

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

<p>SATICOY BAY, LLC SERIES 9720 HITCHING RAIL, A NEVADA LIMITED LIABILITY COMPANY,</p> <p style="text-align: center;">Appellant,</p> <p>v.</p> <p>PECCOLE RANCH COMMUNITY ASSOCIATION; AND NEVADA ASSOCIATION SERVICES, INC.,</p> <p style="text-align: center;">Respondents.</p>	<p>Supreme Court No. 81446</p> <p style="text-align: right;">Electronically Filed Jul 23 2020 09:04 a.m. Elizabeth A. Brown Clerk of Supreme Court</p> <p><b>DOCKETING STATEMENT CIVIL APPEALS</b></p>
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**GENERAL INFORMATION**

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

**WARNING**

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 15

County Clark Judge Joe Hardy

District Ct. Case No. A-19-791797-C

**2. Attorney filing this docketing statement:**

Attorney Chet A. Glover

Telephone (702) 254-7775

Firm Roger P. Croteau & Associates

Address: 2810 W. Charleston Blvd, Suite 75, Las Vegas, Nevada 89102

Client(s) Saticoy Bay, LLC Series 9720 Hitching Rail (“Appellant”)

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Kaleb D. Anderson

Telephone (702) 382-1500

Attorney Amanda A. Ebert

Telephone (702) 382-1500

Firm Lipson Neilson P.C.

Address: 9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144

Client(s) Peccole Ranch Community Association (the “HOA”) and Nevada Association Services, Inc. (the “HOA Trustee”)

**4. Nature of disposition below (check all that apply):**

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☐ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination

☐ Other disposition (specify): \_\_\_\_\_

☒ Dismissal

☐ Lack of jurisdiction

☒ Failure to state a claim

- ☐ Failure to prosecute
- ☐ Other (specify): \_\_\_\_\_
- ☐ Divorce Decree:
- ☐ Original      ☐ Modification

**5. Does this appeal rise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.* bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

The action relates to real property that was the subject of a homeowners' association lien foreclosure sale pursuant to NRS Chapter 116. Plaintiff's Complaint asserts four causes of action against the HOA and HOA Trustee: (1) intentional, or alternatively negligent misrepresentation; (2) breach of duty of good faith; (3) conspiracy; and (4) Violation of NRS 113, et seq. Pursuant to its complaint, Appellant seeks damages resulting from Respondents' failure to disclose the fact that a secured lender had "tendered" and satisfied the superpriority portion of the HOA's lien that was foreclosed upon.

The district court dismissed the complaint based solely on NRS 38.310. Appellant appeals from the district court's order granting Respondents' Motion to Dismiss or in the Alternative for Summary Judgment.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether NRS 38.310 required mandatory, pre-litigation mediation.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

- ☒ N/A
- ☐ Yes
- ☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first impression
- ☐ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

Is so, explain

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the court of Appeals, identify the specific issue(s) or circumstances(s) that warrant retaining the case, and include an explanation of their importance or significance:

The matter does not fall into any of the categories in NRCP 17(a) or (b).

**14. Trial.** If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? \_\_\_\_\_

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in the appeal? If so, which Justice?

No.

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from:** March 19, 2020.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**Date written notice of entry of judgment or order was served:** June 3, 2020.

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was Service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed:** July 2, 2020.

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other:** NRAP 4(a)(1).

## SUBSTANTIVE APPEALABILITY

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) \_\_\_\_\_

(b) Explain how each authority provides a basis for appeal from the judgment or order.

Appellant is appealing from the district court's order granting Respondents' Motion to Dismiss or in the Alternative for Summary Judgment.

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Plaintiff/Appellant: Saticoy Bay, LLC Series 9720 Hitching Rail

Defendant/Respondent: Peccole Ranch Community Association

Defendant/Respondent: Nevada Association Services, Inc.

**(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in the appeal, e.g. formally dismissed, not served, or other:**

N/A

**23. Give a brief description (3 or 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

(1) intentional, or alternatively negligent misrepresentation; (2) breach of duty of good faith; (3) conspiracy; and (4) breach of NRS 113 et seq. Each of these claims were dismissed on March 19, 2020 via the district court's order granting Respondents' Motion to Dismiss or in the Alternative for Summary Judgment.

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

**26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

N/A

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

### VERIFICATION

**I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.**

Saticoy Bay, LLC Series 9720 Hitching Rail  
Name of appellant

Chet A. Glover  
Name of counsel of record

July 23, 2020  
Date

/s/Chet A. Glover  
Signature of counsel of record

Clark County, Nevada  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on July 23, 2020, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Kaleb D. Anderson  
Amanda A. Ebert  
Lipson Neilson P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
Attorneys for Defendants/Respondents

Persi J. Mishel  
10161 Park Run Dr., Suite 150  
Las Vegas, Nevada 89145  
Supreme Court Settlement Judge

Dated this 23rd day of July, 2020.

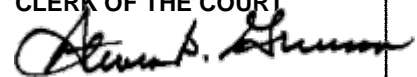
/s/ Joe Koehle

\_\_\_\_\_  
An employee of Roger P. Croteau & Associates



# **EXHIBIT 1**

# **EXHIBIT 1**



CASE NO: A-19-791797-C  
Department 15

1 **COMP**  
2 ROGER P. CROTEAU, ESQ.  
3 Nevada Bar No. 4958  
4 TIMOTHY E. RHODA, ESQ.  
5 Nevada Bar No. 7878  
6 ROGER P. CROTEAU & ASSOCIATES, LTD.  
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12 *Attorney for Plaintiff*

DISTRICT COURT  
CLARK COUNTY, NEVADA

11 SATICOY BAY, LLC, SERIES 9720  
12 HITCHING RAIL, a Nevada limited liability  
13 company,

13 Plaintiff,

14 vs.

15 PECCOLE RANCH COMMUNITY  
16 ASSOCIATION, a Nevada non-profit  
17 corporation; NEVADA ASSOCIATION  
18 SERVICES, INC., a domestic corporation,

17 Defendants

Case No.:  
Dept. No.:

19 **COMPLAINT**

20 COMES NOW, Plaintiff, Saticoy Bay, LLC, Series 9720 Hitching Rail ("*Saticoy*") by  
21 and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby complains  
22 and alleges against Defendants as follows:

23 **PARTIES AND JURISDICTION**

- 24 1. Plaintiff, Saticoy Bay, LLC, Series 9720 Hitching Rail ("*Saticoy Bay*"), is a Nevada series  
25 limited liability company, authorized to do business and doing business in the County of  
26 Clark, State of Nevada.  
27  
28

2. Saticoy is the current owner of real property located at 9720 Hitching Rail, Las Vegas Nevada 89117 (APN 163-06-110-095) (the "*Property*").
3. Saticoy acquired title to the Property by Foreclosure Deed dated February 14, 2014, by and through a homeowners association lien foreclosure sale conducted on February 14, 2014 ("*HOA Foreclosure Sale*"), by Nevada Association Services, Inc., a Nevada corporation, authorized to do business and doing business in Clark County, State of Nevada ("*HOA Trustee*"), on behalf of Peccole Ranch Community Association, a Nevada domestic non-profit corporation ("*HOA*"). The HOA Foreclosure Deed was recorded in the Clark County Recorder's Office on February 18, 2014 ("*HOA Foreclosure Deed*").
4. Upon information and belief, HOA is a Nevada common interest community association or unit owners' association as defined in NRS 116.011, is organized and existing under the laws of the State of Nevada, and transacts business in the State of Nevada.
5. Upon information and belief, HOA Trustee is a debt collection agency doing business in the State of Nevada, and is organized and existing under the laws of the State of Nevada.
6. Venue is proper in Clark County, Nevada pursuant to NRS 13.040.
7. The exercise of jurisdiction by this Court over the parties in this civil action is proper pursuant to NRS 14.065.

#### **GENERAL ALLEGATIONS**

8. Under Nevada law, homeowner's associations have the right to charge property owners residing within the community assessments to cover the homeowner's associations' expenses for maintaining or improving the community, among other things.
9. When the assessments are not paid, the homeowner's association may impose a lien against real property which it governs and thereafter foreclose on such lien.
10. NRS 116.3116 makes a homeowner's association's lien for assessments junior to a first deed of trust beneficiary's secured interest in the property, with one limited exception; a homeowner's association's lien is senior to a deed of trust beneficiary's secured interest "to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the

periodic budget adopted by the association pursuant to NRS 116.3115 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).

11. In Nevada, when a homeowners association properly forecloses upon a lien containing a super-priority lien component, such foreclosure extinguishes a first deed of trust.
12. On or about April 25, 2003, Edna Scott, an unmarried woman (“*the Former Owner*”) refinanced the Property. Former Owner obtained a loan secured by the Property from Republic Mortgage, LLC (“*Lender*”), that is evidenced by a deed of trust between the Former Owner and Lender, recorded against the Property on April 30, 2003, for the loan amount of \$163,567.00 (“*Deed of Trust*”). The Deed of Trust provides that Mortgage Electronic Registration Services (“*MERS*”) is beneficiary, as nominee for Lender and Lender’s successors and assigns. The Deed of Trust was in the amount of \$163,567.00, and the Deed of Trust was recorded in the Clark County Recorder’s office on April 30, 2003
13. The Former Owner executed a Planned Unit Development Rider along with the Deed of Trust on April 25, 2003.
14. On November 8, 2011, Republic Mortgage, LLC, assigned its beneficial interest by Assignment of Deed of Trust to Bank of America, N.A. (“*BANA*”) and recorded the document in Clark County Recorder’s Office on November 14, 2011.

#### **The HOA Lien and Foreclosure**

15. Upon information and belief, the Former Owner of the Property failed to pay to HOA all amounts due to pursuant to HOA’s governing documents.
16. Accordingly, on October 3, 2011, HOA Trustee, on behalf of HOA, recorded a Notice of Delinquent Assessment Lien (“*HOA Lien*”). The HOA Lien stated that the amount due to the HOA was \$1,434.04, as of September 28, 2011, plus continuing assessments, interest, late charges, costs, and attorney’s fees.
17. On December 29, 2011, HOA Trustee, on behalf of the HOA, recorded a Notice of Default and Election to Sell Under Homeowners Association Lien (“*NOD*”) against the

Property. The NOD stated the amount due to the HOA was \$2,660.78 as of December 27, 2011, plus continuing assessments, late fees, collection fees, interest and attorney's fees and costs.

18. On or about December 4, 2013, after the NOD was recorded, BANA, through counsel Miles, Bauer, Bergstrom & Winters, LLP ("*Miles Bauer*") contacted the HOA Trustee and HOA via U.S. Mail and requested adequate proof of the super priority amount of assessments by providing a breakdown of up to nine (9) months of common HOA assessments in order for BANA to calculate the Super Priority Lien Amount in an ostensible attempt to determine the amount the HOA Lien entitled to super-priority ("*Super-Priority Lien Amount*").
19. Upon information and belief, Miles Bauer requested the HOA arrears in an attempt to pay the Super-Priority Lien Amount of the HOA Lien.
20. Miles Bauer used a Statement of Account from HOA Trustee, for a different property in the same HOA to determine an estimated payment of the Super-Priority Lien Amount good faith payoff.
21. On January 10, 2014, BANA, through Miles Bauer, provided a payment of \$585.00 to the HOA Trustee, which included payment of up to nine months of delinquent assessments (the "*Attempted Payment*").
22. HOA Trustee, on behalf of the HOA, rejected BANA's Attempted Payment of \$585.00.
23. On January 23, 2014, HOA Trustee, on behalf of the HOA, recorded a Notice of Sale against the Property ("*NOS*"). The NOS provided that the total amount due the HOA was \$6,614.20 and set a sale date for the Property of February 14, 2014, at 10:00 A.M., to be held at Nevada Association Services.
24. On February 14, 2014, HOA Trustee then proceeded to non-judicial foreclosure sale on the Property and recorded the HOA Foreclosure Deed on February 18, 2014, which stated that the HOA Trustee sold the HOA's interest in the Property to the Plaintiff at the HOA Foreclosure Sale for the highest bid amount of \$51,500.00.
25. The Foreclosure Sale created excess proceeds.

26. After the Notice of Default was recorded, BANA, the purported holder of the Deed of Trust recorded against the Property, through its counsel, Miles Bauer, contacted HOA Trustee and HOA and requested all amounts due the HOA by the Former Owners, upon information and belief, Miles Bauer requested the sums due to the HOA by the Former Owners so it could calculate the breakdown of up to nine (9) months of common HOA assessments in order for BANA to calculate the Super Priority Lien Amount in an ostensible attempt to determine the amount of the HOA Lien entitled to super-priority over the Deed of Trust.
27. In none of the recorded documents, nor in any other notice recorded with the Clark County Recorder's Office, did HOA and/or HOA Trustee specify or disclose that any individual or entity, including but not limited to BANA, had attempted to pay any portion of the HOA Lien in advance of the HOA Foreclosure Sale.
28. Plaintiff appeared at the HOA Foreclosure Sale and presented the prevailing bid in the amount of \$51,500.00, thereby purchasing the Property for said amount.
29. Neither HOA nor HOA Trustee informed or advised the bidders and potential bidders at the HOA Foreclosure Sale, either orally or in writing, that any individual or entity had attempted to pay the Super-Priority Lien Amount.
30. Upon information and belief, the debt owed to Lender by the Former Owners of the Property pursuant to the loan secured by the Deed of Trust significantly exceeded the fair market value of the Property at the time of the HOA Foreclosure Sale.
31. Upon information and belief, Lender alleges that its Attempted Payment of the Super-Priority Lien Amount served to satisfy and discharge the Super-Priority Lien Amount, thereby changing the priority of the HOA Lien vis a vis the Deed of Trust.
32. Upon information and belief, Lender alleges that as a result of its Attempted Payment of the Super-Priority Lien Amount, the purchaser of the Property at the HOA Foreclosure Sale acquired title to the Property subject to the Deed of Trust.
33. Upon information and belief, if the bidders and potential bidders at the HOA Foreclosure Sale were aware that an individual or entity had attempted to pay the Super-Priority Lien

1 Amount and/or by means of the Attempted Payment prior to the HOA Foreclosure Sale  
2 and that the Property was therefore ostensibly being sold subject to the Deed of Trust, the  
3 bidders and potential bidders would not have bid on the Property.

4 34. Had the Property not been sold at the HOA Foreclosure Sale, HOA and HOA Trustee  
5 would not have received payment, interest, fees, collection costs and assessments related  
6 to the Property and these sums would have remained unpaid.

7 35. HOA Trustee acted as an agent of HOA.

8 36. HOA is responsible for the actions and inactions of HOA Trustee pursuant to the doctrine  
9 of respondeat superior.

10 37. HOA and HOA Trustee conspired together to hide material information related to the  
11 Property: the HOA Lien; the Attempted Payment of the Super-Priority Lien Amount; the  
12 rejection of such payment or Attempted Payment; and the priority of the HOA Lien vis a  
13 vis the Deed of Trust, from the bidders and potential bidders at the HOA Foreclosure  
14 Sale.

15 38. The information related to any Attempted Payment or payments made by Lender, BANA,  
16 the homeowner or others to the Super Priority Lien Amount was not recorded and would  
17 only be known by BANA, Lender, the HOA and HOA Trustees.

18 39. Upon information and belief, HOA and HOA Trustee conspired to withhold and hide the  
19 aforementioned information for their own economic gain and to the detriment of the  
20 bidders and potential bidders at the HOA Foreclosure Sale.

21 40. BANA first disclosed the Attempted Payment by BANA/Lender to the HOA Trustee in  
22 BANA's Complaint, filed on March 25, 2016, and served on the Plaintiff after March 25,  
23 2016 ("*Discovery*") in the United States District Court Case No. 2:16-cv-00660 (the  
24 "*Case*").

25 ///

26 ///

27 ///

28 ///

**FIRST CAUSE OF ACTION**

**(Intentional, or Alternatively Negligent, Misrepresentation**

**Against the HOA and HOA Trustee)**

41. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 40 hereof as if set forth fully herein.
42. At no point in time did HOA or HOA Trustee disclose to the bidders and potential bidders at the HOA Foreclosure Sale the fact that any individual or entity had attempted to pay the Super-Priority Lien Amount or provided the Attempted Payment.
43. By rejecting the Attempted Payment of the Super-Priority Lien Amount from Lender and/or Miles Bauer, HOA Trustee provided itself with the opportunity to perform and profit from many additional services on behalf of HOA related to the Property and proceedings related to the HOA Foreclosure Sale.
44. By rejecting the Attempted Payment of the Super-Priority Lien Amount from Lender and/or Miles Bauer, HOA received funds in satisfaction of the entire HOA Lien, rather than only the Super-Priority Lien Amount.
45. Consequently, HOA and HOA Trustee received substantial benefit as a result of their rejection of the Attempted Payment of the Super-Priority Lien Amount from Lender and intentionally failing to disclose that information to the Plaintiff or the other bidders.
46. Neither HOA nor HOA Trustee recorded any notice nor provided any written or oral disclosure to the bidders and potential bidders at the HOA Foreclosure Sale regarding any Attempted Payment of the Super-Priority Lien Amount by Lender or any individual or entity.
47. HOA and HOA Trustee desired that the bidders and potential bidders at the HOA Foreclosure Sale believe that the HOA Lien included amounts entitled to super-priority over the Deed of Trust and that the Deed of Trust would thus be extinguished as a result of the HOA Foreclosure Sale for their own economic gain.
48. As a result of their desire that the bidders and potential bidders at the HOA Foreclosure Sale believe that the HOA Lien included amounts entitled to super-priority over the Deed



1 of Trust and that the Deed of Trust would thus be extinguished as a result of the HOA  
2 Foreclosure Sale, HOA and HOA Trustee intentionally failed to disclose material  
3 information related to the Attempted Payment of the Super-Priority Lien Amount by  
4 Lender and did so for their own economic gain.

5 49. Alternatively, HOA and HOA Trustee were grossly negligent by failing to disclose  
6 material information related to the Attempted Payment of the Super-Priority Lien  
7 Amount.

8 50. Upon information and belief, if HOA Trustee and/or HOA had disclosed the Attempted  
9 Payment of the Super-Priority Lien Amount to the bidders and potential bidders at the  
10 HOA Foreclosure Sale, such bidders and potential bidders would not have bid upon the  
11 Property at the HOA Foreclosure Sale.

12 51. Given the facts of this case now known to Plaintiff, Plaintiff would not have bid on the  
13 Property.

14 52. Upon information and belief, if the Property had not been sold at the HOA Foreclosure  
15 Sale, HOA would not have received funds in satisfaction of the HOA Lien.

16 53. Upon information and belief, if the Property had not been sold at the HOA Foreclosure  
17 Sale, HOA Trustee would not have received payment for the work that it performed on  
18 behalf of HOA in association with the HOA Foreclosure Sale and related proceedings.

19 54. Plaintiff attended the sale as a ready, willing and able buyer without knowledge of the  
20 Attempted Payment.

21 55. Plaintiff would not have purchased the Property if it had been informed that any  
22 individual or entity had paid or attempted to pay the Super-Priority Lien Amount or any  
23 amount in advance of the HOA Foreclosure Sale.

24 56. As a direct result of HOA and HOA Trustee's rejection of the Attempted Payment of the  
25 Super-Priority Lien Amount and their subsequent intentional or grossly negligent failure  
26 to advise the bidders and potential bidders at the HOA Foreclosure Sale of the facts  
27 related thereto, Plaintiff presented the prevailing bid at the HOA Foreclosure Sale and  
28 thereby purchased the Property.

- 1 57. HOA and HOA Trustee each profited from their intentional and/or negligent  
2 misrepresentations and material omissions at the time of the HOA Foreclosure Sale by  
3 failing and refusing to disclose the Attempted Payment of the Super-Priority Lien  
4 Amount.
- 5 58. HOA and HOA Trustee materially misrepresented the facts by hiding and failing to  
6 advise bidders and potential bidders at the HOA Foreclosure Sale of information known  
7 solely to the HOA and/or HOA Trustee that was not publicly available which ostensibly  
8 changed the priority of Deed of Trust vis a vis the HOA Lien.
- 9 59. HOA and HOA Trustee solely possessed information related to the Attempted Payment of  
10 the Super-Priority Lien Amount prior to and at the time of the HOA Foreclosure Sale, and  
11 intentionally withheld such information for their own economic gain.
- 12 60. Alternatively, HOA and HOA Trustee were gross negligently when it withheld  
13 information from the bidders and purchaser at the HOA Foreclosure Sale related to the  
14 Attempted Payment of the Super-Priority Lien Amount.
- 15 61. Plaintiff reasonably relied upon HOA and HOA Trustee's intentional or grossly negligent  
16 failure to disclose the Attempted Payment of the Super-Priority Lien Amount.
- 17 62. HOA and HOA Trustee intended that the bidders and potential bidders at the HOA  
18 Foreclosure Sale would rely on the lack of notice of the Attempted Payment of the Super-  
19 Priority Lien Amount at the time of the HOA Sale and that their failure to disclose such  
20 information promoted the sale of the Property.
- 21 63. HOA and HOA Trustee further intended that their failure of refusal to inform bidders and  
22 potential bidders at the HOA Foreclosure Sale of the Attempted Payment of the Super-  
23 Priority Lien Amount would lead such bidders and potential bidders to believe that the  
24 Deed of Trust was subordinate to the HOA Lien and not being sold subject to the Deed of  
25 Trust.
- 26 64. The HOA and the HOA Trustee had a duty to disclose the Attempted Payment of the  
27 Super-Priority Lien Amount.
- 28

65. The HOA and the HOA Trustee breached that duty to disclose the Attempted Payment to Plaintiff.

66. As a result of the HOA and HOA Trustee's breach of its duty of care, duty of good faith and its duty of candor to bidders at the HOA Foreclosure Sale for its own economic gain, Plaintiff has been economically damaged in many aspects.

67. If the Property is subject to the Deed of Trust, the funds paid by Plaintiff to purchase, maintain, operate, litigate various cases and generally manage the Property would be lost along with the lost opportunity of purchasing other available property offered for sale where a super priority payment had not been attempted, thereby allowing Plaintiff the opportunity to purchase a property free and clear of the deed of trust and all other liens.

68. As a direct and proximate result of the actions of the Defendants, it has become necessary for Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.

69. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil Procedure as further facts become known.

## **SECOND CAUSE OF ACTION**

### **(Breach of the Duty of Good Faith Against the HOA and HOA Trustee)**

70. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 69 as if set forth fully herein.

71. NRS 116.1113 provides that every contract or duty governed by NRS 116, et seq., Nevada's version of the Common-Interest Ownership Uniform Act, must be performed in good faith in its performance or enforcement.

72. A duty of good faith includes within that term a duty of candor in its dealings.

73. Prior to the HOA Foreclosure Sale of the Property, Lender purports to have obtained evidence detailing the Super-Priority Lien Amount.

74. Thereafter, Lender, by and through Miles Bauer attempted to pay the Super-Priority Lien Amount to HOA or HOA Trustee by the Attempted Payment.

- 1 75. Upon information and belief, HOA Trustee, acting on behalf of HOA, rejected the  
2 Attempted Payment.
- 3 76. HOA and HOA Trustee's rejection of the Attempted Payment and subsequent failure and  
4 refusal to inform the bidders and potential bidders at the HOA Foreclosure Sale served to  
5 breach their duty of good faith, fair dealings and candor pursuant to NRS 116, et seq. to  
6 Plaintiff.
- 7 77. HOA and the HOA Trustee owed a duty of good faith, fair dealings, and candor to  
8 Plaintiff.
- 9 78. By virtue of its actions and inactions, HOA and HOA Trustee were substantially  
10 benefitted economically to the detriment of the Plaintiff.
- 11 79. As a direct and proximate result of the actions of the Defendants, it has become necessary  
12 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this  
13 Claim.
- 14 80. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil  
15 Procedure as further facts become known.

16 **THIRD CAUSE OF ACTION**

17 **(Conspiracy)**

- 18 81. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1  
19 through 80 as if set forth fully herein.
- 20 82. HOA and HOA Trustee knew or should have known of BANA's Attempted Payment of  
21 the Super-Priority Lien Amount.
- 22 83. Upon information and belief, acting together, Defendants reached an implicit or express  
23 agreement amongst themselves whereby they agreed to withhold the information  
24 concerning the Attempted Payment of the Super-Priority Lien Amount from bidders and  
25 potential bidders at the HOA Foreclosure Sale.
- 26 84. Defendants knew or should have known that their actions and omissions would  
27 economically harm the successful bidder and purchaser of the Property and benefit HOA  
28 and HOA Trustee. To further their conspiracy, upon information and belief, Defendants

rejected the Attempted Payment for the purpose of obtaining more remuneration than they would have otherwise obtained at a sale of the subpriority portion of the HOA Lien.

85. As a direct and proximate result of the actions of the Defendants, it has become necessary for Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.

86. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil Procedure as further facts become known.

#### **FOURTH CAUSE OF ACTION**

##### **(Violation of NRS 113, et seq.)**

87. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 86 as if set forth fully herein.

88. Pursuant to NRS 113, et seq., the HOA and the HOA Trustee must disclose the Attempted Payment and/or any payments made or attempted to be made by BANA, the Former Owner, or any agents of any other party to the bidders and Plaintiff at the HOA Foreclosure Sale.

89. The HOA and HOA Trustee are required to and must provide a Seller's Real Property Disclosure Form ("SRPDF") to the "Purchaser" as defined in NRS 116, et seq., at the time of the HOA Foreclosure Sale.

90. NRS 116 et seq. foreclosure sales are not exempt from the mandates of NRS 113 et seq.

91. The HOA and HOA Trustee must complete and answer the questions posed in the SRPDF in its entirety, but specifically, Section 9, Common Interest Communities, disclosures (a) - (f), and Section 11, that provide as follows:

9. Common Interest Communities: Any "common areas" (facilities like pools, tennis courts, walkways or other areas co-owned with others) or a homeowner association which has any authority over the property?

- (a) Common Interest Community Declaration and Bylaws available?
- (b) Any periodic or recurring association fees?
- (c) Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien?

- (d) Any litigation, arbitration, or mediation related to property or common areas?
- (e) Any assessments associated with the property (excluding property tax)?
- (f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee?

11. Any other conditions or aspects of the [P]roperty which materially affect its value or use in an adverse manner? (Emphasis added)

See SRPDF, Form 547, attached hereto as Exhibit 1.

92. Section 11 of the SRPDF relates directly to information known to the HOA and the HOA Trustee that materially affects the value of the Property, and in this case, if the Super Priority Lien Amount is paid, or if the Attempted Payment is rejected, it would have a material adverse affect on the overall value of the Property, and therefore, must be disclosed in the SRPDF by the HOA and the HOA Trustee when the SRPDF is completed and disclosed to the purchaser/Trust.
93. The HOA's response to Section 9(c) - (e) of the SRPDF would provide notice to the Plaintiff of any payments made by BANA or others on the HOA Lien.
94. The HOA's response to Section 11 of the SRPDF generally deals with the disclosure of the condition of the title to the Property related to the status of the Deed of Trust and the Attempted Payment that would only be known by the HOA and the HOA Trustee.
95. Pursuant to Nevada Real Estate Division's ("*NRED*"), Residential Disclosure Guide (the "*Guide*"), the Guide provides at page 20 that the HOA and HOA Trustee shall provide, even in an NRS 107, et seq. sale, the following to the purchaser/Plaintiff at the HOA Foreclosure Sale:

The content of the disclosure is based on what the seller is aware of at the time. If, after completion of the disclosure form, the seller discovers a new defect or notices that a previously disclosed condition has worsened, the seller must inform the purchaser, in writing, as soon as practicable after discovery of the condition, or before conveyance of the property.

The buyer may not waive, and the seller may not require a buyer to waive, any of the requirements of the disclosure as a condition of sale or for any other purpose.

In a sale or intended sale by foreclosure, the trustee and the beneficiary of the deed of trust shall provide, not later than the conveyance of the property to, or upon request from, the buyer:

written notice of any defects of which the trustee or beneficiary is aware

...

96. If the HOA and/or HOA Trustee fails to provide the SRPDF to the Plaintiff/purchaser at the time of the HOA Foreclosure Sale, the Guide explains that:

A Buyer may rescind the contract without penalty if he does not receive a fully and properly completed Seller's Real Property Disclosure form. If a Buyer closes a transaction without a completed form or if a known defect is not disclosed to a Buyer, the Buyer may be entitled to treble damages, unless the Buyer waives his rights under NRS 113.150(6).

97. Pursuant to NRS 113.130(4), the HOA and HOA Trustee are required to provide the information set forth in the SRPDF to the Plaintiff at the HOA Foreclosure Sale.

98. The HOA and the HOA Trustee did not provide an SRPDF to the Plaintiff at the HOA Foreclosure Sale.

99. As a result of the HOA and HOA Trustee's failure to provide the Plaintiff with the mandated SRPDF and disclosures required therein that were known to the HOA and HOA Trustee, The Plaintiff has been economically damaged.

100. As a direct and proximate result of the actions of the Defendants, it has become necessary for Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.

101. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil Procedure as further facts become known.

WHEREFORE, Plaintiff prays for relief as follows:

1. For damages to be proven at trial in excess of \$15,000;
2. For punitive damages in an amount to be determined at trial;
3. For an award of reasonable attorneys' fees as special damages, and otherwise under Nevada law;

4. For pre-judgment and post-judgment interest at the statutory rate of interest; and
5. For such other and further relief that the Court deems just and proper.

DATED this 18<sup>th</sup> day of March, 2019.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Roger P. Croteau  
ROGER P. CROTEAU, ESQ.  
Nevada Bar No. 4958  
2810 W. Charleston, Ste. 75  
Las Vegas, Nevada 89102  
(702) 254-7775  
*Attorney for Plaintiff*



# EXHIBIT 1

## SELLER'S REAL PROPERTY DISCLOSURE FORM

In accordance with Nevada Law, a seller of residential real property in Nevada must disclose any and all known conditions and aspects of the property which materially affect the value or use of residential property in an adverse manner (see *NRS 113.130 and 113.140*).

Date \_\_\_\_\_

Do you currently occupy or have you ever occupied this property? YES NO  
☐ ☐

Property address \_\_\_\_\_

Effective October 1, 2011: A purchaser may not waive the requirement to provide this form and a seller may not require a purchaser to waive this form. (NRS 113.130(3))

Type of Seller: ☒ Bank (financial institution); ☐ Asset Management Company; ☐ Owner-occupier; ☐ Other: \_\_\_\_\_

**Purpose of Statement:** (1) This statement is a disclosure of the condition of the property in compliance with the Seller Real Property Disclosure Act, effective January 1, 1996. (2) This statement is a disclosure of the condition and information concerning the property known by the Seller which materially affects the value of the property. Unless otherwise advised, the Seller does not possess any expertise in construction, architecture, engineering or any other specific area related to the construction or condition of the improvements on the property or the land. Also, unless otherwise advised, the Seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. This statement is not a warranty of any kind by the Seller or by any Agent representing the Seller in this transaction and is not a substitute for any inspections or warranties the Buyer may wish to obtain. Systems and appliances addressed on this form by the seller are not part of the contractual agreement as to the inclusion of any system or appliance as part of the binding agreement.

Instructions to the Seller: (1) ANSWER ALL QUESTIONS. (2) REPORT KNOWN CONDITIONS AFFECTING THE PROPERTY. (3) ATTACH ADDITIONAL PAGES WITH YOUR SIGNATURE IF ADDITIONAL SPACE IS REQUIRED. (4) COMPLETE THIS FORM YOURSELF. (5) IF SOME ITEMS DO NOT APPLY TO YOUR PROPERTY, CHECK NA (NOT APPLICABLE). EFFECTIVE JANUARY 1, 1996, FAILURE TO PROVIDE A PURCHASER WITH A SIGNED DISCLOSURE STATEMENT WILL ENABLE THE PURCHASER TO TERMINATE AN OTHERWISE BINDING PURCHASE AGREEMENT AND SEEK OTHER REMEDIES AS PROVIDED BY THE LAW (see NRS 113.150).

**Systems / Appliances:** Are you aware of any problems and/or defects with any of the following:

	YES	NO	N/A		YES	NO	N/A
Electrical System .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Shower(s) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plumbing .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sink(s) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sewer System & line .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sauna / hot tub(s) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Septic tank & leach field .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Built-in microwave .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Well & pump .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Range / oven / hood-fan .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Yard sprinkler system(s) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Dishwasher .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fountain(s) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Garbage disposal .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Heating system .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Trash compactor .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cooling system .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Central vacuum .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Solar heating system .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Alarm system .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fireplace & chimney .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	owned.. <input type="checkbox"/> leased.. <input type="checkbox"/>			
Wood burning system .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Smoke detector .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Garage door opener .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Intercom .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Water treatment system(s) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Data Communication line(s) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
owned.. <input type="checkbox"/> leased.. <input type="checkbox"/>				Satellite dish(es) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Water heater .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	owned.. <input type="checkbox"/> leased.. <input type="checkbox"/>			
Toilet(s) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Other .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bathub(s) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

EXPLANATIONS: Any "Yes" must be fully explained on page 3 of this form.

## Sellers' critics

## Bayer(s) Initiated

Property conditions, improvements and additional information: ..... YES NO N/A  
Are you aware of any of the following?:

1. Structure:

- (a) Previous or current moisture conditions and/or water damage? ..... ☐ ☐  
(b) Any structural defect? ..... ☐ ☐  
(c) Any construction, modification, alterations, or repairs made without required state, city or county building permits? ..... ☐ ☐  
(d) Whether the property is or has been the subject of a claim governed by NRS 40.600 to 40.695 (construction defect claims)? ..... ☐ ☐  
(If seller answers yes, FURTHER DISCLOSURE IS REQUIRED)

2. Land / Foundation:

- (a) Any of the improvements being located on unstable or expansive soil? ..... ☐ ☐  
(b) Any foundation sliding, settling, movement, upheaval, or earth stability problems that have occurred on the property? ..... ☐ ☐  
(c) Any drainage, flooding, water seepage, or high water table? ..... ☐ ☐  
(d) The property being located in a designated flood plain? ..... ☐ ☐  
(e) Whether the property is located next to or near any known future development? ..... ☐ ☐  
(f) Any encroachments, easements, zoning violations or nonconforming uses? ..... ☐ ☐  
(g) Is the property adjacent to "open range" land? ..... ☐ ☐  
(If seller answers yes, FURTHER DISCLOSURE IS REQUIRED under NRS 113.065)

3. Roof: Any problems with the roof? ..... ☐ ☐

4. Pool/spa: Any problems with structure, wall, liner, or equipment? ..... ☐ ☐ ☐

5. Infestation: Any history of infestation (termites, carpenter ants, etc.)? ..... ☐ ☐

6. Environmental:

- (a) Any substances, materials, or products which may be an environmental hazard such as but not limited to, asbestos, radon gas, urea formaldehyde, fuel or chemical storage tanks, contaminated water or soil on the property? ..... ☐ ☐  
(b) Has property been the site of a crime involving the previous manufacture of Methamphetamine where the substances have not been removed from or remediated on the Property by a certified entity or has not been deemed safe for habitation by the Board of Health? ..... ☐ ☐

7. Fungi / Mold: Any previous or current fungus or mold? ..... ☐ ☐

8. Any features of the property shared in common with adjoining landowners such as walls, fences, road, driveways or other features whose use or responsibility for maintenance may have an effect on the property? ..... ☐ ☐

9. Common Interest Communities: Any "common areas" (facilities like pools, tennis courts, walkways or other areas co-owned with others) or a homeowner association which has any authority over the property? ..... ☐ ☐

- (a) Common Interest Community Declaration and Bylaws available? ..... ☐ ☐  
(b) Any periodic or recurring association fees? ..... ☐ ☐  
(c) Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien? ..... ☐ ☐  
(d) Any litigation, arbitration, or mediation related to property or common area? ..... ☐ ☐  
(e) Any assessments associated with the property (excluding property taxes)? ..... ☐ ☐  
(f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee? ..... ☐ ☐

10. Any problems with water quality or water supply? ..... ☐ ☐

11. Any other conditions or aspects of the property which materially affect its value or use in an adverse manner? ..... ☐ ☐

12. Lead-Based Paint: Was the property constructed on or before 12/31/77? ..... ☐ ☐  
(If yes, additional Federal EPA notification and disclosure documents are required)

13. Water source: Municipal ☐ Community Well ☐ Domestic Well ☐ Other ☐  
If Community Well: State Engineer Well Permit # \_\_\_\_\_ Revocable ☐ Permanent ☐ Cancelled ☐  
Use of community and domestic wells may be subject to change. Contact the Nevada Division of Water Resources for more information regarding the future use of this well.

14. Conservation Easements such as the SNWA's Water Smart Landscape Program: Is the property a participant? ..... ☐ ☐

15. Solar panels: Are any installed on the property? ..... ☐ ☐

If yes, are the solar panels: Owned ☐ Leased ☐ or Financed ☐

16. Wastewater disposal: Municipal Sewer ☐ Septic System ☐ Other ☐

17. This property is subject to a Private Transfer Fee Obligation? ..... ☐ ☐

EXPLANATIONS: Any "Yes" must be fully explained on page 3 of this form.

\_\_\_\_\_  
Seller(s) Initials

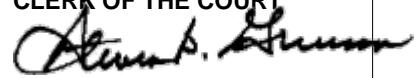
\_\_\_\_\_  
Buyer(s) Initials

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

*Buyer's Initials*

# **EXHIBIT 2**

# **EXHIBIT 2**



LIPSON NEILSON P.C.  
KALEB D. ANDERSON, ESQ.  
Nevada Bar No. 7582  
AMANDA A. EBERT, ESQ.  
Nevada Bar No. 12731  
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[aebert@lipsonneilson.com](mailto:aebert@lipsonneilson.com)  
*Attorneys for Peccole Ranch Community Association, and  
Nevada Association Services, Inc.*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

SATICOY BAY, LLC SERIES 9720  
HITCHING RAIL, a Nevada limited liability  
company,

Plaintiff,

v.

PECCOLE RANCH COMMUNITY  
ASSOCIATION; and NEVADA  
ASSOCIATION SERVICES, INC.,  
Defendants.

CASE NO.: A-19-791797-C

Department: 15

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that the Order Granting Peccole Ranch Community Association and Nevada Association Services' Motion to Dismiss or in the Alternatively for Summary Judgment was filed with the court this 19<sup>th</sup> day of March, 2020, a copy of which is attached.

DATED this 3<sup>rd</sup> day of June, 2020.

LIPSON NEILSON P.C.

By: /s/ Amanda A. Ebert

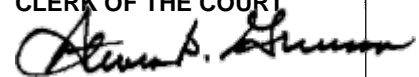
JOSEPH P. GARIN, ESQ. (NV Bar No. 6653)  
AMANDA A. EBERT, ESQ. (NV Bar No. 12731)  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500 - Telephone  
*Attorneys for Peccole Ranch Community Association,  
and Nevada Association Services, Inc.*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 3<sup>rd</sup> day of June, 2020, I electronically transmitted the foregoing **NOTICE OF ENTRY OF ORDER** to the Clerk's Office using the Odyssey eFileNV and Serve system for filing and transmittal to the following Odyssey eFileNV and Serve registrants:

Roger P. Croteau, Esq. ROGER P. CROTEAU & ASSOCIATES, LTD. 2810 W. Charleston Blvd. Ste.75 Las Vegas, NV 89148 <a href="mailto:croteaulaw@croteaulaw.com">croteaulaw@croteaulaw.com</a> <i>Attorney for Plaintiff</i>	
---	--

/s/ Sydney Ochoa  
Employee of LIPSON NEILSON P.C.



LIPSON NEILSON P.C.  
KALEB D. ANDERSON, ESQ.  
Nevada Bar No. 7582  
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[aebert@lipsonneilson.com](mailto:aebert@lipsonneilson.com)  
*Attorneys for Peccole Ranch Community Association, and  
Nevada Association Services, Inc.*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

SATICOY BAY, LLC SERIES 9720  
HITCHING RAIL, a Nevada limited liability  
company,

Plaintiff,

v.

PECCOLE RANCH COMMUNITY  
ASSOCIATION; and NEVADA  
ASSOCIATION SERVICES, INC.,  
Defendants.

CASE NO.: A-19-791797-C

Department: 15

**ORDER GRANTING PECCOLE  
RANCH COMMUNITY ASSOCIATION  
AND NEVADA ASSOCIATION  
SERVICES' MOTION TO DISMISS OR  
IN THE ALTERNATIVE FOR  
SUMMARY JUDGMENT**

This Court, having considered the pleadings on file together with the oral arguments of counsel, orders the Motion to Dismiss or in the Alternative for Summary Judgment Granted in part and Denied in part. During the hearing, the Court held the following:

(1) despite Plaintiff's arguments, it did appear that NRS 38.310 was implicated in the instant case;

(2) the instant case was hereby DISMISSED WITHOUT PREJUDICE, as the language contained in NRS 38.310 required mandatory, pre-litigation mediation through the Nevada Real Estate Division (NRED) in a civil action related to the



enforcement of CC&Rs;

(3) under NRS 38.310(1)(a) and NRS 38.310(2), mandatory dismissal was required, if parties failed to participate in pre-litigation NRED mediation;

(4) the instant case was not an action related to title of property; therefore, that exception under NRS 38.300(3), would not apply;

(5) the instant case was an action for money damages or equitable relief; therefore, there was no threat of irreparable harm, as the case did not deal with title to real property;

(6) under the McKnight case, the Supreme Court read NRS 38.310(a) fairly broadly;

(7) if the parties did not successfully resolve their claims through the NRED mediation process, the case could be filed again; and

(8) due to the Court's ruling, the Court did not get to any of the alternative arguments regarding substance or summary judgment.

DATE: March \_\_, 2020.

**ROGER P. CROTEAU & ASSOCIATES,  
LTD.**

*Refused*  
\_\_\_\_\_  
Roger P. Croteau, Esq.  
Nevada Bar No. 4958  
2810 W. Charleston Blvd. Ste.75  
Las Vegas, NV 89148  
*Attorney for Plaintiff*

DATE: March 13<sup>th</sup>, 2020.

**LIPSON NEILSON P.C.**

*[Signature]*  
\_\_\_\_\_  
LIPSON NEILSON P.C.  
KALEB D. ANDERSON, ESQ.  
Nevada Bar No. 7582  
AMANDA A. EBERT, ESQ.  
Nevada Bar No. 12731  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
*Attorneys for Peccole Ranch Community  
Association, and  
Nevada Association Services, Inc.*

Saticoy Bay, LLC Series 9720 Hitching Rail v.  
Peccole Ranch Community Association  
Case No. A-19-791797-C

THEREFORE, this Court ORDERS Motion GRANTED IN PART WITHOUT  
PREJUDICE and DENIED IN PART WITHOUT PREJUDICE.

Dated this 17<sup>th</sup> day of March, 2020.

  
DISTRICT COURT JUDGE 10

Respectfully Submitted by:

LIPSON NEILSON P.C.

By: 

Kaleb D. Anderson, Esq.  
Amanda A. Ebert, Esq.  
9900 Covington Cross Dr., Ste.120  
Las Vegas, Nevada 89144  
*Attorneys for Peccole Ranch Community Association,  
and Nevada Association Services, Inc.*