IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY S. NOONAN IRA, LLC; LOU NOONAN; AND JAMES M. ALLRED IRA, LLC,

Appellants,

vs.

US BANK NATIONAL ASSOCIATION; AND NATIONSTAR MORTGAGE LLC,

Respondents.

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Elizabeth A. Brown
Clerk of Supreme Court

Case No. 78624

APPEAL

from the Eighth Judicial District Court, Clark County, Department IV
District Court Case No. A-14-710465-C

RESPONDENTS' MOTION TO AMEND PETITION FOR REHEARING

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U.S. Bank, N.A. and Nationstar Mortgage LLC move to amend their currently-pending petition for rehearing to prevent non-party SFR Investments Pool 1, LLC from mischaracterizing their argument in other cases. SFR has argued in other cases that the superpriority component under NRS 116.3116 is always nine months' worth of assessments, even when less than that amount is globally due to an HOA. For example, if an HOA assesses $50 monthly, and commences foreclosure when only $100 is delinquent (including all costs and fees), SFR argues the mortgage holder must pay $450 to clear the superpriority component despite the fact that only $100 is required to cure *all* delinquencies.

SFR has seized on the following sentence in the introductory paragraph to the rehearing petition to claim Nationstar has now conceded the point:

> enforcement action. Instead, the superpriority amount is nine months' worth of assessments—even if a greater (or lesser) amount became payable during the immediately-preceding nine months. The panel's opinion misapprehends NRS

See Pet. at p. 1. SFR has filed motions in other cases arguing that Nationstar conceded the underpayment argument by including the highlighted language in the rehearing petition. That is not accurate. That was *not* Nationstar's intent. Rather, Nationstar intended to emphasize that the superpriority amount bases off of an annualized budget, and is not simply the sum of all amounts that became payable during the immediately preceding nine months.

While Nationstar believes its intent was clear, to prevent confusion in this case and mischief in others, respondents ask the court to allow them to amend the petition for rehearing as follows:

- add "is capped at" and remove the parenthetical "(or lesser)" from the petition in the highlighted sentence above;
- add a new Footnote 1 at the end of the highlighted sentence and renumber the succeeding footnotes accordingly; and
- change the word count in the Certificate of Compliance from 3,840 words to 3,921 words to account for the new footnote.

The proposed amended petition is attached as **Exhibit A**.

DATED August 31st, 2020.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st August of, 2020, I caused to be served a true and correct copy of the foregoing **RESPONDENTS' MOTION TO AMEND PETITION FOR REHEARING** through this Court's automatically electronic service system to those parties listed on the Court's Master Service List.

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EXHIBIT A

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY S. NOONAN IRA, LLC; LOU NOONAN; AND JAMES M. ALLRED IRA, LLC, Appellants, vs. US BANK NATIONAL ASSOCIATION EE; AND NATIONSTAR MORTGAGE LLC, Respondent.	Case No. 78624

APPEAL
from the Eighth Judicial District Court, Clark County, Department IV
District Court Case No. A-14-710465-C

RESPONDENTS' AMENDED PETITION FOR REHEARING

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PETITION FOR REHEARING

This court should grant rehearing and reconsider its opinion that the superpriority component of an HOA lien is the sum of *all* assessments that became payable during the nine months immediately preceding commencement of a lien-enforcement action. Instead, the superpriority amount is capped at nine months' worth of assessments—even if a greater amount became payable during the immediately-preceding nine months.[1] The panel's opinion misapprehends NRS 116.3116[2], and misapplies the precedents of *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 334 P.3d 408 (2014) and *Horizons at Seven Hills Homeowners Ass'n v. Ikon Holdings, LLC*, 132 Nev. 362, 373 P.3d 66 (2016).

In adopting an overly-technical plain language analysis, the opinion declined to consider myriad authorities—including on-point official commentary and legislative history—supporting the contrary outcome. But the statute is capable of more than one reasonable interpretation, and the court's plain-language analysis runs afoul of interpretive doctrines that contradict its conclusion. The court should have

[1] If less than nine months' worth of assessments are owed to the HOA at the time it commences enforcement, then the nine-month cap on the superpriority amount remains in place but the actual superpriority component is the amount of assessments then-owed. For example, if an HOA has assessments in the amount of $100 per month and commences enforcement when only one assessment is delinquent, then the amount entitled to superpriority status is $100—the $900 cap is not reached.

[2] This petition cites the statutes as they existed at the relevant time.

considered the official commentary to the Uniform Common Interest Ownership Act (**UCIOA**) and the legislative history, just like it did in *SFR Investments* and *Ikon Holdings*. By declining to consider those authoritative sources, the court departed from the legislative intent. It also introduced legal uncertainty because the superpriority component is no longer a certain amount determinable from the budget—it now depends on when an HOA chooses to commence enforcement. Under the court's opinion, the same HOA may have superpriority status with respect to one homeowner, and not have any superpriority rights with respect to her next-door neighbor. And, first deed of trust holders cannot know how much to pay. The opinion opens a Pandora's Box of uncertainty where the statute's official commentary, legislative history, and this court's prior precedents all favor an interpretation that offers certainty and predictability. Rehearing is appropriate.

FACTUAL BACKGROUND

This is an HOA superpriority tender case. While the trustee gave notice of the foreclosure to Bank of America, it did not identify the superpriority amount. Instead, it gave the bank's counsel a ledger of the homeowners' account. (2APP467 ¶ 7; 2APP0473-475.) The bank's counsel used that ledger to calculate the superpriority amount, consisting of nine months' worth of assessments. (2APP0467 ¶ 8; 2APP0474; 2APP0478-480.) The HOA has an annual budget, but assessments

are not due in monthly installments. Instead, the entire annual assessment is due once per year. (2APP0474.)

LEGAL STANDARD

The court may consider rehearings in the following circumstances:

> (A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case, or
>
> (B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.

Nev. R. App. P. 40(c)(2).

ARGUMENT

The court misapplied NRS 116.3116(2). The opinion directly conflicts with NRS 116.3116(2), *SFR Investments*, and *Ikon Holdings*. The UCIOA's official commentary and the legislative history also contradict the court's analysis. These are established authorities on which mortgage lenders, HOAs, collection companies, foreclosing trustees, attorneys, and the lower courts have come to rely. The opinion is a major departure from the court's superpriority jurisprudence—a departure, done without the benefit of oral argument, that may well reintroduce uncertainty and unpredictability into Nevada's HOA lien law. The court should grant rehearing, and confirm that an HOA's superpriority lien is an amount calculated by determining

nine months' worth of assessments accrued during the nine-month window immediately preceding commencement of an action to enforce the lien. Correctly understood, the superpriority amount is fixed and dependent on the association's budget—it does not depend on the date on which the assessments became due or the date on which the HOA commenced enforcement proceedings.

I. Chapter 116 and Prior Precedents Contradict the Opinion

NRS Chapter 116 creates a comprehensive statutory scheme for creating and managing HOAs. Recognizing that assessments are vital for associations to function, the statute grants HOAs a lien for assessments. A homeowners' association is formed by recording CC&Rs. NRS 116.2101. The lien is created and perfected when the association is formed. "Recording of the [CC&Rs] constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required." NRS 116.3116(5). Under Nevada's normal "first in time, first in right" rule, the HOA's lien would be completely senior to subsequently recorded mortgages. As a race-notice jurisdiction, when a lien is perfected prior in time, it has seniority to any subsequent lien. NRS 111.320. However, NRS 116.3116(2) (b) grants an exception for first mortgages, giving a later-recorded first deed of trust priority over an HOA's lien. After granting this exception, the statute limits the exception in NRS 116.3116(2)(c). The HOA's lien is senior to a first deed of trust to the extent of assessments adopted under the

periodic budget "which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien." NRS 116.3116(2)(c). Essentially, NRS 116.3116(2)(c) creates an exception to the exception. *SFR Invs.*, 130 Nev. at 745, 334 P.3d at 410. The statute gives HOAs a lien with a superpriority component against all first mortgage holders from the date the HOA is created, in an amount set at 75% of the annual budget at the time the HOA commences enforcement proceedings.

This court addressed the amount of the superpriority component in *Ikon Holdings*. *Ikon Holdings* made clear that the superpriority component is fixed as a function of the annualized budget.[3] The superpriority component is the same regardless of when in the year the HOA commences enforcement. The opinion in this case departs from *SFR Investments* and *Ikon Holdings*, both in substance (by treating the superpriority component as a moving target dependent on when the HOA

[3] An HOA must have a budget that is at least yearly, and must make assessments on at least a yearly basis. NRS 116.3115(1) ("After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association in accordance with the requirements set forth in NRS 116.31151.").

commences enforcement) and approach (by expressly declining to consider sources of authority that guided the outcome of the prior opinions).

II. The Superpriority Component is Fixed at 9 Months' Worth of Assessments Regardless of When an HOA Commences Enforcement

The opinion's analysis begins, as it should, with the statute's language. As the court notes, the statute grants superpriority status to those amounts that "'would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.'" *Noonan v. U.S. Bank, N.A.*, 136 Nev. Adv. Op. at p. 5, citing NRS 116.3116(2). Based on this language, the opinion concludes any assessments that became payable in the immediately preceding nine months have superpriority status. Under the opinion, the superpriority amount depends primarily on two factors: (a) when assessments are payable, and (b) when the HOA chooses to commence enforcement. In this case, the opinion determined the entire annual assessment has superpriority status because it "became due" during the nine-month window immediately preceding enforcement proceedings. But what would have happened had the HOA waited until 10 months following the delinquency to commence enforcement? In that scenario, no assessments would have become due during the immediately preceding nine months, and the superpriority component would have been $0.00. By making the superpriority component dependent on factors that vary from HOA to HOA (i.e., how frequently HOAs make their assessments due and payable) and are always

unpredictable (i.e., when enforcement commences), the opinion introduces uncertainty and arbitrariness into HOA lien priority issues. This new rule of law on how to determine the superpriority component threatens to destabilize the legal regime established through the 2015 amendments to NRS 116.3116 and this court's precedents starting with *SFR Investments*.

To arrive at this destabilizing outcome, the opinion misapprehended and misapplied the statutory language. The statute refers to amounts that "would have become due in the absence of acceleration." The phrase "would have become due" occurs immediately before the modifying phrase "in the absence of acceleration." NRS 116.3116(2). The opinion makes two errors. **First**, it misapprehends the verb tense the statute uses—NRS 116.3116(2) does not speak of amounts that actually ***became*** due in the nine months immediately preceding enforcement, but rather amounts that "***would have become*** due." *Id.* (emphasis added). The conditional perfect verb tense ("would have become due") is important because it makes clear the superpriority component is not simply the amount that actually became due and payable during the immediately preceding nine months.

Second, the opinion compounds this misapprehension by reading the "in the absence of acceleration" clause out of the statute. While the opinion correctly explains that acceleration typically refers to the quickening or shortening of the duration of some thing, that concept cannot apply in an HOA assessment context.

Unlike a mortgage note that typically is payable in installments over a defined period (usually 30 years, or 360 monthly payments), an association's assessments are payable as they are assessed without an outstanding loan to amortize. Assessments are payable as they accrue, but homeowners are not debtors on future assessments that have not been assessed. Acceleration, as understood in the opinion, has no place in a Chapter 116 foreclosure because there is no debt to accelerate. The opinion defines acceleration, but it renders the "in the absence of acceleration" clause meaningless and superfluous. The outcome violates the doctrine of statutory construction requiring courts to "avoid statutory interpretation that renders language meaningless or superfluous." *Hobbs v. State*, 127 Nev. 234, 237, 251 P.3d 177, 179 (2011). The dissent correctly gives the clause meaning, noting that "acceleration" in the NRS 116.3116 context refers to making an assessment payable yearly in one installment. The opinion gives the "in the absence of acceleration" clause no effect.

The 2013 report of the Joint Editorial Board for Uniform Real Property Acts, titled *The Six-Month 'Limited Priority Lien' for Association Fees Under the Uniform Common Interest Ownership Act*[4] (**JEB Report**), supports the dissent. As this court explained in *SFR Investments*, the joint editorial board is responsible for monitoring all uniform real property acts. *SFR Investments* relied on the JEB Report as

[4] Available at https://www.uniformlaws.org/viewdocument/jeb-urpa-report-the-six-month-li?CommunityKey=0f917530-22b5-46dc-941e-efa38af34d71&tab=librarydocuments, last accessed August 21, 2020.

persuasive authority. *SFR Invs.*, 130 Nev. at fn. 4, 334 P.3d at fn. 4. The report explains the proper understanding of the superpriority lien through introductory commentary and several illustrative examples. The illustrative examples all are based on the following factual scenario:

> 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.

See JEB Report at p. 9. The assumed facts of the JEB Report's illustrative examples show the proper understanding of acceleration. The assessment is annual, but payable in monthly installments. *Id.* All of the examples demonstrate that the manner to calculate the superpriority component is with reference to monthly installments as a portion of the overall budget. None of the calculations in the JEB Report's illustrative examples would change if the installment is payable only once, annually. That is clear, as the factual summary itself says the assessment is annual.

The statute treats an assessment payable only once per year as accelerated and affords superpriority status to 75% of that assessment (i.e., nine months' worth). The court's opinion would be correct if the statute said the HOA's lien has priority over a deed of trust to the extent of assessments that ***become*** payable in the nine months immediately preceding the commencement of an enforcement action—with no mention of the absence of acceleration. Instead, the statute *does* reference absence

of acceleration, and it does so in connection with the conditional perfect tense (***would have become***). The dissent's interpretation is correct.

III. Rules of Statutory Interpretation Favor the Dissent's Conclusion

The opinion declined to consider legislative history or public policy because it found the statute to be facially plain. This was a further misapprehension of the statute, because this court has now advanced differing interpretations of NRS 1163116(2) on an identical issue. *Compare Sage Realty LLC Series 2 v. Bank of N.Y. Mellon*, 432 P.3d 191, 2018 WL 6617730 (Nev. 2018) *with Noonan v. U.S. Bank*, 136 Nev. Adv. Op. 41, 466 P.3d 1276 (2020). Even the instant decision was not unanimous. *See* Stiglich, J., dissent. The differing conclusions demonstrate NRS 116.3116(2) is ambiguous.

"A statute is ambiguous if it is capable of being understood in two or more senses by reasonably well-informed persons." *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 476 (2007). "[W]hen a statute is ambiguous, this court construes the statute by looking at the Legislature's intent and conforming the construction to public policy." *Great Basin Water Network v. State Eng'r*, 126 Nev. 187, 196, 234 P.3d 912, 918 (2010) (citation omitted). The opinion itself notes the court reached a contrary conclusion in the non-binding *Sage Realty* order. *Noonan*, 136 Nev. Adv. Op. at fn 3, 466 P.3d at fn. 3. Combined with the dissent, the *Sage Realty* result demonstrates the statute is capable of more than one reasonable

interpretation. The opinion should have considered legislative history and other appropriate authorities. In fact, both *SFR Investments* and *Ikon Holdings* considered legislative history, the official commentary to the UCIOA, and the JEB Report despite finding the statute facially plain and unambiguous.

Legislative history and public policy both support the district court's interpretation of NRS 116.3116(2) requiring annual assessments be "decelerated" to accurately calculate the HOA's superpriority lien amount.

A. Legislative History Confirms "9 Months" Refers to an Amount, Not a Period of Time Predating Enforcement of the Lien

If the court determines NRS 116.3116(2) is ambiguous—which it should, if only based on the dissent and the contrary outcome in *Sage Realty*—NRS 116.3116's legislative history support's respondents' interpretation.

The Uniform Law Commission developed the homeowners' association superpriority lien for planned communities in 1982. UCIOA 3-116. The commission explained its policy goal was to "ensure prompt and efficient enforcement of the association's lien for unpaid assessments." UCIOA, 3-116, p. 189 fn. 2.[5] "[T]he six months' priority for the assessment lien strikes an equitable

[5] https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=8d61a158-4898-7ed3-7aee-119d50a91132.

balance between the need to enforce collection of the unpaid assessments and the obvious necessity for protecting the priority of the secured interests of lenders." *Id.*

Nevada adopted UCIOA in 1991. 1991 Nev. Stat., p. 535. The Legislature amended NRS 116.3116(2) (c) through AB 204 in 2009. AB 204 increased the amount entitled to superpriority status from six months to nine months' worth of regularly budgeted assessments and added a safe harbor for loans owned by Fannie Mae or Freddie Mac. *See* 2009 Nev. Stat., p. 1207. As originally introduced, AB 204 proposed to increase the superpriority amount from six months' to two years' worth of budgeted assessments.

Assemblywoman Ellen Spiegel explained the legislative purpose for increasing the amount of the superpriority lien to two years: at the time, residential bank foreclosures were taking up to two years. Hearing on AB 204 before Assemb. Comm. on the Judiciary, 75th Legislature, p. 34 (2009) (Statement of Assemblyperson Ellen Spiegel). While the legislature ultimately increased the superpriority amount to nine months' worth of assessments, the rationale behind the increase remained the same: the larger amount entitled to superpriority status was necessary to protect HOAs because residential foreclosures were taking longer.

Based on this background, the Legislature's concern in enacting the nine-month period was not about what actually became due in the nine months preceding enforcement but instead capping the amount of assessments entitled to superpriority

status. To confirm, Assemblywoman Spiegel recognized an HOA adopts its assessments on a periodic (yearly) budget: "***Assessments covered under A.B. 204 are the regular monthly or quarterly dues for their home***. I carefully put this bill together to make sure it did not include any assessments for penalties, fines or late fees. ***The bill covers the basic monies the association uses to build its regular budgets***." Senate Committee Minutes, May 8, 2009 (emphasis added).

Knowing an HOA lien perfects upon recording of the CC&Rs and an HOA is statutorily required to budget annually, the Legislature's inclusion of the "9 month" language was necessary to ensure an HOA's superpriority lien cannot exceed an amount equal to nine months' worth of assessments.

B. The Opinion Contradicts the Drafters' Intent

When a statute is subject to more than one reasonable interpretation, the "'court determines the meaning of the words used in a statute by examining the context and spirit of the law or the causes which induced the Legislature to enact it.'" *Noonan*, 136 Nev. Adv. Op. at p. 4, 466 P.3d at 1276, *citing Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007).

This court already has explained the context and spirit of NRS 116.3116(2), and the causes that induced the Legislature to enact it. The court explained in *SFR Investments* that the split-lien approach "is a specially devised mechanism designed to 'strike [] an equitable balance between the need to enforce collection of unpaid

assessments and the obvious need for protecting the priority of the security interests of lenders.'" *SFR Invs.*, 130 Nev. at 748, 334 P.3d at 412-13, citing 1982 UCIOA § 3-116 cmt. 1; 1994 & 2008 UCIOA § 3-116 cmt. 2. The court's opinion in this case upsets this equitable balance by favoring the HOA in the entirety.

The JEB Report adds additional, helpful commentary. After explaining the rationale behind favoring the HOA, the report explains:

> 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 taxes 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 [sic] association's 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.

JEB Report at p. 4. The drafters of the UCIOA believed the split-priority approach "struck a workable and functional balance between the need to protect the financial integrity of the association and the legitimate expectations of first mortgage lenders." *Id.* at pp. 5-6. The court's opinion vitiates the spirt and intent of the split-lien approach by allowing HOAs to claim full priority simply by making assessments due once per year. That is not how the statute is supposed to function.

C. The Opinion Leads to Unreasonable and Absurd Outcomes

As the opinion noted, "'statutory interpretations should not render any part of a statute meaningless, and a statute's language should not be read to produce absurd or unreasonable results.'" *Noonan*, 136 Nev. Adv. Op. at p. 5, 466 P.3d at 1276, *citing Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007). But the opinion creates just that: absurd and unreasonable results. The crux of the problem is that the superpriority component under the opinion depends on two variables the HOA can change or manipulate—thereby depriving others of predictability and frustrating the legislative purpose behind the statute. Some illustrations of how the opinion introduces uncertainty and interferes with the statute's purpose:

- **Scenario 1**: An HOA imposes one annual assessment, which the homeowner fails to pay. The association commences enforcement proceedings 10 months later. Under the opinion, no assessments became due in the immediately preceding nine months.

  Outcome: the HOA lien has no superpriority component.

- **Scenario 2**: An HOA has two equal semi-annual assessments, one due on January 1 and the second due on July 1. A homeowner defaults on both installments and the HOA commences foreclosure proceedings on October 10. Only the July installment became due within the nine months immediately preceding commencement of enforcement.

  Outcome: the superpriority component is six months' worth of assessments.

- **Scenario 3**: An HOA has four quarterly assessments, due on January 1, April 1, July 1, October 1. A homeowner defaults on January 1 and never pays again. If the HOA commences

enforcement on September 30, three quarterly assessments would have become due in the immediately preceding nine months. However, if the association commences enforcement one day later, on October 1, then (a) the January 1 assessment would have become due more than nine months after commencement of enforcement proceedings and (b) the October 1 installment is not yet delinquent.

Outcome: the superpriority component is *either* six or nine months' worth of assessments, depending on the precise date enforcement commences.

- **Scenario 4**: An HOA has semi-annual assessments due on January 1 and July 1. A homeowner defaults on January 1 and does not pay ever again. If the HOA commences enforcement proceedings between July 2 and September 30, both assessments would have been due in the immediately preceding nine months. If it commences enforcement at any other time during the same year, only one assessment would have become due in the immediately preceding nine months.

  Outcome: the superpriority component is either six or 12 months' worth of assessments. There is never a point where the HOA would have a nine-month superpriority in this scenario.

- **Scenario 5**: An HOA changes from monthly assessments in Year 1 to an annual assessment due in January of Year 2. A homeowner does not pay anything during Year 1. The HOA commences enforcement proceedings in January of Year 2, after the homeowner misses the annual payment due that month. The amount that would have become due in the immediately preceding nine months is the sum of (a) the annual assessment due at the beginning of Year 2 and (b) eight or nine assessments (depending on when in the month they were due) from Year 1.

  Outcome: the superpriority amount would be either 20 or 21 months—more than double the nine-month baseline.

These illustrative examples all lead to disparate outcomes. In one illustration, the superpriority component would be up to 21 months' worth of assessments, while in another there would be no superpriority component. As *SFR Investments*, the official commentary, and the JEB Report make clear, the legislative objective is to strike an equitable balance between the needs of mortgage lenders and associations by giving the associations a superpriority component capped at nine months' worth of assessments. The opinion shatters that balance, invites uncertainty, and empowers associations to set the superpriority amount as they see fit through the timing of enforcement actions. These scenarios are realistic and foreseeable, but they are legislatively unintended and absurd.

CONCLUSION

The court should grant rehearing and affirm the decision below.

DATED this 31st day of August, 2020.

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CERTIFICATE OF COMPLIANCE

I certify that this petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in normal Times New Roman 14 point font.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 40(b)(3) because it is proportionately spaced, has a typeface of 14 points or more, and contains 3,921 words excluding the parts of the brief exempted by NRAP 32(a)(7)(C).

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

DATED this 31st day of August, 2020.

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