

Postmark Here

PS Form 3800, August 2006

7011 1570 0002 4887 1413

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 & **U.S. BANK TRUST COMPANY, NATIONAL**
CLARK CO. NV INST NO. 20090326
111 SW FIFTH AVE
PORTLAND, OR 97204

Sent To
 Street, Apt. No., or PO Box No.
 City, State, ZIP+4

Postmark Here

PS Form 3800, August 2006

7011 1570 0002 4887 1451

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

Sent To
 Street, Apt. No., or PO Box No.
 City, State, ZIP+4

Postmark Here

PS Form 3800, August 2006

A&K000052

EDWARD USE00083

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

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

A&K000053

EDWARD APPENDIX 74
USB0084

EXHIBIT 8

EXHIBIT 8

AFFIDAVIT OF DAVID ALESSI, ESQ. AS CUSTODIAN OF RECORDS FOR
ALESSI & KOENIG, LLC

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

NOW COMES, DAVID ALESSI, ESQ., who after first being duly sworn, deposes and says:

1. That Affiant is the Managing Partner of Alessi & Koenig, LLC and in his capacity as Managing Partner is a Custodian of the Records of Alessi & Koenig, LLC.

2. That Alessi & Koenig, LLC is licensed to do business as a law firm in the State of Nevada.

3. That on the 14th day October, 2015, Affiant was served with a Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in connection with the case entitled *U.S. BANK NATIONAL ASSOCIATION ND v. GEORGE R. EDWARDS; et al.* (case no. A-12-667690-C), calling for the production of records pertaining to:

1. Copies of any and all documents in your possession concerning or relating to the real property commonly known as 4254 Rollingstone Drive, Las Vegas, NV 89103 (APN #163-24-111-021) (the "Property") from January 1, 2011 to present.

2. Copies of any and all documents in your possession concerning or relating to the foreclosure sale of the Property conducted by you on behalf of Glenview West Townhomes Association, which occurred on or about January 25, 2012.

3. Copies of any and all documents in your possession concerning or relating to any and all notices of delinquent assessment lien prepared, recorded, or mailed by you on the behalf of Glenview West Townhomes Association concerning the Property from January 1, 2011, to the present. This includes but is not limited to books, records, and

1 other tangible things which demonstrate an accounting of the purported unpaid debt on
2 the Property from January 1, 2011 to present, including the nature of the assessments, fines,
3 and penalties which make up this amount.

4 4. Copies of any and all documents in your possession concerning or relating
5 to any and all notices of default prepared, recorded, or mailed by you on the behalf of
6 Glenview West Townhomes Association, concerning the Property from January 1, 2011, to
7 the present. This includes but is not limited to books, records, and other tangible things which
8 demonstrate an accounting of the purported unpaid debt on the Property from January 1,
9 2011 to present, including the nature of the assessments, fines, and penalties which make up
10 the amount purportedly in default.
11

12 5. Copies of any and all documents in your possession concerning or relating
13 to any and all notices of sale prepared, recorded, or mailed by you on the behalf of
14 Glenview West Townhomes Association concerning the Property from January 1, 2011, to
15 the present. This includes but is not limited to books, records, and other tangible things
16 which demonstrate an accounting of the purported unpaid debt on the Property from
17 January 1, 2011 to present, including the nature of the assessments, fines, and penalties
18 which make up the amount
19

20 6. Copies of any and all documents evidencing correspondence between you
21 and Glenview West Townhomes Association, concerning the Property from January 1, 2011,
22 to the present. This includes but is not limited to letters, emails, and transcribed telephone
23 calls.
24

25 7. Copies of any and all documents evidencing your compliance with
26 preparing and adopting a periodic budget pursuant to NRS 116.3115 from January 1, 2011, to
27
28

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. 3
PART 1**

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 02:32 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

TABLE OF CONTENTS

1. Subpoena	501
2. Affidavits of Service	504
3. Stipulation and Order	506
4. Notice and Re-Notice of Deposition	516
5. Order on Motion to Amend	519
6. Motion for Summary Judgment	521
7. U.S. Bank's Motion for Summary Judgment	647

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 whom is knowledge in all of the aforementioned areas on October 27,**
4 **2016 at 10:00am at the Offices of Depo International, 703 S. 8th St., Las Vegas, NV 89101.**

5 Please produce as an individual and/ or individuals knowledgeable in the aforementioned areas:

- 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.
- 12 3. Any and all communications between you and GLENVIEW WEST
13 TOWNHOMES ASSOCIATION from January 1, 2010 to present.
14 "Communications" is be construed as broadly as possible and includes,
15 but is not limited to, emails, letters, phone records, written bids,
16 Facebook and/ or text messages.
- 17 4. Books, records, and other tangible things which demonstrate an
18 accounting of the purported unpaid debt on the real property commonly
19 known as 4254 Rollingstone Dr., Las Vegas, NV 89103 from January
20 1, 2010 to present including the nature of the assessments, fines, and
21 penalties which make up this amount.
- 22 5. An accounting of the proceeds from the January 25, 2012 sale including
23 an accounting of what happened to the excess proceeds from the sale.
- 24 6. Any promotional material you provide to any Homeowners Association
25 regarding the foreclosure process of Homeowners Association Liens
and/ or collection and foreclosure services you offer.
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.

23 /.../...

24 /.../...

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

DATED: October 11, 2016.

McCarthy & Holthus, LLP

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

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.

AFFIDAVIT OF SERVICE

EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
CLARK COUNTY, STATE OF NEVADA

Anna D. Schum
CLERK OF THE COURT

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

Plaintiff(s)

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; et al.,

Defendant(s)

Case No.: A-12-667690-C
Thomas N. Beckorn, Esq. Bar No. 12554
MCCARTHY HOLTHUS-LITIGATIONS
9510 W. Sahara Avenue, Suite 200
Las Vegas, NV 89117
(702) 685-0329
Attorneys for the Plaintiff
Client File# NV-16-736927-CV

I, Diana Brown, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Subpoena, from MCCARTHY HOLTHUS-LITIGATIONS

That on 10/11/2016 at 4:54 PM I served the above listed documents to Alessi & Koenig, LLC - c/o Robert A. Koenig, Registered Agent by personally delivering and leaving a copy at 9500 W. Flamingo Road, Suite 205, Las Vegas, NV 89147, with Steve Loizzi - Attorney a person of suitable age and discretion, authorized by Registered Agent to accept service of process at the above address.

That the description of the person actually served is as follows:

Gender: Male, Race: Caucasian, Age: 36, Height: 5'10", Weight: 200 lbs., Hair: Black, Eyes: Brown

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under perjury that the foregoing is true and correct.

Date: 10/14/16

Diana Brown
Registered Work Card# R-033810
State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:
Nationwide Legal Nevada, LLC
720 S. 4th Street, Suite 305
Las Vegas, NV 89101
(702) 385-5444
Nevada Lic # 1656



AFFIDAVIT OF SERVICE

EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
CLARK COUNTY, STATE OF NEVADA

Anna L. Quinn
CLERK OF THE COURT

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

Plaintiff(s)

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; et al.,

Defendant(s)

Case No.: A-12-667690-C
Thomas N. Beckom, Esq. Bar No. 12554
MCCARTHY HOLTHUS-LITIGATIONS
9510 W. Sahara Avenue, 200
Las Vegas, NV 89117
(702) 685-0329
Attorneys for the Plaintiff
Client File# NV-16-736927-CV

I, Diana Brown, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Subpoena, from MCCARTHY HOLTHUS-LITIGATIONS

That on 10/12/2016 at 9:49 AM I served the above listed documents to Glenview West Townhomes Association - c/o Marquis Aubach Coffing P.C., Registered Agent by personally delivering and leaving a copy at 10001 Park Run Drive, Las Vegas, NV 89145 with Ely Chavez - Front Desk, a person of suitable age and discretion, authorized by Registered Agent to accept service of process at the above address shown on the current certificate of designation filed with the Secretary of State.

That the description of the person actually served is as follows:

Gender: Female, Race: Caucasian, Age: 27, Height: 5'6", Weight: 130 lbs., Hair: Black, Eyes: Brown

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under perjury that the foregoing is true and correct.

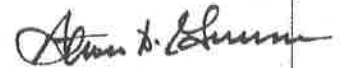
Date: 10/20/16

[Signature]
Diana Brown
Registered Work Card# R-033810
State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:
Nationwide Legal Nevada, LLC
720 S. 4th Street, Suite 305
Las Vegas, NV 89101
(702) 385-5444
Nevada Lic # 1656





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.

16 **STIPULATION AND ORDER TO**
17 **EXTEND DISCOVERY DEADLINES**
18 **(Second Request)**

19 GEORGE R. EDWARDS, an individual, ANY
20 AND ALL PERSON UNKNOWN,
21 CLAIMING TO BE PERSONAL
22 REPRESENTATIVES OF GEORGE R.
23 EDWARDS ESTATE OR DULY
24 APPOINTED, QUALIFIED, AND ACTING
25 EXECUTOR OF THE WILL OF THE
26 ESTATE OF GEORGE R. EDWARDS;
27 RESOURCES GROUP, LLC a Nevada
28 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

IT IS HEREBY STIPULATED AND AGREED, pursuant to EDCR 2.35, by and between the parties, U.S. BANK NATIONAL ASSOCIATION ("U.S. BANK"); and RESOURCES GROUP, LLC through their undersigned counsels of record, that the deadline to complete discovery be extended 30 days. This stipulation is made in good faith and not for purposes of delaying these proceedings.

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

2 This matter involves disputed title to the real property located at 4254 Rollingstone Dr.,
3 Las Vegas, NV 89103 (the "Property"), which was sold at an HOA foreclosure sale. Saticoy
4 purchased the Property at the sale and claims to own the Property free and clear of any first deed
5 of trust. U.S. Bank contends to be the current beneficiary of a first deed of trust still encumbering
6 the Property.

7 On August 30, 2012, U.S. Bank filed a complaint for judicial foreclosure. The Resources
8 Group, LLC filed an answer to the complaint on July 16, 2014 which included a claim for Quiet
9 Title.

10 An Early Case Conference was held on August 17, 2015. A joint case conference report
11 was filed on September 21, 2015 and a scheduling order was entered on October 16, 2015.
12 Thereafter on July 20, 2016; the parties agreed to re-open discovery as well as waive/ extend the 5
13 year rule. Pursuant to the new scheduling order, the current discovery timeline is as follows:

- 14 1. Discovery cut-off -- November 1, 2016
- 15 2. Motions to amend pleadings/add parties -- August 1, 2016
- 16 3. Initial expert disclosures -- August 1, 2016
- 17 4. Rebuttal expert disclosures -- August 31, 2016
- 18 5. Dispositive motions -- December 1, 2016

19 Moreover, an order new order setting civil jury trial was entered on July 20, 2016.

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

22 **II. DISCOVERY COMPLETED TO DATE**

- 23 1. Rule 16.1 early case conference.
- 24 2. Saticoy served its initial disclosures.
- 25 3. U.S. Bank issued subpoenas on the HOA and Alessi & Koenig and have
26 supplemented their disclosure according.
- 27 4. U.S. Bank deposed Iydad Haddad, the Nev. R. Civ. Pro 30(b)(6) witness for

28

Resources Group, LLC

5. Both parties disclosed valuation expert.

III. DISCOVERY THAT REMAINS TO BE COMPLETED

1. Depose Alessi & Koenig
2. Depose the Homeowners Association
3. Supplements to 16.1 initial disclosures.

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

On October 26, 2016; Counsel for Glenview West Townhomes Association contacted counsel for U.S. Bank and requested additional time to produce a properly prepared Nev. R. Civ. Pro 30(b)(6) witness for their deposition. In the spirit of professional courtesy, U.S. Bank and Resources Group, LLC gladly extended this courtesy. On October 27, 2016; U.S. Bank and Resources Group, LLC attempted to depose the Nev. R. Civ. Pro 30(b)(6) witness for Alessi & Koenig, LLC. No witness attended. Both parties at 15 minutes after the appointed time contacted Steve Loizzi, Esq; an attorney for Alessi & Koenig, whom explained that there had been a an inadvertent calendaring error. Both Resources Group as well as U.S. Bank again extended professional courtesy and resolved this matter without the need for Court intervention, however the repeated professional courtesies and re-scheduling has necessitated the extension of discovery, which the parties surmised would be a better use of time than protracted motion work.

V. PROPOSED SCHEDULE FOR COMPLETING ALL DISCOVERY

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

1. Discovery cut-off – December 1, 2016
2. Motions to amend pleadings/add parties – August 1, 2016 [No Change]
3. Initial expert disclosures – August 1, 2016 [No Change]
4. Rebuttal expert disclosures – August 31, 2016 [No Change]
5. Dispositive motions – January 3, 2017

VI. CURRENT TRIAL DATE

The case is set to be tried on a five-week stack to begin on March 6, 2017. At this time, the parties do not wish to continue the trial date.

DATED this 30th day of October, 2016.

DATED this 2nd day of ^{November} October, 2016.

LAW OFFICES OF MICHAEL F. BOHN, ESQ

McCARTHY & HOLTHUS, LLP

Michael Bohn
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
KRISTIN A. SCHULER-HINTZ, ESQ.
Nevada Bar No. 7171
THOMAS N. BECKOM, ESQ.
Nevada Bar No. 12554
MICHAEL PLANK, ESQ.
Nevada Bar No. 14257
9510 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Attorneys for U.S. Bank

ORDER

IT IS SO ORDERED this 9 day of November, 2016.

The discovery deadlines
will be extended as agreed to
by the parties herein;

AS
DISCOVERY COMMISSIONER

a separate amended
scheduling order will
not be issued; the trial
date of 3-6-17 stands for


CLERK OF THE COURT

McCarthy & Holthus, LLP.
Kristin A. Schuler-Hintz, Esq. Nevada State Bar No. 7171
Thomas N. Beckom, Esq. Nevada State Bar No. 12554
9510 West Sahara Avenue, Suite 200
Las Vegas, NV 89117
Telephone: (702) 685-0329
Facsimile: (866) 339-5691
Attorneys for Plaintiff/Counter Defendant U.S. Bank National Association

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

U.S. BANK N.A., 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 EST ATE 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.

Case No. A-2-667690-C

Dept No. XVI

**NOTICE OF ENTRY OF STIPULATION
AND ORDER TO EXTEND DISCOVERY
DEADLINES (SECOND REQUEST)**

AND ALL RELATED CLAIMS

YOU AND ALL OF YOU PLEASE TAKE NOTICE that the following Notice of
Entry of Stipulation and Order to Extend Discovery Deadlines (second request) was entered
on November 15, 2016 for the above captioned matter. A true and correct copy of said Order
is attached hereto.

Dated: November 16, 2016

McCarthy & Holthus, LLP

By: 

Thomas N. Beckom, Esq.

NV-16-736927-CV

EDWARD APPENDIX 510

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 November 16, 2016, I caused the foregoing document entitled: **Notice of Entry of Stipulation and Order to Extend Discovery Deadlines (second request)** [X] 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;


Hall Jaffe & Clayton			
Name	Email	Select	
Amber Geiman	ageiman@lawhjc.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Law Offices of Michael F. Bohn, Esq.			
Name	Email	Select	
Eserve Contact	office@bohnlawfirm.com	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Michael F Bohn Esq	mbohno@bohnlawfirm.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Les Zieve Law Office			
Name	Email	Select	
Benjamin D. Petiprin, Esq.	bpetiprin@zievelaw.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

McCarthy & Holthus, LLP.			
Name	Email	Select	
Kristin Schuier-Hintz	kschv@mccarthyholthus.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

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


Joni Rispalje
An employee of McCarthy & Holthus, LLP


CLERK OF THE COURT

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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
EXTEND DISCOVERY DEADLINES
(Second Request)

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23 ESTATE OF GEORGE R. EDWARDS;
24 RESOURCES GROUP, LLC a Nevada
25 Limited-Liability Company; GLENVIEW
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27 Nevada non-profit corporation; DOES 4
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Defendants.

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5. Dispositive motions -- December 1, 2016

Moreover, an order new order setting civil jury trial was entered on July 20, 2016.

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

II. DISCOVERY COMPLETED TO DATE

1. Rule 16.1 early case conference.
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Resources Group, LLC

5. Both parties disclosed valuation expert.

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V. PROPOSED SCHEDULE FOR COMPLETING ALL DISCOVERY

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

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4. Rebuttal expert disclosures -- August 31, 2016 [No Change]
5. Dispositive motions -- January 3, 2017

VI. CURRENT TRIAL DATE

The case is set to be tried on a five-week track to begin on March 6, 2017. At this time, the parties do not wish to continue the trial date.

DATED this 30th day of October, 2016.

DATED this 2nd day of November, 2016.

LAW OFFICES OF MICHAEL F. BOHN, Esq.

McCARTHY & HOLTUS, 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
MICHAEL PLANK, Esq.
Nevada Bar No. 14257
9510 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Attorneys for U.S. Bank

ORDER

IT IS SO ORDERED this 9 day of November, 2016.

The discovery deadlines
will be extended to agreed to
by the parties hereto;

DISCOVERY COMMISSIONER

a separate amended
scheduling order will
not be issued; the trial
date of 3-6-17 stands.


CLERK OF THE COURT

McCARTHY & HOLTHUS, LLP
Kristin A. Schuler-Hintz, Esq. Nevada State Bar No. 7171
Thomas N. Beckom, Esq. Nevada State Bar No. 12554
9510 West Sahara Avenue, Suite 200
Las Vegas, NV 89117
Telephone: (702) 685-0329
Facsimile: (866) 339-5691
Attorneys for Plaintiff/Counter Defendant U.S. Bank National Association

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

U.S. BANK N.A., 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 EST ATE 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.

Case No. A-2-667690-C
Dept No. XVI


RE-NOTICE OF DEPOSITION

Date: November 29, 2016
Time: 1:00 pm

McCARTHY & HOLTHUS, LLP
ATTORNEYS AT LAW
9510 WEST SAHARA AVENUE, SUITE 200
LAS VEGAS, NV 89117
TELEPHONE (702) 685-0329 Facsimile (866) 339-5691

Please be advised that the Deposition of Glenview West Townhomes Association's date
and time is set for Tuesday, November 29, 2016 at 1:00 pm at the Offices of Depo International,
703 S. 8th St., Las Vegas, NV 89101.

DATED: November 17, 2016.

By: 
Thomas N. Beckom, Esq



CLERK OF THE COURT

McCARTHY & HOLTHUS, LLP

Kristin A. Schuler-Hintz, Esq. Nevada State Bar No. 7171
Thomas N. Beckom, Esq. Nevada State Bar No. 12554
9510 West Sahara Avenue, Suite 200
Las Vegas, NV 89117
Telephone: (702) 685-0329
Facsimile: (866) 339-5691
Attorneys for Plaintiff/Counter Defendant U.S. Bank National Association

IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK COUNTY

U.S. BANK N.A., 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 EST ATE 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.

Case No. A-2-667690-C
Dept No. XVI

NOTICE OF DEPOSITION

Date: November 28, 2016
Time: 1:00 pm

Please be advised that the Deposition of Alessi & Koenig's date and time is set for
Tuesday, November 28, 2016 at 1:00 pm at the Offices of Depo International, 703 S. 8th St., Las
Vegas, NV 89101.

DATED: November 17, 2016.

By:

McCarthy & Holthus, LLP

Thomas N. Beckom, Esq

AFFIDAVIT OF SERVICE

EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
CLARK COUNTY, STATE OF NEVADA

Alvin D. Shuman
CLERK OF THE COURT

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

Plaintiff(s)

v.

GEORGE R. EDWARDS, an individual; et al.,

Defendant(s)

Case No.:A-12-667690-C
Thomas N. Beckom, Esq. Bar No. 12554
MCCARTHY HOLTHUS-LITIGATIONS
9510 W.Sahara Avenue, Suite 200
Las Vegas, NV 89117
(702) 685-0329
Attorneys for the Plaintiff
Client File# NV-16-736927-CV

I, Tanner Trewet, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Subpoena/Notice of Deposition, from MCCARTHY HOLTHUS-LITIGATIONS

That on 11/14/2016 at 9:55 AM I served the above listed documents to Alessi & Koenig, LLC - c/o Robert A. Koenig, Registered Agent by personally delivering and leaving a copy at 9500 W. Flamingo Road, Suite 205, Las Vegas, NV 89147, with Jona Lepoma - Assistant a person of suitable age and discretion, authorized by Registered Agent to accept service of process at the above address.

That the description of the person actually served is as follows:

Gender: Female, Race: Caucasian, Age: 30's, Height: 6'0", Weight: 225 lbs., Hair: Brown, Eyes: Brown

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under perjury that the foregoing is true and correct.

Date: 11/18/2016

Tanner Trewet
Tanner Trewet

Registered Work Card# R-075655
State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:
Nationwide Legal Nevada, LLC
720 S. 4th Street, Suite 305
Las Vegas, NV 89101
(702) 385-5444
Nevada Lic # 1656





CLERK OF THE COURT

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
(702)685-0329(Phone)
(866)339-5691(Fax)
Attorneys for Plaintiff/ Counter Defendant

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.

ORDER ON 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

On September 1, 2016; Plaintiff, U.S. BANK NATIONAL ASSOCIATION ND, A
NATIONAL ASSOCIATION, (hereinafter "U.S. Bank") brought for hearing a Motion to Amend
their Answer to the Counterclaim of Resources Group, LLC. No other party filed an opposition
or otherwise responded.

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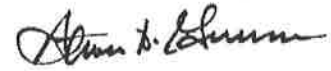
There being no opposition, U.S. Bank,s Motion to Amend their Answer is hereby
GRANTED as unopposed.

Dated this 28th day of November, 2016


DISTRICT COURT JUDGE


McCarthy & Holthus, LLP

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



CLERK OF THE COURT

1 **MSJD**

MICHAEL F. BOHN, ESQ.

2 Nevada Bar No.: 1641

mbohn@bohnlawfirm.com

3 ADAM R. TRIPPIEDI, ESQ.

Nevada Bar No. 12294

4 atrippiedi@bohnlawfirm.com

LAW OFFICES OF

5 MICHAEL F. BOHN, ESQ., LTD.

376 East Warm Springs Road, Ste. 140

6 Las Vegas, Nevada 89119

(702) 642-3113/ (702) 642-9766 FAX

7 Attorneys for defendant/counterclaimant Resources Group, LLC

8 DISTRICT COURT
CLARK COUNTY, NEVADA

9
10 U.S. BANK NATIONAL ASSOCIATION, ND, a
national association

11 Plaintiff,

12 vs.

13 GEORGE R. EDWARDS, an individual; ANY AND
14 ALL PERSONS UNKNOWN, CLAIMING TO BE
15 PERSONAL REPRESENTATIVES OF GEORGE
16 R. EDWARDS ESTATE, OR DULY APPOINTED,
17 QUALIFIED, AND ACTING EXECUTOR OF THE
18 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

19 Defendants.

20 RESOURCES GROUP, LLC,

21 Counter-claimant

22 vs

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

24 Counter-defendant

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

25 **MOTION FOR SUMMARY JUDGMENT**

26 Defendant/counterclaimant, Resources Group, LLC, by and through its attorneys, Michael F. Bohn, Esq.

1 and Adam R. Trippiedi, Esq., moves for summary judgment on its counterclaims for quiet title and
2 declaratory relief.

3 This motion is based upon the points and authorities contained herein.

4 DATED this 3rd day of January, 2017.

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

6 By: /s/ Michael F. Bohn, Esq. /
7 Michael F. Bohn, Esq.
8 Adam R. Trippiedi, Esq.
9 376 East Warm Springs Road, Suite 140
Las Vegas, Nevada 89119
Attorneys for defendant/counterclaimant

10 **NOTICE OF MOTION**

11 TO: Parties above named; and

12 TO: Their respective counsel of record:

13 YOU AND EACH OF YOU, PLEASE TAKE NOTICE that the undersigned will bring the above
14 and foregoing Motion on for hearing before the above entitled Court, Department XVI, on
15 the 07 day of FEBRUARY, 2017, at 9:00 a.m. or as soon thereafter as counsel can be heard.

16 DATED this 3rd day of January 2017.

17 LAW OFFICES OF
18 MICHAEL F. BOHN, ESQ., LTD.

19 By: /s/ Michael F. Bohn, Esq./
20 Michael F. Bohn, Esq.
21 Adam R. Trippiedi, Esq.
376 East Warm Springs Road, Suite 140
Las Vegas, Nevada 89119
Attorneys for defendant/counterclaimant

22 **FACTS**

23 **1. Facts regarding the foreclosure sale**

24 Defendant/counterclaimant Resources Group, LLC, as trustee of the Bourne Valley Court Trust
25 (hereinafter "Resources Group") is the owner of the real property commonly known as 4254 Rollingstone
26 Drive, Las Vegas, Nevada ("the Property"). Resource Group's predecessor in interest, Resources Group
27 LLC, a Nevada Limited Liability Company, Trustee of the Rollingstone Drive Trust acquired the property

1 by Foreclosure Deed recorded with the Clark County Recorder on January 31, 2012. A copy of the
2 foreclosure deed is Exhibit 1 hereto. Defendant/counterclaimant Resources Group obtained title to the
3 Property by way of a grant, bargain, sale deed recorded with the Clark County Recorder on May 29, 2012.
4 A copy of the grant, bargain, sale deed is Exhibit 2. The foreclosure deed arises from a delinquency in
5 assessments due from the former owner to the HOA (hereinafter "HOA"), pursuant to NRS Chapter 116.

6 Plaintiff/counterdefendant, U.S. Bank National Association, ND ("plaintiff"), is the beneficiary
7 of a deed of trust that was recorded as an encumbrance on the subject property on March 26, 2009.

8 On December 20, 2010, the foreclosure agent sent the former owners the prelien letter and a copy
9 of the notice of lien. A copy of the letter and the proof of mailing is Exhibit 3.

10 On January 4, 2011, the foreclosure agent recorded the notice of lien. A copy of the notice of lien
11 is attached as Exhibit 4.

12 On March 29, 2011, the foreclosure agent recorded the notice of default and election to sell. The
13 notice of default was mailed to the former owner, U.S. Bank, and other interested parties. A copy of the
14 notice of default and proof of mailing is attached as Exhibit 5.

15 On October 13, 2011, the foreclosure agent recorded a notice of sale. A copy of the notice of sale
16 is attached as Exhibit 6. The foreclosure agent also mailed a copy of the notice of sale to the former
17 owner, U.S. Bank, and other interested parties. A copy of the proof of mailing is Exhibit 7.

18 The notice of foreclosure sale under the lien for delinquent assessments was also served upon the
19 unit owner by posting a copy of the notice in a conspicuous place on the property. The notice of sale was
20 also posted in three locations within the county. Additionally, the foreclosure agent published the notice
21 of sale in Nevada Legal News.

22 As reflected by the recitals in the foreclosure deed, the predecessor in interest to
23 defendant/counterclaimant Resources Group, LLC appeared at the public auction conducted on January
24 25, 2012, and entered the high bid of \$5,331.00 to purchase the Property.

25 The interest of the plaintiff has been extinguished by reason of the foreclosure resulting from a
26 delinquency in assessment due from the former owner to the HOA pursuant to NRS Chapter 116.

27 Plaintiff bank was on actual notice of the HOA foreclosure and failed to take any action to its own
28

1 detriment. Defendant/Counterclaimant Resources Group now moves for summary judgment on its
2 counterclaims for quiet title and declaratory relief and for dismissal of Plaintiff's complaint.

3 **2. Discovery conducted during litigation**

4 Plaintiff conducted the deposition of the custodian of records for Alessi & Koenig, LLC, the
5 foreclosure agent. Plaintiff produced a copy of the file produced by the custodian as a supplement to its
6 16.1 disclosures. The file contained the affidavit of the custodian of records to verify the authenticity of
7 the documents produced. A copy of the affidavit is Exhibit 8. Exhibits 1, 3, 5, 7 and 8 were contained
8 in the Alessi & Koenig, LLC file as produced by the plaintiff. Exhibits 4 and 6 were contained in the
9 Glenview West Townhomes Association's production of documents as produced by Plaintiff.

10 During discovery in this case, the plaintiff was served with interrogatories regarding the
11 defendant/counterclaimant Resource Group's status as a bona fide purchaser, and for proof of fraud,
12 oppression or unfairness or irregularities regarding the noticing or the sale of the property. The plaintiff's
13 answers contained objections and were otherwise non-responsive. A copy of the answers to
14 interrogatories is Exhibit 9.

15 The defendant/counterclaimant propounded interrogatory 19:

16 **INTERROGATORY NO. 19:** Identify all facts, information, and evidence of which
17 you are aware that contradicts defendant's assertion that it was a bona fide purchaser for
value at the Association foreclosure sale.

18 The plaintiff's response was:

19 See response to Interrogatory No. 11. [**RESPONSE TO INTERROGATORY NO. 11:**
20 First, the sale is commercially unreasonable and void because it is commercially
21 unreasonable that a sale for the amount of \$5,331.00 could extinguish a Deed of Trust in
22 the original amount of \$50,000.00. Additionally, per a Broker's Price Opinion dated as of
23 February 6, 2012, which was around the time of the HOA sale date of January 25, 2012,
24 the approximate value of the Property was at least \$62,500.00. Therefore, it is wholly
25 unreasonable that a HOA sale can extinguish a first position Deed of Trust for an amount
26 that is nowhere near the fair market value of the Property at the time of the sale. Second,
27 the sale is void because the HOA did not provide proper notice of the super priority portion
28 of the lien to U.S. Bank. Third, Defendant is not a bona fide purchaser for value because it
had constructive notice that U.S. Bank's security interest was still of record and did
nothing to ensue U.S. Bank was paid in full to effectuate a reconveyance of its security
interest. Defendant also had actual notice of the contentious state of the law at the time of
the HOA sale, i.e., that the state of the law at the time of the foreclosure sale was that a
HOA sale could not extinguish a first position deed of trust. Therefore, Defendant knew
or should have known that the purchase of the subject real property could, and actually did,

1 result in litigation. Fourth, NRS Chapter 116 is void because it is vague and thus facially
2 unconstitutional, as it does not provide for actual notice to a first position deed of trust
3 holder prior to the foreclosure of any HOA. Fifth, the sale is void because the HOA has
4 not produced any documentation in response to U.S. Bank's subpoena request
5 demonstrating that it complied with the mandatory budget provisions of NRS 116.3115.
6 In support of these factual assertions, Responding Party refers Propounding Party to the
7 exhibits attached to its Complaint, Second Amendment to Complaint, the exhibits attached
8 to its 16.1 Initial Disclosures, the exhibits attached to its Supplemental Disclosures, its
9 Response to Request for Production No. 1 served contemporaneously herewith.
10 Responding Party reserves the right to supplement this response at a later date.]

11 The defendant/counterclaimant propounded interrogatory 24:

12 **INTERROGATORY NO. 24:** Identify all facts, information, and evidence of which
13 you are aware which evidences any fraud, oppression or unfairness in regards to the
14 association foreclosure sale.

15 The plaintiff's response was:

16 See Response to Interrogatory No. 11.

17 The defendant/counterclaimant propounded interrogatory 25:

18 **INTERROGATORY NO. 25:** Identify all facts, information, and evidence of which
19 you are aware which evidences that the association foreclosure sale was not properly
20 conducted.

21 The plaintiff's response was:

22 See Response to Interrogatory No. 11.

23 The defendant/counterclaimant propounded interrogatory 26:

24 **INTERROGATORY NO. 26:** Identify all facts, information, and evidence of which
25 you are aware which evidences that the association foreclosure sale was not properly
26 noticed.

27 The plaintiff's response was:

28 See Response to Interrogatory No. 11.

The plaintiff has no proof that the defendant/counterclaimant Resources Group was not a bona
fide purchaser. The plaintiff also has no proof of any fraud, oppression or unfairness, or that the sale was
not properly noticed or conducted. For this reason, the court should grant summary judgment granting
quiet title to the defendant/counterclaimant and dismiss plaintiff's complaint.

POINTS AND AUTHORITIES

A. The bank is not entitled to relief against the bona fide purchaser

Under both the Restatement and Nevada law, the plaintiff bank has no remedies against Resources Group in regard to the foreclosure sale because any damages which the plaintiff may have sustained as a result of an alleged wrongful foreclosure can be compensated with money damages.

The decision in the case of Shadow Wood Homeowners Association v. New York Community Bank, 132 Nev. Adv. Op 5, 366 P.3d 1105 (2016) has limited application because Shadow Wood dealt with title divestment of the former owner. This case, however, deals with the extinguishment of the plaintiff's security interest in the property. However, because Resources Group is a bona fide purchaser, the sale cannot be set aside.

In Shadow Wood, the Supreme Court referred to the Restatement (Third) of Prop.: Mortgages § 8.3. Comment (b) recognizes that where the property has been purchased by a bona fide purchaser, "the real estate is unavailable" and that "price inadequacy" may be raised in a suit against the foreclosing mortgagee for damages. Comment b states:

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 are prejudiced by the sale. **If the real estate is unavailable because title has been acquired by a bona fide purchaser**, the issues 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. (emphasis added)

A copy of Section 8.3 from the Restatement is attached as Exhibit 10.

This authority from the Restatement is consistent with Nevada law and the common law rule that there is no equity jurisdiction when a party has available to itself an adequate remedy at law.

Back in 1868, the court in Sherman v. Clark 4 Nev. 138 (1868) the court stated:

The writ is exclusively an equitable remedy. But equity is chary of its powers; it employs them only when the impotent or tardy process of the law does not afford that complete and perfect remedy or protection which the individual may be justly entitled to. **When therefore it is shown that there is a complete and adequate remedy at law, equity will afford no assistance.** "When a party has a remedy at law," says Mr. Hilliard, "he cannot

1 come into equity, unless from circumstances not within his control he could not avail
2 himself of his legal remedy.” (Hill. Inj. sec. 23.) That full compensation can be had at law
3 is the great rule for withholding the strong arm of the chancellor,” says Mr. Justice
4 Thompson, in *Pusey v. Wright*, (31 Penn. 396.) See also *Thompson v. Matthews* (2 Edw.
5 Ch. R. 213; 9 Page, 323.) **Before refusing its aid upon this ground, however, it must**
6 **appear that the legal remedy is complete and adequate to afford the complainant full**
7 **redress; but when that fact does appear, equity at once relinquishes all control over**
8 **the case, and leaves the party to pursue his legal remedy.** (Emphasis added)

9
10 Likewise, in the case of *Conley v. Chedic* 6 Nev. 222 (1870) the court held:

11 Equity will not take jurisdiction or interpose its powers when there is a full, complete and
12 adequate remedy in the ordinary course of law; that is, when the wrong complained of
13 may be fully compensated in damages, which can easily be ascertained, and it is not
14 shown that a judgment at law cannot be satisfied by execution. (See *Sherman v. Clark*, 4
15 Nev. 138.)

16 In *Turley v. Thomas* 31 Nev. 181, 101 P. 568 (1909) the court stated:

17 Again, in a decision rendered last year, *Hills v. McMunn*, 232 Ill. 488, 83 N. E. 963, it is
18 stated: “It is also contended that the case made by the bill and proofs shows no grounds
19 for the interposition of a court of equity, and that if appellant has any remedy the law will
20 afford adequate relief.

21 In *State v. Second Judicial District Court* 49 Nev. 145, 241 P.317, 43 A.L.R. 1331 (1925), the
22 court stated:

23 As to the contention that pursuant to paragraph 6 the court was authorized to make the
24 appointment under its general equity jurisdiction, we need only say that where it does not
25 appear, as in this case, that the plaintiff has no adequate remedy at law, a court of equity
26 acquires no jurisdiction.

27 In *Washoe County v. City of Reno* 77 Nev. 152, 360 P.2d 602 (1961), the court held that the fact
28 that the judgment may not be collectable is not an issue to be considered. The court stated:

During oral argument, counsel for respondents suggested that an action at law would not
be adequate because it could not be enforced by a writ of execution against a county fund.
Whether this be true or not, it is hardly to be supposed that an execution would be
necessary in the event a judgment at law were obtained against the county in this type of
case any more than a contempt proceeding would be required in the event a peremptory
writ of mandamus were issued. **In answer to this suggestion however it is necessary to**
23 **say only that our concern is with the existence of a remedy and not whether it will**
24 **be unproductive in this particular case.** *Hughes v. Newcastle Mutual Insurance Co.*, 13
25 U.C.Q.B. (Ont.) 153, or inconvenient, *Gulf Research & Development Co. v. Harrison*, 9
26 Cir., 185 F.2d 457, or ineffectual, *United States ex rel. Crawford v. Addison*, 22 How.
27 174, 63 U.S. 174, 16 L.Ed. 304.

28 In *Stewart v. Manget*, 132 Fla. 498, 181 So. 370, in affirming an order dismissing a bill
in equity on the ground that the plaintiff had an adequate remedy at law, the Florida

1 Supreme Court cited with approval the following language from *Tampa & G. C. R. Co.*
2 v. *Mulhern*, 73 Fla. 146, 74 So. 297, 299:

3 'The inadequacy of a remedy at law to produce money is not the test of the
4 applicability of the rule. **All remedies, whether at law or in equity,**
5 **frequently fail to do that; and to make that the test of equity**
6 **jurisdiction would be substituting the result of a proceeding for the**
7 **proceeding which is invoked to produce the result. The true test is,**
8 **could a judgment be obtained in a proceeding at law, and not, would**
9 **the judgment procure pecuniary compensation.'**

10 (Emphasis added)

11 The rule that equity will not be imposed is consistent with Nevada case law protecting the
12 interests of a bona fide purchaser. Any defects in the sale gives the party damaged thereby a claim for
13 money damages against the foreclosure agent. The Supreme Court in the *Shadow Wood* decision
14 repeatedly stated the rule that the title of a bona fide purchaser will not be disturbed. This is consistent
15 with the rule that equity won't interfere when there is an adequate remedy at law.

16 In discussing the bona fide purchaser doctrine the court stated:

17 A subsequent purchaser is bona fide under common-law principles if it takes the property
18 "for a valuable consideration and without notice of the prior equity, and without notice
19 of facts which upon diligent inquiry would be indicated and from which notice would be
20 imputed to him, if he failed to make such inquiry." *Bailey v. Butner*, 64 Nev. 1, 19, 176
21 P.2d 226, 234 (1947) (emphasis omitted); see also *Moore v. De Bernardi*, 47 Nev. 33, 54,
22 220 P. 544, 547 (1923) ("The decisions are uniform that the bona fide purchaser of
23 a legal title is not affected by any latent equity founded either on a trust,
24 [e]ncumbrance, or otherwise, of which he has no notice, actual or constructive.").
25 Although, as mentioned, NYCB might believe that Gogo Way purchased the property for
26 an amount lower than the property's actual worth, that Gogo Way paid "valuable
27 consideration" cannot be contested. *Fair v. Howard*, 6 Nev. 304, 308 (1871) ("The
28 question is not whether the consideration is adequate, but whether it is valuable."); see
also *Poole v. Watts*, 139 Wash.App. 1018 (2007) (unpublished disposition) (stating that
the fact that the foreclosure sale purchaser purchased the property for a "low price"
did not in itself put the purchaser on notice that anything was amiss with the sale).
366 P.3d at 1115-6 (emphasis added)

29 The plaintiff has adduced no evidence that would put the Resources Group on any kind of notice
30 of any type of claim that the plaintiff bank may have. The court should therefore find that title is properly
31 in the name of Resources Group and that the plaintiff's trust deed has been extinguished.

32 Also noted in comment b to the Restatement, any claim the plaintiff bank has is not against
33 Resources Group but against the foreclosure agent. This is consistent with the case law.

1 In the case of Moeller v. Lien, 25 Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994), the respondent
2 allowed a trustee's sale to go forward even though it had available cash deposits to pay off the loan. Id.
3 at 828. The trial court set aside the sale because "[t]he value of the property was four times the amount
4 of the debt/sales price." Id. at 829. The Court of Appeals reversed the trial court's order and stated:

5 **Thus as a general rule, a trustor has no right to set aside a trustee's deed as against**
6 **a bona fide purchaser for value by attacking the validity of the sale.** (Homestead
7 Savings v. Damiento, supra, 230 Cal. App. 3d at p. 436.) The conclusive presumption
8 precludes an attack by the trustor on a trustee's sale to a bona fide purchaser even though
9 there may have been a failure to comply with some required procedure which
10 deprived the trustor of his right of reinstatement or redemption. (4 Miller & Starr,
11 supra, § 9:141, p. 463; cf. Homestead v. Damiento, supra, 230 Cal. App. 3d at p. 436.)
12 The conclusive presumption precludes an attack by the trustor on the trustee's sale to a
13 bona fide purchaser even where the trustee wrongfully rejected a proper tender of
14 reinstatement by the trustor. **Where the trustor is precluded from suing to set aside**
15 **the foreclosure sale, the trustor may recover damages from the trustee.** (Munger v.
16 Moore (1970) 11 Cal. App. 3d 1, 9, 11 [89 Cal. Rptr. 323].)

17 Id. at 831-832. (emphasis added)

18 This holding is consistent with Nevada case law. The Nevada Supreme Court has repeatedly held
19 that equity jurisdiction does not exist when there exists an adequate remedy at law which may be
20 compensated by a judgment for money damages. Any defects in the sale, and there are none in this case,
21 which may have damaged any party with an interest in the party may be compensated by money damages
22 in a claim against the foreclosure agent.

23 The plaintiff therefore has no claim for relief which may be granted against the purchaser,
24 Resources Group because it is a bona fide purchaser.

25 **B. The Trust Deed has been Extinguished.**

26 In its decision in the case of SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv.
27 Op. 75, 334 P.3d 408 (2014), the Nevada Supreme Court stated:

28 NRS 116.3116 gives a homeowners' association (HOA) a superpriority lien on an individual
homeowner's property for up to nine months of unpaid HOA dues. With limited exceptions, this
lien is "prior to all other liens and encumbrances" on the homeowner's property, even a first deed
of trust recorded before the dues became delinquent. NRS 116.3116(2). We must decide whether
this is a true priority lien such that its foreclosure extinguishes a first deed of trust on the property
and, if so, whether it can be foreclosed nonjudicially. We answer both questions in the
affirmative and therefore reverse.

334 P.3d at 409.

1 At the conclusion of its opinion, the Nevada Supreme Court stated:

2 NRS 116.3116(2) gives an HOA a true superpriority lien, proper foreclosure of which will
3 extinguish a first deed of trust. Because Chapter 116 permits nonjudicial foreclosure of
4 HOA liens, and because SFR's complaint alleges that proper notices were sent and
5 received, we reverse the district court's order of dismissal. In view of this holding, we
6 vacate the order denying preliminary injunctive relief and remand for further proceedings
7 consistent with this opinion.

8 334 P.3d at 419.

9 Because the facts in the present case are substantially the same as the facts in SFR Investments
10 Pool 1, LLC v. U.S. Bank, N.A., this Honorable Court should reach the same conclusion that the
11 nonjudicial foreclosure arising from the HOA's super priority lien extinguished the deed of trust held by
12 the plaintiff bank on the date of sale. As a result, this Court should rule that the deed of trust held by
13 plaintiff was extinguished by the HOA's foreclosure sale.

14 **C. There is no requirement that the foreclosure agent obtain sums to satisfy junior liens.**

15 There is no authority for the proposition that a foreclosure agent must seek sufficient sums at
16 foreclosure sale to satisfy the claims of junior lienholders. This was noted by Judge Pro in Bourne Valley
17 Court Trust v. Wells Fargo Bank, 80 F. Supp. 3d 1131 (D. Nev. 2015). The decision addresses
18 commercial reasonableness and notes that there is no duty to obtain sums in excess of the sums necessary
19 to satisfy the HOA lien. The Court stated:

20 Wells Fargo next argues that even if the HOA foreclosure sale extinguished its first deed
21 of trust on the property, the HOA foreclosure sale was "commercially unreasonable" and
22 therefore was void. (Opp'n at 5-7.) Specifically, Wells Fargo argues the HOA foreclosure
23 sale was not conducted in good faith because "the HOA made no effort to obtain the best
24 price or to protect either Johnson or Wells Fargo" by selling the property for \$4,145.00
25 when the assessed value of the property was \$90,543.00. (*Id.* at 7.) Bourne Valley replies
26 that Chapter 116 does not require an HOA foreclosure sale to be commercially reasonable.
27 Bourne Valley further argues that the inadequacy of the price is not sufficient to void the
28 HOA foreclosure sale when there is no evidence of fraud, procedural defects, or other
irregularities in the conduct of the sale.

The commercial reasonableness here must be assessed as of the time the sale occurred.
Wells Fargo's argument that the HOA foreclosure sale was commercially unreasonable
due to the discrepancy between the sale price and the assessed value of the property
ignores the practical reality that confronted the purchaser at the sale. Before the Nevada
Supreme Court issued SFR Investments, purchasing property at an HOA foreclosure sale
was a risky investment, akin to purchasing a lawsuit. Nevada state trial courts and
decisions from the United States District Court for the District of Nevada were divided
on the issue of whether HOA liens are true priority liens such that their foreclosure

1 extinguishes a first deed of trust on the property. *SFR Investments*, 334 P.3d at 412. Thus,
2 a purchaser at an HOA foreclosure sale risked purchasing merely a possessory interest in
3 the property subject to the first deed of trust. This risk is illustrated by the fact that title
4 insurance companies refused to issue title insurance policies on titles received from
5 foreclosures of HOA super priority liens absent a court order quieting title. (Mot. to
6 Remand to State Court (Doc. # 6), Decl. of Ron Bloecker.) Given these risks, a large
7 discrepancy between the purchase price a buyer would be willing to pay and the assessed
8 value of the property is to be expected.

9 **Moreover, Wells Fargo does not point to any evidence or legal authority indicating**
10 **the Court must void an HOA foreclosure sale because the purchaser bid only a**
11 **fraction of the property's assessed value. Wells Fargo does not point to evidence of**
12 **fraud or any other procedural defects or other irregularities in the conduct of the**
13 **sale that would require the Court to void the sale, or any evidence indicating the**
14 **HOA acted in bad faith by selling the property for an amount that would satisfy the**
15 **unpaid assessments. Nor does Wells Fargo point to evidence or legal authority**
16 **indicating that beyond selling the property to the highest bidder, the HOA was**
17 **responsible for protecting Wells Fargo and Johnson's interests in addition to the**
18 **homeowners' interests. See *Carmen v. S.F. Unified Sch. Dist.*, 237 F.3d 1026, 1028-31**
19 **(9th Cir.2001) (stating that a court need not "comb the record" looking for a genuine issue**
20 **of material fact if the party has not brought the evidence to the court's attention) (quotation**
21 **omitted)). Thus, no genuine issue of material fact remains as to whether the HOA**
22 **foreclosure sale was commercially unreasonable. Under the specific facts presented here,**
23 **it was not. (emphasis added)**

24 Id. at 1135-1136.

25 In the case of BFP v. Resolution Trust Corporation, 511 U.S. 531, 548-49 (1994), the U.S.
26 Supreme Court explained why the fair market value of a property sold at foreclosure or a "forced sale"
27 is in fact the price said at the foreclosure sale:

28 ...the fact that a piece of property is legally subject to forced sale, like any other fact
bearing upon the property's use or alienability, necessarily affects its worth. Unlike most
other legal restrictions, however, foreclosure has the effect of completely redefining the
market in which the property is offered for sale; normal free-market rules of exchange are
replaced by the far more restrictive rules governing forced sales. Given this altered
reality, and the concomitant inutility of the normal tool for determining what property is
worth (fair market value), the only legitimate evidence of the property's value at the time
it is sold is the foreclosure-sale price itself.

This BFP case is also cited in Restatement (Third) of Prop.: Mortgages § 8.3.

The court should first consider that the Shadow Wood case was not an HOA lien extinguishment
case. In Shadow Wood, the property owner was trying to set aside the foreclosure sale. Next, the
position taken by most bank counsel ignores the requirement, set forth more than once in the Shadow
Wood case, that there must be evidence of fraud, unfairness or oppression.

1 As demonstrated by the authorities cited above, the bank's remedy for a wrongful foreclosure
2 would be a claim for money damages against the foreclosure agent because Resources Group is a bona
3 fide purchaser.

4 **D. The plaintiff's inactions must be viewed by the court**

5 The Supreme Court in both SFR and Shadow Wood noted that the defendant banks were
6 responsible for their own damages. In SFR Investments Pool 1 v. U.S. Bank 130 Nev. Adv. Op. 75, 334
7 P.3d 408 (2014) the court said not once, but twice, that the price paid at the foreclosure sale was not an
8 issue because the bank could simply have paid the super priority amount to preserve its interest in the
9 property. The Court stated at page 414:

10 U.S. Bank's final objection is that it makes little sense and is unfair to allow a relatively
11 nominal lien—nine months of HOA dues—to extinguish a first deed of trust securing
12 hundreds of thousands of dollars of debt. But as a junior lienholder, U.S. Bank could have
13 paid off the SHHOA lien to avert loss of its security; it also could have established an
14 escrow for SHHOA assessments to avoid having to use its own funds to pay delinquent
15 dues. 1982 UCIOA § 3116 cmt. 1; 1994 & 2008 UCIOA § 3-116 cmt. 2. **The inequity**
16 **U.S. Bank decries is thus of its own making and not a reason to give NRS 116.3116(2)**
17 **a singular reading at odds with its text and the interpretation given it by the authors**
18 **and editors of the UCIOA.** (emphasis added)

19 The Court also stated at page 418:

20 U.S. Bank further complains about the content of the notice it received. It argues that due
21 process requires specific notice indicating the amount of the superpriority piece of the lien
22 and explaining how the beneficiary of the first deed of trust can prevent the superpriority
23 foreclosure sale. But it appears from the record that specific lien amounts were stated in
24 the notices, ranging from \$1,149.24 when the notice of delinquency was recorded to
25 \$4,542.06 when the notice of sale was sent. The notices went to the homeowner and other
26 junior lienholders, not just U.S. Bank, so it was appropriate to state the total amount of
27 the lien. As U.S. Bank argues elsewhere, dues will typically comprise most, perhaps even
28 all, of the HOA lien. *See supra* note 3. **And from what little the record contains,**
29 **nothing appears to have stopped U.S. Bank from determining the precise**
30 **superpriority amount in advance of the sale or paying the entire amount and**
31 **requesting a refund of the balance.** *Cf. In re Medaglia*, 52 F.3d 451, 455 (2d Cir.1995)
32 (“[I]t is well established that due process is not offended by requiring a person with actual,
33 timely knowledge of an event that may affect a right to exercise due diligence and take
34 necessary steps to preserve that right.”). (Emphasis added)

35 In the case of Shadow Wood Homeowners Association v. New York Community Bank, 132
36 Nev. Ad. Op. 5, 366 P.3d 1105 (2016), the Supreme Court stated other ways that a bank could protect
37 itself.

38 Against these inconsistencies, however, must be weighed NYCB's (in)actions. The NOS
39 was recorded on January 27, 2012, and the sale did not occur until February 22, 2012.

1 NYCB knew the sale had been scheduled and that it disputed the lien amount, yet it did
2 not attend the sale, request arbitration to determine the amount owed, or seek to enjoin the
3 sale pending judicial determination of the amount owed. The NOS included a warning as
4 required by NRS 116.311635(3)(b):

366 P.3d at 1114

5 The court in the Shadow Wood case also noted in footnote 7:

6 **Consideration of harm to potentially innocent third parties is**
7 **especially pertinent here where NYCB did not use the legal remedies**
8 **available to it to prevent the property from being sold to a third party,**
9 **such as by seeking a temporary restraining order and preliminary**
10 **injunction and filing a lis pendens on the property. See NRS 14.010;**
11 **NRS 40.060. Cf. Barkley's Appeal, Bentley's Estate, 2 Monag. 274, 277**
12 **(Pa.1888) ("In the case before us, we can see no way of giving the**
13 **petitioner the equitable relief she asks without doing great injustice to**
14 **other innocent parties who would not have been in a position to be injured**
15 **by such a decree as she asks if she had applied for relief at an earlier**
16 **day."'). (emphasis added)**

17 The plaintiff bank had remedies available to it to protect its interests before the foreclosure sale
18 and failed to avail itself of these remedies. It cannot now seek relief from this court, especially when it
19 has failed to demonstrate fraud, oppression or unfairness.

20 **E. There is a Statutory Conclusive Presumption that the HOA's Foreclosure Sale was Properly**
21 **Conducted.**

22 The detailed and comprehensive statutory requirements for a foreclosure sale are indicative of a
23 public policy which favors a final and conclusive foreclosure sale as to the purchaser. See 6 Angels, Inc.
24 v. Stuart-Wright Mortgage, Inc., 85 Cal. App. 4th 1279, 102 Cal. Rptr. 2d 711 (2011); McNeill Family
25 Trust v. Centura Bank, 60 P.3d 1277 (Wyo. 2033); In re Suchy, 786 F.2d 900 (9th Cir. 1985); and Miller
26 & Starr, California Real Property 3d §10:210. In the case of SFR Investments Pool 1, LLC v. U.S. Bank,
27 N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408 (2014), the Court described the non-judicial foreclosure
28 provisions of NRS Chapter 116 as "elaborate," and therefore indicative of the public policy favoring the
finality of a foreclosure sale.

Additionally, there is a common law presumption that a foreclosure sale was conducted validly.
Fontenot v. Wells Fargo Bank, 198 Cal. App. 4th 256, 129 Cal. Rptr. 3d 467 (2011); Moeller v. Lien 25
Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994); Burson v. Capps, 440 Md. 328, 102 A.3d 353 (2014);

1 Timm v. Dewsnap 86 P.3d 699 (Utah 2003); Deposit Insurance Bridge Bank, N.A. Dallas v. McQueen,
2 804 S.W. 2d 264 (Tex. App. 1991); Myles v. Cox, 217 So.2d 31 (Miss. 1968); American Bank and Trust
3 Co v. Price, 688 So.2d 536 (La. App. 1996); Meeker v. Eufaula Bank & Trust, 208 Ga. App. 702, 431
4 S.E. 2d 475 (Ga. App 1993).

5 Nevada has a disputable presumption that “the law has been obeyed.” See NRS 47.250(16). This
6 creates a disputable presumption that the foreclosure sale was conducted in compliance with the law. By
7 statute, the recitals in the deed are sufficient and conclusive proof that the required notices were mailed
8 by the HOA. The foreclosure deed, attached hereto as Exhibit 1, recites in part:

9 This conveyance is made pursuant to the powers granted to association claimant and
10 conferred upon appointed trustee by the provisions of the Declaration of Covenants,
11 Conditions, and Restrictions recorded 5/12/1998 as Instrument No. 01569 Book 980512
12 Page County of Clark and pursuant to NRS 116.3115 et. seq. and NRS 116.3116 through
13 116.3118 et. seq. and that certain Notice of Delinquent Assessment Lien, described herein.
14 Default occurred as set forth in a Notice of Default and Election to Sell, recorded on as
15 Document No. Book Page of Official Records in the Office of the Recorder of Clark
16 County, Nevada. ATC Assessment Collection Group, LLC has complied with all
17 requirements of law including, but not limited to, the elapsing of 90 days, mailing of
18 copies of Notice of Delinquent Assessment Lien and Notice of Default and the Posting
19 and Publication of the Notice of Sale. Said property was sold by said Trustee at public
20 auction on 8/1/2012 at the place named in the Notice of Trustee’s Sale, in the County of
21 Clark, Nevada, in which the property is situated.
22 The controlling statute, NRS 116.31166, provides in part:.

23 **Foreclosure of liens: Effect of recitals in deed; purchaser not responsible for proper**
24 **application of purchase money; title vested in purchaser without equity or right of**
25 **redemption.**

26 1. **The recitals in a deed** made pursuant to NRS 116.31164 of:

- 27 (a) Default, the mailing of the notice of delinquent assessment, and the recording of
28 the notice of default and election to sell;
(b) The elapsing of the 90 days; and
(c) The giving of notice of sale,
are **conclusive proof of the matters recited.**

2. **Such a deed containing those recitals is conclusive against** the unit’s former
owner, his or her heirs and assigns, **and all other persons.** The receipt for the purchase
money contained in such a deed is sufficient to discharge the purchaser from obligation
to see to the proper application of the purchase money.

(emphasis added)

The recitals in the deed between the foreclosure agent and the purchaser at the foreclosure sale
are conclusive from this statute, NRS116.31166. The sole exception would be in the case of fraud or

1 other grounds for equitable relief. See Shadow Wood Homeowners Association v. New York
2 Community Bank, 132 Nev. Ad. Op. 5, 366 P.3d 1105 (2016).

3 In addition to the recitals, the exhibits attached to the motion are additional proof that the notices
4 were served. It is respectfully submitted that this court should find that the foreclosure deed received
5 by the Resource Group's predecessor in interest at the time it obtained title to the Property is conclusive
6 and sufficient proof that title is vested in the Resources Group and not subject to attack from the plaintiff
7 bank.

8 **F. Defendant/counterclaimant Resources Group is a bona fide purchaser**

9 The only contention of the plaintiff in the answers to interrogatories disputing that Resources
10 Group is a bona fide purchaser is the fact that Resource Group's predecessor in interest was aware of the
11 deed of trust before the sale. However, because the foreclosure sale extinguished the plaintiff's deed of
12 trust, there was nothing for the defendant/counterclaimant's predecessor in interest to be on notice of.

13 Shadow Wood discusses bona fide purchaser in detail. The many points contained in the decision
14 can be summarized as:

- 15 1. A bona fide purchase is without notice of any **prior equity**.
- 16 2. "The decisions are uniform" that the title of a bona fide purchaser is not affected by any matter
17 of which he has no notice.
- 18 3. The bona fide purchaser must pay **valuable** consideration, not "adequate" consideration.
- 19 4. The fact that the foreclosure price may be "low" is not sufficient to put the purchaser on notice
20 of any alleged defects with the sale.
- 21 5. The fact that the court retains equitable power to void the sale does deprive the purchaser of
22 bona fide purchaser status.
- 23 6. The time to determine the status of bona fide purchaser is at the time of the sale.

24 Resources Group is a bona fide purchaser as a matter of law, and the law must protect its title as
25 to all matters to which it does not have notice of.

1 The concept of bona fide purchaser has more application in voluntary sales in which title is
2 transferred by deed. In these cases, a purchaser takes subject to any matters which are recorded against
3 the property.

4 In HOA foreclosure cases, the bona fide purchaser doctrine rarely comes into play because all
5 interests on the property other than prior existing debts and taxes are extinguished by the foreclosure.
6 The purchaser would be precluded from bona fide purchaser status in HOA foreclosure cases only if
7 there was some irregularity in the sale AND the purchaser knew of the irregularity.

8 **G. Shadow Wood's limited application supports judgment in the purchaser's favor**

9 The so called "20%" rule from the Restatement stated in Shadow Wood has no application in this
10 case because Resources Group is a bona fide purchaser, there are no irregularities regarding the sale, and
11 if there were any irregularities, equity would not interfere because the party harmed would have a claim
12 against the foreclosing agent. However, because the price paid is raised as an issue, Resources Group will
13 address it here and show that it has no application without a showing of "fraud, oppression or unfairness
14 as accounts for and brings about the inadequacy of price"

15 In three instances before the court's reference to the Restatement in the Shadow Wood case, the
16 Court reiterates, without contradiction or criticism, the standard that a foreclosure sale will not be set
17 aside absent fraud, oppression or unfairness which results in an inadequate sales price.

18 The first citation to the fraud, oppression or unfairness standard specifically reaffirms the
19 standards as set forth in both the Long and Golden cases. The court's first reference to the standard was:

20 Shadow Wood and Gogo Way maintain that, under NRS 116.31166, recitals such as these
21 bar any post-sale challenge regardless of basis, whether it disputes the HOA's compliance
22 with the statutory default, notice, and timing requirements or, as here, seeks to set aside
23 the sale for equity-based reasons. If true, this interpretation would call into question this
24 court's statement in Long v. Towne, that a common-interest community association's
25 nonjudicial foreclosure sale may be set aside, just as a power-of-sale foreclosure sale may
26 be set aside, upon a showing of grossly inadequate price plus "fraud, unfairness, or
27 oppression." 98 Nev. at 13, 639 P.2d at 530 (citing Golden v. Tomiyasu, 79 Nev. 503, 514,
28 387 P.2d 989, 995 (1963) (stating that, while a power-of-sale foreclosure may not be set
aside for mere inadequacy of price, it may be if the price is grossly inadequate and there
is "in addition proof of some element of fraud, unfairness, or oppression as accounts for
and brings about the inadequacy of price" (internal quotation omitted))).

366 P.3d at 1110.