ALLEN KORNBERG

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US RECORDINGS
2925 COUNTRY DRIVE STE. 201

ST. PAUL, MN 55117

A&K000045

EDWARD A. [illegible]

USB00078

Docket 74575 Document 2018-13060

EDWARDS GEORGE R TRUST
4254 ROLLINGSTONE DR

LAS VEGAS, NV 89103

REPUBLIC SERVICES
ACCT# [redacted]308
PO BOX 98508
LAS VEGAS, NV 89193-8508

US RECORDINGS
2925 COUNTRY DRIVE STE. 201

ST. PAUL, MN 55117

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

LAS VEGAS, NV 89101

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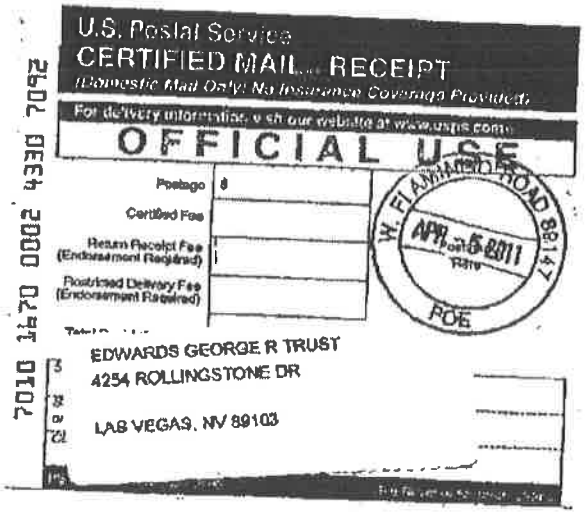

EXHIBIT G

EXHIBIT G

AR0857

A&K000069

EDWARD APPENDIX 1247
USB0100

050111		APPLY CHARGES	A1	ASSESSMENT	130.00
2370.00					
060111		APPLY CHARGES	A1	ASSESSMENT	130.00
2500.00					
070111		APPLY CHARGES	A1	ASSESSMENT	130.00
2630.00					
080111		APPLY CHARGES	A1	ASSESSMENT	130.00
2760.00					
090111		APPLY CHARGES	A1	ASSESSMENT	130.00
2890.00					
100111		APPLY CHARGES	A1	ASSESSMENT	130.00
3020.00					
110111		APPLY CHARGES	A1	ASSESSMENT	130.00
3150.00					
120111		APPLY CHARGES	A1	ASSESSMENT	130.00
3280.00					
122811	414.40	339 122811	A1	ASSESSMENT	(414.40)
2865.60					
010112		APPLY CHARGES	A1	ASSESSMENT	130.00
2995.60					
020112		APPLY CHARGES	A1	ASSESSMENT	130.00
3125.60					
022112	2995.60	65871 ales 022112	A1	ASSESSMENT	(2965.60)
130.00					
022112			01	Late Fees	(10.00)
022112			03	Admin. Fees	(20.00)
030112		APPLY CHARGES	A1	ASSESSMENT	130.00
260.00					
040112		APPLY CHARGES	A1	ASSESSMENT	130.00
390.00					
050112		APPLY CHARGES	A1	ASSESSMENT	130.00
520.00					
060112		APPLY CHARGES	A1	ASSESSMENT	130.00
650.00					
070112		APPLY CHARGES	A1	ASSESSMENT	130.00
780.00					

BALANCE SUMMARY

CHARGE CODE	DESCRIPTION	AMOUNT
A1	ASSESSMENT	650.00
03	Admin. Fees	130.00
	TOTAL:	780.00

EDWARD ABREMOVICH
USB0099

120109	(110.00)	APPLY CHARGES	A1	ASSESSMENT	130.00
120109	(110.00)	APPLY PREPAYMNT	A1	ASSESSMENT	(130.00)
123009	0.00	EXPENSE ADJ	A1	ASSESSMENT	110.00

010110	130.00	APPLY CHARGES	A1	ASSESSMENT	130.00
010110	130.00	APPLY PREPAYMNT	A1	ASSESSMENT	(110.00)

020110	260.00	APPLY CHARGES	A1	ASSESSMENT	130.00

030110	390.00	APPLY CHARGES	A1	ASSESSMENT	130.00
033010	400.00	APPLY LATE FEE	01	Late Fees	10.00

040110	530.00	APPLY CHARGES	A1	ASSESSMENT	130.00

050110	660.00	APPLY CHARGES	A1	ASSESSMENT	130.00

060110	790.00	APPLY CHARGES	A1	ASSESSMENT	130.00

070110	920.00	APPLY CHARGES	A1	ASSESSMENT	130.00

080110	1050.00	APPLY CHARGES	A1	ASSESSMENT	130.00

090110	1180.00	APPLY CHARGES	A1	ASSESSMENT	130.00

100110	1310.00	APPLY CHARGES	A1	ASSESSMENT	130.00

110110	1440.00	APPLY CHARGES	A1	ASSESSMENT	130.00

120110	1570.00	APPLY CHARGES	A1	ASSESSMENT	130.00

010111	1700.00	APPLY CHARGES	A1	ASSESSMENT	130.00

020111	1830.00	APPLY CHARGES	A1	ASSESSMENT	130.00

030111	1960.00	APPLY CHARGES	A1	ASSESSMENT	130.00
032911	Action taken: 60 - Atty. to FC				
032911	2110.00	APPLY ADMIN FEE	03	Admin. Fees	150.00

040111	2240.00	APPLY CHARGES	A1	ASSESSMENT	130.00

020109		APPLY CHARGES		A1	ASSESSMENT	130.00
(232.00)						
020109		APPLY PREPAYMNT		A1	ASSESSMENT	(130.00)
(232.00)						
022709	130.00	124	022709	A1	ASSESSMENT	(130.00)
(362.00)						
022709	131.00	5094	022709	A1	ASSESSMENT	(131.00)
(493.00)						
030109		APPLY CHARGES		A1	ASSESSMENT	130.00
(363.00)						
030109		APPLY PREPAYMNT		A1	ASSESSMENT	(101.00)
(363.00)						
033009	131.00	5097	033009	A1	ASSESSMENT	(27.00)
(494.00)						
033009				PP	Credit-Prepaid	(104.00)
040109		APPLY CHARGES		A1	ASSESSMENT	130.00
(364.00)						
043009	131.00	5101	043009	PP	Credit-Prepaid	(131.00)
(495.00)						
050109		APPLY CHARGES		A1	ASSESSMENT	130.00
(365.00)						
053009	131.00	106	053009	PP	Credit-Prepaid	(131.00)
(496.00)						
060109		APPLY CHARGES		A1	ASSESSMENT	130.00
(366.00)						
070109		APPLY CHARGES		A1	ASSESSMENT	130.00
(236.00)						
070109		APPLY PREPAYMNT		A1	ASSESSMENT	(130.00)
(236.00)						
071509	131.00	5108	071509	PP	Credit-Prepaid	(131.00)
(367.00)						
071509	131.00	5102	071509	PP	Credit-Prepaid	(131.00)
(498.00)						
080109	131.00	0	080109	PP	Credit-Prepaid	(131.00)
(629.00)						
080109		APPLY CHARGES		A1	ASSESSMENT	130.00
(499.00)						
080109		APPLY PREPAYMNT		A1	ASSESSMENT	(130.00)
(499.00)						
090109		APPLY CHARGES		A1	ASSESSMENT	130.00
(369.00)						
090109		APPLY PREPAYMNT		A1	ASSESSMENT	(130.00)
(369.00)						
100109		APPLY CHARGES		A1	ASSESSMENT	130.00
(239.00)						
100109		APPLY PREPAYMNT		A1	ASSESSMENT	(130.00)
(239.00)						
102209	131.00	118	102209	PP	Credit-Prepaid	(131.00)
(370.00)						
110109		APPLY CHARGES		A1	ASSESSMENT	130.00
(240.00)						
110109		APPLY PREPAYMNT		A1	ASSESSMENT	(130.00)
(240.00)						

050108	(160.00)			APPLY CHARGES	A1	ASSESSMENT	121.00
050108	(160.00)			APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)
050608	(291.00)	131.00	68	050608	PP	Credit-Prepaid	(131.00)
060108	(170.00)			APPLY CHARGES	A1	ASSESSMENT	121.00
060108	(170.00)			APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)
070108	(49.00)			APPLY CHARGES	A1	ASSESSMENT	121.00
070108	(49.00)			APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)
071108	(180.00)	131.00	74	071108	PP	Credit-Prepaid	(131.00)
072008	(311.00)	131.00	66	072008	PP	Credit-Prepaid	(131.00)
080108	(190.00)			APPLY CHARGES	A1	ASSESSMENT	121.00
080108	(190.00)			APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)
081108	(321.00)	131.00	5077	081108	PP	Credit-Prepaid	(131.00)
090108	(200.00)			APPLY CHARGES	A1	ASSESSMENT	121.00
090108	(200.00)			APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)
100108	(79.00)			APPLY CHARGES	A1	ASSESSMENT	121.00
100108	(79.00)			APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)
103008	(210.00)	131.00	5080	103008	PP	Credit-Prepaid	(131.00)
103008	(341.00)	131.00	5083	103008	PP	Credit-Prepaid	(131.00)
110108	(220.00)			APPLY CHARGES	A1	ASSESSMENT	121.00
110108	(220.00)			APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)
113008	(351.00)	131.00	5086	113008	PP	Credit-Prepaid	(131.00)
120108	(230.00)			APPLY CHARGES	A1	ASSESSMENT	121.00
120108	(230.00)			APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)
010109	(100.00)			APPLY CHARGES	A1	ASSESSMENT	130.00
010109	(100.00)			APPLY PREPAYMNT	A1	ASSESSMENT	(130.00)
012909	(231.00)	131.00	5089	012909	PP	Credit-Prepaid	(131.00)
013009	(362.00)	131.00	92	013009	A1	ASSESSMENT	(131.00)

(181.00)					
060107		APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)
(181.00)					

070107		APPLY CHARGES	A1	ASSESSMENT	121.00
(60.00)					
070107		APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)
(60.00)					
070607	131.00	5057	070607 PP	Credit-Prepaid	(131.00)
(191.00)					
072507	131.00	5058	072507 PP	Credit-Prepaid	(131.00)
(322.00)					

080107		APPLY CHARGES	A1	ASSESSMENT	121.00
(201.00)					
080107		APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)
(201.00)					
081707	131.00	59	081707 PP	Credit-Prepaid	(131.00)
(332.00)					

090107		APPLY CHARGES	A1	ASSESSMENT	121.00
(211.00)					
090107		APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)
(211.00)					

100107		APPLY CHARGES	A1	ASSESSMENT	121.00
(90.00)					
100407	131.00	5060	100407 PP	Credit-Prepaid	(131.00)
(221.00)					
100407	131.00	5060	100407 PP	Credit-Prepaid	(131.00)
(352.00)					

110107		APPLY CHARGES	A1	ASSESSMENT	121.00
(231.00)					

120107		APPLY CHARGES	A1	ASSESSMENT	121.00
(110.00)					
122007	262.00	61-62	122007 PP	Credit-Prepaid	(262.00)
(372.00)					

010108		APPLY CHARGES	A1	ASSESSMENT	121.00
(251.00)					
012308	131.00	0000005063	012308 PP	Credit-Prepaid	(131.00)
(382.00)					
012308	131.00	5064	012308 PP	Credit-Prepaid	(131.00)
(513.00)					

020108		APPLY CHARGES	A1	ASSESSMENT	121.00
(392.00)					
020108		APPLY PREPAYMNT	A1	ASSESSMENT	(605.00)
(392.00)					
022008	131.00	50065	022008 PP	Credit-Prepaid	(131.00)
(523.00)					

030108		APPLY CHARGES	A1	ASSESSMENT	121.00
(402.00)					
030108		APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)
(402.00)					

040108		APPLY CHARGES	A1	ASSESSMENT	121.00
(281.00)					
040108		APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)
(281.00)					

GLENVIEW WEST TOWNHOMES ASSN.
FINANCIAL TRANSACTIONS - 07/10/12

4254 ROLLING STONE
4254 rollingstone trust

Unit ID: 4254
STATUS: 60 - Atty. to FC
PREPAID BAL: 0.00

TXN DATE	PAYMT AMT	CHECK #	DEP DT	CODE	N/A	DESCRIPTION	AMOUNT	BALANCE DUE
	-----PAYMENTS/TRXN DESCR-----					---------CHARGES/PAYMENT DISTR---------		
042205	131.00	5067	042205	PP		Credit-Prepaid	(131.00)	(131.00)
113006	121.00	INIT CREDIT BAL		PP		Credit-Prepaid	(121.00)	(252.00)
120106		APPLY CHARGES		A1		ASSESSMENT	121.00	(131.00)
120106		APPLY PREPAYMNT		A1		ASSESSMENT	(121.00)	(252.00)
121106	121.00	5048	121106	PP		Credit-Prepaid	(121.00)	(131.00)
010107		APPLY CHARGES		A1		ASSESSMENT	121.00	(10.00)
020107		APPLY CHARGES		A1		ASSESSMENT	121.00	(131.00)
020107		APPLY PREPAYMNT		A1		ASSESSMENT	(121.00)	(10.00)
022007	131.00	5052	022007	A1		ASSESSMENT	(121.00)	(141.00)
022007				PP		Credit-Prepaid	(10.00)	
030107		APPLY CHARGES		A1		ASSESSMENT	121.00	(20.00)
030107		APPLY PREPAYMNT		A1		ASSESSMENT	(10.00)	(30.00)
031307	131.00	5053	031307	A1		ASSESSMENT	(111.00)	(141.00)
031307				PP		Credit-Prepaid	(20.00)	
032807	131.00	54	032807	PP		Credit-Prepaid	(131.00)	(282.00)
040107		APPLY CHARGES		A1		ASSESSMENT	121.00	(161.00)
040107		APPLY PREPAYMNT		A1		ASSESSMENT	(121.00)	(40.00)
050107		APPLY CHARGES		A1		ASSESSMENT	121.00	(161.00)
050107		APPLY PREPAYMNT		A1		ASSESSMENT	(121.00)	(40.00)
050207	131.00	5055	050207	PP		Credit-Prepaid	(131.00)	(171.00)
051807	131.00	5056	051807	PP		Credit-Prepaid	(131.00)	(302.00)
060107		APPLY CHARGES		A1		ASSESSMENT	121.00	

EDWARD A. PREDMORE
USB0094

U.S. Supreme Court has the explained the purpose of the rule which directs the judicial branch to adopt the constitutional interpretation as follows:

> [O]ne of the canon's chief justifications is that it allows courts to *avoid* the decision of constitutional questions. It is a tool for choosing between competing plausible interpretations of a statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts.

Clark v. Martinez, 543 U.S. 371, 381 (2005).

Furthermore, the rule which directs the judicial branch to adopt the constitutional interpretation is paramount to other rules of statutory interpretation because the duty of the judicial branch to save statutes from an unconstitutional interpretation is derived from the constitutional separation of powers which—out of respect for a coequal branch of government whose legislative members also take an oath to uphold the Constitution—requires the judicial branch to presume the legislative branch "legislates in the light of constitutional limitations." Rust v. Sullivan, 500 U.S. 173, 191 (1991); Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Const. Trades Council, 485 U.S. 568, 574-75 (1988); Illinois v. Krull, 480 U.S. 340, 351 (1987); Rostker v. Goldberg, 453 U.S. 57, 64 (1981). Therefore, based on the constitutional separation of powers, the judicial branch must adopt any reasonable construction which will save the statutes from unconstitutionality. Rust, 500 U.S. at 190 ("[A]s between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is

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to adopt that which will save the Act." (quoting Blodgett v. Holden, 275 U.S. 142, 148 (1927) (opinion of Holmes, J.))). As further explained by the High Court:

> As was stated in Hooper v. California, 155 U.S. 648, 657 (1895), "[t]he elementary rule is that every reasonable construction must be resorted to, in order to save a statute from unconstitutionality." This approach not only reflects the prudential concern that constitutional issues not be needlessly confronted, but also recognizes that Congress, like this Court, is bound by and swears an oath to uphold the Constitution. The courts will therefore not lightly assume that Congress intended to infringe constitutionally protected liberties or usurp power constitutionally forbidden it.

DeBartolo Corp., 485 U.S. at 575.

In Bourne Valley, the panel failed to follow this paramount rule of interpretation—which is of constitutional dimension—directing the judicial branch to adopt the constitutional interpretation of the pre-amendment statutes. Instead, the panel gave preference to a subordinate rule of interpretation disfavoring a statutory reading that would "render words or phrases superfluous or make a provision nugatory." 832 F.3d at 1159 (quoting S. Nev. Homebuilders Ass'n v. Clark Cnty., 121 Nev. 446, 449 (2005)). By failing to follow the paramount rule of interpretation and declining to adopt the constitutional interpretation of the pre-amendment statutes, the panel improperly interpreted the statutes as not requiring HOAs to provide lenders with notice under NRS 107.090 that satisfied procedural due process.

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Finally, the Bourne Valley panel highlighted the Legislature's 2015 amendments as evidence of statutory intent, stating if the statutes "already required [HOAs] affirmatively to provide notice, there would have been no need for the amendment." 832 F.3d at 1159 n.4. However, under Nevada's rules of statutory interpretation, statutory amendments can be legislative pronouncements of already existing law which are enacted to remove any doubt regarding interpretation of that existing law. PEBP v. LVMPD, 124 Nev. 138, 157 (2008); Sheriff v. Smith, 91 Nev. 729, 734 (1975); Welfare Div. v. Maynard, 84 Nev. 525, 529 (1968). For example, this Court stated in Maynard:

> The respondent argues that since the legislature felt compelled to add this provision of irrevocability to the law, such documents must have been revocable before the amendment. Such is not necessarily the case. A statutory enactment can be simply a legislative pronouncement of already existing law.

84 Nev. at 529. Thus, under Nevada's rules of statutory interpretation, "when a statute's doubtful interpretation is made clear through subsequent legislation, we may consider the subsequent legislation persuasive evidence of what the Legislature originally intended." PEBP, 124 Nev. at 157 (internal quotations omitted).

The pre-amendment statutes—which expressly incorporated the deed-of-trust foreclosure procedures from NRS 107.090—required HOAs to provide lenders with notice that satisfied procedural due process. Because the 2015 amendments

were legislative pronouncements of already existing law in the pre-amendment statutes, the amendments were enacted to remove any doubt regarding the interpretation of that existing law. Therefore, the Bourne Valley panel's opinion should not be given any persuasive weight because the panel misapplied Nevada's rules of statutory interpretation and, as a result, improperly interpreted the pre-amendment statutes as not requiring HOAs to provide lenders with notice under NRS 107.090 that satisfied procedural due process.

VII. The Bourne Valley panel's opinion should not be given any persuasive weight because under U.S. Supreme Court precedent, the panel improperly invalidated the pre-amendment statutes on their face instead of severing the unconstitutional provisions.

Under U.S. Supreme Court precedent, "a federal court should not extend its invalidation of a statute further than necessary to dispose of the case before it," and the "normal rule [is] that partial, rather than facial, invalidation is the required course." Brockett v. Spokane Arcades, 472 U.S. 491, 502-04 (1985). Therefore, before facially invalidating state statutes, federal courts must determine whether unconstitutional provisions are severable:

> Generally speaking, when confronting a constitutional flaw in a statute, we try to limit the solution to the problem. We prefer, for example, to enjoin only the unconstitutional applications of a statute while leaving other applications in force, or to *sever its problematic portions while leaving the remainder intact.*

Ayotte v. Planned Parenthood, 546 U.S. 320, 328-29 (2006) (emphasis added and citations omitted). To determine whether unconstitutional provisions are

severable, federal courts apply the state's rules of severability. Ariz. Libertarian Party v. Bayless, 351 F.3d 1277, 1283 (9thCir.2003).

The Legislature has adopted and codified rules of severability in Nevada's severability statute:

> **NRS 0.020 Severability.**
> 1. If any provision of the Nevada Revised Statutes, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of NRS which can be given effect without the invalid provision or application, *and to this end the provisions of NRS are declared to be severable.*
> 2. *The inclusion of an express declaration of severability in the enactment of any provision of NRS* or the inclusion of any such provision in NRS, *does not enhance the severability of the provision so treated or detract from the severability of any other provision of NRS.*

Under NRS 0.020, there is a legislative presumption in favor of severability that must be applied to every provision of NRS, regardless of whether there is "an express declaration of severability in the enactment of any provision of NRS," and the inclusion of such an express declaration "does not enhance the severability of the provision so treated or detract from the severability of any other provision of NRS." In other words, the presence or absence of a severability clause in enacting legislation does not alter or affect NRS 0.020's legislative presumption in favor of severability, which means that the Legislature has declared its intent that all "provisions of NRS are declared to be severable," regardless of whether there is a severability clause in enacting legislation.

This Court has found the Legislature's "preference in favor of severability is set forth in NRS 0.020(1), which charges courts with preserving statutes to the extent they 'can be given effect without the invalid provision or application.'" Sierra Pac. Power v. State Dep't of Tax'n, 130 Nev.Adv.Op. 93, 338 P.3d 1244, 1247 (2014). However, this Court has explained:

> [This] preference is not a mandate, and not all statutory language is severable. Before language can be severed from a statute, a court must first determine whether the remainder of the statute, standing alone, can be given legal effect, and whether preserving the remaining portion of the statute accords with legislative intent.

Id. Thus, NRS 0.020 does not create a conclusive presumption in favor of severability, but creates a rebuttable presumption which places the burden on the party opposing severance to prove under the two-part severability test that the offending provisions cannot be severed and the remaining provisions cannot be saved and given legal effect on their own without the offending provisions. Clark Cnty. v. City of Las Vegas, 92 Nev. 323, 334-37 (1976).

If the "opt-in" notice provisions are severed from the pre-amendment statutes, the remaining provisions—expressly incorporating the deed-of-trust foreclosure procedures from NRS 107.090—can be saved and given legal effect on their own without the offending provisions. Because the remaining provisions, standing alone, required HOAs to provide notice to all recorded junior or subordinate lienholders in the same manner as deed-of-trust foreclosures under NRS 107.090,

the remaining provisions required HOAs to provide lenders with notice that satisfied procedural due process.

Moreover, there is nothing in the legislative history to rebut the presumption in favor of severability or to suggest the Legislature intended for the pre-amendment statutes to be rendered unenforceable in their entirety if the "opt-in" notice provisions were invalidated. Therefore, given the legislative presumption in favor of severability under NRS 0.020 that must be applied to every provision of NRS, regardless of whether there is a severability clause in enacting legislation, the Legislature intended for the remaining provisions of the pre-amendment statutes to be given legal effect even after the invalid provisions were severed. Under such circumstances and based on U.S. Supreme Court precedent, the Bourne Valley panel was required to "sever [the] problematic portions while leaving the remainder intact." Ayotte, 546 U.S. at 328-29. Accordingly, the panel's opinion should not be given any persuasive weight because under U.S. Supreme Court precedent, the panel improperly invalidated the pre-amendment statutes on their face instead of severing the unconstitutional provisions.

CONCLUSION

Based on the foregoing, the Legislature respectfully asks this Court to provide a final and binding interpretation of the pre-amendment statutes which is based on Nevada's rules of statutory interpretation and is consistent with the plain language

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and legislative history of the statutes. When the pre-amendment statutes are properly interpreted under Nevada's rules of statutory interpretation, the statutes survive a facial challenge because they expressly incorporated the deed-of-trust foreclosure procedures from NRS 107.090 and, as a result, they required HOAs to provide lenders with notice that satisfied procedural due process.

DATED: This **12th** day of December, 2016.

Respectfully submitted,

BRENDA J. ERDOES
Legislative Counsel

By: /s/ Kevin C. Powers
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Attorneys for Amicus Curiae Nevada Legislature

CERTIFICATE OF COMPLIANCE

1. We certify that the foregoing Amicus Brief complies with the formatting requirements of NRAP 29(d) and NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because the brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in 14 point font and Times New Roman type.

2. We certify that the foregoing Amicus Brief complies with the type-volume limitations of NRAP 29(e) and NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), the brief is proportionately spaced, has a typeface of 14 points or more, and contains **6,471** words, which is less than the type-volume limit of 7,000 words.

3. We certify that we have read the foregoing Amicus Brief, and to the best of our knowledge, information and belief, the brief is not frivolous or interposed for any improper purpose. We further certify that the brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found. We understand that we may be subject to sanctions in the event that the brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: This **12th** day of December, 2016.

BRENDA J. ERDOES
Legislative Counsel

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the **12th** day of December, 2016, pursuant to NRAP 25 and NEFCR 8 and 9, I filed and served a true and correct copy of the foregoing Amicus Brief, by electronic means to registered users of the Nevada Supreme Court's electronic filing system and by electronic mail, directed to the following:

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ADDENDUM

EDWARD APPENDIX 1340
Docket 69308 Document 2016-38489

ASSEMBLY BILL NO. 440—ASSEMBLYMAN CALLISTER

MARCH 24, 1989

Referred to Committee on Judiciary

SUMMARY—Requires trustee under deed of trust to give notice of default and foreclosure sale to junior lienholders. (BDR 9-1209)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in italics is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to deeds of trust; requiring a trustee or other person authorized by a deed of trust to record a notice of default or exercise a power of sale to give notice of the default and sale to any person with a subordinate interest of record in the property; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 107.090 is hereby amended to read as follows:

107.090 1. As used in this section, [a] "person with an interest" means any person who has or claims any right, title or interest in, or lien or charge upon, the real property described in the deed of trust and as evidenced by any document or instrument filed or recorded in the office of the county recorder of the county in which any part of the real property is situated.

2. A person with an interest desiring a copy of a notice of default or notice of sale under a deed of trust with power of sale upon real property may at any time [subsequent to] *after* recordation of [such] *the* deed of trust file in the office of the county recorder of the county in which any part of the real property is situated an acknowledged request for a copy of [such] *the* notice of default or sale.

[3.] The request [shall] *must* state the name and address of the person requesting copies of [such] *the* notices and identify the deed of trust by stating the names of the parties thereto, the date of recordation and the book and page where it is recorded.

[4.] *3.* The trustee or person authorized to record the notice of default shall, within 10 days [of recordation of such notice,] *after the notice of default is recorded,* cause to be deposited in the United States mail an envelope, registered or certified and with postage prepaid, containing a copy of [such] *the* notice, addressed to [each] *:*

(a) Each person who has filed a request for a copy of [such notice.

5.] *the notice; and*

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(b) Each other person with an interest whose interest or claimed interest is subordinate to the deed of trust.

4. The trustee or person authorized to make the sale shall, at least 20 days before the date of sale, cause to be deposited in the United States mail an envelope, registered or certified and with postage prepaid, containing a copy of the notice of time and place of sale, addressed to each person [who has filed a request for a copy of such notice.

6.] *described in subsection 3.*

5. No request [for a copy of any notice filed under] *filed pursuant to* the provisions of [this section shall affect] *subsection 2 affects* the title to real property.

MINUTES OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Sixty-fifth Session
April 4, 1989

The Assembly Committee on Judiciary was called to order by Chairman, Robert Sader at 8:05 a.m. on Tuesday, April 4, 1989, in Room 240 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda, Exhibit B is the Attendance Roster.

MEMBERS PRESENT:

Robert M. Sader, Chairman
Gene T. Porter, Vice Chairman
John C. Carpenter
Vonne Chowning
Renee L. Diamond
Robert E. Gaston
James Gibbons
Bill Kissam
Mike McGinness
John Regan
Gaylyn J. Spriggs
Vincent L. Triggs
Wendell P. Williams
Jane A. Wisdom

STAFF MEMBERS PRESENT:

Jennifer Stern, Deputy Legislative Counsel

OTHERS PRESENT:

John Marvel, Assembly District 34
A. D. Jensen, American Federal Savings
John Sande, Nevada Bankers' Association
Lori Schlicker, Nevada Association of Counties
Ray Badger, Nevada Trial Lawyers' Association
Jerry Ash, President, Nevada Hospital Association
Nancy Angres, Welfare
Thom Reilly, Welfare
Pamela Bugge, State Industrial Insurance System

ASSEMBLY BILL NO. 440 - Requires trustee under deed of trust to give notice of default and foreclosure sale to junior lienholders.

Chairman Sader explained A.B. 440 was introduced by Assemblyman Callister, Assembly District No. 1, and continued with a description of current practice as well as what was hoped to be accomplished by the bill. Currently, when money was loaned on real property, deeds of trust (in Nevada) or mortgages were issued which gave a security in the real property. If the party borrowed from several different sources, there could be a number of deeds of trust. If the debtor defaulted, the only recourse was to foreclose on the property through a foreclosure sale. Any deed of trust had a trustor (i.e., the person who received a loan), a trustee (the person who administered the trust) and the beneficiary (i.e., the person who owed the money). When foreclosure took place, the trustee, oftentimes an institution, was the one conducting the foreclosure. In that circumstance, the law required an individual to file, with the County Recorder, a request or notice that he wanted to receive notice of foreclosure. Then, if any trustee foreclosed, they were required to issue that notice. This served to protect the lienholder's interest. Examples cited by Chairman Sader illustrated the possibility of an unsophisticated junior lienholder who would not necessarily receive notice because he had not filed the request with the County Recorder. Absent that, a foreclosure could go ahead without that junior lienholder having the opportunity to protect his security in some way.

What Mr. Callister sought was to require that anyone foreclosing would have to give notice of default to junior lienholders, regardless of whether there was a notice on file. This would mean the trustee would have to research the title, to find out if any junior liens (mechanics lien, hospital liens or other types of valid encumbrances recorded against the property) existed.

The Nevada Banker's Association was represented by John Sande who told the committee several banks had notified him of their concern about A.B. 440. Generally, he said, the law now provided that if someone wanted notice, they could request this by filing a "Notice of Request." If this law were to pass, the question would be, what would happen if a title company, in a title search, discovered multiple liens

on a piece of property and inadvertently failed to give notice to one person. Would this somehow defeat and make a non bone fide sale?

Mr. Porter asked what the mechanism was for locating someone listed on a deed of trust. Mr. Sande acknowledged this could be a problem if the deed of trust omitted an address. Mr. Sader offered that if it was decided that Mr. Callister's philosophy was correct, the burden of proof should be limited on the foreclosing party. The easiest mechanism for doing this was to require that the recorded document give an address or contact person.

Language which would clarify the bill and accomplish the intent was discussed with the conclusion to hold the bill until Mr. Sande and Mr. Callister could confer on suggested amendments.

Chairman Sader asked that the committee take action on bills ready to be considered.

ASSEMBLY BILL NO. 454 - Limits liability of local governments for medical expenses of prisoners.

An amendment prepared by Mr. Hillerby was distributed to committee members (see Exhibit E) and discussed. Attention was drawn to the penultimate line of the amendment, which was an addition -- not a deletion. Chairman Sader opined the amendment only served to cloud the law and did not illuminate a standard of what the legal liability of the county was. Today, the premise was that that was whatever the hospital charged. This could lend confusion that there was a statutory obligation now being imposed, and the rate was not what the hospital charged, it was a negotiable amount. Redefining, Chairman Sader concluded the amendment appeared to offer a different legal standard of what the rate was for a hospital.

After discussion Mr. Hillerby opined this was a one-case incident, and his clients were agreeable to leaving the law alone. Mr. Sader said he saw it as a cost-shifting bill, which had to be paid for either by the taxpayers, or by the consumers of health care. It was his opinion taxpayers as a whole should bear this burden.

ASSEMBLYMAN GASTON MOVED TO INDEFINITELY POSTPONE A.B. 454.

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-fifth Session
June 1, 1989

The Senate Committee on Judiciary was called to order by Chairman Sue Wagner, at 8:05 a.m., on Thursday, June 1, 1989, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Sue Wagner, Chairman
Senator R. Hal Smith, Vice Chairman
Senator Joe Neal
Senator Nicholas J. Horn
Senator Mike Malone
Senator Charles W. Joerg
Senator Dina Titus

STAFF MEMBERS PRESENT;

Jennifer Stern, Legal Counsel
Judith Jacobs, Committee Secretary

ASSEMBLY BILL 744 - Limits duty of seller of real property to disclose facts concerning property.

Testimony of Janet Hartmann and Chris Harris, Nevada Association of Realtors.

Ms. Hartmann introduced Mr. Harris, who read testimony as evidenced in Exhibit C.

Mr. Harris declared: "Under the existing law it could be interpreted that we were remiss in not disclosing, and if we do disclose we damage the seller, and if we don't disclose some buyers could feel that possibly they have been damaged."

In the absence of further testimony, the hearing was closed on A.B. 769.

ASSEMBLY BILL 440 - Makes various changes to provisions governing interests in property.

Testimony of Julian Sourwine, President, State Bar of Nevada.

Mr. Sourwine stated the changes from A.B. 440 would require that junior lienors be given notice of foreclosure sales. He said notice is generally given by title companies to all holders of recorded liens for trustee sales, whether or not they have requested notice. He explained, however, notice is only required to be given to those who have recorded such a request, but the change suggested by A.B. 440 would require that all junior lienors be notified, even if they have not requested notice.

Mr. Sourwine noted the change would protect unsophisticated people who make loans on real property in a junior lien position.

Mr. Sourwine said other changes in A.B. 440 will address policy regarding homestead exemptions. He alleged the statutes have been unclear as to whether the exemption refers to gross value or equity. He said the the state bar was not advocating which way the exemption should apply, the bar only seeks clarification. He pointed out the Assembly has defined the exemption as equity. He ascribed the basis of the definition to another statute, dealing with summary administration and the setting aside of estates without administration, which uses the term "value after deducting encumbrances," which is the method used to determine equity.

On the other hand, Mr. Sourwine added the existing homestead statute implies gross value rather than equity, as evidenced on page 4 line 31 of the bill. He indicated the homesteader's interest in the property would be the equity. He said if the legislature intends to protect the equity, A.B. 440 would clarify the law. He asserted, if the legislature intends to impose exemption of a maximum value of $95,000, the bill should be amended accordingly.

Mr. Sourwine said that, although the homestead exemption does not apply to contractual liens, whether the exemption is gross or of equity could make a significant difference to a person in a bankruptcy or judgement execution proceeding. He declared there have been unreported findings from bankruptcy judges and other judges that disagree as to whether the homestead protection is of equity or relates only to the total value of the property in question.

Mr. Sourwine reiterated the state bar was not asking for a policy decision one way or the other, only clarification, in order to avoid ambiguity. In reply to Senator Malone's question, he indicated the best protection for the homeowner would be to exempt the equity.

Mr. Sourwine said Section 6 was designed to correct what the state bar felt was a mistake in legislation enacted in 1987. He said: "Until 1987, in case of summary administration in probate...a short cut procedure for estates...under $100,000, there has never been...a requirement that the notice of the petition for probate and for summary administration be published...." He said the 1987 legislature amended several sections of the probate code to require publication. The change in Section 6 would delete the requirement for publication of the notice of a petition for probate in a summary administration.

Mr. Sourwine said Section 7 amends the probate statute dealing with setting aside the estate without administration, a procedure used with small estates under $25,000. He said: "It first provides, now, that if there is a surviving spouse or child, then the estate must be set aside for their benefit....We propose to insert the word 'minor' wherever 'child' or 'children' appears, so that the...setting aside is limited in this fashion: if there is a surviving spouse or minor child, then the estate must be set aside for their benefit. But if there is neither...then whoever is entitled to it can get it."

Mr. Sourwine suggested the problem comes from occasions when there is not a surviving spouse, but there may be adult children, and the estate leaves property to someone other than the child. He explained that, under

current law, in order to distribute the property, the estate must go through probate or a summary administration even though it is a small estate under $25,000. AB. 440 would allow the same procedure to be used when there are no minor children or when someone else is entitled to inherit, without the necessity of the full probate or summary administration proceeding.

There was no further testimony, and the hearing was closed on A.B. 440.

SENATE BILL 142 - Makes technical correction to Nevada Revised Statutes.

Senator Wagner noted the committee had processed S.B. 142 early in the session, but the Assembly had attached several amendments. She said the alterations were proposed to resolve conflicts with Assembly Bill 8, Assembly Bill 167, and Assembly Bill 428.

SENATOR JOERG MOVED TO CONCUR IN S.B. 142.

SENATOR MALONE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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ASSEMBLY BILL 508 - Makes various changes relating to actions for support of children.

Senator Wagner said: "We voted not to recede on our action [Assembly Bill] 508 yesterday, and I've assigned a conference committee of myself, Mr. Joerg, and Ms. Titus..."

Senator Wagner briefed the committee on the action of the Assembly Committee on Judiciary relating to bills with prison impact. She said some of those bills with major fiscal impact had been referred to the Assembly Committee on Ways and Means, some are being amended to reduce the impact, and some have no fiscal impact. She declared her intent to schedule all those bills for two consecutive days. She said an expert from the National Council on Crime and Delinquency would be available to testify on the projection of inmate population figures and make an estimate of the impact of those bills. She

added: "Obviously, we're going to be looking at the bills, not just if they have an impact, but whether we think they're good policy as well."

The committee discussed the prison population, the general impact on the state from longer sentencing, and prison facilities.

ASSEMBLY BILL 440.

SENATOR JOERG MOVED TO DO PASS A.B. 440.

SENATOR HORN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

****

ASSEMBLY BILL 744.

SENATOR SMITH MOVED TO DO PASS A.B. 744.

SENATOR HORN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

****

ASSEMBLY BILL 767.

SENATOR JOERG MOVED TO DO PASS A.B. 767.

SENATOR HORN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

****

ASSEMBLY BILL 768.

SENATOR HORN MOVED TO DO PASS A.B. 768.

SENATOR JOERG SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

****

Assembly Bill No. 440—Assemblyman Callister

CHAPTER 306

AN ACT relating to property; requiring a trustee or other person authorized by a deed of trust to record a notice of default or exercise a power of sale to give notice of default and sale to any person with a subordinate interest of record in the property; clarifying that the homestead exemption applies to the value of equity in the property; eliminating the requirement of publication of notice of certain matters concerning the summary administration of estates; allowing an estate of a certain value to be set aside when there is no surviving spouse or minor children of the deceased; and providing other matters properly relating thereto.

[Approved June 9, 1989]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 107.090 is hereby amended to read as follows:

107.090 1. As used in this section, [a] "person with an interest" means any person who has or claims any right, title or interest in, or lien or charge upon, the real property described in the deed of trust and as evidenced by any document or instrument filed or recorded in the office of the county recorder of the county in which any part of the real property is situated.

2. A person with an interest desiring a copy of a notice of default or notice of sale under a deed of trust with power of sale upon real property may at any time [subsequent to] *after* recordation of [such] *the* deed of trust file in the office of the county recorder of the county in which any part of the real property is situated an acknowledged request for a copy of [such] *the* notice of default or sale.

[3.] The request [shall] *must* state the name and address of the person requesting copies of [such] *the* notices and identify the deed of trust by stating the names of the parties thereto, the date of recordation and the book and page where it is recorded.

[4.] *3.* The trustee or person authorized to record the notice of default shall, within 10 days [of recordation of such notice,] *after the notice of default is recorded,* cause to be deposited in the United States mail an envelope, registered or certified and with postage prepaid, containing a copy of [such] *the* notice, addressed to [each] *:*

(a) Each person who has filed a request for a copy of [such notice.

5.] the notice; and

(b) Each other person with an interest whose interest or claimed interest is subordinate to the deed of trust.

4. The trustee or person authorized to make the sale shall, at least 20 days before the date of sale, cause to be deposited in the United States mail an envelope, registered or certified and with postage prepaid, containing a copy of the notice of time and place of sale, addressed to each person [who has filed a request for a copy of such notice.

6.] *described in subsection 3.*

5. No request [for a copy of any notice filed under] *filed pursuant to* the provisions of [this section shall affect] *subsection 2 affects* the title to real property.

Sec. 2. NRS 21.090 is hereby amended to read as follows:

21.090 1. The following property is exempt from execution, except as otherwise specifically provided in this section:

(a) Private libraries not to exceed $1,500 in value, and all family pictures and keepsakes.

(b) Necessary household goods, as defined in 16 C.F.R. § 444.1(i) as that section existed on January 1, 1987, and yard equipment, not to exceed $3,000 in value, belonging to the judgment debtor to be selected by him.

(c) Farm trucks, farm stock, farm tools, farm equipment, supplies and seed not to exceed $4,500 in value, belonging to the judgment debtor to be selected by him.

(d) Professional libraries, office equipment, office supplies and the tools, instruments and materials used to carry on the trade of the judgment debtor for the support of himself and his family not to exceed $4,500 in value.

(e) The cabin or dwelling of a miner or prospector, his cars, implements and appliances necessary for carrying on any mining operations and his mining claim actually worked by him, not exceeding $4,500 in total value.

(f) One vehicle if the judgment debtor's equity does not exceed $1,000 or the creditor is paid an amount equal to any excess above that equity.

(g) For any pay period, 75 percent of the disposable earnings of a judgment debtor during that period, or for each week of the period 30 times the minimum hourly wage prescribed by section 6(a)(1) of the federal Fair Labor Standards Act of 1938 and in effect at the time the earnings are payable, whichever is greater. Except as otherwise provided in paragraph (n), the exemption provided in this paragraph does not apply in the case of any order of a court of competent jurisdiction for the support of any person, any order of a court of bankruptcy or of any debt due for any state or federal tax. As used in this paragraph, "disposable earnings" means that part of the earnings of a judgment debtor remaining after the deduction from those earnings of any amounts required by law, to be withheld.

(h) All fire engines, hooks and ladders, with the carts, trucks and carriages, hose, buckets, implements and apparatus thereunto appertaining, and all furniture and uniforms of any fire company or department organized under the laws of this state.

(i) All arms, uniforms and accouterments required by law to be kept by any person, and also one gun, to be selected by the debtor.

(j) All courthouses, jails, public offices and buildings, lots, grounds and personal property, the fixtures, furniture, books, papers and appurtenances belonging and pertaining to the courthouse, jail and public offices belonging to any county of this state, all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by the town or city to health, ornament or public use, or for the use of any fire or military company organized under the laws of this state and all lots, buildings and other school property owned by a school district and devoted to public school purposes.

(k) All money, benefits, privileges or immunities accruing or in any manner growing out of any life insurance, if the annual premium paid does not

exceed $1,000. If the premium exceeds that amount, a like exemption exists which bears the same proportion to the money, benefits, privileges and immunities so accruing or growing out of the insurance that the $1,000 bears to the whole annual premium paid.

(l) The homestead as provided for by law.

(m) The dwelling of the judgment debtor occupied as a home for himself and family, [not exceeding] *where the amount of equity held by the judgment debtor in the home does not exceed* $95,000 in value [, where] *and* the dwelling is situate upon lands not owned by him.

(n) All property in this state of the judgment debtor where the judgment is in favor of any state for failure to pay that state's income tax on benefits received from a pension or other retirement plan.

2. No article or species of property mentioned in this section is exempt from execution issued upon a judgment to recover for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon.

3. Any exemptions specified in subsection (d) of section 522 of the Bankruptcy Act of 1978 (92 Stat. 2586) do not apply to property owned by a resident of this state unless conferred also by subsection 1, as limited by subsection 2, of this section.

Sec. 3. Chapter 115 of NRS is hereby amended by adding thereto a new section to read as follows:

As used in this chapter, unless the context otherwise requires:

1. "Equity" means the amount that is determined by subtracting from the fair market value of the property, the value of any liens excepted from the homestead exemption pursuant to subsection 3 of NRS 115.010.

2. "Homestead" means the property consisting of either a quantity of land, together with the dwelling house thereon and its appurtenances, or a mobile home whether or not the underlying land is owned by the claimant, to be selected by the husband and wife, or either of them, or a single person claiming the homestead.

Sec. 4. NRS 115.010 is hereby amended to read as follows:

115.010 1. The homestead [, consisting of either a quantity of land, together with the dwelling house thereon and its appurtenances, or a mobile home whether or not the underlying land is owned by the claimant, not exceeding $95,000 in value, to be selected by the husband and wife, or either of them, or a single person claiming the homestead,] is not subject to forced sale on execution [,] or any final process from any court, except as provided by [subsection 2.] *subsections 2 and 3.*

2. *The exemption provided in subsection 1 extends only to that amount of equity in the property held by the claimant which does not exceed $95,000 in value.*

3. The exemption provided in subsection 1 does not extend to process to enforce the payment of obligations contracted for the purchase of the [premises,] *property,* or for improvements made thereon, including any mechanic's lien lawfully obtained, or for legal taxes, or for:

(a) Any mortgage or deed of trust thereon executed and given; or

(b) Any lien to which prior consent has been given through the acceptance

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of property subject to any recorded declaration of restrictions, deed restriction, restrictive covenant or equitable servitude,
by both husband and wife, when that relation exists.

[3.] *4.* Any declaration of homestead which has been filed before July 1, 1989, shall be deemed to have been amended on that date by extending the homestead exemption commensurate with any increase in the [value of] *amount of equity held by the claimant in* the property selected and claimed for the exemption up to the [value] *amount* permitted by law on that date, but the increase does not impair the right of any creditor to execute upon the property when that right existed before July 1, 1989.

Sec. 5. NRS 115.050 is hereby amended to read as follows:

115.050 1. Whenever execution has been issued against the property of a party claiming the property as a homestead, and the creditor in the judgment makes oath before the judge of the district court of the county in which the [premises are] *property is* situated, that the [cash value of the premises] *amount of equity held by the claimant in the property* exceeds, to the best of the creditor's information and belief, the sum of $95,000, the judge shall, upon notice to the debtor, appoint three disinterested and competent persons as appraisers to estimate and report as to the [value of the premises,] *amount of equity held by the claimant in the property,* and if the [value] *amount of equity* exceeds the sum of $95,000, *determine* whether the [premises] *property* can be divided so as to leave the [premises amounting] *property subject* to the homestead exemption without material injury.

2. If it appears, upon the report, to the satisfaction of the judge that the [premises] *property* can be thus divided, he shall order the excess to be sold under execution. If it appears that the [premises] *property* cannot be thus divided, and the [value thereof] *amount of equity held by the claimant in the property* exceeds the exemption allowed by this chapter, he shall order the entire [premises] *property* to be sold, and out of the proceeds the sum of $95,000 to be paid to the defendant in execution, and the excess to be applied to the satisfaction on the execution. No bid under $95,000 may be received by the officer making the sale.

3. When the execution is against a husband or wife, the judge may direct the $95,000 to be deposited in court, to be paid out only upon the joint receipt of the husband and wife, and the deposit possesses all the protection against legal process and voluntary disposition by either spouse as did the original homestead . [premises.]

Sec. 6. NRS 145.030 is hereby amended to read as follows:

145.030 Notice of a petition for the probate of a will and the issuance of letters testamentary or for letters of administration [,] *must be given as provided in NRS 155.010,* and the notice to creditors must be given as provided in NRS 155.020.

Sec. 7. NRS 146.070 is hereby amended to read as follows:

146.070 1. When a person dies leaving an estate, the gross value of which after deducting any encumbrances does not exceed $25,000, and there is a surviving spouse or *minor* child or *minor* children of the deceased, the estate must not be administered upon, but the whole thereof, after directing such payments as may be deemed just, must be, by an order for that purpose, assigned and set apart for the support of the surviving spouse or *minor*

children, or for the support of the *minor* child or *minor* children, if there is no surviving spouse. Even though there is a surviving spouse, the court may, after directing such payments, set aside the whole of the estate to the *minor* child or *minor* children, [according to the subserviency of] *if it is in* their best interests.

2. When there is no surviving spouse or *minor* child of the deceased and the gross value of a decedent's estate, after deducting any encumbrances, does not exceed $25,000, upon good cause shown therefor, the judge may order that the estate must not be administered upon but the whole thereof must be assigned and set apart:

First: To the payment of funeral expenses, expenses of last illness, and creditors, if there are any; and

Second: Any balance remaining to the claimant or claimants entitled thereto.

3. All proceedings taken under this section, whether or not the decedent left a will, must be originated by a verified petition containing:

(a) A specific description of all of the decedent's property.

(b) A list of all the liens, encumbrances of record at the date of his death.

(c) An estimate of the value of the property.

(d) A statement of the debts of the decedent so far as known to the petitioner.

(e) The names, ages and residences of the decedent's heirs, devisees and legatees.

The petition may include a prayer that if the court finds the gross value of the estate, less encumbrances, does not exceed $25,000, the estate be set aside as provided in this section.

4. The petitioner shall give notice of the petition and hearing in the manner provided in NRS 155.010 to the decedent's heirs, devisees and legatees. The notice must include a statement that a prayer for setting aside the estate to the spouse, or *minor* child or *minor* children, as the case may be, is included in the petition.

5. No court or clerk's fees may be charged for the filing of any petition in, or order of court thereon, or for any certified copy of the petition or order in an estate not exceeding $1,000 in value.

6. If the court finds that the gross value of the estate, less encumbrances, does not exceed the sum of $25,000, the court may direct that the estate be distributed to the father or mother of any minor heir or legatee, with or without the filing of any bond, or may require that a general guardian be appointed and that the estate be distributed to the guardian, with or without bond as in the discretion of the court seems to be in the best interests of the minor. The court may direct the manner in which the money may be used for the benefit of the minor.

Sec. 8. Section 2 of this act becomes effective at 12:01 a.m. on October 1, 1989.

(h) The assets of a gaming licensee who is a sole proprietorship are transferred to a partnership in which 80 percent of the ownership of the partnership interests are held by the former sole proprietor [.] ;

(i) A licensed gaming partnership is dissolved and the assets of the gaming establishment are transferred to a corporation, at least 80 percent of the stock of which is held by the former partnership interests; or

(j) A licensed gaming partnership is dissolved or reorganized and the assets of the gaming establishment are transferred to a partnership, at least 80 percent of the ownership of which is held by the former partnership interests.

3. Except as *otherwise* provided in this section, no credit or refund of fees or taxes may be made because a gaming establishment ceases operation.

Assembly Bill No. 221—Committee on Judiciary

CHAPTER 245

AN ACT relating to property; enacting the Uniform Common-Interest Ownership Act; appropriately modifying chapters 117 and 278A of NRS as they remain in effect for condominiums and planned unit developments created before the effective date of this act; and providing other matters properly relating thereto.

[Approved June 5, 1991]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 10 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 128, inclusive, of this act.

Sec. 2. This chapter may be cited as the Uniform Common-Interest Ownership Act.

Sec. 3. Applicability of this chapter is governed by sections 47 to 54, inclusive, of this act.

Sec. 4. In the declaration and bylaws (section 87 of this act), unless specifically provided otherwise or the context otherwise requires, and in this chapter, the words and terms defined in sections 5 to 36, inclusive, of this act have the meaning ascribed to them in those sections.

Sec. 5. 1. "Affiliate of a declarant" means any person who controls, is controlled by or is under common control with a declarant.

2. A person "controls" a declarant if the person:

(a) Is a general partner, officer, director or employer of the declarant;

(b) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing, more than 20 percent of the voting interest in the declarant;

(c) Controls in any manner the election of a majority of the directors of the declarant; or

(d) Has contributed more than 20 percent of the capital of the declarant.

from time to time postpone the sale by such advertisement and notice as it considers reasonable or, without further advertisement or notice, by proclamation made to the persons assembled at the time and place previously set and advertised for the sale.

2. On the day of sale originally advertised or to which the sale is postponed, at the time and place specified in the notice or postponement, the person conducting the sale may sell the unit at public auction to the highest cash bidder. Unless otherwise provided in the declaration or by agreement, the association may purchase the unit and hold, lease, mortgage or convey it. If so authorized to purchase, the association may enter a credit bid up to the amount of the unpaid assessments and any permitted costs, fees and expenses incident to the enforcement of its lien.

3. After the sale, the person conducting the sale shall make, execute and, after payment is made, deliver to the purchaser, or his successor or assign, a deed without warranty which conveys to the grantee all title of the unit's owner to the unit, and shall apply the proceeds of the sale for the following purposes in the following order:

(a) The reasonable expenses of sale;

(b) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by agreement between the association and the unit's owner, reasonable attorney's fees and other legal expenses incurred by the association;

(c) Satisfaction of the association's lien;

(d) Satisfaction in the order of priority of any subordinate claim of record; and

(e) Remittance of any excess to the unit's owner.

Sec. 103. 1. The recitals in such a deed of:

(a) Default and the recording of the notice of delinquent assessment and notice of default and election to sell;

(b) The elapsing of the 60 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 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.

3. The sale of a unit pursuant to sections 101 and 102 of this act vests in the purchaser the title of the unit's owner without equity or right of redemption.

Sec. 104. 1. The provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed. The request must identify the lien by stating the names of the unit's owner and the common-interest community. The association must also give reasonable notice of its intent to foreclose to all holders of liens in the unit who are known to it.

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2. An association may, after recording a notice of default and election to sell, waive the default and withdraw the notice or any proceeding to foreclose. The association is thereupon restored to its former position and has the same rights as though the notice had not been recorded.

Sec. 105. (Deleted by amendment.)

Sec. 106. The association shall keep financial records sufficiently detailed to enable the association to comply with section 117 of this act. All financial and other records must be made reasonably available for examination by any unit's owner and his authorized agents.

Sec. 107. With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

Sec. 108. 1. Sections 108 to 128, inclusive, of this act apply to all units subject to this chapter, except as otherwise provided in subsection 2 or as modified or waived by agreement of purchasers of units in a common-interest community in which all units are restricted to nonresidential use.

2. Neither a public offering statement nor a certificate of resale need be prepared or delivered in the case of a:

(a) Gratuitous disposition of a unit;

(b) Disposition pursuant to court order;

(c) Disposition by a government or governmental agency;

(d) Disposition by foreclosure or deed in lieu of foreclosure;

(e) Disposition to a dealer;

(f) Disposition that may be canceled at any time and for any reason by the purchaser without penalty; or

(g) Disposition of a unit in a planned community in which the declaration limits the maximum annual assessment of any unit to not more than $300, as adjusted pursuant to section 46 of this act if:

(1) The declarant reasonably believes in good faith that the maximum stated assessment will be sufficient to pay the expenses of the planned community;

(2) The declaration cannot be amended to increase the assessment during the period of declarant's control without the consent of all units' owners; and

(3) The planned community is not subject to any developmental rights.

Sec. 109. 1. Except as otherwise provided in subsection 2, a declarant, before offering any interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of sections 110 to 114, inclusive, of this act.

2. A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant (sections 83 and 84 of this act) or to a dealer who intends to offer units in the common-interest

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Assembly Bill No. 612—Committee on Judiciary

CHAPTER 573

AN ACT relating to property; making various changes in the Uniform Common-Interest Ownership Act; and providing other matters properly relating thereto.

[Approved July 12, 1993]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 116 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this act.

Sec. 2. *1. Except as otherwise provided in subsection 2, the declaration may provide for a period of declarant's control of the association, during which a declarant, or persons designated by him, may appoint and remove the officers of the association and members of the executive board. Regardless of the period provided in the declaration, a period of declarant's control terminates no later than the earlier of:*

(a) Sixty days after conveyance of 75 percent of the units that may be created to units' owners other than a declarant, except that if a majority of the units are divided into time shares, the percentage is 80 percent;

(b) Five years after all declarants have ceased to offer units for sale in the ordinary course of business; or

(c) Five years after any right to add new units was last exercised.

A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event the declarant may require, for the duration of the period of declarant's control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

2. Not later than 60 days after conveyance of 25 percent of the units that may be created to units' owners other than a declarant, at least one member and not less than 25 percent of the members of the executive board must be elected by units' owners other than the declarant. Not later than 60 days after conveyance of 50 percent of the units that may be created to units' owners other than a declarant, not less than 33 1/3 percent of the members of the executive board must be elected by units' owners other than the declarant.

Sec. 3. *1. Except as otherwise provided in subsection 5 of NRS 116.2120, not later than the termination of any period of declarant's control, the units' owners shall elect an executive board of at least three members, at least a majority of whom must be units' owners. The executive board shall elect the officers. The members and officers of the executive board shall take office upon election.*

2. An officer, employee, agent or director of a corporate owner of a unit, a trustee or designated beneficiary of a trust that owns a unit, a partner of a partnership that owns a unit, and a fiduciary of an estate that owns a unit may be an officer or member of the executive board. In all events where the person serving or offering to serve as an officer or member of the executive board is

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other permits and approvals so issued and applicable which are required by law to be kept on the premises of the community.

9. Written warranties of the contractor, subcontractors, suppliers and manufacturers that are still effective.

10. A roster of owners and mortgagees of units and their addresses and telephone numbers, if known, as shown on the declarant's records.

11. Contracts of employment in which the association is a contracting party.

12. Any contract for service in which the association is a contracting party or in which the association or the units' owners have any obligation to pay a fee to the persons performing the services.

Sec. 6. *The association or other person conducting the sale shall also mail, within 10 days after the notice of default and election to sell is recorded, a copy of the notice by first-class mail to:*

1. Each person who has requested notice pursuant to NRS 107.090 or 116.31168;

2. Any holder of a recorded security interest encumbering the unit's owner's interest who has notified the association, 30 days before the recordation of the notice of default, of the existence of the security interest; and

3. A purchaser of the unit, if the unit's owner has notified the association, 30 days before the recordation of the notice, that the unit is the subject of a contract of sale and the association has been requested to furnish the certificate required by subsection 2 of NRS 116.4109.

Sec. 7. *The association or other person conducting the sale shall also, after the expiration of the 60 days and before selling the unit:*

1. Give notice of the time and place of the sale in the manner and for a time not less than that required by law for the sale of real property upon execution, except that a copy of the notice of sale must be mailed, on or before the date of first publication or posting, by certified or registered mail, return receipt requested, to the unit's owner or his successor in interest at his address if known, and to the address of the unit.

2. Mail, on or before the date of first publication or posting, a copy of the notice by first-class mail to:

(a) Each person entitled to receive a copy of the notice of default and election to sell notice under section 6 of this act; and

(b) The holder of a recorded security interest or the purchaser of the unit, if either of them has notified the association, before the mailing of the notice of sale, of the existence of the security interest, lease or contract of sale, as applicable.

Sec. 8. *1. In a condominium or planned community:*

(a) Except as otherwise provided in paragraph (b), a judgment for money against the association, if a copy of the docket or an abstract or copy of the judgment is recorded, is not a lien on the common elements, but is a lien in favor of the judgment lien holder against all of the units in the common-interest community at the time the judgment was entered. No other property of a unit's owner is subject to the claims of creditors of the association.

(b) If the association has granted a security interest in the common elements to a creditor of the association pursuant to NRS 116.3112, the holder

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(b) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by [agreement between the association and the unit's owner,] *the declaration,* reasonable attorney's fees and other legal expenses incurred by the association;

(c) Satisfaction of the association's lien;

(d) Satisfaction in the order of priority of any subordinate claim of record; and

(e) Remittance of any excess to the unit's owner.

Sec. 39. NRS 116.31166 is hereby amended to read as follows:

116.31166 1. The recitals in [such] a deed *made pursuant to NRS 116.31164* of:

(a) Default [and the recording] , *the mailing* of the notice of delinquent assessment , and *the recording of the* notice of default and election to sell;

(b) The elapsing of the 60 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 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.

3. The sale of a unit pursuant to NRS 116.31162 and 116.31164 *and section 6 of this act* vests in the purchaser the title of the unit's owner without equity or right of redemption.

Sec. 40. NRS 116.31168 is hereby amended to read as follows:

116.31168 1. The provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed. The request must identify the lien by stating the names of the unit's owner and the common-interest community. [The association must also give reasonable notice of its intent to foreclose to all holders of liens in the unit who are known to it.]

2. An association may, after recording a notice of default and election to sell, waive the default and withdraw the notice or any proceeding to foreclose. The association is thereupon restored to its former position and has the same rights as though the notice had not been recorded.

Sec. 41. NRS 116.4101 is hereby amended to read as follows:

116.4101 1. NRS 116.4101 to 116.4120, inclusive, apply to all units subject to this chapter, except as otherwise provided in subsection 2 or as modified or waived by agreement of purchasers of units in a common-interest community in which all units are restricted to nonresidential use.

2. Neither a public offering statement nor a certificate of resale need be prepared or delivered in the case of a:

(a) Gratuitous disposition of a unit;

(b) Disposition pursuant to court order;

(c) Disposition by a government or governmental agency;

(d) Disposition by foreclosure or deed in lieu of foreclosure;

(e) Disposition to a dealer;

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EXHIBIT M

EXHIBIT M

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.

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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.

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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

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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

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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

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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-

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Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provisions of this Article, in the event a party wall is damaged or destroyed as a result of the negligent or willful act or omission by an adjoining Owner, his agents, tenants, licensees, guests or family, then in such event, such Owner shall bear the whole cost of rebuilding and/or repairing such party wall.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Extension or Alteration. In addition to meeting the other requirements of these restrictive covenants and of any building code or similiar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his Unit in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner, and approval of the Board, and approval of the Building Department of the City of Las Vegas, and/or Clark County Nevada together with necessary building permits.

Section 7. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each Owner shall choose an arbitrator, and such arbitrators shall choose an additional arbitrator, or if the two arbitrators cannot agree as to the selection of the third arbitrator within five (5) days, then any Judge of the Superior Court of Clark County, Nevada shall choose the additional arbitrator. A determination of the matter signed by any two (2) of the three (3) arbitrators shall be binding upon the Owners, who shall share the cost of the arbitration equally. In the event one Owner fails to choose an arbitrator within the (10) days after receipt of a request in writing for arbitration from the other Owner, then said other Owner shall have the right and power to choose both arbitrators.

Section 8. Covenants Binding. These covenants shall be binding upon the heirs and assigns of any Owners, but no person shall be liable for any act or omission respecting any party wall except as took place while an Owner.

ARTICLE X

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration herein be made until the plans and specifications showing the nature, kind, shape, height, colors, materials and locations of same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an

architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with, provided that the building, structure or other improvement to be built or placed on the Properties shall be governed by all of the Restrictions in this Declaration. The initial landscaping that is provided or approved by the Board shall not be altered or changed (except for similar replacements and rehabilitation) without the prior approval of the Board. Notwithstanding the foregoing, the Restrictions and controls set forth in this Section shall not be applicable to Declarant with respect to any original construction or landscaping undertaken by Declarant within the Properties.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Enforcement. The Association, the Declarant or any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. In the event any such person employs an attorney or attorneys to enforce compliance with or specific performance of the terms and conditions of this Declaration, and prevails in such action, the Owner or Owners against whom the action is brought shall pay all attorney's fees and costs incurred in conjunction with such action. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The foregoing shall apply regardless of whether any person affected thereby (or having the right to enforce these Restrictions) had knowledge of the breach or violation.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgement or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Admendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall be binding upon each Owner and his heirs, executors, administrators, successors and assigns and all other persons claiming an interest in and to the Properties, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not loss than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded in the office of the County Recorder of Clark County, Nevada.

Section 4. Construction and Interpretation of Declaration. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and Properties benefited or bound by these Restrictions.

Section 5. Gender. Whenever the context of this Declaration so requires, words used in masculine gender shall include the feminine and neuter genders, words used in the neuter gender shall include the masculine and feminine genders, words in the singular shall include the plural, and words in the plural shall include the singular.

Section 6. Captions, Titles and Headings. All captions, titles and headings of the Articles and Sections of this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or contents hereof.

Section 7. Jurisdiction. All Owners agree that any matter arising under this Declaration may be finally adjudged or determined in any court of courts of the State of Nevada, and such Owners hereby submit generally and unconditionally to the jurisdiction of such courts and of any of them in respect to any such matter; provided, however, as to those matters to be submitted to arbitration pursuant to any provision hereof, such arbitration provisions shall be controlling and prevail.

Section 8. Annexation.

(a) Additional residential property and common area may be annexed to the properties with the consent of two-thirds (2/3) of each class of members.

(b) Additional land within the area described in Deed Book _____ Page _____ of the land records of Clark County Nevada may be annexed by the Declarant without the consent of Members within Five (5) years of the date of this instrument provided that the FHA and/or VA determine that the annexation is in accord with the general plan heretofore approved by them.

Section 9. FHA/VA Approval. As long as there is a Class B membership and provided the FHA and/or VA have approved the development for FHA and/or VA loans, the following actions will require the prior approval of the Federal Housing Administration and/or the Veterans Administration: Annexation of additional Properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 8th day of December, 1983.

DIVERSIFIED PROPERTIES CORPORATION,
a Nevada Corporation, Declarant

By Park K. Haws
Its President PARK K. HAWS

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

The foregoing instrument was acknowledged before me this 8th day of December, 1983 by Park K. Haws the President of DIVERSIFIED PROPERTIES CORPORATION, a, Nevada Corporation, on behalf of the Corporation.

NOTARY PUBLIC

My commission expires:

March 10, 1984

OFFICIAL SEAL
MARTHA B. GURTNER
NOTARY PUBLIC - STATE OF NEVADA
COUNTY OF CLARK
My Appointment Expires Mar 10, 1984

Book 1845

1804064

" "

CLARK COUNTY, NEVADA
JOAN L. SWIFT, RECORDER
RECORDED AT REQUEST OF
FIRST AMERICAN TITLE CO. OF NEVADA

Dec 12 10 44 AM '83

FEE $ DEPUTY
OFFICIAL RECORDS
BOOK INSTRUMENT

1845

1804064

EXHIBIT L

EXHIBIT L

IN THE SUPREME COURT OF THE STATE OF NEVADA

NAVY FEDERAL CREDIT UNION,

Appellant,

vs.

SATICOY BAY LLC SERIES 1916 SUMMER POINT,

Respondent.

Electronically Filed
Dec 13 2016 10:30 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 69308

Appeal from Eighth Judicial District Court, Clark County, Nevada, Case No. A-14-703202-C

MOTION OF NEVADA LEGISLATURE FOR LEAVE FOR LATE FILING OF AMICUS CURIAE BRIEF

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EDWARD APPENDIX 1294
Docket 69308 Document 2016-38489

MOTION

Pursuant to NRAP 26(b)(1)(A), NRAP 27(a) and NRAP 29(f), the Nevada Legislature (Legislature), by and through its counsel the Legal Division of the Legislative Counsel Bureau under NRS 218F.720, hereby files this motion for leave for late filing of the Legislature's proposed amicus brief. As required by NRAP 29(c), a copy of the proposed amicus brief accompanies this motion.

GROUNDS AND LEGAL ARGUMENT

The Legislature's proposed amicus brief supports the facial constitutionality of the former statutes in NRS 116.3116-116.31168 that regulated nonjudicial foreclosure of superpriority liens by homeowners' associations (HOAs) for certain unpaid HOA dues. In 2015, the Legislature amended the former statutes and revised the foreclosure procedures. SB306, 2015 Nev.Stat., ch.266, §§1-7, at 1331-45. However, the facial challenge in this case—and in numerous other appeals currently pending before this Court—is based on the former statutes as they existed before the amendments (the pre-amendment statutes).[1] Because the pre-amendment statutes were in effect for 25 years, their facial invalidation could adversely affect hundreds of HOAs and call into question thousands of

[1] The Legislature's proposed amicus brief is limited solely to legal issues concerning the proper statutory interpretation of the pre-amendment statutes and their facial constitutionality under procedural due process. The proposed amicus brief does not address any other legal issues arising from the particular facts of this case, and it does not support either party concerning such other legal issues.

foreclosures, which could cloud property titles and undermine the stability and vitality of Nevada's real estate markets.

On November 23, 2016, this Court entered an order determining that oral argument before the en banc Court may be of assistance in resolving this case and directing such oral argument to be scheduled on the next available calendar. Because facial invalidation of the pre-amendment statutes could have far-reaching adverse consequences on the stability and vitality of Nevada's real estate markets, the Legislature respectfully asks this Court for leave for late filing of its proposed amicus brief so that it may present its legal arguments to the en banc Court to defend the facial constitutionality of the pre-amendment statutes.

The Legislature acknowledges that it is asking for leave at a late juncture in this case. However, because there are so many other appeals currently pending before this Court that raise the same facial challenge to the pre-amendment statutes under procedural due process, the Legislature believes it would be in the best interests of judicial economy and efficiency for the en banc Court to consider the Legislature's legal arguments in its proposed amicus brief as part of the Court's preparation for oral argument in this case.

The Legislature notes that on December 12, 2016, it timely filed the same amicus brief in HSBC Bank USA v. SFR Invs. Pool 1, Nevada Supreme Court Case No. 69437, which raises the same facial challenge to the pre-amendment

statutes under procedural due process. However, to avoid burdening this Court with repeated filings by the Legislature of the same amicus brief in the other appeals that raise the same facial challenge to the pre-amendment statutes under procedural due process, the Legislature respectfully asks this Court to accept the Legislature's proposed amicus brief in this case in the interests of judicial economy and efficiency.

The Legislature also respectfully asks this Court to accept the Legislature's proposed amicus brief in this case because in Bourne Valley Court Trust v. Wells Fargo Bank, 832 F.3d 1154 (9thCir.2016), a panel of the Ninth Circuit misapplied Nevada's rules of statutory interpretation and, as a result of its erroneous interpretation, facially invalidated the pre-amendment statutes as violating the procedural due-process rights of all mortgage lenders. However, under well-established U.S. Supreme Court precedent, the panel should not have decided state-law questions of statutory interpretation but should have certified those state-law questions to this Court for final decision because the pre-amendment statutes were "susceptible of . . . an interpretation [that] would avoid or substantially modify the federal constitutional challenge to the statute[s]." Arizonans for Official English v. Arizona, 520 U.S. 43, 77-80 (1997) (quoting Bellotti v. Baird,

428 U.S. 132, 148 (1976), and admonishing the Ninth Circuit for failing to certify state-law questions of statutory interpretation to the state's highest court).[2]

Because this Court is the final arbiter of the meaning of Nevada state law, this Court is not bound by the Bourne Valley panel's erroneous statutory interpretation of the pre-amendment statutes. See Blanton v. N. Las Vegas Mun. Ct., 103 Nev. 623, 633 (1987) ("[T]he decisions of the federal district court and panels of the federal circuit court of appeal are not binding upon this court."), *aff'd*, Blanton v. City of N. Las Vegas, 489 U.S. 538 (1989). Therefore, the Legislature has an interest in presenting the legal arguments in its proposed amicus brief and having this Court provide a final and binding interpretation of the pre-amendment statutes based on Nevada's rules of statutory interpretation.

Specifically, when Nevada's rules of statutory interpretation are applied to the plain language and legislative history of the pre-amendment statutes, it is inescapable that the statutes—which expressly incorporated the deed-of-trust foreclosure procedures from NRS 107.090—required HOAs to provide lenders with notice that satisfied procedural due process. But even assuming there was any

[2] After the Bourne Valley panel issued its decision, the Legislature filed an amicus brief with the Ninth Circuit supporting Bourne Valley's petition for rehearing or rehearing en banc. Ninth Circuit Case No. 15-15233, DktEntry: 51-1 (Sept. 6, 2016). Because the Ninth Circuit denied the petition on November 4, 2016, it is the Legislature's understanding that Bourne Valley will be filing a petition for certiorari review with the U.S. Supreme Court, and the Legislature intends to file an amicus brief supporting that petition.

doubt and the statutes were susceptible of conflicting interpretations, one rendering them constitutional, and the other unconstitutional, the judicial branch must adopt the constitutional interpretation. Sheriff v. Wu, 101 Nev. 687, 689-90 (1985).

The rule which directs the judicial branch to adopt the constitutional interpretation is paramount to other rules of statutory interpretation because the duty of the judicial branch to save statutes from an unconstitutional interpretation is derived from the constitutional separation of powers which—out of respect for a coequal branch of government whose legislative members also take an oath to uphold the Constitution—requires the judicial branch to presume the legislative branch "legislates in the light of constitutional limitations." Rust v. Sullivan, 500 U.S. 173, 191 (1991); Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Const. Trades Council, 485 U.S. 568, 574-75 (1988); Illinois v. Krull, 480 U.S. 340, 351 (1987); Rostker v. Goldberg, 453 U.S. 57, 64 (1981). Therefore, based on the constitutional separation of powers, the judicial branch must adopt any reasonable construction which will save the statutes from unconstitutionality. Rust, 500 U.S. at 190 ("[A]s between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the Act." (quoting Blodgett v. Holden, 275 U.S. 142, 148 (1927) (opinion of Holmes, J.))).

Consequently, the Legislature respectfully asks this Court to consider the legal arguments in its proposed amicus brief and to provide a final and binding interpretation of the pre-amendment statutes which is based on Nevada's rules of statutory interpretation and is consistent with the plain language and legislative history of the statutes. When the pre-amendment statutes are properly interpreted under Nevada's rules of statutory interpretation, the statutes survive a facial challenge because they expressly incorporated the deed-of-trust foreclosure procedures from NRS 107.090 and, as a result, they required HOAs to provide lenders with notice that satisfied procedural due process.

CONCLUSION

Based on the foregoing, the Legislature respectfully asks this Court to grant the Legislature's motion for leave for late filing of its proposed amicus brief.

DATED: This **12th** day of December, 2016.

Respectfully submitted,

BRENDA J. ERDOES
Legislative Counsel

By: /s/ Kevin C. Powers
KEVIN C. POWERS
Chief Litigation Counsel
LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION
Attorneys for Amicus Curiae Nevada Legislature

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the **12th** day of December, 2016, pursuant to NRAP 25 and NEFCR 8 and 9, I filed and served a true and correct copy of the foregoing Motion of Nevada Legislature for Leave for Late Filing of Amicus Curiae Brief, by electronic means to registered users of the Nevada Supreme Court's electronic filing system and by electronic mail, directed to the following:

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EDWARD APPENDIX 1301

IN THE SUPREME COURT OF THE STATE OF NEVADA

NAVY FEDERAL CREDIT UNION, Appellant, vs. SATICOY BAY LLC SERIES 1916 SUMMER POINT, Respondent.	**Supreme Court Case No. 69308** Appeal from Eighth Judicial District Court, Clark County, Nevada, Case No. A-14-703202-C

AMICUS CURIAE BRIEF OF NEVADA LEGISLATURE SUPPORTING FACIAL CONSTITUTIONALITY OF FORMER STATUTES IN NRS 116.3116-116.31168 THAT REGULATED NONJUDICIAL FORECLOSURE OF SUPERPRIORITY LIENS BY HOMEOWNERS' ASSOCIATIONS

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NEVADA RULES OF APPELLATE PROCEDURE

OTHER AUTHORITIES

INTRODUCTION

The Nevada Legislature (Legislature), by and through its counsel the Legal Division of the Legislative Counsel Bureau under NRS 218F.720, hereby files an amicus brief supporting the facial constitutionality of the former statutes in NRS 116.3116-116.31168 that regulated nonjudicial foreclosure of superpriority liens by homeowners' associations (HOAs) for certain unpaid HOA dues. In 2015, the Legislature amended the former statutes and revised the foreclosure procedures. SB306, 2015 Nev.Stat., ch.266, §§1-7, at 1331-45. However, the facial challenge in this case is based on the former statutes as they existed before the amendments (the pre-amendment statutes).[1]

Under NRAP 29(a), as an agency of the State of Nevada, the Legislature "may file an amicus curiae brief without the consent of the parties or leave of court." Additionally, under NRS 218F.720(1), the Legislature may appear through its counsel in any action to protect its official interests. The determination of whether to appear is made by "the Legislative Commission, or the Chair of the Legislative Commission in cases where action is required before a meeting of the

[1] The Legislature's amicus brief is limited solely to legal issues concerning the proper statutory interpretation of the pre-amendment statutes and their facial constitutionality under procedural due process. This brief does not address any other legal issues arising from the particular facts of this case, and it does not support either party concerning such other legal issues.

Legislative Commission is scheduled to be held." Id. In this case, because such action is required, the Chair authorized filing of the Legislature's amicus brief.

The Legislature has an interest in this case because Appellant asks this Court to facially invalidate long-standing statutory provisions that authorized HOAs to pursue nonjudicial foreclosure against units to enforce statutory superpriority liens for certain unpaid HOA dues. Because those provisions were in effect for 25 years, their facial invalidation could adversely affect hundreds of HOAs and call into question thousands of foreclosures, which could cloud property titles and undermine the stability and vitality of Nevada's real estate markets.

Moreover, the Legislature has an interest in this case because in Bourne Valley Court Trust v. Wells Fargo Bank, 832 F.3d 1154 (9thCir.2016), a panel of the Ninth Circuit misapplied Nevada's rules of statutory interpretation and, as a result of its erroneous interpretation, facially invalidated the pre-amendment statutes as violating the procedural due-process rights of all mortgage lenders. However, under well-established U.S. Supreme Court precedent, the panel should not have decided state-law questions of statutory interpretation but should have certified those state-law questions to this Court for final decision because the pre-amendment statutes were "susceptible of . . . an interpretation [that] would avoid or substantially modify the federal constitutional challenge to the statute[s]." Arizonans for Official English v. Arizona, 520 U.S. 43, 77-80 (1997) (quoting

Bellotti v. Baird, 428 U.S. 132, 148 (1976), and admonishing the Ninth Circuit for failing to certify state-law questions of statutory interpretation to the state's highest court).[2]

Because this Court is the final arbiter of the meaning of Nevada state law, this Court is not bound by the Bourne Valley panel's erroneous statutory interpretation of the pre-amendment statutes. See Blanton v. N. Las Vegas Mun. Ct., 103 Nev. 623, 633 (1987) ("[T]he decisions of the federal district court and panels of the federal circuit court of appeal are not binding upon this court."), *aff'd*, Blanton v. City of N. Las Vegas, 489 U.S. 538 (1989). Therefore, the Legislature has an interest in having this Court provide a final and binding interpretation of the pre-amendment statutes based on Nevada's rules of statutory interpretation.

Specifically, when Nevada's rules of statutory interpretation are applied to the plain language and legislative history of the pre-amendment statutes, it is inescapable that the statutes—which expressly incorporated the deed-of-trust foreclosure procedures from NRS 107.090—required HOAs to provide lenders

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[2] After the Bourne Valley panel issued its decision, the Legislature filed an amicus brief with the Ninth Circuit supporting Bourne Valley's petition for rehearing or rehearing en banc. Ninth Circuit Case No. 15-15233, DktEntry: 51-1 (Sept. 6, 2016). Because the Ninth Circuit denied the petition on November 4, 2016, it is the Legislature's understanding that Bourne Valley will be filing a petition for certiorari review with the U.S. Supreme Court, and the Legislature intends to file an amicus brief supporting that petition.

with notice that satisfied procedural due process. But even assuming there was any doubt and the statutes were susceptible of conflicting interpretations, one rendering them constitutional, and the other unconstitutional, the judicial branch must adopt the constitutional interpretation. Sheriff v. Wu, 101 Nev. 687, 689-90 (1985).

The rule which directs the judicial branch to adopt the constitutional interpretation is paramount to other rules of statutory interpretation because the duty of the judicial branch to save statutes from an unconstitutional interpretation is derived from the constitutional separation of powers which—out of respect for a coequal branch of government whose legislative members also take an oath to uphold the Constitution—requires the judicial branch to presume the legislative branch "legislates in the light of constitutional limitations." Rust v. Sullivan, 500 U.S. 173, 191 (1991); Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Const. Trades Council, 485 U.S. 568, 574-75 (1988); Illinois v. Krull, 480 U.S. 340, 351 (1987); Rostker v. Goldberg, 453 U.S. 57, 64 (1981). Therefore, based on the constitutional separation of powers, the judicial branch must adopt any reasonable construction which will save the statutes from unconstitutionality. Rust, 500 U.S. at 190 ("[A]s between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the Act." (quoting Blodgett v. Holden, 275 U.S. 142, 148 (1927) (opinion of Holmes, J.))).

Consequently, the Legislature respectfully asks this Court to provide a final and binding interpretation of the pre-amendment statutes which is based on Nevada's rules of statutory interpretation and is consistent with the plain language and legislative history of the statutes. When the pre-amendment statutes are properly interpreted under Nevada's rules of statutory interpretation, the statutes survive a facial challenge because they expressly incorporated the deed-of-trust foreclosure procedures from NRS 107.090 and, as a result, they required HOAs to provide lenders with notice that satisfied procedural due process.

BACKGROUND

In SFR Invs. Pool 1 v. U.S. Bank, this Court held that the pre-amendment statutes created superpriority liens in favor of HOAs for certain unpaid HOA dues. 130 Nev.Adv.Op. 75, 334 P.3d 408, 412-14 (2014). This Court also held that if an HOA foreclosed on its superpriority lien, the foreclosure extinguished all junior or subordinate liens, including a mortgage lender's first deed of trust. Id. at 414-17.

In Bourne Valley Court Trust v. Wells Fargo Bank, Wells Fargo challenged the validity of an HOA's foreclosure of its superpriority lien which extinguished Wells Fargo's first deed of trust. 80 F.Supp.3d 1131, 1132-33 (D.Nev.2015), *vacated*, 832 F.3d 1154 (9thCir.2016). In the federal district court, Wells Fargo mounted only an as-applied challenge to the pre-amendment statutes, claiming that because no evidence was presented that the HOA provided Wells Fargo with

notice of the foreclosure before it occurred, the foreclosure violated its procedural due-process rights by extinguishing its first deed of trust without notice and an opportunity to protect its interests. Id. The federal district court rejected the as-applied challenge. Id. at 1134-35.

For the first time on appeal, Wells Fargo raised its facial challenge. 832 F.3d at 1158 n.3. In its facial challenge, Wells Fargo argued the pre-amendment statutes facially violated the procedural due-process rights of all mortgage lenders with liens on units because the statutes allegedly did not require HOAs to provide lenders with notice of foreclosures unless the lenders had "opted-in" by affirmatively requesting such notice under the framework in the statutes. In response, Bourne Valley argued that because the pre-amendment statutes expressly incorporated the deed-of-trust foreclosure procedures from NRS 107.090, the pre-amendment statutes required HOAs to provide lenders with notice under NRS 107.090 that satisfied procedural due process.

In a 2-1 decision, the Ninth Circuit panel agreed with Wells Fargo and interpreted the pre-amendment statutes to create an "opt-in" notice scheme. 832 F.3d at 1157-59. Despite the fact that the pre-amendment statutes expressly incorporated the deed-of-trust foreclosure procedures from NRS 107.090, the panel rejected interpreting the statutes as requiring HOAs to provide lenders with notice under NRS 107.090 because such an interpretation "would impermissibly render

the [opt-in] notice provisions of Chapter 116 entirely superfluous." Id. at 1159. As a result of its erroneous statutory interpretation, the panel held that the "opt-in" notice scheme facially violated lenders' procedural due-process rights. Id. at 1157-59. The panel also held that although nonjudicial foreclosure of HOA liens involved only private parties—rather than state actors—the state-action requirement was met because the pre-amendment statutes "unconstitutionally degraded" the lenders' interests in their first deeds of trust. Id. at 1159-60.

Judge Wallace dissented on both grounds. Id. at 1160-65 (Wallace, J., dissenting). Judge Wallace disagreed with the panel's holding that the state-action requirement was met because "an HOA is not a government actor and a nonjudicial foreclosure by definition takes place without government involvement." Id. at 1161. Judge Wallace also disagreed with the panel's statutory interpretation because it was contrary to the statutes' plain language expressly incorporating the deed-of-trust foreclosure procedures from NRS 107.090 and because it was contrary to the canon that courts must adopt an interpretation that renders the statutes constitutional if fairly possible. Id. at 1163-65.

The Legislature agrees with Judge Wallace's dissent, including his conclusion that the state-action requirement was not met. However, if the pre-amendment statutes are properly interpreted under Nevada's rules of statutory construction, the statutes are facially constitutional under procedural due process, and there is no

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need for this Court to reach the state-action issue because it is rendered moot. Therefore, although the Legislature agrees that the state-action requirement was not met, the Legislature does not present any arguments on the state-action issue in its amicus brief.

ARGUMENT

I. Standards for reviewing constitutional challenges.

When reviewing the constitutionality of statutes, this Court presumes the statutes are constitutional, and "[i]n case of doubt, every possible presumption will be made in favor of the constitutionality of a statute, and courts will interfere only when the Constitution is clearly violated." List v. Whisler, 99 Nev. 133, 137 (1983). The presumption places a heavy burden on the challenger to make "a clear showing that the statute is unconstitutional." Id. at 138. As a result, this Court will not invalidate a statute on constitutional grounds unless the statute's invalidity appears "beyond a reasonable doubt." Cauble v. Beemer, 64 Nev. 77, 101 (1947); State ex rel. Lewis v. Doron, 5 Nev. 399, 408 (1870) ("[E]very statute is to be upheld, unless plainly and without reasonable doubt in conflict with the Constitution.").

Furthermore, it is a fundamental rule of constitutional review that "the judiciary will not declare an act void because it disagrees with the wisdom of the Legislature." Anthony v. State, 94 Nev. 337, 341 (1978). Thus, in reviewing the

constitutionality of statutes, this Court is not concerned with the wisdom or policy of the statutes because "matters of policy or convenience or right or justice or hardship or questions of whether the legislation is good or bad are solely matters for consideration of the legislature and not of the courts." King v. Bd. of Regents, 65 Nev. 533, 542 (1948).

II. The Bourne Valley panel's opinion should not be given any persuasive weight because under U.S. Supreme Court precedent, the panel should have certified the state-law questions of statutory interpretation to this Court for final decision.

In Arizonans for Official English, the U.S. Supreme Court admonished the Ninth Circuit for failing to certify state-law questions of statutory interpretation to the Arizona Supreme Court because certification could have avoided or substantially modified the federal constitutional challenges to the state provisions. 520 U.S. at 77-80. In its admonishment, the Supreme Court explained that federal courts normally should not "consider the [c]onstitutionality of a state statute in the absence of a controlling interpretation of its meaning and effect by the state courts." Id. at 75 (quoting Poe v. Ullman, 367 U.S. 497, 526 (1961) (Harlan, J., dissenting)). Instead, the Supreme Court warned federal courts that they have a duty to certify state-law questions of statutory interpretation to the state's highest court when "the statute is susceptible of . . . an interpretation [that] would avoid or substantially modify the federal constitutional challenge to the statute." Id. at 77 (quoting Bellotti, 428 U.S. at 148). As further explained by the High Court:

> Warnings against premature adjudication of constitutional questions bear heightened attention when a federal court is asked to invalidate a State's law, for the federal tribunal risks friction-generating error when it endeavors to construe a novel state Act not yet reviewed by the State's highest court. Speculation by a federal court about the meaning of a state statute in the absence of prior state court adjudication is particularly gratuitous when . . . the state courts stand willing to address questions of state law on certification from a federal court.

Id. at 79 (internal quotations and citations omitted); Beth A. Hardy, Note, Federal Courts—Certification Before Facial Invalidation: A Return to Federalism, 12 W. New Eng. L. Rev. 217, 240 (1990) ("Certification before facial invalidation will further the principles of federalism which warn against unnecessary interference with state policy and unnecessary adjudication of constitutional questions.").

In other cases, the Ninth Circuit has properly certified state-law questions of statutory interpretation to the state's highest court, even if no party requested certification or all parties objected to certification. Parents Cmty. Schs. v. Seattle Sch. Dist., 294 F.3d 1085, 1086 (9thCir.2002); Doyle v. City of Medford, 565 F.3d 536, 537-44 (9thCir.2009). And given the U.S. Supreme Court's admonishment in Arizonans for Official English, the Ninth Circuit has acknowledged its duty to certify such state-law questions, stating that "even when we find the plain language of state law dispositive, we have an obligation to consider whether novel state-law questions should be certified—and we have been admonished in the past for failing to do so." Parents Cmty. Schs., 294 F.3d at 1086 (citations omitted).

Under NRAP 5, this Court has adopted a "liberal standard" that favors answering state-law questions certified by federal courts because the liberal standard "best serves the purposes of NRAP 5 [certification]: federalism, comity and judicial efficiency." Volvo Cars v. Ricci, 122 Nev. 746, 750-51 (2006). Thus, this Court stands willing to answer state-law questions certified by federal courts when: (1) the answer may be determinative of part of the federal case; (2) there exists no clearly controlling Nevada precedent with respect to the questions; and (3) the answer will help settle important issues of law. Hartford Fire Ins. v. Trs. of Constr. Indus. Trust, 125 Nev. 149, 154 (2009).

In Bourne Valley, all three elements for NRAP 5 certification were met. First, this Court's answer to the state-law questions of statutory interpretation would have been determinative of the facial validity of the pre-amendment statutes under the federal due-process challenge. Second, although this Court interpreted the pre-amendment statutes in SFR, 334 P.3d at 418, the Ninth Circuit panel did not consider that interpretation to be clearly controlling in Bourne Valley, so from the panel's point of view, there was no clearly controlling Nevada precedent with respect to the state-law questions of statutory interpretation. Third, this Court's answer to the state-law questions would have helped settle important issues of law because there are numerous cases pending in state and federal courts challenging

the facial validity of the pre-amendment statutes whose resolution is dependent on the proper statutory interpretation of the pre-amendment statutes.

Thus, the Ninth Circuit panel was presented with a textbook case of a facial challenge that required certification of the state-law questions of statutory interpretation to this Court for final decision because—as evidenced by the differing interpretations offered by the panel and dissent—the pre-amendment statutes were susceptible of a reasonable interpretation that, if adopted by this Court, would have eliminated or substantially modified the facial challenge in the federal case. Under such circumstances, the panel should not have decided the state-law questions of statutory interpretation but should have certified those state-law questions to this Court for final decision in compliance with Arizonans for Official English. Because the panel failed to certify the state-law questions to this Court for final decision in contravention of U.S. Supreme Court precedent, the panel's opinion transgresses principles of federalism, comity and judicial efficiency, and it should not be given any persuasive weight.

III. The Bourne Valley panel's opinion should not be given any persuasive weight because under U.S. Supreme Court precedent, the panel improperly reviewed the facial challenge based on the pre-amendment statutes instead of the current version.

Under U.S. Supreme Court precedent, federal courts must review the facial validity of a statute "as it now stands, not as it once did." Hall v. Beals, 396 U.S. 45, 48 (1969); Cal. Bankers Ass'n v. Shultz, 416 U.S. 21, 53 (1974); Fusari v.

Steinberg, 419 U.S. 379, 387 (1975). When a statute is amended during appeal, federal courts must review the facial challenge "in light of presently existing [state] law, not the law in effect at the time that judgment was rendered." Fusari, 419 U.S. at 387 (holding that statutory amendment during appeal rendered facial procedural due-process challenge moot). By contrast, in an as-applied challenge, federal courts review the validity of the statute based on the version in effect when it was applied to the facts of the case. Bigelow v. Virginia, 421 U.S. 809, 817-18 (1975) (holding that statutory amendment during appeal rendered facial challenge moot but did not preclude as-applied challenge to pre-amendment version).

While the Bourne Valley appeal was pending, the Legislature amended the statutes, but despite the amendments and contrary to U.S. Supreme Court precedent, the panel reviewed Wells Fargo's facial challenge based on the pre-amendment statutes rather than the version "as it now stands." Hall, 396 U.S. at 48. Thus, the panel improperly reviewed the facial challenge based on the pre-amendment statutes instead of the current version. Further, after the Legislature's amendments, Wells Fargo was limited to challenging the pre-amendment statutes only as applied to the facts of the Bourne Valley case. As a result, after the Legislature's amendments, Wells Fargo's facial challenge to the pre-amendment statutes was rendered moot, and the panel exceeded its jurisdiction by declaring the pre-amendment statutes facially invalid. Princeton Univ. v. Schmid, 455 U.S. 100,

103 (1982). Consequently, the Bourne Valley panel's opinion should not be given any persuasive weight because the panel improperly reviewed the facial challenge based on the pre-amendment statutes instead of the current version.

IV. The Bourne Valley panel's opinion should not be given any persuasive weight because under U.S. Supreme Court precedent, the panel improperly reviewed the facial challenge before the as-applied challenge.

Under U.S. Supreme Court precedent, when parties raise both a facial challenge and as-applied challenge in federal court, the as-applied challenge "should ordinarily be decided first." Bd. of Trs. v. Fox, 492 U.S. 469, 485 (1989); City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 447 (1985). "This is the preferred course of adjudication since it enables courts to avoid making unnecessarily broad constitutional judgments." Cleburne, 473 U.S. at 447. This is also consistent with the rule that "a person to whom a statute may constitutionally be applied may not challenge that statute on the ground that it may conceivably be applied unconstitutionally to others in situations not before the Court." L.A. Police Dep't v. United Reporting Publ'g, 528 U.S. 32, 38 (1999).

Under this U.S. Supreme Court precedent, the Bourne Valley panel was required to decide Wells Fargo's as-applied challenge first. If Wells Fargo's procedural due-process rights were not violated by the pre-amendment statutes as applied to the facts of the Bourne Valley case, Wells Fargo could not mount a facial challenge to the statutes "on the ground that [the statutes] may conceivably

be applied unconstitutionally to others in situations not before the Court." L.A. Police, 528 U.S. at 38. Therefore, before the panel considered the facial challenge, it was required to decide whether Wells Fargo's procedural due-process rights were violated by the pre-amendment statutes as applied to the facts of the Bourne Valley case. See Jones v. Flowers, 547 U.S. 220, 226-29 (2006) (evaluating specific facts of case to determine whether property owner's procedural due-process rights were violated by statutory foreclosure of tax lien); United Student Aid Funds v. Espinosa, 559 U.S. 260, 272 (2010) (evaluating specific facts of case to determine whether creditor's procedural due-process rights were violated by discharge of debt in bankruptcy).

For example, nothing in the pre-amendment statutes prohibited HOAs from providing lenders with "notice reasonably calculated, under all the circumstances, to apprise [the lenders] of the pendency of the [foreclosure] and afford them an opportunity to present their objections." Jones, 547 U.S. at 226. Therefore, before it considered the facial challenge, the panel was required to decide whether Wells Fargo received such notice under the facts of the Bourne Valley case. If Wells Fargo received such notice, its procedural due-process rights were not violated by the pre-amendment statutes as applied, and Wells Fargo could not mount a facial challenge. Thus, because the Bourne Valley panel decided the facial challenge first in contravention of U.S. Supreme Court precedent, its opinion should not be

given any persuasive weight because it improperly reviewed the facial challenge before the as-applied challenge.

V. The Bourne Valley panel's opinion should not be given any persuasive weight because under U.S. Supreme Court precedent, the panel improperly invalidated the pre-amendment statutes on their face when the statutes were not unconstitutional under all circumstances.

Under U.S. Supreme Court precedent, for a facial challenge to succeed, Wells Fargo had to prove the pre-amendment statutes were unconstitutional under all circumstances:

> A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid. The fact that the [legislative] Act might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid, since we have not recognized an "overbreadth" doctrine outside the limited context of the First Amendment.

United States v. Salerno, 481 U.S. 739, 745 (1987). Because a facial challenge requires unconstitutionality *under all circumstances*, Wells Fargo's facial challenge should have failed because there were circumstances under which the pre-amendment statutes could operate constitutionally. Wash. State Grange v. Wash. State Republican Party, 552 U.S. 442, 449 (2008).

As discussed previously, nothing in the pre-amendment statutes prohibited HOAs from providing lenders with "notice reasonably calculated, under all the circumstances, to apprise [the lenders] of the pendency of the [foreclosure] and afford them an opportunity to present their objections." Jones, 547 U.S. at 226. If

HOAs provided such notice, the statutes could operate constitutionally. Id. at 226-29; Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 795-800 (1983). Given there were circumstances under which the pre-amendment statutes could operate constitutionally, Wells Fargo's facial challenge should have failed under U.S. Supreme Court precedent. Therefore, the Bourne Valley panel's opinion should not be given any persuasive weight because under U.S. Supreme Court precedent, the panel improperly invalidated the pre-amendment statutes on their face when the statutes were not unconstitutional under all circumstances.

VI. The Bourne Valley panel's opinion should not be given any persuasive weight because the panel misapplied Nevada's rules of statutory interpretation and, as a result, improperly interpreted the pre-amendment statutes as not requiring HOAs to provide lenders with notice under NRS 107.090 that satisfied procedural due process.

When interpreting state statutes, federal courts must apply the state's rules of statutory interpretation. In re First T.D. & Inv., 253 F.3d 520, 527 (9thCir.2001). Based on Nevada's rules of statutory interpretation in light of plain language and legislative history, the pre-amendment statutes—which expressly incorporated the deed-of-trust foreclosure procedures from NRS 107.090—required HOAs to provide lenders with notice that satisfied procedural due process.

Before 1989, NRS 107.090 required persons conducting deed-of-trust foreclosures to notify only those persons who had recorded requests to receive such notice. However, during the 1989 session, the Legislature amended the

statute to require notice, by registered or certified mail, to all recorded junior or subordinate lienholders, regardless of whether they requested the notice. AB440, 1989 Nev.Stat., ch.306, §1, at 644 (*Addendum:A12*). In committee hearings, Assemblyman Callister explained the purpose of the amendment:

> What Mr. Callister sought was to require that anyone foreclosing would have to give notice of default to junior lienholders, regardless of whether there was a notice on file. This would mean the trustee would have to research the title, to find out if any junior liens (mechanics lien, hospital liens or other types of valid encumbrances recorded against the property) existed.

Hearing AB440 Assembly Comm. Judiciary, 65th Leg., at p.5 (Nev. Apr. 4, 1989) (*Addendum:A5*); Hearing AB440 Senate Comm. Judiciary, 65th Leg., at p.6 (Nev. June 1, 1989) (*Addendum:A8*).

During the next session in 1991, the Legislature enacted the HOA statutes incorporating NRS 107.090 into NRS 116.31168 as follows:

> *The provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed.* The request must identify the lien by stating the names of the unit's owner and the common-interest community. *The association must **also** give reasonable notice of its intent to foreclose to all holders of liens in the unit who are known to it.*

AB221, 1991 Nev.Stat., ch.245, §104, at 570-71 (codified as NRS 116.31168) (emphasis added) (*Addendum:A18*).

Based on its plain language, NRS 116.31168 required each HOA to provide notice to: (1) all recorded junior or subordinate lienholders in the same manner as

deed-of-trust foreclosures under NRS 107.090; and ***also*** (2) all holders of liens in the unit who were known to the HOA. Clearly, by requiring HOAs to provide notice to an ***additional*** category of lienholders who were separate and apart from the recorded lienholders under NRS 107.090, the Legislature intended HOAs to provide even more expansive notice than what was required in deed-of-trust foreclosures under NRS 107.090. Moreover, given that the Legislature—during the immediately preceding session—had just required more expansive notice to recorded lienholders in deed-of-trust foreclosures under NRS 107.090, it is unreasonable to think the Legislature intended for HOAs to provide less expansive notice to those same recorded lienholders in HOA lien foreclosures. See NL Indus. v. Eisenman Chem., 98 Nev. 253, 260 (1982) ("We will not construe statutes in a manner which will bring about an unreasonable result, or a result contrary to the legislature's purpose.").

During the next session in 1993, the Legislature amended NRS 116.31168 as follows:

> The provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed. The request must identify the lien by stating the names of the unit's owner and the common-interest community. ~~[The association must also give reasonable notice of its intent to foreclose to all holders of liens in the unit who are known to it.]~~

AB612, 1993 Nev.Stat., ch.573, §40, at 2373 (strike-out added between existing brackets) (*Addendum:A22*).

In place of the stricken language regarding the ***additional*** category of lienholders ("all holders of liens in the unit who are known to it"), the Legislature substituted the "opt-in" notice provisions codified in NRS 116.31163 and 116.311635 to again apply to an ***additional*** category of lienholders who were separate and apart from the recorded lienholders under NRS 107.090. AB612, 1993 Nev.Stat., ch.573, §§6-7, at 2355 (*Addendum:A21*). Under the "opt-in" notice provisions, HOAs were required to provide notice to this ***additional*** category of lienholders only if they requested the notice. However—and most importantly—the Legislature did not change the original mandate in NRS 116.31168 which required HOAs to provide notice to all recorded junior or subordinate lienholders in the same manner as deed-of-trust foreclosures under NRS 107.090.

Reading this legislative history in conjunction with the plain language of the statutes and Nevada's rules of statutory interpretation, it is inescapable that the pre-amendment statutes required HOAs to provide lenders with notice that satisfied procedural due process. But even assuming there was any doubt and the pre-amendment statutes were susceptible of conflicting interpretations, one rendering them constitutional, and the other unconstitutional, the judicial branch must adopt the constitutional interpretation. Sheriff v. Wu, 101 Nev. 687, 689-90 (1985). The

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Apr 05 2018 02:34 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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. 6 PART 2

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Attorney for Appellant

Docket 74575 Document 2018-13060

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GLENVIEW WEST TOWNHOMES ASSN.
FINANCIAL TRANSACTIONS - 07/10/12

4254 ROLLING STONE
4254 rollingstone trust

Unit ID: 4254
STATUS: 60 - Atty. to FC
PREPAID BAL: 0.00

TXN DATE	PAYMT AMT	CHECK #	DEP DT	CODE	N/A	DESCRIPTION	AMOUNT	DUE BALANCE
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113006	121.00	INIT CREDIT BAL		PP		Credit-Prepaid	(121.00)	(252.00)
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USB0098

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EDWARD ARKEDIN 1957 USB0097

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020110 260.00	APPLY CHARGES	A1	ASSESSMENT	130.00
030110 390.00	APPLY CHARGES	A1	ASSESSMENT	130.00
033010 400.00	APPLY LATE FEE	01	Late Fees	10.00
040110 530.00	APPLY CHARGES	A1	ASSESSMENT	130.00
050110 660.00	APPLY CHARGES	A1	ASSESSMENT	130.00
060110 790.00	APPLY CHARGES	A1	ASSESSMENT	130.00
070110 920.00	APPLY CHARGES	A1	ASSESSMENT	130.00
080110 1050.00	APPLY CHARGES	A1	ASSESSMENT	130.00
090110 1180.00	APPLY CHARGES	A1	ASSESSMENT	130.00
100110 1310.00	APPLY CHARGES	A1	ASSESSMENT	130.00
110110 1440.00	APPLY CHARGES	A1	ASSESSMENT	130.00
120110 1570.00	APPLY CHARGES	A1	ASSESSMENT	130.00
010111 1700.00	APPLY CHARGES	A1	ASSESSMENT	130.00
020111 1830.00	APPLY CHARGES	A1	ASSESSMENT	130.00
030111 1960.00	APPLY CHARGES	A1	ASSESSMENT	130.00
032911 Action taken: 60 - Atty. to FC				
032911 2110.00	APPLY ADMIN FEE	03	Admin. Fees	150.00
040111 2240.00	APPLY CHARGES	A1	ASSESSMENT	130.00

EDWARD ARMENDARIZ
USB0098

AR0857

050111 2370.00		APPLY CHARGES	A1	ASSESSMENT	130.00
060111 2500.00		APPLY CHARGES	A1	ASSESSMENT	130.00
070111 2630.00		APPLY CHARGES	A1	ASSESSMENT	130.00
080111 2760.00		APPLY CHARGES	A1	ASSESSMENT	130.00
090111 2890.00		APPLY CHARGES	A1	ASSESSMENT	130.00
100111 3020.00		APPLY CHARGES	A1	ASSESSMENT	130.00
110111 3150.00		APPLY CHARGES	A1	ASSESSMENT	130.00
120111 3280.00		APPLY CHARGES	A1	ASSESSMENT	130.00
122811 2865.60	414.40	339 122811	A1	ASSESSMENT	(414.40)
010112 2995.60		APPLY CHARGES	A1	ASSESSMENT	130.00
020112 3125.60		APPLY CHARGES	A1	ASSESSMENT	130.00
022112 130.00	2995.60	65871 ales 022112	A1	ASSESSMENT	(2965.60)
022112			01	Late Fees	(10.00)
022112			03	Admin. Fees	(20.00)
030112 260.00		APPLY CHARGES	A1	ASSESSMENT	130.00
040112 390.00		APPLY CHARGES	A1	ASSESSMENT	130.00
050112 520.00		APPLY CHARGES	A1	ASSESSMENT	130.00
060112 650.00		APPLY CHARGES	A1	ASSESSMENT	130.00
070112 780.00		APPLY CHARGES	A1	ASSESSMENT	130.00

BALANCE SUMMARY

CHARGE CODE	DESCRIPTION	AMOUNT
A1	ASSESSMENT	650.00
03	Admin. Fees	130.00
	TOTAL:	780.00

EDWARD APPENDIX 1257
USB0100

EXHIBIT G

EXHIBIT G

EDWARDS GEORGE R TRUST
4254 ROLLINGSTONE DR

LAS VEGAS, NV 89103

US RECORDINGS
2925 COUNTRY DRIVE STE. 201

ST. PAUL, MN 55117

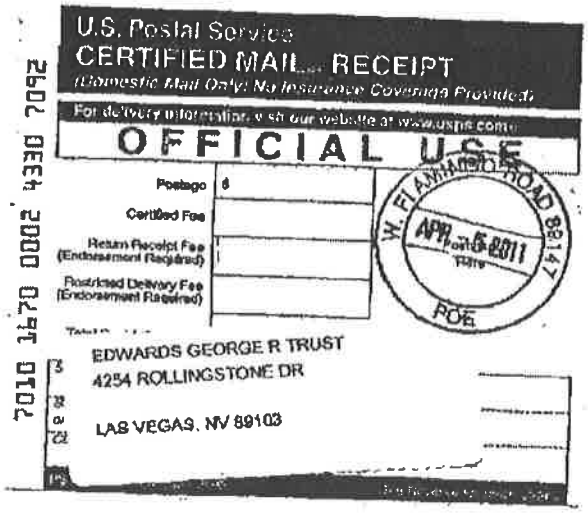
ROBERT HAZELL
14683 MAMMOTH PL

FONTANA, CA 92336

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

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

LAS VEGAS, NV 89101



A K
A L E S S I
K O N I G

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

ROBERT HAZELL
14963 MAMMOTH PL

FONTANA, CA 92336

A K
A L E S S I
K O N I G

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

US RECORDINGS
2925 COUNTRY DRIVE STE. 201

ST. PAUL, MN 55117

A&K000045

EDWARD A. [illegible]
USB00778

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**

AL KUN
KOENIG

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

REPUBLIC SERVICES
ACC[redacted]306
PO BOX 98508
LAS VEGAS, NV 89193-8508

AL KUN
KOENIG

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

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

LAS VEGAS, NV 89101

EDWARD ARBURY
USB00078

A&K000047

*See

www.appraisal.com

EXHIBIT H

EXHIBIT H

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

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** Ryan Kerbow

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

US8482

EXHIBIT I

EXHIBIT I

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 Ryan Kerbow

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

24230

GEORGE R. EDWARDS, TRUSTEE, GEOR
4254 ROLLINGSTONE DR

LAS VEGAS, NV 89103-3407

REPUBLIC SERVICES
ACCT# [redacted]1308
PO BOX 98508
LAS VEGAS, NV 89193-8508

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

HUNTINGTON BEACH, CA 92648

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

PORTLAND, OR 97204

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

ST. PAUL, MN 55117

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

LAS VEGAS, NV 89101

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

CINCINNATI, OH 45202

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

ROBERT HAZELL
14983 MAMMOTH PL

FONTANA, CA 92336

GEORGE R. EDWARDS
4254 ROLLINGSTONE DR

LAS VEGAS, NV 89103-3407

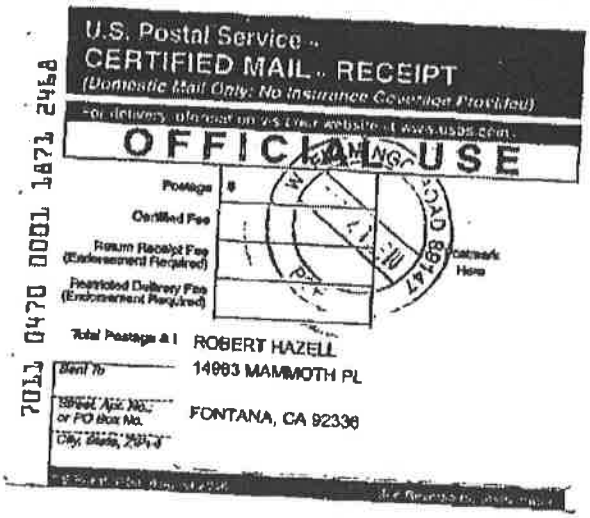
U.S. BANK NATIONAL ASSOCIATION ND
CLARK CO.NV INST NO. 20090326-
4325 17TH AVENUE, SW

FARGO, ND 58103

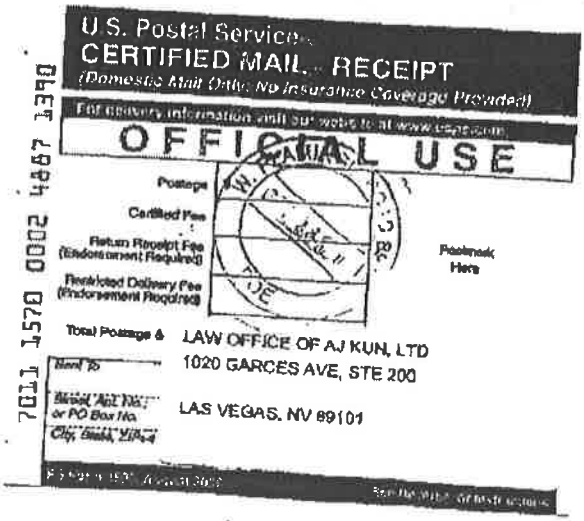
NOTS MAILINGS


U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
OFFICIAL USE
Postage
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage
Sent To
GEORGE R. EDWARDS, TRUSTEE, GEOR
Street, Apt. No.; or PO Box No.
4254 ROLLINGSTONE DR
City, State, ZIP+4
LAS VEGAS, NV 89103-3407
7011 1570 0002 4887 1444

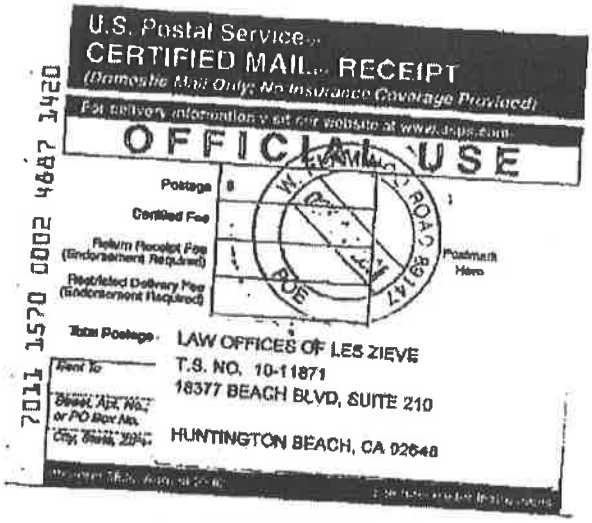

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
OFFICIAL USE
Postage
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage
Sent To
US RECORDINGS
Street, Apt. No.; or PO Box No.
CLARK CO.NV INST NO. 20090326-
City, State, ZIP+4
2925 COUNTRY DRIVE STE. 201
ST. PAUL, MN 55117
7011 1570 0002 4887 1406

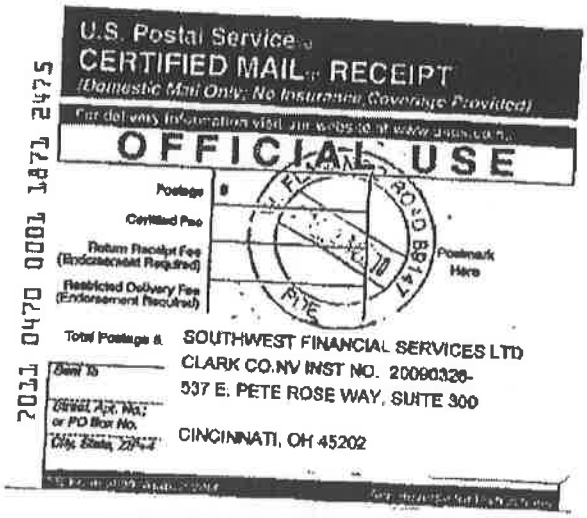

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
OFFICIAL USE
Postage
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage
Sent To
ROBERT HAZELL
Street, Apt. No.; or PO Box No.
14993 MAMMOTH PL
City, State, ZIP+4
FONTANA, CA 92336
7011 0470 0001 1871 2468


U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
OFFICIAL USE
Postage
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage
Sent To
REPUBLIC SERVICES
Street, Apt. No.; or PO Box No.
ACCT# [redacted]308
City, State, ZIP+4
PO BOX 98508
LAS VEGAS, NV 89193-8508
7011 1570 0002 4887 1437


U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
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
Street, Apt. No.; or PO Box No.
1020 GARCES AVE, STE 200
City, State, ZIP+4
LAS VEGAS, NV 89101
7011 1570 0002 4887 1390

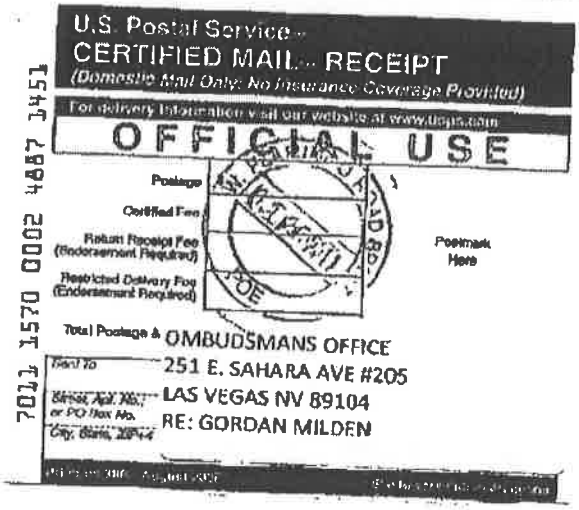

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com
OFFICIAL USE
Postage $
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $
Postmark Here
Sent To
Street, Apt. No.; or PO Box No.
City, State, ZIP+4
7011 0470 0001 1871 2451
GEORGE R. EDWARDS
4284 ROLLINGSTONE DR
LAS VEGAS, NV 89103-3407


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 & Fees $
Postmark Here
Sent To
Street, Apt. No.; or PO Box No.
City, State, ZIP+4
7011 1570 0002 4887 1420
LAW OFFICES OF LES ZIEVE
T.S. NO. 10-11871
18377 BEACH BLVD, SUITE 210
HUNTINGTON BEACH, CA 92648


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 & Fees $
Postmark Here
Sent To
Street, Apt. No.; or PO Box No.
City, State, ZIP+4
7011 0470 0001 1871 2475
SOUTHWEST FINANCIAL SERVICES LTD
CLARK CO.NV INST NO. 20090326-
537 E. PETE ROSE WAY, SUITE 300
CINCINNATI, OH 45202


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 & Fees $
Postmark Here
Sent To
Street, Apt. No.; or PO Box No.
City, State, ZIP+4
7011 0470 0001 1871 2482
U.S. BANK NATIONAL ASSOCIATION ND
CLARK CO.NV INST NO. 20090326-
4325 17TH AVENUE, SW
FARGO, ND 58103


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 & Fees $
Postmark Here
Sent To
Street, Apt. No.; or PO Box No.
City, State, ZIP+4
7011 1570 0002 4887 1413
U.S. BANK TRUST COMPANY, NATIONAL
CLARK CO.NV INST NO. 20090326-
111 SW FIFTH AVE
PORTLAND, OR 97204


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 & Fees $
Postmark Here
Sent To
Street, Apt. No.; or PO Box No.
City, State, ZIP+4
7011 1570 0002 4887 1451
OMBUDSMANS OFFICE
251 E. SAHARA AVE #205
LAS VEGAS NV 89104
RE: GORDAN MILDEN

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 Ryan Kerbow

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

EXHIBIT J

EXHIBIT J

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

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

4. Copies of any and all documents in your possession concerning or relating to any and all notices of default 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 other tangible things which demonstrate nan accounting of the purported unpaid debt on the Property from January 1, 2011 to present, including the nature of the assessments, fines, and penalties which make up the amount purportedly in default.

5. Copies of any and all documents in your possession concerning or relating to any and all notices of sale 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 other tangible things which demonstrate an accounting of the purported unpaid debt on the Property from January 1, 2011 to present, including the nature of the assessments, fines, and penalties which make up the amount

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

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

the present.

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

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

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

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

FURTHER AFFIANT SAYETH NAUGHT.

DAVID ALESSI, ESQ.,
Affiant

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

NOTARY PUBLIC
HEIDI A. HAGEN
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. MAY 17, 2017
No: 13-10829-1

Notary Public, in and for said
County and State.

EXHIBIT K

EXHIBIT K

BOOK 1845

1804064

16

RETURN TO:
FIRST AMERICAN
TITLE

DECLARATIONS
OF COVENANTS, CONDITIONS AND RESTRICTIONS
GLENVIEW WEST TOWNHOMES

The Declarant, DIVERSIFIED PROPERTIES CORPORATION, a Nevada Corporation, is the owner of a certain subdivision and tract of land situated in the County of Clark, State of Nevada, and described as follows:

All that parcel of land described in a map entitled Glenview West Townhomes, a "Townhome Subdivision", which was filed for record in the office of the Clark County Recorder, State of Nevada on November 30, 1983, in Book 30 of Plats at Page 65 further described as document No. 1799023.

RECITALS:

1. Declarant is the owner of a certain tract of land situated in the County of Clark, State of Nevada, as described above.

2. Declarant has improved or intends to improve the property by constructing on the property, Townhome structures which have been or will be constructed substantially in accordance with plans approved by the County of Clark on December 5, 1983.

3. All of the real property, including all structures and other improvements thereon, is hereby defined and shall hereinafter be referred to as the "project".

4. Declarant hereby established, by this Declaration, a plan for individual ownership of the real property estates consisting of the area or space contained beneath each of the units in each structure and the adjoining land referred to as "Lot", and an undivided fractional interest ownership in Glenview West Townhomes Homeowners Association that being all the remaining portion of the project, which is hereinafter defined and referred to herein as the "common area".

DECLARATION:

Declarant, the fee owner of the real property described in the introduction above, hereby makes the following Declaration as to divisions, easements, rights, liens, charges, covenants, restrictions, limitations, conditions and uses to which the property may be put, hereby specifying that such Declaration shall constitute covenants to run with the land and shall be binding on Declarant, its successors and assigns, and all subsequent owners of all or any part of the project together with their grantee, successors, heirs, executors, administrators, devisees or assigns.

NOW THEREFORE, Declarant, desiring to establish a general plan for the improvement, development, use and enjoyment of the property described above hereby declares that the said property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having or acquiring any right, title or interest in the said property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Glenview West Townhomes Association, a Nevada nonprofit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of equitable title (or legal title if equitable title has merged) in any Lot which is a part of the Properties, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" or "Development" or "Premises" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association and become subject to this Declaration.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows: All properties within the boundaries of the Plat except Lots 1 through 50 and that Property dedicated to any governmental entity. Additional property may hereafter be brought within the jurisdiction of the Association and designated a "Common Area".

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Diversified Properties Corporation, a Nevada Corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Unit" shall mean and refer to a residential living unit constructed upon a separately designated Lot, without limiting or restricting the definition of Lot referred to in Section 5 above, which also may include any improvements on a Lot.

Section 8. "Mortgage" shall mean a realty mortgage and include deeds of trust, "Mortgagee" includes a beneficiary under a deed of trust; "Mortgagor" includes a trustor under a deed of trust; and "foreclosure" includes a trustee's sale proceeding pursuant to a deed of trust.

ARTICLE I

USE RESTRICTIONS

Section 1. Residential Use. All of the Lots in the Development shall be known and described as, and limited in use to, residential purposes. No improvements or construction whatever, other than a private dwelling and appurtenant uses, may be erected or maintained on any of the lots unless specifically authorized, in writing, by the Board pursuant to Article X below.

Section 2. Construction. All units and structures on the Lots shall be of new construction and no buildings or structures shall be moved from any other location onto any of the Lots.

Section 3. Temporary Structures. No structures of a temporary character shall be permitted on the Premises, and no trailers (except those permitted to be parked pursuant to Section 8 of this Article), and no tents, shacks or barns shall be ermitted on the Premises, either temporarily or permanently.

Section 4. Business or Offensive Activities. No noxious or offensive activity may be carried on or permitted on any part of the Properties, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood; nor shall any part of the Premises be used for business, professional, commercial, rest home (including but not limited to care or treatment of the physically or mentally sick or disabled), religious or institutional purposes. This section does not apply to the activities of the Association in furtherance of its powers and purposes as set forth in this Declaration.

Section 5. Signs. No sign of any nature whatsoever shall be displayed or placed upon any Lot or on the outside of any Unit. No "For Sale" or "For Rent" signs of any nature whatsoever shall be permitted on any part of the Premises, and no other signs shall be permitted on any of the Common Areas without the prior written consent of the Board.

Section 6. Outside Lighting. Except as may be initially installed by Declarant, no spotlights, floodlights or similar type high intensity lighting shall be place or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or the improvements thereon or upon the Common Area or any part thereof without the written authorization of the Board. Other types of low intensity lighting which do not disturb the Owners or other occupants of the Properties shall be allowed.

Section 7. Animals, Pets. Only two dogs, two cats, a dog and a cat or two other small household pets may be kept on a Lot without Board approval, provided that such household pets are not kept, bred or maintained for any commercial purposes. Two small birds may also be kept in addition to the foregoing animals provided such birds are caged and do not disturb neighboring Lots. All additional small household pets are prohibited unless approved by the Board. Except as stated above, no other animals or birds of any kind shall be raised, bred or kept on the Premises or any part thereof without the written consent of the Board first obtained. Pets shall not be allowed loose or unsupervised on any part of the Properties and walking of pets shall be allowed only on such portions of the Properties as the Board may prescribe by its rules and regulations.

Section 8. Trucks, Boats, Cycles, Campers. Residents are permitted to park only passenger cars, station wagons, small trucks, motorcycles, small vans, boats, small trailers and campers on their own private parking area. No portion of any vehicle will be allowed to project into the commonly owned streets or driveways. Visitors are permitted to either temporarily park in the common area parking spaces, or on the private parking areas of the resident being visited. Except in an emergency or as may be necessary for the performance of authorized repair or maintenance of common areas, no vehicle or equipment shall be kept or parked in the streets, driveways, or on any other common area property unless specitic written permission is given by the Board. No vehicle or equipment shall be stored either permanently or temporarily on the Development, whether on blocks or otherwise, which is inoperable and/or in a state of disrepair, or which is in various stages of construction, repair, reconstruction, modification, or rebuilding with respect to the vehicle or any part thereof, including without limitation, engines, frames, bodies, and other parts and accessories. If the Board determines that any vehicle (including but not limited to a motorbike or motorcycle) is creating loud or annoying noises by virtue of its operation within the Properties, such determination shall be conclusive and final that the operation of such vehicle is a nuisance and said operation, upon notice by the Board to the owner or operator thereof, shall be prohibited within the Properties. Subject to the above restrictions, all vehicles must be operated in the Development by licensed operators.

Section 9. Windows and Awnings. No reflective materials, including but not limited to, aluminum foil, reflective screens or glass, mirrors or similar type items shall be permitted to be installed or placed on the outside or inside of any windows or any other part of a Lot which can be seen from the outside of the Development or from other portions of the Development. Further, no metal or rigid plastic awnings of any nature whatsoever shall be permitted to be placed or installed on or attached to the outside of any of the Units, or elsewhere on a Lot, except those initially installed by Declarant, or approved by the Board.

Section 10. Screening Areas, Fencing. All screening areas and fences, hedges or walls shall be maintained upon the Premises in accordance with their original construction or installation, except as otherwise approved in accordance with Article X.

Section 11. Trash, Unsitely Items. All clotheslines equipment, service areas, woodpiles, storage piles and storage areas shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring property and streets. Garbage cans shall be maintained in a neat, clean and sanitary condition in the areas therefor along the back fence line of the Owners Lot. Rubbish, trash and garbage shall not be burned on or allowed to accumulate on any Lot or on the Premises. No incinerators shall be permitted on the Premises or any part thereof.

Section 12. Underground Utilities. All electric, power, telephone, water and other service and utility lines, pipes and/or other structures and media for transmission thereof shall be placed and maintained underground except above-ground service pedestals and switch cabinets, and except to the extent (if any) such underground placement may be prohibited by law, and except for such above-ground structures and/or media for transmission as may be originally constructed by Declarant or as may be otherwise approved in writing by the Board.

Section 13. Noisy Equipment. Except for emergencies, no equipment which emanates disturbing sounds or loud noises, including but not limited to, lawn mowers, power hedge clippers, power chain saws and other similarly noisy equipment, shall be operated in any part of the Properties on Sundays or National Holidays.

Section 14. Antennas. No radio, television and other antennas of any kind or nature shall be placed and maintained upon any Lot or the Premises or any part thereof (or the improvements located thereon) unless approved in writing by the Board.

Section 15. Renting. No portion of any Lot may be rented, except to a single person or single family. The restriction set forth in this Section 15 shall apply only to rental of Lots and shall not be deemed to restrict or limit the manner in which any Lot is purchased or owned or the number or relationship of the person purchasing or owning any Lot.

Section 16. Subdividing. None of the Lots shall be resubdivided into smaller Lots or conveyed or encumbered in less than the full original dimensions as shown on the Plat of this Development.

Section 17. Walls. The walls of any building or improvements and fences constructed on any Lot shall not exceed the height of the original construction unless approved in writing by the Board. Setback lines shall be maintained in accordance with the original construction on each Lot unless otherwise permitted by written approval of the Board.

Section 18. Declarant Exempt. Notwithstanding anything contained herein to the contrary or otherwise, none of the use restrictions contained in this Article II nor any other restriction contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, or its employees, agents and subcontractors or parties designated by it in connection with the construction, completion, sale or leasing of the Units and Lots.

ARTICLE III

PROPERTY RIGHTS

Section 1. Owners Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot. It is expressly acknowledged and agreed by all parties concerned that this Section is for the mutual benefit of all Owners of the Lots and is necessary for the protection of all Owners. Such easement of enjoyment is, however, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

(b) the right of the Association to suspend the voting rights and right to use the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication signed by two-thirds (2/3) of each class of members has been recorded.

(d) the right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with this Declaration, the Articles of Incorporation, the Bylaws, and the rules and regulations of the Board, his right to enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE IV

EASEMENTS

Section 1. Blanket Easement for Utilities. There is hereby created a blanket easement upon, across, over and under the Properties for ingress, egress, installation, replacing, repairing and maintaining all utilities including but not limited to water, sewers, telephones, cable television and electricity. By virtue of said easement, its shall be expressly permissible for the providing utility company to erect and maintain the necessary facilities and equipment on the Properties and to affix and maintain wires, circuits, conduits and related facilities and equipment on, above, across and under the roofs and exterior

walls of the Units. Notwithstanding anything to the contrary contained in this Section, no easements shall be created nor shall any sewers, electrical lines, water lines, or other facilities for utilities be installed or relocated on the Properties except as initially created, programmed and approved by Declarant or thereafter created or approved by Declarant or the Association. This provision shall in no way affect any other recorded easements on the Properties. Notwithstanding anything herein to the contrary, individual utilities serving a Unit shall not pass over, under, or through another Unit.

Section 2. Common Area Easements. There is hereby created a blanket easement upon and across the Common Areas and that Lot area in front of each unit in favor of (1) each Lot Owner and his guests and invitees for the purpose of providing ingress and egress to the Lot owned by said Owner, (2) the Association and its invitees, employees or independent contractors for the purpose of providing landscaping or other maintenance to the Common Areas, and (3) the Declarant and its invitees, employees or independent contractors for the purpose of providing landscaping or other maintenance to the Common Areas, and for any activities related to the promotion and sale of any of the Lots or any Lots within the expansion areas referred to in Article XI hereof.

Section 3. Rights of Association and Declarant. There is hereby created a blanket easement upon, across, over and under the Lots in favor of the Declarant and the Association, their respective invitees, employees or independent contractors for the purpose of maintaining or replacing any improvements upon such Lots to the extent the Declarant and/or the Association have the authority under this instrument to undertake such maintenance for replacement.

Section 4. Encroachments. Each Lot, Unit and the Common Areas shall be subject to an easement for encroachments, including but not limited to encroachments of balconies, ledges, roofs, walls fences and trellises, created by construction, settling and overhangs, as designed or constructed by Declarant or its nominee. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist. In the event of any Unit or any structure is partially or totally destroyed and then rebuilt, the Owners of Units agree that similiar encroachments of parts of the adjacent Units or Common Areas due to construction, settling and overhangs shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

Section 5. Interference. Except as may be constructed by Declarant or its nominee or as specifically allowed by this Declaration and the Plat, no building or other structures shall be placed or erected on any easements nor interference made with the free use thereof for the purposes intended.

ARTICLE V

ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

Section 1. Purpose. The Association shall be a nonprofit corporation organized under and by virtue of the laws of the State of Nevada for the general welfare and benefit of the property Owners and the Development. The Association through its Members and Board, shall take the appropriate action to manage and maintain, repair, replace and improve the Common Areas together with improvements located thereon, to perform related activities, and to perform all other functions and duties assigned to the Association by this Declaration, all in accordance with this Declaration and with the Articles of Incorporation and Bylaws.

Section 2. Membership. Membership in the Association shall be limited to the Owners of Lots as hereinabove defined, and such membership shall be subject to all the provisions of this Declaration and to the Association's Articles of Incorporation and Bylaws, as the same may be amended from time to time. An Owner of a Lot shall automatically, upon becoming the Owner of a Lot, be a Member of the Association. An Owner shall remain a Member of the Association until such time as his ownership for any reason ceases, at which time his membership in the Association automatically shall cease. Ownership of a Lot shall be the sole qualification and criterion for membership. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. A membership in the Association shall not be transferred, pledged or alienated in any way except by the sale of such Lot and then only to such purchaser who shall automatically become a member of the Association after such conveyance, or by intestate succession, testamentary disposition, foreclosure of a Mortgage of record or other legal process. Any attempt to make prohibited transfer is void and will not be reflected upon the books and records of the Association. At the discretion of the Board, no certification of membership need be issued, and if certificates are not issued, membership shall be evidenced by an official list of Members kept by the Secretary of the Association.

Section 3. Voting Rights. The Association shall have two (2) classes of voting memberships:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. In the event any such Lot is owned by two (2) or more persons, the membership as to such Lot shall be joint, and a single membership for such Lot shall belong to all Owners, and they shall designate to the Association in writing one of their number who shall have the power to vote said membership, and in the absence of such designation, and until such designation is made, the Board shall make such designation.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lein and Personal Obligation of Assessments.

The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the general benefit, recreation, health, safety and welfare of the residents in the Properties. Such purposes shall include, but shall not be limited to, and the Association's rights and powers shall include (in addition to the rights and powers set forth in this Declaration and in the Association's Articles of Incorporation and Bylaws) provision for the improvement, construction, repair, maintenance, care, upkeep and management of the Common Areas and the improvements and facilities thereon; and further, shall include the payment of any taxes and assessments, if any, which may be assessed against and levied upon any property owned by the Association, and all premiums for hazard and public liability insurance, together with all other costs and expenses related to the management and maintenance of the Common Areas and Unit exteriors.

Section 3. Basis Of Assessments. The Board, subject to the provisions of this Article, shall determine and establish a budget and make assessments upon the Owners of Lots on the basis of costs and expenses incurred or estimated to be incurred by the Association. The Owner of each lot for said Owner and for said Owner's heirs, executors, administrators, personal representatives, successors and assigns, covenants and agrees that each Lot shall be subject to an assessment in an amount to be determined, which amount shall be the said Lot's pro rata share of the following:

(a) The actual cost to the Association of all taxes and improvement assessments (if any), water, utilities, insurance, repairs, construction, replacement and maintenance of Common Areas and the improvements and facilities located thereon, and Unit exteriors, and shall include but not be limited to charges in connection with the sprinkler systems, street paving, pathways, security guard service (if any), sewer lines, utility expense related to Lots served by joint meters, and other services benefiting the Owners, and all other charges necessary or appropriate to carry out the purposes of the Association as set forth in this Declaration, the Articles of Incorporation and Bylaws of the Association, and its rules and regulations; and

(b) Such sums as the Board shall determine to be fair and prudent for the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance, management and administrative costs and other charges as specified herein.

Section 4. Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Six Hundred Dollars ($600.00) per lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding month of July.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above that established by the Consumer Price Index formula by a vote of members for the next succeeding one year and at the end of each such period of one year, for each succeeding period of one year, provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in

person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 5. Special Assessments for Capital Improvements In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum For Any Action Authorized Under Section 4 and 5. Written notice of any meetings called for the purpose of taking any action authorized under Section 4 and 5 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Except as provided in Section 12 below, both annual and special assessments must be fixed as at uniform rate for all Lots and may be collected on a monthly basis.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 9. Individual Assessment For Restoration of Owners Lot.

(a) In the event the Owner of a Lot fails to maintain his Lot (including the yard, patio and landscaping thereon as required pursuant to Article VII, Section 2, but excluding those obligations of the Association pursuant to Article VII, Section 1, hereof) in a first-class, neat and clean condition, and generally in a manner satisfactory to the Board, the

Association or the Board, through its agents, employees and/or independent contractors, shall have the right, and each Owner expressly grants and assigns the Association the right (subject to prior notice as hereinbelow set forth) to enter upon such Owner's Lot and repair, maintain, rehabilitate and restore the Lot, yard, patio, and exterior of any and all buildings and/or other structures located thereon to the condition deemed satisfactory to the Board, or to remove structures therefrom which are, in the opinion of the Board or the Association, in such a state of disrepair or such a condition as to be objectionable to surrounding Lot Owners. The cost thereof shall be charged against and collected from the Owner of the Lot, the amount thereof to be paid by the Owner within thirty (30) days from the date of the invoice sent to the Owner, and said amount further shall be secured by and subject to all provisions regarding the assessment lien as provided in this Article.

(b) Prior to exercising the aforesaid right of restoration, the Board shall give written notice to the Owner of said Lot specifying the necessary repairs, maintenance, rehabilitation or restoration to be undertaken, and granting the Owner thirty (30) days to accomplish the same. If at the end of said period, the work required to be performed has not been completed (or has been completed in a manner unsatisfactory to the Board), or if, in the opinion of the Board, sufficient action has not been taken to effect same, then the Association or the Board shall have the right, as above set forth, to make such repairs, maintenance, rehabilitation or restoration.

(c) Nothing herein contained shall be construed as granting to the Association or the Board any right to enter into or inside of any building or buildings located on a Lot without the consent of the Owner thereof.

Section 10. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve said Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 12. Assessment for Declarant's Lots. Notwithstanding anything herein to the contrary, the Declarant shall be responsible for and shall pay only twenty-five percent (25%) of any annual assessment for any Lot owned by Declarant until such time as the Unit thereon is occupied. After such time as the Unit on such Lot is occupied, the Declarant shall be responsible for and pay all of any annual assessments for any Lot owned by Declarant.

ARTICLE VII

MAINTENANCE

Section 1. Rights and Obligations of Association. The Board, acting for and on behalf of the Association, shall have the obligation to maintain, repair and replace the Common Areas (except any portion now or hereafter maintained by any governmental agency with jurisdiction over said portion or any portion maintained by an Owner pursuant to Article VIII below), and all landscaping, recreational facilities and other improvements located thereon, including, without limitation, sewer lines in accordance with the terms and conditions hereof. Without limiting the generality of the foregoing, the Association shall have the right at any and all times to promulgate reasonable rules and regulations concerning the landscaping, color scheme and other related matters affecting the outside appearance of the Development as a whole, and the individual Unit Owners shall be bound thereby. The powers, rights and duties of the Association and Board shall be as contained in this Declaration, and as may be adopted in its Articles of Incorporation and Bylaws not inconsistent herewith.

In addition to maintenance of the Common Areas, the Board, acting for and on behalf of the Association, shall provide exterior maintenance of each Lot which is subject to assessment as follows: paint, repair, replacement and care of roofs, exterior buildings surfaces, walks and other exterior improvements. Such exterior maintenance shall not include patios, glass surfaces, landscaping on the Lot, fences along the Lot lines or private parking areas.

In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its Owner, or through the willful or negligent acts of the family, guests or invitees of the Owner of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become a part of the assessment to which such Lot is subject.

Section 2. Rights and Obligations of Owners. Except for those items for which the duty to maintain or repair is imposed on the Association in accordance with Section 1 of this Article, all fixtures and equipment (including heating and air conditioning units) installed within or on a Unit or a Lot, including but not limited to, patios, all windows which are a part of any Unit, fences along Lot lines, private parking areas, and all landscaping on the Lot, shall be maintained and kept in repair by the Owner thereof at his sole cost and expense except that the Association shall have the right to undertake the care and maintenance of all or any portion of the Lots and to promulgate reasonable rules and regulations as aforesaid, and the Association shall have the right at any time to maintain and repair utility lines, pipes, wires, conduits or similar systems or facilities up to the point where they enter the exterior walls of a Unit. Each Owner shall be reponsible for maintenance and repair of all yard areas, patios and private parking areas located upon his Lot, and all landscaping thereon. Termite control shall be the responsibility of the Owner. An Owner shall do no act nor any work that will impair the structural soundness or integrity of the Development or impair any easement, nor do any act nor allow any condition to exist which will adversely affect the other Units or their Owners.

Section 3. Insurance. The Board shall have the authority to and shall obtain insurance for the entire Development, including each of the Units, against loss or damage by fire, hazards covered by a standard extended coverage endorsement, and such other hazards covered by a standard extended coverage endorsement, and such other hazards as are customarily insured

against in the Las Vegas, Nevada area. Such insurance shall be in an amount sufficient to provide full replacement of any damage in an amount not less than one hundred percent (100%) of the full insurable value of the Common Area and the Units, as determined at least once each year by the Board. Such insurance coverage shall be written in the name of and the proceeds thereof shall be payable to, the Association, as Trustees for and for the use and benefit of the individual Unit Owners in their respective percentages of ownership interest in the Common Area, and to the holders of mortgages or the beneficiaries of deeds of trust covering each of the Units, as their interests may appear. Such policy of insurance shall, if possible, contain a waiver of subrogation rights by the insurer against individual Owners.

The Board shall also obtain comprehensive public liability policy covering any liability of the Association on the Development and, if available, coverage of liability of Owners of the Units on their respective private parking areas. Such insurance policies shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner. The scope of coverage shall be in the kinds and amounts as the Board may determine. Coverage shall be for not less than One Million and No/100 Dollars ($1,000,000.00) per occurrence, for personal injury and/or property damage.

Premiums for all of the above-referenced insurance shall be common expenses and assessed against each Owner as provided herein. Each Owner shall be responsible for his own insurance on the personal property contents of his Unit, any additions, decorating or fixtures or other improvements placed therein or stored elsewhere on the Property. Each Unit Owner shall further be responsible to provide his own personal liability coverage to the extent not covered by the liability insurance to be provided by the Board as set forth above.

ARTICLE VIII

SWIMMING POOL

Section 1. Swimming Pool. The swimming pool, if any, shall be deemed to be part of the Common Area and be administered by the Association. All powers of the Association as granted by the Covenants, Conditions and Restrictions to other areas of the Common Area shall also apply to the swimming pool. In addition, the Association may promulgate any reasonable rules concerning the operation of the pool including but not limited to: opening and closing dates of the pool, times of operation, conduct within the pool area, heating and maintenance of the pool. Nothing contained herein shall conflict with the authority of the Health Department of Clark County, Nevada in respect to its enforcement of its rules regarding the operation of public swimming pools.

ARTICLE IX

PARTY WALLS AND FENCES

Section 1. General Rules of Law to Apply. Each wall or fence which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a "party wall," for the purposes hereof, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.