A servicer may initiate foreclosure on a delinquent mortgage, regardless of whether three consecutive monthly payments under the mortgage are due but unpaid, if one of the following conditions is met,:

- The servicer has determined that the property has been abandoned or vacant for more than 60 days; or
- The borrower, after being clearly advised of the options available for relief (including a pre-foreclosure sale and a deed in lieu of foreclosure), has clearly stated to the mortgagee in writing that he/she has no intention of fulfilling his/her obligation under the mortgage.

Servicers must clearly document reasons for not proceeding with loss mitigation activity prior to initiating foreclosure.

Loss Mitigation during the Foreclosure Process

Once foreclosure has been initiated, HUD expects servicers to keep open lines of communication with borrowers so that borrowers can notify servicers of any changes in their circumstances that may qualify them for loss mitigation options. In the event that a borrower notifies a servicer of a change in circumstances that may make him/her eligible for a loss mitigation option, the servicer may continue with the foreclosure process while evaluating the borrower for a loss mitigation option. The following chart describes the actions the servicer must take when it receives a loss mitigation request from a borrower.

Loss Mitigation Request Received by Servicer	Servicer Action
45 or more calendar days prior to the scheduled foreclosure sale date	Within 5 business days of receiving the request, the servicer must notify the borrower in writing that: • The borrower's request has been received, and • The request is complete or incomplete (See the section of this Mortgagee Letter entitled "Requests for Additional Documents.") Within 30 days of receiving a complete request, the servicer must review the borrower's loss mitigation request for eligibility for all retention and non-retention loss mitigation options. A servicer must not move forward with a scheduled foreclosure sale during its review. See the section of this Mortgagee Letter entitled "Loss Mitigation and Initiation of Foreclosure" for conditions under which the servicer may proceed with a foreclosure sale.

More than 37 calendar days prior to the scheduled foreclosure sale date, but less than 45 calendar days prior to the scheduled foreclosure sale date	Within 30 days of receiving a complete request, the servicer must review a borrower's request for eligibility for loss mitigation options. If an incomplete request is received and is not completed despite the servicer's repeated requests to the borrower for information, a servicer may, at its discretion, evaluate an incomplete loss mitigation application and offer a proprietary, non-incentivized loss mitigation option. A servicer must not move forward with a scheduled foreclosure sale during its review. See the section of this Mortgagee Letter entitled, "Loss Mitigation and Initiation of Foreclosure" for conditions under which the servicer may proceed with a foreclosure sale.
Fewer than 37 calendar days prior to the scheduled foreclosure sale date	A servicer must use its best efforts to complete a thorough and accurate review of a borrower's request for loss mitigation. The servicer is not required to suspend the foreclosure sale. The servicer may proceed with a foreclosure sale if the servicer: • Determines after its review that a borrower is ineligible for loss mitigation, or • Using its best efforts is still unable to complete a thorough and accurate review of a borrower's request by the scheduled foreclosure sale date. Such efforts must be documented in the servicer's files.

See Mortgagee Letter 2013-38 for information on compliance with reasonable diligence timeframes in completing foreclosure.

In addition, servicers must ensure that strong communication lines are established between their loss mitigation and foreclosure departments to facilitate the coordination of loss mitigation efforts, and the sharing and documentation of information relating to a borrower's delinquency. For example, both departments should be aware that a borrower's file is under review for loss mitigation.

Requests for Additional Documents

When a servicer receives incomplete loss mitigation requests, the servicer must notify the borrower in writing:

- which documents are needed for review;
- when the documents should be sent back to the servicer.

This notice is expected to comply with all applicable federal requirements, including 12 CFR 1024.41 when it becomes effective, regarding requests for additional documents, including the requirement that the notice to the borrower includes a statement that the borrower should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options.

Extensions of Time for Initiating Foreclosure

To ensure that borrowers are properly considered for all appropriate loss mitigation options, HUD allows servicers certain automatic extensions of time to meet the deadline to perform the first legal action initiating foreclosure.

If there have been no other intervening delays (such as bankruptcy), HUD grants servicers an automatic 90-day extension of the six-month foreclosure initiation deadline as long as they have:

- Approved, but are unable to complete a retention option prior to the expiration of the first legal deadline to initiate foreclosure; and
- Reported the appropriate status code in the Single Family Default Monitoring System (SFDMS).

Servicers may also submit additional Requests for Extensions of Time through the Extensions and Variances Automated Requests System (EVARS).

Terminating Foreclosure Proceedings

When a borrower requests loss mitigation assistance after the servicer has initiated foreclosure, the servicer must terminate the foreclosure proceedings after:

- Verifying that a borrower's financial situation qualifies him/her for a loss mitigation option;
- Allowing the borrower at least 14 calendar days to either accept or reject the servicer's offer(s) of loss mitigation assistance, if the request for loss mitigation was received more than 37 calendar days prior to the scheduled foreclosure sale date; and
- Receiving an executed loss mitigation option agreement from the borrower, indicating that the borrower understands and agrees to the loss mitigation option terms.

Some loss mitigation option agreements may be executed only after completion of a Trial Payment Plan. Thus, if the servicer offers a borrower a loss mitigation option paired with a Trial Payment Plan, the servicer must suspend foreclosure proceedings during this Trial Payment Plan period and, as stated above, terminate foreclosure proceedings upon receiving a signed loss mitigation option agreement from the borrower.

Information Collection Requirements

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Number 2502-0589. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Questions

Any questions regarding this Mortgagee Letter may be directed to HUD's National Servicing Center at (877) 622-8525. Persons with hearing or speech impairments may reach this number by calling the Federal Information Relay Service at (800) 877-8339. For additional information on this Mortgagee Letter, please visit www.hud.gov/answers.

Signature

Carol J. Galante
Assistant Secretary for Housing- Federal Housing Commissioner

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DISTRICT COURT

CLARK COUNTY, NEVADA

ALESSI & KOENIG, LLC, a Nevada limited liability company, Plaintiff, vs. ARMANDO A. CARIAS, an individual; BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, an unknown entity; DOES INDIVIDUALS I-X, inclusive; and ROE CORPORATIONS XI-XXX, Defendants. AND ALL RELATED CLAIMS, COUNTERCLAIMS AND CROSS-CLAIMS.	Case No. A-13-684501-C Dept. No. XXI **SFR INVESTMENTS POOL 1, LLC'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** **Hearing Date: February 3, 2016** **Hearing Time: 9:30 a.m.**

SFR Investments Pool 1, LLC ("SFR") hereby files its reply in support of its Motion for Summary Judgment. This reply is based on the papers and pleadings on file herein, the following memorandum of points and authorities, the Declaration of Jacqueline A. Gilbert ("Gilbert Decl.") attached hereto as **Exhibit A**, and any oral argument this Court may entertain. This reply is also based on SFR's Motion for Summary Judgment ("SFR's Mot."), and SFR's Opposition to Bank of America, N.A.'s ("BANA" or "the Bank") Motion for Summary Judgment ("SFR's Opp."), which are incorporated fully herein by reference.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Nothing in BANA's Opposition ("BANA's Opp.") provides a reason against granting summary judgment in favor of SFR:[1] (1) SFR can rely on the conclusive recitals in the foreclosure deed; (2) BANA's "tender" argument is flawed as it cannot send a conditional payment for the wrong amount and think that it has satisfied the super-priority portion of the Association lien, especially when the conditional payment was outright rejected; (3) even if it could, however, that would not affect the transfer of title free and clear of BANA's interest to SFR as a bona fide purchaser; (4) the commercial reasonableness argument lacks merit because price alone is never enough, and there is no evidence of fraud, unfairness or oppression; (5) BANA's due process argument is a non-starter because due process is not implicated, but even if it is, BANA lacks standing because it received actual notice; (6) BANA's constitutional argument is futile as the Nevada Supreme Court has already decided the issue in SFR[2] ("SFR" or "the SFR decision"); and (7) BANA's Supremacy Clause argument is untenable since it lacks standing to assert the rights of the federal government; even if it did have standing (which it does not), there is no preemption as NRS 116.3116 does not conflict with a federal law. As such, summary judgment should be granted in favor of SFR.

II. STATEMENT OF DISPUTED FACTS

SFR does not dispute BANA's statement of facts with the exception of the following:

Disputed Fact No. 1: "Miles Bauer overpaid since the 9 months' of assessments super priority is measured by the sum of 9 months immediately preceding the mailing of the notice of delinquent assessments." (BANA's Opp., 4:15-17.)

SFR disputes this fact to the extent that it disguises a legal argument as a factual allegation. There is a dispute as to what is included in the superpriority amount, and Nevada has not ruled on this issue. Further, this was not a proper payment. As explained below, a payment

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[1] SFR hereby incorporates by reference its Opposition to BANA's Motion For Summary Judgment as though fully set forth therein, and also incorporates by reference SFR's Motion for Summary Judgment as though fully set forth herein.

[2] SFR Investments Pool I, LLC v. U.S. Bank, N.A., ___ Nev. ___, 334 P.3d 408, 419 (2014).

with conditions is not a proper tender. Here, BANA clearly used conditional language when it proffered its alleged payment, effectively eliminating any chance of it being a proper tender.

Disputed Fact No. 2: "Nevada and Clark County Law Mandated the HOA's creation." (BANA's Opp., 5:1-6:12.)

This disputed "fact" is being proffered to support BANA's legal argument that there is sufficient state action to implicate due process. Notwithstanding the fact that BANA's analysis is still devoid of a state actor which is also required (discussed below), this "fact" is a legal conclusion and should not be considered.

Disputed Fact No. 3: "Under this [HUD Mortgagee Letter 2012-11] HUD provided that HUD will only reimburse mortgagees '100 percent of payments of Condo/HOA fees incurred between the date of foreclosure and the date of transfer of title to HUD.'... HUD state that the mortgagee must take any action 'necessary' to protect HUD's interest when foreclosure actions are brought by a condo/HOA ...[S]uch actions do not include filing suit against the HOA since attorney's fees and costs in such actions are not listed as reimbursable under HUD Mortgage Letter 2005-30, which updated HUD's Schedule of Allowable Attorney Fees." (BANA's Opp., 6:20-23 [internal citations omitted].)

First, the documents posited to support these "facts," namely the HUD Mortgagee Letter 2012-11 and HUD Mortgagee Letter 2005-30, are inadmissible as untimely, as they were not produced in the course of discovery.

However, if the court were to consider these documents, rather than rely on BANA's interpretation of these documents, the documents should instead speak for themselves. For example, the HUD Mortgagee Letter 2012-11 **also** includes the following language: "[i]f the mortgage property is in a jurisdiction where pre-foreclosure unpaid Condo/HOA fees...[a]re extinguished by foreclosure [t]hen the mortgagee must ensure that...[a]ny pre-foreclosure Condo/HOA fees/liens that the Condo/HOA claims are due are resolved." Id. at *3.

Lastly, BANA has not produced admissible evidence to support the "facts" regarding the purported "allowable" attorney's fees and costs. Specifically, no documentation has been produced to support the statement that "attorney's fees and costs in such actions [against the

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HOA] are not listed as reimbursable under HUD Mortgagee Letter 2005-30." The section in Mortgagee Letter 2005-30, which briefly discusses attorney's fees and costs, refers specifically to Attachment 3, which was not produced by BANA in discovery or attached to its Opposition. Any attempt to attach this document to BANA's reply would be extremely prejudicial. Thus, these "facts" should be rejected.

Disputed Fact No. 4: "SFR Admitted Alessi's Lack of Disclosure is a Deal Killer."(BANA's Opp., 8:1.)

BANA mischaracterizes Chris Hardin's testimony. While he did testify as to the effect of a **payment** of the superpriority amount on SFR's decision to bid on a property, he did not testify as to the effect of an **attempted payment**, let alone one that was conditional with restrictive language. He certainly did not "admit" that Alessi & Koenig, LLC's ("Alessi) "lack of disclosure" was a "deal killer." As discussed below, the attempted payment by BANA was not a proper tender, and was rejected. Since there was no actual tender of the superpriority amount prior to the sale, it was not necessary for Alessi to announce it at the sale.

While the disputes over these facts defeat BANA's motion for summary judgment, the truth or falsity of these facts have no bearing whatsoever on SFR's Motion for Summary Judgment, which can still be granted even if these facts are true.

III. OBJECTIONS TO REQUEST FOR JUDICIAL NOTICE

SFR objects to the following of BANA's Requests for Judicial Notice ("BANA's RJN") for the reasons provided below:

1. Exhibit G: HUD Mortgagee Letter 2012-11

SFR's Objection: The court should not take judicial notice of the purported "facts" of this document, as they are not "generally known within the territorial jurisdiction of this court, nor "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."[3] NRS 47.130(2).

[3] Furthermore, this document is inadmissible as untimely, as it was not produced in the course of discovery. The Court should not consider it as evidence for purposes of determining whether or not to grant summary judgment.

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2. Exhibit R: HUD Mortgagee Letter 2013-40

SFR's Objection: The court should not take judicial notice of the purported "facts" of this document, as they are not "generally known within the territorial jurisdiction of this court, nor "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."[4] NRS 47.130(2).

3. Exhibit N:[5] Published article concerning planned unit communities in the United States.

SFR's Objection: The court should not take judicial notice of the purported "facts" of this document, as they are not "generally known within the territorial jurisdiction of this court, nor "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."[6] NRS 47.130(2).

4. Exhibit O:[7] Published article concerning planned unit communities in the United States.

SFR's Objection: The court should not take judicial notice of the purported "facts" of this document, as they are not "generally known within the territorial jurisdiction of this court, nor "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."[8] NRS 47.130(2).

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[4] Furthermore, this document is inadmissible as untimely, as it was not produced in the course of discovery. The Court should not consider it as evidence for purposes of determining whether or not to grant summary judgment.

[5] The published articles were erroneously described as Exhibits M-N; they are indeed located at Exhibit N-O.

[6] Furthermore, this document is inadmissible as untimely, as it was not produced in the course of discovery. The Court should not consider it as evidence for purposes of determining whether or not to grant summary judgment.

[7] The published articles were erroneously described as Exhibits M-N; they are indeed located at Exhibit N-O.

[8] Furthermore, this document is inadmissible as untimely, as it was not produced in the course of discovery. The Court should not consider it as evidence for purposes of determining whether or not to grant summary judgment.

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IV. LEGAL ARGUMENT

A. The Recitals in the Association Foreclosure Deed Provide Conclusive Proof that the Sale was Properly, Lawfully and Fairly Effectuated.

As fully discussed in SFR's Motion,[9] in SFR, a foreclosure deed "reciting compliance with notice provisions of NRS 116.31162 through NRS 116.31168 'is conclusive' as to the recitals 'against the unit's former owner, his or her heirs and assigns and all other persons.'" SFR, 334 P.3d at 411-412 (quoting NRS 116.31166(2)). In fact, the statute actually goes further, stating that the recitals "are **conclusive proof** of the matters recited." NRS 116.31166(1). Nothing in the statute makes such recitals rebuttable.

While here, SFR is a bona fide purchaser for value,[10] under Nevada law, it need not be a BFP to rely on the recitals as conclusive proof. See Pro-Max Corp. v. Feenstra, 117 Nev. 90, 95, 16 P.3d 1074, 1077-78 (2001), opinion reinstated on reh'g (Jan. 31, 2001)(holding that no limitation of bona fide purchaser can be read into a statute providing a conclusive presumption). The "conclusive proof" standard "cannot be overcome by any additional evidence or argument." Employers Ins. Co. of Nev. v. Daniels, 122 Nev. 1009, 1016 n.15, 145 P.3d 1024 n.15 (2006) (citing Black's Law Dictionary 1223 (8th ed. 2004)). Only a very narrow set of circumstances would render the sale void, such as fraud committed by SFR itself. SFR need only present the deed and its recitals as evidence that the sale was properly, lawfully, and fairly conducted.

This conclusive proof is key because "[t]he conclusive presumption precludes an attack by the trustor on the trustee's sale to a bona fide purchaser **even where the trustee wrongfully rejected a proper tender of reinstatement** by the trustor[,]" and even where "the sale price was only 25 percent of the value of the property. . . ." Moeller v. Lien, 25 Cal.App.4th 822, 831-833, 30 Cal. Rptr. 777 (Cal. Ct. App. 1994) (emphasis added).[11] As such, SFR need only present the deed and its recitals as evidence that the sale was properly, lawfully, and fairly conducted.

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[9] SFR's Mot., pp. 6-10.

[10] See SFR's Mot., Sec. B, and infra.

[11] However, while BANA is precluded from having the foreclosure sale declared void, BANA may still recover damages from the trustee conducting the sale. Munger v. Moore, 11 Cal.App.3d 1, 89 Cal.Rptr. 323 (1970). In other words, BANA's remedy, if one is required, is damages. To the extent that BANA suggests, even by inference, that taking title subject to the first deed of trust is an option, the statute does

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However, even if the conclusive proof of the recitals is not enough, (which it is), it is undisputed that BANA received all the necessary notices with respect to the Association sale. Specifically, it is undisputed that BANA was mailed and received (1) the Notice of Default and Election to Sell Under Homeowners Association Lien; and (2) the Notice of Trustee's Sale. SFR's Mot., Ex. C-1; see also excerpts from deposition of Rule 30(b)(6) witness for BANA, George (Strat) Spiel, attached hereto as Ex. A-1 at 20:4-23. Despite this, BANA did not properly protect its interest.[12] As such, according to the Nevada Supreme Court's binding interpretation of NRS 116.3116(2), because BANA did not cure the deficiency after notice of the properly conducted Association foreclosure sale, its first deed of trust was extinguished. Therefore, summary judgment in favor of SFR is appropriate.

B. SFR is a Bonafide Purchaser for Value.

First, as fully discussed in SFR's Motion,[13] SFR is a bona fide purchaser although not required by Nevada law. A BFP purchases real property: (i) for value; and (ii) without notice of a competing or superior interest in the same property. Berge v. Fredericks, 95 Nev. 183, 185, 591 P.2d 246, 247 (1979). A "purchaser for value" is one who has given "valuable consideration" as opposed to receiving the property as a gift. Id. at 186-187; Allen v. Webb, 87 Nev. 261, 266, 485 P.2d 677, 680 (1971)("A specific finding of what the consideration was may be implied from the record."). Here, SFR paid valuable consideration for the Property at the foreclosure sale. At the time of the sale, SFR had no notice of a competing or superior interest in the Property where the public records showed only that (1) a deed of trust was recorded after the Association perfected

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not provide such an option. Unless BANA can demonstrate actual fraud, unfairness, or oppression **by the purchaser** at the publically advertised and held auction, the purchaser should not be subject to any acts that would set aside its unencumbered deed.

[12] BANA claims it paid the super-priority portion of the lien but, as discussed in detail below, Alessi and the Association rejected this payment. See SFR's Mot., Ex. A-9 at 22:20-22. But even if this payment was wrongfully rejected, the conclusive proof of the recitals "precludes an attack by the trustor on the trustee's sale to…**even where the trustee wrongfully rejected a proper tender of reinstatement** by the trustor." Moeller, 25 Cal.App.4th at 831-33. Additionally, this irregularity (assuming it can even be called that) in the proceedings of the sale itself, is something of which SFR had no knowledge. This is particularly true because BANA never recorded any document stating that the super-priority portion was paid. SFR's Mot., Ex. B, ¶ 10.

[13] SFR's Mot., pp. 11-12.

its lien by recording its declaration of CC&Rs; and (2) there was a delinquency by Carias, which resulted in the Association instituting foreclosure proceedings, and after complying with NRS Chapter 116, sold the Property at a public auction. Between the date the Notice of Sale was recorded and the date SFR purchased the Property, BANA never recorded a lis pendens or other document alleging any problems with the foreclosure process or the foreclosure sale. SFR's Mot., Ex. B, ¶¶ 6, 10. Additionally, SFR has no relationship with the Association or Alessi, except as a purchaser of Property. Id. at ¶¶ 8, 9. Nevertheless, BANA has not alleged any facts or introduced admissible evidence that SFR had any knowledge precluding it from BFP status, other than an impotent deed of trust.[14]

Even if BANA could present some credible evidence that SFR somehow knew that BANA's interest was superior for some reason other than BANA's faulty interpretation of the NRS Chapter 116, BANA would still have to prove that SFR was not a BFP **and** that SFR somehow induced the Association to fraudulently sell the Property to it. Bailey v. Butner, 64 Nev. 1, 8-9, 176 P.2d 226, 229-230 (1947). There is absolutely no evidence of fraud, and therefore SFR is entitled to summary judgment.

Second, BANA's analysis of Allison Steel and the applicability of *caveat emptor* are unpersuasive. BANA's Opp., pp. 15-16. Allison Steel is inapplicable to this situation, as that case dealt with the priority of liens where a creditor subsequently purchased property at a sheriff's sale with constructive knowledge of the existence of two prior recorded tax liens. See Allison Steel Manufacturing Co. v. Bentonite, Inc., 86 Nev. 494, 471 P.2d 666 (1970). There the Court held that the subsequent purchaser did not have superior title, despite having recorded its deed before the prior purchaser at the tax lien sale. Id. at 497. This was because the tax liens had priority over the lien being foreclosed. Interestingly, however, the Court's reasoning

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[14] BANA attacks SFR's BFP status on the grounds that it "did not bother to ask Alessi whether BANA tendered." BANA's Opp., 16:1. However, assuming *arguendo* that this is true, as is demonstrated in SFR's Opposition and below, BANA did not properly tender payment and the attempted payment was rejected. Therefore, there was no "tender" for Alessi to announce at the sale or for SFR to inquire about.

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incorporated the provisions of Nevada's recording statute, which included the good faith purchaser similar to a BFP:

> Under our recording act, it is not enough that a subsequent purchaser record his conveyance first, he must also be a purchaser "in good faith." A subsequent purchaser *with notice, actual or constructive, of an interest in the land superior to that which he is purchasing* is not a purchaser in good faith, and not entitled to the protection of the recording act.

Id. at 499 (emphasis added). In other words, while Allison Steel is inapplicable, it nonetheless held that a subsequent purchaser does not possess superior title when it is imputed with actual or constructive notice of a **superior** interest. Id. (emphasis added). Here, since NRS 116.3116(2) became effective prior to the first deed of trust, BANA, like the purchaser in Allison Steel, had actual or constructive knowledge of a superior lien to its deed of trust, the Association's superpriority lien. Conversely, SFR had no knowledge of a superior or competing interest at the time it purchased the Property at the Association non-judicial foreclosure sale.

Furthermore, the rule set forth in Allison Steel is not applicable to non-judicial foreclosure sales related to homeowner's association liens and is unnecessary because of the SFR Decision. In Allison Steel, as to "a purchaser at a judgment sale[,]" the court adopted the rule in 8 Thompson on Real Property §4313, 371 (1963), that caveat emptor applies "to a sale under execution" in the "absence of statute." Id. Here, there is no secondary judgment sale or sale under execution, and Nevada is certainly not devoid of law governing this issue. Specifically, SFR held that NRS 116.3116(2) gives associations a true super-priority lien, the non-judicial foreclosure of which **extinguishes** a first deed of trust. SFR, 334 P.3d at 419 (emphasis added). Therefore, there is no absence of law governing the effect of non-judicial foreclosure sales and therefore caveat emptor need not apply.

Lastly, BANA's arguments regarding the extent of interest acquired by SFR via the association foreclosure sale are incorrect. BANA in essence argues that the language of NRS 116.31164(3)(a) and NRS 116.31166(3) mean that SFR received only what title Carias (unit owners) possessed at the time of the Association foreclosure sale. BANA's Opp., 16:3-18. The argument then follows that because Carias' interest was subject to BANA's deed of trust, so too

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is SFR's interest. Id. This interpretation is flatly wrong. As is well known, NRS 116.3116(2) and the Nevada Supreme Court have already confirmed that first deeds of trust are extinguished upon non-judicial foreclosure of the superpriority lien. NRS 116.3116(2); SFR, 334 P.3d at 419. Therefore, it would be nonsensical to argue that NRS 116.31164(3)(a) and NRS 116.31166(3) conveyed title to SFR subject to the unit owner's first deed of trust, when NRS 116.3116(2) and SFR provide for extinguishment. Accordingly, summary judgment in favor of SFR is appropriate.

C. BANA's "Tender" Argument Fails

As fully discussed in SFR's Opposition, BANA's so-called "tender" argument fails. See SFR's Opp., pp. 4-9.

1. *BANA Failed to Make its Payment Unconditional.*

Although Nevada has not defined the term "tender," other states within the 9th Circuit have, and they have held that "tender" means the actual unconditional production of money.[15] Here, BANA attempted a conditional payment in an amount ($720.00) less than the total amount owed ($2,930.00 – the amount the foreclosing trustee, Alessi, stated needed to be paid according to its payoff demand letter). See BANA's Opp., Ex. A, A-2 and A-3. BANA also conditioned the proposed payment by putting forth the condition that any endorsement of the cashier's check will be strictly construed as an unconditional acceptance and an express agreement that the lien has been paid in full. Id., Ex. A-3. As such, that conditional offer of payment cannot be construed as a "tender."

[15] See McDowell Welding & Pipefitting, Inc. v. United State Gypsum Company, 320 P.3d 579, 585 (Or. Ct. App. 2014) ("To constitute a tender of money, the money must actually be produced and made available for the acceptance…" "The prospect that payment might occur at some point in the future is not sufficient for a court to conclude that there has been a tender…"); Gaffney v. Downey Savings and Loan Association, 246 Cal.Rptr. 421, 427 (Cal. Ct. App. 1988) ("[n]othing short of the full amount due the creditor is sufficient to constitute a valid tender, and the debtor must at his peril offer the full amount."); Allied Investments, Inc. v. Dunn, 663 P.2d 300, 301 (Idaho 1983) ("a mere offer to pay does not constitute a valid tender…"); Owens v. Idaho First National Bank, 649 P.2d 1221, 1222-23 (Idaho Ct. App. 1982) ("a mere offer to pay does not constitute a valid tender, the law requires that the tenderer have the money present and ready, and produce and actually offer it to the party."); Bembridge v. Miller, 385 P.2d 172, 175 (Or. 1963) (tender requires the unconditional offer to pay the full amount of the debt and actual presentment of money); Equitable Life Assur. Soc. of United States v. Boothe, 86 P.2d 960, 962 (Or. 1939) (tender means "an unconditional offer of payment, consisting in the actual production, in current coin of realm, of a sum not less than the amount due.").

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Furthermore, to the extent BANA sent a check for 9 months of assessments, according to its calculations, the Nevada Supreme Court has yet to decide whether the superpriority portion of the lien includes collection costs or not, in other words, whether a lender had to pay 9 months plus collections costs in order to protect its deed of trust. Furthermore, it is still unclear as to whether an association may include collection costs in addition to the 9 months of assessments as part of the superpriority lien. See Briefing, Horizons at Seven Hills v. Ikon Holdings, Nevada Supreme Court Case No. 63178, which raised this very issue and has been pending following full briefing since May 12, 2014. See U.S. ex rel. Calilun v. Ormat Industries, Ltd., Slip Copy, 2015 WL 1321029, NO. 3:14-00325-RCJ-VPC (D.Nev. Mar. 24, 2015), at *7.

Based on these facts, it is undisputed that BANA never tendered payment to the HOA. As such, the Association foreclosure sale was valid, and according to the Nevada Supreme Court's binding interpretation of NRS 116.3116(2), because BANA did not cure the deficiency after notice of the properly conducted Association foreclosure sale, BANA's first deed of trust was extinguished, and therefore summary judgment in favor of SFR and against BANA is appropriate.

2. *BANA's Purported Super-Priority Payment Is An Unrecorded Interest In Property And Therefore Ineffective In Preserving BANA's Lien.*

As fully discussed in SFR's Opposition,[16] BANA's purported payment of the super-priority interest is void as a property interest as a matter of law against SFR because it was not recorded in accordance with Nevada's laws. See NRS 111.315; NRS 106.220; see also Tae-Si Kim v. Kearney, 838 F.Supp.2d 1077, 1087-1088 (U.S. Dist. Nev. 2012) (an unrecorded interest in property is void against a subsequent purchaser if the subsequent purchaser's interest is first duly recorded). IF BANA had made a proper tender or paid the Association's lien, thereby elevating the lien priority of its first deed of trust, it would have had to record such evidence to be effective against the world. BANA's failure to record any evidence of any such change in position prior to the Association foreclosure sale renders the purported payment void as against

[16] SFR's Opp., at 5:17-8:20.

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SFR, and therefore SFR did not take subject to BANA's deed of trust when it purchased the Property.

3. *Even if BANA's Attempt to Pay was Proper, the Sale Cannot be Undone.*

Even if even if this Court were to find that BANA's payment constituted a proper tender, and that BANA had no duty to record its interest, the sale to SFR would stand and BANA's deed of trust would be extinguished. As discussed in SFR's Opposition and reiterated above, SFR can rely on the deed recitals in the Trustee's Deed Upon Sale as conclusive proof that the sale was carried out in a proper, lawful and fair manner. Regarding any purported irregularities, BANA would have to seek its remedies elsewhere. SFR's Opp., 8:22-9:22.

First, Alessi rejected BANA's payment because it was not for the full lien or the full super-priority portion of the lien. See BANA's Opp., Ex. A. But, as discussed in Section IV(A) above, this rejection, even if improper, still does not render the sale void or result in SFR taking the property subject to BANA's deed of trust because the sale is conclusive as to SFR. Moeller, 25 Cal.App.4th at 831-33 (finding that "[t]he conclusive presumption precludes an attack by the trustor on the trustee's sale to a bona fide purchaser **even where the trustee wrongfully rejected a proper tender** of reinstatement by the trustor[,]" and even where "the sale price was only 25 percent of the value of the property…" (emphasis added)).[17] BANA's remedy, if one is required, is damages.[18] Additionally, the statute does not provide the option of SFR taking subject to BANA's deed of trust. BANA has not and cannot demonstrate actual fraud, unfairness, or oppression by SFR at the publically advertised and held auction, and therefore SFR cannot be subject to any acts that would set aside its unencumbered deed.

Second, BANA took no action to put the world on notice that it had any dispute with the Association or Alessi regarding the amount needed to protect BANA's priority. It did not file a

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[17] BANA's attack on Moeller v. Lien is misplaced. The rule of law as stated in Moeller and recited above, is clear and applicable. Here, SFR, a bonafide purchaser for value (although not required in Nevada), received a trustee's deed reciting compliance with the law. Id. at 831. This created a conclusive presumption as to SFR. Id. Thus, "**[e]ven if respondent [trustor] had known** of his right to a one-day postponement, had exercised that right **and had tendered** the amount due, **and the trustee [bank] had improperly rejected the tender, the sale could not have been properly set aside** against a bonafide purchaser for value." Moeller, 25 Cal.App.4th 822, 833 (emphasis added).

[18] See fn. 11, infra.

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lawsuit and record a lis pendens to stop the sale and force the Association to provide the correct amount. It did not appear at the sale and announce to the potential bidders that it was trying to protect its interest. It sat silent to the world. Thus, the BANA cannot hold SFR accountable for such knowledge.

In sum, where remedies at law exist, one cannot seek equity, which is what it would be asking for if the sale were vacated or its deed of trust survived. SFR had nothing to do with anything that took place prior to the sale and should not be held accountable. As such, regardless of Alessi's alleged conduct, according to the Nevada Supreme Court's binding interpretation of NRS 116.3116(2), BANA's deed of trust was extinguished and the finality of that sale is conclusive as to SFR such that the sale cannot be set aside nor can SFR's deed be subject to BANA's deed of trust. Therefore, summary judgment in favor of SFR must be granted.

D. BANA Has No Right to Redeem its Priority on the First Deed of Trust Because The Non-Judicial Foreclosure Sale Vested Title in SFR Without Equity or Right of Redemption.

BANA claims that its "tender" prior to the Association foreclosure sale "redeemed" the priority of the first deed of trust. BANA's Opp., 12:16-17. BANA is incorrect because the association foreclosure sale vested title SFR "without equity or right of redemption."[19] SFR, 334 P.3d at 419, citing NRS 116.31166(3). As the dissent in SFR explained, "the owner, as well as the first security, will have no right to redeem the property under the majority's holding." Id. citing NRS 116.31166(3) and Bldg. Energetix Corp. v. EHE, LP, 129 Nev. ___, ___, 294 P.3d 1228, 1233 (2013) (recognizing that there is no right to redeem after a Chapter 107 non-judicial

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[19] According to the Nevada Supreme Court,

> **sales without equity or right of redemption vest the purchaser with absolute title**:
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> [T]he law authorizing the mortgagee to sell is, in our opinion, so thoroughly settled that it cannot now admit of a question. Such being the right of the mortgagee, it follows as a necessary consequence that the purchaser from him obtains an absolute legal title as complete, perfect and indefeasible as can exist or be acquired by purchase; and a sale, upon due notice to the mortgagor, whether at public or private sale, forecloses all equity of redemption as completely as a decree of court.

In re Grant, 303 B.R. 205, 209 (Bankr. D. Nev. 2003) (quoting Bryant v. Carson River Lumbering Co., 3 Nev. 313, 317–18 (1867)) (emphasis added).

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foreclosure sale because a sale under that chapter 'vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption" (quoting NRS 107.080(5)).

This is consistent with long-standing Nevada non-judicial foreclosure law that "[i]f the sale is properly, lawfully and fairly carried out, [the bank] cannot unilaterally create a right of redemption in [itself]." Golden v. Tomiyasu, 79 Nev. 503, 518, 387 P.2d 989, 997 (1963). Nevada law does not allow BANA or the Court to create a redemption period to save BANA from its own failure to properly protect its interest.[20] As such, BANA's first deed of trust was extinguished, and therefore summary judgment in favor of SFR and against BANA is appropriate.

E. No Issues of Material Fact Exist as to Commercial Reasonableness.

SFR thoroughly addressed the commercial reasonableness argument in its Motion[21] and Opposition,[22] and therefore will not reiterate it in full here. That being said, BANA's claim that this Court should deny SFR's motion for summary judgment because the foreclosure sale was commercially unreasonable is flawed for several reasons.

First, NRS §116.31164 and §116.31166 are clear and unambiguous. Neither contain a requirement that the sale be "commercially reasonable" nor that the purchaser at the sale satisfy the requirements of a "bona fide purchaser."

Second, a commercial reasonableness analysis does not mean comparing the price paid to value.[23] The Nevada Supreme Court has held that commercial reasonableness of an association foreclosure sale deals with analyzing **the sale process**, and whether fraud, unfairness or

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[20] To the extent BANA is misusing the term "redeem" to mean "cured" the superpriority amount, as discussed above, BANA failed to actually tender without conditions. Furthermore, as discussed in full in SFR's Opposition and above, without notice to the world, any attempted "tender" by BANA would not affect SFR's title clear of the deed of trust.

[21] At pp. 12-17.

[22] SFR's Opp., p. 18.

[23] BANA's reliance on Will v. Mill Condominium Owner's Association, 848 A.2d 336 (Vt. 2004), is misplaced. The case is materially distinguishable. In Will, the court voided an association non-judicial foreclosure sale as commercially unreasonable because: (1) the price was low; (2) there was only one bidder; and (3) the association told the bidder what price would be acceptable. In addition, the homeowner had tendered the amount to cure the lien on the same day as, but after the sale due to an apparent miscommunication between the Association and the homeowner as to the sale date.

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oppression brought about the low price. Long v. Towne, 98 Nev. 11, 14, 639 P.2d 528, 530 (1982) (refusing to unwind a sale where the mortgage had been fully paid and the property was sold at an association foreclosure sale for $3,000) (emphasis added).[24] The Long Court relied on what had long been the law in Nevada regarding forced sales under a deed of trust, citing Golden, 79 Nev. at 504: "mere inadequacy of price, without proof of some element of fraud, unfairness or oppression as accounts for and brings about the inadequacy of price is not sufficient to support a judgment setting aside the sale." Long, 98 Nev. at 13; see also Bourne Valley Court Trust v. Wells Fargo Bank, N.A., 80 F.Supp.3d 1131, 1136 (D.Nev. 2015).

Put simply, in Nevada a commercial reasonableness analysis never deals with comparing price paid to value. All the price paid can do is trigger closer scrutiny of the **sale process**. But the analysis is **never** looking at the price paid. Instead, the analysis is looking at the sale process i.e. whether proper notice was given, whether the bidding was competitive, and whether the sale was conducted pursuant to…normal procedures. Iama Corp. v. Wham, 99 Nev. 730, 736, 669 P.2d 1076, 1079 (1983). In other words, commercial reasonableness deals with looking at whether there was conduct that led to the low price, not simply comparing price to value.

Here, BANA has offered no evidence of any fraud, unfairness or oppression in the sale process that would justify setting aside the sale. The Association's sale was publically noticed, as required by statute, multiple bidders attended the auctions, and neither the homeowner nor BANA paid an amount to cure the lien before the sale. [25] Here, viewing the transaction as a whole, the sale was commercially reasonable, and as a matter of law, BANA cannot rely on SFR's bid as evidence that it was not.

Third, fair market value of a property is not applicable to a forced sale situation. Bourne

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[24] BANA's reliance on the Restatement (Third) of Property §8.3, for the general proposition that foreclosure sales can be voided if 20% less then fair market value, is misguided. First, the Restatement clearly notes the "considerable deference" given to trial courts on the issue of price adequacy. Second, the Nevada Supreme Court has already provided guidance on the commercial reasonableness in association foreclosure sales. Long, 98 Nev. at 14. Third, this argument ignores the failure of fair market value to give consideration to a forced sale context. BFP v. Resolution Trust Corporation, 512 U.S. 531, 114 S.Ct. 1757 (1994).

[25] BANA claims the Association's rejection of BANA's payment was bad faith, but this fact, even if true (which it is not – see Section IV(C) above), does not rise to fraud or oppression on the part of SFR.

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Valley, 80 F.Supp.3d at 1136; BFP v. Resolution Trust Corporation, 511 U.S. 531, 537-549, 114 S.Ct. 1757, 1760 (1994).[26] BANA wants to focus on the price paid, while ignoring the reality of the market. The low price was not driven by any untoward conduct, but driven by lenders like BANA. Specifically, because lenders challenged whether an NRS 116 sale extinguished the first deed of trust, purchasers at Association foreclosure sales did not know for certain what they were buying. The Bourne Valley Court thoroughly described the reality of the market that was driving the low prices:

> The commercial reasonableness here must be assessed as of the time the sale occurred. Wells Fargo's argument that the HOA foreclosure sale was commercially unreasonable due to the discrepancy between the sale price and the assessed value of the property ignores the practical reality that confronted the purchaser at the sale. Before the Nevada Supreme Court issued SFR Investments, purchasing property at an HOA foreclosure sale was a risky investment, akin to purchasing a lawsuit. Nevada state trial courts and decisions from the United States District Court for the District of Nevada were divided on the issue of whether HOA liens are true priority liens such that their foreclosure extinguishes the first deed of trust on the property. SFR Investments, 334 P.3d at 412. Thus, a purchaser at an HOA foreclosure sale risked purchasing merely a possessory interest in the property subject to the first deed of trust. This risk is illustrated by the fact that title insurance companies refused to issue title insurance policies on titles received from foreclosures of HOA super priority liens absent a court order quieting title. (Mot. to Remand to State Court (Doc. #6, Decl. of Ron Bloecker.) Given these risks, a large discrepancy between the purchase price a buyer would be willing to pay and the assessed value of the property is to be expected.

Bourne Valley, 80 F.Supp.3d at 1136.[27] BANA cannot create the very market which drove the low prices, and then claim the sales were not commercially reasonable.

In sum, although not required by NRS 116, the Association sale was commercially reasonable, and summary judgment in favor of SFR is appropriate.

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[26] See SFR's Mot., 15:2-16:3, for full analysis of BFP v. Resolution Trust Corporation.

[27] BANA's attempt to distinguish Bourne Valley is flawed. First, the fact that the bank's argument in Bourne Valley was that the price paid shocked the conscience, versus here where the alleged disparity between purchase price and purported "fair market value" was allegedly 25%, is irrelevant. In Bourne Valley the Court still found the sale commercially reasonable. Id. at 1136. Second, BANA's attempted payment is not "evidence of fraud or any other procedural defects or other irregularities in the conduct of the sale what would require the Court to void the sale." Id. The attempted payment was not a tender, and even if it was, this is not fraud or oppression attributable to SFR.

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F. BANA Lacks Standing to Challenge the Constitutionality of NRS 116.3116; BANA Received Actual Notice of the Association Foreclosure Sale

BANA lacks standing to assert its claim that NRS116.3116 facially violates its due process rights because BANA was, in fact and application, provided actual notice of the Association's non-judicial foreclosure sale. See excerpts from deposition of Rule 30(b)(6) witness for BANA, George (Strat) Spiel, attached hereto as Ex. A-1 at 20:4-23; see also Wiren v. Eide, 542 F.2d 757, 762 (9th Cir. 1976) ("receipt of actual notice deprives [appellant] of standing to raise the claim" that the statutory notice scheme violated due process); see also Green Tree Servicing, LLC v. Random Antics, LLC, 869 N.E.2d 464, 470-71 (Ind. Ct. App. 2007) (where one receives actual notice cannot claim that the noticing provisions of the statute are unconstitutional). Any irregularity in notice does not violate due process where one has actual notice of the action to be taken. See United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 272, 130 S.Ct. 1367, 1378 (2010) (debtor's failure to serve a summons and complaint does not violate due process where creditor received "actual notice of the filing and contents of [debtor's Chapter 13] plan."); see also In re Medaglia, 52 F.3d 451, 455-56 (2d Cir. 1995) ("[D]ue process is not offended by requiring a person with actual, timely knowledge of an event that may affect a right to exercise due diligence and take necessary steps to preserve that right.") (cited with favor in SFR, 334 P.3d at 418.) Here, BANA knew about the Association foreclosure sale when it received notice of the sale and chose not to take appropriate action to prevent the sale and therefore cannot claim injury as a result of the noticing provisions of the statute.

Although Nevada does not have the same Article III standing requirements as federal courts, "Nevada has a long history of requiring an actual justiciable controversy as a predicate to judicial relief." Kahn v. Dodds (In re AMERCO Derivative Litig.), 252 P.3d 681, 694, 2011 Nev. LEXIS 18, *19-20 (Nev. 2011) (citing Doe v. Bryan, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986)). "In cases for declaratory relief and where constitutional matters arise, this court has required plaintiffs to meet increased jurisdictional standing requirements."[28] Stockmeier v. Nev.

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[28] To be sure, the Nevada Supreme Court in Stockmeier stated that "where the Legislature has provided the people of Nevada with certain statutory rights, we have not required constitutional standing to assert such rights but instead have examined the language of the statute itself to determine whether the plaintiff

Dep't of Corr. Psychological Review Panel, 122 Nev. 385, 393, 135 P.3d 220, 225-226 (2006) (citing Bryan, 102 Nev. at 525-26, 728 P.2d at 444-45); see also Sereika v. State, 114 Nev. 142, 151, 955 P.2d 175, 180 (1998) (holding that Sereika lacked standing to challenge the constitutionality of a potentially applicable statute on the basis that it may be unconstitutionally applied to others not at issue in the case). Specifically, to demonstrate constitutional standing, BANA must demonstrate (1) it suffered an "injury in fact" to a legally protected interest; (2) there is a causal connection by what the injury and the conduct complained of; and (3) it is likely the injury would be redressed by a favorable decision." In this instance, BANA has not been able to demonstrate that it has standing to claim the applicable statutes are unconstitutional. Miller v.Warden, Nevada State Prison, 112 Nev. 930, 936, 921, P.2d 882, 885 (1996).

In sum, because BANA was provided with actual notice of the Association's non-judicial foreclosure sale, it lacks standing to assert its claim that NRS116.3116 facially violates its due process rights. Summary judgment in favor of SFR is appropriate.

G. NRS 116 is Constitutional.

As elaborated in SFR's Opposition,[29] BANA's facial due process challenge to NRS 116 fails because the Nevada Supreme Court has already decided the issue and has done so in a manner that honors the constitutional avoidance doctrine, and BANA fails to identify a state actor, even if it has potentially identified state action. For due process to be implicated, both must exist.

1. The Nevada Supreme Court has already decided the issue, in compliance with the Constitutional Avoidance Doctrine.

Statutes are presumed to be valid, and the challenger bears the burden of showing that a statute is unconstitutional." Tam v. Eighth Jud. Dist. Ct., 131 Nev. ___, ___ P.3d___, 2015 WL 5771245 at *2 (Adv. Op. No. 80, Oct. 1, 2015) (quoting Silvar v. Eighth Judicial Dist. Court, 122

(continued)

had standing to sue." 122 Nev. at 393, 135 P.3d at 226. Here, NRS 116.3116 does **not** establish the standing criteria for lawsuits against a homeowner association or their trustee for non-compliance with this chapter. For comparison, the Stockmeier court explained that the applicable NRS 241.037(2) stated "any person denied a right conferred by [NRS Chapter 241] may sue," id.; no such statement appears in NRS Chapter 116.

[29] SFR's Opp., pp. 9-18.

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Nev. 289, 292, 129 P.3d 682, 684 (2006)). The party making a facial challenge to a statute "bears the burden of demonstrating that there is no set of circumstances under which the statute would be valid." Déjà vu Showgirls v. State, Dept. of Tax., 130 Nev. ___, ____, 334 P.3d 392, 398 (Nev. 2014); see Flamingo Paradise Gaming, LLC v. Chanos, 125 Nev. 502, 509, 217 P.3d 546, 552 (2009) (citing Washington State Grange v. Washington State Republican Party, 552 U.S. 442, 449, 128 S.Ct. 1184, 1190 (2008) (noting that the Supreme Court of the United States reaffirmed the requirement that a statute be void in all its applications to be successful, when civil statutes are at issue). Facial challenges are generally disfavored because they rest on speculation, and "run contrary to the fundamental principle of judicial restraint that courts should neither "'anticipate a question of constitutional law in advance of the necessity of deciding it'" nor "'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.'" Washington State Grange, 552 U.S. at 450-451.

Courts must "avoid considering the constitutionality of a statute unless it is absolutely necessary to do so." Sheriff v. Andrews, 128 Nev. ___, ___, 286 P.3d 262, 263 (2012). Likewise, courts "will not decide the constitutionality of a statute based upon a supposed or hypothetical case which might arise thereunder." Carlisle v. State, 98 Nev. 128, 131, 642 P.2d 596, 598 (1982). These precepts emanate from and perpetuate the constitutional avoidance doctrine. Ashwander v. Tenn. Valley Auth., 297 U.S. 288, 341, 346-48 (1936) (Brandeis, J., concurring). Justice Frankfurter described this doctrine as "the most fundamental principle of constitutional adjudication [.]" U.S. v. Lovett, 328 U.S. 303, 320 (1946) (Frankfurter, J., concurring). BANA ignores this important doctrine; this Court, however, cannot. If the Court can interpret the statutes constitutionally, it must.

The Nevada Supreme Court majority in SFR Investments Pool 1, LLC, v. U.S. Bank, N.A., recognized the incorporation of NRS 107.090 by NRS 116.31168(1), and making the provisions "apply to the foreclosure of an association's line as if a deed of trust were being foreclosed." SFR, 334 P.3d at 411. The majority expressly noted that though the incorporation of NRS 107.090(3)(b) and (4) both the notice of default and notice of sale were required to be given to "[e]ach other person with an interest whose interest or claimed interest is subordinate to the

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deed of trust." Id. (quoting 107.090(3)(b)). Thus, by incorporation, this means that notice is required to each person whose interest is subordinate to the Association's lien. These provisions are in addition to providing notice to each person with an interest who has requested notice.[30] See 107.090(2), (3)(a); see also 116.31163; 116.311635(1)(b)(1)-(2). The SFR dissent also recognized that the statutes require notice of default and sale be sent to the lenders, as junior lienholders, through the incorporation of NRS 107.090. SFR, 334 P.3d at 422. Thus, to the extent BANA asks this Court to interpret NRS 116.3116 *et seq.* otherwise, and render them unconstitutional, this Court must decline.

2. BANA Misapplies the Analyses Required to find State Actor.

BANA's due process analysis still cannot overcome the lack of state actor. If there is no state actor, then due process — including concerns about "notice" — is inapplicable. Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295, 121 S.Ct. 924 (2001); Rendell-Baker v. Kohn, 457 U.S. 830, 838, 102 S.Ct. 2764 (1982) ("If the action of the respondent school is not state action, our inquiry ends."). Moreover, **the burden of establishing a state actor is on the party claiming a deprivation of a constitutionally protected interest**. Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 156, 98 S.Ct. 1729 (1978). Such a burden is steep and "necessarily fact-bound[.]" Brentwood, 531 U.S. at 289. Yet, BANA provides no facts regarding this Association and this case to show that the Association here was acting in the capacity of the state. Unlike mechanics liens, which are not only creatures of statute but require the use of the judicial system to enforce, there is no state actor enforcing an association lien. Even if this Court were to presume state action arising from the adoption of the UCIOA as Chapter 116, a private party relying on a state-created procedural scheme is not sufficient to invoke due process:

> While private misuse of a statute does not describe conduct that can be attributed to the State, the procedural scheme created by the statute obviously is the product of state action. This is subject to constitutional restraints and properly may be

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[30] BANA's argument that recent changes to NRS 116 noticing provisions support its interpretation of the statutes is unavailing. The Legislature simply took the notice required under NRS 107.090(3)(b) and (4) and incorporated it directly into 116. It did not change to whom notice was already required.

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> addressed in a § 1983 action, **if the second element of the state-action requirement is met as well.**

Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 941 (1982) (emphasis added). In Lugar, the "second element of the state-action requirement" is "the party charged with the deprivation must be a person who may fairly be said to be **a state actor**." Id. at 937 (emphasis added). Again, due process' protections do not extend to private actor's private conduct. Am. Mfr. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 50, 119 S.Ct. 977 (1999). Rather, the private actor must be performing functions that are **traditionally and exclusively performed by governments**. Flagg Bros., 436 U.S. at 158.

3. Nothing in NRS 116 Compels an Association to Foreclose; that is the Association's Private Decision.

BANA misleads this Court by claiming there is "government compulsion." BANA's Opp., 20:1-13. BANA points to the requirement of a super-priority lien that is not waivable, and arises only by statute. Id. at 20:12-13. BANA cannot make such a blatant statement regarding the existence of the right coming only through statute, however. Prior to 1992, a common-interest community could have acquired its lien and had the power to foreclose through the declaration of CC&Rs. It is impossible to know if any given association created after 1992 would have chosen to incorporate such power in the absence of NRS 116. In fact, BANA's reliance on the inability to enforce a "mortgage protection clause" belies its assertion that an association's lien could not be prior to a first deed of trust without the statutes. That suggests, without basis, that no declaration recorded before 1992 included a mortgage protection clause, because such protection would be unnecessary.

More importantly, BANA fails to focus its analysis on the very act that deprived it of its property interest – **the decision to enforce the lien** and act of foreclosure. As one federal district court noted, "the power to impose fines or enforce liens are not traditional and exclusive governmental functions." Snowdon v. Preferred RV Resort Owners Ass'n, No. 2:08-cv-01094-RCJ-PAL, at *14:14-15 (D. Nev. Apr. 1, 2009), aff'd, 379 Fed. Appx. 636 (9th Cir. 2010) ("[Association] did not perform the traditional and exclusive public function of municipal

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governance." (internal citation omitted)). The United States Supreme Court has never held that the enactment of a remedy transforms a private entity into a state actor. Sullivan, 526 U.S. at 53 ("We have never held that the mere availability of a remedy for wrongful conduct, even when the private use of that remedy serves important public interests, so significantly encourages the private activity as to make the State responsible for it."). Indeed, the United State Supreme Court held in Flagg Bros, New York's enactment of UCC 7-210 did not significantly encourage a warehouse owner's decision to send a letter threatening to sell belongings. Flagg Bros., 436 U.S. at 165. Instead, the Court recognized that a State's mere acquiescence in private conduct does not constitute state action and enacting a statute to permit such action does not constitute "encouragement" or compulsion. Id. Indeed, the 9th Circuit has held that merely enacting statutes that provide a framework for non-judicial foreclosure under NRS 107 does not transform that private act into a state action. Charmicor v. Deaner, 572 F.2d 694, 695 (9th Cir. 1978). "[T]he statute creates only the right to act; it does not require that such action be taken." Id.

Nothing requires or compels an association to foreclose. That decision is purely private. See 116.3102(3) (granting the executive board the authority to determine whether to take enforcement action to collect unpaid assessments). Thus, BANA's compulsion analysis fails.

4. The State is not "Intertwined" in the Association's Decision to Foreclose and Foreclosure.

Like its tortured reading of case law to try and show "compulsion" or coercion, BANA's argument regarding an "intertwinement" under Culbertson v. Leland, 528 F.2d 426 (9th Cir. 1975), is equally misguided. BANA's Opp., pp. 20-23. Since Culbertson was decided, the United States Supreme Court has determined a right's origins (i.e. statutory or common law) do not dictate whether a private entity is a state actor. S.F. Arts & Athletics, Inc. v. USOC, 483 U.S. 522, 547, 107 S.Ct. 2971 (1987) ("Nor is the fact that Congress has granted the USOC exclusive use of the word 'Olympic' dispositive. All enforceable rights in trademarks are created by some governmental act, usually pursuant to a statute or the common law. The actions of the trademark owners nevertheless remain private."). Similarly, that Court has never held the enactment of a remedy transforms a private entity into a state actor. Sullivan, 526 U.S. at 53

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("We have never held that the mere availability of a remedy for wrongful conduct, even when the private use of that remedy serves important public interests, so significantly encourages the private activity as to make the State responsible for it.").

As the Ninth Circuit determined in Charmicor, a foreclosure sale under NRS 107 did not implicate due process, noting that the statutory source of a power or right "does not necessarily transform a private, non-judicial foreclosure into state action." Charmicor, 572 F.2d at 695-696. The court further recognized that Culbertson did not stand for the proposition that the source of the rights being enforced was dispositive to the issue of state action:

> [E]ven this court's opinion in Culbertson v. Leland, 528 F.2d 426 (9th Cir. 1975), holding that Arizona's Innkeeper's Lien Statute colored otherwise private transactions with state action, did not consider the statutory source of the rights involved to be determinative. Two judges thought that the distinction between statutory and common law rights did not matter at all, 528 F. 2d at 435, n.5, 436-437, and one stated that the distinction, while a factor to be considered, was not dispositive of the state action issue. Id. at 431.

Charmicor, 572 F.2d at 696. The court held that "the distinction between the sources of the California [contractual right] and the Nevada [statutory right conferring power of sale on a trustee] powers of sale does not compel, or strongly support, a holding that the latter constitutes state action, nor does it call into question the district court's reliance upon California cases." Id. at 696.

BANA alleges that the state "imposed an obligation to pay sums due on a lien onto a party who has no connection to the debt." BANA's Opp., 22:22-24. This grossly misstates BANA's obligation. BANA has no obligation to pay anything, unless it wishes to protect its own interest, like any junior lienholder can do when a senior lienholder attempts to foreclose. Additionally, BANA voluntarily took on the possibility of that obligation in the First Deed of Trust. See BANA's Motion for Summary Judgment ("BANA's Mot."), Ex. A: First Deed of Trust – Planned Unit Development Rider (giving the lender the right to pay association dues if the borrower does not).

Second, as discussed above, the Association could have had a senior lien for assessments through the CC&Rs, thus it is not a given fact that its rights did not exist at common law. In fact,

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at common law, a lienholder had priority if it was first in time, even if unrecorded. The recording statutes changed common law. Third, the shift in the amount does not change the fact that this shift came because of the bank's own misconduct and failure to foreclose promptly, and still did not compel foreclosure by the associations. Fourth, as set forth above, all non-judicial foreclosure in the State of Nevada is regulated through state law – that does not make the foreclosing party a state actor. Such an assertion would (1) make all lenders state actors when they foreclose, contrary to Charmicor; and (2) make all lender foreclosures prior to 1989 unconstitutional, as NRS 107.090(3)(b) became law at that time - expanding the request notice statutes of 107.090 to include notice to junior lienholders of record. 1989 Nev. Stat., ch. 306, § 1, at 644. That cannot be what BANA means. Finally, nothing prevents associations and secured lenders from reaching agreements that would protect a lender's lien priority, it just cannot be through waiver of an association's super-priority lien.

Again, BANA misses the point. The analysis must focus on the actual act that would deprive it of its interest – the decision to foreclose and the foreclosure. Both of which are private decisions made by private parties simply using a state-authorized procedure without the extensive involvement of state actors (like the courts or sheriff) to accomplish the result. Just as BANA had to make a private business decision as to whether or not to pay to protect its security interest. That is solely their decision and their risk.

Due process is not implicated because there is no state actor. Even if it was, however, the constitutional avoidance doctrine and the SFR Court have already determined that due process is not offended by NRS 116 non-judicial foreclosure statutes.

5. The Statutes Require Notice to All Junior Lienholders of Record.

BANA points to the Mennonite and Mullane decisions to support its position that any party must receive actual notice to satisfy due process. BANA's Opp., pp. 23-26. This is patently inaccurate, constituting a rejection of United States Supreme Court precedent. To be clear, due process, if it were required here, does not require actual notice. Specifically, "our cases have never required actual notice." Dusenbery v. U.S., 534 U.S. 161, 171, 122 S.Ct. 694 (2002). Due process requires only that the noticing be "reasonably calculated…to apprise interested parties of

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the pendency of the action[.]" Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 652 (1950). If a notice identifies an event that will impact an individual's property interest, then due process is satisfied. United Student Aid Funds, 559 U.S. at 272 (bankruptcy plan's filing and contents); Jones v. Flowers, 547 U.S. 220, 239, 126 S.Ct. 1708 (2006) (tax sale); Dusenbery, 534 U.S. at 168 (cash forfeiture); Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 798, 103 S.Ct. 2706 (tax sale).

Here, the Association's notice satisfied due process because it was "reasonably calculated…to apprise [BANA] of" the pendency of the Association's foreclosure. Mullane, 339 U.S. at 314. Thus, BANA's motion should be denied and SFR is entitled to summary judgment.

Furthermore, despite BANA's assertions to the contrary, NRS 116 is not an "opt in" statute. As discussed supra, in Sec. F(1), both the majority and the dissent in the SFR decision recognized that, through incorporation of NRS 107.090, including subsection 3(a), requires notice to all junior lienholders of record. SFR, 334 P.3d at 411, 422. As the Hon. Linda Bell recognized in analyzing the statutes for facial constitutionality, "Chapter 116, if read in a vacuum," it could lead to an erroneous interpretation that" lenders are only entitled to notice upon request. SFR Investments Pool 1, LLC v. Wells Fargo Bank, N.A., 2015 WL 4501851, at *6 (Nev.Dist.Ct. July 21, 2015). However, Judge Bell, like the Nevada Supreme Court, understood that NRS 116.31168 incorporated fully NRS 107.090, not just some portions thereof. Even more recently, the Hon. Judge Susan Johnson, granted summary judgment in favor of SFR, by ruling that the Plaintiff's facial challenge of NRS 116 fails because reading the statutes as a whole, and in conjunction with well-established related law, ensures mortgage holders and other interested parties be sent actual notice of the association's impending non-judicial foreclosure. Bank of New York Mellon Corp. v. SFR Investments Pool 1, LLC, 2015 WL 4945714, at *7 (Nev.Dist.Ct. August 19, 2015).

Even if BANA was correct about the statue, which it is not, it mischaracterizes the Fifth Circuit's holding in Small Engine Shop, Inc. v. Cascio, 878 F.2d 883, 892-93 (5th Cir. 1989). BANA's Opp., 25:13-17. The Small Engine court did not strike down any statute.[31] Rather, it

[31] BANA insists that Small Engine struck down a "request-notice" statute as unconstitutional; this

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expressly held that the request notice statute at issue "acts only to supplement Louisiana's preexisting constructive notice scheme in Louisiana foreclosure actions." Id. The court, out of adherence to the constitutional avoidance doctrine, articulated a way for courts to read "request-notice" statutes constitutionally. Id. at 890. As in Small Engine, if NRS Chapter 116's had request-notice provisions, they would be constitutional, especially when construed in conjunction with Nevada's recording laws, (NRS Chapter 111), and with the requirements of NRS 116.31168 and NRS 107.090. At bottom, Small Engine provides this Court with a blueprint for how to give request-notice provisions a constitutional construction. Small Engine, 878 F.2d at 889.[32]

The non-judicial noticing requirements of NRS 116 require notice to lenders. BANA simply refuses to acknowledge that its own actions caused its loss, not those of the Association, its agent, and certainly not those of SFR. Summary judgment in favor of SFR is appropriate.

6. BANA's Remedy Argument Fails for Lack of State Actor/Action.

In a "Hail Mary" attempt to save itself from its own inaction, BANA claims that NRS 116 fails to provide it a remedy. BANA's Opp., pp. 27-28. Yet, for the very reasons stated above, due process is not implicated. The case on which it hangs its hat does not support this argument. Id. at 28:6-10. Garcia-Rubiera v. Fortuno is factually and legally distinguishable. 665 F.3d 261 (1st Cir. 2011). There, the Commonwealth of Puerto Rico required persons to purchase mandatory insurance from either the state or privately. Id. at 264. The case involved an attempt to recover duplicate payments made to and collected **by the state**. Id. at 265 (emphasis added). At issue were the procedures involved in obtaining the reimbursement **from the state**. Id.

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(continued)

disregards that case's admonition that "[b]ecause Small Engine did not request notice under La.Rev.Stat.Ann. 13:3886, we do not decide whether the provisions of the statute are constitutional in their entirety." Small Engine, 878 F.2d at 893 n.9.

[32] As the Hon. Robert C. Jones stated in rejecting a facial constitutional argument, "[t]he first mortgagee has no better notice-based argument against an HOA than the second mortgagee has against the first mortgagee." Nationstar Mortgage, LLC v. Rob and Robbie, LLC, No. 2:13-cv-01241-RCJ-PAL, 2014 WL 3661398 at *3 (Order) (D.Nev. July 23, 2014) (order rejecting the lender's due process arguments and denying lender's motion for summary judgment). The Court recognized that, like a second mortgagee, the first mortgagee as a junior lienholder to the association "is aware when deciding whether to take its security interest that the putative that the senior party may foreclose upon a future delinquency." Id. The Rob and Robbie court went so far as to admonish the first deed holder, stating that "[a] junior secured party cannot be heard to complain that he was too lazy or disorganized to keep abreast of the freely available public notices as to the property in which he has an interest." Id.

(emphasis added). Thus, there is not only state action in the legislation, but there is a state actor involved in the procedures at issue. Because there is no state actor here, the due process analysis falls flat. Furthermore, BANA had a full set of remedies, including the one it gave itself, the ability to pay the entire amount owning and adding it to the loan principal. See BANA's Mot., Ex. A. Additionally, at its disposal was the ability to seek court intervention and injunctive relief prior to the sale. It did not avail itself to those options either.

NRS 116 foreclosure procedures do not implicate due process and, even if they do, fully provide due process and a means for junior lienholders to protect themselves. See SFR, 334 P.3d at 418. Thus, this Court should not reward BANA for failing to take care of its security interest by way of this flawed argument.

H. BANA cannot use the Supremacy Clause to Displace Nevada Law

SFR thoroughly addressed the Supremacy Clause argument in its Motion,[33] and therefore will not reiterate it in full here. However, as elaborated in SFR's Motion, BANA cannot use the Supremacy Clause to displace Nevada law.

BANA claims that the loan underlying the Deed of Trust is FHA insured. Assuming *arguendo* that this is true, it would not be enough to save BANA, as BANA lacks standing to assert the rights of a federal agency.[34] However, even if BANA had standing to assert the rights of a federal agency (which it does not), its argument fails as the Supremacy Clause does not

[33] SFR's Mot., pp. 17-20.

[34] BANA's reliance on Washington & Sandhill and Saticoy Bay is misplaced. As for Washington & Sandhill Homeowners Ass'n, v. Bank of Am., N.A., No. 2:13-cv-01845-GMN, 2014 WL 4798565 (D. Nev. Sept. 25, 2014), that case did not determine that HUD insurance was a federal property interest. Washington & Sandhill, 2014 WL 47989565 at *6. It expressly never reached the issue. Id. Besides, Washington & Sandhill incorrectly relied on the three distinguishable Ninth Circuit NHA decisions, in which the actual property interest was already transferred to HUD. Similarly, BANA's reliance on Saticoy Bay, LLC is also misplaced as that case never concluded that HUD insurance was federal property either. Saticoy Bay, LLC v. SRMOF II 2012-1 Trust, 2:13-cv-1199 JCM-VCF, 2015 WL 1990076 (D. Nev. April 30, 2015). Further, Judge Dorsey rejected Washington & Sandhill. In Freedom Mortgage Corp., the court recognized that the purpose of HUD is not frustrated by NRS 116 because Nevada HOA laws "are entirely consistent with [HUD's] goals of improving residential community development, eliminating blight, and preserving property values." Freedom Mortgage Corp. v. Las Vegas Development Group, LLC, No. 2:14-cv-01928 JAD-NJK 2015 WL 2398402 *9 (D.Nev. 2015). In fact, HUD's policy is not only consistent with Nevada HOA laws, it is harmonious because "[i]n superpriority lien states, the HUD-insured lenders' obligation to prevent foreclosure by satisfying HOA liens in not an aspirational goal; it's a requirement." Id. at *6.

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apply to this matter. BANA, a private litigant, misleadingly uses the Supremacy Clause in an attempt to displace state law in direct contravention to United States Supreme Court precedent. BANA's misapplication of the Supremacy Clause is glaring. As fully discussed in SFR's Motion,[35] the United States Supreme Court has already determined that private litigants cannot use the Supremacy Clause to displace state law. Armstrong v. Exceptional Child Care Ctr., Inc., 575 U.S. ___, 135 S.Ct. 1378, 1383-85 (2015). Indeed, in Armstrong this country's highest court clarified the Supremacy Clause's purpose and scope, doing so by reversing an unpublished Ninth Circuit opinion. Id. at 1383. Armstrong determined the Supremacy Clause does not authorize private litigants to: (i) displace state law or (ii) enforce federal law. Id. at 1383-85. Rather, a judge-made equitable remedy allows private parties to enjoin government actors from violating federal law. Id. at 1384-85. And, Congress — via a law's text — determines who can enforce a federal statute. Id. at 1383-84. Here, and under Nevada law, Association's sale extinguished the first deed of trust. SFR, 334 P.3d at 419.

BANA is trying to use the Supremacy Clause to preempt NRS Chapter 116. BANA relies on pre-Armstrong readings of the Supremacy Clause and preemption jurisprudence. See BANA's Opp., 28:12-29:4. BANA cannot use the Supremacy Clause to preempt 116 because that Clause is not a source of rights, and preemption jurisprudence does not recognize any corresponding cause of action. At bottom, Armstrong rejects BANA's use of the Supremacy Clause — a proposition confirmed by Armstrong's facts.

I. There Is No Conflict Between NRS 116 and HUD's Objectives and Policies.

BANA claims that NRS 116 undermines the HUD's objectives and policies and therefore violates the Supremacy Clause. One of the so-called conflicts that BANA believes exists is that HUD requires a lender to present clear title and/or that a variance from this requirement is time intensive. BANA's Opp., 30:4-6. But what BANA fails to consider or intentionally ignores is that all it has to do is pay off the Association lien in order to preserve its interest. In so doing, it preserves its deed of trust, and its right to foreclose, which in turns preserves its ability to present

[35] SFR's Mot., 7:11-22

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clear title to HUD. But not wanting to comply with state law, and there being a conflict with state law are too different things. Here, BANA simply did not comply with Nevada law and now it has found itself in an untenable position whereby it cannot claim the insurance proceeds from HUD because it cannot present clear title. But nothing in the HUD guidelines prohibited BANA from paying the Association lien to preserve its interest. In fact, HUD's guidelines even provide for reimbursement when a bank does pay the Association lien. See BANA's Opp., Ex. I - U.S. Department of Housing and Urban Development May 31, 2013 Mortgagee Letter, p. 5.[36] In other words, HUD not only encourages banks to comply with Nevada law, and other states with Association lien statutes for that matter, but it provides a reimbursement mechanism when a bank does comply. BANA has absolutely no excuse for failing to comply with Nevada law in order to preserve its interest.

BANA also claims that NRS 116 undermines the FHA Program's foreclosure avoidance scheme and therefore violates the Supremacy Clause. BANA's Opp., 31:9-32:5. In other words, because HUD has a more lengthy foreclosure process than NRS 116, the two conflict. However, NRS 116 does not frustrate or conflict with HUD policies. This is so because both NRS 116 and the HUD scheme still contemplate foreclosure and allow for it. Not to mention, NRS 116 is not a foreclosure statute for banks; it is a foreclosure statute for associations. In other words, there is no compliance on the part of BANA that is required by NRS 116 that conflicts with the rules BANA must follow in order to foreclose on an FHA-insured loan. Simply because NRS 116 requires less hoops, so to speak, does not mean it conflicts with HUD's policies. BANA is not required to do anything under NRS 116 that would make it violate any rules or guidelines of HUD. Instead, HUD encourages the payment of Association liens.

Specifically, as noted by Judge Dorsey in Freedom Mortgage Corp., the purpose of HUD is not frustrated by NRS 116 because Nevada HOA laws "are entirely consistent with [HUD's] goals of improving residential community development, eliminating blight, and preserving property values." Freedom Mortgage Corp., 2015 WL 2398402 *9. Also, the goals of HUD are

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[36] BANA mischaracterizes the purported effect of the mortgagee letters, and thus attempts to create a conflict where one doesn't exist. BANA's Opp., 29:19-30:6. See discussion in Disputed Fact #3 above.

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furthered by Nevada's HOA lien laws because the laws encourage lenders to pay the liens so that the homeowners can avoid foreclosure, thereby meeting the federal policy of keeping homeowners in their homes. Id.

In short, NRS Chapter 116 does not conflict with HUD policies; instead, it comports with HUD policies, and therefore summary judgment in favor of SFR is appropriate.

V. CONCLUSION

Based on the above, the Court should deny BANA's motion for summary judgment and instead, grant summary judgment in favor of SFR, stating that SFR is the title holder of the Property and that BANA's deed of trust was extinguished when the Association foreclosed its lien containing super priority amounts.

DATED this 27th day of January, 2016.

KIM GILBERT EBRON

/s/ Jacqueline A. Gilbert
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of January, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **SFR INVESTMENTS POOL 1, LLC'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**, to the following parties:

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/s/ Vanessa S. Goulet
An employee of Kim Gilbert Ebron

Ex. A

EXHIBIT A

Ex. A

DECLARATION OF JACQUELINE A. GILBERT IN SUPPORT OF SFR INVESTMENTS POOL 1, LLC'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I, Jacqueline A. Gilbert, Esq., declare as follows:

1. I am an attorney with Kim Gilbert Ebron, formerly known as Howard Kim & Associates, admitted to practice law in the State of Nevada.

2. I am counsel for SFR Investments Pool 1, LLC ("SFR") in this action.

3. I make this declaration in support of SFR's Reply in Support of Motion for Summary Judgment.

4. I have personal knowledge of the facts set forth below based upon my review of the documents produced in this matter.

5. I am knowledgeable about how Kim Gilbert Ebron maintains its records associated with litigation, including litigation in this case.

6. Attached hereto as **Exhibit A-1** are true and correct copies of excerpts from George (Strat) Spiel's deposition, the 30(b)(6) designee for Bank of America, N.A. ("Chase").

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

Dated this 27th day of January, 2016.

/s/ Jacqueline A. Gilbert
Jacqueline A. Gilbert

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Ex. A-1

EXHIBIT A-1

Ex. A-1

DISTRICT COURT

CLARK COUNTY, NEVADA

ALESSI & KOENIG, LLC, a Nevada Limited Liability Company, Plaintiff, VS. ARMANDO A. CARIAS, an individual; BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP fka COUNTRYWIDE HOME LOANS SERVICING, LP, an unknown entity; DOES INDIVIDUALS I-X, inclusive; and ROE CORPORATIONS XI-XXX, Defendants.	Case No. A-13-684501-C Dept. No. XXI JOB NO.: 241419

BANK OF AMERICA, N.A., successor by merger to BAC HOME LOANS SERVICING, LP fka COUNTRYWIDE HOME LOANS SERVICING, LP, a National Association,

Cross-Claimant,

VS.

ARMANDO A. CARIAS, an individual, and DOES 1 through 10 and ROE BUSINESS ENTITIES,

Cross-Defendant.

BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP fka COUNTRYWIDE HOME

LOANS SERVICING, LP, a National Association,

Third-Party Plaintiff,

VS.

SFR INVESTMENTS POOL 1, LLC, a domestic limited liability company, and DOES 1 through 10 and ROE BUSINESS ENTITIES 1 through 10,

Third-Party Defendant.

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company,

Counter-Claimant,

VS.

BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP fka COUNTRYWIDE HOME LOANS SERVICING, LP, a National Association; ARMANDO A. CARIAS, an individual; DOES 1 through 10 and ROE BUSINESS ENTITIES 1 through 10 inclusive,

Counter-Defendant/ Cross-Defendants.

****

30(b)(6) DEPOSITION OF

BANK OF AMERICA, N.A.

GEORGE (STRAT) SPIEL

Friday, March 27, 2015

****

ORAL DEPOSITION OF GEORGE (STRAT) SPIEL, produced as a witness at the instance of SFR INVESTMENTS POOL 1, LLC, and duly sworn, was taken in the above-styled and numbered cause on the 27th day of March, 2015, from 8:59 a.m. to 10:10 a.m., before Susan E. Brown, Certified Shorthand Reporter in and for the State of Texas, at the law offices of Akerman, LLP, 2001 Ross Avenue, Suite 2550, Dallas, Texas 75201, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

did on behalf of Bank of America in trying to tender payments to the Homeowners Association.

BY MS. CLINE:

Q. In your review of the business records, did you see foreclosure notices received from the Association or its agent?

A. We received the Notice of Default and Election to Sell.

MR. BRENNER: You may as well give her the date.

A. We received that on 5-17-2012, and 1-24-2013 we received the Notice of Trustee Sale.

Q. So Bank of America is not disputing that it received notice of the foreclosure sale in this case?

A. No.

MR. BRENNER: In case that's confusing, we're stipulating that we received notice of the foreclosure sale.

BY MS. CLINE:

Q. Let me ask that a little bit different.

Bank of America received notice in this case, correct?

A. Yes.

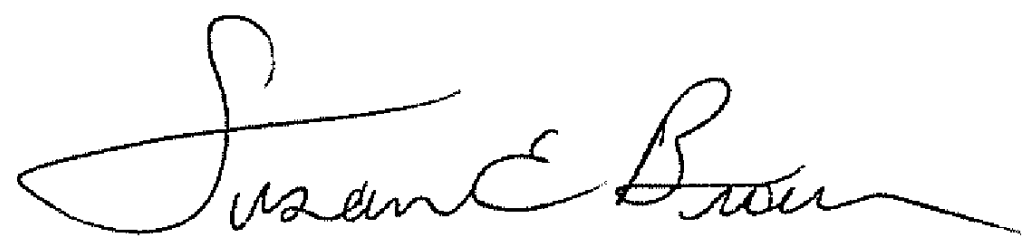
Q. What did Bank of America do in relation to the Association lien after it received the Notice of Default

STATE OF TEXAS)
COUNTY OF DALLAS)

I, Susan E. Brown, Certified Shorthand Reporter in and for the State of Texas, hereby certify that the foregoing deposition of GEORGE (STRAT) SPIEL was reported stenographically by me at the time and place indicated, said witness having been placed under oath by an officer, and that the deposition is a true record of the testimony given by the witness.

I further certify that I am neither counsel for nor related to any party in this cause and am not financially interested in its outcome.

Given under my hand on this the 7th day of April, 2015.



Susan E. Brown
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Expiration Date: 12-31-15

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DISTRICT COURT

CLARK COUNTY, NEVADA

ALESSI & KOENIG, LLC, a Nevada limited liability company, Plaintiff, vs. ARMANDO A. CARIAS, an individual; BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, an unknown entity; DOES INDIVIDUALS I-X, inclusive; and ROE CORPORATIONS XI-XXX, Defendants. AND ALL RELATED CLAIMS, COUNTERCLAIMS AND CROSS-CLAIMS.	Case No. A-13-684501-C Dept. No. XXI **SFR INVESTMENTS POOL 1, LLC'S ERRATA TO REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** **Hearing Date: February 3, 2016** **Hearing Time: 9:30 a.m.**

PLEASE TAKE NOTICE that Defendant, SFR Investments Pool 1, LLC ("SFR"), filed its Reply in Support of Motion for Summary Judgment on January 27, 2016, and hereby files this errata so that the sentence at page 3, lines 21 through 25 is **corrected** to reflect instead the following: "For example, the HUD Mortgagee Letter 2012-11 **also** includes the following language: '[i]f the mortgaged property is in a jurisdiction where pre-foreclosure unpaid

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///

Condo/HOA fees…[s]urvive the foreclosure [t]hen the mortgagee must ensure that…[s]uch fees/liens are either paid or removed from the property.' Id. at *3."

DATED this 27th day of January, 2016.

KIM GILBERT EBRON

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of January, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **SFR INVESTMENTS POOL 1, LLC'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**, to the following parties:

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/s/ Vanessa S. Goulet
An employee of Kim Gilbert Ebron

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Assemblyman Ohrenschall:
I was looking at the flow chart, and looking at our neighboring states that have the more generous time periods. Do you think if we did process this bill and extend the time periods that either your office, or the other parts of the social services network, might be able to help evicted tenants avoid falling into homelessness? Do you think that is realistic?

Rhea Gerkten:
In a lot of cases, it would be realistic. Some of the things that we have actually seen are tenants who received the 5-day notice, cannot get the money together in 5 days, file the affidavit, and get a hearing set. In Las Vegas it used to be that you would get a hearing set within 3 days, now most of the courts have changed the process a little bit, so the quickest hearing might be 5 days. But for tenants, a lot of the time what they needed was either that extra time to come up with the money, to borrow the money, or to get a social services agency to approve their applications. There are a lot of times where we have seen tenants who come up with the money prior to their court hearings, which is within the 10-day time frame that is in the bill.

Assemblyman Hogan:
Assemblyman Hambrick raised a good question about who would benefit. I kept hearing that question as I was listening to the last witness. I think our witness has indicated that the most severe need may be those who are disabled or elderly. We would certainly concur that those are the people for whom we are trying to level the playing field. We think they would benefit.

Vice Chair Segerblom:
This would also be the single mothers with small children. Anyone else wish to come forward to testify?

James T. Endres, representing McDonald, Carano & Wilson; and the Southern Nevada Chapter of the National Association of Industrial and Office Properties, Reno, Nevada:
This bill came to our attention in the past week, and after studying it, we realize that it does apply to commercial real estate. As Mr. Hogan and Mr. Sasser pointed out this morning, it was not the intent of A.B. 189 to apply to commercial real estate. Real estate transactions in the commercial sector are very complex, and the leasing negotiations are very detailed. Some of the underpinnings that go through those lease agreements are grounded in part in the current statute.

Vice Chair Segerblom:
Have you offered an amendment?

James T. Endres:
Yes, we have (Exhibit L).

Vice Chair Segerblom:
Have you shown it to Mr. Hogan?

James T. Endres:
Yes, we reviewed it this morning with him and Mr. Sasser. We believe that the amendment we offer this morning may be a solution to distinguish between residential and commercial properties. We suggest that, in *Nevada Revised Statutes* (NRS) Chapter 118, the solution has already been found by referring to residential properties or residential dwellings as "dwellings" to distinguish them from commercial. Whether or not that is the most appropriate solution in this instance, we are not totally clear. But we think, without any question, there is a solution to distinguish between commercial and residential and allow the bill to move forward in its normal progress.

Paula Berkley, representing the Nevada Network Against Domestic Violence, Reno, Nevada:
I think we are a group of people to which Assemblyman Hambrick has been referring. As you know, domestic violence is about control. Quite often, a key sector of control is controlling the money. With so many women that are victims of domestic violence, their partners either take the money or they do not pay the child support and women find themselves unable to pay their rent. This is certainly not due to any problem on her part, but rather her money has been taken. She finds herself potentially evicted. Especially with kids; that is a tremendous pressure and a concern for her sense of security if she gets kicked out of her house. An additional five days, if she can get that money together, certainly protects her children as well as herself. We would urge support of this bill. Thank you.

Vice Chair Segerblom:
Are there resources that woman could go to in order to get the money to help pay the rent?

Paula Berkley:
There are limited resources. For example, the network has the Jan Evans Foundation. We collect money for just such emergencies, but, unfortunately, it is not anywhere near what it needs to be.

Jan Gilbert, representing the Progressive Leadership Alliance of Nevada, Carson City, Nevada:
One of our main goals is to create more humane solutions to problems in Nevada. We support this bill. Years ago, I sat in the welfare office to interview women who were applying for food stamps and health care. A hundred percent of the people I interviewed said the unreliability of their child support was the reason they were there. It was an amazing experience to hear about the amount of money they were owed in unpaid child support. Most of these people want to stay in their homes and keep their children protected, and without child support, they struggle. I would urge you to think about Nevada's laws and try to make them more consistent with our surrounding states.

Assemblyman Cobb:
For purposes of disclosure, Ms. Gilbert is one of my constituents. Whatever response she gives, she is correct. We are talking about the humaneness of all the things we are dealing with here. It is a very laudable goal to help people and give them enough time to move, or to give them whatever they need to aid the individual. I think my colleague from the south referenced the other side of the coin. A lot of people that I know own homes and rent them out. They are not huge corporations, they are just individuals. In Nevada, we are seeing people who cannot afford these homes anymore with 9 percent unemployment. A lot of times they are renting out their homes and living in much smaller ones so that they can pay the mortgage on their homes. I worry about the unintended consequences here for that individual who cannot afford to pay a mortgage and another rent. Are we tying the hands of the individuals who are also hurting right now in this economy, and who would not be able to cover a renter for an extra 10 days?

Jan Gilbert:
That is a very good question. I know we are very sensitive, because you are right. A lot of people I know have rentals. I think the example that Mr. Sasser gave of all the neighboring states contrasts the severity of our laws. It seems unrealistic to me. According to Ms. Gerkten's comments, she actually had tenants get the money before the end of the 5-day period. I know my husband gets his social security check deposited into our account, and it is quite frequently late. I do not know if that is just the way our situation works, but you have to know that these people are living very close. They want to pay the rent; they just need a little extra time. This is not an extreme bill. As Assemblyman Hogan said, we would still have the most severe laws in the country. I am sympathetic to both sides, but I really feel that we want these people to pay the rent. Let us give them that extra time to do so.

Assemblyman Cobb:
I think there is a lot of common ground. Many people are agreeing on all sides of this issue. The people I know who rent out their homes do not, on day 5 or whenever they are allowed to, walk into the court and start paying fees to have people evicted. They want to give them that extra time, and oftentimes just do give them extra time. There might be a slight late fee or something to encourage prompt payment. Nevertheless, I hope we have a good examination of where we are in this economy with the people who are going to be hurt on both sides, while also realizing that common sense oftentimes prevails and allows these people that extra time anyway. Thank you.

David L. Howard, representing the National Association of Industrial and Office Properties, Northern Nevada Chapter, Reno, Nevada:
We are here to go on record that we are in support of the amendment that would make the distinction between commercial property and residential property. Thank you.

Ernie Nielsen, representing Washoe County Senior Law Project, Reno, Nevada:
We support this bill. We assist and represent hundreds of seniors in eviction cases each year. A great percentage of our clients are disabled and are extremely frail. Many of these evictions are very avoidable. As Ms. Gerkten points out, some of the reasons for having the nonpayment is very unique to that month; otherwise, the rent is very affordable to that person and sustainable. There are remedies. There are emergency funds, such as the 15 percent from the Low-Income Housing Trust Fund that is available for emergency housing. However, you must have sustainability with respect to your ability to pay your rent thereafter. There are also representative payee programs for seniors who are beginning to lose their ability to ably manage their funds. However, we need time to be able to engage these systems to be able to save the tenancy. We think that there is a win-win approach here. Both the tenant and the landlord win when we can get involved and have time to work these things out. The cost associated with getting people out of homelessness is far greater than the cost of keeping them from becoming homeless.

Assemblyman Hambrick:
Mr. Nielsen, I appreciate when you say you need the time to be effective. You are representing many seniors and disabled people. This might be a rhetorical question, but how many of your clients find out on the first or second of the month that they cannot pay that month's rent. Can they not backtrack to the middle of the previous month and foresee something coming down the pipeline and say, "Uh oh, I have got a problem. I better let somebody know about this situation?" Can they not do this, instead of waiting until the last minute, which puts the landlord into a difficult situation? As my colleague from the north

states, we do have individuals owning these homes who also have to meet their obligations. Where is the middle?

Chairman Anderson:
Mr. Nielsen, what other material would you like add to the discussion?

Ernie Nielsen:
Our clients are generally less able as they grow older. We find that many of our clients need our assistance to work themselves out of the issue. Certainly, even I would prefer to stave off a problem when we see that it is going to occur. But many of our clients do not have that capability, and they may not feel that they have any options. They try to do the best they can.

Shawn Griffin, Director, Community Chest, Virginia City, Nevada:
I am in favor of A.B. 189. I have been working in a nonprofit organization called Community Chest in Virginia City for the past 20 years. I see these individuals after they are evicted. We do not have this discussion; this discussion is over. The discussion we have is, "where am I going to stay tonight," "how am I going to eat," "how am I going to feed my kids," and "how am I going to get my job?" It is absent housing and it is just not the right thing to do. We do not have the luxury of putting more people out on the street. All of you know this. Every single social system we have is overrun right now; every single one. There is not another place to turn to. I will tell you where they go. They go back to the endlessness of living without shelter. Every person working on this problem would tell you that it is going to take much more time, energy, and taxpayer resources to find them shelter than it takes to evict them. If this were health care, they would say "do not send them to the emergency room to get fixed." They would say, "treat them before the problem occurs." We can do better. We need to do better. Let us give them a few more days and enable them to find the resources they need to stay in their shelter. That is all I have.

Chairman Anderson:
Mr. Griffin, thank you for your testimony and your service to the folks up in Virginia City through Community Chest. Let us now hear from those who are opposed to A.B. 189.

Charles "Tony" Chinnici, representing Corazon Real Estate, Reno, Nevada:
I am opposed to A.B. 189 (Exhibit M). Overall, the effect of this legislation would be minimal to negative for good tenants, fantastic for bad tenants, and bad for landlords. Going back to the analogy of throwing out the baby with the bathwater, this bill would create a huge benefit for people who are abusing the eviction process. When seniors particularly have a problem making their rent, I

always hear from them long before there is an issue. For instance, in the previous month, I would get a phone call from them. Because I represent landlords who recognize that it costs a great deal more to make a property ready for the next tenant, they are supportive of my efforts to negotiate the best possible outcome for both the tenant and the landlord. That means working out some sort of payment arrangement. Any of the community groups who spoke today, if they are working with a tenant who is having financial difficulty, they contact me and I work with them. In the owner's best interest, if there is an opportunity to receive funds from someone who is helping the tenant, that is just as good for the landlord. Some practical aspects of extending the periods involved in eviction would be that it shifts the risk of renting to a marginal tenant to the landlord. The landlord is going to have to compensate for that. Some ways in which that would happen are in a rental agreement where you would typically see a grace period 5 days like our rental agreement has in it. A tenant has 5 days already written into the agreement where no notice is filed, in which they could come in and pay the rent. That way they are covered for things like weekends when they get paid. They can also call me and say, "I am going to be in on the seventh of the month to pay my rent." The first thing that is going to happen is we are going to have to get rid of the grace period of our evictions. Then, we are going to have to file eviction notice for nonpayment on the second day of the month.

Over ten years of managing properties, I have rented to thousands and thousands of tenants. A lot of those tenants were people who, on paper and on their applications, had some things on their credit report that would make me concerned. But, looking at their application as a whole, they were worth taking a risk on to rent them a property. Now, if we were to pass this bill, the majority of those people I would have been willing to take a risk with in the past are people I would no longer be able to afford to take that risk with. Again, we are hurting a lot of good tenants who would be worth renting to but who maybe had some hardships in the past and they do not look so great when they apply to rent your property.

Finally, another way in which we would have to adjust for the risk involved in the extended eviction process is that we would have to increase the security deposit that we charge tenants up front. Or, we would ask for prepaid rent to cover this period. In practical terms, it is about once in a blue moon that it is an actual 5-day process for nonpayment, or for breach of lease, or an actual 3-day period for a nuisance eviction, due to the court restrictions based on whether a tenant received a notice in person or had it mailed to them, due to holidays, and due to weekends. What effectively winds up happening is that it is about a three-week to one-month process already to evict a tenant. So, it does not really make sense to create this extension when, in Nevada, regardless

of what is happening in regional states, this bill would result in more than one month to remove tenants from property. That is why this law is bad for landlords.

The corporate landlords that were mentioned earlier make business decisions, so typically they are going to work with tenants in the first place. But, what they are going to start doing as a matter of procedure is that they are going to be filing eviction notices on everybody. So, you are going to see the number of notices processed start to go way up. For practical reasons, I ask that you vote against A.B. 189. This bill would only serve the interests of bad tenants, people who do not do what they promise to do, and those who exploit the system that is in place.

Jennifer Chandler, Co-Chair, Northern Nevada Apartment Association, Reno, Nevada:
I am speaking in opposition to A.B. 189. [Read from prepared text (Exhibit N).]

A lot of properties we are seeing with Section 8, Section 42, and the Department of Housing and Urban Development (HUD) housing, are those where people are paying portions of people's rent and trying to assist in that. A lot of those programs are tax credit properties where, if they do not maintain a certain occupancy rate, they are in jeopardy of losing their tax credit. We are not getting eviction-happy. The only ones who are not being worked with are the ones who seem to be predominately doing the same repetitive thing over and over again. [Continued to read from prepared text (Exhibit N).]

All in all, we have the laws we have because we are Nevada. We are not California, Massachusetts, Oregon, Vermont, Washington, or Arizona; we are Nevada. We are proud of our state and our abilities. That is what makes Nevada worth investing in. To model ourselves after other states makes us no more enticing for investors than any other state to invest in. How the law is now is an economic benefit to investors. If you take that away, investors will just go somewhere else. Thank you.

Chairman Anderson:
We have two handouts from you that will be entered into the record (Exhibit N) (Exhibit O). We appreciate you putting forth the information. Are there any questions for Ms. Chandler? Mr. Manendo.

Assemblyman Manendo:
Thank you, Mr. Chairman. What is the average rent in northern Nevada?

Jennifer Chandler:
The average rent as far as the cost?

Assemblyman Manendo:
Rent for your units or apartments. You are with the Northern Nevada Apartment Association. Am I wrong? What are the rents?

Jennifer Chandler:
Right. I am on the legislative committee. They range anywhere from about $675 to $1,200, depending on the area you are in.

Assemblyman Manendo:
You had mentioned something about a tax credit. Can you explain that to me? What is the tax credit based on occupancy that you get?

Jennifer Chandler:
There are programs that investors can partake in, with regards to their purchasing of a property. If they were to make their property—and each program is different, that is why you have Section 8 and Section 42, they all have different levels of qualifications—partake in those programs for the complex, it renders them a tax credit. To be able to partake in the tax credit, they have to maintain a certain percentage of occupancy. They have to be above 82 percent, 88 percent, or 89 percent, depending upon how many units there are in the complex or on the property. If they go below that, they do not get the tax credit because they are not conforming to the guidelines of the program, which is to maintain a certain amount of occupancy. If they go below that, they do not get the tax credit, there is no benefit for them to have that complex as a Section 8 or Section 42 complex.

Assemblyman Manendo:
So, keeping a high occupancy and keeping people in their homes is a benefit to you.

Jennifer Chandler:
It is key.

Assemblyman Manendo:
I just wanted to get that into the record. Thank you, Mr. Chairman.

Assemblyman Hambrick:
Ms. Chandler, from your expertise in the area, would the effect of this bill, one way or the other, directly impact the number of investors that would step up to the plate to offer their properties for Section 8?

Jennifer Chandler:
I think, right now, where our law states having the time frame that we have, we are in the middle of the road. To increase the time frame is going to be consequential. To lower the time frame would not make a difference. We have neighboring states: Wyoming, Arizona, and other states that have a 3-day, pay or quit notices. We have 5-day pay or quit notices. California and other states have even higher time frames. As we sit right now, we are in the middle of the road. I like to think of us as being pretty neutral. We are not pro-tenant, and we are not pro-landlord. The landlords are not beyond working with people, especially in these hard economic times. It is just as hard on the investors. They are having a hard time making their payments and mortgages when people cannot afford to pay their rent. It is hard for everybody. So I think, for the investor side, if we were to go with A.B. 189, they would be less likely to invest in our areas of Nevada where we are steadily growing exponentially. It is going to be detrimental. It is not going to be worth it to them to have somebody in their units for a month without paying rent when they cannot turn around and receive the same time extension to pay their debts and bills.

Rhonda L. Cain, Private Citizen, Reno, Nevada:
I am speaking in opposition to A.B. 189. I am a property owner and investor in Nevada. I am also on the Northern Nevada Apartment Association board. I have been an investor in Nevada for about 20 years. I came here from California; I was an investor in California as a property owner. It is beyond me why we would want to mirror California at this point. Last I looked, they are not doing so well. The laws were so prohibitive for property owners there that I got out. I can speak firsthand to investors wanting to come to Nevada because I have several investors right now from California who are looking to invest and have done so in the last six months. When this bill came on the radar screen, the investors backed off to wait to see what happened. They do not want to invest here if they could have the same laws and invest in California.

I am a property owner and I have been for 15 years. I work with tenants. I do not file a 5-day notice on day 2. We do not do that; we do not want vacancies. With this new legislation, I will change the way I do business. I will probably eliminate my 5-day grace period, and I will start filing those notices on day 2. So, it is just prohibitive. We have mortgages to pay and vendors to pay; we have taxes, sewer bills, water bills, and with all of that, we still have to pay them. The reality is right now, even with the 5-day notice, it takes about

30 days to get someone out. When we extend that to 10 days, it is going to extend that far beyond another 5 days. So the reality is we do not want vacancies, and we work with tenants at this point. As was testified to before, it is the bad tenants that this law will protect, because we try to protect the good tenants at this point. We want good tenants. My investors from California want to come to Nevada, and they want me to manage and oversee these properties. They do not want me evicting good tenants. They want me to work with them. But, when they see the laws going down the slippery slope as California is going, where they are not investing, they are not going to bring their investment dollars here and provide rental housing in Nevada.

Assemblyman Manendo:
Your investors have invested in northern Nevada before?

Rhonda L. Cain:
They have invested extensively in the last six months. We have made several purchases.

Assemblyman Manendo:
Are they interested in converting the apartments into condominiums? That happened a lot in southern Nevada, where we had a lot of apartment units reconfigured and made into condominiums.

Rhonda L. Cain:
That was happening at the beginning of 2007. We invested in many properties with the intent of conversion. Now, what is happening is what is called a reversion. They are going back from the condominiums to rentals. The mindset of most investors right now is to find a safe place to park their money. They are not comfortable with the stock market, and they are not comfortable with 1 percent interest in the banks. So, if they do have a little bit of funds, they want to invest it in a place where it can sit for two to three years.

Assemblyman Manendo:
Thank you, I appreciate that. I am sure that they will invest, build some apartments, or invest in some apartments, flip those over and make some more money later on when the economy changes. Maybe that is why you see many places where people are struggling to find a place to live, because a lot of these units have gone over into single family dwellings. I am sorry your investors were not making as much as they thought they were going to at the time. Thank you, Mr. Chairman.

Assemblyman Cobb:
You made an interesting point about automatically filing for evictions if the law is changed. My question has to do with the costs involved on the rental property side. I know, in Carson City, it is $69 to file for eviction, and then another $69 to lock out a tenant. I am assuming that, if we are changing the law and you are going to automatically file for eviction on day 2, that action would raise your costs; Rental rates would go up for people throughout Nevada; therefore, it is going to be more costly to have a place to live. Finally, there is going to be less opportunity for people who do not make a lot of money to find apartment spaces to live in. Is this correct?

Rhonda L. Cain:
Correct. The costs will go up considerably when we have to change the way we do business. I thought about how I will run my business should this legislation pass, because it is an enormous impact. It sounds like 5 days, but it is much more than that. I will probably raise my security deposit on those tenants that are a little iffy on their application because I am taking a risk. It is more money out-of-pocket for them. It does not help anyone in the long run.

Kellie Fox, Crime Prevention Officer, Community Affairs, Reno Police Department, Reno, Nevada:
Good morning, Mr. Chairman and members of the Committee. [Read prepared testimony (Exhibit P).]

Assemblyman Gustavson:
You brought up the point of illegal activities. I know we are having a lot of problems with homes being foreclosed on and people removing appliances and fixtures in the home. Are they having the same problem with rental properties too? If time would be extended, would they have more time to remove these items from the homes?

Kellie Fox:
I am familiar with a specific house in my cul-de-sac that was foreclosed on. The people living there moved out and took everything, including the kitchen sink. All my neighbors came to me because of what I do, and we referred that to code enforcement. We, as a police department, did supervise it as far as making sure there were no kid parties, it did not get broken into, or other criminal activity until it was repaired. We had a neighborhood watch.

As far as rentals and apartments, I have not seen that happen. I do not think that would come to the police department per se; however, I do not know.

Chairman Anderson:
Let us turn our attention to the people in the south. Is there anyone who wishes to speak in opposition to A.B. 189?

Barbara Holland, Private Citizen, Las Vegas, Nevada:
I would like to comment on some of the other comments that have been made. If anyone thinks that a landlord, owner, or manager wants to put people out on the streets, that is absolutely incorrect. Our job is to have apartments rented; occupied with paying renters. There are very few residents who are evicted because they are waiting for social security checks. I do not even know anybody in southern Nevada that would do that. Most of the management companies in southern Nevada all have grace periods of anywhere from three to five days. If a person has not paid his rent on the first, he would not even see a 5-day notice until either the fourth or sixth of the month. Also, I want to talk about the timeline. Here in southern Nevada, the 5-day period is not a 5-day period. You cannot serve a 24-hour notice until after eight days. We already have an extended time period that has been done here locally. For all of southern Nevada, if you serve a 5-day notice, you will actually wait eight days. It does not count the day that it was served, weekends, or holidays. In addition, we cannot bring any more than five evictions per property per day because the courts cannot process the notices. Right now, if this law were to pass, it would complicate the situation even more. A statistic was made by another person showing there were about 23,000 evictions a year. Do you know what that means in southern Nevada? That means less than one person evicted per year per apartment property.

One of the things that has not been stated is that we go out of our way to talk to the residents about what is happening. Most of us will knock on doors and say, "Please, talk to us. Give us an idea. Are you going to pay rent or not pay rent? Should we put you in a promissory note? Are you changing jobs and waiting for another two-week period before you get paid?" These are things that are not being mentioned by the people that spoke in favor of the bill. We will even talk to people who have lost their roommates and offer them cheaper accommodations.

As far as damage to property, there is a tremendous relationship between the people that do not talk to us and those who we are forced to evict, that abuse the system and damage the property. I can show you multiple units in southern Nevada over the years that have that relationship. Also, I want to distinguish on foreclosures. If a foreclosure was happening in a single family home, and there was a tenant who was elderly or handicapped, there is already a state law that states you can go to the courts and ask for an additional 30 or 60 days.

Those who have started the legal aid services can certainly help tenants who are elderly and handicapped, and who are affected by bank foreclosures.

As far as giving people an extra five days for nonpayment of rent, I doubt whether they are going to be able to come up with any money. There are very few government programs left right now for people to have additional money. The other thing that people have misstated is that a lot of times tenants will say, "my rent money is sitting at the craps table at one of the local casinos." That makes us different from other states in the United States. I am from Connecticut and Massachusetts, where the eviction process was difficult. Obviously, we do not have a 24-hour town that offers a lot of vices. I tell my friends, if you move to this state, do not come here if you have a vice, because it will kill you.

Our industry creates jobs. We spent over $16 million dollars in southern Nevada in goods and services last year on all the properties that we managed. When we have vacancies caused by evictions because people are not paying their rent, two things happen. Number one, we stop doing maintenance, or the maintenance gets slower, because we have to pay our mortgages. Also, not everybody that owns an apartment complex is a corporation. We have many retired people that own over a hundred units as well as many that own 50 units or less. These units are their retirements. Obviously, between everything else that is happening in our country right now, they are not seeing very much money.

It was mentioned before about the single-family homes. Many homeowners, in trying to prevent losing their single-family homes, have moved into apartment communities and then have asked property managers to help lease those homes. They are willing to subsidize, so if I can find a tenant to pay $1,200 a month towards the mortgage and the homeowner that does not want to lose his home can contribute $300, which enables the homeowner to keep that home. This bill has a horrible effect for the individual homeowner with a single-family home.

Chairman Anderson:
Thank you. I see no questions for you, Ms. Holland.

Bret Holmes, President, Southern Nevada Multi-Housing Association, Las Vegas, Nevada:
I want to reiterate a few of the points and point out that the Southern Nevada Multi-Housing Association represents hundreds of property managers and owners in the Las Vegas area that are all opposed to A.B. 189.

The good landlords do work with the tenants. The way that this was presented in the beginning was like we were following the letter of the law. Generally, landlords do not do that, especially the good ones. People will not get their notice to pay rent or quit until the fourth, fifth or sixth day. Then it turns into a lengthy process. When you talk about the current process being approximately three to four weeks, extending that out to six to eight weeks and having a landlord or owner go through that period of time with no income on that unit really hurts a number of people. The decrease in income would have to be made up by an increase in rent, security deposits, and tightening up the credit. The other side that this affects is the employment side and the problem of employing a full staff to keep up the property and maintain tenant relations. There are an extensive number of reasons why this bill should be tabled and put down, some of which you have heard today.

Chairman Anderson:
Mr. Holmes, you also sent up by fax your position statement. I will make sure it is entered into the record (Exhibit Q).

Zelda Ellis, Director of Operations, City of Las Vegas Housing Authority, Las Vegas, Nevada:
We would like to go on record opposing section 2 of A.B. 189 in regard to the nuisance extension to serve a notice. The housing authority rarely serves 3-day notices, but in the event that we do, it is because there is a serious situation on the property. Because we are the owners of low-income public housing property, numerous times we have illegal activity occurring on our property. We are working with our local police department. When we have a situation where there is gun violence, illegal drugs being sold, search warrants being served, the housing authority absolutely needs the ability to get those residents out of our property as soon as possible in order to maintain the quality of life for the law-abiding citizens that are living in our units. When you extend the time frame from three to five days, including the time these residents have to go through due process within the Housing Authority with the grievance procedure, it extends that time for them to continue to damage the property that they are living in. By the time we eventually evict them, many lives have been affected by the continued illegal activity. To increase the time frame from three to five days would be a disservice to the population that we serve, especially those who are law-abiding citizens.

Jenny Reese, representing the Nevada Association of Realtors, Reno, Nevada:
The realtors are in opposition to A.B. 189.

Chairman Anderson:
Mr. Kitchen, do you have written documentation that you want to submit to the Committee? We will have that submitted for the record (Exhibit R). Is there anyone else who feels compelled to speak, whose position has not been fairly represented, in opposition to A.B. 189?

Roberta A. Ross, Private Citizen, Reno, Nevada:
I am here against A.B. 189. I own a 162-unit weekly/monthly apartment building in downtown Reno. I am the President of the Motel Association. We have an unintended consequence here with the majority of the people who are in extreme poverty, living in motels. In 2001, I came in front of this Committee to try to pass legislation that people who lived in weekly motels did not have to pay room tax. At that time, I think it was around an 11 percent tax. Now it is up to 13.5 percent tax. That started in 2001. Since that time, I was very politely told here that this was a local issue, not a state issue. I went back locally. I became President of the Motel Association, and then I was on the board of the Reno-Sparks Convention and Visitors Authority (RSCVA) and worked diligently to get this passed. Those people who live in weekly motels do not have to pay the room tax if they can pay 10 days all at one time. The other thing that is in place and stays there is that if a person pays weekly, they will be charged room tax until the 28th day. So, in Washoe County, that will be 12.5 and 13.5 percent. If this bill passes, I would say that it will probably happen that those people who live in weekly motels are going to be hit hard. The landlords of those motels will no longer let them go in ten days because you can usually weed out your bad tenants in 28 days. They will be charged 13.5 percent room tax. If they leave in under 28 days, we as the landlords have to pay the 13.5 percent tax. So, now the people in weekly motels will probably be charged that 13.5 percent for the landlords to protect themselves.

The other issue is that, in the 28-day stay, those people who sign a contract stating that they will live there for 28 days do not have to pay the room tax. If they get knocked out prior to that, they will have to pay the room tax. My point is that the people who are barely scraping by and living at weekly rentals will be affected by this because landlords will not take them in for 30 days, keep them at the weekly rental rates, and absorb the 13.5 percent tax. They will probably begin raising their deposits up from the $35 or $50 deposits to $100 or more. I would ask that you do not pass A.B. 189.

Bill Uffelman, President and Chief Executive Officer, Nevada Bankers Association, Las Vegas, Nevada:
Normally, the bankers would not care about a bill like this; however, due to foreclosures and the progress of Assembly Bill 140, which is over in the Commerce and Labor Committee, we may well become landlords for a period of

60 days following a foreclosure sale. Mr. Sasser made reference to section 6 of A.B. 189, which is the notice to quit after a foreclosure sale. He said that he did not really care about that section, as it was a result of the enthusiasm on the part of the Legislative Counsel Bureau. I would suggest that section 6 needs to fall off of the bill.

Chairman Anderson:
So, the bankers would like us to remove section 6 as being unnecessary. Have you prepared an amendment?

Bill Uffelman:
I could prepare one very quickly, Mr. Anderson (Exhibit S).

Chairman Anderson:
Did you raise these concerns with the primary sponsor of the bill?

Bill Uffelman:
I have spoken with Mr. Sasser, who was acting as a representative of the sponsor of A.B. 189.

Chairman Anderson:
Thank you, sir. Does anybody have any amendments that need to be placed into the record? Ms. Rosalie M. Escobedo has submitted testimony, and that will be entered into the record (Exhibit T). We will close the hearing on A.B. 189.

[A three-minute recess was called.]

I will open the hearing on Assembly Bill 204.

Assembly Bill 204: Revises provisions relating to the priority of certain liens against units in common-interest communities. (BDR 10-920)

Assemblywoman Ellen Spiegel, Clark County Assembly District 21:
Thank you for having me and for hearing this bill. As a disclosure, I serve on the Board of the Green Valley Ranch Community Association. This bill will not affect me or my association any more than it would any other association in this state. My participation on the board gave me firsthand insight into this issue. That is what led me to introduce this legislation. I am here today to present A.B. 204, which can help stabilize Nevada's real estate market, preserve communities, and help protect our largest assets: our homes. Whether you live in a common-interest community or not, whether you like common-interest communities or hate them, whether you live in an urban area or a rural area, the

outcome of this bill will have a direct impact on you and your constituents. Just as a summary, A.B. 204 extends the existing superpriority from six months to two years. There are no fiscal notes on this. In a nutshell, this bill makes it possible for common-interest communities to collect dues that are in arrears for up to two years at the time of foreclosure. This is necessary now because foreclosures are now taking up to two years. At the time the original law was written, they were taking about six months. So, as the time frames moved on, the need has moved up.

Since everyone who buys into a common-interest community clearly understands that there are dues, community budgets have historically been based upon the assumption that nearly all of the regular assessments will be collected. Communities are now facing severe hardships, and many are unable to meet their contractual obligations because of all of the dues that are in arrears. Some other communities are reducing services, and then simultaneously increasing their financial liabilities. They and their homeowners need our help.

I recognize that there are some concerns with this bill, and you will hear about those later this morning directly from those with concerns. I have been having discussions with several of the concerned parties, and I believe that we will be able to work something out to address many of their concerns. In the meantime, I would like to make sure that you have a clear understanding of this bill and what we are trying to achieve.

The objectives are, first and foremost, to help homeowners, banks, and investors maintain their property values; help common-interest communities mitigate the adverse effects of the mortgage/foreclosure crisis; help homeowners avoid special assessments resulting from revenue shortfalls due to fellow community members who did not pay required fees; and, prevent cost-shifting from common-interest communities to local governments.

This bill is vital because our constituents are hurting. Our current economic conditions are bleak, and we must take action to address our state's critical needs. I do not need to tell you that things are not good, but I will. If you look, I have provided you with a map that shows the State of Nevada and, by county, how foreclosures are going (Exhibit U). Clark, Washoe, and Nye Counties are extremely hard hit, with an average of 1 in every 63 housing units in foreclosure. People whose homes are being foreclosed on are not paying their association dues, and all of the rest of the neighbors are facing the effects of that. Clark County is being hit the hardest, and we will look at what is going on in Clark County in a little bit more depth just as an example.

In Clark County, between the second half of 2007 and the second half of 2008, property values declined in all zip codes, except for one really tiny one, which increased by 3 percent. Overall, everywhere else in Clark County, property values declined significantly. The smallest decline was 13 percent, and that was in my zip code. The largest decline was 64 percent. Could you imagine losing 64 percent of the equity of your home in one year? Property values have plummeted, and this sinkhole that we are getting into is being affected because there is increased inventory of housing stock on the market that is due to foreclosures, abandoned homes, and the economic recession. People cannot afford their homes; they are leaving; they are not maintaining them. It is flooding the market, and that is depressing prices. You sometimes have consumers who want to buy homes, but they cannot get mortgages. That keeps homes on the market. There is increased neighborhood blight and there is a decreased ability for communities to provide obligated services. For example, if you have a gated community that has a swimming pool in it (or a nongated community, for that matter), and your association cannot afford to maintain the pool, and someone is coming in and looking at a property in that community, they will say, "Let me get this straight: you want me to buy into this community because it has a pool, except the pool is closed because you cannot afford to maintain the pool; sorry, I am not buying here." That just keeps things on the market and keeps the prices going down, because they are not providing the services; therefore, how do you sell something when you are not delivering?

Unfortunately, we are hearing in the news that help is not on the way for most Nevadans. We have the highest percentage of underwater mortgage holders in the nation. Twenty-eight percent of all Nevadans owe more than 125 percent of their home's value. Nearly 60 percent of the homeowners in the Las Vegas Valley have negative equity in their homes. This is really scary. Unfortunately, President Barack Obama's Homeowner Affordability and Stability Plan restricts financing aid to borrowers whose first mortgage does not exceed 105 percent of the current market values of their homes. There are also provisions that they be covered by Fannie Mae or Freddie Mac. Twenty-eight percent owe more than 125 percent, and cannot get help from the federal government. And for 60 percent of homeowners, the help is just not there. So, we need to be doing something.

What does this mean to the rest of the people who are struggling to hold onto their homes in common-interest communities? Their quality of life is being decreased because there are fewer services provided by the associations. There is increased vandalism and other crime. As I mentioned earlier, there is a potential for increased regular and special assessments to make up for revenue

shortfalls, and then there is the association liability exposure. Let me explain that.

If you have a community that has a pool, and you were selling it as a community with a pool, and all of a sudden you cannot provide the pool, the people who are living there and paying their dues have a legal expectation that they are living in a pool community, and they can sue their community association because the association is not providing the services that the homeowners bought into. That could then cause the communities to further destabilize as they have financial exposure with the possibility of lawsuits because they are not providing services since the dues are not paid.

That all leads to increased instability for communities and further declines in property values. I went to see for myself. What does this really mean? What are we talking about? Through a friend in my association who generously helped send out some surveys, we received responses to this survey from 75 common-interest community managers. Fifty-five of them were in Clark County, 20 of them were in Washoe County. Their answers represented over 77,000 doors in Nevada. That is over 77,000 households, and they all told me the same thing. First of all, not one person was opposed to the bill. They gave me some comments that were very enlightening. They are all having problems collecting money; they all do not want to raise their dues; they do not want to have special assessments; they are cutting back; they are scared.

I want to share some comments with you and enter them into the record. Here is the first one: "Dollars not collected directly impact future assessment rates to compensate for the loss of projected income. Also, there is less operating cash to fund reserves or maintain the common area." That represented 2,001 homes in Las Vegas. Another one: "Our cash reserves are severely underfunded and we have serious landscaping needs." This is 129 homes in Reno that are affected. This one just really scared me: "Increase in bad debt expense over $100,000 per year has frustrated the majority of the owners who are now having to pay for those who are not paying, including the lenders who have foreclosed." That is from the Red Rock Country Club HOA, over 1,100 homes in Las Vegas. This last one: "The impact is that the HOA is cutting all services that are not mandated: water, trash, and other utilities. The impact is that drug dealers are moving into the complex, and homicides are on the rise, and the place looks horrible. Special assessments will not work. Those that are paying will stop paying if they are increased. The current owners are so angry that they are footing the bill for the deadbeat investors that they no longer have any pride or care for their units. I support this bill 100 percent. The assessments are an obligation and should not be reduced." That is from someone who manages several properties in Las Vegas.

I mentioned an additional impact, and that I really believe that this bill will affect everybody in the state, even those who do not live in common-interest communities. Let me explain that. There could be cost shifting to local government. I gave you a couple of examples in the handout: graffiti removal, code enforcement, inspections, use of public pools and parks, and security patrols. Let me use graffiti as an example.

My HOA contracts with a firm to come out and take care of our graffiti problem. We do this, and we pay for this. Clark County also has a graffiti service for homeowners in Clark County. There are about 4,000 homes in our community, and our homeowners are told, "If you see graffiti, here is the number you call. It is the management company. They send out American Graffiti, who is the provider we use, and they have the graffiti cleaned up." If an association like mine all of a sudden says, Well, you know, we do not have the money to pay our bills and do other things. We could cut out the graffiti company and we could just say to our homeowners, 'You know what, the number has changed.' So instead of calling the management company, you now call Clark County. There is a cost shift. There is a limited number of resources available in Clark County, and that will have to be spread even thinner.

It goes on into other things too. You have the pools that are closed. The people are now going to send their kids to the public pools, again, taking up more of the county resources and spreading it out thinner and thinner. There are community associations that are now, because of their cash flow problems, having to pay their vendors late. Many of their vendors are small local businesses. They are being severely impacted because the reduced cash flow is having a ripple effect on their ability to employ people.

Chairman Anderson:
Let us go back to the graffiti removal question. I understand the use of pools and parks. Are you under the impression that the HOA and common-interest community would allow the city to go and do that?

Assemblywoman Spiegel:
It is my opinion, and from what I have heard from property managers, especially that big long quote that I read, that people are cutting back on everything and anything that they deem as nonessential.

Chairman Anderson:
That is not the question. The question deals specifically with graffiti removal and security. Patrols by the police officers are usually not acceptable in gated communities and other common-interest communities. This would be a rather

dramatic change, and it would probably change the city's view of their relationship with, or their tolerance of, some common-interest communities.

Assemblywoman Spiegel:
Mr. Chairman, one thing I can tell you is that my community, Green Valley Ranch, last year had our own private security company who would patrol our several miles of walking trails and paths. We have since externalized our costs and now the city of Henderson is patrolling those at night instead of our private service.

Chairman Anderson:
So, for your common-interest community, you have moved the burden over to the taxpayers and the city as a whole.

Assemblywoman Spiegel:
Yes, but our homeowners are also taxpayers of the city.

Chairman Anderson:
Of course, they choose to live in such a gated complex.

Assemblywoman Spiegel:
It is not gated. Parts of the community are, and some parts are not. Overall, the master association is not a gated area.

Chairman Anderson:
You allow the public to walk on those same paths?

Assemblywoman Spiegel:
Yes. They are open to all city residents, and non-city residents.

Chairman Anderson:
Okay. Are there any questions for Ms. Spiegel on the bill?

Assemblyman Segerblom:
Is it your experience that the lender will pay the association fees when the property is in default, or will they let it go to lien and then the association fees are paid when the property is sold?

Assemblywoman Spiegel:
My experience has been that, in many instances the fees are just not being paid. The lenders are not paying the fees. There may be some exceptions, but as a general rule they are not.

Alan Crandall, Senior Vice President, Community Association Bank, Bothell, Washington:

We have approximately 25,000 communities here in the State of Nevada. I am honored to speak today. I am a resident of Washington state. The area I want to specialize in my discussion is with loans for capital repair. We are the nation's leading provider of financing of community associations to make capital repairs such as roofs, decks, siding, retaining walls, and large items that the communities, for health and safety issues, have to maintain. Today, in Nevada, we are seeing associations with 25 to 35 percent delinquency rate. We are unable to make loans for these communities because we tie these loans to the cash flow of the association. If there is no cash flow coming in to support their operations, we cannot give them a loan. We do loans anywhere from $50,000, and we just approved one today for $17 million, so there are some communities out there with some severe problems that need assistance.

Now you may ask, why do we care about the loan? The loan is important in that it empowers the board to offer an option to the homeowners. Some of you may live in a community, and some of you may have children or parents who live in one. Because of a financial requirement for maintaining the property—the roof, the decks that may be collapsing, or a retaining wall that may be failing—they have to special assess because they do not have the money in their reserves. It was unforeseen, or they have not had the time to accumulate the money for whatever reason. These loans allow the association to provide the option to the homeowner to pay over time because, in effect, the board borrows the money from the bank, which is typically set up as a line of credit; they borrow the portion that they need for those members who do not have the ability to pay lump sum. So, whether that is $5,000, $10,000, $40,000, or $50,000, or my personal record which is $90,000 per unit, due in 60 days, it is a major financial hardship on homeowners. The typical association, based upon my experience of 18 years in this industry, is comprised of one-third of first time home buyers who may have had to borrow money from mom and dad to make the down payment, and who have small children for whom they are paying off their credit cards for next Christmas. Another one-third is comprised of retirees on a fixed income. Neither of those two groups, which typically make up two-thirds of an average community, are in a position to pay a large chunk of money in a very short period of time. The board cannot sign contracts in order to do the work unless they are 100 percent sure they can pay for the work when it is done. That is where the loan assists.

I urge your support of this bill. It will give us the ability to have some cash flow and guarantees that there will be some extended cash flows in these difficult times, and make it easier for those banks, like ours, who provide this special

type of financing that helps people keep their homes, to continue to do so. Thank you.

Bill DiBenedetto, Private Citizen, Las Vegas, Nevada:
I moved to Nevada in 1975 when I was 11 years old. The first time I was here was in 1982 as a delegate to Boys State. If you told me at that time that I would be testifying, I would have said, No way, you have got to know what you are talking about. Well, I was up here at an event honoring the veterans, and I saw this bill. I serve as the secretary-treasurer of my HOA, Tuscany, in Henderson, Nevada. The reason I became a board member was I revolted against the developer's interests in raising our dues. You see, we were founded in 2004, and we are at 700 homes out of 2,000, which means we are under direct control of our declarant, Rhodes Homes. We are at their mercy if they want to give us a special assessment or raise our dues. The reason I am here today is I also serve as secretary-treasurer. I am testifying as a homeowner, not as a member of the board. As of last year, our accounts receivable were over $200,000, which represented 13 percent of our annual revenue. Out of our 600 homeowners, 94 percent went to collections. Out of those, there were eight banks. When a bank takes over a home, they turn off the water; the landscaping dies; our values go down. We need these two years of back dues. Anything less, I believe, would be a bailout for the banks that took a risk, just like the homeowners. When it comes right down to it, out of the 700 homes that we have, we have to fund a $6.2 million reserve. Why? Because the developer continued to build a recreation center, greenways, and other amenities. So, our budget is $1.6 million. We have $200,000 in receivables. We receive 90-day notices from our utility companies. We can barely keep the lights and the water on. Our reserve fund, by law, is supposed to be funded, but we cannot because we have to pay the utility bills. I moved into that community because it was unique: We have rallied the 700 homes. We are not looking for a handout, but we are looking for what is right. When the bank took over the homes, they assumed the contracts that were made: to pay the dues, the $145 a month. I have banks that are 15 months past due, 10 months past due, 12 months past due. Thank you for listening to me.

Assemblyman Segerblom:
In regards to the banks owning these properties, at least under current law, what they owe for six months would be a super lien which you would collect when the property is sold. Have you been able to collect on those super liens?

Bill DiBenedetto:
Yes, we have.

Assemblyman Segerblom:
Is it your experience that the banks never pay without this super lien?

Bill DiBenedetto:
The banks never pay until the home is sold.

Assemblyman Segerblom:
Now, they are just paying for only six months?

Bill DiBenedetto:
They are paying for six months, and we are losing money that should be going into our reserve fund.

Chairman Anderson:
Does the bank not maintain an insurance policy on the property as the holder of the initial deed of trust?

Bill DiBenedetto:
I do not know. I would assume they would have to have some kind of liability insurance with the property.

Assemblyman Cobb:
When the banks foreclose, do they not take the position of the owner in terms of the covenants?

Bill DiBenedetto:
They do.

Assemblyman Cobb:
Do they have to start paying dues?

Bill DiBenedetto:
They have to start paying dues, and they have to abide by the covenants, which includes keeping their landscaping living.

Assemblyman Cobb:
How are they turning off the water and destroying the property?

Bill DiBenedetto:
They just shut off the water at the property.

Assemblyman Cobb:
And you do not do anything to try to force them to abide by the covenants?

Bill DiBenedetto:
There is nothing that we can do, unless we want to absorb legal costs by taking them to court. We cannot afford that. We have called them; we have begged them; there is just no response.

Assemblyman Cobb:
You cannot recover those legal costs if you do take them to court?

Bill DiBenedetto:
I have not pursued that any further with my board or the attorneys. Thank you.

Chairman Anderson:
Thank you, sir.

Michael Trudell, Manager, Caughlin Ranch Homeowners Association, Reno, Nevada:
I have emailed a prepared statement to members of the Committee (Exhibit V). I do not want to belabor the point. There is a statutory obligation of HOAs to maintain their common areas and to maintain the reserve accounts for their HOAs. I also believe that there is a direct impact on homeowners when there is only a six month ability for the HOA to collect because we have to be much more aggressive in our collection process. If that time frame was to be increased, we would be more willing to work with homeowners. Recently, our board at Caughlin Ranch changed our collection policy to be much more aggressive and to start the lien process much more quickly than we had in the past, which eventually leads to a foreclosure process. I think that has a direct impact upon our homeowners.

Chairman Anderson:
Mr. Trudell, you have been associated with this as long as I can recall, and you have been appearing in front of the Judiciary Committee. In dealings with the banks, have there been these kinds of problems in the past with your properties and others that you have been with?

Michael Trudell:
Yes, sir. Mr. Chairman, in the past, banks were much more receptive in working with us to pay the assessments and to get a realtor involved in the property to represent the property for sale.

Chairman Anderson:
Since the HOA traditionally looks out to make sure that everyone is doing the right thing, when there is a vacant property there, you probably become a little bit more mindful of it than you would in a normal community. Do you think that

this is the phenomenon right now because of the current economic situation? By extending this time period, are we going to be establishing an unusual burden, or changing the responsibility of the burden in some unusual way? In other words, should it have originally been this longer period of time? Why should there be any limit to it at all?

Michael Trudell:
From the association's standpoint, no limit would be better for the HOA, because each property is given its pro rata share of the annual budget. When we are unable to collect those assessments, then the burden falls on the other members of the HOA. As far as the current condition, banks in many instances are not taking possession of the property, so the property sits in limbo. There is a foreclosure, and then there is no property owner, at least in the situations that I have dealt with in Caughlin Ranch. We have had much fewer incidences of foreclosure than most HOAs.

Chairman Anderson:
Thank you very much. Let us turn to the folks in the south.

Lisa Kim, representing the Nevada Association of Realtors, Las Vegas, Nevada:
The Nevada Association of Realtors (NVAR) stands in support of A.B. 204. Property owners within common-interest community associations are suffering increases in association dues to cover unpaid assessments that are uncollectable because they are outside of the 6-month superpriority lien period. Many times, these property owners are hanging on by a thread in making their mortgage payment and association dues payment. I talk to people everyday that are nearing default on their obligations. By increasing the more-easily collectable assessments amount, the community associations are going to be able to keep costs down for the remaining residents. Thank you.

Chairman Anderson:
Thank you.

John Radocha, Private Citizen, Las Vegas, Nevada:
I cannot find anywhere in this bill, or in NRS Chapter 116, where a person, who has an assessment against him or her, has the right to go to the management company and obtain documents to prove retaliation and selective enforcement that was used to initiate an assessment. If they come by and accuse me of having four-inch weeds, and my next door neighbor has weeds even taller, and they are dead, that is selective enforcement. I think something should be put into this bill where I, as an individual, have the right to go to the management company and demand documentation. That way, when a case comes up, a person can be prepared. This should be in the bill someplace.

Chairman Anderson:
We will take a look and see if that is in another section of the NRS. It may well be covered in some other spot, sir.

John Radocha:
On section 1, number 5, I was wondering, could not that be changed to "a lien for unpaid assessments or assessments is extinguished unless proceedings to enforce the lien or assessments instituted within 3 years after the full amount of the assessments becomes due"?

Chairman Anderson:
The use of the words "and" and "or" are usually reserved to the staff in the legal division. They make sure the little words do not have any unintended consequences. But, we will take your comments under suggestion.

Michael Buckley, Commissioner, Las Vegas, Commission for Common-Interest Communities Commission, Real Estate Division, Department of Business and Industry; Real Property Division, State Bar of Nevada:
We are neutral on the policy, but we wanted to point out that one of the requirements for Fannie Mae on condominiums is that the superpriority not be more than six months. Just for your education, the six month priority came from the Uniform Common-Interest Ownership Act back in 1982. It was a novel idea at the time. It was met with some resistance by lenders who make loans to homeowners to buy units. It was generally accepted. We are pointing out that we would want to make sure that this bill would not affect the ability of homeowners to be able to buy units because lenders did not think that our statutory scheme complied with Fannie Mae requirements.

My second point is that there was an amendment to the Uniform Common-Interest Ownership Act in 2008. It does add to the priority of the association's cost of collection and attorney's fees. We did think that this would be a good idea. There is some question now whether the association can recover its costs and attorney's fees as part of the six-month priority. We think this amendment would allow that and it would allow additional monies to come to the association.

Chairman Anderson:
Are there any questions for Mr. Buckley who works in this area on a regular basis?

Assemblyman Segerblom:
I was not clear on what you were saying. Are you saying that this law would be helpful for providing attorney's fees to collect the period after six months?

Michael Buckley:
What I am saying is that, with the existing law, there is a difference of opinion whether the six-months priority can include the association's costs. The proposal that we sent to the sponsor and that was adopted by the 2008 uniform commissioners would clarify that the association can recover, as part of the priority, their costs in attorney's fees. Right now, there is a question whether they can or not.

Assemblyman Segerblom:
So, you are saying we should put that amendment in this bill?

Michael Buckley:
Yes, sir. This was part of a written letter provided by Karen Dennison on behalf of our section.

Chairman Anderson:
We will make sure it is entered into the record (Exhibit W).

Assemblywoman Spiegel:
I have received the Holland & Hart materials on March 4, 2009 at 2:05 p.m. They were hand delivered to my office. I am happy to work with Mr. Buckley and Ms. Dennison on amendments, especially writing out the condominium association so that they are not impacted by the Fannie Mae/Freddie Mac provisions.

David Stone, President, Nevada Association Services, Las Vegas, Nevada:
All of my collection work is for community associations throughout the state, so I am extremely familiar with this issue. Last week, I had the pleasure of meeting with Assemblywoman Spiegel in Carson City to discuss her bill and her concerns about the prolonged unpaid assessments (Exhibit X).

Chairman Anderson:
Sir, we have been called to the floor by the Speaker, and I do not want them to send the guards up to get us. I have your writing, which will be submitted for the record. Is there anything you need to quickly get into the record?

David Stone:
The handout is a requirement for a collection policy, which I think would affect and help minimize the problem that Assemblywoman Spiegel is having. I submitted a friendly amendment to cut down on that. I see that associations with collection policies have lower delinquent assessment rates over the prolonged period, and I think that would be an effective way to solve this problem. Thank you.

Chairman Anderson:
Neither Robert's Rules of Order, nor Mason's Manual, which is the document we use, recognizes any kind of amendment as friendly. They are always an impediment. Thank you, sir, for your writing. If there are any other written documents that have not yet been given to the secretary, please do so now.

Wayne M. Pressel, Private Citizen, Minden, Nevada:
Myself and two witnesses would like to speak against A.B. 204. I realize that this may not be the opportunity to do so, I just want to make sure that we are on the record that we do have some opposition, and we would like to articulate that opposition at some later time to the Judiciary Committee.

Chairman Anderson:
There will probably not be another hearing on the bill, given the restraints of the 120-day session. The next time we will see this bill is if it gets to a work session, at which time there is no public testimony. I would suggest that you put your comments in writing, and we will leave the record open so that you can have them submitted as such. With that, we are adjourned.

[Meeting adjourned at 11:20 a.m.]

RESPECTFULLY SUBMITTED:

_____
Robert Gonzalez
Committee Secretary

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 6, 2009 **Time of Meeting:** 8:12 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 182	C	Jennifer Chisel, Committee Policy Analyst	Federal Register, list of explosive materials
A.B. 207	D	Assemblyman John C. Carpenter	Prepared testimony introducing A.B. 207.
A.B. 207	E	Assemblyman Carpenter	Suggested amendment to A.B. 207.
A.B. 207	F	Robert Robey	Suggested amendment to A.B. 207.
A.B. 189	G	Assemblyman Joseph Hogan	Prepared testimony introducing A.B. 189.
A.B. 189	H	Assemblyman Joseph Hogan	Chart comparing the various eviction processes of various states.
A.B. 189	I	Assemblyman Joseph Hogan	Flow chart of the California eviction process.
A.B. 189	J	Jon L. Sasser	Prepared testimony supporting A.B. 189.
A.B. 189	K	Rhea Gerkten	Prepared testimony supporting A.B. 189.
A.B. 189	L	James T. Endres	Suggested amendment to A.B. 189.
A.B. 189	M	Charles "Tony" Chinnici	Prepared testimony against A.B. 189.
A.B. 189	N	Jennifer Chandler	Prepared testimony against A.B. 189.
A.B. 189	O	Jeffery G. Chandler	Prepared testimony against A.B. 189.
A.B. 189	P	Kellie Fox	Prepared testimony opposing the change in section 2 of A.B. 189.
A.B. 189	Q	Bret Holmes	Prepared testimony against A.B. 189.
A.B. 189	R	Charles Kitchen	Prepared testimony against A.B. 189.

A.B. 189	S	Bill Uffelman	Suggested amendments for A.B. 189.
A.B. 189	T	Rosalie M. Escobedo	Prepared testimony against A.B. 189.
A.B. 204	U	Assemblywoman Ellen Spiegel	Presentation of A.B. 204.
A.B. 204	V	Michael Trudell	Prepared testimony in support of A.B. 204.
A.B. 204	W	Karen D. Dennison	Prepared testimony with suggested amendments for A.B. 204.
A.B. 204	X	David Stone	Suggested amendments for A.B. 204.

EXHIBIT Q

EXHIBIT Q

AB 204 – Preserving Nevada Communities

Presented by:
Assemblywoman Ellen Spiegel, District 21
March 6, 2009

Committee: Assembly Judiciary
Exhibit: U P.1 of 15 Date: 03/06/2009
Submitted by: Ellen Spiegel

AB 204 Summary

Revises provisions relating to the priority of certain liens against units in common-interest communities (BDR 10-920), increasing the super priority from six months to two years.

Fiscal Notes:

- Effect on Local Government: No
- Effect on the State: No

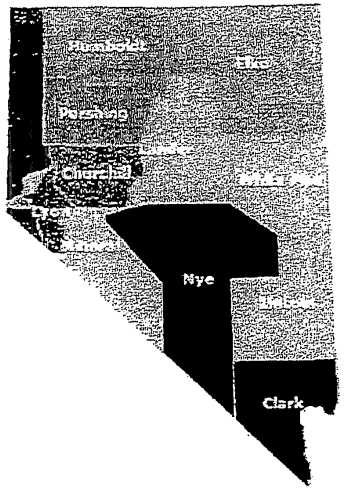
4-2

Legislative Intent/Objectives

- Help homeowners, banks and investors maintain their property values;
- Help common interest communities mitigate the adverse effects of the mortgage/foreclosure crisis;
- Help homeowners avoid special assessments resulting from revenue shortfalls due to fellow community members who did not pay required fees; and,
- Prevent cost-shifting from common-interest communities to local governments

Currently: Individual Property Values Decline

January 2009 Foreclosure Rate Heat Map



Foreclosure Rate Heat Map
What are new foreclosures as a percentage of the housing market?

Foreclosure Actions to Housing Units

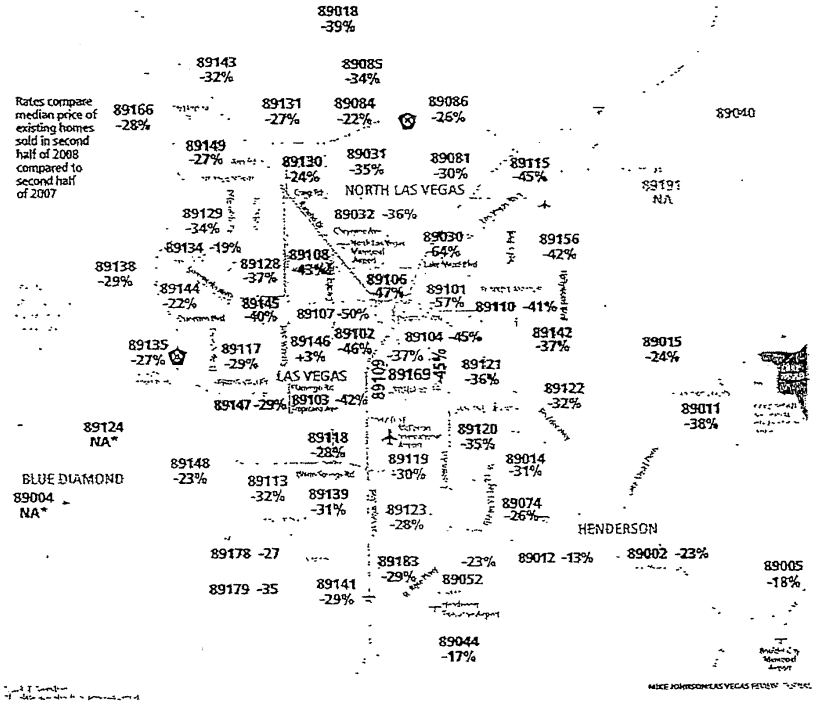
1 in 63 Housing Units — 1 in 2,859 Housing Units

High — Med — Low

Source: http://www.realtytrac.com/TrendCenter/default.aspx?address=Nevada

4-4

Clark County is Hardest Hit



Between the 2nd Half of 2007 and the 2nd Half of 2008, Property Values Declined in All Las Vegas Valley Zip Codes Except One (89146)

- The Smallest Decline was 13% (89012)
- The Largest Decline was 64% (89030)

Property Values Impacted by:

- Increased Inventory of Housing Stock due to Foreclosures, Abandoned Homes, and Economic Recession;
- Consumer Inability to Acquire Mortgages;
- Increased Neighborhood Blight; and,
- Decreased Ability for Communities to Provide Obligated Services

Help is Not on the Way for Most Nevadans

- Nevada has the Highest Percentage of "Underwater" Mortgage Holders in the Nation
  - 28% of Nevadans Owe More than 125% of their Home's Value
  - Nearly 60% of Homeowners in the Las Vegas Valley Have Negative Equity in their Homes

- President Barack Obama's Homeowner Affordability and Stability Plan Restricts Refinancing Aid to Borrowers Whose First Mortgage Does Not Exceed 105% of the Current Market Value of their Homes

Source: Las Vegas Review Journal 3/5/09

U-7

What Does This Mean to Homeowners in Common-Interest Communities?

- Decreased Quality of Life
  - Fewer Services Provided by Association
  - Increased Vandalism and Other Crime
- Potential for Increased Regular and Special Assessments to Make Up for Revenue Shortfalls and Association Liability Exposure; Increased Instability for Communities; and,
- Further Declines in Property Values

Survey of Community Managers

- 77,020 "Doors";
- 75 Common-Interest Community Managers Responded to Survey:
  - 55 in Clark County
  - 20 in Washoe County
- No Respondent Opposition to the Bill
- Comments Enlightening

Comments

- *"Dollars not collected directly impact future assessment rates to compensate for the loss of projected income. Also, there is less operating cash to fund reserves or maintain the common area."*

  Dale H. Collins, CMCA
  Siena Community Association (2,001 homes in Las Vegas)

- *"Our cash reserves are severely underfunded...and we have some serious landscaping needs."*

  Cathy Walters, Treasurer
  Skyline View Associations (129 homes in Reno)

Comments

- *"Increase in bad debt expense [over $100,000 per year] has frustrated the majority of the owners who are now having to pay for those who are not paying, including the lenders who have foreclosed."*

Donna Erwin, AMS, LSM, PCAM

Red Rock Country Club Homeowners Association (1,117 homes in Las Vegas)

4-11

Comments (continued)

"The impact is that the HOA is cutting all services that are not mandated (water, trash and other utilities). The impact is that drug dealers are moving into the complex and homicides are on the rise and the place looks horrible.

"Special Assessments won't work. Those that are paying will stop paying if they are increased.

"The current owners are so angry that they are footing the bill for the dead beat investors that they no longer have any pride or care for their units.

"I support this bill 100%. The assessments are an obligation and should not be reduced."

Amy Groves

Nevada's Finest Properties (Managers of Several Associations in Las Vegas)

U-12

Additional Potential Impact

- Cost-Shifting to Local Government:
  - Graffiti Removal
  - Code Enforcement/Inspections
  - Use of Public Pools/Parks
  - Security Patrols
- Late Payments to Local Vendors Impedes Business Stability

AB284 Supports Nevada Communities And Is Vital for Recovery

- Stabilize Communities
- Mitigate Further Declines In:
  - Property Values
  - Local Businesses
- Helps Homeowners:
  - Families
  - Banks
  - Other Investors

The Bottom Line

...Home Means Nevada

Let's work together to preserve our equity, our communities and our quality of life

U-15

EXHIBIT R

EXHIBIT R

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

November 1, 2013 **Mortgagee Letter 2013-40**

To **All Approved Mortgagees, Single Family Servicing Managers**

Subject **Loss Mitigation during the Foreclosure Process**

Purpose

The purpose of this Mortgagee Letter is to clarify the Department's requirements delineated in 24 CFR 203.502 and to communicate expectations for servicers who are engaging in loss mitigation during the foreclosure process.

Effective loss mitigation is essential to stabilizing communities affected by natural disasters, poor housing market conditions, etc. Therefore, servicers are reminded that participation in FHA's Loss Mitigation Program is not optional, they are to inform borrowers of and evaluate them for each loss mitigation retention and non-retention option[1] in a timely manner.

Effective Date

Mortgagees must implement the requirements in this Mortgagee Letter by January 1, 2014.

Affected Policy

The policies set forth in this Mortgagee Letter modify or supersede, where there is conflict, HUD Handbook 4330.1, Rev-5, and clarify parts of Mortgagee Letter 2000-05.

Notice to Borrower after Loss Mitigation Review

Pursuant to 24 CFR 203.605, servicers are to evaluate on a monthly basis all loss mitigation tools available for delinquent borrowers and document their evaluations. Servicers must timely evaluate and respond to complete loss mitigation requests. A loss mitigation request is considered complete when it contains all information required by the servicer from the borrower in order to evaluate him/her for available loss mitigation retention and non-retention[2] options.

[1] For updated information on FHA's Loss Mitigation home retention options, see Mortgagee Letter 2012-22. For upated information on FHA's non-retention loss mitigation options, see Mortgagee Letter 2013-23.
[2] See ML 2013-23 for information regarding documents to be included in a complete mortgagor workout packet for non-retention loss mitigation options.

After its timely review of a borrower's loss mitigation request, the servicer must send a written notice to the borrower which indicates:

- whether or not he/she qualifies for a loss mitigation option;
- the actual reason(s) he/she has been denied for any loss mitigation option; and
- the servicer's points of contact and process for appeals or the escalation of cases.

FHA emphasizes that effective communication with borrowers is an important aspect of proper servicing. In this regard, servicers should be mindful of persons with disabilities and persons with limited English proficiencies, and take extra care to ensure that the appropriate communication tools are available for them. Providing thorough explanations and information about appeal or escalation processes may reduce instances of challenges to foreclosure actions, and in some instances, may reveal additional circumstances under which some mortgage loans may be brought current, thus precluding mortgage insurance claims. In these instances, the servicer is continuing to mitigate losses that FHA, as the mortgage insurer, might otherwise incur. Servicers are expected to comply with all applicable federal laws regarding loss mitigation appeals, including 12 CFR 1024.41 when it becomes effective.

Loss Mitigation and Initiation of Foreclosure

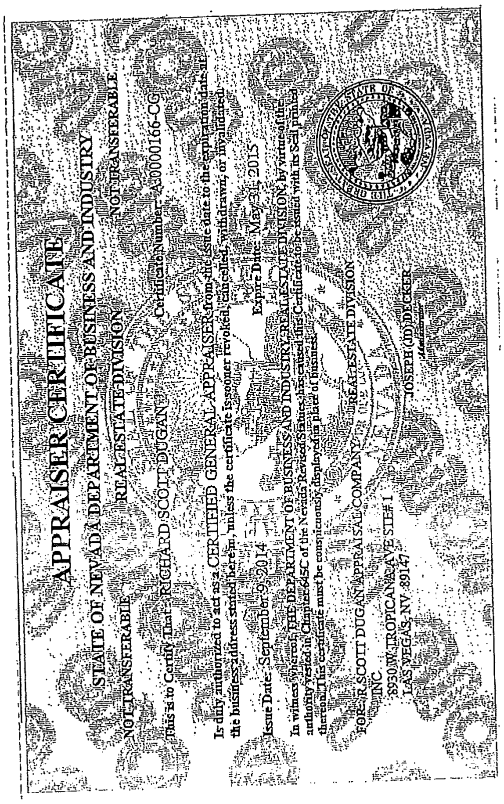
Pursuant to 24 CFR 203.606(a), a foreclosure may not be commenced for monetary defaults unless at least three consecutive monthly payments are unpaid. In addition, servicers are required to consider borrowers for each appropriate loss mitigation option prior to initiating foreclosure, unless the property has been abandoned or vacant for more than 60 days. Servicers are expected to comply with all applicable federal laws when initiating foreclosure, including 12 CFR 1024.41 when it becomes effective. After at least three consecutive monthly payments are due but unpaid, a servicer may initiate a foreclosure for monetary default if one of the following conditions is met:

- The servicer has completed its review of the borrower's loss mitigation request, determined that the borrower does not qualify for a loss mitigation option, properly notified the borrower of this decision, and rejected any available appeal by the borrower;
- The borrower has failed to perform under an agreement on a loss mitigation option, and the servicer has determined that the borrower is ineligible for other loss mitigation options; or
- The servicer has been unable to make a determination of the borrower's eligibility for any loss mitigation option due to the borrower not responding to the servicer's efforts to contact the borrower.

Main File No. 3617 Diamond Spur Ave | Page #31

Appraiser License

Client	BofA c/o Bradley Arant Boult Cummings LLP
Property Address	3617 Diamond Spur Avenue
City	N Las Vegas County Clark State NV Zip Code 89032
Borrower/Client	N/A



APPRAISER CERTIFICATE

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY

NOT TRANSFERABLE REAL ESTATE DIVISION NOT TRANSFERABLE

This is to Certify That: RICHARD SCOTT DUGAN Certificate Number: A.0000166-CG

Is duly authorized to act as a CERTIFIED GENERAL APPRAISER from the issue date to the expiration date at the business address stated herein, unless the certificate is sooner revoked, canceled, withdrawn, or invalidated.

Issue Date: September 9, 2014 Expire Date: May 31, 2015

In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, by virtue of the authority vested in Chapter 645C of the Nevada Revised Statutes, has caused this Certificate to be issued with its Seal printed thereon. This certificate must be conspicuously displayed in place of business.

FOR: R. SCOTT DUGAN APPRAISAL COMPANY, INC. REAL ESTATE DIVISION

3930 W. TROPICANA AVE STE# 1

LAS VEGAS, NV 89147 JOSEPH (JD) DECKER Administrator

Appraisal Resume (Qualifications) - Page 1

R. Scott Dugan, SRA

GENERAL APPRAISAL EXPERIENCE:

- Independent Real Estate Appraiser - September 1976 to Present
- Senior Real Estate Appraiser First Western Savings Association, Las Vegas, NV - 10/74 to 09/76
- Independent Real Estate Appraiser - 1969 to 1974

SPECIALIZED VALUATION EXPERIENCE:

Qualified Expert Witness: Real Estate and Appraisal Matters- District, Bankruptcy and Federal Courts

Forensic Review Expert: Appraisal reviews for litigation. Clients include major banks, attorneys and the FDIC.

TYPES OF PROPERTIES:

Residential, Condominium, Planned Unit Developments, Small Residential Income, Existing, Proposed and Vacant Land, Commercial and Income units.

LICENSING:
Licensed in the State of Nevada, Certified General Appraiser License #A.0000166-CG

PROFESSIONAL DESIGNATION:
SRA Member - Appraisal Institute - 1989 to Present

EDUCATION:
Bachelor of Science in Business Administration - Finance, University of Nevada
High School Diploma - General Studies, Ed W. Clark High School, Las Vegas, NV

REALTOR ASSOCIATIONS:
Appraiser Member - National Association of Realtors - 1992 to Present
Appraiser Member - Greater Las Vegas Association of Realtors - 1992 to Present

MEMBERSHIPS:

Employee Relocation Council, Appraiser Member - 1990 to 2013
Member of the Clark County Board of Equalization - 1994 to Present (Current Vice Chair)
Relocation Appraisers & Consultants Member - 1995 to Present

REFERENCES:

Cheryl Moss, SVP – Chief Appraiser
Bank of Nevada
2700 W. Sahara Avenue
Las Vegas, NV 89102
702-252-6366

Terry Jones, VP
First Security Bank
10501 W. Gowan Road, Ste.170
Las Vegas, NV 89129
702-853-0950

Jim Howard, COO
Bank of Las Vegas
1700 W. Horizon Ridge Parkway
Henderson, NV 89052
702-492-4468

Timothy R. Morse – MAI, SRPA
Timothy R. Morse & Associates
801 S. Rancho Drive, Ste. B-1
Las Vegas, NV 89106
702-386-0068 X21

Glenn Anderson, MAI, SRPA
Glenn Anderson
1601 S. Rainbow Boulevard, Ste. 230
Las Vegas, NV 89146
702-307-0888

Sandy Boatwright, Branch Manager
I Mortgage
2855 St. Rose Parkway, Ste. 110
Henderson, NV 89052
702-575-6413

Jim Goodrich, MAI, SRA, CCIM
Goodrich Realty Consulting, LLC
2570 Eldorado Pkwy, Ste. 110
McKinney, TX 75070
972-529-2828

Rick Platte, Owner
Premier Mortgage Lending Group
8689 W. Sahara Ave, Ste. 100
Las Vegas, NV 89117
702-485-6600

Appraisal Resume (Qualifications) - Page 2

OFFICES HELD:

- Nevada Commission of Appraisers - Real Estate Division Educational Committee - 1994-1996
- Member of the Regional Ethics and Counseling Panel Appraisal Institute - 1994-1996
- State Chair Nevada, State Government Relations Subcommittee Appraisal Institute - 1994-1995
- Chapter Admissions Chair, Las Vegas Chapter Appraisal Institute - 1994
- Chapter Representative, Las Vegas Chapter Appraisal Institute - 1993-1995
- Vice Chair Nevada, State Government Relations Subcommittee Appraisal Institute - 1993
- Member of Region VII Nominating Committee Appraisal Institute - 1992-1995
- President, Las Vegas chapter Appraisal Institute - 1992
- First Vice President, Las Vegas Chapter Appraisal Institute - 1990 - 1991

CONTINUING EDUCATION: GENERAL, LITIGATION, APPRAISAL INSTITUTE, ERC, and SREA:

- A.I. Las Vegas Market Symposium 2014 – November 2014
- Unraveling the Mystery of Fannie Mae Appraisal Guidelines – June 2014
- Litigation Assignments for Residential Appraisers: Expert Work on Atypical Cases – June 2014
- Liability Issues for Appraisers Performing Litigation and Other Non-Lending Work – May 2014
- 2014 National USPAP Update Course – January 2014
- Las Vegas Market Symposium 2013 – November 2013
- Do's and Don't's of Litigation Support – October 2013
- Appraising the Appraisal: Appraisal Review-Residential – April 2013
- A. I. Uniform Appraisal Dataset Aftereffects: Efficiency vs. Obligation – February 2013
- Complex Litigation Appraisal Case Studies – January 2013
- Seller Concessions in Market Value Appraisals – November 2012
- National USPAP Update Course – May 2012
- Valuation of Basements – March 2012
- Accurately Analyzing and Reporting Market Rebounds and Declines – December 2011
- Las Vegas Market Symposium 2011 – October 2011
- The Uniform Appraisal Dataset from FNMA and FMAC – July 2011
- Tools, Techniques & Opportunities for Residential Appraising – November 2010
- Business Practice and Ethics – September 2010
- Appraisal Curriculum Overview Residential – September 2010
- Nevada Commission of Appraisers Hearing – June 2010
- Inspecting the Residential Green or High Performance House – January 2010
- ENERGY STAR and the Appraisal Process – January 2010
- 2009 National USPAP Update Course – January 2010
- A.I. Committee CE Credit – Chapter Level – December 2009
- Residential Design: The Making of a Good House November 2009
- The New Residential Market Conditions Form Seminar – March 2009
- REO Appraisal - Appraisal of Residential Property Foreclosure – October 2008
- National USPAP Update Course - Las Vegas, NV - March 2008
- Dealing with Client Pressure, Appraiser Identity Theft and Appraisal Report Tampering – March 2008
- Inside & Outside the Boxes, Developing & Communicating the URAR – October 2007
- Housing Market Analysis - September 2007
- Making Sense of the Changing Landscape of Value - Las Vegas, NV - July 2007
- The Real Estate Economy: What's In Store for 2008? - Las Vegas, NV - July 2007
- Real Estate Investing & Development - A Valuation Perspective - July 2007
- Litigation Skills for the Appraiser: An Overview - October 2006
- National USPAP Update Course - June 2006
- The Professional's Guide to the Uniform Residential Appraisal Report Seminar - July 2005
- Re-appraising, Re-addressing, and Re-assigning What to do and why Seminar - June 2005
- Market Analysis and the Site to Do Business Seminar - June 2005

Appraisal Resume (Qualifications) - Page 3

- Secrets of a Successful Litigation Seminar - June 2005
- Mortgage Fraud & the Appraiser's Role Seminar - June 2005
- Uniform Standards of Professional Appraisal Practice Update Course - February 2005
- Course 705 Litigation Appraising - October 2004
- Avoiding Liability as a Residential Appraiser - October 2004
- AVM, VFR and Power Tools for Appraisers - September 2004
- Course 400 - National USPAP Update - November 2003
- Residential Sales Comparison Approach - October 2003
- Appraisal Review (Residential) - February 2003
- Nevada Real Estate Appraisal Statutes - October 2002
- National USPAP Update Course - June 2002
- Standard of Professional Practice Part A and Part B - Course 410 and 420 - September 2001
- Appraisal Procedures - Course 120 - November 2000
- Standards of Professional Practice Part A - Course 410 - October 1999
- Standards of Professional Practice Part B - Course 420 - October 1999
- Attacking & Defending an Appraisal in Litigation - September 1999
- FHA and the Appraisal Process - July 1999
- Reporting Sales Comparison Grid Adjustments for Residential Properties - March 1999
- Valuation of Detrimental Conditions in Real Estate - September 1998
- Standards of Professional Practice Part C - Course 430 - May 1998
- Incorporating Energy Efficiency into Residential Appraisals – December 1998
- Residential Design and Functional Utility Seminar - September 1997
- Alternative Residential Reporting Forms Seminar - July 1996
- Evaluation Guidelines Workshop – July/August 1994
- Understanding Limited Appraisals and Appraisal Reporting Options – July/August 1994
- Appraisal Review - Residential properties – July/August 1994
- Fair Lending and the Appraiser - July 1994
- Evaluation Guidelines Workshop July 1993
- Environmental Checklists, ASTM Property Screen Standard & the Valuation Process – July 1993
- Current Standards of Professional Appraisal Practice Issues-July 1993
- Americans With Disabilities Act (ADA)- July 1993
- The New Uniform Residential Appraisal Report- September 1993
- Intern Appraiser and the Law -February 1993
- Appraisal Reporting of Complex Residential Properties – December 1992
- Accrued Depreciation Seminar - September 1992
- Appraising from Blueprints - September 1992
- Appraising the Tough Ones -July 1992
- Employee or Independent Contractor- The Impact of an IRS Audit on an Appraiser-July 1992
- Landfills and Their Effect Upon Value- August 1991
- Subdivision Analysis- August 1991
- Real Estate Law for Real Estate Appraisers- August 1991
- Technical Inspection of Real Estate August 1991
- Relocation Appraisal Seminar- August 1991
- Practical Approach: The New Small Residential Income Property Guidelines – July 1990
- Extraction of Market Data on Residential Properties- August 1990
- Residential Appraisal Report from the User's Perspective- August 1990
- Legislative Update Panel-August 1990
- Relocation Appraising in the 90's PHH Home Equity – September 1990
- Nevada Real Estate Appraisal Statute October 1990
- Professional Practice and Real Estate Appraisal Law- October 1990
- Exam Preparation Seminar for Appraiser - General Certification – October 1990

Appraisal Resume (Qualifications) - Page 4

ERC NATIONAL RELOCATION CONFERENCE:

- ERC – RAC Trac Conference - May 2007
- National Relocation Appraisal Forum - May 1996

PHH REAL ESTATE NETWORK:

- Regional Seminar "Hearts, Smarts & Courage" - September 1996
- "Force of Excellence" – November 1995
- Western Appraiser Regional Seminar "Leaders in Change" -September 1994

CLIENTS: Banks and Mortgage Companies:

- Bank of Nevada
- Bank of Las Vegas
- Bank of New York
- Broad Street Nationwide Valuations
- Capital One Bank
- Castle & Cook Mortgage
- Chase Bank
- Citibank
- Citicorp Mortgage, Inc.
- City National Bank
- Clark County Public Guardians Office
- Deutsche Bank
- Executive Relocation Corp.
- Federal National Mortgage Association
- First Republic Bank
- First Security Bank of Nevada
- Guarantee Bank
- Homebase Mortgage
- Irwin Union Bank and Trust Company
- J.P. Morgan
- Kinecta Federal Credit Union
- Meadows Bank
- Mellon Bank
- Mutual of Omaha Bank
- Nations Bank
- Nationstar Mortgage
- Nevada Guardian Services
- Northern Trust Bank
- Premier Mortgage Lending Group
- Prudential Relocation
- Rels Valuation - Wells Fargo Bank
- REO Management Services
- RMS & Associates
- Secolink
- Security One Valuation Services
- Settlement One
- SIRVA Relocation
- Stars Valuations Services
- Trimavin Appraisal Management Co.
- US Bank
- Valuation Partners
- Washington Federal Savings
- Wells Fargo Bank

Attorneys / Others:

- Abrams, Jennifer
- Americana Nevada Company
- Alverson, Taylor, Mortenson-Judd Balmer
- Anderson, McPharlin & Conners
- Barney, Anthony
- Barranco & Kircher
- Black & Lobello
- Delanoy, Schuetz & Mcgaha
- Drizin, Lee A
- Ecker Law Group
- Goodrich, Jim (Valuation Consulting)
- Gordon Silver
- Hansen, Randon
- Holland & Hart LLP
- Hoskin, Hughes and Pifer
- Jensen, Rob (Broker)
- Jolley Urga Wirth Woodbury & Standish
- Kainen Law Group
- Kelleher & Kelleher
- Koeller, Nebeker, Carlson & Haivek
- Lee & Russell
- Lee, Hernandez, Kelsey, & Brooks
- Leavitt, Andrew
- Menninger, Carol
- Miller & Wright Rawlings, Olsen, Cannon, Gormley & Desrulsseaux
- Shapiro, Florence (Broker)
- Shea & Carlyon
- Woodbury & Standish

(Rev. Nov 6, 2014)

EXHIBIT B

R Scott Dugan, SRA
R Scott Dugan Appraisal Company, Inc.
Fee Schedule
(As of November 15, 2014)

Exterior Appraisal Report - $750 Each

Assignments are for bid on a case-by-case basis. Standard fees for additional work (if needed) are listed below:

Expert Witness Work and Testimony:

- Deposition, Court Testimony, Trial Preparation - $400/Hour
- Supplemental Work and Research - $400/Hour
- Consulting Meetings, Case Discussions, etc. - $200/Hour

There is a three-hour minimum for deposition and court testimony. If either is canceled within 24 hours of a scheduled appearance, the client will be billed for 50% of the minimum, in addition to any time for preparation.

The above fees are exclusive of the costs associated with both the development of the valuation report or consulting study, and that of supporting materials that may be required for trial.

Real Estate Appraisers and Consultants
6767 W. TROPICANA AVENUE, SUITE 110 LAS VEGAS, NV 89103-4343 (702) 876-2000 FAX (702) 253-1888

R. Scott Dugan, SRA
State Certification Number: A.0000166-CG

ATTORNEY WORKLOAD REPORT

	Subject Address	Name	Purpose	Attorney or Client	Court Date	Case No.
1	Lots 1, 3, 4 & 5 Ghost Dance	Town & Country vs Goddard	Court Testimony	Holland & Hart LLP	12/20/2010	
2	2966/2970 San Lorenzo	Bank of Nevada	Deposition/Crt Testimony	Lionel, Sawyer & Collins	1/6/2011	120-201-0059
3	5025 Kell Lane	OneCap Mortgage	District Court Appearance	Reade & Associates	1/25/2011	
4	2966/2970 San Lorenzo	Bank of Nevada	Federal Court Testimony	Lionel, Sawyer & Collins	1/28/2011	120-201-0059
5	940 N Sloan Lane #105	Bank of Nevada	Court Testimony/Settled	Mazur & Associates	3/3/2011	
6	Platinum	Platinum Condo Dev	Litigation/Deposition	Foley & Lardner LLP	7/4/2011	209CV00671PMPGWF
7	4945 Ghost Dance Circle	Goddard	Federal Court Testimony	Town & Country Bank	9/8/2011	2:09CV00686RLHLRL
8	2132 Country Cove	Bank of Nevada vs King	District Court Testimony	Gerrard & Cox	10/6/2011	A627640
9	14480 Roundabout Circle	Shavitz vs Jacobs Construction	District Court Deposition	Schofield Miller Law Firm	12/5/2011	A-09-592088-D
10	39 Quail Hollow Drive	Limpscomb vs Smith	Depo/Court Testimony	Silvermann Decaria & Kattelman	1/8/2012	D-11-444324-D
11	645 Sari Drive	M&I vs. Long	Court Testimony	Cooper Castle Law Firm	1/13/2012	A-11-65-203-C
12	7811 Dana Point Court	BofNV vs Troncosco	Court Testimony	Mazur & Brooks	9/24/2012	A647414
13	2139 Wilbanks Circle	BofNV vs Deevers	Court Testimony	Mazur & Brooks	10/4/2012	A-12-655231-C
14	22 Sawgrass Court	Provident vs Levy	Deposition	Cooper Castle Law Firm	10/5/2012	A-09-601666-C
15	23 Mallard Creek Trail	Goldstein/Irsfeld	Deposition	The Bourassa Law Group	11/30/2012	A617125
16	8031 Springbuck Court	BofNV vs Townsend	Deficiency Hearing	Michael Marcellette	4/2/2013	A-12-671738-C
17	49 Hawk Ridge Drive	BofNV vs Barry	Deficiency Hearing	Michael Marcellette	5/7/2013	A-126555559-C
18	1500 Windhaven	FDIC	Deposition	Kolesar & Leatham	7/23/2013	8408-2
19	32 Via Vasari	Deutsche Bank	Litigation	Blut Law Group	Current	A-11-651083-C
20	8623 Fire Mountain	Bank of Nevada	Deficiency Hearing	Mazur & Brooks	7/31/2013	A-11-642953-C
21	1157 Via Casa Palmero	FDIC vs Rekis	Deposition	Kolesar & Leatham	8/29/2013	2:12-cv-02061-GMN
22	51 Agate Ave #303	Giuliano vs Giuliano	Court Testimony	Zashin & Rich	10/9/2013	DR12343002
23	FDIC Reviews	FDIC vs Core Logic	Deposition	Mullin Hoard Brown	12/10/2013	8:11-cv-00704-DOC-AN
24	53 Hawk Ridge Drive	D&J Family Tst vs Palm Canyon	Deposition	Bourassa Law Group	12/17/2013	A646373
25	FDIC Reviews	FDIC vs LSI Appraisal LLC	Deposition	K&L Gates LLP	1/8/2014	SACV11-706 DOC(Anx)
26	8 Rue Mediterra Drive	RBM Constuction vs Rosenaur	Deposition	Bremer, Whyte, Brown & O'meara	1/15/2014	09-A595366
27	2621 Dandelion Street	Puckett vs Bank of Nevada	Deposition	Michael Marcellette	2/13/2014	A-13-677331-C
28	3180 Darby Gardens Court	Everflow	Court Testimony	Lionel, Sawyer & Collins	3/4/2014	A-11-652597-B
29	4381 W Flamingo Rd #39301	Royal Business Bank vs Lin	Court Testimony	Compton Law	3/26/2014	A-14-694431
30	7229 Mira Vista Street	Anthony Savino	Court Testimony	McDonald Law Offices	6/12/2014	A-13-674390-C
31	1147 Evening Canyon Ave	Ana Thompson	Court Testimony	Brooks Hubley LLP	9/26/2014	A-13-17461
32	4381 W Flamingo Rd #18321	Palms Place vs Lue Garlick	Deficiency Hearing	Brownstein Hyatt Farber Schreck	11/4/2014	A-14-697506-B
33	5583 Mermaid Cr.	McGee vs. Citi Mortgage	Deposition	Wolfe & Wyman	11/24/2014	2:12-CV-02025JCMPAL

DUGAN000041

EXHIBIT N

EXHIBIT N

2014
Community Association
Fact Book

FOUNDATION FOR
COMMUNITY ASSOCIATION
research

Foundation for Community Association Research
6402 Arlington Boulevard, Suite 500
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The Foundation for Community Association Research (FCAR) was founded in 1975. FCAR is a 501(c)(3) organization that supports and conducts research and makes that information available to those involved in association development, governance and management.

FCAR provides authoritative research and analysis on community association trends, issues and operations. Our mission is to inspire successful and sustainable communities. We sponsor needs-driven research that informs and enlightens all community association stakeholders—community association residents, homeowner volunteer leaders, community managers and other professional service providers, legislators, regulators and the media. Our work is made possible by your tax-deductible contributions. Your support is essential to our research.

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American Community Survey (ACS)
Census – Statistical Brief 1994
CAI: Common Ground magazine
CAI Government & Public Affairs (G&PA)
CAI Press
California Department of Real Estate
California Law Revision Commission
Colorado Department of Regulatory Agencies
Connecticut Judicial Branch Law Libraries
Department of Agriculture – Rural Development
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Federal Home Loan Mortgage Corporation (Freddie Mac)
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National Association of Homebuilders (NAHB)
National Association of Realtors (NAR)
Nevada Real Estate Division
Urban Land Institute
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2.3 Notes on Community Association Data:

The *Fact Book* is based on information from six sources grouped in two categories:

- Public Data: (1) Census data, (2) State data, (3) Related housing industries data such as that from the National Association of Realtors (NAR) and the National Association of Homebuilders (NAHB),
- FCAR and CAI Data: (4) FCAR data accumulated over time, (5) CAI data, also, accumulated over time, and (6) Data provided by CAI members.

The public data is largely from the Census and the American Community Survey (ACS). This data has a lag time to publication, i.e., certain of the ACS 2014 data may not be available until late in 2015. Some public association data is available from individual states. This state data, also, may have a lag time from collection to publication. Usually, both the few states with association data and the ACS data lack specificity in critically identifying the three basic types of associations: condominiums, cooperatives and planned communities. Similarly, the public data may count certain association units, but not the entities (the associations) themselves. From a timing viewpoint, FCAR, CAI data and CAI member data are more readily available. Because of the timing issue, the *Fact Book* data generally will be one year ahead of public data.

3. Getting Started with the FCAR 2014 Fact Book

3.1 CAI and the Growth of Community Associations

It's been said that the growth of community associations (condominiums, planned communities and cooperatives) offers the greatest single extension of homeownership opportunities since the housing reforms of the New Deal and the provision of GI Bill benefits just after World War II. The Community Associations Institute estimates that in 1970 there were 10,000 community associations nationwide. In 2014, there are 333,600 associations housing more than 66 million Americans. **See the Statistical Review 2014**. From its inception, CAI has grown along with association housing, along with the homeowners and along with association professionals – to foster better communities based on fostering harmony, transparency and sustainability.

The **Community Associations Institute** (CAI) is a national nonprofit 501(c)(6) organization founded in 1973 to foster competent, responsive community associations through research, training and education.

The **Foundation for Community Association Research** (FCAR) is a national, nonprofit 501(c)(3) organization devoted to common interest community research, development, and scholarship. Incorporated in 1975, the Foundation supports and conducts research in the community association industry.

3.2 Community Association 2014 Fact Book – Key Features

The *Fact Book* is published by FCAR and it documents, in general, the history, current status, trends and future issues of U.S. community association housing. The *Fact Book*, also, provides community association information on a state-by-state basis in "State Summaries." The *Fact Book* and any one of the *State Summaries* will facilitate, demonstrate and provide an understanding of four points:

(1) **Evidence-Based Decisions:** Facilitate the creation, publication and analysis of credible data such that evidence-based decisions on various community association issues, regulations and laws can be made.

(2) **Contributions to the Economy and Society:** Demonstrate the role of community associations as part of the evolving *transformation of land development practices* and in maintaining housing as shelter, as a neighborhood benefit and as an investment.

(3) **Core Services:** Provide an understanding that there are three core services delivered by associations to residents (owners and renters)

- Governance Services,
- Community Services and
- Business Services

– and that these three core services are complimentary to a broad range of both local and national housing services, housing goals and of related public policy considerations.

(4) **Associations as a Housing Market:** Demonstrate that all three types of community associations in and of themselves, are an important housing market that needs to be understood and analyzed in a comprehensive manner.

3.3 ***Statistical Review 2014*:** The *Statistical Review 2014* is part of the *Fact Book*, but it is provided as a separate document available by a hyperlink. Like its predecessor, the *Statistical Review 2013* (also found by hyperlink), *Review 2014* provides national facts concerning community associations.

3.4 **State Summaries:** While the *Fact Book* and the ***Statistical Review 2014*** deal with community associations from a broad national perspective, there are 51 *State Summaries* (including the District of Columbia) that bring the national data to the state level. The format of the *State Summaries* generally follows the Fact Book, but without the emphasis on history, definitions and comparative matters.

4. Community Association National Trends and Issues

In *Democracy in America*, Alexis de Tocqueville reflected in differing ways on the constant activity that characterized American society in the 1830s as it strived for continuous improvement at all levels of society and government. Little has changed since that time. He would be right at home at a community association board meeting, at a CAI Chapter program or at a national CAI Conference or Law Seminar. The best way to keep up with association trends and issues (and the need for continuous improvement) at either or both the national or local level is through the links that follow.

4.1 At the National Level

CAI Issues and Advocacy

- From federal affairs, to state issues, to amicus briefs and more – this is constantly updated. Topics include regulatory issues with FHA and FEMA, new mortgage rules and CAI's Public Policies.

CAI Common Ground Magazine Key Issues

- From aging in place, to fostering participation, to manager licensing and more – key themes from the *Common Ground* articles. A subscription to Common Ground is part of CAI Membership, but separate subscriptions are available.

Chronological History of the Federal Involvement in Community Associations

- From the early Twentieth Century through today, you can track over 40 major federal initiatives and related issues and activities that have impacted community associations.

4.2 At the Local Level

CAI Local Chapters

- This will help you find and contact any of CAI's 60 U.S. Chapters and CAI's South African Chapter.

CAI Grass Roots Advocacy Center

- CAI's Government & Public Affairs provides political information and intelligence for the association industry.

4.3 At all Levels for All Interests

CAI Press: CAI Press, the publishing division of CAI, is dedicated to publishing the very best resources for community associations. We offer the largest collection of over 100 books on association governance, management and operations. Browse by category, view our most popular products and discover what's new. Check back frequently to see our Featured Products and to take advantage of our money-saving promotions.

10. Community Services as an Association Core Function

Introduction: The Statistical Review 2014 reports on the active involvement of more than 2.3 million homeowner volunteers who served on association boards of directors and committees providing $1.6 billion dollars of time to their associations. In addition to privatizing certain infrastructure and development functions mentioned in #7.3, the community services functions save local government between $2 to $4 billion a year by minimizing the need for building and health code enforcement and other public safety services.

Associations perform many of these governmental type functions as part of common area inspections and obtaining cooperation and compliance from residents. New Jersey, for instance, makes clear that it understands that community associations have the same inspection functions as do hotel owners and rental apartment building owners. New Jersey, also, recognizes that community association assessments often cover the same services paid for in property taxes. See the *New Jersey State Summary* at Section #5.4 for the "Municipal Services Act for Community Associations." Also, see this CAI Amicus Brief on **Reimbursement Under the New Jersey Municipal Services Act**

Community Services run the range of activities below and include a variety of related activities that are discussed in this CAI publication:

Managing & Governing: How Community Associations Function

10.1 An Introduction to Community Association Living

Introduction: The purpose of An Introduction to Community Association Living is to introduce community volunteer leaders and members to community associations, provide a greater understanding of exactly how a community association works from both an organizational and people standpoint, and to endow members with the information necessary for fully enjoying and benefiting from community association living.

10.2 From Good to Great Communities

Every community has its own history, personality, attributes and challenges, but all associations share common characteristics and core principles. Good associations preserve the character of their communities, protect property values and meet the established expectations of homeowners. Great associations also cultivate a true sense of community, promote active homeowner involvement and create a culture of informed consensus. The ideas and guidance conveyed in this brochure speak to these core values and can, with commitment, inspire effective, enlightened leadership and responsible, engaged citizenship.

10.3 Community Matters – What You Should Know Before You Buy

Whether you are considering buying a home in a community that is newly developed (either new construction or a conversion), a resale in an existing community or you are renting with the possibility of buying—you need to consider certain key points about community association governance and operations. This publication will help. Also, this information runs parallel to the Consumer Finance Protection Bureau (CFPB) campaign on Know Before You Owe. Further, the *State Summaries* provide information links for those states that require disclosure upon sale. The states with some version of the Uniform Real Property Acts require disclosure upon sale. If interstate land sales are involved, then the CFPB by means of the requirement for **Interstate Land Sales Registration** provides consumer protection.

About the Foundation for Community Association Research
The Foundation provides authoritative research and analysis on community association trends, issues and operations. Our mission is to inspire successful and sustainable communities. We sponsor needs-driven research that informs and enlightens all community association stakeholders—community association residents, homeowner volunteer leaders, community managers and other professional service providers, legislators, regulators and the media. Our work is made possible by your tax-deductible contributions.

FOUNDATION FOR COMMUNITY ASSOCIATION research

Your support is essential to our research. Visit www.cairf.org or e-mail foundation@caionline.org .

About Community Associations Institute (CAI)
Community Associations Institute (CAI) is an international membership organization dedicated to building better communities. With more than 33,000 members, CAI works in partnership with 60 chapters, including a chapter in South Africa, as well as with housing leaders in a number of other countries, including Australia, Canada, the United Arab Emirates and the United Kingdom. CAI provides information, education and resources to the homeowner volunteers who govern communities and the professionals who support them. CAI members include association board members and other homeowner leaders, community managers, association management firms and other professionals who provide products and services to associations.

CAI serves community associations and homeowners by:

- Advancing excellence through seminars, workshops, conferences and education programs, most of which lead to professional designations for community managers and other industry professionals.
- Publishing the largest collection of resources available on community association management and governance, including website content, books, guides, *Common Ground* magazine and specialized newsletters.
- Advocating on behalf of common-interest communities and industry professionals before legislatures, regulatory bodies and the courts.
- Conducting research and serving as an international clearinghouse for information, innovations and best practices in community association development, governance and management.

community ASSOCIATIONS INSTITUTE

We believe homeowner and condominium associations should strive to exceed the expectations of their residents. We work toward this goal by identifying and meeting the evolving needs of the professionals and volunteers who serve associations, by being a trusted forum for the collaborative exchange of knowledge and information, and by helping our members learn, achieve and excel. Our mission is to inspire professionalism, effective leadership and responsible citizenship—ideals reflected in associations that are preferred places to call home. Visit www.caionline.org or call (888) 224-4321.

For suggestions, additions, or updates to this Community Association Fact Book State Page, please e-mail foundation@caionline.org.

FOUNDATION FOR COMMUNITY ASSOCIATION research

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EXHIBIT O

EXHIBIT O

Residential Community Associations:
Private Governments in the Intergovernmental System?

With Papers from a Policy Conference
Sponsored by the
U.S. Advisory Commission on Intergovernmental Relations

A-112
May 1989

Preface

This policy report is one in a series of publications from a Commission project on "Rethinking Local Self-Government in a Federal System." Already published are *The Organization of Local Public Economies* (1987), and *Metropolitan Organization: The St. Louis Case* (1988). A report on Allegheny County, Pennsylvania, will be published in the near future.

Traditionally, the intergovernmental system has been thought to include the national government, state governments, and local governments of all kinds. This report suggests that the concept of intergovernmental relations should be adapted to contemporary developments so as to take account of territorial community associations that display many, if not all, of the characteristics of traditional local government.

Previous studies indicate that the vitality of local governance lies in part in the kind of diversity and differentiation among governments that can create opportunities for genuine self-government in manageable, human-scale communities. New participants enter the intergovernmental system each year. Every census of governments shows an increase in the number of municipalities and special districts serving citizens. This ever-growing intergovernmental family now should be seen as overlapping to some extent with residential community associations (RCAs). In this respect, RCAs are part of a growing phenomenon in American society; namely, the proliferation of organizations that lie within the border regions between the public and private sectors.

Established by deed covenants attached to real property, RCAs are mandatory membership associations consisting of homeowners in a subdivision or development. Although RCAs are private organizations, typically created by residential developers, they are beginning to play a role in the intergovernmental system because, like local governments, they provide quasi-public services, levy mandatory fees, and regulate resident behavior (sometimes in far greater detail than local government). Because of their functions, RCAs, like local governments, develop relationships with neighboring local governments and the state. In addition, RCAs often provide innovative opportunities for local self-government on a human scale.

RCAs can generate important benefits for their members, for developers, for local governments, and for the community as a whole. RCA members often

benefit from steady or increasing home values created by the land-use restrictions in their communities. In addition, RCAs often provide their members with a wide range of services that are not available from local government or that supplement the services provided by local government. Builders are benefited by being able to provide more attractive and marketable homes in a stable, livable environment, often at cost savings to both the developer and the purchaser. Local governments benefit by obtaining development that is self-financing, features desirable amenities, and adds to the local tax base. The community as a whole benefits from RCAs through the increased range of housing choices available to potential home buyers.

The number of RCAs has exploded during the last 30 years. Informed observers estimate that there are as many as 130,000 RCAs in the United States today, compared to fewer than 5,000 in 1960. Much of this growth results from the dramatic increase in planned unit development (PUD) zoning and condominium ownership projects.

Because RCAs are private organizations, they generally have not been recognized as participants in the intergovernmental system. Indeed, RCAs cannot be regarded as local governments in the same sense as a municipality. Nonetheless, the development of RCAs does raise intergovernmental concerns, particularly with regard to service provision, citizenship and governance, and finances and taxation.

RCAs constitute a privately organized unit for the provision of local public services. In recent years, there has been a major shift in thinking about patterns of organization of local government, particularly with regard to the delivery of services. A new consensus may be emerging around the idea that a multiplicity of local governments constitutes a "local public economy" for service delivery, which consists of a "provision side" and a "production side." Briefly, the provision side refers to making arrangements for the supply of services, and the production side refers to creating service outputs.

RCAs are clearly provision units in that they decide (1) what goods and services to provide their members, and their quantity and quality; (2) what private activities to regulate, and the type and degree of regulation; (3) the amount of revenue to raise, and how to raise it; and (4) how to arrange for the production of goods and services.

In determining what goods and services to provide, an RCA may decide, for example, to build a tennis court. An RCA may decide to regulate private activities, such as the keeping of pets. An RCA raises revenue through association fees and special assessments. An RCA makes decisions about service quantity and quality, as when it contracts for snow removal and street repair. Finally, an RCA decides how to make arrangements for the production of goods and services, often through contracts with private companies or agreements with local government.

The existence of RCAs as community provision units suggests that these private organizations substitute for local government service provision. Yet relatively little is known about their service provision activities or how they influence local government.

RCAs also raise intergovernmental questions regarding citizenship and governance. RCA membership implies very different rights, privileges and obligations than public citizenship. Yet the differences are not known to most of the public. Indeed, many homeowners appear to be unaware of the implications of living in an RCA community.

Finally, RCAs pose questions regarding finance and taxation. RCAs embody the principle of fiscal equivalence—you get what you pay for and you pay for what you get. By funding their own services through dues and special assessments, RCA members retain exclusive rights to use amenities, such as swimming pools, tennis courts, play areas, and club houses, which often are not available in other communities. At the same time, because the RCAs self-finance many services, members are beginning to call on local government for tax consideration.

Strong proponents of RCAs argue that they provide for increased local self-determination and community control, greater economic efficiency in land use, more efficient and responsive service provision, more stable neighborhood land values, and more attractive residential neighborhoods.

Critics of RCAs say that many homeowners do not understand the implications of living in an RCA community and are unprepared for community control, that RCAs do not, in fact, expand consumer choice, that RCAs can reduce the efficiency of land markets, that their regulations can be excessive, and that RCA service costs may prove a burden to members, particularly those with moderate or stable incomes. Indeed, critics argue that RCAs raise a number of important questions for the intergovernmental system, including the role of local government in regulating these organizations, the extent of tax consideration RCAs may be due, the degree to which RCAs lower the cost of public services for local government, and the extent to which failed RCAs become a burden on the public sector.

RCAs, therefore, have a partial role in the intergovernmental system. To explore this role more fully, the ACIR sponsored a conference in June 1988 and conducted a nationwide survey of RCAs in cooperation with the Community Associations Institute (CAI). This publication reflects the results of those activities. We hope it will begin a dialogue on the role of RCAs in the intergovernmental system. It will be followed by another publication, a practical guide to public officials answering the most common questions officials ask about RCAs.

The Findings and Recommendations in this report were adopted by the Commission at its meeting on September 16, 1988.

Robert B. Hawkins, Jr.
Chairman

Acknowledgments

This publication grew out of a conference on residential community associations sponsored by the Advisory Commission on Intergovernmental Relations and held in Washington, DC, June 13-14, 1988.

Thanks are expressed to the many people who participated in the conference, both those who presented papers and those who commented on them. Specifically, thanks go to: Stephen Barton, William Blomquist, Marc Burford, Tom Burgess, Jacqueline Dewey, C. James Dowden, Mark Frazier, Barbara Gregg, Doug Kleine, John Maberry, Pamela Mack, Andrew Mansinne, Dolores Martin, Dean Miller, Robert Nelson, Don Pepe, Katharine Rosenberry, Winfield S. Sealander, Carol Silverman, Dan Tarlock, Dennis Tomsey, John Watts, Marc Weiss, James Winokur, and Joselyn Wells.

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Thanks also go to the Community Associations Institute for its joint sponsorship of the nationwide survey of community associations. Doug Kleine of CAI was particularly patient, pleasant, and always willing to help throughout this project.

Debra Dean conducted the survey, arranged the conference, and drafted the report.

Editorial assistance was provided by Linda Woodhouse. Secretarial assistance was supplied by Lori A. Coffel and Anita J. McPhaul.

ACIR is grateful for the help of all those who contributed to this report. Full responsibility for the contents lies with the Commission and its staff.

John Kincaid
Executive Director

Bruce D. McDowell
Director of Government Policy Research

Contents

Local government gets developments that are significantly self-financing, often have additional amenities, and add to the local tax base. At the same time, RCA development relieves local government and, thereby, existing taxpayers of much of the responsibility for financing infrastructure and services.

6. Governmental and Intergovernmental Relations

Relationships between residential community associations and local governments, and between state and local governments concerning association matters, have been established and are increasing. The ACIR/CAI survey of association officials found that 56 percent of them judged the level of cooperation between local government and their RCA to be excellent or good. Twenty-three percent rated the relationship as only fair. With respect to specific types of relationships, responding RCAs rated their treatment by local governments as follows: 71 percent said that their treatment on policy issues was somewhat or very fair; ratings in the 61-66 range were assigned to school, traffic, water/sewer, park and recreation, animal control, and zoning issues; the issues of parking, pollution, new development, and local taxes received fairness ratings in the 53-58 percent range. The ACIR/CAI survey and the resource papers and discussions at the ACIR conference identified a number of issues that deserve attention:

Service separation and double taxation. Typically, the RCA provides its own facilities and services at its own expense. However, this arrangement usually does not relieve individual association members of local property tax liability for their own units or the association of liability for property taxes on the common properties. Therefore, the associations and their members sometimes pay twice for some services that taxpayers outside the association's boundaries get from local government and pay for only once. In a few localities, tax rebates or local government contracts to pay for certain RCA services help to offset this inequity.

Excluded public services. Because the property within the RCA boundaries is private, including the streets, public officials often do not enter to provide certain normal services of government without explicit permission of the owners. This fact typically excludes government from providing routine police patrols, trash collection, animal control, and the like. Some local governments and associations have negotiated agreements to enable one or more of these regular services to be provided publicly by local government.

Tax inequities. The application of normal property tax and federal income tax rules to RCAs creates two inequities compared to the non-association case. With the local property tax, association homeowners' units typically are assessed at a value that reflects their greater desirability based on the commonly held amenities. Then the amenities, themselves, are assessed and taxed as private properties. In the non-association case, these amenities typically would be in public ownership and off the tax rolls. When appealed to the courts, associations are generally successful in revising these assessment practices, but each case must go to the courts individually. A legislative solution could be more simple, fair, and effective.

With respect to the federal income tax, association dues are not tax deductible even though they pay for some of the same types of facilities and services that are paid for by deductible local property taxes in the non-association case. As the proportion of the nation's population living within RCAs increases, this lack of deductibility will affect more people. Any solution to this form of double taxation would have to be through federal legislation.

Dual citizenship and the presumption of public responsibility. As a member of an RCA, the homeowner is a citizen of the association's "government" as well as a citizen of the local government in which the association is located. If the member becomes unhappy with the association—its restrictions on life style, its style of government, or some other issue—the member is likely to call on local government for help. Increasingly, city and county consumer affairs offices are receiving such inquiries.

Some local governments have begun educational campaigns to inform association members about their organizations; some have set up dispute resolution mechanisms; and some have offered training or resource materials for association board members. Such preventive approaches may be less costly to local governments in the long run than allowing an escalation of their consumer affairs case loads.

Local governments, as partners in encouraging RCAs, and as beneficiaries of their activities, have an interest in keeping them healthy, happy, and out of the courts. Above all, local governments have an interest in helping RCAs to remain financially solvent and well managed so that they do not dissolve and shift their responsibilities to the general public. One way some local governments have kept current with association concerns is to set aside a special time for RCA presidents or representatives to meet with public

avoided by treating facilities as the "private" property of an RCA rather than as "public" property to be maintained by a local government. Thus, the regulatory activities of an overlying unit affect the provision activities and responsibilities of RCAs. Some of these consequences may be unintended, although not necessarily problematic (i.e., the intention is to require developers to build facilities to a certain standard, but the result is to endow RCAs with greater provision responsibilities).

Once established, both the RCA and local governments function concurrently as provision units for the same population. To a considerable degree, RCAs seem to *substitute* for service provision by local governments and, often, simultaneously increase the level of service provision for association members. Consequently, RCAs tend to reduce the service demands made on municipalities and counties, while responding more precisely to the service demands of their members. Less frequently, RCAs function as supplementary service providers, adding their own increments to the level of provision made available by local governments.

To the extent that RCA service provision substitutes for local government provision, a degree of tension arises between RCAs and overlying local governments with respect to taxes. A local government may continue to collect taxes from the residents of RCAs, while not providing them with services comparable to those provided to non-RCA residents. This tension is not different from the difficulties that often accompany overlying jurisdictions among general-purpose local governments (e.g., counties that overlay both municipalities and unincorporated areas). Counties sometimes offer tax concessions to municipalities to encourage them to undertake their own service provision, thus relieving county government of responsibility. RCAs offer the potential for similar "load shedding" by local governments. In any event, overlapping service responsibilities among jurisdictions in no way imply wasteful duplication of effort.[13]

In the case of St. Louis private street associations,[14] two municipalities are virtually blanketed by private streets, and there is no problem of disparity in municipal street provision within those municipalities. In the other municipalities, however, RCA residents pay taxes to support municipal streets while also paying for their subdivision streets separately. This represents a significant departure from fiscal equivalence in the municipality. RCA residents are subsidizing street services for non-RCA residents. Yet, private street associations get the added benefit of being able to control street access, and this may be mainly what they are paying for. The price of autonomy is what is sometimes called "double taxation."

One option available to many, but not all, RCAs is to create a new local government with coterminous boundaries. If the immediate overlying local government is a county or a township, it is possible that the citizens of an RCA may be able to incorporate as a municipality, depending on state law. When this happens, the RCA continues to exist, but is supplemented by municipal organization. Pennsbury Village, located in Allegheny County, just outside Pittsburgh, is a condominium that incorporated as a borough under Pennsylvania law when faced with a demand by the overlying township to abandon its sewage treatment facility and hook onto a new township system.[15] Many of the small municipalities in St. Louis County were originally private subdivisions, and the subdivision associations continue to function concurrently with the municipalities.[16]

Another role that may be assumed by overlying local governments relates to conflict resolution. Conflicts between individual homeowners and an RCA would seem to require reference to third parties. Often this can mean litigation, but an overlying local government can, by mediating conflicts, provide a service short of going to court. Information disclosure rules, required by state law or local ordinance, amount to anticipatory conflict resolution. The use of overlying jurisdictions to provide an arena for the resolution of conflicts in complex local public economies is hardly unusual. The only difference in this case is the private legal character of RCAs. Because the RCA results from a series of private transactions, conflicts that arise seem to come to the attention of state and local consumer protection agencies. A conflict between an RCA and an individual member, however, is not one between a seller and a buyer. Not only is the relevant law that applies much different, but the relationship among neighbors also is a continuing one. A closer analogy would exist to family relations than to consumer protection.

Conclusion

A substantial consensus is emerging that the care of common property and neighborhood service provision are appropriate RCA functions. Regulation of private property use is perhaps also an appropriate function of RCAs, assuming an increasing demand for neighborhood amenities and an assurance that current amenities will continue. In buying into an RCA, homeowners implicitly agree to shoulder the burdens associated with participation in governing a collective association in order to manage common grounds and facilities. Deed covenants amount to a tacit "social contract" among the members of an RCA. Adjustments of property relations among homeowners, however, may often be too difficult. Market adjustments cannot correct for a developer's mistake in writing deed covenants that homeowners subsequently learn are too restrictive. The rules under which RCAs are formed and, in particular, the rules under which restrictive covenants are written and can be rewritten, need to be

evaluated carefully in view of accumulating experience.

Overall, RCAs have much to contribute to the performance of local public economies. By closely matching association boundaries to particular subdivisions and housing developments, and by using revenue-raising instruments that are closely matched to benefits received, RCAs yield both fiscal equivalence and more precise preference satisfaction for their members. RCA members tend to get what they pay for and to pay for what they get—from their association. Difficulties arise, however, in fiscal equivalence among RCA and non-RCA communities within local government jurisdictions. As RCAs increase in number, the payment of taxes by RCA members without an equivalent return in public services can be expected to generate conflict. At the same time, some local governments may find RCAs a useful means of "load shedding," allowing them to concentrate on service provision and regulation activities that address issues of broader concern than specific neighborhoods. The result will be a more highly differentiated local public economy that is better able to serve both the diverse and the common interests of its various communities.

NOTES

[1] See ACIR, *The Organization of Local Public Economies*, A-109 (Washington, DC: U.S. ACIR, December 1987) and Ronald J. Oakerson, "Local Public Economies: Provision, Production, and Governance," *Intergovernmental Perspective* 13 (Summer/Fall,1987): 20-25.

[2] See, for example, ACIR, *Metropolitan Organization: The St. Louis Case*, M-158 (Washington, DC: U.S. ACIR, September 1988).

[3] This distinction was introduced by Vincent Ostrom, Charles M. Tiebout, and Robert Warren, "The Organization of Government in Metropolitan Areas: A Theoretical Inquiry," *American Political Science Review 55* (December 1961): 831-842. See ACIR, *The Organization of Local Public Economies* for an elaboration of these ideas.

[4] See ACIR, *The Organization of Local Public Economies*, pp. 7-10.

[5] Ibid., pp. 18-20.

[6] See the argument made by Anthony Downs, *Urban Problems and Prospects*, 2nd ed. (Chicago: Rand McNally College Publishing Company, 1976), Chapter 12.

[7] The distinction between exit and voice was introduced by Albert O. Hirschman, *Exit, Voice and Loyalty* (Cambridge, Mass.: Harvard University Press, 1970).

[8] See the discussion by Dean Miller in this volume.

[9] Many developers voluntarily allow this practice, but it is not known to what extent this practice is followed.

[10] See the critique by Stephen Barton and Carol Silverman in this volume.

[11] See the discussion by Ronald Oakerson in this volume.

[12] Alexis de Tocqueville, *Democracy in America* (New York: Alfred A. Knopf, 1945 [1835]).

[13] See, for example, ACIR, *Metropolitan Organization: The St. Louis Case*, pp. 151-152.

[14] See the discussion by Ronald Oakerson in this volume.

[15] See ACIR, *Metropolitan Organization: The Allegheny County Case* (forthcoming 1989).

[16] ACIR, *Metropolitan Organization: The St. Louis Case*, pp. 15-17.

EXHIBIT P

EXHIBIT P

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fifth Session
March 6, 2009

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:12 a.m. on Friday, March 6, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

Assemblyman Richard McArthur (excused)

Minutes ID: 391

CMB91

GUEST LEGISLATORS PRESENT:

Assemblyman Joseph M. Hogan, Clark County Assembly District No. 10
Assemblywoman Ellen Spiegel, Clark County Assembly District No. 21

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Robert Gonzalez, Committee Secretary
Nichole Bailey, Committee Assistant

OTHERS PRESENT:

Pam Borda, President and General Manager, Spring Creek Association, Spring Creek, Nevada
Stephanie Licht, Private Citizen, Spring Creek, Nevada
Warren Russell, Commissioner, Board of Commissioners, Elko County, Nevada
Michael Buckley, Commissioner, Las Vegas, Commission for Common-Interest Communities Commission, Real Estate Division, Department of Business and Industry; Real Property Division, State Bar of Nevada
Robert Robey, Private Citizen, Las Vegas, Nevada
Barbara Holland, Private Citizen, Las Vegas, Nevada
Jon L. Sasser, representing Washoe Legal Services, Reno, Nevada
Rhea Gerkten, Directing Attorney, Nevada Legal Services, Las Vegas, Nevada
James T. Endres, representing McDonald, Carano & Wilson; and the Southern Nevada Chapter of the National Association of Industrial and Office Properties, Reno, Nevada
Paula Berkley, representing the Nevada Network Against Domestic Violence, Reno, Nevada
Jan Gilbert, representing the Progressive Leadership Alliance of Nevada, Carson City, Nevada
David L. Howard, representing the National Association of Industrial and Office Properties, Northern Nevada Chapter, Reno, Nevada
Ernie Nielsen, representing Washoe County Senior Law Project, Reno, Nevada
Shawn Griffin, Director, Community Chest, Virginia City, Nevada
Charles "Tony" Chinnici, representing Corazon Real Estate, Reno, Nevada

Jennifer Chandler, Co-Chair, Northern Nevada Apartment Association, Reno, Nevada
Rhonda L. Cain, Private Citizen, Reno, Nevada
Kellie Fox, Crime Prevention Officer, Community Affairs, Reno Police Department, Reno, Nevada
Bret Holmes, President, Southern Nevada Multi-Housing Association, Las Vegas, Nevada
Zelda Ellis, Director of Operations, City of Las Vegas Housing Authority, Las Vegas, Nevada
Jenny Reese, representing the Nevada Association of Realtors, Reno, Nevada
Roberta A. Ross, Private Citizen, Reno, Nevada
Bill Uffelman, President and Chief Executive Officer, Nevada Bankers Association, Las Vegas, Nevada
Alan Crandall, Senior Vice President, Community Association Bank, Bothell, Washington
Bill DiBenedetto, Private Citizen, Las Vegas, Nevada
Michael Trudell, Manager, Caughlin Ranch Homeowners Association, Reno, Nevada
Lisa Kim, representing the Nevada Association of Realtors, Las Vegas, Nevada
John Radocha, Private Citizen, Las Vegas, Nevada
David Stone, President, Nevada Association Services, Las Vegas, Nevada
Wayne M. Pressel, Private Citizen, Minden, Nevada

Chairman Anderson:
[Roll called. Chairman reminded everyone present of the Committee rules.]

We have a rather large number of people who have indicated a desire to speak. We have three bills which must be heard today, so we will try to allocate a fair amount of time to hear from those both in favor and against so that everybody has an opportunity to be heard.

Ms. Chisel, do we have a handout from legislation we saw yesterday?

Jennifer M. Chisel, Committee Policy Analyst:
Yesterday we heard Assembly Bill 182, which was brought to the Committee by Majority Leader Oceguera. During that conversation, Lieutenant Tom Roberts indicated that he would provide to the Committee a list of the explosive materials that is in the Federal Register. That has been provided to the Committee, and that is what is before you (Exhibit C).

Chairman Anderson:
Mr. Gustavson, I think this was part of the concerns you raised. You wanted to see the specific prohibited materials. With that, Mr. Carpenter, I think we are going to start with your bill. Let me open the hearing on Assembly Bill 207.

Assembly Bill 207: Makes various changes concerning common-interest communities. (BDR 10-694)

Assemblyman John C. Carpenter, Assembly District No. 33:
Thank you, Mr. Chairman and members of the Committee.

[Read from prepared text, Exhibit D.]

Chairman Anderson:
The amendment (Exhibit E) is part of the copy of Mr. Carpenter's prepared testimony. Are there any questions on the amendment? No? Is there anyone else to speak on A.B. 207?

Pam Borda, President and General Manager, Spring Creek Association, Spring Creek, Nevada:
Thank you, Mr. Chairman and members of the Committee. I am the President and General Manager of the Spring Creek Association (SCA). We have existed for about 38 years, long before the Ombudsman Office was even thought about. When it was created in 1997 and then broadened in 1999, we were exempted from that office and from its fees. In 2005, there was a change to legislation, which compelled us to pay fees, but still exempted us from the services of the Ombudsman Office. We are here today to ask you to change it back and exempt us from paying those fees because we do not utilize their services. We have been taking care of our own problems in Spring Creek for 38 years, and we are pretty good at it. We do not believe we need the services of the Ombudsman Office, and therefore should not be paying fees to them. I have provided you with a handout with a lot of information about the history of Spring Creek. The biggest issue I would like to portray today is that, while this may not seem like a lot of money, our deed restrictions limit the amount that our assessments can be raised, unlike a lot of other homeowners' associations (HOA). Any raise in cost to us generally means we need to cut something out of our budget. If you can imagine, we have 158 miles of road that we are responsible for maintaining, which costs hundreds of thousands of dollars a year. We are not even doing the job that we need to do. This year, for example, we had to cut $500,000 out of our budget because of a 110 percent increase in our water rates and other utilities. The impact of the Ombudsman fees means that, if we have to pay those fees, we will be cutting out some other service to our homeowners.

Chairman Anderson:
Ms. Borda, you do not use the Ombudsman, at least you have not to date? You are precluded from using the Ombudsman?

Pam Borda:
We are exempt from it, yes.

Chairman Anderson:
That is because you have chosen not to avail yourself of the use of that office?

Pam Borda:
Yes, we have been exempt from it since the office was created.

Assemblywoman Dondero Loop:
I have actually been to Spring Creek many times visiting your schools. You mentioned 5,420 lots. Is this how many homes are actually up there, or simply lots?

Pam Borda:
That is referring to the number of lots. We are at 74 percent capacity.

Stephanie Licht, Private Citizen, Spring Creek, Nevada:
I have been a resident of Spring Creek HOA since September 1987. My first husband was Chairman of the Board for quite a few years in the early 1990s. I have been through eight different general managers, so I have some history of the particular problems that are related to the Association. All of those have been solved by things that are in place in our board—the way they conduct themselves, and the way the Committee of Architecture conducts themselves. Basically, we have taken care of our own problems for 38 years. If you look on the Ombudsman's page on the website, most of the things they deal with are arbitration and disputes between a homeowner and an overzealous board. We do not feel that we should fall under the Ombudsman, primarily because we are quite different from other HOAs. Mr. Chairman, I have brought with me a low-tech visual. If you will allow me to show a map, I would appreciate it.

This map is on loan from the Nevada Department of Transportation. In the upper left hand corner is just part of the mobile home section. The line transecting most of the center of that is Lamoille Highway. You can see that the lots are quite spread out. In fact, we abut a rancher's place on the right. All of our lots are over an acre, and are spread out all over. I think that part of Chapter 116 of *Nevada Revised Statutes* (NRS) at one time requested gated communities. The only way we could do that is by blocking off the state route with a toll gate, I guess. We are spread over most of 25 to 30 square miles.

We cover 19,000 acres that are interspersed with a lot of different kinds of things, some common and some private or federal. You can see some of the common elements in that, but there is quite a bit of Bureau of Land Management (BLM) property that surrounds us. There are some private areas in between. Some of what you see on the map are other small developments. We are just not like the other HOA properties, which are so close to one another.

Pam Borda:
We have four different housing tracts of land in the Spring Creek Association. It covers 30 square miles, and we have 158 miles of road.

Stephanie Licht:
I would be happy to answer any questions.

Assemblyman Horne:
What is to stop other associations from coming to the Legislature and asking to be exempted because they are not like others? Is this not a slippery slope? You say it is different because you are rural and, I think you said, "we take care of ourselves," and you are spread out over 30 square miles. Next time it could be another association with other dynamics who will want to be excluded.

Pam Borda:
That is a good question. The answer would be that our Conditions, Covenants and Restrictions (CC&Rs) are not restrictive like the typical HOA. We do not care what color someone paints his house, or what kind of fence he puts in. It is truly a rural environment where we do not make a lot of rules about how people live. They move out there to be left alone and to live as they choose. You will find that the typical HOA is extremely restrictive and makes more rules for homeowners and how they live. That is one of the primary differences between a rural agricultural HOA and an urban HOA.

Warren Russell, Commissioner, Board of Commissioners, Elko County, Nevada:
Thank you, Mr. Chairman. Two-thirds of my district, which is the Fifth District, is part of the Spring Creek HOA. I try to attend at least half the meetings by the SCA Board, both as a commissioner and as official liaison from the Elko County Commission. We continue to have a very close working relationship with this group. I support this bill, and everything that has been said before.

Chairman Anderson:
Commissioner Russell, are there services that the county provides in that area in which the HOA is treated differently than other organizations? Is that the only HOA you have in the county?

Warren Russell:
No, sir, that is not the only HOA in the county. We subsidize the road program throughout the HOA. The HOA is subject to codes and resolutions that we have established. Many of the issues that might arise for the residents who live in isolated areas would probably have no other recourse for resolution except through the HOA. There might be limited options for recourse pertaining to the laws of the county.

Chairman Anderson:
Do you have a similar relationship with other HOAs in the county in that you maintain their roads?

Warren Russell:
We do not maintain the roads of other HOAs. We do not maintain the roads in the Spring Creek HOA, either. We provide a subsidy.

Chairman Anderson:
Do you have any influence in deciding infrastructural questions such as the upkeep and development of roads, inasmuch as your budget is affected?

Warren Russell:
As a county, our budget would not be affected by this bill. The SCA would be affected. Our primary relationship would revolve around the use of the right-of-ways. All the roads have already been established in SCA, so we are not looking to develop new roads. That would be an exception rather than the rule.

Chairman Anderson:
You are misinterpreting the question. Obviously, this is going to be an economic advantage to SCA. Given the peculiar nature of this relationship between the county and SCA, is there any time when the SCA can place upon the county an economic demand without the input of the county? If the SCA wanted to build additional roads, would they not have to come to the county to gain approval since it is an additional cost to the county?

Warren Russell:
I think that it would be a voluntary decision if there were additional fiscal costs to the county associated with building new roads in Spring Creek. For example,

there are additional units that have decided to connect to utilities and roads that are outside of Spring Creek. That issue is handled by the SCA in a satisfactory manner in coordination with Elko County. I would say there is no impact to the county, but rather it falls upon the residents of Spring Creek, and the tax base in a general way.

Chairman Anderson:
I see no other questions. Thank you very much.

Michael Buckley, Commissioner, Las Vegas, Commission for Common-Interest Communities Commission, Real Estate Division, Department of Business and Industry; Real Property Division, State Bar of Nevada:
The Commission has no objection to the bill that would take these associations out of paying the ombudsman's fee.

Chairman Anderson:
Has the Commission taken a position regarding the loss of revenue that would stem from passage of A.B. 207?

Michael Buckley:
At the Commission meeting on March 2, 2009, we were advised that the compliance department of the Division had not ever had problems with Spring Creek. In that sense, there was never a use of the ombudsman facilities. We did not discuss the loss of revenue.

Chairman Anderson:
That is the heart of the bill. They have always been exempt from your oversight. Now, what they are saying is, "we should not be paying for it."

Michael Buckley:
Mr. Chairman, I think that is right. They have not been paying it in the past. They paid it only one year, I think. The loss would not affect the Ombudsman office.

Chairman Anderson:
Thank you, Mr. Buckley. Are there any questions? Thank you, sir. Is there anyone else compelled to speak in support of A.B. 207?

Robert Robey, Private Citizen, Las Vegas, Nevada:
I am supporting A.B. 207. I found the most interest in the idea of the open meeting law being applied. I wish that applied to all HOAs. I feel that HOAs are taxing authorities. We put assessments on people that they have to pay.

Chairman Anderson:
We are distributing the amendment that was faxed here just before we started today (Exhibit F). Did you have an opportunity to discuss this with Mr. Carpenter, Mr. Robey?

Robert Robey:
No, sir, I did not.

Assemblyman Carpenter:
I am aware that there are some people who want all associations to be under the open meeting law, but I think that would need discussion with all the people involved. All I know is that it works well at Spring Creek. Whether it would work with all the other associations, I am not in a position to say at this time.

Chairman Anderson:
It sounds as if the maker of the bill does not perceive this as a friendly amendment, Mr. Robey. The question of open meeting may require a longer discussion. The Chair will be placing several bills dealing with common-interest communities in a subcommittee. There are several bills that deal with that, and all of those will be worked out. If you would like, I will add your amendment to their responsibilities to include in the general law, rather than the specific law in this particular piece of legislation. If you would like to pursue it, I would be happy to put it in the work session and put it in front of the Committee. Your choice, sir.

Robert Robey:
I appreciate the time that you took to respond to me. Whatever you think is the wisest and best. I think that the open meetings are very important.

Chairman Anderson:
I do not disagree with you. It would be one of the recommendations that we would want to make to this piece of legislation to deal with all the common-interest communities. I do not disagree with the concept of having an open meeting law. Thank you.

We will not hold it for the work session on this particular piece of legislation unless a member of the Committee wants me to put it into the work session document. Two people have indicated to me a desire to serve on the common-interest community subcommittee. It is my intention to put in the recommendation for open meetings.

Anybody else feel compelled to speak on A.B. 207? Anyone in opposition?

Barbara Holland, Private Citizen, Las Vegas, Nevada:
Looking at number one, which exempts HOAs from paying the $3, you ask if there would be an impact on the Ombudsman Office. I can tell you right now, it would probably not have an impact. The Ombudsman Office has never had an audit. The $3 per unit per year is substantially more than what they actually need, so if we are going to exempt people from paying the $3, maybe we should look at reducing the $3 for everybody to a different number. I think it is about time the Legislature does something as far as auditing the Ombudsman Office. Number two, the last legislative session, the Legislature approved electronic mail. We can use the computer age electronic mail, which is still available for rural areas, to facilitate open meetings and to reduce scheduling costs. The law allows HOAs to create one newsletter, which they can create at the very beginning of the year, and list every single meeting time, thereby avoiding additional costs associated with the mailing of notices of their meetings.

Let us talk about the reserves. Assembly Bill No. 396 of the 74th Session, for which the Governor's veto was upheld, also had a section that talked about the reserve study. It talked about the counties with fewer than a certain number of people should be exempt from paying fees. I think the slippery slope is a very dangerous situation with many inequities. We have many small HOAs, and right now in southern Nevada, where we have a lot of foreclosures, they would love to be exempt from paying $3 to the Real Estate Division. As to reserve studies, I will let you know that these reserve studies cost an average of about $1,200 a year.

Chairman Anderson:
Ms. Holland, I do not believe the issue of reserve studies is in this bill.

Barbara Holland:
I am reading where they would be exempt from conducting a reserve study, as per item number 3.

Chairman Anderson:
So, you are speaking against this particular group.

Barbara Holland:
That is exactly correct, sir. I am against the exemption of HOAs from paying $3 for the ombudsman fee because: One, I think you can argue that there are many other types of properties that should be exempt. There is a need for an audit, because I think that $3 is too much. Two, the electronic mail that I mentioned would facilitate the open meeting laws. Three, HOAs should notify homeowners once a year about meetings. Because they do not have many of

the improvements that we have here in the urban areas, whether they are high-rises, condominiums, townhomes, and so forth, the average reserve study costs $1,200. That reserve study is done once every five years. There is absolutely no reason why they cannot budget for this. One of the Assembly members said something to the effect that, if we allow this exemption, there are many other associations that can come back with their own idiosyncrasies. I agree with this sentiment. Though Spring Creek may have 5,000 lots, there are some large associations in southern Nevada, in the thousands already, that could certainly look for having a reduction in their costs. We have a lot of planned urban developments (PUD) that are single-family homes. There are many associations that are not over-regulated, especially the PUDs. I certainly have many associations that have never been before the Ombudsman Office. We have a very clean record; we try to resolve all of our problems, too. The whole concept of NRS Chapter 116 was to be able to protect the members of the public. I am very glad they do not have any troubles today. People from the county areas other than Clark County have written letters to me about their issues for the column I write in southern Nevada on HOAs.

Chairman Anderson:
Thank you, Ms. Holland. Is there anyone else who wishes to speak in opposition? Is there anyone who is neutral? Let me close the hearing on A.B. 207. We will now turn to Assembly Bill 189.

Assembly Bill 189: Revises provisions governing the eviction of tenants from property. (BDR 3-655)

I will turn the Chair over to Vice Chair Segerblom.

Vice Chair Segerblom:
Is the sponsor for A.B. 189 ready? I will open the hearing on A.B. 189.

Assemblyman Joseph M. Hogan, Clark County Assembly District No. 10:
Good morning, Vice Chair Segerblom. Good to see you this morning.
[Read from prepared testimony (Exhibit G); submitted (Exhibit H) and (Exhibit I).]

Vice Chair Segerblom:
Thank you, Mr. Hogan. Mr. Sasser?

Jon L. Sasser, representing Washoe Legal Services, Reno, Nevada:
I appear today in support of A.B. 189. By way of background, I have been involved in the Nevada Legislature since 1983. I have testified on each landlord-tenant bill that has come before this body since that time. This is the third time I have been involved in an attempt to expand the time frames in this

process. The first time was in 1983, when Congresswoman Shelley Berkley (then Assemblywoman, 1983-1984) sponsored a bill that we got through the Assembly, but died in the final days of the session in the Senate. It would have wiped out our summary eviction process entirely, and created a normal summons and complaint process. Then, in 1995, I was involved with a bill to expand the time frame again. I am back today, and my hope is that the applicable cliché is "the third time is a charm," rather than "three strikes and you're out." I represent two legal services organizations that represent tenants in this eviction process. Rarely do we have the luxury of representing tenants in court. Most of the time, we provide advice and brief service, and help with some pro se forms.

The number of evictions in Nevada is staggering. I have given you some statistics in my written testimony (Exhibit J). For example, in a Las Vegas Justice Court, they have 23,000 evictions filed each year. As you know, there are many good tenants, and some bad tenants. There are also many good landlords and a few bad ones. There are some transient tenants that have little contact with our state, and there are some huge apartment complexes owned by out-of-state landlords who also care little about Nevada. There is much mud that can be thrown in both directions. You will probably hear some of that mud today, unfortunately. However, I ask you to stay above the fray and look at the process dispassionately and try to decide if the process is fair or if it needs change.

Nevada's eviction procedures, as Assemblyman Hogan mentioned, are among the fastest in the country. You have been given a wonderful chart prepared by the Legislative Counsel Bureau (LCB) research staff showing the process in the western states around us. You will see that there are three stages in the process. The first is, prior to any court action, there is a notice that must be given from a landlord to a tenant telling him to do something: pay rent, get out, to cure a lease violation, or to be out after a certain period of time if there is an alleged nuisance. Our time frames are in-line with other states there. Some are actually a little bit shorter. California was mentioned with 3 days for nonpayment of rent, whereas we have 5 days.

The next stage is the court process. That is where Nevada is truly unique. As mentioned in a nonpayment of rent case, you get a five-day notice to pay or quit, or, if you are going to contest the matter, file an affidavit with the court. If you file an affidavit, a hearing is scheduled the next day. If you do not file an affidavit, then on noon of the fifth day, the landlord can go down and get an order removing the tenant within 24 hours. If you lose that hearing the day after you file your affidavit, you again can be evicted within 24 hours. That, too, is unique in Nevada. If you look at the chart provided to you, in all of the

other states, there are somewhere between 2 to 7 days that the sheriff has to put you out at the end of the process, instead of within 24 hours as it is in Nevada. Also, in every other state, there is a regular lawsuit filed, a summons and complaint, where the defendant can either file an answer within a certain period of time, or the summons and complaint contains a court date, which is usually 7 days or more until there is an actual hearing. So the speed in our process is in step two and in step three. Because the summary eviction process is well-rooted in Nevada, we have not proposed changing that. Instead, we ask you to add some time on the front end. We think that would be very helpful in a number of cases. It might even avoid eviction. If a tenant has 10 days instead of 5 days to try and raise the rent, and they pay it, then the landlord is better off and the court system is better off. An eviction has been avoided, and the rent has been paid. Nowadays, with people who had a job two months ago and are now trying to live on unemployment compensation, for example, juggling those bills, that extra time can often make a crucial difference. Also, we have a few programs around the state that offer some rental assistance to tenants in this situation. Unfortunately, those are few and far between. Their processes take some time to go through, and frequently the programs do not have enough money. For example, calls to the Catholic Community Services in Reno indicate they get 300 applications a month, and they have only enough money to help about 10 to 12 families each month. The rest are out of luck.

Let me walk you through the bill. First, in section 1, we are expanding the nonpayment of rent notice from 5 to 10 days. In section 2, we are expanding from 3 to 5 days the notice for waste or nuisance. Section 3 talks about a breach of lease. Today, you get a 5-day notice. You have 3 days to cure that breach, and then you have to be out 2 days later. We would change that from 7 to 10, and I have provided in my testimony some comparison to other states in our region and around the country. Section 4 goes into the eviction process itself in the statute. It repeats the change from 5 to 10 days for nonpayment of rent, expands from the eviction within 24 hours to 5 days. Then there is another section, for which I have received a number of calls. It might inadvertently create a problem, if the Committee chooses to process this bill. It might need to be looked at and some issues resolved. There is an unusual problem sometimes in the courts where a 5-day notice is given. A tenant goes down the next day and files his answer. Then, he gets a hearing 1 day later. If he loses, he is out within 24 hours. He is out before the rent is actually due under the 5-day notice to pay or quit. The way this bill is drafted, it would propose to give the tenant up to the end of the 5-day period to actually pay the rent. I have received some concern from the constables' offices in southern Nevada, that this may create a problem with them if they have a notice in hand. How do they know the rent was paid? There are complications contacting the constable and stopping them in their tracks. Court clerks have expressed some

concern. How do they know this receipt for the rent that the tenant brings is a legitimate receipt? I think that does create some logistical complications. I have some ideas about how that might be solved, and would like an opportunity, if you go forward, to meet with the parties, and we can resolve that one.

On the next two sections of the bill, the bill drafter went a little further and gave the tenants a little more than we had originally contemplated. I am glad to have that, of course, but I would say upfront that it gave us more than what we contemplated. It amends *Nevada Revised Statutes* (NRS) 40.254, which deals with evictions that are from other than nonpayment of rent. Now the time frame is, at the end of their notice period, say a 30-day notice for a no-fault eviction. The landlord then gives a 5-day notice to tell the tenant to be out or to file an affidavit with the court. The bill extends that to 10 days. That is wonderful, but it is not what we had asked for originally. I am not pressing that at this time. You have already had your 30 days, you have already had your 5 days, and it is stretching it a little bit to ask for 10 days instead.

Also there is an amendment in the bill to NRS 40.255 that deals with evictions, post-foreclosure sale. That is the subject of another bill in the Commerce Committee, Assembly Bill 140 that expands the time frame for single-family dwellings to 60 days. This bill, as drafted, would change it from 3 to 5 days. Again, that would affect those who are in a sale situation or in a foreclosure sale situation. That would be nice, but it is not something that we specifically asked for. We have also been approached by Jim Endres, who has called our attention to the fact that the way the bill is drafted, it may affect commercial property as well as residential property. It was certainly not our intention to change the law as to commercial property. I believe he has offered an amendment that I believe the sponsor of the bill has seen. I do not want to speak for him, but I have no problem with it. Finally, we believe the time has come to level the playing field. This is a value difference between my friends, the realtors, and me. Normally, we can work things out over the years, but I think things are out of balance and in favor of the landlords in Nevada. The playing field needs to be leveled, as compared to these other states. They do not feel this is the case. I ask you again to rise above the fray and look at the fairness of the process to decide, and I ask you to pass A.B. 189 as may be amended in work session. Thank you, Mr. Vice Chair.

Vice Chair Segerblom:
Thank you, Mr. Sasser. Could you briefly walk through the typical time frame of eviction? Say I have rent due the first of the month, and I do not pay it. These dates get a little confusing. Please go through the different stages.

Jon Sasser:
I would be happy to, Mr. Vice Chair. If my rent is due on the first of the month, and I do not pay on the first, and it is now the second of the month, the landlord has the legal right to give me a 5-day notice to pay or quit my rent by noon of the fifth day after the receipt of that notice.

Vice Chair Segerblom:
Let me stop you there. The law seems to say 3-day notice. Is that a different 3 days?

Jon Sasser:
For nonpayment of rent, the notice is 5 days. There are other notices that we are affecting as well: notice for breach of lease, and notice for nuisance and waste. But for nonpayment of rent, we propose to change the current 5-day limit to 10 days. Again, going back to the current law, at noon on the fifth day, if the tenant has not filed an affidavit, paid the rent, or left, then the landlord can go to the court and apply for an order of removal. He can get it that day, and the tenant can be evicted within 24 hours. If the tenant files the affidavit by noon of the fifth day, the court schedules a hearing as soon as possible—at least in Reno, that is typically the very next day—and if the tenant loses, he can be evicted within 24 hours. I would note, these are judicial days and not calendar days. When you start adding in the weekends, it does lengthen it out a bit. That is the way it works for nonpayment of rent. For something that is not a rent case, it is a little different. You get a 30-day notice for no cause (we are not trying to change that), then at the end of that 30 days, if the tenant is still there, the landlord gives that 5-day notice that says be out within 5 days or file an affidavit with the court, or we can go to court and seek relief.

Vice Chair Segerblom:
So, right now, I do not pay the rent on the first of the month. The second, they give me a notice to quit. I have 5 days to go to court and file an affidavit. You are requesting that it be changed to 10 days?

Jon Sasser:
That is correct.

Vice Chair Segerblom:
Right now, if I file an affidavit and go to court, and I lose, I get evicted the next day. Are you extending that time?

Jon Sasser:
We are asking for that to be extend to 5 days.

Vice Chair Segerblom:
Okay. Any questions? Mr. Hambrick.

Assemblyman Hambrick:
Thank you, Mr. Vice Chair. Mr. Sasser, the bill, as it is presented right now, appears to throw out the baby with the bathwater. I think things have to be worked over. There are so many consequences that I do not think we really realize what is coming down the pipeline. Who is this bill really meant to protect? When we start talking about large conglomerates, we have one mind-set. But when we are talking about individuals, I think we have a different mind-set. We need to address those issues. I am cognizant of the possible unintended consequences. I hope we can address those issues.

Vice Chair Segerblom:
Are there any questions? I see none. Assemblyman Hogan, do you have anyone else you wish to speak on your behalf?

Assemblyman Hogan:
Yes, Mr. Vice Chair. In Las Vegas, we have Rhea Gerkten of Nevada Legal Services who is familiar with the process in that locale and could add a little something and also answer questions that might be on the minds of some of your members who are from Las Vegas.

Rhea Gerkten, Directing Attorney, Nevada Legal Services, Las Vegas, Nevada:
I am testifying in support of A.B. 189 (Exhibit K). We at Nevada Legal Services at the Las Vegas office represent clients who receive a federal subsidy or a county subsidy for their rent. We have a tenants' rights center that assists individuals who are in private landlord situations that do not receive a subsidy. We are primarily going to court only on tenants in subsidized apartments because the need is so great for eviction defense work. Because of that, we see a lot of disabled, elderly, and single mothers with small children as our clients. It is extremely difficult at times for our clients, especially in these difficult economic times, to come up with the money, for various reasons, within the 5-day time frame. Some of our disabled clients might, for one reason or another, not have received their social security benefits on the third of the month, as they had hoped, and are therefore unable to pay by the fifth day of the month. Some of our clients are individuals who are applying for unemployment benefits. The unemployment rate, as per my written testimony, is 9.1 percent; however, it may be higher than that now in Nevada. It takes at least three months to get a hearing if someone is initially denied unemployment benefits. The actual claims process can take some time, so even someone who applies for unemployment benefits is not necessarily going to be approved right away. Dealing with unemployment benefits and trying to find a job makes it

difficult to juggle bills. Some of our clients have to choose whether they are going to buy food for their children or pay rent, late fees, and utilities. Again, some of our clients are single mothers with small children who rely on child support payments. If, for some reason, they do not get their child support checks that month, they are going to have a difficult time coming up with the money to pay. This is not designed to get rid of late fees; these tenants are still required to pay late fees. Late fees are designed to protect the landlords against some financial loss. Certainly, this is not going to do away with any late fee provisions in a lease agreement.

I think Mr. Sasser mentioned social services and tenants applying for rental assistance. That also is not a quick process. Even if money is available, it can take time for tenants to receive financial assistance. The landlords first have to agree to accept the money from the social services agency, so it is not like the tenant can just walk in, say "I need help," get the money, and go pay the rent. There is a back and forth with landlords and with the tenants before they are even eligible to receive the financial assistance, and it does take quite a bit of time in some instances. We would also support the lengthening of time from 24 hours to 5 days after a family receives the order for summary eviction. It is very difficult for a disabled or elderly tenant to pick up and move within 24 hours after a judge tells him that he is going to be evicted. Giving someone a little additional time might mean he gets to remove his property out of the landlord's house or apartment prior to the constable coming to lock him out, which should save the landlords a lot of headaches in the long run. If former tenants remove all their property, landlords would not be required to store and keep the property for 30 days, as per Nevada law. With these changes, the Nevada eviction law would still be one of the fastest in the country. In most other states, it takes quite a bit longer to see an eviction through. We just ask that tenants be given a little bit of extra time in these difficult economic times in which to pay their rent or cure lease violations.

Vice Chair Segerblom:
Because of the tough economic environment, have you seen an increase in evictions in the past year or six months?

Rhea Gerkten:
What we have seen is a huge increase in the number of denials of unemployment benefits. Eviction cases have been increasing, especially with the foreclosure crisis. We are seeing a lot more tenants come in that are being evicted after foreclosure. So, yes, in the general sense, evictions have been increasing, but I cannot give you any numbers.

the association and the legitimate expectations of first mortgage lenders. Fundamental to that belief was the assumption that, if an association took action to enforce its lien and the unit/parcel owner failed to cure its assessment default, the first mortgage lender would promptly institute foreclosure proceedings and pay the prior six months of unpaid assessments to the association to satisfy the limited priority lien — thus permitting the mortgage lender to preserve its first lien position and deliver clear title in its foreclosure sale. The drafters further understood — based on circumstances then existing — that the first mortgage lender's foreclosure proceeding would likely be completed within six months (particularly in jurisdictions with nonjudicial foreclosure) or a reasonable period of time thereafter, minimizing the period during which unpaid assessments would accrue for which the association would not have first lien priority. Finally, the drafters anticipated that the unit/parcel would, in the typical situation, have a value sufficient to enable the first mortgagee to recover the both the unpaid mortgage balance and the cost of six months of assessments. Once a buyer was in place — whether the foreclosing first mortgagee or a third party — that buyer would have to begin making monthly assessment payments, thus preserving the association's ability to carry out its maintenance and services obligations.

Today's Marketplace. The real estate market facing common interest communities today is quite different from the one contemplated by the drafters of the Uniform Laws:

- Many units/parcels in common interest communities are "underwater," with values below the outstanding first mortgage balance.

- More significantly — particularly in states with judicial foreclosure — there are long delays in the completion of foreclosures. During this time, neither the unit/parcel owner nor the mortgagee typically pays the common expense assessments — the unit/parcel owner is unable or unwilling to do so, and the mortgagee is not legally obligated to do so prior to acquiring title.

If it takes 24 months for a mortgagee to complete a foreclosure, but the association has a first priority lien for only the immediately preceding six months of unpaid assessments, the consequences for the association can be devastating. The association may receive payment of six months worth of assessments, but because of depressed unit/parcel values, the sale will not generate surplus proceeds from which the association could satisfy the subordinate portion of its lien — and the association likely could not collect a judgment against the unit/parcel owner for that unpaid balance.

Because an association's sources of revenues are usually limited to common assessments, the remaining residents of the community bear the consequences of default by a unit/parcel owner of its assessment obligations, unless the state's statute requires the mortgagee to bear some portion of that cost. As suggested above, § 3-116(c)'s "split" priority for association liens was premised on the assumption that the six-

month limited priority lien would protect the mortgagee's expected first lien position while enabling an association to recover a substantial portion of the common expense costs that would accrue during a period in which the first mortgagee was foreclosing on the unit/parcel. However, if foreclosure takes substantially longer than six months and foreclosure proceeds are inadequate to pay off the first mortgage, the association can collect only a fraction of unpaid assessments from the mortgagee, effectively forcing the remaining owners to bear increased assessments or decreased maintenance/services.

This problem has become extreme in the current economic environment, in which long foreclosure delays have become commonplace. In some cases, delay is attributable to the size of defaulted mortgage portfolios having overwhelmed the capacity of lenders and their servicers. Faulty record-keeping and transaction practices by both lenders and servicers have prompted statutory and judicial responses that have lengthened the foreclosure timeline in judicial foreclosure states.[3] Further, anecdotal evidence suggests that some mortgage lenders are delaying the institution of foreclosure proceedings on units/parcels affected by common interest assessments. If the lender acquires such a unit/parcel at a foreclosure sale via credit bid, the lender (as a successor owner of the unit/parcel) becomes legally obligated to pay assessments arising during the lender's period of ownership. The lender may fear that it may be unable to resell the unit/parcel quickly and for an appropriate return in a depressed housing market — recognizing that it will incur liability for assessments during any period in which it holds the unit/parcel for resale. Thus, for two reasons, the lender has a substantial economic incentive to delay the foreclosure. First, the lender may benefit from a higher recovery in the event that the local housing market experiences any recovery during the period of delay. Second, the delay enables the lender to avoid incurring any legal obligation to pay common expense assessments on the unit/parcel as those assessments accrue during the delay prior to foreclosure.

While the existing legal infrastructure gives the mortgage lender a substantial economic incentive to delay foreclosure, the consequences of this delay are devastating to the community and the remaining residents. To account for the unpaid assessments, the association must either increase the assessment burden on the remaining

[3] The Federal Housing Finance Authority, conservator for Fannie Mae and Freddie Mac, has published foreclosure timelines for all 50 states, reflecting the "periods within which Enterprise servicers are expected to complete the foreclosure process for mortgages that did not qualify for loan modification or other loss mitigation alternatives." Notice, State-Level Guarantee Fee Pricing, Federal Housing Finance Agency (September 25, 2012), 77 Fed. Reg. 58991, 58992. FHFA prepared these timelines from an analysis of the actual experience of Fannie Mae and Freddie Mac with foreclosure processing in each state, as adjusted for each state's statutory requirements and changes in law or practice in response to the foreclosure crisis. *Id.* The national average of the FHFA timelines is 396 days, ranging from 270 days (a common timetable in nonjudicial foreclosure states such as Georgia, Michigan, Minnesota and Missouri) to 750 days in New Jersey and 820 days in New York. *Id.* at 58992, 58993.

unit/parcel owners or reduce the services the association provides (e.g., by deferring maintenance on common amenities). If the other community residents have to pay the burden of increased assessments to preserve community services/amenities, the delaying lender receives a benefit — the value of its collateral is preserved, to some extent, while the lender waits to foreclose. Yet this preservation of the mortgage lender's collateral value comes through the community's imposition of assessments that the lender does not have to pay or reimburse. This benefit arguably constitutes unjust enrichment of the mortgage lender, particularly to the extent that the lender enjoys this benefit by virtue of a conscious decision to delay instituting or prosecuting a foreclosure. See generally Andrea Boyack, *Community Collateral Damage: A Question of Priorities*, 43 Loy.U.Chi.L.Rev. 53 (2011).

THE PURPOSE OF THIS REPORT

The Board has two primary purposes in issuing this Report. The first purpose is to address the appropriate interpretation of the existing six-month limited priority lien provision in the Uniform Acts. In states that have adopted § 3-116(c) or a provision substantially comparable to it, the pressures described in the Introduction have produced an increasing volume of litigation between associations and first mortgage lenders regarding the proper scope of the association's lien priority. This litigation may include not only questions regarding the effect of foreclosure proceedings by the association and/or the first mortgage lender, but also questions regarding whether an association can assert its six-month assessment lien priority only on a one-time basis or on a recurring basis (i.e., each time it brings an action to enforce its lien for unpaid assessments). As a result, the Board has prepared this Report to clarify, for the benefit of parties and courts faced with these disputes, the intended application of § 3-116(c) in a variety of scenarios in which priority disputes might arise.

The second purpose is to acknowledge — as addressed in the Introduction — that the existing law governing the relative priority of association liens and first mortgage liens is unsatisfactory. In a slight majority of states, association liens are subordinate to first mortgage liens and mortgage lenders have no obligation to pay or reimburse assessments that accrued prior to the lender's acquisition of title in a foreclosure sale. As a result, first mortgage lenders effectively can shift the costs of preserving the value of their collateral onto the remaining unit/parcel owners. Even in states that have adopted § 3-116(c) or a comparable limited priority rule for association liens, the six-month period of limited priority has proven insufficient to protect the community's financial interests. The Board thus encourages the ULC to consider preparing a uniform law that would strike a more appropriate balance between the interests of first mortgage lenders and common interest community associations and their residents.[4]

[4] In a state that has adopted § 3-116(c) of the Uniform Laws or a similar provision, the new uniform law would effectively function as an amendment to the existing state statute. In states

APPLICATION OF § 3-116(c) AND THE SIX-MONTH LIMITED PRIORITY LIEN

This portion of the Report addresses the intended application of § 3-116(c) through examining a series of examples, the facts of which are reflective of those in judicial opinions addressing the relative priority of association liens and mortgage liens under § 3-116(c). Each example presumes the following facts: Pinecrest is a common interest community created by virtue of a recorded declaration pursuant to UCIOA. Under the declaration, parcels or units within Pinecrest are subject to a mandatory annual common expense assessment of $3,000, payable to Pinecrest Property Owners Association (PPOA) in monthly installments of $250. The assessments pay for operating expenses of PPOA, including the maintenance and insurance of common facilities and recreational areas within Pinecrest.

Unpaid assessments constitute a lien in favor of PPOA upon the affected parcel or unit. Homeowner is the owner of a parcel or unit within Pinecrest, which parcel or unit is subject to a properly recorded mortgage or deed of trust in favor of Bank, securing the repayment of the unpaid balance of Homeowner's mortgage debt to Bank in the amount of $200,000. In each example, Homeowner is in default to Bank on its debt secured by a mortgage or deed of trust, and is also in default to PPOA in payment of assessments.

Example One: Homeowner has failed to pay both its common expense assessments and its mortgage for a period of 12 months, Bank institutes a foreclosure proceeding, joining PPOA as a party. Bank ultimately proceeds with a proper foreclosure sale, at which Buyer purchases the unit/parcel for $150,000.

Section § 3-116(c) establishes that the association's assessment lien is "prior to" even the lien of a first mortgage to the extent of "common expense assessments ... which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien." This means that prior to the sale, PPOA had a first priority lien in the unit/parcel to secure the payment of the preceding six months of common expense assessments ($1,500); Bank effectively had a second priority lien to secure the outstanding mortgage balance ($200,000); and PPOA had a third priority lien to secure the payment of the additional six months of unpaid assessments ($1,500).

When Bank forecloses its mortgage in this context, the foreclosure sale extinguishes its mortgage and PPOA's subordinate lien, with these liens being transferred to the sale proceeds. Bank's foreclosure sale does not extinguish PPOA's first priority "limited priority lien" for the immediately preceding six months of assessments, as that lien is senior under § 3-116(c) and is thus unaffected by Bank's foreclosure sale. Buyer will thus take title to the unit/parcel subject to PPOA's six-month limited priority lien; Buyer

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that do not currently have a limited priority provision for association liens, the new uniform law could be enacted as a freestanding statute.

must pay $1,500 to PPOA to extinguish this lien and clear her title.[5] The $150,000 sale proceeds will be applied first to costs of sale, then to the unpaid balance of Bank's mortgage. As the sale proceeds are insufficient to satisfy Bank's claim, PPOA is left with an unsecured claim for unpaid assessments beyond its six-month priority.

In Example One, it is conceivable that PPOA and Bank may agree, in advance, that the foreclosure sale will deliver clear title to the foreclosure sale purchaser. If PPOA and Bank so agree, the sale would also extinguish PPOA's six-month limited priority lien. If that sale produced a price of $151,500,[6] the proceeds would be applied first to costs of sale; the next $1,500 would be distributed to PPOA on account of its limited priority lien, and the balance would be distributed to Bank to be applied to the unpaid mortgage balance. Again, as the sale proceeds would be insufficient to satisfy Bank's claim, PPOA would be left with an unsecured claim for unpaid assessments beyond its six-month priority.

As described above, Example One involves a third party buying the property at Bank's foreclosure sale. It is perhaps more likely that Bank would end up as the foreclosure sale buyer by means of a credit bid, but this would not make a difference in terms of the appropriate application of § 3-116(c). If Bank buys the property for a credit bid in an amount less than or equal to the unpaid mortgage balance, Bank will receive clear title only if it pays PPOA $1,500 to satisfy its assessment limited priority lien; to the extent Bank does not pay that amount, Bank will take title subject to PPOA's lien, which PPOA could enforce by bringing a foreclosure proceeding of its own.

Example Two: Homeowner has failed to pay its common expense assessment for 12 consecutive months (a total unpaid balance of $3,000). PPOA brings an action to foreclose its lien, joining Homeowner and Bank as parties. Bank does not institute a foreclosure action. PPOA obtains a judgment allowing it to foreclose; neither Homeowner nor Bank takes steps to redeem their respective interests. At the sale, Buyer purchases Homeowner's interest for a cash bid of $207,000. PPOA incurs costs and attorney's fees of $5,000 in conjunction with the sale.

This example is based in part on the facts of *Summerhill Village Homeowners Association v. Roughley*, 270 P.3d 639 (Wash. Ct. App. 2012). In *Summerhill Village*, the association commenced an action against the unit owner and her mortgagee (GMAC) to obtain a judgment for unpaid assessments and to foreclose its lien. The association obtained a default judgment and sold the unit to a third-party buyer for

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[5] If Buyer redeems her title by paying off the lien before PPOA brings an action to enforce it, Buyer can redeem by paying only the six months of unpaid assessments. By contrast, if Buyer does not pay off the lien until after PPOA brings an action to enforce it, Buyer must also pay the costs and reasonable attorney's fees incurred by PPOA in its lien enforcement action.

[6] In this context, the sale should produce a higher price (by an increment of $1,500) as the foreclosure sale purchaser will receive clear title rather than title subject to PPOA's senior lien for $1,500 worth of assessments.

$10,302 ($100 over the balance of the judgment). GMAC later sought to set aside the default judgment and establish the priority of its mortgage lien (or, in the alternative, to redeem the property). The Washington Court of Appeals held that under the six-month limited priority lien as incorporated in Washington's version of the Uniform Condominium Act, Rev. Code Wash. Ann. § 64.34.364(3), the association's foreclosure sale had extinguished the lien of the mortgagee. Under this view, the association's six-month limited priority lien constituted a true lien priority and not merely a distributional preference in favor of the association.

To the extent that *Summerhill Village* held that the association's foreclosure sale extinguished GMAC's mortgage lien,[7] the decision is consistent with the proper understanding of the six-month limited priority lien reflected in § 3-116. Section 3-116(c) establishes that the association's lien is "prior to" even the lien of a first mortgage to the extent of both "common expense assessments ... which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien" and "reasonable attorney's fees and costs incurred by the association in foreclosing the association's lien." A foreclosure sale of the association's lien (whether judicial or nonjudicial)[8] is governed by the principles generally applicable to lien foreclosure sales, i.e., a foreclosure sale of a lien entitled to priority extinguishes that lien and any subordinate liens, transferring those liens to the sale proceeds. Nothing in the Uniform Laws establishes (or was intended to establish) a contrary result.[9]

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[7] The *Summerhill Village* court also concluded that under Washington's post-sale redemption statute, GMAC was not entitled to redeem the property. As the question of GMAC's right to redeem did not involve the interpretation of § 3-116(c), this Report expresses no opinion as to that aspect of the *Summerhill Village* decision.

[8] The Uniform Laws provide that in a condominium or planned community, the association must foreclose its lien in the manner in which a mortgage is foreclosed. Thus, an association may foreclose its lien by nonjudicial proceedings if the state permits nonjudicial foreclosure. See UCIOA § 3-116(k), UCA § 3-116(a).

[9] Two recent Nevada federal decisions interpreting Nevada's limited priority lien statute, Nev. Rev. Stat. § 116.3116(2)(c), rejected the reasoning of *Summerhill Village* and concluded that an association's nonjudicial foreclosure of its assessment lien did not extinguish the lien of the senior mortgage lender. See Weeping Hollow Avenue Trust v. Spencer, 2013 WL 2296313 (D. Nev. May 24, 2013); Diakonos Holdings, LLC v. Countrywide Home Loans, Inc., 2013 WL 531092 (D. Nev. Feb. 11, 2013). For example, in *Weeping Hollow*, the court held that the limited priority lien provision did not create a true lien priority, but instead merely provided that the association's lien would continue to encumber the property following a foreclosure sale by the first mortgagee, to the extent of the assessments unpaid during the preceding nine months. Weeping Hollow, 2013 WL 2296313, at *5 ("Read in its entirety, NRS 116.3116(2)(c) states that an HOA's unpaid charges and assessments incurred during the nine months prior to the foreclosure of a first position mortgage continue to encumber the property after the foreclosure of the first position deed of trust.... However, the super priority lien does not extinguish the first position deed of trust."). These decisions misread and misinterpret the Uniform Laws limited

As a result, in Example Two, under a proper application of § 3-116(c), PPOA would have a first priority lien on Homeowner's unit/parcel to the extent of $6,500, reflecting six months of unpaid assessments ($1,500) and the reasonable costs and attorney's fees incurred by PPOA in its foreclosure ($5,000). Bank would have a second priority lien on the unit/parcel to the extent of the $200,000 unpaid balance of Homeowner's mortgage debt. PPOA would have a third priority lien to the extent of the unpaid assessments beyond the six-month threshold (a total of $1,500).

PPOA's foreclosure sale in Example Two would extinguish both of its liens (the six month "limited priority lien" as well as the third-priority lien) as well as the Bank's mortgage lien, thereby delivering a clear title to Buyer. The extinguished liens would transfer to the $207,000 sale proceeds in the same order of priority. PPOA would receive the first $6,500 of the sale proceeds on account of its limited priority lien. Bank would receive the next $200,000 in sale proceeds on account of its mortgage lien. PPOA would receive the final $500 of sale proceeds on account of its third-priority lien, and the remaining $1,000 of PPOA's claim would be unsecured.

Example Three. Because of a dispute over PPOA's enactment of parking rules and imposition of parking fines, Homeowner withheld payment of the monthly installment of assessments. After six months, PPOA brings an action to enforce its lien for the six preceding months of unpaid assessments and to collect fines (joining Bank as a party). Homeowner continues to withhold assessments. Six months later, while the first action is still pending, PPOA brings a second action to enforce another lien for the most recent six months of unpaid assessments and fines. Again, PPOA joins Bank as a party and seeks to establish its lien priority over Bank for the additional six months of unpaid assessments. Bank objects that PPOA is entitled to only one six-month limited priority lien and cannot extend its lien priority through successive actions.

Example Three is based upon the facts in *Drummer Boy Homes Association, Inc. v. Britton*, 2011 Mass. App. Div. 186 (2011). In *Drummer Boy*, the association commenced three successive actions, seeking to establish lien priority for a total of 18 months of unpaid assessments. The association argued that the six-month limited priority lien provision in the Massachusetts statute [Mass. Gen. Laws Ann. Ch. 183A, § 6(c)] did not explicitly forbid — and thus presumptively permitted — successive actions to extend the association's six-month lien priority. The court rejected this view, instead concluding that the association's lien priority was limited to only six months of unpaid assessments:

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priority lien provision, which provides the association with priority to the extent of assessments accruing in the period immediately prior to the association's enforcement of its lien. As discussed in the text, this constitutes a true lien priority, and thus the association's proper enforcement of its lien would thus extinguish the otherwise senior mortgage lien.

> Under the Association's theory, however, a condominium association could file successive suits and thereby enlarge the priority portion of its lien such that its entire lien, no matter how large and no matter how much time was encompassed, would be prior to the first mortgage. If the Legislature had intended to make the condominium lien prior to the first mortgage, it could have done so explicitly.... Recognizing that a condominium association's lien could be extinguished entirely by a foreclosing first mortgagee, the legislature gave condominium associations a limited six-month period of priority. This was meant to be an "equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of mortgage lenders." [quoting Uniform Condominium Act (1980) § 3-116, Comment 2.]

On its face, the language of § 3-116(c) does not explicitly address whether an association may file successive actions every six months to extend its limited priority lien priority. Section 3-116(c) provides, in pertinent part:

> A lien under this section is also prior to [a first mortgage recorded prior to the due date of the unpaid assessments] to the extent of both the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien and reasonable attorney's fees and costs incurred by the association in foreclosing the association's lien.

Nevertheless, the result reached by the court in *Drummer Boy* is consistent with the appropriate understanding of § 3-116(c). *See also* Hudson House Condo. Ass'n v. Brooks, 223 Conn. 610, 61 A.2d 862 (1992) (rejecting the view that Connecticut six-month limited priority lien statute permitted an association to institute a foreclosure proceeding every six months and thereby obtain perpetual superpriority over mortgagee). Section 3-116(c) provides an association with a first priority lien for the common expense assessments accruing during the six months preceding the filing of "an action" to foreclose (either an action by the association to foreclose its lien, or by the first mortgagee to foreclose the mortgage). The second and third lien foreclosure actions commenced by the association in *Drummer Boy* were not necessary to enforce the association's lien; only one such action is needed for the purpose of selling the unit/parcel and delivering clear title.[10] Thus, the association's commencement of the successive actions could only have been to extend the association's lien priority beyond the six months reflected in § 3-116(c). In such a situation, a court should properly consolidate those successive actions into a single action — in which the association would receive first lien priority only for the immediately preceding six months of unpaid assessments.

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[10] Recognizing this, the court in *Drummer Boy* properly consolidated the three actions into a single action. *Drummer Boy*, 2011 Mass.App.Div. 186, at *1.

Thus, in Example Three, Bank can redeem its first mortgage lien from the burden of PPOA's limited priority lien by payment of $1,500 (reflecting the immediately preceding six months of unpaid assessments) plus the costs (including reasonable attorney's fees) incurred by PPOA in bringing the action to enforce its lien).[11] Once Bank has paid this amount to PPOA, PPOA's foreclosure sale to enforce the balance of unpaid assessments would transfer title to the unit/parcel subject to the remaining balance of Bank's first mortgage. PPOA's lien for the unpaid assessment balance would transfer to the proceeds of the sale (if there are any proceeds).[12]

Once the Association Brings an Action to Enforce Its Lien, Is Its Lien Priority Limited to the Prior Six Months of Unpaid Assessments, or Does Its Priority Extend to Include Any Assessments that Accrue During the Pendency of the Lien Enforcement Action? Example Three addressed whether an association could extend its lien priority by filing successive lien enforcement actions every six months. In a recent set of Vermont decisions, however, several associations argued that once an association files an action to enforce its lien, its lien priority should extend not only to the unpaid assessments that had accrued during the preceding six months, but also to all assessments that accrued and remained unpaid during the pendency of the lien enforcement action. Two recent Vermont Superior Court decisions have accepted this argument. *Bank of America, N.A. v. Morganbesser*, No. 675-10-10 (Jan. 18, 2013); *Chase Home Finance, LLC v. Maclean*, http://www.vermontjudiciary.org/20112015%20Tcdecisioncvl/2012-5-25-13.pdf (Jan. 31, 2012). In the *Morganbesser* case, the court concluded that section 3-116(c) is "silent" as to the issue of continuing priority, and reasoned that continuing priority is justified because the association could "extend its superpriority merely by filing a new action for unpaid assessments which have come due every six months" and requiring the association "to repeatedly file new actions simply to extend its priority position serves no purpose." In addition, the court in *Morganbesser* justified its interpretation of section 3-116(c) by observing that "[e]xtending the superpriority from 6 months prior to institution through to the end of the action also provides the mortgage lender with an incentive, albeit a small one, to proceed as expeditiously as permitted in their foreclosure actions."

As explained in Example Three, however, section 3-116(c) does not (and was not intended to) authorize an association to file successive lien enforcement actions every six months as a means to extend the association's limited lien priority. Only one action

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[11] In this situation, the court might reasonably conclude that the attorney fees incurred by PPOA in bringing a repetitive action were not reasonable and thus not secured by PPOA's superlien.

[12] If the value of the unit/parcel is less than the remaining balance due to Bank, of course, PPOA will have no substantial incentive to proceed with the foreclosure sale. No third party will agree to purchase the unit/parcel without an agreement by Bank to reduce the mortgage loan balance. PPOA could acquire the unit by credit bid, but this would obligate PPOA to pay ongoing assessments — accentuating the burden on the rest of the residents of the community, who will have to bear assessment increases or service decreases until PPOA could re-sell the unit/parcel.

is necessary to permit the association to enforce its lien, sell the unit/parcel, and deliver clear title; accordingly, successive actions would only serve to extend the association's lien priority beyond the six-month period expressed in section 3-116(c). Two other Vermont Superior Court decisions have disagreed with *Morganbesser* and *Maclean*, correctly concluding that section 3-116(c) places a six-month limit on the association's lien priority. See Vermont Hous. Fin. Auth. v. Coffey, S0367-11 CnC (Aug. 11, 2011) (Toor, J.); EverHome Mtge. Co. v. Murphy, No. 115-3-10 Bncv (Dec. 6, 2011) (Hayes, J.).

Example Four. Homeowner fails to pay common expense assessments and its mortgage debt for a period of six months. Both Bank and PPOA institute foreclosure proceedings. In response to PPOA's foreclosure proceeding, Bank redeems its lien position by tendering payment of $3,500 to PPOA ($1,500 for six months of unpaid common expense assessments plus $2,000 in costs and attorney fees incurred to that date by PPOA in enforcing its lien). For the next six months, while Bank's foreclosure action is pending, Homeowner again fails to pay common expense assessments. PPOA brings another action to enforce its lien, once again joining Bank as a party.

Example Four is based upon the facts in *Lake Ridge Condominium Association, Inc. v. Vega*, No. NNHCV116021568S (Conn. Super. Ct. June 25, 2012). Example Four presents a question about the appropriate interpretation of UCIOA § 3-116(c). Is the six-month limited priority lien a "one-time" lien; i.e., once an association brings an action to enforce its limited priority lien and the mortgagee responds by redeeming that lien by paying six months of common expense assessments, does the association no longer have the right to assert the limited priority lien for any future unpaid assessments? Or is the six-month limited priority lien a potentially recurring lien; i.e., in Example Four, can PPOA assert the limited priority lien a second time, and thereby successfully obtain lien priority over Bank's mortgage lien to the extent of the most recent six months of unpaid assessments?

In *Lake Ridge*, the association commenced a second action to enforce its lien two years after the mortgagee had ostensibly redeemed the association's priority by paying off the then-immediately preceding six months of assessments. The association argued that under the text of the statute and sound policy, there was no bar on repetitive association foreclosures and that in each such proceeding the association should be permitted to assert a limited priority lien for assessments unpaid during the immediately preceding six months. The mortgagee disagreed, asserting that under UCIOA as adopted in Connecticut, Conn. Gen. Stat. § 47-258, the six-month limited priority lien created but a "one-time" lien priority over the mortgagee.

The Connecticut Superior Court agreed with the lender, stating that the association had "previously satisfied its 'superpriority' lien" and holding that the statute "allows the assertion of that lien only once during the pendency of either an action to enforce either

the association's lien or a security interest (first priority mortgage)." See also Linden Condo. Ass'n, Inc. v. McKenna, 247 Conn. 575, 726 A.2d 502 (1999) (statute prevents association from asserting limited priority lien more than once during the course of a foreclosure action by the mortgagee).

The result reached by the court in *Lake Ridge* is consistent with the appropriate understanding of § 3-116(c) as drafted. Section 3-116(c) provides an association with first lien priority only to the extent of the six months of unpaid common expense assessments that accrued immediately preceding a lien foreclosure action by either the association or the first mortgagee. In Example Four, Bank had a foreclosure action pending at the time it made the $3,500 payment to redeem its mortgage from PPOA's limited priority lien, and that action remained pending at the time of PPOA's second lien enforcement proceeding. By its terms, § 3-116(c) does not permit PPOA to assert a first lien priority for more than six months of unpaid common expense assessments in the context of the same foreclosure proceeding by Bank.

As discussed in the Introduction, in fashioning the six-month limited priority lien, the drafters of UCIOA § 3-116(c) did not contemplate the now-common scenario in which the first mortgagee's foreclosure action might remain pending for two years or more. In such a situation, the mortgagee's delay in foreclosure may unreasonably force the community residents to bear either increased assessments or decreased maintenance/services.

Example Five. Homeowner fails to pay common expense assessments for a period of six months. PPOA notifies Bank that Homeowner has not paid those assessments. Before PPOA commences an action to enforce its lien, Bank pays PPOA an amount equal to the preceding six months of common expense assessments. For the ensuing six months, Homeowner again fails to pay its common expense assessments. PPOA then commences an action to enforce its lien and joins Bank as a party. Bank responds by instituting a proceeding to foreclose its mortgage lien.

In Example Five, Bank's payment of the unpaid common charges to PPOA does not prevent PPOA from now asserting its six-month limited priority lien. Under § 3-116(c), PPOA can assert a limited priority lien to the extent of "common expense assessments ... which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien." Under the proper understanding of § 3-116(c), PPOA can thus assert a limited priority lien either in (a) an action by PPOA to enforce its association lien, or (b) an action by Bank to foreclose its mortgage lien. In Example Five, at the time of Bank's payment of the unpaid common expense assessments, PPOA had not commenced an action to enforce its lien, nor had Bank instituted a foreclosure proceeding. Bank's payment of the unpaid common charges was a voluntary business decision which Bank was not compelled to make to

protect its lien priority.[13] As a result, the payment does not prevent PPOA from asserting its limited priority lien in PPOA's subsequent lien enforcement action. To redeem its lien priority in PPOA's action, Bank will have to pay PPOA the immediately preceding six months of unpaid common expense assessments, as well as costs and reasonably attorney's fees incurred by PPOA in its lien enforcement action.

CONCLUSION: A PROPOSAL FOR A NEW UNIFORM LAW

As discussed above, existing law governing the relative priority of association liens and first mortgage liens is unsatisfactory. In many states, association liens are entirely subordinate to first mortgage liens, and mortgage lenders have no obligation to pay or reimburse assessments that accrued prior to the time that the lender acquired title in a foreclosure sale. This permits first mortgage lenders to delay in foreclosing mortgages on common interest units/parcels, while effectively and unjustly shifting the cost of preserving the value of their collateral onto the remaining unit/parcel owners. Even in states that have adopted § 3-116(c) or a comparable limited priority rule for association liens, the six-month period of limited priority has proven insufficient to protect the community's financial interests.

The Board thus encourages the ULC to consider preparing a uniform law that would strike a more appropriate balance between the interests of first mortgage lenders and common interest community associations and their residents. A new uniform law might take a number of potential approaches:

- It might simply extend the association's existing limited priority lien from six months to a longer fixed duration, such as one year or more. A uniform law taking this approach might reflect a more appropriate response to the longer foreclosure timetables that have resulted in the wake of the mortgage crisis.[14]
- It might establish alternatives for the duration of association's limited priority lien, such that the duration of the association's lien priority might vary from state to state. A uniform law taking this approach might acknowledge that differences in local circumstances (i.e., the duration of a state's foreclosure

[13] Bank likely can add this payment to the balance of the Homeowner's mortgage debt as an amount advanced to protect Bank's security, at least to the extent permitted by the terms of Bank's mortgage or deed of trust (which typically provides that the lien shall secure such advances).

[14] It is worth noting that Florida's limited priority lien provides the association with priority to the extent of the lesser of twelve (12) months' worth of unpaid association assessments or one percent (1%) of the outstanding mortgage loan amount. Fla. Stat. Ann. § 718.116. Professor Andrea Boyack has observed that given the delays customarily experienced in Florida foreclosures, even this expanded lien priority has not been sufficient to permit Florida associations to recover all unpaid assessments. Andrea J. Boyack, *Community Collateral Damage: A Question of Priorities*, 43 Loy.U.Chi.L.Rev. 53, 116 (2011).

timetable, or the extent of decreases in unit values) might warrant local differences in the duration of an association's lien priority.

- It might preserve the state's existing priority rule as a general matter, but require that if the first mortgage lender delays foreclosure beyond a defined period of time, the lender must pay assessments as they accrue during that period of delay (or some portion of those assessments). This would permit a first mortgage lender to make a determination to delay in foreclosing if the lender concludes that delay is justified, but would prevent the lender from being unjustly enriched by forcing the remaining unit/parcel owners to bear the increased cost of preserving the lender's collateral.
- It might preserve the state's existing priority rule as a general matter, but require that if the first mortgage lender delays foreclosure beyond a defined period of time, the association's lien would have priority (or extended priority) for the assessments accruing during that period of delay.
- It could analogize common interest ownership assessments to real property taxes, and give the association full priority over the first mortgage lender for unpaid assessments to the same extent as real property taxes currently enjoy a superpriority over first mortgage liens.[15]

The Board does not advocate for any one of these approaches; a drafting committee should make a determination following deliberations involving the participation of all relevant stakeholder groups (including first mortgage lenders, community associations, and government-sponsored enterprises like Fannie Mae and Freddie Mac).

[15] To a significant extent, an analogy between community assessments and property taxes is compelling, as the association often provides public services such as paving, snow removal, open space maintenance, and land use control/enforcement. First mortgage lenders would no doubt voice strong objections to giving association liens full priority, which raises a concern as to whether such a change would affect the availability of home mortgage credit for common interest units/parcels. Nevertheless, as Professor Boyack has noted, priority for real property taxes has not dissuaded lenders from making first mortgage loans; lenders have addressed this risk by requiring real property escrow accounts, and could demand similar escrow accounts for association assessments. Andrea J. Boyack, *Community Collateral Damage: A Question of Priorities*, 43 Loy.U.Chi.L.Rev. 53, 116, 122 (2011).

EXHIBIT M

EXHIBIT M

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Attorneys for Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP

EIGHTH JUDICIAL DISTRICT COURT FOR

CLARK COUNTY, NEVADA

ALESSI & KOENIG, LLC, a Nevada limited liability company

Plaintiff,

vs.

ARMANDO A. CARIAS, an individual, BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, unknown entity, DOES INDIVIDUALS I-X, inclusive, and ROE CORPORATIONS XI-XX inclusive,

Defendants.

BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, a National Association,

Third Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a domestic

Case No. : A-13-684501-C
Dept. No.: XXI

DEFENDANT BANK OF AMERICA'S EXPERT DISCLOSURE

AKERMAN LLP
1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 – FAX: (702) 380-8572

Limited Liability Company, and DOES 1 through 10, and ROE BUSINESS ENTITIES 1 through 10, Third Party Defendant.	
SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Counter-Claimant, vs. BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, a national association; ARMANDO A. CARIAS, an individual; DOES 1 10 and ROE BUSINESS ENTITIES 1 through 10 inclusive, Counter-Defendant/Cross-Defendants.	

AKERMAN LLP
1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 – FAX: (702) 380-8572

Defendant Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP (**Bank of America**), by and through its attorneys of the law firm of AKERMAN LLP, hereby designates the following expert witness pursuant to NRCP 16.1(a)(2)(A)(C)(i):

1. Accurity Qualified Analytics
2470 Gray Falls Drive, Suite 190
Houston, TX 77077-6598
By: R. Scott Dugan
R. Scott Dugan Appraisal Company, Inc.
8930 West Tropicana Avenue, Suite 1
Las Vegas, NV 89147

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Scott Dugan will provide his expert opinion concerning the market value at the time of the HOA's foreclosure sale. Mr. Dugan's initial expert report, fee schedule, and curriculum vitae are attached hereto as **Exhibit A** (DUG000001 through DUGAN000036). Mr. Dugan's statement of compensation and the list of cases where Mr. Dugan has testified at trial or by deposition are attached hereto as **Exhibit B** (DUGAN000040 through DUGAN000041).

DATED this 17th day of February, 2015.

AKERMAN LLP

/s/ William S. Habdas
DARREN BRENNER, ESQ.
Nevada Bar No. 8386
TENESA S. SCATURRO, ESQ.
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Attorneys for Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of February, 2015, and pursuant to NRCP 5(b), I served via the court's electronic filing system ("Wiznet") a true and correct copy of the foregoing **DEFENDANT BANK OF AMERICA'S EXPERT DISCLOSURE** to:

Huong Lam, Esq. Bradley Bace, Esq. ALESSI & KOENIG, LLC 9500 W. Flamingo Rd., Ste. 205 Las Vegas, NV 89147 *Attorneys for Plaintiff*	Diana S. Cline, Esq. HOWARD KIM & ASSOCIATES 1055 Whitney Ranch Dr., Ste. 110 Henderson, NV 89014 *Attorneys for Counterclaimant/Cross-Defendant/Third-Party Defendant SFR Investment Pool 1, LLC*

/s/ Lucille Chiusano
An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A

Cover Page

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SUMMARY APPRAISAL REPORT

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APPRAISAL OF REAL PROPERTY

LOCATED AT
3617 Diamond Spur Avenue
N Las Vegas, NV 89032
Sutter Creek-Phase 1 Plat Book 85 Page 30 Lot 60 Block 1

FOR
BofA c/o Bradley Arant Boult Cummings LLP
1819 Fifth Avenue South
Birmingham, AL 35203

AS OF
February 20, 2013

BY
R. Scott Dugan, SRA
R. Scott Dugan Appraisal Company, Inc.
8930 West Tropicana Avenue, Suite 1
Las Vegas, NV 89147
702-876-2000
appraisals@rsdugan.com

February 09, 2015

BofA c/o Bradley Arant Boult Cummings LLP
1819 Fifth Avenue South
Birmingham, AL 35203

Re: Property: 3617 Diamond Spur Avenue
N Las Vegas, NV 89032
Borrower: N/A
File No.: 3617 Diamond Spur Ave

Opinion of Value: $ 96,000
Effective Date: February 20, 2013

As requested, we have prepared an analysis and valuation of the referenced property. The purpose of this assignment was to develop a value opinion based upon the assignment conditions and guidelines stated within the attached report. Our analysis of the subject property was based upon the property (as defined within the report) and the economic, physical, governmental and social forces affecting the subject property as of the effective date of this assignment.

The analysis and the report were developed and prepared within the stated Scope of Work and our Clarification of Scope of Work along with our comprehension of applicable Uniform Standards of Professional Appraisal Practice and specific assignment conditions provided by the client and intended user.

The findings and conclusions are intended for the exclusive use of the stated client and for the specific intended use identified within the report. The reader (or anyone electing to rely upon this report), should review this report in its entirety to gain a full awareness of the subject property, its market environment and to account for identified issues in their business decisions regarding the subject property.

Use and reliance on this report by the client or any third party indicates the client or third party has read the report, comprehends the basis and guidelines employed in the analysis and conclusions stated within and has accepted same as being suitable for their decisions regarding the subject property.

The value opinion reported is as of the stated effective date and is contingent upon the Certification and Limiting Conditions attached. The Assumptions and Limiting Conditions along with the Clarification of Scope of Work provide specifics as to the development of the appraisal along with exceptions that may have been necessary to complete a credible report.

Thank you for the opportunity to service your appraisal needs.

Sincerely,

R. Scott Dugan, SRA
License or Certification #: A.0000166-CG
State: NV Expires: 05/31/2015
appraisals@rsdugan.com

Client	BofA c/o Bradley Arant Boult Cummings LLP			File No.	3617 Diamond Spur Ave
Property Address	3617 Diamond Spur Avenue				
City	N Las Vegas	County Clark	State NV	Zip Code	89032
Borrower/Client	N/A				

TABLE OF CONTENTS

RESIDENTIAL APPRAISAL REPORT

File No.: 3617 Diamond Spur Ave

SUBJECT

Property Address: 3617 Diamond Spur Avenue | City: N Las Vegas | State: NV | Zip Code: 89032

County: Clark | Legal Description: Sutter Creek-Phase 1 Plat Book 85 Page 30 Lot 60 Block 1

Assessor's Parcel #: 139-08-410-014

Tax Year: 2013 | R.E. Taxes: $ N/A | Special Assessments: $ 0 | Borrower (if applicable): N/A

Current Owner of Record: SFR Investments Pool 1 LLC | Occupant: ☐ Owner ☐ Tenant ☒ Vacant | ☐ Manufactured Housing

Project Type: ☒ PUD ☐ Condominium ☐ Cooperative ☐ Other (describe) | HOA: $ 80 ☐ per year ☒ per month

Market Area Name: Sutter Creek - North Las Vegas | Map Reference: 34-C4 | Census Tract: 36.13

ASSIGNMENT

The purpose of this appraisal is to develop an opinion of: ☒ Market Value (as defined), or ☐ other type of value (describe)

This report reflects the following value (if not Current, see comments): ☐ Current (the Inspection Date is the Effective Date) ☒ Retrospective ☐ Prospective

Approaches developed for this appraisal: ☒ Sales Comparison Approach ☐ Cost Approach ☐ Income Approach (See Reconciliation Comments and Scope of Work)

Property Rights Appraised: ☒ Fee Simple ☐ Leasehold ☐ Leased Fee ☐ Other (describe)

Intended Use: Provide a Retrospective Market Value opinion for litigation involving the HOA foreclosure of the subject property. For definitions, refer to the Explanatory Comments - Retrospective Value and Definition of Value section in the Residential Certifications Addendum.

Intended User(s) (by name or type): BofA c/o Bradley Arant Boult Cummings LLP and/or legal professionals associated with this case.

Client: BofA c/o Bradley Arant Boult Cummings LLP | Address: 1819 Fifth Avenue South, Birmingham, AL 35203

Appraiser: R. Scott Dugan, SRA | Address: 8930 W Tropicana Avenue, Suite 1, Las Vegas, NV 89147

MARKET AREA DESCRIPTION

				Predominant Occupancy	One-Unit Housing			Present Land Use		Change in Land Use
Location:	☐ Urban	☒ Suburban	☐ Rural		PRICE $(000)		AGE (yrs)	One-Unit	75 %	☒ Not Likely
Built up:	☒ Over 75%	☐ 25-75%	☐ Under 25%	☒ Owner				2-4 Unit	0 %	☐ Likely * ☐ In Process *
Growth rate:	☐ Rapid	☐ Stable	☒ Slow	☐ Tenant	70	Low	5	Multi-Unit	5 %	* To:
Property values:	☒ Increasing	☐ Stable	☐ Declining	☒ Vacant (0-5%)	200	High	25	Comm'l	10 %	
Demand/supply:	☐ Shortage	☒ In Balance	☐ Over Supply	☐ Vacant (>5%)	105	Pred	18	Vacant	10 %	
Marketing time:	☒ Under 3 Mos.	☐ 3-6 Mos.	☐ Over 6 Mos.							

Market Area Boundaries, Description, and Market Conditions (including support for the above characteristics and trends): Craig Road - N, I-15 - E, Cheyenne Avenue - S, and Decatur Boulevard - W. The subject project of Sutter Creek is in North Las Vegas, consists of 150 +/- homes, and has a gated entry, community clubhouse, park, pool and spa. There are a variety of residential tract housing with supporting services in the immediate area. Major office / retail / major medical facilities are N, E and S within 1 to 8 +/- miles, which includes the North Las Vegas Airport, College of Southern Nevada Cheyenne Campus, Craig Ranch Regional Park, VA Southern Nevada Healthcare Services Center and the Premium Outlet Mall in downtown Las Vegas. The subject is within 6 to 9 +/- miles of the Las Vegas CBD and Resort Corridor (key employment centers) with good freeway and major street access. Currently, price points in various areas continue to adjust to supply/demand. Period-to-period shifts in median and average prices should not be seen as lasting appreciation, but rather market adjustments, until a long-term trend can be established. Refer to related market condition comments, graphs, etc.

SITE DESCRIPTION

Dimensions: 38 x 92 | Site Area: .08 Acre (3,485 Sq Ft)

Zoning Classification: PUD | Description: Planned Unit Development

Zoning Compliance: ☒ Legal ☐ Legal nonconforming (grandfathered) ☐ Illegal ☐ No zoning

Are CC&Rs applicable? ☒ Yes ☐ No ☐ Unknown | Have the documents been reviewed? ☐ Yes ☒ No | Ground Rent (if applicable) $ N/A

Highest & Best Use as Improved: ☒ Present use, or ☐ Other use (explain) The highest and best use is limited to single-family residential via zoning, master plan and CC&R's.

Actual Use as of Effective Date: Single Family Residential | Use as appraised in this report: Single Family Residential

Summary of Highest & Best Use: Subject is located in an established conforming residential market area. The neighborhood appears to have an economic climate that is expected to maintain its desirability, therefore, residential use is financially feasible. The subject is located within a residential neighborhood, and therefore, residential use is legally permissible.

Utilities	Public	Other	Provider/Description
Electricity	☒	☐	NV Energy
Gas	☒	☐	SW Gas
Water	☒	☐	LLVWD
Sanitary Sewer	☒	☐	Clark County
Storm Sewer	☒	☐	Clark County

Off-site Improvements	Type	Public	Private
Street	Asphalt	☐	☒
Curb/Gutter	Concrete	☐	☒
Sidewalk	Concrete	☐	☒
Street Lights	Electric	☐	☒
Alley	None	☐	☐

Topography	Built Up Pad
Size	Typical for Area
Shape	Rectangular
Drainage	Appears Adequate
View	Residential

Other site elements: ☒ Inside Lot ☐ Corner Lot ☐ Cul de Sac ☒ Underground Utilities ☐ Other (describe)

FEMA Spec'l Flood Hazard Area ☐ Yes ☒ No | FEMA Flood Zone X | FEMA Map # 32003C2155F | FEMA Map Date 11/16/2011

Site Comments: The subject is typical for residences in the area with no adverse site conditions observed at the time of inspection. The site appears to have normal utility easements and setbacks. The subject backs to a parcel of vacant land that is currently zoned PUD - Planned Unit Development, but there is insufficient data as located to support any adjustment. This subject has the same zoning, thus, as located no negative impact is evidenced. Refer to the Explanatory Comments: External Obsolescence - Flight Path.

IMPROVEMENTS

General Description		Exterior Description		Foundation		Basement	☒ None	Heating	Yes
# of Units	One ☐ Acc.Unit	Foundation	Concrete/Avg	Slab	Concrete	Area Sq. Ft.		Type	FWA
# of Stories	Two	Exterior Walls	Stucco/Avg	Crawl Space	None	% Finished		Fuel	Gas
Type	☒ Det. ☐ Att. ☐	Roof Surface	Tile/Avg	Basement	None	Ceiling			
Design (Style)	Ranch/2-Story	Gutters & Dwnspts.	None	Sump Pump	☐ None	Walls		Cooling	Yes
	☒ Existing ☐ Proposed ☐ Und.Cons.	Window Type	Insulated/Avg	Dampness	☐ None	Floor		Central	Yes
Actual Age (Yrs.)	14	Storm/Screens	None	Settlement	None observe	Outside Entry		Other	None
Effective Age (Yrs.)	14			Infestation	None observe				

Interior Description		Appliances		Attic ☐ None		Amenities		Car Storage	☐ None
Floors	Exterior Only	Refrigerator	☐	Stairs	☐	Fireplace(s) #	0	Garage	# of cars (2 Tot.)
Walls	Exterior Only	Range/Oven	☒	Drop Stair	☐	Patio	Yes	Attach.	
Trim/Finish	Exterior Only	Disposal	☒	Scuttle	☒	Deck	None	Detach.	
Bath Floor	Exterior Only	Dishwasher	☒	Doorway	☐	Porch	Yes	Blt.-In	2
Bath Wainscot	Exterior Only	Fan/Hood	☒	Floor	☐	Fence	Yes	Carport	
Doors	Exterior Only	Microwave	☒	Heated	☐	Pool	None	Driveway	Yes
		Washer/Dryer	☐	Finished	☐	Spa	None	Surface	Concrete

Finished area above grade contains: 6 Rooms 4 Bedrooms 2.5 Bath(s) 1,439 Square Feet of Gross Living Area Above Grade

Additional features: The property has standard features and amenities for this submarket.

Describe the condition of the property (including physical, functional and external obsolescence): The subject is assumed to have been at minimum in average condition. No external obsolescence (unless indicated in report). As no interior inspection was made and this is a retrospective assignment, the appraiser invokes the following Extraordinary Assumptions: 1) appraiser assumes both the SF and components (size of garage, pool, quality, appliances, etc.) were equal to those stated in the MLS and or assessor records, 2) condition of the interior was at minimum average 3) no obsolescence affected the interior improvements (layout was unknown-tandem room, missing kitchen appliances or bath fixtures, no AC, etc.), 4) subject was consistent in design, layout, amenities, etc. with its competition, 5) subject is tenant occupied. If any of these are found to be false, it could alter the value opinion and or other conclusions in this report. Refer to the addendum - Extraordinary Assumption.

RESIDENTIAL APPRAISAL REPORT

File No.: 3617 Diamond Spur Ave

TRANSFER HISTORY

My research ☒ did ☐ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data Source(s): Public Records

1st Prior Subject Sale/Transfer	Analysis of sale/transfer history and/or any current agreement of sale/listing: Local MLS and public records were used as sources for the Transfer History section, as applicable. Refer to the Explanatory Comments - Sale History.
Date: 11/03/2010	
Price: 72,000	
Source(s): Public Records	
2nd Prior Subject Sale/Transfer	Comparable sales/transfers used may or may not represent arms-length transactions and/or meet the definition of market value as stated within this report. If comparables used sold previously within the date range of reporting guidelines, every reasonable effort was made to analyze the data to ensure that none were questionable transactions. As applicable, refer to the Summary of Sales Comparison Approach.
Date:	
Price:	
Source(s):	

SALES COMPARISON APPROACH

SALES COMPARISON APPROACH TO VALUE (If developed) ☐ The Sales Comparison Approach was not developed for this appraisal.

FEATURE	SUBJECT	COMPARABLE SALE # 1		COMPARABLE SALE # 2		COMPARABLE SALE # 3	
Address	3617 Diamond Spur Avenue N Las Vegas, NV 89032	3335 Sutters Fort Street N Las Vegas, NV 89032		3252 Bridge House Street N Las Vegas, NV 89032		3308 Sutters Fort Street N Las Vegas, NV 89032	
Proximity to Subject		0.13 miles N		0.09 miles NE		0.08 miles N	
Sale Price	$	$ 99,000		$ 100,000		$ 97,500	
Sale Price/GLA	$ /sq.ft.	$ 68.80 /sq.ft.		$ 69.49 /sq.ft.		$ 74.71 /sq.ft.	
Data Source(s)	Document No.	20120912-1763		20120828-2217		20121019-4171	
Verification Source(s)	Ext Inspection	MLS-Public Records		MLS-Public Records		MLS-Public Records	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) $ Adjust.	DESCRIPTION	+(-) $ Adjust.	DESCRIPTION	+(-) $ Adjust.
Sales or Financing Concessions		CASH		FHA None		OWC $77,500	
Date of Sale/Time		09/12/2012		08/28/2012		10/19/2012	
Rights Appraised	Fee Simple	Fee Simple		Fee Simple		Fee Simple	
Location	Vacant Land/Gated	Busy/Gated	0	Average/Gated	0	Average/Gated	0
Site	.08 Acre/Interior	.09 Acre/Interior		.07 Acre/Interior		.07 Acre/Interior	
View	Residential	Residential		Residential		Residential	
Design (Style)	Ranch/2-Story	Ranch/2-Story		Ranch/2-Story		Ranch/2-Story	
Quality of Construction	Stucco	Stucco		Stucco		Stucco	
Age	1999	2000		1999		2000	
Condition	Avg-Owner	Renov/Owner	-7,200	Renov/Owner	-7,200	Avg-Owner	
Above Grade Room Count	Total 6 / Bdrms 4 / Baths 2.5	Total 6 / Bdrms 4 / Baths 2.5		Total 6 / Bdrms 4 / Baths 2.5		Total 5 / Bdrms 3 / Baths 2.5	
Gross Living Area	1,439 sq.ft.	1,439 sq.ft.	0	1,439 sq.ft.	0	1,305 sq.ft.	+4,000
Basement & Finished	None	None		None		None	
Rooms Below Grade	None	None		None		None	
Functional Utility	Average	Average		Average		Average	
Heating/Cooling	Central	Central		Central		Central	
Energy Efficient Items	Standard	Standard		Standard		Standard	
Garage/Carport	2 Car Garage	2 Car Garage		2 Car Garage		2 Car Garage	
Porch/Patio/Deck	L/S, Patio	L/S, Patio		L/S, Patio		L/S, Patio	
Net Adjustment (Total)		☐ + ☒ -	$ -7,200	☐ + ☒ -	$ -7,200	☒ + ☐ -	$ 4,000
Adjusted Sale Price of Comparables			$ 91,800		$ 92,800		$ 101,500

Summary of Sales Comparison Approach: In consideration of the above market transactions and current market conditions, greatest consideration is placed on the Sales Comparison Approach to Value. The value opinion is correlated at $96,000. The package price per square foot of $67 (rounded) includes land plus improvements. Based on the analysis of comparables one through four, the subject's central tendency is $97,500, which lends good support to the value opinion. Comparables five and six demonstrate the extreme low end of the range and are not weighted in the final analysis. The comparable closed transactions indicate a package price from $54 to $75 (sale prices divided by gross living area of the comparables), with comparables one through four indicating a package price from $68 to $75. The subject's package price falls below the tighter range, however, this is not unreasonable given limited availability of data and condition adjustments required to comparables one and two. The value opinion expressed falls within the adjusted sale pricing of these comparables, thus, is deemed supported and reasonable. It is the appraiser's determination that these four comparables would reasonably compete with the subject property. No one comparable or group of comparables is considered more supportive of the value opinion than another. The value opinion expressed is deemed reasonable based on the overall range of adjusted pricing of comparable transactions. See Explanatory Comments - Sales Comparison Approach comments.

Indicated Value by Sales Comparison Approach $ 96,000

RESIDENTIAL APPRAISAL REPORT

File No.: 3617 Diamond Spur Ave

COST APPROACH TO VALUE (If developed) ☒ The Cost Approach was not developed for this appraisal.

Provide adequate information for replication of the following cost figures and calculations.

Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value): The Cost Approach is not applicable due to building design and inability to construct a single unit. The subject improvements and site were constructed with some degree of "economy of scale" (multiple units - single developer) as a small tract subdivision. The cost approach is based upon the theory of a buyer being able to "build a substitute property" as opposed to buying the subject property. In this case, a buyer would not have this option for several reasons: 1) economy of scale and 2) the inability to purchase a small finished building site in the same general location as the subject. These and other conditions render the cost approach unreliable.

ESTIMATED ☐ REPRODUCTION OR ☐ REPLACEMENT COST NEW

Source of cost data:

Quality rating from cost service: Effective date of cost data:

Comments on Cost Approach (gross living area calculations, depreciation, etc.):
Refer to the above section on site value.

OPINION OF SITE VALUE		=$
DWELLING	Sq.Ft. @ $	=$
	Sq.Ft. @ $	=$
	Sq.Ft. @ $	=$
	Sq.Ft. @ $	=$
	Sq.Ft. @ $	=$
		=$
Garage/Carport	Sq.Ft. @ $	=$
Total Estimate of Cost-New		=$
Less Physical / Functional / External Depreciation		=$( )
Depreciated Cost of Improvements		=$
"As-Is" Value of Site Improvements		=$
		=$
		=$
INDICATED VALUE BY COST APPROACH		=$

Estimated Remaining Economic Life (If required): 66 Years

INCOME APPROACH TO VALUE (If developed) ☒ The Income Approach was not developed for this appraisal.

Estimated Monthly Market Rent $ N/A X Gross Rent Multiplier N/A = $ N/A Indicated Value by Income Approach

Summary of Income Approach (including support for market rent and GRM): The income approach was not developed for several reasons: 1) while units were being rented in the area, tenant occupied properties highly similar to the subject were not sold in sufficient numbers from which to develop a reliable GRM and 2) investors were buying, renovating and selling properties as opposed to renting and holding for investment cash flow. Effectively, the income data was not sufficient to provide a reasonable and consistent value indication via this method.

PROJECT INFORMATION FOR PUDs (If applicable) ☒ The Subject is part of a Planned Unit Development.

Legal Name of Project: Sutter Creek

Describe common elements and recreational facilities: Gated entry, private streets, perimeter fencing, park, clubhouse, pool, spa, and enforcement of CC&R's.

RECONCILIATION

Indicated Value by: Sales Comparison Approach $ 96,000 Cost Approach (If developed) $ N/A Income Approach (If developed) $ N/A

Final Reconciliation The value opinion is based upon direct sales comparison and considers a 30 to 90 day concurrent marketing and exposure period of the improvements. The cost and income approaches were not applied for the reasons stated within those areas. The value opinion is based upon the extraordinary assumptions referenced below and assumes all systems (mechanical, electrical, plumbing, structural, roof, etc.) are operational and functioning correctly. The appraiser is not a home inspector and anyone relying on this report should not consider this appraisal as a home inspection. Please read the report in its entirety for a full understanding of the techniques and logic employed.

This appraisal is made ☒ "as is", ☐ subject to completion per plans and specifications on the basis of a Hypothetical Condition that the improvements have been completed, ☐ subject to the following repairs or alterations on the basis of a Hypothetical Condition that the repairs or alterations have been completed, ☐ subject to the following required inspection based on the Extraordinary Assumption that the condition or deficiency does not require alteration or repair: An exterior inspection of the subject was made by the appraiser on January 18, 2015. The retrospective market value was estimated as of February 20, 2013. This report is subject to an Extraordinary Assumptions. Refer to the condition section of page 1 and the addendum for additional information.

☒ This report is also subject to other Hypothetical Conditions and/or Extraordinary Assumptions as specified in the attached addenda.

Based on the degree of inspection of the subject property, as indicated below, defined Scope of Work, Statement of Assumptions and Limiting Conditions, and Appraiser's Certifications, my (our) Opinion of the Market Value (or other specified value type), as defined herein, of the real property that is the subject of this report is: $ 96,000 , as of: February 20, 2013 , which is the effective date of this appraisal.

If indicated above, this Opinion of Value is subject to Hypothetical Conditions and/or Extraordinary Assumptions included in this report. See attached addenda.

ATTACHMENTS

A true and complete copy of this report contains 35 pages, including exhibits which are considered an integral part of the report. This appraisal report may not be properly understood without reference to the information contained in the complete report.

Attached Exhibits:

☒ Letter of Transmittal ☒ Assumptions/Limiting C/SOW ☒ Market Conditions/Graphs ☒ Map & Photo Addenda ☒ Appraiser License
☒ GP-Res CertsAddenda ☒ Additional Sales ☒ Sketch Addendum ☒ Clarification of SOW ☒ Appraiser Resume
☒ Extraordinary Assumptions ☒ Market A.Overview 1pg ☒ Plat and or Flood Maps ☒ Explanatory Comments ☒ Trustee's Deeds

Client Name: BofA c/o Bradley Arant Boult Cummings LLP

Client Contact: BofA c/o Bradley Arant Boult Cummings LLP Address: 1819 Fifth Avenue South, Birmingham, AL 35203

E-Mail: N/A

SIGNATURES

APPRAISER

Appraiser Name: R. Scott Dugan, SRA
Company: R. Scott Dugan Appraisal Company, Inc.
Phone: 702-876-2000 Fax: 702-253-1888
E-Mail: appraisals@rsdugan.com
Date of Report (Signature): February 09, 2015
License or Certification #: A.0000166-CG State: NV
Designation: SRA
Expiration Date of License or Certification: 05/31/2015
Inspection of Subject: ☐ Interior & Exterior ☒ Exterior Only ☐ None
Date of Inspection: January 18, 2015

SUPERVISORY APPRAISER (If required) or CO-APPRAISER (If applicable)

Supervisory or Co-Appraiser Name:
Company:
Phone: Fax:
E-Mail:
Date of Report (Signature):
License or Certification #: State:
Designation:
Expiration Date of License or Certification:
Inspection of Subject: ☐ Interior & Exterior ☐ Exterior Only ☐ None
Date of Inspection:

ADDITIONAL COMPARABLE SALES

File No.: 3617 Diamond Spur Ave

FEATURE	SUBJECT	COMPARABLE SALE #4		COMPARABLE SALE #5		COMPARABLE SALE #6	
Address	3617 Diamond Spur Avenue N Las Vegas, NV 89032	3522 Gold Sluice Avenue N Las Vegas, NV 89032		3517 Diamond Spur Avenue N Las Vegas, NV 89032		3510 Gold Sluice Avenue N Las Vegas, NV 89032	
Proximity to Subject		0.14 miles N		0.04 miles E		0.15 miles NE	
Sale Price	$	$ 98,000		$ 78,000		$ 78,888	
Sale Price/GLA	$ /sq.ft.	$ 75.10 /sq.ft.		$ 54.20 /sq.ft.		$ 54.82 /sq.ft.	
Data Source(s)	Document No.	20121211-2868		20121126-4873		20120912-2515	
Verification Source(s)	Ext Inspection	MLS-Public Records		MLS-Public Records		MLS-Public Records	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) $ Adjust.	DESCRIPTION	+(-) $ Adjust.	DESCRIPTION	+(-) $ Adjust.
Sales or Financing Concessions		FHA None		FHA $2,000		FHA $2,200	
Date of Sale/Time		12/11/2012		11/26/2012		09/12/2012	
Rights Appraised	Fee Simple	Fee Simple		Fee Simple		Fee Simple	
Location	Vacant Land/Gated	Average/Gated	0	Average/Gated	0	Average/Gated	0
Site	.08 Acre/Interior	.07 Acre/Interior		.07 Acre/Interior		.07 Acre/Interior	
View	Residential	Residential		Residential		Residential	
Design (Style)	Ranch/2-Story	Ranch/2-Story		Ranch/2-Story		Ranch/2-Story	
Quality of Construction	Stucco	Stucco		Stucco		Stucco	
Age	1999	1999		1999		1999	
Condition	Avg-Owner	Avg-Owner		As Is-Short Sale	0	As Is-Bank Own	0
Above Grade Room Count	Total 6 / Bdrms 4 / Baths 2.5	Total 5 / Bdrms 3 / Baths 2.5		Total 6 / Bdrms 4 / Baths 2.5		Total 6 / Bdrms 4 / Baths 2.5	
Gross Living Area	1,439 sq.ft.	1,305 sq.ft.	+4,000	1,439 sq.ft.	0	1,439 sq.ft.	0
Basement & Finished Rooms Below Grade	None None	None None		None None		None None	
Functional Utility	Average	Average		Average		Average	
Heating/Cooling	Central	Central		Central		Central	
Energy Efficient Items	Standard	Standard		Standard		Standard	
Garage/Carport	2 Car Garage	2 Car Garage		2 Car Garage		2 Car Garage	
Porch/Patio/Deck	L/S, Patio	L/S, Patio		L/S,C/Patio		L/S,C/Patio	
Net Adjustment (Total)		☒ + ☐ -	$ 4,000	☐ + ☐ -	$	☐ + ☐ -	$
Adjusted Sale Price of Comparables			$ 102,000		$ 78,000		$ 78,888

Summary of Sales Comparison Approach: The comparable sales were on the market 61, 179, 310, 1, 19, and 6 days, respectively. Data was verified through MLS and public records, and the appraiser was able to determine that there appeared to be no significant sales concessions, special financing, or other considerations unless noted in the report.

Comparable one reported a transfer on 01/04/2012 for $83,500 as a Trustee's Deed.

Comparable two reported a transfer on 05/18/2011 for $85,000.

Comparable six reported a transfer on 08/15/2011 for $298,039 as a Trustee's Deed.

SALES COMPARISON APPROACH

Assumptions, Limiting Conditions & Scope of Work

File No.: 3617 Diamond Spur Ave

Property Address: 3617 Diamond Spur Avenue City: N Las Vegas State: NV Zip Code: 89032

Client: BofA c/o Bradley Arant Boult Cummings LLP Address: 1819 Fifth Avenue South, Birmingham, AL 35203

Appraiser: R. Scott Dugan, SRA Address: 8930 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147

STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS

— The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.

— The appraiser may have provided a sketch in the appraisal report to show approximate dimensions of the improvements, and any such sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size. Unless otherwise indicated, a Land Survey was not performed.

— If so indicated, the appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.

— The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.

— If the cost approach is included in this appraisal, the appraiser has estimated the value of the land in the cost approach at its highest and best use, and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used. Unless otherwise specifically indicated, the cost approach value is not an insurance value, and should not be used as such.

— The appraiser has noted in the appraisal report any adverse conditions (including, but not limited to, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property, or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property, or adverse environmental conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.

— The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.

— The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice, and any applicable federal, state or local laws.

— If this appraisal is indicated as subject to satisfactory completion, repairs, or alterations, the appraiser has based his or her appraisal report and valuation conclusion on the assumption that completion of the improvements will be performed in a workmanlike manner.

— An appraiser's client is the party (or parties) who engage an appraiser in a specific assignment. Any other party acquiring this report from the client does not become a party to the appraiser-client relationship. Any persons receiving this appraisal report because of disclosure requirements applicable to the appraiser's client do not become intended users of this report unless specifically identified by the client at the time of the assignment.

— The appraiser's written consent and approval must be obtained before this appraisal report can be conveyed by anyone to the public, through advertising, public relations, news, sales, or by means of any other media, or by its inclusion in a private or public database.

— An appraisal of real property is not a 'home inspection' and should not be construed as such. As part of the valuation process, the appraiser performs a non-invasive visual inventory that is not intended to reveal defects or detrimental conditions that are not readily apparent. The presence of such conditions or defects could adversely affect the appraiser's opinion of value. Clients with concerns about such potential negative factors are encouraged to engage the appropriate type of expert to investigate.

The Scope of Work is the type and extent of research and analyses performed in an appraisal assignment that is required to produce credible assignment results, given the nature of the appraisal problem, the specific requirements of the intended user(s) and the intended use of the appraisal report. Reliance upon this report, regardless of how acquired, by any party or for any use, other than those specified in this report by the Appraiser, is prohibited. The Opinion of Value that is the conclusion of this report is credible only within the context of the Scope of Work, Effective Date, the Date of Report, the Intended User(s), the Intended Use, the stated Assumptions and Limiting Conditions, any Hypothetical Conditions and/or Extraordinary Assumptions, and the Type of Value, as defined herein. The appraiser, appraisal firm, and related parties assume no obligation, liability, or accountability, and will not be responsible for any unauthorized use of this report or its conclusions.

Additional Comments (Scope of Work, Extraordinary Assumptions, Hypothetical Conditions, etc.):

Important - Please Read - The client should review this report in its entirety to gain a full awareness of the subject property, its market environment and to account for identified issues in their business decisions. This appraisal report includes comments, observations, exhibits, maps, explanatory comments, and addenda that are necessary for the reader to comprehend the relevant characteristics of the subject property. The Expanded Comments and Clarification of Scope of Work provides specifics as to the development of the appraisal along with exceptions that may have been necessary to complete a credible report.

INTENDED USE/USER:

The intended user of this appraisal report is the lender/client. No additional intended users are identified by the appraiser. This report contains sufficient information to enable the client to understand the report. Any other party receiving a copy of this report for any reason is not an intended user; nor does it result in an appraiser-client relationship. Use of this report by any other party(ies) is not intended by the appraiser.

SCOPE OF WORK:

In the normal course of business, the appraiser attempted to obtain an adequate amount of information regarding the subject and comparable properties. Some of the required standardized responses, especially those in which the appraiser has not had the opportunity to verify personally or measure, could mistakenly imply greater precision and reliability in the data than is factually correct or typical in the normal course of business. Consequently, this information should be considered an estimate unless otherwise noted by the appraiser.

Examples include condition and quality ratings, as well as comparable sales and listing data. Not every element of the subject of the subject property was viewable, and comparable property data was generally obtained from third-party sources (real estate agents, buyers, sellers, public records, and the Greater Las Vegas Board of Realtors Multiple Listing Service).

Certifications

File No.: 3617 Diamond Spur Ave

Property Address: 3617 Diamond Spur Avenue City: N Las Vegas State: NV Zip Code: 89032
Client: BofA c/o Bradley Arant Boult Cummings LLP Address: 1819 Fifth Avenue South, Birmingham, AL 35203
Appraiser: R. Scott Dugan, SRA Address: 8930 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147

APPRAISER'S CERTIFICATION

I certify that, to the best of my knowledge and belief:
— The statements of fact contained in this report are true and correct.
— The credibility of this report, for the stated use by the stated user(s), of the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
— I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
— I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
— My engagement in this assignment was not contingent upon developing or reporting predetermined results.
— My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
— My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.
— I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.
— Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.
— Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification.

Additional Certifications:

Supplemental Certification: In compliance with the Ethics Rule of USPAP, I hereby certify that I have not performed any services with regard to the subject property within the 3-year period immediately preceding the engagement of this assignment.

Supplemental Certification: The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. As of the date of this report, I, R. Scott Dugan, SRA, Certified General Appraiser, have completed the continuing education program of the Appraisal Institute.

Definition of Market Value: (X) Market Value ( ) Other Value

Source of Definition: FDIC Interagency Appraisal and Evaluation Guidelines (December 2, 2010) Appendix D

As defined in the Agencies' appraisal regulations, the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

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

*The definition of market value above is the most widely cited by federally regulated lending institutions, HUD and VA. Absent a specific definition from the client, this definition was used in the assignment.

SIGNATURES:

Client Contact: BofA c/o Bradley Arant Boult Cummings LLP Client Name: BofA c/o Bradley Arant Boult Cummings LLP
E-Mail: N/A Address: 1819 Fifth Avenue South, Birmingham, AL 35203

APPRAISER

Appraiser Name: R. Scott Dugan, SRA
Company: R. Scott Dugan Appraisal Company, Inc.
Phone: 702-876-2000 Fax: 702-253-1888
E-Mail: appraisals@rsdugan.com
Date Report Signed: February 09, 2015
License or Certification #: A.0000166-CG State: NV
Designation: SRA
Expiration Date of License or Certification: 05/31/2015
Inspection of Subject: ☐ Interior & Exterior ☒ Exterior Only ☐ None
Date of Inspection: January 18, 2015

SUPERVISORY APPRAISER (if required)
or CO-APPRAISER (if applicable)

Supervisory or Co-Appraiser Name:
Company:
Phone: Fax:
E-Mail:
Date Report Signed:
License or Certification #: State:
Designation:
Expiration Date of License or Certification:
Inspection of Subject: ☐ Interior & Exterior ☐ Exterior Only ☐ None
Date of Inspection:

GP RESIDENTIAL Form GPRES2AD — "WinTOTAL" appraisal software by a la mode, inc. — 1-800-ALAMODE

DUGAN000010

Supplemental Addendum File No. 3617 Diamond Spur Ave

Client	BofA c/o Bradley Arant Boult Cummings LLP				
Property Address	3617 Diamond Spur Avenue				
City	N Las Vegas	County Clark	State NV	Zip Code 89032	
Borrower/Client	N/A				

EXPLANATORY COMMENTS

EXTRAORDINARY ASSUMPTION:

USPAP provides the following definition for "extraordinary assumption":

Defined as an assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser's opinions or conclusions.

Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. (USPAP, 2014-2015 Edition)

This report was completed without an interior inspection of the subject. External sources including, but not limited to, information from a drive-by street inspection, appraiser's files, county records, and or multiple listing service data were relied upon for information used to describe the improvements and or condition of the subject.

As indicated on page 1 of this report, if any of the assumptions invoked are found to be false, it could alter the value opinion and or other conclusions in this report. As such, the appraiser reserves the right to amend the value opinion and or conclusions based on new or revised information.

Retrospective Value: is generally defined as "A value opinion effective as of a specified historical date. The term does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiation, deficiency judgments, estate tax, and condemnation. Inclusion of the type of value with this term is appropriate, e.g., "retrospective market value opinion." Source: Appraisal Institute, The Dictionary of Real Estate Appraisal, 5th ed. (Chicago: Appraisal Institute, 2010).

The final value within this appraisal assignment represents a "Retrospective" Market Value opinion as of the date of the HOA sale, February 20, 2013, the effective date of this report. The physical exterior inspection of the subject property was performed on January 18, 2015.

External Obsolescence - Flight Path: The subject market area is situated near or under one of the flight paths that services the North Las Vegas Airport. The external influence, if any, may or may not be a factor in the sale of the subject property. The obsolescence is noted but, because of the limited data in the market, the appraiser was unable to isolate and quantify an adjustment for this comparison. Refer to the scanned Airport Environment Map in this report.

Sale History: Per county records, there was a recorded HUD foreclosure sale for the subject property within the past three years on 11/03/2010 for $72,000. As of the effective date of this appraisal, the subject has not, within the last 12 months, been offered for sale through the Las Vegas Board of Realtors Multiple Listing Service.

Supplemental Addendum File No. 3617 Diamond Spur Ave

Client	BofA c/o Bradley Arant Boult Cummings LLP				
Property Address	3617 Diamond Spur Avenue				
City	N Las Vegas	County Clark	State NV	Zip Code 89032	
Borrower/Client	N/A				

Comments on Sales Comparison Approach: The appraiser performed adjustments to comparable sales based on the market's reaction to noted differences between the comparables and subject. If adjustments were not made for noted differences, no measurable market reaction was found. One or more comparables are reported to have sold with a covered patio, a feature lacking in the subject, and other comparables differed from the subject for age, bedroom count, and site size. As of the effective date of this assignment no market reaction for these differences in this submarket were found.

The subject as well as the comparables are located within the gated community of Sutter Creek in North Las Vegas. The comparables utilized in this report range in gross living area from 1,305 to 1,439 square feet. Comparables one, four, five, and six are reported to be model matches to the subject, with two and three smaller plans.

Comparable one backs to an exterior surface street with busy traffic. The external influence, if any, may or may not be have been a factor in the sale of this property. The obsolescence is noted, however, because of limited data, the appraiser was unable to isolate and quantify an adjustment for this comparison. No adjustment warranted.

One or more comparables required adjustments for variation gross living area at $30 per square foot of contributory value. Comparables one and two were listed as having undergone renovation to include a combination of the following: new carpet and tile, interior paint, new custom kitchen cabinets, and or new kitchen appliances. Adjustments to these transactions for variation in overall condition were made at $5 per square foot of living area.

Comparables four and five, a short and bank sale, respectively, listed in "as is" condition and closed at price points significantly lower than other sales. This is not uncommon for these sale types, due to being non-arm's length, distressed transactions, often purchased in unknown condition (i.e., HUD) with repairs needed, and or with extended days on market (DOM) subject to changing market conditions. Limited offerings at the time (table below) reveals that these properties were originally priced, one below and one above comparable market pricing, then adjusted. Condition adjustments were not taken by the appraiser, due to insufficient verifiable data. The use of these comparables demonstrate the low end of the market range and are not weighted in the final analysis.

Address	Sale Price	Contract Date	Act Close Date	List Price	OrigListPrice	List Date	SqFt	DOM
3502 GOLD SLUICE AV	$80,000	03/18/2011	05/27/2011	$80,000	$80,000	02/28/2011	1439	18
3315 BRIDGE HOUSE ST	$85,000	06/14/2011	08/11/2011	$84,900	$89,900	04/22/2011	1439	53
3501 DIAMOND SPUR AV	$65,000	03/15/2012	05/01/2012	$65,000	$90,000	07/29/2011	1439	230
3510 GOLD SLUICE AV	$78,888	07/09/2012	09/12/2012	$64,000	$80,000	09/03/2011	1439	310
3429 DIAMOND SPUR AV	$63,000	01/31/2012	03/01/2012	$63,000	$60,000	09/19/2011	1439	134
3267 GOLD RUN ST	$85,000	11/18/2011	12/23/2011	$84,900	$89,000	09/30/2011	1439	49
3261 IDAHO SPRINGS ST	$56,600	03/09/2012	04/03/2012	$56,600	$69,900	12/02/2011	1439	98
3609 DIAMOND SPUR AV	$46,199	01/05/2012	04/09/2012	$50,000	$50,000	12/27/2011	1439	9
3517 DIAMOND SPUR AV	$78,000	08/17/2012	12/04/2012	$82,000	$70,000	02/20/2012	1439	179
3261 IDAHO SPRINGS ST	$96,000	05/08/2012	05/18/2012	$94,900	$94,900	04/17/2012	1439	21
3335 SUTTERS FORT ST	$99,000	08/21/2012	09/12/2012	$99,000	$99,000	06/21/2012	1439	61
3252 BRIDGE HOUSE ST	$100,000	08/02/2012	09/03/2012	$100,000	$100,000	08/01/2012	1439	1

Research of properties considered competitive to the subject indicated a smaller than typical number of recently closed comparables available for analysis. Due to this, one or more of the comparables used is approaching the recommended guideline for date of sale. As of the effective assignment

Supplemental Addendum File No. 3617 Diamond Spur Ave

Client	BofA c/o Bradley Arant Boult Cummings LLP				
Property Address	3617 Diamond Spur Avenue				
City	N Las Vegas	County Clark	State NV	Zip Code 89032	
Borrower/Client	N/A				

date of this report, increasing prices were evidenced throughout various metro submarkets. However, with too few closed transactions in the subject project, trend analysis that might warrant date of sale adjustments lacked reliability.

During times of limited availability, greatest consideration is typically placed on the most recent transactions, with support at times provided by a central tendency, and or pending or active listings (if available). Typically, in our market, when market data is within several months of a report's effective date, it usually encompasses any increase in market conditions (or pricing). This is reasonably supported by the trend analysis included within this report. Refer to the Trend graphs included in this assignment.

In developing the value opinion, the sales comparison approach was weighted. This approach considers and analyzes listings (active, pending sales, expired, etc.), along with closed sales, to determine the value opinion, factors affecting the market and the market direction or trends. This permits reconciliation of the trends and value indicators to form an opinion reflective of market conditions as of the date of value.

The following table depicts MLS transactions reviewed in the market area.

Address	List Price	Sale Price	YearBlt	SqFt	Lot Sqft	List Date	Contract Date	Act Close Date
3522 GOLD SLUICE AV	$97,900	$98,000	1999	1305	3049	10/03/2012	10/08/2012	12/12/2012
3517 DIAMOND SPUR AV	$82,000	$78,000	1999	1439	3049	02/20/2012	08/17/2012	12/04/2012
3308 SUTTERS FORT ST	$99,999	$97,500	2000	1305	3049	08/31/2012	09/19/2012	10/19/2012
3510 GOLD SLUICE AV	$64,000	$78,888	1999	1439	3107	09/03/2011	07/09/2012	09/12/2012
3335 SUTTERS FORT ST	$99,000	$99,000	2000	1439	3920	05/21/2012	08/21/2012	09/12/2012
3252 BRIDGE HOUSE ST	$100,000	$100,000	1999	1439	3049	08/01/2012	08/02/2012	09/03/2012
3248 BRIDGE HOUSE ST	$89,900	$78,000	1999	1305	3065	12/01/2011	03/28/2012	07/17/2012
3261 IDAHO SPRINGS ST	$94,900	$96,000	1999	1439	3049	04/17/2012	05/08/2012	05/18/2012
3501 DIAMOND SPUR AV	$65,000	$65,000	1999	1439	3150	07/29/2011	03/15/2012	05/01/2012
3260 SUTTERS FORT ST	$89,000	$83,000	1999	1305	3274	10/03/2011	03/25/2012	04/27/2012
3609 DIAMOND SPUR AV	$50,000	$46,199	1999	1439	3363	12/27/2011	01/05/2012	04/09/2012
3261 IDAHO SPRINGS ST	$56,600	$56,600	1999	1439	3033	12/02/2011	03/09/2012	04/03/2012
3331 SUTTERS FORT ST	$60,000	$66,000	2000	1305	3227	08/11/2011	03/19/2012	03/30/2012
3429 DIAMOND SPUR AV	$63,000	$63,000	1999	1439	3366	09/19/2011	01/31/2012	03/01/2012
3338 IDAHO SPRINGS ST	$60,000	$40,950	1999	1305	4071	11/24/2010	11/07/2011	12/29/2011
3267 GOLD RUN ST	$84,900	$85,000	2000	1439	3281	09/30/2011	11/18/2011	12/23/2011
3513 DIAMOND SPUR AV	$54,900	$70,000	1999	1305	3041	08/26/2011	09/16/2011	10/31/2011
3315 BRIDGE HOUSE ST	$84,900	$85,000	1999	1439	2946	04/22/2011	06/14/2011	08/11/2011
3264 BRIDGE HOUSE ST	$66,400	$62,211	1999	1305	3028	11/04/2010	02/06/2011	07/12/2011
3267 GOLD RUN ST	$74,900	$61,000	2000	1439	3281	02/11/2011	06/09/2011	06/30/2011
3324 GOLD RUN ST	$81,000	$80,000	2000	1305	2898	03/08/2011	04/17/2011	06/03/2011
3502 GOLD SLUICE AV	$80,000	$80,000	1999	1439	3289	02/28/2011	03/18/2011	05/27/2011
3252 BRIDGE HOUSE ST	$85,000	$85,000	1999	1439	2943	02/09/2011	04/07/2011	05/17/2011
3265 BRIDGE HOUSE ST	$62,370	$60,000	1999	1305	2934	04/08/2011	04/28/2011	05/13/2011
3260 SUTTERS FORT ST	$60,000	$65,000	1999	1305	3274	01/19/2011	01/31/2011	04/20/2011

Private Road: The road agreement has not been reviewed by this appraiser. The property clearly has access over a private road due to evidence of a gated entry noted at time of inspection. We believe its use is legal and permitted, however, no title report or maintenance agreement was furnished. No liability is implied by this office regarding the road agreement. If desired, the client should obtain a copy of the Covenants, Codes, and Restrictions (CC&R'S) to confirm that the Home Owner's Association (HOA) maintains the private streets.

Supplemental Addendum

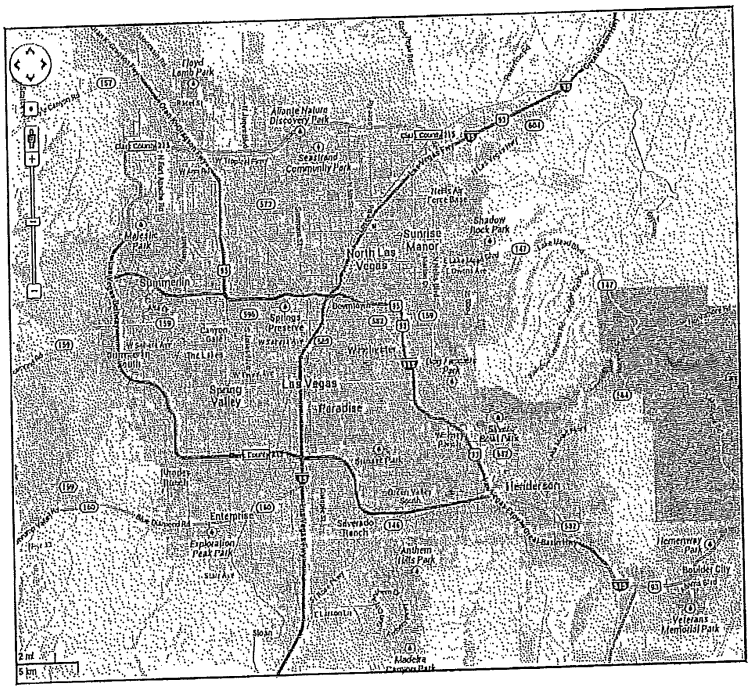
File No. 3617 Diamond Spur Ave

Client	BofA c/o Bradley Arant Boult Cummings LLP			
Property Address	3617 Diamond Spur Avenue			
City	N Las Vegas	County Clark	State NV	Zip Code 89032
Borrower/Client	N/A			

SQUARE FOOTAGE ANALYSIS: THE GROSS LIVING AREA AND SITE SIZE CALCULATIONS FOR THE SUBJECT AND COMPARABLES MAY DIFFER FROM THOSE FIGURES IN COUNTY RECORDS. THE APPRAISERS HAVE COMPLETED ASSIGNMENTS IN THE COMPETING SUBDIVISIONS AND HAVE USED THE APPRAISER'S CALCULATIONS (IF THEY NEED TO) INSTEAD OF FIGURES IN COUNTY RECORDS. INFORMATION FROM COUNTY RECORDS IS SOMETIMES NOT AVAILABLE FOR NEW CONSTRUCTION OR EXISTING HOMES THAT HAVE HAD ADDITIONS AND MODIFICATIONS. THE INFORMATION IN THE APPRAISAL REPORT IS THE MOST RELIABLE.

Market Area Overview

Client	BofA c/o Bradley Arant Boult Cummings LLP				
Property Address	3617 Diamond Spur Avenue				
City	N Las Vegas	County Clark	State NV	Zip Code 89032	
Borrower/Client	N/A				



General Area Description: The economy revolves around the Las Vegas Strip and Downtown Casino center along with key employment centers such as Nellis AFB, McCarran International Airport, numerous satellite retail, office and industrial districts that employ and service a base of 2-million people. The valley covers over 600+ square miles and includes parts of unincorporated Clark County, the cities of Las Vegas, North Las Vegas and Henderson. The unincorporated county areas within the valley have "Las Vegas" addresses and access to public services, making them transparent local to residents.

The valley is compact and can be crossed from any location in less than 1 hour. Buyer preferences are less dependent on location and more a function of personal choice, neighborhood attributes and housing types. The valley is divided into seven market areas (NW, NC, NE, SW, SC, SE and Henderson), each of which is further defined by political jurisdictions along with any number of master-planned communities a buyer would consider as a neighborhood, with emphasis on lifestyle, amenities and name recognition.

Key Factors Influencing Housing Market Trends in the area: People buy or sell based on affordability, investment potential or relocation. From 2004-2007, the market was influenced by speculation. From 2007 through 2012, the market declined severely, influenced by REOs, short sales and investor activity. The market over-corrected from the peak to the bottom, creating an imbalance between "market value" and "economic value." Investors recognized the "economic imbalance" (the spread between the monthly payment vs. the monthly market rent for the same property) and used "all cash sales" to dominate the market for several years.

While investors remain active in the market, recently we are seeing "end users" (owner occupants) take a greater participation in the market. End users also include second homebuyers and long-term investors that purchase homes for rental and cash flow. Unlike investors that buy and flip homes over short periods, end users are more sensitive to shifts in financing.

As interest rates move up from their historically low levels, pricing (and therefore values) will adjust as the market attempts to sort itself out and find balance. Until normal market level balances are reached (relationship between rents and mortgage payments or economic value reaches sale price), it is likely the market will experience some fluctuation between similar units at the neighborhood level.

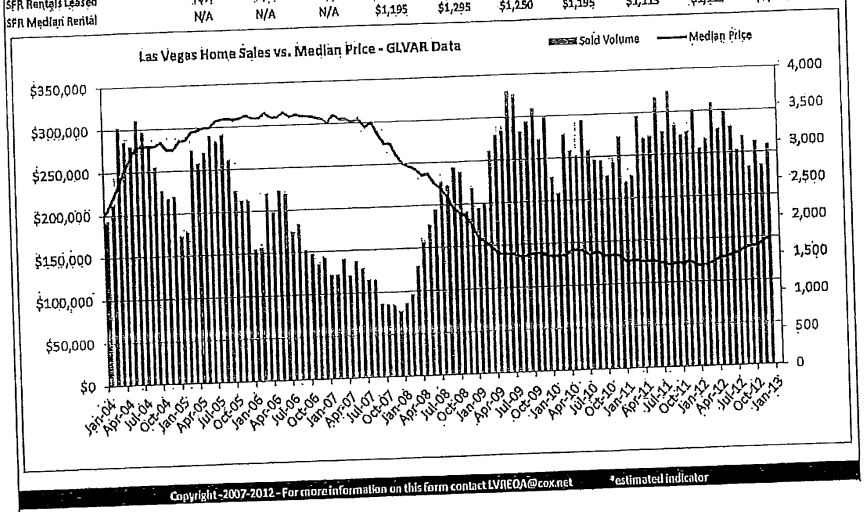
Economic Indicators

Economic Indicators Addendum

Economic Overview - Key Indicators - Clark County, NV	2006	2007	2008	2009	2010	2011	2012	M
POPULATION - Mid Yr	1,874,837	1,954,319	1,967,716	1,973,619	1,920,756	1,931,510	1,990,466	11*
EMPLOYMENT - Annual	873,249	890,104	880,822	864,353	853,969	856,174	869,640	11
LABOR FORCE - Annual	911,492	933,770	969,998	980,387	994,210	994,152	970,959	11
UNEMPLY. RATE - Yr End	4.20%	4.68%	9.19%	11.84%	14.11%	13.88%	10.40%	11
Pop. to Employ Ratio	2.15	2.20	2.23	2.28	2.25	2.26	2.29	11
Labor Force Growth	36,572	22,278	36,228	10,389	13,823	-58	-23,193	11
Net Jobs Created	38,663	16,855	-9,282	-16,469	-10,384	2,205	-13,466	11
Labor to Pop. Ratio	2.06	2.09	2.03	2.01	1.93	1.94	2.05	11
TAXABLE SALES 000's	$34,139,810	$36,052,682	$36,358,261	$34,652,202	$28,503,924	$28,207,925	$26,195,444	10
Taxable Sales / Capita	$19,001	$18,448	$18,477	$17,558	$14,840	$14,604	$13,160	10
HOTEL ROOMS	148,605	149,948	146,972	153,165	161,883	164,574	162,257	11
Visitors/Room	300	300	300	273	247	247	244	11
VISITOR VOLUME	44,025,888	43,840,535	43,915,629	41,793,952	39,870,781	40,705,384	39,568,304	11
Hotel Occupancy	89%	87%	88%	85%	81%	81%	85%	11
Airport Passengers	44,267,362	46,198,000	47,703,259	44,060,564	40,455,300	39,757,359	38,705,139	11
Convention Attend.	6,166,194	6,307,961	6,209,253	5,899,725	5,492,275	5,473,134	4,873,681	11
GAMING REVENUE - 000's	$9,718,807	$10,643,828	$10,868,509	$9,796,972	$8,833,902	$8,908,697	$8,574,214	11
Revenue per Room	$66,292	$72,929	$74,253	$63,964	$54,739	$54,132	$52,843	11

Housing - Clark County Totals								
HOUSING STOCK TOTAL	704,826	740,817	769,875	784,688	798,255	814,868	816,099	MidYr
Pop./Housing Ratio	2.66	2.64	2.56	2.52	2.41	2.37	2.44	11
Emp/Housing Ratio	1.24	1.20	1.14	1.10	1.07	1.05	1.07	11
LabFor/Housing Ratio	1.29	1.26	1.26	1.25	1.25	1.22	1.19	11
Used/Housing Stock	11.30%	10.53%	9.63%	9.08%	8.73%	8.19%	5.97%	12
RESIDENTIAL PERMITS	80,254	83,942	24,069	14,355	8,741	4,859	7,189	11
Single Family	29,408	20,748	13,011	6,095	3,840	4,324	6,006	11
Multi-Family	8,846	13,194	11,058	8,460	1,901	535	1,183	11
INTEREST RATES	6.87%	6.41%	6.34%	6.03%	5.01%	4.75%*	3.94%*	12

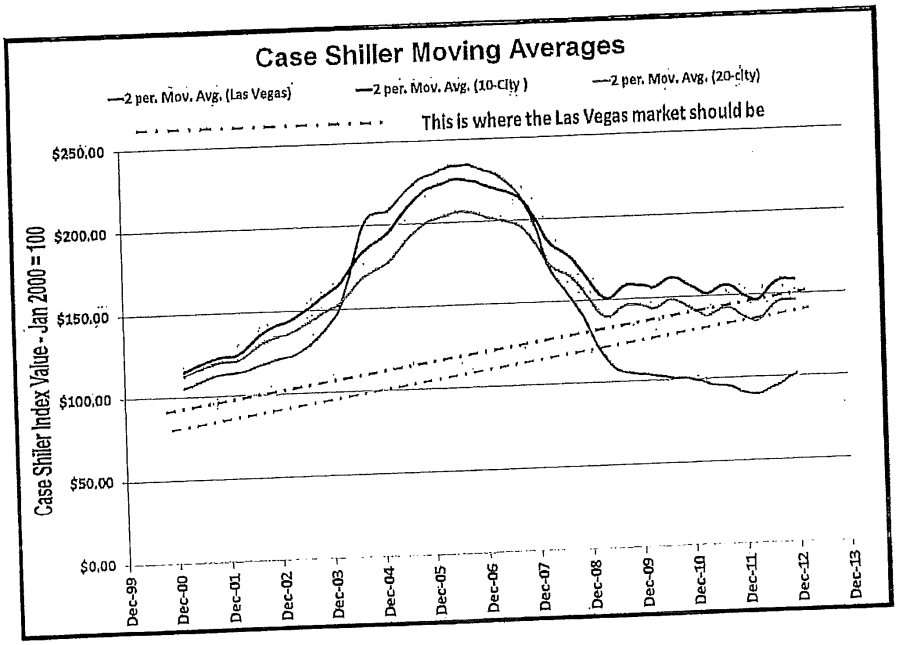
Existing Home Supply and Demand - GLVAR MLS	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	M
Single Family Listed	31,194	60,661	57,943	64,049	62,783	61,038	57,016	56,643	55,174	40,271	12
Single Family Sold	30,142	35,260	33,529	24,130	15,279	24,924	38,127	34,434	38,153	36,609	12
Percentage	97%	58%	58%	38%	24%	41%	67%	61%	69%	91%	Up
Single Family Median Price						$222,500	$140,000	$135,347	$124,750	$132,393	Up
Single Family Average Price						$285,934	$170,118	$166,917	$152,924	$165,998	Up
Condo/Townhome Listed	7,531	11,306	11,474	15,589	15,243	13,076	14,249	12,838	11,537	8,411	12
Condo/Townhome Sold	5,539	7,581	7,872	5,826	3,276	3,694	8,752	8,526	9,146	7,569	12
Percentage	74%	67%	69%	37%	21%	28%	61%	66%	79%	90%	Up
Condo/TH Median Price						$136,250	$66,644	$65,000	$56,500	$63,700	Up
Condo/TH Average Price						$185,375	$87,696	$73,159	$64,056	$70,899	Up
Total Home Sales	35,681	42,841	41,401	29,956	18,555	28,618	46,879	42,960	47,299	44,178	Up
SFR Rentals Leased	N/A	N/A	N/A	13,670	16,716	16,748	21,756	25,100	28,272	33,653	12
SFR Median Rental	N/A	N/A	N/A	$1,195	$1,295	$1,250	$1,195	$1,113	$1,115	$1,194	4



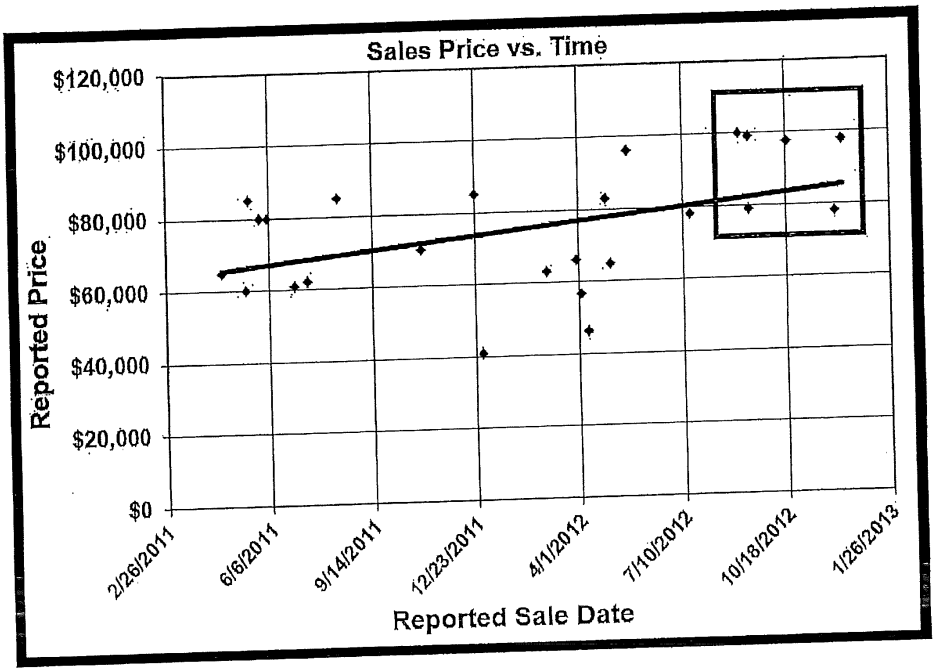
 *estimated indicator

Case Shiller

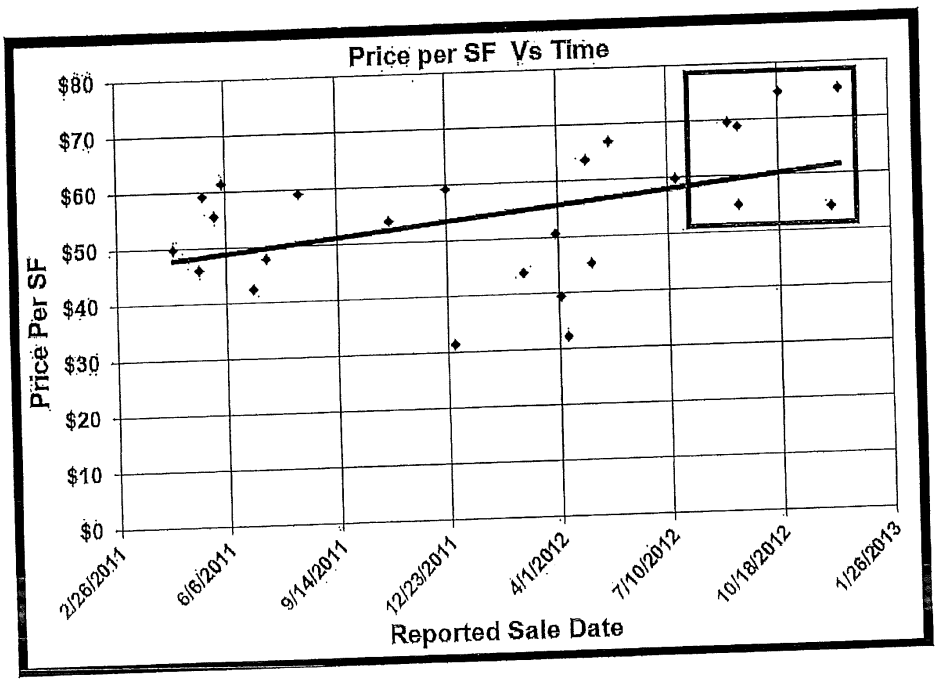
Client	BofA c/o Bradley Arant Boult Cummings LLP				
Property Address	3617 Diamond Spur Avenue				
City	N Las Vegas	County Clark	State NV	Zip Code 89032	
Borrower/Client	N/A				



Trend

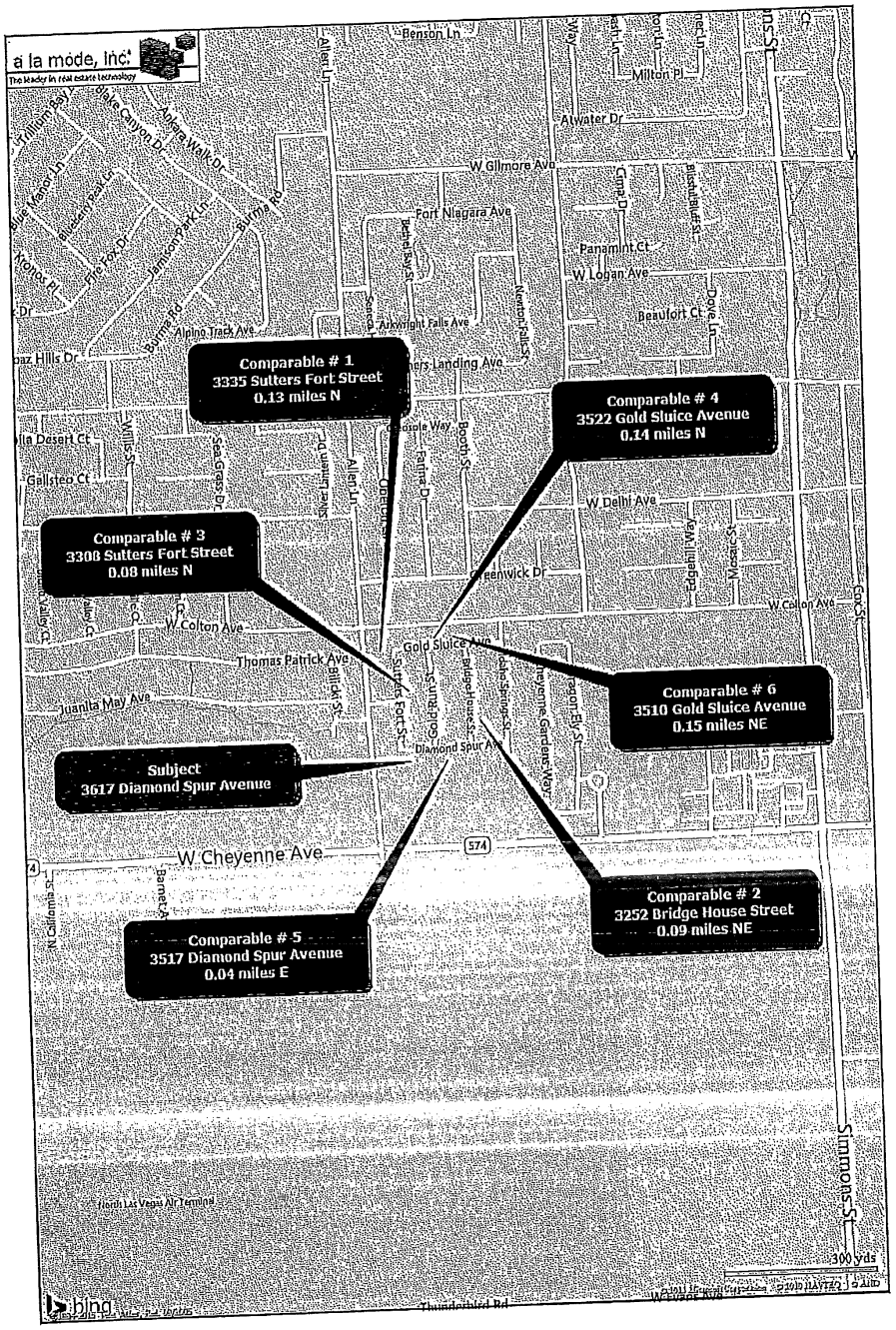

Sales Price vs. Time
$120,000
$100,000
$80,000
$60,000
$40,000
$20,000
$0
Reported Price
2/26/2011
6/6/2011
9/14/2011
12/23/2011
4/1/2012
7/10/2012
10/18/2012
1/26/2013
Reported Sale Date

Trend


Price per SF Vs Time
$80
$70
$60
$50
$40
$30
$20
$10
$0
Price Per SF
2/26/2011
6/6/2011
9/14/2011
12/23/2011
4/1/2012
7/10/2012
10/18/2012
1/26/2013
Reported Sale Date

Location Map

Client	BofA c/o Bradley Arant Boult Cummings LLP				
Property Address	3617 Diamond Spur Avenue				
City	N Las Vegas	County Clark	State NV	Zip Code 89032	
Borrower/Client	N/A				

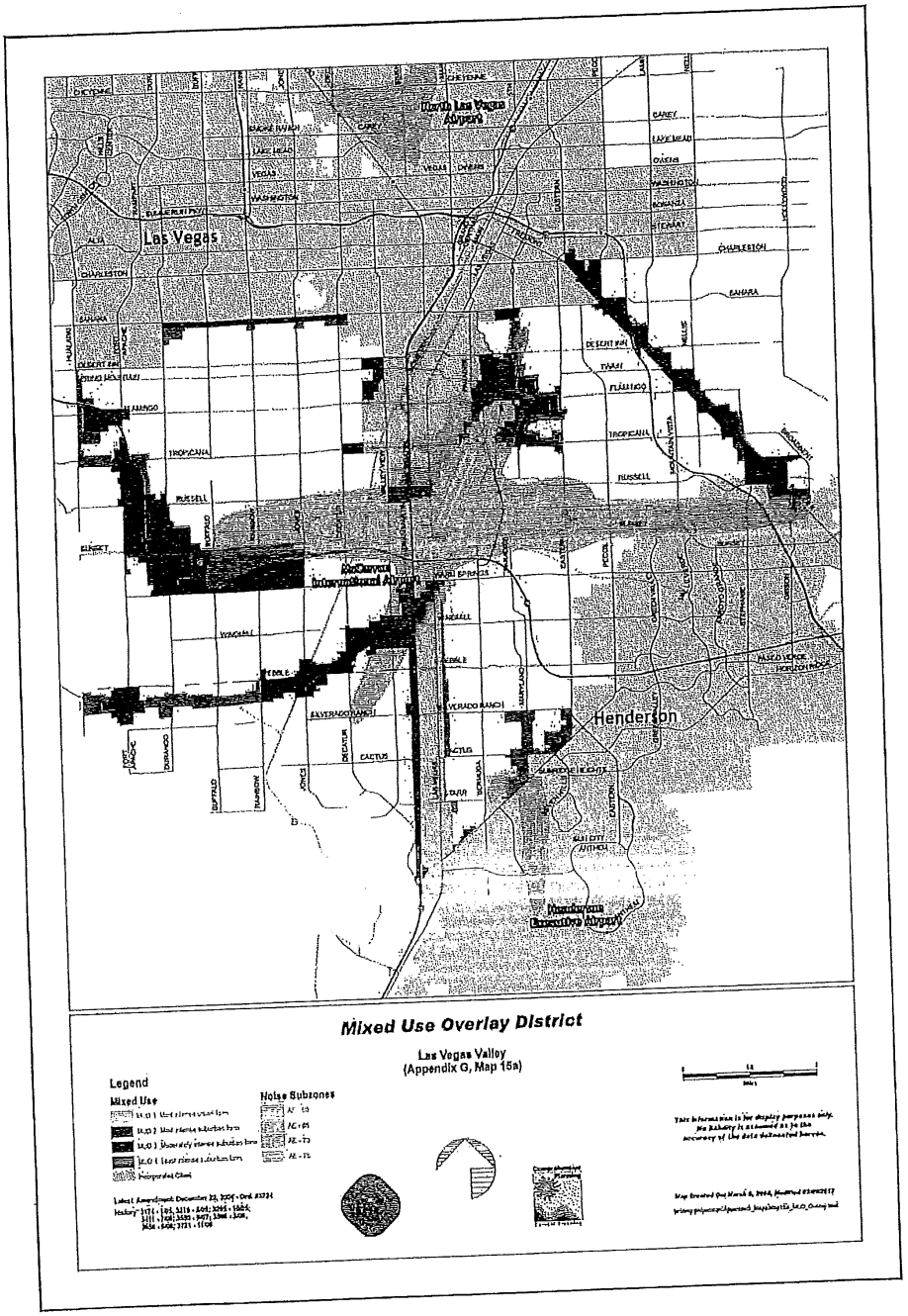


Form MAP.LOC — "WinTOTAL" appraisal software by a la mode, Inc. — 1-800-ALAMODE

DUGAN000020

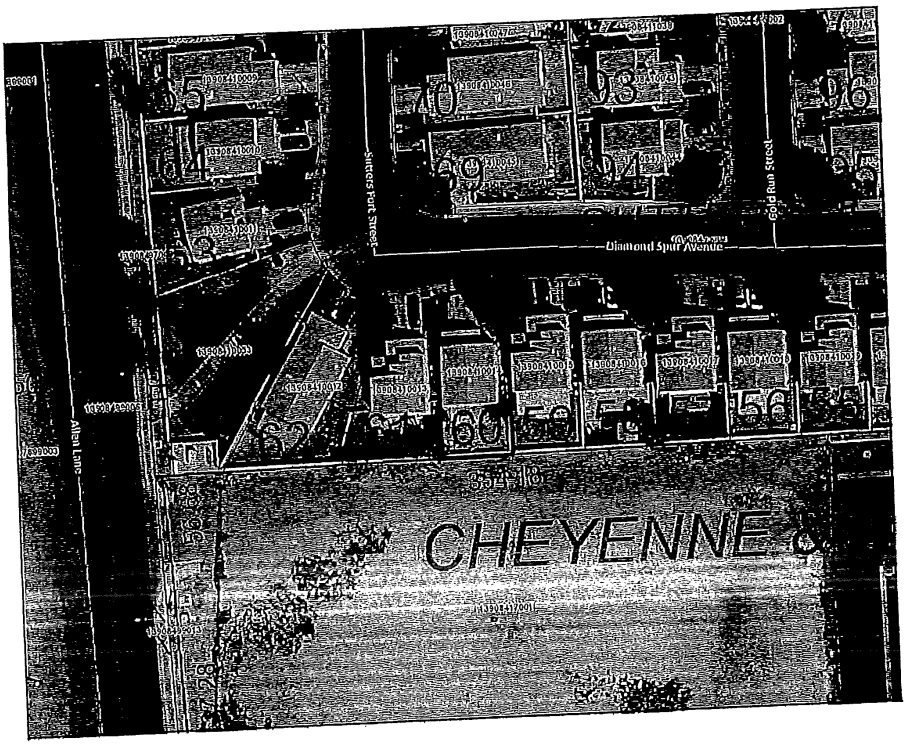
Airport Environment Map

Client	BofA c/o Bradley Arant Boult Cummings LLP				
Property Address	3617 Diamond Spur Avenue				
City	N Las Vegas	County Clark	State NV	Zip Code 89032	
Borrower/Client	N/A				



Plat Map

Client	BofA c/o Bradley Arant Boult Cummings LLP				
Property Address	3617 Diamond Spur Avenue				
City	N Las Vegas	County	Clark	State NV	Zip Code 89032
Borrower/Client	N/A				



Building Sketch

SKETCH/AREA TABLE ADDENDUM

APN: 139-08-410-014-01

SUBJECT

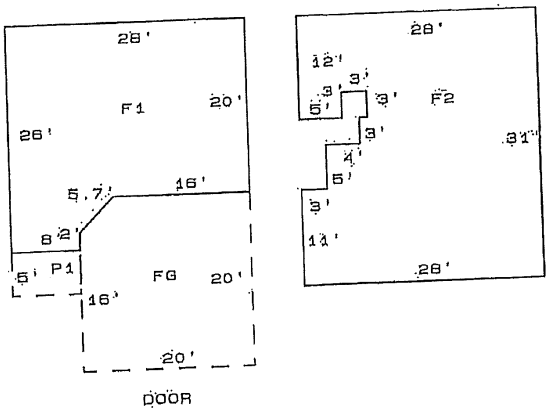
Proj/Subdivision: SUTTER CREEK — Model: PLAN 4 RT - THE COTTONWOOD

Property Address: 3617 DIAMOND SPUR AVE

Date: 06-1999 — Appr#: 605

Perimeter:

IMPROVEMENTS SKETCH



SCALE: 1 inch = 12.00 feet

Comments: This is for Tax Assessment Purposes only

AREA CALCULATIONS

AREA CALCULATIONS SUMMARY

Area	Name of Area	Actual	Factor	Effective	Totals
GLA1	F1	616.00	1.00	616.00	616.00
GLA2	F2	823.00	1.00	823.00	823.00
P/P	P1	40.00	1.00	40.00	40.00
GAR	FG	392.00	1.00	392.00	392.00

COMMENTS

FIXTURES

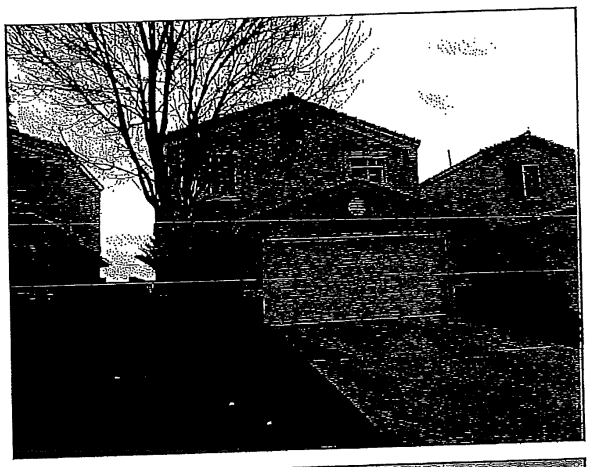
CLARK COUNTY ASSESSOR — APEX SOFTWARE 210-699-8868 — APX-8165 Apex II

Form SCNLGL — "WinTOTAL" appraisal software by a la mode, Inc. — 1-800-ALAMODE

DUGAN000023

Subject Photo Page

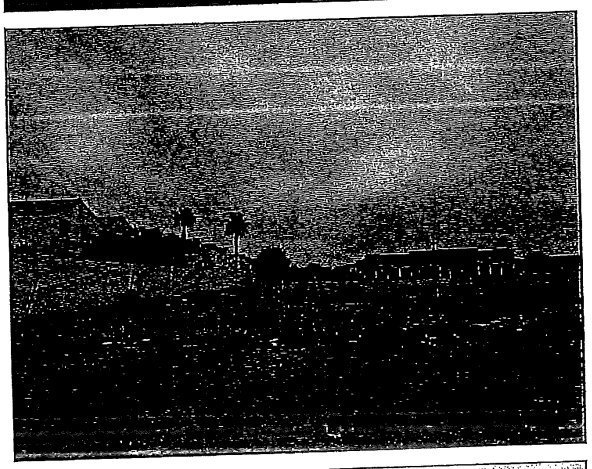
Client	BofA c/o Bradley Arant Boult Cummings LLP				
Property Address	3617 Diamond Spur Avenue				
City	N Las Vegas	County Clark	State NV	Zip Code 89032	
Borrower/Client	N/A				



Subject Front

3617 Diamond Spur Avenue

Sales Price	
Gross Living Area	1,439
Total Rooms	6
Total Bedrooms	4
Total Bathrooms	2.5
Location	Vacant Land/Gated
View	Residential
Site	.08 Acre/Interior
Quality	Stucco
Age	1999

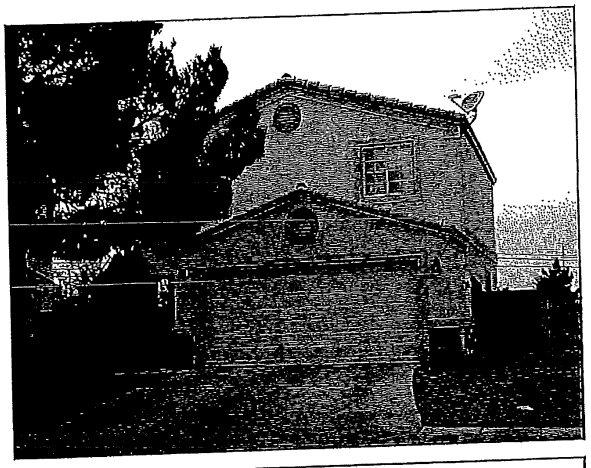


Backs to Vacant Land

Subject Street

Comparable Photo Page

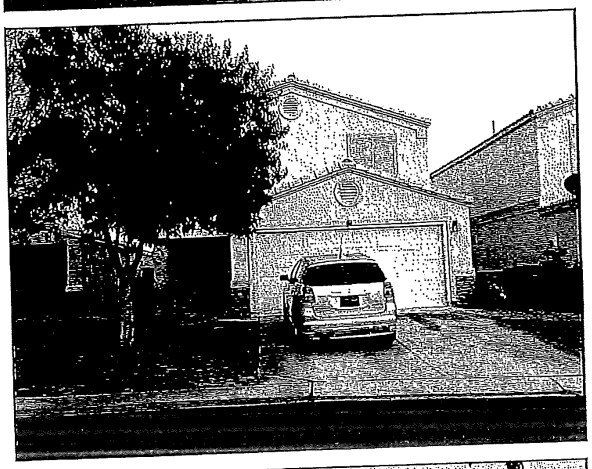
Client	BofA c/o Bradley Arant Boult Cummings LLP				
Property Address	3617 Diamond Spur Avenue				
City	N Las Vegas	County Clark	State NV	Zip Code 89032	
Borrower/Client	N/A				



Comparable 1

3335 Sutters Fort Street

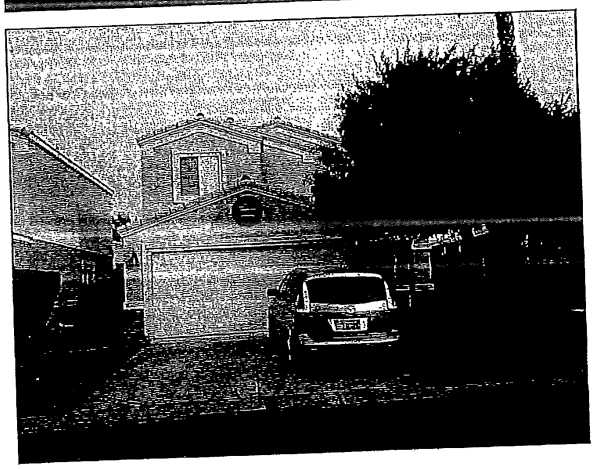
Prox. to Subject	0.13 miles N
Sales Price	99,000
Gross Living Area	1,439
Total Rooms	6
Total Bedrooms	4
Total Bathrooms	2.5
Location	Busy/Gated
View	Residential
Site	.09 Acre/Interior
Quality	Stucco
Age	2000



Comparable 2

3252 Bridge House Street

Prox. to Subject	0.09 miles NE
Sales Price	100,000
Gross Living Area	1,439
Total Rooms	6
Total Bedrooms	4
Total Bathrooms	2.5
Location	Average/Gated
View	Residential
Site	.07 Acre/Interior
Quality	Stucco
Age	1999



Comparable 3

3308 Sutters Fort Street

Prox. to Subject	0.08 miles N
Sales Price	97,500
Gross Living Area	1,305
Total Rooms	5
Total Bedrooms	3
Total Bathrooms	2.5
Location	Average/Gated
View	Residential
Site	.07 Acre/Interior
Quality	Stucco
Age	2000

Comparable Photo Page

Client	BofA c/o Bradley Arant Boult Cummings LLP				
Property Address	3617 Diamond Spur Avenue				
City	N Las Vegas	County Clark	State NV	Zip Code 89032	
Borrower/Client	N/A				

Comparable 4

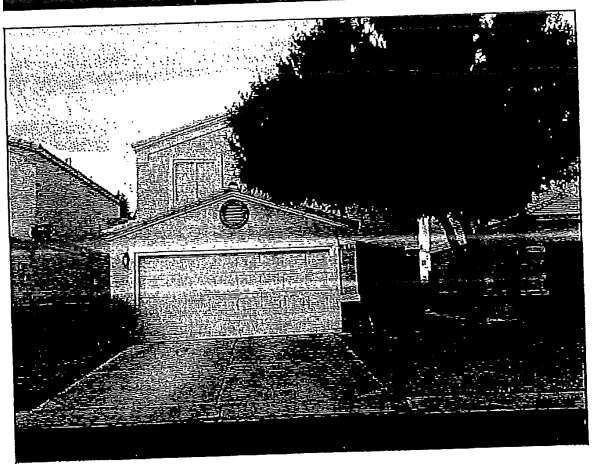
3522 Gold Sluice Avenue

Prox. to Subject	0.14 miles N
Sales Price	98,000
Gross Living Area	1,305
Total Rooms	5
Total Bedrooms	3
Total Bathrooms	2.5
Location	Average/Gated
View	Residential
Site	.07 Acre/Interior
Quality	Stucco
Age	1999

Comparable 5

3517 Diamond Spur Avenue

Prox. to Subject	0.04 miles E
Sales Price	78,000
Gross Living Area	1,439
Total Rooms	6
Total Bedrooms	4
Total Bathrooms	2.5
Location	Average/Gated
View	Residential
Site	.07 Acre/Interior
Quality	Stucco
Age	1999



Comparable 6

3510 Gold Sluice Avenue

Prox. to Subject	0.15 miles NE
Sales Price	78,888
Gross Living Area	1,439
Total Rooms	6
Total Bedrooms	4
Total Bathrooms	2.5
Location	Average/Gated
View	Residential
Site	.07 Acre/Interior
Quality	Stucco
Age	1999

Trustee's Deed - Page 1

Inst #: 201302260003889
Fees: $17.00 N/C Fee: $0.00
RPTT: $107.10 Ex: #
02/26/2013 03:47:58 PM
Receipt #: 1612190
Requestor:
ALESSI & KOENIG LLC
Recorded By: JACKSM Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
SFR Investments Pool 1, LLC
5030 Paradise Road, St. B-214
Las Vegas, NV 89119

A.P.N. No.139-08-410-014 TS No. 30455-3617

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: SFR Investments Pool 1, LLC
The Foreclosing Beneficiary herein was: Sutter Creek Homeowners Association
The amount of unpaid debt together with costs: $5,260.00
The amount paid by the Grantee (Buyer) at the Trustee's Sale: $21,000.00
The Documentary Transfer Tax: $107.10
Property address: 3617 DIAMOND SPUR AVE, NO LAS VEGAS, NV 89032
Said property is in [ ] unincorporated area: City of NO LAS VEGAS
Trustor (Former Owner that was foreclosed on): ARMANDO A. CARIAS

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded February 23, 2012 as instrument number 0001691, in Clark County, does hereby grant, without warranty expressed or implied to: SFR Investments Pool 1, LLC (Grantee), all its right, title and interest in the property legally described as: SUTTER CREEK-PHASE 1 LOT 60 BLOCK 1, as per map recorded in Book 85, Pages 30 as shown in the Office of the County Recorder of Clark County Nevada.

TRUSTEE STATES THAT:
This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on February 20, 2013 at the place indicated on the Notice of Trustee's Sale.

Ryan Kerbow, Esq.
Signature of AUTHORIZED AGENT for Alessi & Koenig, LLC

State of Nevada)
County of Clark)

SUBSCRIBED and SWORN to before me 2/20/13

WITNESS my hand and official seal.
(Seal)

(Signature)

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
LANI MAE U. DIAZ
Appt. No. 10-2800-1
My Appt. Expires Aug. 24, 2014

Trustee's Deed - Page 2

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 139-08-410-014
   b.
   c.
   d.
2. Type of Property:
   a. ☐ Vacant Land b. ☑ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other

FOR RECORDERS OPTIONAL USE ONLY
Book _____ Page: _____
Date of Recording: _____
Notes:

3. a. Total Value/Sales Price of Property: $ 21,000.00
   b. Deed in Lieu of Foreclosure Only (value of property): ( )
   c. Transfer Tax Value: $ 21,000.00
   d. Real Property Transfer Tax Due: $ 107.10

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

5. Partial Interest: Percentage being transferred: 100 %

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

Signature _____ Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION (REQUIRED)	BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Alessi & Keonig LLC	Print Name: SFR Investments Pool 1, LLC
Address: 9500 W Flamingo Rd., Suite 205	Address: 5030 Paradise Road, St. B-214
City: Las Vegas	City: Las Vegas
State: NV Zip: 89147	State: NV Zip: 89119

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)
Print Name: Alessi & Keonig LLC
Address: 9500 W Flamingo Rd., Suite 205
City: Las Vegas
Escrow #N/A Foreclosure
State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Clarification of Scope of Work

File No. 3617 Diamond Spur Ave

Client	BofA c/o Bradley Arant Boult Cummings LLP			
Property Address	3617 Diamond Spur Avenue			
City	N Las Vegas	County Clark	State NV	Zip Code 89032
Borrower/Client	N/A			

CLARIFICATION OF SCOPE OF WORK (Rev. 09/08/2014)

This following, explanatory comments are not a modification of the assumptions, limiting conditions or certifications in the appraisal report, but a "clarification" of the appraiser's actions with respect to generally accepted appraisal practice and the requirements of this assignment. The intent is to clarify and document what the appraiser did and or did not do in order to develop the value opinion.

Limitations of the Assignment: The appraisal process is technical and therefore requires the intended user or anyone relying on the conclusions, to have a general understanding of the appraisal process to comprehend the limits of the applicability of the value opinion to the appraisal problem. Real estate is an "imperfect market" and one that can be affected by many factors. Therefore, supplemental reporting requirements and the realities of the market, including the reliability of the data sources, inability to verify key information and the reliance on information sources as being factual and accurate, can affect the conclusions within the report. Those relying on the report and its conclusions must understand and factor these limitations into their decisions regarding the subject property.

The "single point of value" (SPV) is based on the definition of value (stated within the report) which has criteria that may or may not be consistent in the marketplace. Value definitions often assume "knowledgeable buyers and sellers" or "no special motivations," when these and other criteria cannot be verified. For most assignments, guidelines require the selection and reporting of a SPV, taken from a range of value indicators that may vary high or low from the SPV due to factors that cannot be quantified or qualified within the constraints of the data, market conditions and time limits imposed in the development of the report and associated scope of work.

The SPV conclusion is a "benchmark" in time, provided at the request of the client and or intended user of this report and for the purpose stated. Anyone relying upon the conclusions should read the report in its entirety, to comprehend and accept the assignment conditions as suitable and reliable for their purpose. The definition of market value and its criteria is not universal in its application, nor consistent from one intended use to another.

This report was prepared to the intended user's requirements and only for their stated purpose. The analysis and conclusions are unique to that purpose and should not be relied upon for another purpose or use, even though they may seem similar. Decisions related to this property should only be made after properly considering all factors including information not within the report, but known or available to the reader and comprehending the process and guidelines that shape the appraisal process.

SCOPE OF WORK (SOW): Is "the type and extent of research and analysis in an assignment." This is specific to each appraisal given the appraisal problem and assignment conditions. The SOW is generally similar for most assignments, however, the property type or assignment conditions may require deviations from normal procedures. With some assignments, it is not possible to complete an interior inspection of the subject property. Likewise, with a retrospective date of value, the subject property and comparables may appear different than they were as of the effective value date.

For these and other reasons, this "clarification of scope of work" (COSOW) is intended as a guide to general tasks and analysis performed by the appraiser. These statements are a guide for comparison purposes (as part of the valuation process) and do not represent a detailed analysis of the physical or operational condition of these items. This report is not a home inspection. Any statement is advisory based only upon casual observation. The reader or intended user should not rely on this report to disclose hidden conditions and defects.

Complete Visual Inspection Includes: A visual inspection of only the readily accessible areas of the property and only those components that were clearly visible from the ground or floor level. List amenities, view readily observable interior and exterior areas, note quality of materials/workmanship and observe the general condition of improvements. Determine the building areas of the improvements; assess layout and utility of the property. Note the conformity to the market area. Perform a limited check and or observation of mechanical and electrical systems. Photograph interior/exterior, view site, observe and photograph each comparable from the street.

Complete Visual Inspection Does/Did NOT Include: Observation of spaces or areas not readily accessible to the typical visitor; building code compliance beyond obvious and apparent issues; testing or inspection of the well or septic system; mold and radon assessments; moving furniture or personal property; roof condition report beyond observation from the ground level.

No Interior Inspection: Some assignment conditions preclude inspection of the interior and or improvements on the site. Drive-by, review assignments, proposed construction and other assignment factors may affect the ability to view the improvements from the interior and at times, the exterior. In these cases, the appraiser has disclosed the "non-inspection" and used various sources of information to determine the property characteristics and condition as of the effective date of value. When applicable, these assignment conditions are stated in the report.

Inspect The Neighborhood: Observations were limited to driving through a representative number of streets in the area, reviewing maps and other data and observing comparables from the street to determine factors that may influence the value of the subject property. "Neighborhood" boundaries are not exact and are defined by the influence of physical, social, economic and governmental characteristics (the same criteria used to define census tracts). Over time, small areas merge and once

Clarification of Scope of Work

File No. 3617 Diamond Spur Ave

Client	BofA c/o Bradley Arant Boult Cummings LLP				
Property Address	3617 Diamond Spur Avenue				
City	N Las Vegas	County Clark	State NV	Zip Code 89032	
Borrower/Client	N/A				

distinct boundaries become less defined. Comparable data was selected based upon the area proximate to the subject that a buyer would consider directly competitive.

Repairs or Deterioration: Deficiency and livability are subjective terms. The value considers repair items that (in his/her opinion), affect safety, adequacy, and marketability of the property. Physical deterioration has not been itemized, but considered in the approaches to value.

Construction Defects: Construction defect issues (even when widely publicized) are not consistently reported in the MLS data. State law requires disclosure by the seller to a buyer of known defects and or prior issues. The definition of value assumes "informed buyer" and disclosure to the buyer is mandated by law. The analysis and conclusions presume the prices reported in the market data reflect the buyer's knowledge of prior or current defect related issues (if any).

Satisfactory Completion: The work will be completed as specified and consistent with the quality and workmanship associated with the quality classification identified and physical characteristics outlined within the report.

Cost Approach: Is applicable when the improvements are new or relatively new and when sufficient building sites are available to provide a buyer with a "construction alternative" to purchasing the subject. In areas where similar sites are not available and or in cases where the economy of scale from multi-unit construction is not available to a potential buyer, reliability of the cost approach is limited. Applicability of the cost approach in this assignment is specifically addressed in that section of the appraisal report.

If the cost approach was used it represents the "replacement cost estimate." If used, its inclusion was based on one of the following: request by the client; age requirement under FHA/HUD guidelines; or deemed appropriate for use by the appraiser for "valuation purposes." Regardless of the condition or reason for its use, it should not be relied upon for insurance purposes. The definition of "market value" used within this report is not consistent with the definition of "insurable value."

Income Approach: Is applicable when investors regularly acquire properties that are similarly desirable to the subject for the express purpose of the income they provide. While rentals may exist in any area, their presence alone is not proof of a viable rental and investor marketplace. Use or exclusion of the income approach is specifically addressed in that section of the appraisal report.

Gross Living Area (GLA): The Greater Las Vegas Association of Realtors ® MLS auto-populates the GLA from Clark County Assessor (CCAO) records. Assessors in Nevada are granted (by statute), leeway in determination of the GLA via several commonly employed methods to measure properties and typically rounds measurements to the nearest foot. Therefore, it is common to have variances between the "as measured" GLA by the appraiser and the "as reported" GLA from the CCAO. The GLVAR MLS handles more than 90% of the transactions in this area. Buyers and sellers rely on the MLS and therefore, the GLAs therein are the de-facto standard used by the market as a decision making factor. The appraiser deems the CCAO reported GLA as being reasonable and reliable for comparison purposes, regardless of any other standard used by builders, architects, agents, etc. The appraiser has considered these facts in the analysis and reconciled in the value opinion, only differences in GLA that would be "market recognized" and contribute to greater utility or function in the subject or comparable and greater value by the buying and selling public.

Extent of Data Research-Comparable Data: The appraiser used reasonably available information from city/county records, assessor's records, multiple listing service (MLS) data and visual observation to identify the relevant characteristics of the subject property. Comparables used were considered relevant to the analysis of subject property and applicable to the appraisal problem. The data was adjusted to the subject to reflect the market's reaction (if any and in terms of value contribution) to differences. Photographs taken by the appraiser are originals and un-altered, unless physical access was unavailable. In some cases, MLS photographs may be used to illustrate property conditions, views, etc.

Public and Private Data: The appraiser has access to public records and data available on the internet, the Multiple Listing Service, various cost estimating services, flood data, maps and other property related information, along with private information and knowledge of the market that is pertinent and relevant for this assignment.

Adverse Factors: Based upon the standards of the party observing the property, a range of factors internal or external to the property may be "adverse" by their viewpoint. The appraiser noted factors that may affect the marketability and livability to potential buyers, based upon knowledge of the market and as evidenced by sales of properties with similar or comparable conditions. These items are noted in the report and the valuation approaches that were applied to the analysis. Some buyers in the market may consider factors such as drug labs, registered sex offenders, criminal activity, interim rehabilitation facilities, halfway houses or similar uses as "adverse". No attempt was made to investigate or discover such activities, unless such factors were readily apparent and obviously affecting the subject property as evidenced by market data. If the intended user or a reader has concerns in these areas, it is recommended that they secure this information from a reliable source.

Easements: Major power transmission and distribution lines, railroad and other services related easements, including utility easements, limited common areas and conditions that grant others the right to access the subject property and or travel adjacent to the private areas of the subject property. The term adverse applies to individual perspective. It may or may not be

Clarification of Scope of Work

File No. 3617 Diamond Spur Ave

Client	BofA c/o Bradley Arant Boult Cummings LLP				
Property Address	3617 Diamond Spur Avenue				
City	N Las Vegas	County Clark	State NV	Zip Code 89032	
Borrower/Client	N/A				

negative, dependent upon the individual. One perspective may hold easements to be unappealing visually or disruptive. From another, such easements and corridors provide open space and ensure greater privacy (due to the size of the easement) from neighboring properties. Unless the easement affects the utility or use of the site or improvements, any impact was only considered from the perspective of marketability. In cases where the site abuts a major power transmission easement, the towers are generally centered within the right of-way and engineered to collapse within the easement. The effect or impact is inconsistent (as measured in the market) and therefore unless compelling evidence was found in comparable data, no adjustment was made, only the presence stated.

Valuation Methodology: The data presented in the report is considered to be the most relevant to the valuation of the subject property (and its market segment) based on its current occupancy and market environment. In areas influenced by foreclosure, short-sale and REO activity, and motivated (or impacted) by factors that cannot be qualified or quantified, the transactional characteristics of those sales may not fully meet the definition of market value criteria and therefore may be misleading. Verifications and drive-by inspections frequently reveal inconsistencies between the MLS and public records. Through this process, the appraiser can present the rationale supporting the final value opinion within the reconciliation and the reader can comprehend the logic and its application to the valuation process.

The Value Opinion: The value opinion may not be valid in another time-period. It is important for anyone relying on the report to comprehend the dynamic nature of real estate and the validity of the single value point or value range reported. The reported value is a benchmark or reference in time (as of a specific date) and subject to change (sometimes rapidly), based upon many factors including market conditions, interest rates, supply and demand. Therefore, anyone relying on the reported conclusions should first comprehend and accept the assignment conditions, assumptions, limiting conditions and other factors stated within the report as being suitable and reliable for their purpose and intended use.

Specific Reporting Guidelines: Market participants have unique appraisal reporting guidelines. The COSOW is supplemental to the forms stated scope of work, providing an overview of the appraiser's actions with respect to general appraisal practice and the stated requirements of the assignment. The intent is to clarify what the appraiser did and or did not do in order to develop the value opinion. Guidelines require the borrower receive a copy of the appraisal report, however, the borrower is not an intended user. The appraisal process and specific reporting requirements are highly technical and in most cases, beyond the comprehension of most readers. Anyone choosing to rely upon the appraisal should read the report in its entirety and if needed, consult with professionals that can assist them with understanding the basis of this report and the required reporting requirements, prior to making any decisions based upon the conclusions and or observations stated within.

Use of Electronic Appraisal Delivery Services: If the client directed that the appraiser transmit the content of this report via Appraisal Port or a similar delivery portal service, pursuant to user agreements, these services disclaim any warranty that the service provided will be error free and that these services may be subject to transmission errors. Accordingly, the client should make its own determination as to the accuracy and reliability of any such service they employ. The appraiser makes no representations and specifically disclaims any warranty regarding the accuracy or portrayal of content transmitted via Appraisal Port or any similar service or their reliability. The appraiser uses such technology at the specific direction and sole risk of the client. At its request, the client may obtain a true copy of the original report directly from the appraiser via email (PDF), mail or other means.

EXHIBIT F

EXHIBIT F

Inst #: 201302260003889
Fees: $17.00 N/C Fee: $0.00
RPTT: $107.10 Ex: #
02/26/2013 03:47:58 PM
Receipt #: 1512190
Requestor:
ALESSI & KOENIG LLC
Recorded By: JACKSM Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
SFR Investments Pool 1, LLC
5030 Paradise Road, St. B-214
Las Vegas, NV 89119

A.P.N. No.139-08-410-014 TS No. [redacted]3617

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: **SFR Investments Pool 1, LLC**
The Foreclosing Beneficiary herein was: **Sutter Creek Homeowners Association**
The amount of unpaid debt together with costs: $5,260.00
The amount paid by the Grantee (Buyer) at the Trustee's Sale: **$21,000.00**
The Documentary Transfer Tax: $107.10
Property address: **3617 DIAMOND SPUR AVE, NO LAS VEGAS, NV 89032**
Said property is in [ ] unincorporated area: City of **NO LAS VEGAS**
Trustor (Former Owner that was foreclosed on): **ARMANDO A. CARIAS**

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded **February 23, 2012** as instrument number **0001691**, in Clark County, does hereby grant, without warranty expressed or implied to: **SFR Investments Pool 1, LLC** (Grantee), all its right, title and interest in the property legally described as: **SUTTER CREEK-PHASE 1 LOT 60 BLOCK 1,** as per map recorded in Book **85**, Pages **30** as shown in the Office of the County Recorder of Clark County Nevada.

TRUSTEE STATES THAT:
This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on **February 20, 2013** at the place indicated on the Notice of Trustee's Sale.

Ryan Kerbow, Esq.
Signature of AUTHORIZED AGENT for **Alessi & Koenig, LLC**

State of Nevada)
County of **Clark**)

SUBSCRIBED and SWORN to before me 2/20/13

WITNESS my hand and official seal.
(Seal) (Signature)

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
LANI MAE U. DIAZ
Appt. No. 10-2800-1
My Appt. Expires Aug. 24, 2014

BANA00058

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 139-08-410-014
   b. _____
   c. _____
   d. _____
2. Type of Property:
   a. ☐ Vacant Land b. ☑ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other

FOR RECORDERS OPTIONAL USE ONLY
Book _____ Page: _____
Date of Recording: _____
Notes:

3.a. Total Value/Sales Price of Property $ 21,000.00
   b. Deed in Lieu of Foreclosure Only (value of property) ( )
   c. Transfer Tax Value: $ 21,000.00
   d. Real Property Transfer Tax Due $ 107.10

4. **If Exemption Claimed:**
   a. Transfer Tax Exemption per NRS 375.090, Section _____
   b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

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

Signature _____ Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION (REQUIRED)
Print Name: Alessi & Keonig LLC
Address: 9500 W Flamingo Rd., Suite 205
City: Las Vegas
State: NV Zip: 89147

BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: SFR Investments Pool 1, LLC
Address: 5030 Paradise Road, St. B-214
City: Las Vegas
State: NV Zip: 89119

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)
Print Name: Alessi & Keonig LLC
Address: 9500 W Flamingo Rd., Suite 205
City: Las Vegas
Escrow #N/A Foreclosure
State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

BANA00059

EXHIBIT G

EXHIBIT G

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

June 20, 2012

Mortgagee Letter 2012-11

To **All FHA-Approved Mortgagees, Single Family Servicing Managers**

Subject **Clarification Regarding Title Approval at Conveyance**

Purpose

The purpose of this Mortgagee Letter is to provide changes relating to title approval at conveyance. Title approval issues include:

- Unpaid Taxes;
- Condominium (Condo)/Homeowners' Association (HOA) Fees;
- Unpaid Utility Bills; and
- Manufactured Housing Titles.

Effective Date

All requirements and changes are effective on August 1, 2012.

Affected Policy

The policies set forth in this Mortgagee Letter supersede those portions of Mortgagee Letter 2002-19, *Clarification Regarding Title Approval Issues, Property Condition at Conveyance, Administrative Offsets and a New Process for Lender Appeal of Conveyance Issues*, regarding unpaid taxes, condominium/HOA fees, unpaid utility bill, and manufactured housing home title issues. All other requirements of Mortgagee Letter 2002-19 remain in effect.

Mortgagees Must Pay All Taxes Prior to Conveyance

Because taxes are generally paid in arrears, they effectively constitute a lien on a property even when they are not yet due and payable. In some states, unpaid taxes are given priority over first mortgages of record, so mortgagees must request and pay all available tax bills prior to conveyance. Upon conveyance of good marketable title to the property to HUD, the mortgagee must:

- Certify that all taxes are paid as of the date of conveyance;
- Document such payment and identify the most recent period for which taxes were paid in the Mortgagee Comments section of Form HUD-27011 Part A; and
- Provide any documentation, such as a paid receipt, that is necessary to verify that such payment was made.

Mortgagees are reminded that in accordance with 24 CFR § 203.365 they must also retain invoices and paid bill receipts in the claim file and provide hard copies to HUD within 24 hours, if so requested.

Because the payment of taxes is the responsibility of the mortgagee, HUD will not reimburse late fees and/or interest penalties charged by the taxing jurisdiction for the late payment of taxes.

Additionally, mortgagees are on notice that failure to pay taxes when due is a violation of HUD requirements. The National Servicing Center will track and monitor reported violations and refer lenders who exhibit a pattern of non-compliance to the Office of Lender Activities for appropriate action including possible referral to the Mortgagee Review Board.

Reconveyance for Unpaid/ Outstanding Taxes

Where taxes, late fees and/or interest penalties are owed to the taxing jurisdiction when a property is conveyed to HUD, FHA may:

- Reconvey the property (if doing so is in the best interest of HUD), and
- Require the mortgagee to pay the unpaid taxes before resubmitting its claim for insurance benefits, including any deductions as a result of the delayed conveyance.

FHA may also reconvey a property if the mortgagee fails to properly document payment of such items on Form HUD-27011 Part A as provided above.

Mortgagees Must Pay HOA Fees Prior to Conveyance

At this time, condominium and homeowners' association fees are not required escrow items for FHA-insured single-family mortgages. Therefore, payment of these fees as they become due is the mortgagor's responsibility. When a mortgagor defaults and a foreclosure action is necessary, the mortgagee must:

- Name and properly serve the condo/HOA in the foreclosure proceedings in order to eliminate or minimize HUD's responsibility for unpaid condo/HOA fees; and
- Upon completion of a foreclosure sale, notify the condo/HOA of the mortgagee's interest in the property and, prior to conveyance to HUD, pay condo/HOA assessments not extinguished by the foreclosure.

Further, mortgagees must take any action necessary to protect HUD's interest when foreclosure actions are brought by a condo/HOA on a property securing an FHA-insured mortgage.

In addition, mortgagees must ensure that any pre-foreclosure condo/HOA fees/liens are removed from the property prior to conveyance to HUD.

If the mortgaged property is in a jurisdiction where pre-foreclosure unpaid Condo/HOA fees…	Then the mortgagee must ensure that…
Survive the foreclosure	Such fees/liens are either paid or removed from the property.
Are extinguished by foreclosure	Any pre-foreclosure Condo/HOA fees/liens that the Condo/HOA claims are due are resolved.

HUD will reimburse mortgagees 100 percent of payments of Condo/HOA fees incurred between the date of foreclosure and the date of transfer of title to HUD. Mortgagees may also claim reimbursement for penalties, interest, and other related fees and charges incurred by the former mortgagor and paid by the mortgagee. However, HUD will not reimburse any penalties, interest and/or late fees incurred after the foreclosure sale.

Reconveyance for Unpaid HOA Fees

All final bills, lien payments and/or removal of pre-foreclosure liens for Condo/HOA fees must be documented in the Mortgagee Comments section of Form HUD-27011 Part A, and the mortgagee must provide such documentation necessary to verify that these payments were due and paid by the mortgagee.

In addition, if applicable, the mortgagee must document any common area access requirements needed to gain access to the FHA-insured property. Absent this information on Form HUD-27011 Part A, FHA may reconvey the property.

Mortgagees Must Pay All Unpaid Water, Sewer, or Other Assessments

Mortgagees must research and pay water, sewer, and other assessments against the property securing an FHA-insured mortgage prior to the conveyance of the property to HUD. All final bills and/or lien payments for water/sewer/utility or other assessments must be documented in the Mortgagee Comments section of Form HUD-27011 Part A, and the mortgagee must provide such documentation necessary to verify that these payments were due and paid by the mortgagee. Absent this information on Form HUD-27011 Part A, FHA may re-convey the property.

However, where a contract for sale has been consummated, upon receipt of a work order from the Asset Manager (AM) or Government Technical Representative (GTR) the Mortgagee Compliance Manager (MCM) shall:

- Issue a Notice of Non-compliance, and
- Demand payment from the mortgagee in an amount sufficient to satisfy any lien or encumbrances, including penalties and interest, which prevent or delay a sale.

Title Evidence for Manufactured Housing

Conveyance problems occur when a manufactured home has not been included in the title to the land and is therefore not being taxed as real estate. If the manufactured home title issued by the jurisdictional Department of Motor Vehicles has not been purged or surrendered by the mortgagor, subsequent owners of the property might find that they have title to the land but not to its improvements (*i.e.*, the manufactured home).

HUD requires additional documentation in the title evidence for all manufactured homes. Specifically, there must be evidence that:

- The manufactured home is attached to the land,
- The manufactured home is classified and taxed as real estate, and
- In accordance with the jurisdictional requirements, the manufactured home title has been surrendered or purged.

Such evidence must be documented in the Mortgagee Comments section of Form HUD-27011 Part A. Title evidence that is insufficient to convey title to both the manufactured home and the land may be rejected by FHA, if doing so is in HUD's best interest.

Mortgagees should seek the advice of their legal counsel whenever a manufactured home is securing an FHA-insured loan and is being foreclosed upon, as there may be additional requirements that must be met in properly conducting the foreclosure.

Questions

Any questions regarding this Mortgagee Letter may be directed to James McGee, (202) 402-2287. Persons with hearing or speech impairments may reach this number by calling the Federal Information Relay Service at (800) 877-8339.

Signature

Carol J. Galante
Acting Assistant Secretary for Housing-Federal Housing Commissioner

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The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0429. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB Control Number.

EXHIBIT H

EXHIBIT H

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

July 12, 2005

MORTGAGEE LETTER 2005-30

TO: **All Approved Mortgagees**

ATTENTION: **Single Family Servicing Managers**

SUBJECT: **Single Family Foreclosure Policy and Procedural Changes:
Reasonable Diligence Requirements;
Update to HUD's Schedule of Allowable Attorney Fees; and
Update to HUD's Foreclosure Time Frames**

This Mortgagee Letter provides updates to HUD's reasonable diligence time frames and the schedule of attorney fees for all jurisdictions.

REASONABLE DILIGENCE REQUIREMENTS AND EFFECTIVE DATES

When foreclosure of a defaulted loan is necessary, HUD regulation 24 CFR 203.356(b) provides that mortgagees "must exercise reasonable diligence in prosecuting the foreclosure proceedings to completion and in acquiring title to and possession of the property." That regulation also states that HUD will make available to mortgagees a time frame that constitutes "reasonable diligence" for each state. This Mortgagee Letter provides an update to the state foreclosure time frames and attorney's fee schedules that were provided in Mortgagee Letter 2001-19, dated August 24, 2001. The updates are as follows:

Foreclosures

Attachment 1 provides listings of the first legal action necessary to initiate foreclosure on a mortgage and of the typical security instrument used in each state. Reasonable diligence time frames for completing foreclosure and acquisition of title in each state are provided in Attachment 2. These time frames identify the time between the first legal action required by the jurisdiction to commence foreclosure and the date that the foreclosure deed (Sheriff's, Trustee's, etc. or certificate of title) is recorded. Delays in completing foreclosure due to bankruptcy are treated as exceptions and are not included in the time frames.

The revised time frames provided in Attachment 2 will be effective for all cases where the first legal action to initiate foreclosure occurs on or after September 1, 2005.

Acquiring Possession

When a separate legal action is necessary to gain possession following foreclosure, an automatic extension of the reasonable diligence time frame will be allowed for the actual time necessary to complete the possessory action provided that the mortgagee begins such action promptly. Mortgagees must take the first public legal action to initiate the eviction or possessory action within thirty calendar days of foreclosure completion to qualify for this extension of the reasonable diligence time frame.

The Department is not issuing time frames for completing possessory actions because of wide differences in time periods depending upon the location of the property and other factors outside of the mortgagee's control.

Bankruptcies

When a borrower files bankruptcy after foreclosure proceedings have been instituted, an extension of the reasonable diligence time frame for foreclosure and acquisition of the property will be allowed. However, the mortgagee must ensure that all necessary bankruptcy-related legal actions are handled in a timely and effective manner. The case must be promptly referred to a bankruptcy attorney after the bankruptcy is filed and the mortgagee must monitor the action to ensure that the case is timely resolved. The time frame for completing legal action on a bankruptcy will vary based on the chapter under which the bankruptcy is filed.

Chapter 7 Bankruptcy Filings

HUD does not reimburse for legal expenses associated with a current FHA-insured mortgage. Where the mortgagee cannot proceed with foreclosure action because of a Chapter 7 Bankruptcy, the case shall be resolved through dismissal, termination of the automatic stay or trustee abandonment of all interest in the secured property. The mortgagee's claim review file must document that the case was promptly referred to the mortgagee's foreclosure attorney after the bankruptcy filing.

In general, the additional time allowed for the Chapter 7 Bankruptcy delay for meeting the reasonable diligence requirement shall not exceed 90 days from the date of the bankruptcy filing. Any delay beyond 90 days from the date of bankruptcy filing must be supported by documentation that the delay was not due to the failure of the mortgagee to timely notify its bankruptcy attorney or by any failure of the mortgagee's attorney.

Chapter 13 (and Chapter 11 and 12) Bankruptcy Filings

HUD does not reimburse for legal expenses associated with a current FHA-insured mortgage. Where the mortgagee cannot proceed with foreclosure action because of a Chapter 13 (or Chapter 11 or 12) Bankruptcy, the case shall be resolved through dismissal, termination of the automatic stay or trustee abandonment of all interest in the secured property. The mortgagee's claim review file must document that the case was promptly referred to the mortgagee's attorney after the bankruptcy filing.

In addition to prompt and accurate notification to the bankruptcy court, the mortgagee shall closely monitor the payments required by the bankruptcy court. If the borrower becomes 60 days delinquent in payments required under a Chapter 13 (or Chapter 11 or 12) plan, the lender must ensure that prompt legal action is taken to resolve the matter.

In general, the additional time allowed for the Chapter 13 (or Chapter 11 or 12) Bankruptcy delay for meeting the reasonable diligence requirement shall not exceed 90 days from the date of the payments under the bankruptcy plan became 60 days delinquent. Any delay beyond 90 days from the date of the account became 60 days delinquent under the terms of the bankruptcy plan must be supported by documentation that the delay was not due to the failure of the mortgagee to timely notify its bankruptcy attorney or by any failure of the mortgagee's attorney.

Non-compliance

Mortgagees are responsible for "self-curtailment" of interest on single-family claims where reasonable diligence or reporting requirements are not met. Self-curtailment shall be accomplished by identification of the interest curtailment date on Form HUD-27011, Item 31. Explanation and examples are provided in Attachment 4.

SCHEDULE OF ATTORNEY FEES AND EFFECTIVE DATES

The Department has revised the attorney fees that will be considered as reasonable and customary for various legal actions for purposes of calculating the maximum amount HUD will reimburse in an insurance claim. The updated fee schedules are provided in Attachment 3.

These fees cover the customary legal services performed in each type of action. In all cases, the amount claimed for attorney fees shall reasonably relate to the work actually performed. In the event a legal action is stopped for a loss mitigation option, a reinstatement or a payment in full, the attorney fees that the borrower is required to pay shall be commensurate with the work actually completed to that point and the amount charged may not be in excess of the fee that HUD has established as reasonable and customary for claim purposes.

Foreclosures

The update to HUD's Schedule of Attorney Fees, as provided in Attachment 3, will be effective for all cases where the first legal action to initiate foreclosure occurs on or after September 1, 2005. In the interim, mortgagees shall continue to follow the HUD Schedule of Attorney Fees that was issued with Mortgagee Letter 2001-19, dated August 24, 2001.

Bankruptcy Actions

The update to HUD's Schedule of Attorney Fees will be effective for all bankruptcy clearances undertaken on or after September 1, 2005. These fees represent maximum allowable amounts for customary and routine legal services performed in each type of bankruptcy filing. Mortgagee claims for legal fee reimbursement must be reasonably related to the amount of work that the bankruptcy attorney actually performed.

A bankruptcy clearance begins when a petition for release of the bankruptcy stay is submitted to the bankruptcy court. Bankruptcy clearances begun prior to the effective date shall be reimbursed according to HUD's Schedule of Attorney Fees that was issued with Mortgagee Letter 2001-19, dated August 24, 2001.

Possessory Actions (Evictions)

The update to HUD's Schedule of Attorney Fees will be effective for all possessory actions undertaken on or after September 1, 2005. Possessory actions begun prior to the effective date shall be reimbursed according to HUD's Schedule of Attorney Fees that was issued with Mortgagee Letter 2001-19, dated August 24, 2001.

Deeds-in-Lieu of Foreclosure

The update to HUD's Schedule of Attorney Fees will be effective for all deeds-in-lieu recorded in HUD's name on or after September 1, 2005. In the interim, mortgagees shall continue to follow HUD's Schedule of Attorney Fees that was issued with Mortgagee Letter 2001-19, dated August 24, 2001.

Questions regarding this Mortgagee Letter may be directed to HUD's National Servicing Center at (888) 297-8685.

Sincerely,

Brian D. Montgomery
Assistant Secretary for Housing-
Federal Housing Commissioner

Attachments

EXHIBIT I

EXHIBIT I

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

May 31, 2013

Mortgagee Letter 2013-18

To **All FHA-Approved Mortgagees, Single Family Servicing Managers**

Subject **Updated Clarification Regarding Title Approval at Conveyance**

Purpose

The purpose of this Mortgagee Letter is to provide updated guidance relating to title approval at conveyance. This Mortgagee Letter addresses the following:

- Unpaid property taxes;
- Homeowners Association (HOA)/Condominium fees;
- Unpaid utility bills/assessments; and
- Unresolved manufactured housing title issues.

Effective Date

All requirements are effective for single-family real estate owned (REO) properties conveyed on or after 90 days from the date of issuance.

Affected Policy

This Mortgagee Letter rescinds Mortgagee Letter 2012-11, *Clarification Regarding Title Approval at Conveyance* in its entirety. This Mortgagee Letter also supersedes provisions regarding unpaid taxes, HOA/ condominium fees, utility/assessment bills, and unresolved manufactured housing title issues in Mortgagee Letter 2002-19, *Clarification Regarding Title Approval Issues, Property Condition at Conveyance, Administrative Offsets and a New Process for Lender Appeal of Conveyance Issues*. All other requirements of Mortgagee Letter 2002-19 remain in effect.

Mortgagees Must Pay All Property Taxes Prior to Conveyance

Because taxes are generally paid in arrears, they effectively constitute a lien on a property even when they are not yet due and payable. In some states, unpaid taxes are given priority over first mortgages of record. Therefore, mortgagees must obtain from taxing authorities all available tax bills, including bills due within 30 days of the date of conveyance, prior to conveying a property to HUD. Such bills must be paid by the mortgagee prior to the conveyance of a property to HUD. No available bills from the taxing authorities should remain unpaid as of the date of conveyance.

To ensure that properties being conveyed to HUD have good marketable title, the mortgagee must:

- Certify that all tax bills due within 30 calendar days of conveyance are paid as of the date of conveyance;
- Document such payment and identify the most recent period for which taxes were paid in Section 32, "Schedule of Tax Information," of Form HUD-27011 Part A; and
- Upload to P260 or its successor system (on or before the Part A claim filing date) any documentation, such as a paid receipt or a copy of the mortgagee's tax payment history screen, that is necessary to validate that such payment was made.

Mortgagees are reminded that in accordance with 24 CFR § 203.365 they must also retain invoices and paid bill receipts in the claim file, and provide hard copies of such documents to HUD within 24 hours, if requested.

Because the payment of taxes is the responsibility of the mortgagee, HUD will not reimburse late fees and/or interest penalties charged by the taxing authority/jurisdiction assessing such late payments or penalties.

Mortgagees Must Pay Outstanding HOA Fees Prior to Conveyance

HOA/Condominium Fees. While the payment of condominium and homeowners' association fees is the mortgagor's responsibility, mortgagees are responsible for ensuring that properties conveyed to HUD have clear title. FHA requires mortgagees initiating foreclosure to provide notice to HOAs/condominium management companies to help ensure that any outstanding HOA/condominium fees are resolved through the foreclosure process.

The following clarifies the difference between an HOA/condominium "assessment" and a HOA/condominium "fee" as those terms are used in this mortgagee letter. An HOA/condominium assessment refers to the periodic payment required of all property owners. On the other hand, HOA/condominium fees include assessments plus interest, late charges, collection/attorney fees, other penalties, etc.

A mortgagee must take the following actions:

- Notice. As part of the foreclosure proceedings, the mortgagee shall notify and serve all interested parties of the pending foreclosure, pursuant to state law. Interested parties include all condominium management companies and HOAs that are reflected in the mortgage loan/origination documents, recorded covenants/declarations, initial foreclosure referral and/or title search review, or made known to the mortgagee during the foreclosure proceedings;

- Outstanding HOA/Condominium Fees. Unless prohibited by state law, the mortgagee shall ensure that outstanding HOA/condominium fees are included as part of the foreclosure proceedings in the event that the HOA/condominium management company fails to do so;
- Post-foreclosure. After completion of foreclosure proceedings, the mortgagee shall resolve any outstanding HOA/condominium bills (i.e., fees) as outlined in the *Post-Foreclosure HOA/Condominium Fees Chart.*

Post-Foreclosure HOA/Condominium Fees Chart
For FHA REO Properties Conveyed Prior to January 1, 2014

Where there are unpaid condominium/HOA fees…	**Then…**
• That were not included in the foreclosure proceedings and these fees survive foreclosure*	The mortgagee must: • Negotiate the amount required to obtain a release of outstanding HOA/condominium fees. *HUD will only reimburse the mortgagee for payment of assessments that were incurred from the foreclosure sale date to the date of conveyance.* • Obtain a release of outstanding HOA/condominium fees • Ensure that the HOA/condominium lien, if any, is removed from the title to the property prior to conveying the property to HUD. Note: HUD's Schedule of Allowable Attorney Fees is included in ML 2005-30.
• The fees were included in the foreclosure,* and • There is a lien on the property that survives foreclosure	The mortgagee must: • Negotiate the amount required to obtain a release of outstanding HOA/condominium fees. *HUD will only reimburse mortgagees for HOA fees up to the state law mandated amount.* • Obtain a release of outstanding condominium/HOA fees • Ensure that the HOA/condominium lien, if any, is removed from the title to the property, prior to conveying the property to HUD. Note: HUD's Schedule of Allowable Attorney Fees is included in ML 2005-30.
• And none of the aforementioned conditions are applicable*	The mortgagee must: • Pay the HOA/condominium assessment required under applicable law prior to conveying the property to HUD. *HUD will reimburse the mortgagee for this amount.* • Enter the amount on Form HUD-27011 and in P260 or its successor system; and • Upload into P260 or successor system the invoice from the condominium/HOA, reflecting a list of itemized charges, including but not limited to: (a) condominium/HOA assessments required to be paid pursuant to state law; (b) interest; (c) penalties; (d) third party fees, etc. HUD will negotiate any remaining amounts with the HOA or condominium management company. Note: HUD's Schedule of Allowable Attorney Fees is included in ML 2005-30.

* Provided state law does not prohibit inclusion of these fees in the foreclosure proceedings. This requirement takes effect 90 days after the publication of this Mortgagee Letter with the commencement of first legal action initiating a foreclosure.

Post-Foreclosure HOA/Condominium Fees Chart
For FHA Properties Conveyed On or After January 1, 2014

Where there are unpaid condominium/HOA fees…	**Then…**
• That were not included in the foreclosure proceedings and these fees survive foreclosure*	The mortgagee must: • Negotiate the amount required to obtain a release of outstanding HOA/condominium fees. *HUD will only reimburse the mortgagee for payment of assessments that were incurred from the foreclosure sale date to the date of conveyance.* • Obtain a release of outstanding HOA/condominium fees • Ensure that the HOA/condominium lien, if any, is removed from the title to the property prior to conveying the property to HUD. Note: HUD's Schedule of Allowable Attorney Fees is included in ML 2005-30.
• The property is located in a state in which HOA/condominium liens can take priority over the mortgagee's/HUD's 1st lien and these fees were included in the foreclosure and survived foreclosure*	The mortgagee must: • Negotiate the amount required to obtain a release of outstanding HOA/condominium fee. *HUD will only reimburse mortgagees for HOA fees up to the total value of the periodic HOA/condominium assessments due and paid from the date the mortgagor defaulted on his/her HOA assessment to the date of conveyance.* • Obtain a release of outstanding HOA/condominium fees • Ensure that the HOA/condominium lien, if any, is removed from the title to the property, prior to conveying the property to HUD. Note: HUD's Schedule of Allowable Attorney Fees is included in ML 2005-30.
• The property is <u>not</u> located in a state in which HOA/condominium fees can take priority over the mortgagee's/HUD 1st lien, • The fees were included in the foreclosure,* and • There is a lien on the property that survives foreclosure	The mortgagee must: • Negotiate the amount required to obtain a release of outstanding HOA/condominium fees. *HUD will only reimburse mortgagees for HOA fees up to the state law mandated amount.* • Obtain a release of outstanding condominium/HOA fees • Ensure that the HOA/condominium lien, if any, is removed from the title to the property, prior to conveying the property to HUD. Note: HUD's Schedule of Allowable Attorney Fees is included in ML 2005-30.
• And none of the aforementioned conditions are not applicable*	The mortgagee must: • Pay the HOA/condominium assessment required under applicable law prior to conveying the property to HUD. *HUD will reimburse the mortgagee for this amount.* • Enter the amount on Form HUD-27011 and in P260 or its successor system; and • Upload into P260 or successor system the invoice from the condominium/HOA, reflecting a list of itemized charges, including but not limited to: (a) condominium/HOA assessments required to be paid pursuant to state law; (b) interest; (c) penalties; (d) third party fees, etc. HUD will negotiate any remaining amounts with the HOA or condominium management company. Note: HUD's Schedule of Allowable Attorney Fees is included in ML 2005-30.

* Provided state law does not prohibit inclusion of these fees in the foreclosure proceedings.

Mortgagees must pay fees that become due within 30 days of the date of conveyance. Since HOA/condominium billing cycles may vary, mortgagees are responsible for determining whether any HOA/condominium fees will be due within 30 days of the date of conveyance and for paying these fees before

conveying a property to HUD.[1] The mortgagee may claim reimbursement for this additional HOA/condominium amount on Part B of Form HUD-27011.

Documentation Requirements for Payment of HOA Fees

In the "Comments" section of Form HUD-27011, mortgagees must document the payment of all final bills and liens (including pre-foreclosure liens) for HOA/condominium fees.

Within 15 calendar days of conveyance, the mortgagee must upload to P260 or its successor system the paid HOA/condominium invoice and any other documentation necessary to verify that the mortgagee made such payments prior to conveyance. In addition, if applicable, the mortgagee must document any common area requirements associated with gaining access to the property securing an FHA-insured loan.

Unresponsive/ Uncooperative HOAs

On a case-by-case-basis, at its sole discretion, HUD will consider accepting conveyances in instances where the HOA/condominium has been unresponsive or uncooperative. Mortgagees must request a variance through HUD's Mortgagee Compliance Monitor (MCM) and must submit:

- A certification stating that it has exhausted all methods of obtaining and paying the outstanding HOA/condominium assessments, and
- Documentation evidencing its attempts to obtain and pay these assessments. These attempts include, but are not limited to:
  - repeated phone contacts (at least 3 calls);
  - certified mail notices to HOA/condominium contacts from mortgagees' attorneys; and
  - documentation validating the pursuit of available legal remedies (this documentation must evidence the resolution or final decisions resulting from arbitration or court proceedings).

To help reduce the volume of these variance requests, FHA expects servicers to: (a) implement procedures that will result in them being notified when mortgagors default on HOA fees; and/or (b) establish escrows for HOA fees.

Mortgagees Must Pay All Unpaid Water and Sewer Bills or Other Assessments

Mortgagee Letter 2010-18 states that utility accounts including electricity, gas, home heating oil and water should be in the mortgagee's name until conveyance of the property to HUD. Utilities are to be turned off unless they are required to protect the property. For instance, some states require the heat to remain on. Prior to the conveyance of a property to HUD, mortgagees must research, obtain and pay all available utility bills (including, but not limited to, water and sewer) that may become a lien attached to a property following foreclosure.

[1] For example, a foreclosure sale occurs in a jurisdiction where condominium/HOA fees survive foreclosure and the mortgagee is scheduled to convey a property to HUD on February 2nd. The mortgagee has paid all condominium/HOA fees prior to conveyance, and additionally, due to the HOA's billing cycle, a $150 payment is required for the period of March 1st through June 30th. In this scenario, because these March-June fees are due within 30 days of the February 2nd conveyance date, the mortgagee must also pay the $150 fee. The $150 fee is a post-conveyance expense where HUD has ownership of the property and as such is fully reimbursable, unless the property is subsequently reconveyed.

In states where utilities are not required to remain on to protect the property, mortgagees must obtain a final bill up to the date of conveyance. Utilities are to be turned off no later than the date of conveyance. No later than 60 days after conveyance, the mortgagee must upload to P260 or its successor system the paid invoice and any other documentation necessary to verify that the mortgagee made such payments. Mortgagees may request reimbursement for these final bills by itemizing them in Section 305 of Part D of Form HUD-27011.

In states where utilities are required to remain on, mortgagees should pay available bills that are due prior to conveyance. In addition, mortgagees should contact each utility provider within 60 days after conveyance and request and pay the final bill (i.e., calculated to the day in which the utilities are transferred to HUD) and upload to P260 or its successor system the paid invoice and any other documentation necessary to verify that the mortgagee made the payment for the final bill. Mortgagees may request reimbursement for these final bills by itemizing them in Section 305 of Part D of Form HUD-27011.

Title Evidence for Manufactured Housing

Conveyance problems occur when a manufactured home has not been included in the title to the land and is, therefore, not being taxed as real estate. If the title to the manufactured home, issued by the jurisdictional Department of Motor Vehicles, has not been purged or surrendered by the mortgagor, subsequent owners of the property might find that they have title to the land but not to its improvements (*i.e.*, the manufactured home).

HUD requires additional documentation in the title evidence for all manufactured homes. Specifically, there must be evidence that:

- The manufactured home is attached to the land;
- The manufactured home is classified and taxed as real estate; and
- In accordance with the jurisdictional requirements, the title to the manufactured home has been surrendered or purged.

Mortgagees should review each property at the time of foreclosure referral to determine if the collateral for the mortgage is a manufactured home. If the property is a manufactured home, mortgagees must certify in the "Mortgagee Comments" section of Form HUD-27011 Part A that the required additional title work has been completed and that the title evidence has been uploaded into P260 or its successor system on or before the Part A filing date. Title evidence that is deemed insufficient to convey title to both the manufactured home and the land may be rejected by HUD.

Mortgagees should seek the advice of their legal counsel whenever a manufactured home is securing an FHA-insured loan and is being foreclosed upon as there may be additional requirements that must be met in properly conducting the foreclosure.

Penalties for Unpaid/ Outstanding Property Taxes, HOA fees, and Utility Bills, and Failure to Provide Title Evidence for Manufactured Homes

Mortgagees that fail to pay taxes, HOA/condominium fees, or utilities bills when payment is due will be considered in violation of HUD's requirements. Therefore, HUD may refer mortgagees to the Mortgagee Review Board for administrative sanctions, including but not limited to civil money penalties, based on noncompliance with these requirements.

Taxes
Where taxes, late fees and/or interest penalties are owed to the taxing authority/jurisdiction when a property is conveyed to HUD, HUD may elect to re-convey the property back to the mortgagee or refuse to accept the conveyance of said property.

Utility Bills
If a mortgagee fails to pay utility bills and other assessments, HUD, at its sole discretion, may:

- Issue a Notice of Non-compliance and demand payment from the mortgagee in an amount sufficient to satisfy any liens or encumbrances, including penalties and interest, which prevent or delay a sale, or
- Re-convey the property to the mortgagee.

Manufactured Homes
HUD may, at its discretion, re-convey the property or accept the conveyance despite the mortgagee's failure to provide the appropriate title evidence for the manufactured home.

Information Collection Requirements

The information collection requirements contained in this document have been approved by the office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0429. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB Control Number.

Questions

Any questions regarding this Mortgagee Letter may be directed to William Collins of HUD's National Servicing Center on (405) 609-8466. Persons with hearing or speech impairments may reach this number by calling the Federal Information Relay Service at (800) 877-8339. For additional information on this Mortgagee Letter, please visit www.hud.gov/answers.

Signature

Carol J. Galante
Assistant Secretary for Housing-Federal Housing Commissioner

EXHIBIT J

EXHIBIT J

Inst #: 201011030002714
Fees: $27.00
N/C Fee: $25.00
11/03/2010 02:38:27 PM
Receipt #: 885489
Requestor:
NEVADA TITLE LAS VEGAS
Recorded By: MSH Pgs: 14
DEBBIE CONWAY
CLARK COUNTY RECORDER

Loan Number: 3000054072
APN#: 139-08-410-014
09-11-029850
~~Recording Requested by:~~
Name: W.J. BRADLEY MORTGAGE CAPITAL CORP.
Address: 10975 S. STERLING VIEW DRIVE #100
City/State/Zip: SOUTH JORDAN, UTAH 84095

Mail Tax Statements to:
Name: W.J. BRADLEY MORTGAGE CAPITAL CORP.
Address: 10975 S. STERLING VIEW DRIVE #100
City/State/Zip: SOUTH JORDAN, UTAH 84095

Please complete Affirmation Statement below:

☒ I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

-OR-

☐ I the undersigned hereby affirm that this document submitted for recording contains the social security number of a person or persons as required by law: _____ (State specific law)

_____ E.O.
Signature (Print name under signature) Paula L. Difulvio Title

Deed of Trust
(Insert Title of Document Above)

NEVADA COVER PAGE
NEV. REV. STAT. §239B.030
NVOP.MSC 11/14/07

DocMagic eForms 800-649-1362 www.docmagic.com

BANA00039

Assessor's Parcel Number: 139-08-410-014

Recording Requested By:
W.J. BRADLEY MORTGAGE CAPITAL CORP.

And When Recorded Return To:
W.J. BRADLEY MORTGAGE CAPITAL CORP.
10975 S. STERLING VIEW DRIVE #100
SOUTH JORDAN, UTAH 84095
Loan Number: 3000054072

Mail Tax Statements To:
W.J. BRADLEY MORTGAGE CAPITAL CORP.,
10975 S. STERLING VIEW DRIVE #100, SOUTH
JORDAN, UTAH 84095

Mortgage Broker's Name:

NV License #:

[Space Above This Line For Recording Data]

DEED OF TRUST

FHA CASE NO.
332-5283706-703

MIN: 100252230000540720

THIS DEED OF TRUST ("Security Instrument") is made on OCTOBER 15, 2010
The grantor is ARMANDO A. CARIAS, A SINGLE MAN ("Borrower").

The trustee is WESTERN TITLE COMPANY ("Trustee"),
241 RIDGE STREET SUITE 100, RENO, CALIFORNIA 89501
The beneficiary is Mortgage Electronic Registration Systems, Inc. ("MERS") (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns). MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

W.J. BRADLEY MORTGAGE CAPITAL CORP., AN OREGON CORPORATION ("Lender")

is organized and existing under the laws of OREGON
and has an address of 10975 S. STERLING VIEW DRIVE #100, SOUTH JORDAN, UTAH 84095

Borrower owes Lender the principal sum of SEVENTY-FOUR THOUSAND SIX HUNDRED FORTY-TWO AND 00/100 Dollars (U.S. $ 74,642.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on NOVEMBER 1, 2040. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in CLARK County, Nevada:
SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A".
A.P.N.: 139-08-410-014.

which has the address of 3617 DIAMOND SPUR AVENUE [Street]
NORTH LAS VEGAS [City], Nevada 89032 [Zip Code] ("Property Address");

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

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

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

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

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. **Monthly Payment of Taxes, Insurance, and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. **Application of Payments.** All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

FIRST, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

SECOND, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

THIRD, to interest due under the Note;

FOURTH, to amortization of the principal of the Note; and

FIFTH, to late charges due under the Note.

4. **Fire, Flood and Other Hazard Insurance.** Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under

the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. **Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. **Charges to Borrower and Protection of Lender's Rights in the Property.** Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement at the Note rate, and at the option of Lender shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. **Fees.** Lender may collect fees and charges authorized by the Secretary.

9. **Grounds for Acceleration of Debt.**

(a) **Default.** Lender may, except as limited by regulations issued by the Secretary in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

(i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or

(ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) **Sale Without Credit Approval.** Lender shall, if permitted by applicable law (including section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

(i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and

(ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property, but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) **No Waiver.** If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) **Regulations of HUD Secretary.** In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) **Mortgage Not Insured.** Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 DAYS from the date hereof, Lender may, at its option require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 DAYS from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. **Reinstatement.** Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement

of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. Borrower Not Released; Forbearance by Lender Not a Waiver. Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. Governing Law; Severability. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

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

16. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

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

17. Assignment of Rents. Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

18. Foreclosure Procedure. If Lender requires immediate payment in full under paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

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

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

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 et seq.) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this paragraph 18 or applicable law.

19. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such

person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under applicable law.

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

21. **Assumption Fee.** If there is an assumption of this loan, Lender may charge an assumption fee of U.S. $ 500, as a maximum amount, depending on whether the assumption includes a release of liability.

22. **Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

[Check applicable box(es)].

☐ Condominium Rider	☐ Graduated Payment Rider	☐ Growing Equity Rider
☒ Planned Unit Development Rider	☐ Adjustable Rate Rider	☐ Rehabilitation Loan Rider
☐ Non-Owner Occupancy Rider	☐ Other [Specify]	

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in pages 1 through 10 of this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

ARMANDO A. CARIAS (Seal) -Borrower

Armando A. Carias

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

Witness:

Witness:

[Space Below This Line For Acknowledgment]

State of NEVADA

County of CLARK

This instrument was acknowledged before me on 10-27-10

by ARMANDO A. CARIAS

PAULA L. DIFULVIO
Notary Public, State of Nevada
Appointment No. 94-0676-1
My Appt. Expires Mar. 29, 2014

Paula L. DiFulvio

(Seal) 94-0676-1
3-29-14

Signature of notarial officer

Title NOTARY Public

My commission expires: 3-29-14

BANA00049

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL ONE (1)

LOT SIXTY (60) IN BLOCK ONE (1) OF SUTTER CREEK – PHASE 1, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 85, OF PLATS, PAGE 30, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL TWO (2)

A NON EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS ON AND OVER COMMON ELEMENTS, ASSOCIATION PROPERTY AND PRIVATE STREETS, WHICH EASEMENT IS APPURTENANT TO PARCEL ONE (1).

FHA Case Number: 332-5283706-703
Loan Number: 3000054072

FHA PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 15th day of OCTOBER, 2010, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to W.J. BRADLEY MORTGAGE CAPITAL CORP., AN OREGON CORPORATION ("Lender") of the same date and covering the Property described in the Security Instrument and located at: 3617 DIAMOND SPUR AVENUE, NORTH LAS VEGAS, NEVADA 89032

[Property Address]

The Property is part of a planned unit development ("PUD") known as: SUTTER CREEK-PHASE 1

[Name of Planned Unit Development]

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

A. So long as the Owners Association (or equivalent entity holding title to common areas and facilities), acting as trustee for the homeowners, maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the property located in the PUD, including all improvements now existing or hereafter erected on the mortgaged premises, and such policy is satisfactory to Lender and provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and other hazards included within the term "extended coverage," and loss by flood, to the extent required by the Secretary, then: (i) Lender waives the provision in Paragraph 2 of this Security Instrument for the monthly payment to Lender of one-twelfth of the yearly premium installments for hazard insurance on the Property, and (ii) Borrower's obligation under Paragraph 4 of the Security Instrument to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners' Association policy. Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage and of any loss occurring from a hazard. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to the entity legally entitled thereto.

B. Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments creating and governing the PUD.

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

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

ARMANDO A. CARIAS (Seal) Borrower

(Seal) Borrower

(Seal) Borrower

(Seal) Borrower

(Seal) Borrower

(Seal) Borrower

EXHIBIT K

EXHIBIT K

DISTRICT COURT

CLARK COUNTY, NEVADA

ALESSI & KOENIG, LLC,

Plaintiff,

v.

ARMANDO A. CARIAS, an individual, BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, unknown entity, DOES INDIVIDUALS 1-X, inclusive, and ROE CORPORATIONS XI-XXX, inclusive,

Defendants.

Case No.: A-13-684501-C
Dept. No.: XXI

. . . . . .
. . . . . .

DEPOSITION OF CHRISTOPHER JOHN HARDIN

LAS VEGAS, NEVADA

TUESDAY, MAY 12, 2015

REPORTED BY: GINA DILUZIO, RPR, CCR #833
JOB NO. 247887

. . . . . .
. . . . . .

BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, a National Association,

Cross-Claimant,

v.

ARMANDO A. CARIAS, an individual, DOES INDIVIDUALS 1 through 10, inclusive, and ROE BUSINESS ENTITIES 1 through 10, inclusive,

Cross-Defendants.

BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, a National Association,

Cross-Claimant,

v.

SFR INVESTMENTS POOL 1, LLC, a domestic Limited Liability Company, SUTTER CREEK HOMEOWNERS' ASSOCIATION, an unknown entity, and DOES 1 through 10 and ROE BUSINESS ENTITIES 1 through 10,

Cross-Defendants.

DEPOSITION OF CHRISTOPHER JOHN HARDIN, taken at Akerman, LLP, 1160 Town Center Drive, Suite 330, Las Vegas, Nevada, on Tuesday, May 12, 2015, at 3:06 p.m., before Gina DiLuzio, Certified Court Reporter, in and for the State of Nevada.

APPEARANCES:

For the Plaintiff:

ALESSI KOENIG
BY: STEVE LOIZZI, JR., ESQ.
9500 W. Flamingo Boulevard
Suite 205
Las Vegas, Nevada 89147
(702) 222-4033

For Defendant/Cross-Claimant Bank Of America, N.A.:

AKERMAN, LLP
BY: TENESA S. SCATURRO, ESQ.
1160 Town Center Drive
Suite 330
Las Vegas, Nevada 89144
(702) 634-5000
tenesa-scaturro@akerman.com

For Cross-Defendant SFR Investments Pool 1, LLC

HOWARD KIM & ASSOCIATES
BY: KAREN L. HANKS, ESQ.
DIANA S. CLINE, ESQ.
1055 Whitney Ranch Drive
Suite 110
Henderson, Nevada 89014
(702) 485-3300
karen@hkimlaw.com
diana@hkimlaw.com

A. Did testify that Alessi does make available a -- a list of pending foreclosure properties to any investor who's seeking that information.

Q. Okay. For the properties that have been through the foreclosure process, but did not sell, so, you know, reverted property, does Alessi make available to you a list of those properties?

A. Alessi has notified me of HOAs who wish to sell their properties and give me a list of those HOA properties.

Q. So they don't just send you a list of reverted properties the after sales are over and ask if you want them; is that correct?

I suppose that -- let me ask that over -- let me ask that a different way.

A. Uh-huh.

Q. When you -- if or when you receive a list of properties that reverted after the sale -- that did not sell, so they were reverted -- is it upon your request or is it because an HOA expressed an interest in not keeping the property and wanted to sell it and Alessi is checking with all -- a number of investors?

MS. HANKS: Objection. Form.

THE WITNESS: I don't remember how the company started. I don't remember how I was -- at some point, was aware that -- that HOAs, who have become owners of these

properties, wish to sell them, because they're a financial burden of the HOA.

BY MR. LOIZZI:

Q. Okay. But you don't have any sort of, you know, separate arrangement where you'll just get these lists to the exclusion of other investors?

A. I can't speak to how Alessi or the HOAs market their properties. I'm not aware -- I wasn't paying, that I know, any special amount. I simply paid whatever the price was that we negotiated.

Any investors could come in and done their own negotiation bidding.

MS. SCATURRO: Perfect. That's it.

MS. HANKS: I just have one question.

EXAMINATION

BY MS. HANKS:

Q. For this particular foreclosure sale, if you had heard an announcement that the super priority portion of the lien had been paid, would SFR have bid on the property?

A. Typically, it's my practice that if I hear an announcement or have knowledge, in any way, that the super priority lien had been paid by a lender, I will not bid on the property.

MS. HANKS: That's all I have.

MS. SCATURRO: I have just one follow-up.

FURTHER EXAMINATION

BY MS. SCATURRO:

Q. That was your practice or policy in 2013? Or I should say, was that practice or policy in 2013?

A. I don't think my policy or practice ever changed.

Q. Okay. So, yes, it was?

A. Yes.

Q. Okay.

A. Yes.

MS. SCATURRO: That's all I have.

(Whereupon, the deposition was concluded at 3:35 p.m.)

(Reading and signing not requested.)

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Gina DiLuzio, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify: That I reported the deposition of CHRISTOPHER JOHN HARDIN, commencing on Tuesday, May 12, 2015, at 3:06 p.m.

That prior to being deposed, the deponent was duly sworn by me to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true and accurate transcription of my said shorthand notes, and that deponent was not asked to review and correct the transcript.

I further certify that I am not a relative, employee of counsel of any of the parties, nor a relative or employee of the parties involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 1st day of June, 2015.

Gina DiLuzio

GINA DILUZIO, RPR, CCR #833

EXHIBIT L

EXHIBIT L

REPORT OF THE JOINT EDITORIAL BOARD FOR UNIFORM REAL PROPERTY ACTS

THE SIX-MONTH "LIMITED PRIORITY LIEN" FOR ASSOCIATION FEES UNDER THE UNIFORM COMMON INTEREST OWNERSHIP ACT

JUNE 1, 2013

The Joint Editorial Board for Uniform Real Property Acts (the "Board") provides guidance to the Uniform Law Commission (ULC) and others regarding potential subjects for uniform laws relating to real estate, as well as advice regarding potential amendments to existing uniform laws relating to real estate. The Board is comprised of representatives of the ULC, the American Bar Association Real Property, Trust and Estate Law Section, and the American College of Real Estate Lawyers, as well as liaisons from the American College of Mortgage Attorneys, the American Land Title Association, and the Community Associations Institute.

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JOINT EDITORIAL BOARD FOR UNIFORM REAL PROPERTY ACTS

THE SIX-MONTH "LIMITED PRIORITY LIEN" FOR ASSOCIATION FEES UNDER THE UNIFORM COMMON INTEREST OWNERSHIP ACT

Introduction

Role of Association Assessments. In the modern common interest community (the most common forms of which are the condominium, the planned community, and the cooperative), each unit/parcel is subject to an assessment for its proportionate share of the common expenses needed to operate the owners' association (the "association") and to maintain, repair, replace, and insure the community's common elements and amenities. Assessments constitute the primary source of revenue for the community, and the ability to collect assessments is crucial to the association's ability to provide the maintenance and services expected by community residents. If some owners do not pay their proportionate share of common expenses, the association will be forced to shift the burden of delinquent assessments to the remaining unit owners through increased assessments or reduced services and maintenance, potentially threatening property values within the community.

Statutory Lien. To facilitate the association's ability to collect assessments, assessments unpaid by an owner constitute a lien on the owner's unit/parcel. In theory, the lien provides the association with the leverage needed to assure timely collection of assessments. If an owner fails to pay assessments, the association can institute an action to foreclose on the owner's interest in the unit/parcel and can use the proceeds of the foreclosure sale to satisfy the balance of the unpaid assessments (along with interest, costs, and to the extent authorized by the declaration and applicable law, attorney's fees incurred by the association in enforcing its lien).

Uniform Law Treatment. The Uniform Common Interest Ownership Act (UCIOA) — along with its predecessor acts, the Uniform Condominium Act, the Model Real Estate Cooperative Act, and the Uniform Planned Community Act (collectively, the "Uniform Laws") — facilitate an association's ability to collect common expense assessments by providing that, subject to limited exceptions, the association's lien is prior to all encumbrances that arise after the recording of the declaration. The rationale for this approach lies in the realization that (1) the association is an involuntary creditor that is obligated to advance services to owners in return for a promise of future payments; and (2) the owners' default in these payments could impair the association's financial stability and its practical ability to provide the obligated services. The priority of the association's lien is critical because if there is insufficient equity in a unit/parcel to provide a full recovery of unpaid assessments, the association must (as explained above) either reassess the remaining unit owners or reduce maintenance and services. The potential impact of these acts on the community and the association's status as an

involuntary creditor argue in favor of providing the association lien with priority vis-à-vis competing liens.

Nevertheless, many practical and regulatory barriers militate against complete priority for an association's assessment lien. Because the interests of the general public outweigh the interests of the community alone, real estate tax liens and other governmental charges should have priority over an association's assessment lien. Likewise, complete priority for association liens could discourage common interest community development. Traditional first mortgage lenders might be reluctant to lend from a subordinate lien position if there was no "cap" on the potential burden of the an association's assessment lien. In addition, some federally- or state-regulated lenders face regulatory restrictions on the amount of mortgage lending they can undertake involving security other than first lien security.

For these and other reasons, the general rule in the Uniform Laws (granting the association's lien priority as of the recording of the declaration) does not apply to first mortgages. Instead, the priority of the association's lien with respect to first mortgages is a function of the time the assessment becomes due. If the assessment becomes due after a first mortgage is of record, the assessment lien is generally subordinate to the lien of the first mortgage. However, this subordination is not absolute; under UCIOA § 3-116(c), the association's lien is given a limited or "split" priority over the first mortgage lien to the extent of six months' worth of assessments based on the association's periodic budget:[1]

> A lien under this section is also prior to [a first mortgage lien] to the extent of both the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien and reasonable attorney's fees and costs incurred by the association in foreclosing the association's lien.

In this way, the Uniform Laws mark a substantial deviation from prior law, striking what the drafters described as "an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lenders." UCIOA § 3-116, comment 1. Since its introduction in 1976, the six-month priority for association liens has been adopted in more than twenty

[1] Comparable priority provisions appear in the Uniform Condominium Act [UCA § 3-116], the Model Real Estate Cooperative Act [MRECA § 3-115], and the Uniform Planned Community Act [UPCA § 3-116].

jurisdictions, either through adoption of the UCA, UCIOA, or in nonuniform legislation comparable in substance to UCIOA § 3-116.[2]

The drafters of § 3-116(c) believed that the six-month association lien priority struck a workable and functional balance between the need to protect the financial integrity of

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[2] The relevant Uniform Laws include Ala. Code § 35-8A-316(b) (six-month limited priority for assessment lien for condominium association); Alaska Stat. Ann. § 34.08.470(b) (six-month limited priority for assessment lien for common interest community association); Colo. Rev. Stat. Ann. § 38-33.3-316(b) (six-month limited priority for assessment lien for common interest community association); Conn. Gen. Stat. Ann. § 47-258(b) (six-month limited priority for assessment lien for common interest community association, plus association's costs and attorney fees in enforcing its lien); Del. Code Ann. tit. 25, § 81-316(b) (six-month limited priority for assessment lien for common interest community association); Minn. Stat. Ann. § 515B.3-116(c) (six-month limited priority for assessment lien for common interest community association); Vernon's Ann. Mo. Stat. § 448.3-116(2) (limited priority for six months of condominium association assessments and fines which are due at time of subsequent refinancing); Nev. Rev. Stat. Ann. § 116.3116(2) (nine-month limited priority for assessment lien for common interest community association; although duration may be reduced to six months if required by federal regulation); Purdon's Pa. Cons. Stat. Ann. tit. 68, § 5315(b) (six-month limited priority for assessment lien for planned community association); *id.* § 3315(b) (six-month limited priority for assessment lien for condominium association); *id.* § 4315(b) (six-month limited priority for assessment lien for cooperative association); R.I. Gen. Laws Ann. § 34-36.1-3.16(b) (six-month limited priority for assessment lien for condominium association); Vt. Stat. Ann. tit. 27A, § 3-116(b) (six-month limited priority for assessment lien for common interest community association); Rev. Code Wash. Ann. § 64.34.364(3) (six-month limited priority for assessment lien for condominium association); W. Va. Code § 36B-3-116(b) (six-month limited priority for assessment lien for common interest community association).

Jurisdictions that have not enacted one of the Uniform Laws, but that have adopted a limited priority lien provision, include the District of Columbia, D.C. Code § 42-1903.13(a)(2) (six-month limited priority for assessment lien for condominium association); Florida, Fla. St. Ann. §§ 718.116(1)(b), 720.3085(2)(c) (priority for assessment lien for association limited to twelve months of assessments or one percent of the original mortgage debt); Illinois, 765 Ill. Comp. Stat. § 605/9(g)(4) (six-month limited priority for assessment lien for condominium association); Maryland, Md. Code Real Prop. § 11B-117(c) (four-month limited priority for assessment lien of homeowners association); Massachusetts, Mass. Gen. Laws Ann. ch. 183A, § 6(c) (six-month limited priority for assessment lien for condominium association); New Hampshire, N.H. Rev. Stat. § 356-B:46(I) (six-month limited priority for assessment lien for condominium association); New Jersey, N.J. Stat. Ann. § 46:8B-21 (six-month limited priority for assessment lien for condominium association); and Tennessee, Tenn. Code Ann. § 66-27-415(b) (six-month limited priority for assessment lien for condominium association).

Although Kentucky, Maine, Nebraska, New Mexico, North Carolina, Texas, and Virginia each adopted versions of the UCA, those states did not enact the six-month limited-priority for condominium association liens. Ky. Rev. Stat. Ann. § 381.9193; Me. Rev. Stat. Ann. tit. 33, § 1603-116(b); Neb. Rev. Stat. § 76-874; N.M. Stat. Ann. § 47-7C-16; N.C. Gen. Stat. § 47C-3-116; Tex. Prop. Code § 82.113(b); Va. Code Ann. § 55-79.84.

IN THE SUPREME COURT OF THE STATE OF NEVADA

BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, a National Association. Appellant, vs. SFR INVESTMENTS POOL 1, LLC, a Nevada Limited Liability Company, Respondent.	Case No. 70501

APPEAL

from the Eighth Judicial District Court, Department XXI
The Honorable Valerie Adair, District Judge
District Court Case No. A-13-684501-C

APPELLANT'S INDEX TO APPENDIX

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 7th day of October, 2016, I caused to be served a true and correct copy of foregoing **APPELLANT'S INDEX TO APPENDIX**, in the following manner:

(UNITED STATES MAIL) By depositing a copy of the above-referenced document for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, to the parties listed below at their last-known mailing addresses, on the date above written:

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/s/ Carla Llarena
An employee of AKERMAN LLP