

IN THE SUPREME COURT OF NEVADA

SATICOY BAY, LLC SERIES 9720
HITCHING RAIL, A NEVADA
LIMITED LIABILITY COMPANY,

Appellant,

v.

PECCOLE RANCH COMMUNITY
ASSOCIATION; AND NEVADA
ASSOCIATION SERVICES, INC.,

Respondents.

Supreme Court Case No. 81446

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Elizabeth A. Brown
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JOINT APPENDIX VOLUME 1

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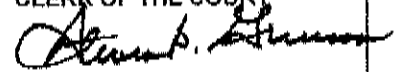
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CASE NO: A-19-791797-C
Department 15

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants

Case No.:
Dept. No.:

COMPLAINT

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

PARTIES AND JURISDICTION

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

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*").

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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

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

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

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

11 68. 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 69. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil
15 Procedure as further facts become known.

16 SECOND CAUSE OF ACTION

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

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

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

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

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

26 74. Thereafter, Lender, by and through Miles Bauer attempted to pay the Super-Priority Lien
27 Amount to HOA or HOA Trustee by the Attempted Payment.
28

75. Upon information and belief, HOA Trustee, acting on behalf of HOA, rejected the Attempted Payment.

76. HOA and HOA Trustee's rejection of the Attempted Payment and subsequent failure and refusal to inform the bidders and potential bidders at the HOA Foreclosure Sale served to breach their duty of good faith, fair dealings and candor pursuant to NRS 116, et seq. to Plaintiff.

77. HOA and the HOA Trustee owed a duty of good faith, fair dealings, and candor to Plaintiff.

78. By virtue of its actions and inactions, HOA and HOA Trustee were substantially benefitted economically to the detriment of the Plaintiff.

79. 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.

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

THIRD CAUSE OF ACTION

(Conspiracy)

81. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 80 as if set forth fully herein.

82. HOA and HOA Trustee knew or should have known of BANA's Attempted Payment of the Super-Priority Lien Amount.

83. Upon information and belief, acting together, Defendants reached an implicit or express agreement amongst themselves whereby they agreed to withhold the information concerning the Attempted Payment of the Super-Priority Lien Amount from bidders and potential bidders at the HOA Foreclosure Sale.

84. Defendants knew or should have known that their actions and omissions would economically harm the successful bidder and purchaser of the Property and benefit HOA and HOA Trustee. To further their conspiracy, upon information and belief, Defendants

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

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

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

8 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

- 26 (a) Common Interest Community Declaration and Bylaws
available?
27 (b) Any periodic or recurring association fees?
(c) Any unpaid assessments, fines or liens, and any warnings or
28 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 I.

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 Decd 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;

1 4. For pre-judgment and post-judgment interest at the statutory rate of interest; and

2 5. For such other and further relief that the Court deems just and proper.

3 DATED this 18th day of March, 2019.

4 ROGER P. CROTEAU & ASSOCIATES, LTD.

5 /s/ Roger P. Croteau

6 ROGER P. CROTEAU, ESQ.

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8 2810 W. Charleston, Ste. 75

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10 (702) 254-7775

11 *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 N/A (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"/>
Bathtub(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

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

Seller(s) Initials

Buyer(s) Initials

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?		<input type="checkbox"/>	<input type="checkbox"/>	
(b) Any structural defect?		<input type="checkbox"/>	<input type="checkbox"/>	
(c) Any construction, modification, alterations, or repairs made without required state, city or county building permits?		<input type="checkbox"/>	<input type="checkbox"/>	
(d) Whether the property is or has been the subject of a claim governed by NRS 40.600 to 40.695 (construction defect claims)?		<input type="checkbox"/>	<input type="checkbox"/>	
(If seller answers yes, FURTHER DISCLOSURE IS REQUIRED)				
2. Land / Foundation:				
(a) Any of the improvements being located on unstable or expansive soil?		<input type="checkbox"/>	<input type="checkbox"/>	
(b) Any foundation sliding, settling, movement, upheaval, or earth stability problems that have occurred on the property?		<input type="checkbox"/>	<input type="checkbox"/>	
(c) Any drainage, flooding, water seepage, or high water table?		<input type="checkbox"/>	<input type="checkbox"/>	
(d) The property being located in a designated flood plain?		<input type="checkbox"/>	<input type="checkbox"/>	
(e) Whether the property is located next to or near any known future development?		<input type="checkbox"/>	<input type="checkbox"/>	
(f) Any encroachments, easements, zoning violations or nonconforming uses?		<input type="checkbox"/>	<input type="checkbox"/>	
(g) Is the property adjacent to "open range" land?		<input type="checkbox"/>	<input type="checkbox"/>	
(If seller answers yes, FURTHER DISCLOSURE IS REQUIRED under NRS 113.065)				
3. Roof: Any problems with the roof?		<input type="checkbox"/>	<input type="checkbox"/>	
4. Pools/spa: Any problems with structure, wall, liner, or equipment?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Infestation: Any history of infestation (termites, carpenter ants, etc.)?		<input type="checkbox"/>	<input type="checkbox"/>	
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?		<input type="checkbox"/>	<input type="checkbox"/>	
(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?		<input type="checkbox"/>	<input type="checkbox"/>	
7. Fungi / Mold: Any previous or current fungus or mold?		<input type="checkbox"/>	<input type="checkbox"/>	
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?		<input type="checkbox"/>	<input type="checkbox"/>	
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?		<input type="checkbox"/>	<input type="checkbox"/>	
(a) Common Interest Community Declaration and Bylaws available?		<input type="checkbox"/>	<input type="checkbox"/>	
(b) Any periodic or recurring association fees?		<input type="checkbox"/>	<input type="checkbox"/>	
(c) Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien?		<input type="checkbox"/>	<input type="checkbox"/>	
(d) Any litigation, arbitration, or mediation related to property or common area?		<input type="checkbox"/>	<input type="checkbox"/>	
(e) Any assessments associated with the property (excluding property taxes)?		<input type="checkbox"/>	<input type="checkbox"/>	
(f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee?		<input type="checkbox"/>	<input type="checkbox"/>	
10. Any problems with water quality or water supply?		<input type="checkbox"/>	<input type="checkbox"/>	
11. Any other conditions or aspects of the property which materially affect its value or use in an adverse manner?		<input type="checkbox"/>	<input type="checkbox"/>	
12. Lead-Based Paint: Was the property constructed on or before 12/31/77?		<input type="checkbox"/>	<input type="checkbox"/>	
(If yes, additional federal EPA notification and disclosure documents are required)				
13. Water source: Municipal <input type="checkbox"/> Community Well <input type="checkbox"/> Domestic Well <input type="checkbox"/> Other <input type="checkbox"/>				
If Community Well: State Engineer Well Permit # _____ Revocable <input type="checkbox"/> Permanent <input type="checkbox"/> Canceled <input type="checkbox"/>				
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?		<input type="checkbox"/>	<input type="checkbox"/>	
15. Solar panels: Are any installed on the property?		<input type="checkbox"/>	<input type="checkbox"/>	
If yes, are the solar panels: Owned <input type="checkbox"/> Leased <input type="checkbox"/> or Financed <input type="checkbox"/>				
16. Wastewater disposal: Municipal Sewer <input type="checkbox"/> Septic System <input type="checkbox"/> Other <input type="checkbox"/>				
17. This property is subject to a Private Transfer Fee Obligation?		<input type="checkbox"/>	<input type="checkbox"/>	

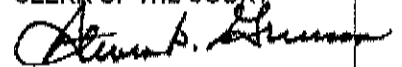
EXPLANATIONS: Any "Yes" must be fully explained on page 3 of this form.

Seller's Initials

Buyer's Initials

[illegible]

Buyer(s) initials



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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

DEFENDANTS' MOTION TO DISMISS
OR IN THE ALTERNATIVE FOR
SUMMARY JUDGMENT

(HEARING REQUESTED)

MOTION TO DISMISS OR FOR SUMMARY JUDGMENT

Defendants Peccole Ranch Community Association, ("HOA"), and Nevada Association Services, ("NAS") submit this Motion To Dismiss or for Summary Judgment against Saticoy Bay, LLC Series 9720 Hitching Rail ("Plaintiff" or "Purchaser").

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\\

1 This Motion is made and based upon the attached memorandum of points and
2 authorities, the pleadings on file, the exhibits attached hereto, and any argument the
3 Court may consider.

4 DATED this 26th day of June, 2019.

5 LIPSON NEILSON P.C.

6 By: /s/ Peter E. Dunkley

7 KALEB D. ANDERSON, ESQ.

8 Nevada Bar No. 7582

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case is about applying NRS 116 to an HOA's nonjudicial foreclosure sale. The underlying facts are undisputed. The Court need only apply the law to the undisputed facts of this case and may either dismiss the complaint, or grant summary judgment in favor of the HOA.

A foreclosure purchaser's expectation at a nonjudicial foreclosure sale does not change the application or operation of NRS 116. The only deed permitted by a nonjudicial foreclosure sale pursuant to NRS 116 is a deed "without warranty." That has been the case since Nevada enacted NRS 116 in 1991.

The Plaintiff is ignoring the nonwarranty status of the foreclosure deed, and has decided to sue the PRCA and NAS under a variety of specious theories, demanding a cornucopia of damages, costs, and attorney's fees. However, the nonwarranty status of the deed is expressly stated in NRS 116, and is fully disclosed in the recorded notice of sale, and is clearly identified in the Foreclosure Deed itself. And because a nonwarranty deed is just that, nonwarranty, each of the claims either fails to state a claim for which relief can be granted, or fails as a matter of law.

Equity follows the law, so law and equity require the Plaintiff to honor the operation of NRS 116. Additionally, the Plaintiff has already litigated the any foreclosure issues in this case, in a prior federal court, Case No. 2:16-cv-660. In the prior federal case, the federal court, citing the Nevada Supreme Court, ultimately ruled that a bank's "tender" of the superpriority amount of the HOA's lien protects the bank's deed of trust from extinguishment at the nonjudicial foreclosure sale. See Federal Court Order, p.5:6-11, a copy of which is attached as Exhibit A-1. There are no new facts that would change the outcome. The factual universe of this case is complete. Accordingly, the Court may dismiss the complaint, with prejudice, or alternatively, enter summary judgment in favor of the PRCA and NAS, that the nonjudicial foreclosure sale complied with NRS 116.

1 **II. UNDISPUTED FACTS AND BACKGROUND¹.**

2 **A. THE HOA, THE PROPERTY, AND THE LOAN**

3 1. The Peccole Ranch Community Association, recorded its CC&Rs on
4 August 27, 1990 as Instrument No. 1990082700000428. See Deed of Trust, at Exhibit
5 A, Legal Description, p. 9 of 13. A true copy of the Deed of Trust and Rider is attached
6 hereto as **Exhibit A**.

7 2. The CC&Rs provide that the HOA may levy assessments and may
8 foreclose such a lien. See CC&Rs, § 7.1 at p. 52, attached as **Exhibit B**, (permitting
9 foreclosure of lien).

10 3. In 1991, Nevada adopted the Uniform Common Interest Owner Act ("NRS
11 116")²

12 4. CC&Rs which were recorded prior to the enactment of NRS 116 are
13 superseded by NRS 116, and are deemed to comply with NRS 116. (NRS 116.1206(1).)

14 5. NRS 116 provides that HOA's may impose assessments. (NRS
15 116.3115.)

16 6. NRS 116 provides that HOA's may have a lien against units for
17 assessments. (NRS 116.3116.)

18 7. NRS 116 provides that HOA liens are perfected upon the recording of the
19 HOA's CC&Rs. (NRS 116.3116(5).)

20 8. NRS 116.1104 provides that NRS 116 "may not be varied by agreement,
21 waived, or evaded."

22 \ \ \

23
24 ¹ This Court may take judicial notice of publically recorded documents and information which "can be
25 accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed.
26 R. Evid. 201(b)(2); See also, *Eagle SPE NV 1, Inc. v. S. Highlands Dev. Corp.*, No. 2:12-CV-00550-MMD,
27 2014 WL 3845420 (D. Nev. Aug. 5, 2014) (taking judicial notice of facts under Fed. R. Evid. 201, and
facts on posted on government website (citing *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99
(9th Cir.2010)). See also, NRS 47.130, judicial notice of facts which are: "Capable of accurate and ready
determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is
not subject to reasonable dispute."

28 ² References to NRS 116 in this motion are to the 2012 version of NRS 116.

1 9. NRS 116 provides that if the Property is foreclosed under NRS 116, the
2 "purchaser, or his or her successor or assign [receives] a *deed without warranty...*"
3 (NRS 116.31166, (emphasis added).)

4 10. NRS 116 provides that the nonjudicial foreclosure sale "vests in the
5 purchaser the title of the unit's owner *without equity or right of redemption.*" (NRS
6 116.31166(3) (emphasis added).

7 11. On April 25, 2003, more than a decade after Nevada enacted NRS 116,
8 and more than a decade after the HOA perfected its assessment lien, non-party Edna
9 Scott ("Former Owner") executed a Deed of Trust which encumbered real property
10 located at 9720 Hitching Rail Drive, Las Vegas, NV, (APN 163-06-110-095), (the
11 "Property"). The Deed of Trust was recorded. (Compl. ¶¶ 12,13.)

12 12. The Property is within the HOA and is subject to the CC&Rs and the
13 Borrower was obligated to pay assessments. (See Compl.¶¶ 8, 9.)

14 **B. THE FORMER OWNER'S BREACH OF THE DEED OF TRUST**

15 13. At first the Former Owner paid the HOA assessments pursuant to the
16 CC&Rs and as required by the Deed of Trust. But eventually, the Former Owner failed
17 to pay assessments which resulted in a Notice of Delinquent Assessment being
18 recorded in October 3, 2011. (Compl. ¶¶ 15, 16.) The Notice of Delinquent Assessment
19 Lien stated the lien amount. (*Id.*)

20 14. The Former Owner failed to pay assessments and a Notice of Default and
21 Election to Sell was recorded on December 29, 2011. (Compl. ¶ 17.) The Notice of
22 Default stated the amount of the HOA's lien. (*Id.*)

23 15. The Lender received the Notice of Default which indicated the Borrower's
24 delinquency amount was \$2,660.78; in response to the Notice of Default, the Lender
25 sent two letters to NAS acknowledging that the Lender had received actual notice of the
26 HOA's nonjudicial foreclosure notice and the HOA's superpriority lien. The second
27 letter from the Lender included a check. (See Exhibit A-1, Federal Court Order 2:14-
28 20.)

1 16. The check amount was \$585.00, which is \$2,075.78 less than the amount
2 indicated on the Notice of Default. The second letter states that the settlement offer is
3 "non-negotiable" and conditioned upon the HOA warranting that the Lender's
4 "obligations toward the HOA" are "paid in full." (See Federal Court Order p. 2:14-20.)³

5 17. The check was not accepted.

6 18. The Borrower failed to pay assessments and the Notice of Sale was
7 recorded on January 23, 2014 (Compl. ¶ 23). The Notice of Sale stated the lien
8 amount. (*Id.*) The Notice of Sale also included a warning and instructions for the
9 Borrower to take action to avoid the loss of the Property, and included the telephone
10 number of the foreclosing agent, and the Ombudsman's Office, in **BOLD** and **ALL**
11 **CAPS**. (See Notice of Sale, a copy of which is attached hereto as **Exhibit C**.)

12 19. The Notice of Sale also stated: "The sale will be made *without covenant*
13 *or warranty*, expressed or implied regarding, but not limited to, title or possession, or
14 encumbrances, or obligations to satisfy any secured or unsecured liens." (See Notice of
15 Sale (emphasis added).)

16 20. Despite having actual notice of the nonjudicial foreclosure and despite the
17 undisputed content of the notices, each of which clearly indicating the lien amount, the
18 Lender declined to exercise its contractual right (but not obligation) to: (1) foreclose
19 under the Deed of Trust, or (2) pay "any lien" on behalf of its Borrower.

20 21. The Former Owner failed to pay assessments and the HOA's lien was
21 nonjudicially foreclosed upon and sold at a public auction on February 14, 2014 (Compl.
22 ¶ 28). The Foreclosure Deed was recorded on February 18, 2014. (*Id.*) A copy of the
23 Foreclosure Deed is attached hereto as **Exhibit D**.

24 22. At the publicly noticed and publicly conducted foreclosure sale, the
25 Plaintiff acquired record title to the Property. (See Foreclosure Deed.)

26 \ \ \

27 _____
28 ³ There is no "obligation" for the Lender to pay assessments. A lender may elect to pay on behalf of the
borrower, but the Lender does not have to.

23. The Foreclosure Deed states that the HOA grants and conveys "but without warranty expressed or implied" the Property to the Plaintiff. (See Foreclosure Deed, emphasis added.)

24. The Foreclosure Deed contains recitals regarding compliance with the necessary requirements set forth in the Nevada Revised Statutes, the CC&Rs. (See Foreclosure Deed.)

25. The federal court case was filed by the bank on March 25, 2016. (A copy of the federal court's docket summary is attached as **Exhibit E.**)

26. Plaintiff answered the federal complaint on April 19, 2016. (*Id.*)

27. The federal court case was completed when the federal court ruled that the bank's preforeclosure payment attempt protected the Deed of Trust from extinguishment by the nonjudicial foreclosure sale. (See Exhibit A-1 Federal Court's Order.)

28. The federal court case did not find any, (and the Plaintiff in this case did not allege any) defects in the nonjudicial foreclosure sale, or any failures by the HOA's or NAS to comply with the nonjudicial foreclosure sections of NRS 116.

29. On March 26, 2019, the Plaintiff filed the complaint in this case, which is more than five years after the February 14, 2014 nonjudicial foreclosure sale, and more than three years after the bank filed the federal complaint.

III. LEGAL STANDARDS

The Nevada Rules of Civil Procedure: "shall be construed and administered to secure the just, speedy, and inexpensive determination of every action." NRCP 1. This Court may also consider federal courts' interpretations of the corresponding federal rules. *Moseley v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark*, 124 Nev. 654, 663, 188 P.3d 1136, 1142 (2008), because the "Nevada Rules of Civil Procedure are based in large part upon their federal counterparts." *Executive Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002).

\\

1 **A. NOTICE PLEADING**

2 Nevada is a "notice pleading" jurisdiction which requires a "short and plain
3 statement of the claim" NRCP 8(a). However, "[a] complaint must set forth sufficient
4 facts to establish all necessary elements of a claim for relief. . . ." *Hay v. Hay*, 100 Nev.
5 196, 198, 678 P.2d 672, 674 (1984). Under the equivalent federal rules, the complaint
6 must provide "more than mere labels and conclusions, and a formulaic recitation of the
7 elements of a cause of action will not do." *See generally, Bell Atl. Corp. v. Twombly*,
8 550 U.S. 544, 570, 127 S.Ct. 1955, 1959, 167 L.Ed. 2d 929 (2007). (*construing Fed. R.*
9 *Civ. P. 8*, "Factual allegations must be enough to raise a right to relief above the
10 speculative level [;]"). Instead, a plaintiff must allege "enough facts to state a claim for
11 relief that is plausible" - not merely "conceivable" - on its face. *Id.* at 1974.

12 **B. MOTION TO DISMISS**

13 Nevada Rule of Civil Procedure 12(b)(5) provides that a party may move to
14 dismiss a complaint where the complaint fails to state a claim upon which relief can be
15 granted. NRCP 12(b)(5). Under Rule 8(a), a properly pled complaint must provide "s
16 short and plain statement of the claim showing that the pleader is entitled to relief."
17 NRCP 8(a). While Rule 8 does not require detailed factual allegations, it demands more
18 than "labels and conclusions" or a "formulaic recitation of the elements of a cause of
19 action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted).

20 "Dismissal is proper where the allegations are insufficient to establish the
21 elements of a claim for relief." *Stockmeier v. Nev. Dep't of Corr. Psychological Review*
22 *Panel*, 124 Nev. 313, 316, 183 P.3d 133, 135 (2009) (citation omitted). Thus, to survive
23 a motion to dismiss, a complaint must contain sufficient factual matter "to state a claim
24 to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (citation omitted). If,
25 however, matters are outside the pleadings are presented to the Court, the Rule
26 12(b)(5) motion to dismiss must be treated as a motion for summary judgment under
27 NRCP 56(b). NRCP 12(b)(5).

28 \\

1 **C. SUMMARY JUDGMENT**

2 "Summary judgment is appropriate under NRCP 56 when the pleadings,
3 depositions, answers to interrogatories, admissions, and affidavits, if any, that are
4 properly before the court demonstrate that no genuine issue of material fact exists, and
5 the moving party is entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*, 121
6 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

7 To survive a motion for summary judgment, the nonmoving party "may not rest
8 upon the mere allegations or denials of [its] pleadings," *Anderson v. Liberty Lobby, Inc.*,
9 477 U.S. 242, 248 (1986), nor may it "simply show there is some metaphysical doubt as
10 to the material facts." *Matsushita Elec. Indus. Co.*, 475 U.S. at 586. It is the nonmoving
11 party's burden to "come forward with specific facts showing that there is a genuine issue
12 for trial." *Id.* at 587; see also *Wood v. Safeway, Inc.*, 121 Nev. 724 (2005), citing
13 *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82 (2002).

14 An issue is only genuine if there is a sufficient evidentiary basis for a reasonable
15 jury to return a verdict for the nonmoving party. See *Anderson*, 477 U.S. at 248 (1986).
16 Further, a dispute will only preclude the entry of summary judgment if it could affect the
17 outcome of the suit under governing law. *Id.* "The amount of evidence necessary to
18 raise a genuine issue of material fact is enough to require a judge or jury to resolve the
19 parties' differing versions of the truth at trial." *Id.* at 249. In evaluating a summary
20 judgment, a court views all facts and draws all inferences in a light most favorable to the
21 nonmoving party. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729 (2005).

22 **IV. DISCUSSION**

23 **A. THE COMPLAINT SHOULD BE DISMISSED BECAUSE THE**
24 **PLAINTIFF SHOULD MEDIATE WITH DEFENDANTS AS REQUIRED**
25 **BY NRS 38.310**

26 The Plaintiff is the record owner of the Property which is located in the HOA.
27 Thus, the Plaintiff should be required to mediate its claims against the HOA. Nevada
28 Revised Statutes, Section 38.310(1)(a) states as follows:

1 No civil action based upon a claim relating to the interpretation, application
2 or enforcement of any covenants, conditions or restrictions, including any
3 late charges, interest and costs of collecting the charges ... may be
submitted to mediation ...

4 NRS 38.310(1)(a).

5 If an action is commenced in violation of this section, it must be dismissed. NRS
6 38.310(2). The question before this Court is whether Saticoy Bay's failure to comply
7 with the mediation requirements of section 38.310(1)(a) deprives the Court of subject
8 matter jurisdiction over its claims.

9 "[A] statutory condition that requires a party to take some action before filing a
10 lawsuit is not automatically a jurisdictional bar to suit." *Maronyan v. Toyota Motor*
11 *Sales, U.S.A., Inc.*, 658 F.3d 1038, 1043 (9th Cir. 2011) (internal citations omitted). If,
12 however, "the legislature clearly states that a threshold limitation on a statute's scope
13 shall count as jurisdictional," then failure to comply with the statute operates as a
14 "jurisdictional bar" to litigation. *Maronyan*, 658 F.3d at 1040-41, citing *Weinberger v.*
15 *Saffi*, 422 U.S. 749, 757, 95 S.Ct. 2457, 45 L. Ed.2d. 522 (1975) (distinguishing
16 prudential exhaustion from jurisdictional exhaustion).

17 Here, the Nevada legislature used "sweeping and direct language [to
18 demonstrate] clear intent to mandate loss of subject matter jurisdiction" for failure to
19 comply with section 38.310(1)(a). See *Maronyan*, 658 U.S. at 1043. In fact, if a party
20 violates this section by initiating formal litigation before attending mediation, courts are
21 required to dismiss the action. NRS 38.310 (2) ("a court shall dismiss any civil action
22 which is commenced [without first submitting to NRED].").

23 The Supreme Court of Nevada has already determined that NRS 38.310 applies
24 to any claim that requires the district court "to interpret regulations and statutes that
25 contained conditions and restrictions applicable to residential property." *McKnight*
26 *Family, L.L.P. v. Adept Mgmt.*, 310 P.3d 555, 558-59, 129 Nev. 610, 615 (Nev. 2013).
27 This includes cause of action for negligence that raise concerns regarding various
28

1 activities governed by the NRS 116.1113. *Id.* (district court properly dismissed
2 negligence claim because it concerned payments made to the HOA).

3 All of the allegations and claims raised by Plaintiff in this matter are civil actions
4 as defined by NRS 38.300(3) and require the Court to analyze and interpret rights and
5 obligations arising under the CC&Rs. Specifically, Plaintiff asserts that the HOA and its
6 agents failed to provide notice that the bank had sent the preforeclosure payment
7 attempt. (Compl. ¶ 29). And that Plaintiff would not have purchased the Property if it
8 was aware the preforeclosure payment attempt. (Compl. ¶ 55.)

9 However, NRS 116 does not impose any extra-statutory obligation on the HOA to
10 provide additional foreclosure notices to parties, in addition to the notices already
11 required by NRS 116. The Plaintiff's failure to comply with NRS 38.310 thus permits the
12 Court to dismiss the complaint and send it to mediation.

13 **B. THE COMPLAINT SHOULD BE DISMISSED WITH PREJUDICE**
14 **BECAUSE A NONWARRANTY DEED DOES NOT CREATE ANY**
15 **LIABILITY ON THE HOA OR NAS**

16 In the event the Court determines that the complaint should not be dismissed
17 under NRS 38.310, the complaint may still be dismissed for failure to state a claim.
18 Neither the HOA nor NAS can be liable for the character of title to the Property because
19 the only deed which can result from an NRS 116 nonjudicial foreclosure sale is a deed
20 ***without warranty***.

21 NRS 116.31164(3) states: "After the sale, the person conducting the sale shall:
22 (a) Make, execute and, after payment is made, deliver to the purchaser, or his or her
23 successor or assign, ***a deed without warranty*** which conveys to the grantee all title of
24 the unit's owner to the unit" (emphasis added). The nonwarranty deed vests title
25 "without equity or right of redemption." NRS 116.31166(3).

26 A nonwarranty deed is the same as a quitclaim deed, which: "is sufficient to
27 convey whatever interest the grantor had in the property at the time the conveyance
28 was made," *Brophy Min. Co. v. Brophy & Dale Gold & Silver Min. Co.*, 15 Nev. 101, 107

(1880). For more than 100 years, a nonwarranty deed protects a grantor from liability from deed warranties because the deed conveys only that which the grantor holds and promises nothing more. See *Oliver v. Piatt*, 44 U.S. 333, 11 L. Ed. 622 (1845) ("A purchaser by a deed of quit claim without any covenant of warranty, is not entitled to protection in a court of equity as a purchaser for a valuable consideration, without notice; and he takes only what the vendor could lawfully convey.") See also, e.g., *Platner v. Vincent*, 194 Cal. 436, 444, 229 P. 24, 27 (1924) ('Appellant [w]ould have [been] protected [] from liability as a cograntor by executing a quitclaim deed [because s]uch deeds do not carry covenants of warranty.") See also, *Greek Catholic Congregation of Borough of Olyphant v. Plummer*, 347 Pa. 351, 353–54, 32 A.2d 299, 300 (1943) ("One quit-claiming his interest in a property is creating no liability against himself and the real owner of that property: See *Power v. Foley*, *Newfoundland Reports*, 1897-1903, p. 540; *England v. Cowley*, L. R. 8 Ex. 126; and *Owen v. Legh*, 3 B. & Ald. 470."). See also, *Lowe v. Ragland*, 156 Tex. 504, 516, 297 S.W.2d 668, 675–76 (1957) ("All of the title which the grantor owned or had the power to convey passes under the conveyance, but there is no liability on the warranty for any impairment of title resulting from the prior conveyance.")

In Nevada, under NRS 116, the HOA cannot provide a nonjudicial foreclosure deed with any deed warranties because NRS 116 expressly specifies the type of deed conferred, which is a "deed without warranty." The HOA has "little autonomy in taking extra-statutory efforts" under the "elaborate" requirements of NRS 116. *Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641, 645 (Nev. 2017), reh'g denied (Dec. 13, 2017), reconsideration *en banc* denied (Feb. 23, 2018).

In addition, the language of the deed itself confirms the deed is: "without warranty expressed or implied." See Exhibit D. The Deed also references the Notice of Sale, and that the property was sold "at the time and place indicated on the Notice of Trustee's Sale." It is undisputed that the recorded Notice of Sale on which the Purchaser relied also expressly states that the sale "will be made, without covenant or

warranty, express or implied....” (See Notice of Sale, Exhibit C.) As the Nevada Supreme Court has said:

The language in the Notice of Sale clearly and accurately explained that the winning bidder would receive a deed without warranty, see NRS 116.31164(3)(a) (2005) (requiring the person conducting the foreclosure sale to deliver to the purchaser a deed without warranty), and *it cannot reasonably be construed as suggesting that a first deed of trust would survive the foreclosure sale.*

First Mortg. Corp. v. Saticoy Bay LLC Series 1828 La Calera, 432 P.3d 189 (Nev. 2018) (table) (emphasis added). In other words, the HOA grants without warranty, what ever interest it holds, nothing more and nothing less. The deed does not include a promise to defend the grantee's (Purchaser's) title and does not include a right to sue the grantor (or NAS) under a theory that the deed included warranties which cannot exist as a matter of law.

Additionally, it cannot reasonably be disputed that the HOA's nonjudicial foreclosure complied with NRS 116 because the federal court has already ruled the Deed of Trust "survived the HOA Sale and continues to encumber the Property." (See Federal Court Order, (also dismissing remaining claims as moot).) In other words, the nonjudicial foreclosure sale was valid, but the Deed of Trust survived because of the "tender." The federal court did not rule that the Deed of Trust survived because of a defective nonjudicial foreclosure (*see generally, id.*).

Thus, between the nonwarranty deed created as required by NRS 116, and the federal court's order finding no substantive or procedural defect in the sale, and the undisputed nature of the facts of this case, the HOA and NAS are not liable to the Plaintiff for the quality of title to the Property which Plaintiff obtained through the nonwarranty foreclosure deed. The Complaint may be dismissed.

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1 C. THE FEDERAL COURT ORDER PRECLUDES THE PLAINTIFF'S
2 CLAIM AGAINST THE HOA AND NAS

3 The Federal Court Order has already determined that the nonjudicial foreclosure
4 sale was not defective so the Plaintiff's claim should be precluded.

5 [The] three-part test for determining whether claim preclusion should
6 apply: (1) the parties or their privies are the same, (2) the final judgment is
7 valid, and (3) the subsequent action is based on the same claims or any
8 part of them that were or could have been brought in the first case. These
9 three factors, in varying language, are used by the majority of state and
federal courts. This test maintains the well-established principle that claim
preclusion applies to ***all grounds of recovery that were or could have
been brought in the first case.***

10 *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054--55, 194 P.3d 709, 713 (2008)
11 (emphasis added). In 2015 the Nevada Supreme Court modified the *Five Star* holding in
12 the case, *Weddell v. Sharp*, 131 Nev. Adv. Op. 28, 350 P.3d 80 (2015). In the *Weddell*
13 case, the Nevada Supreme Court logically adopted the doctrine of nonmutual claim
14 preclusion, which added a factor that the plaintiff in the second case must have "a good
15 reason" for not bring the claims in the first case. *Weddell v. Sharp*, 131 Nev. Adv. Op.
16 28, 350 P.3d 80, 85 (2015).

17 In this case, each of the factors is present here, where Plaintiff, the HOA, and
18 NAS were parties to the federal case and the federal case resulted in a final judgment,
19 based on the identical facts. The claims were not brought in the first case, and
20 therefore, should not be brought in the second case.

21 Because the federal case did not rule that the Deed of Trust survived because of
22 a defect in the underlying foreclosure, the Plaintiff cannot create an entirely separate
23 case based on the same facts, between the same parties, upon which the federal court
24 has already ruled. The complaint may be dismissed.

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1 D. FRAUD FAILS AS A MATTER OF LAW BECAUSE NRS 116 DID NOT
2 REQUIRE NAS TO RESPOND TO, OR TO DISCLOSE, THE REJECTED
3 PREFORECLOSURE PAYMENT ATTEMPT

4 The Plaintiff's misrepresentation claims are based on an alleged failure to
5 disclose the bank's preforeclosure payment attempt. (See Compl. ¶¶ 41-67.) The
6 Plaintiff alleges both intentional and negligent misrepresentation. Both claims fail and
7 should be dismissed.

8 Intentional misrepresentation requires: (1) a false representation (2) made with
9 either knowledge or belief that it is false (3) intended to induce reliance, (4) reliance is
10 reasonable, and (5) damages caused by the reliance. *Foster v. Dingwall*, 126 Nev. 56,
11 70-71, 227 P.3d 1042, 1052 (2010).

12 Here, the alleged misrepresentation is the nondisclosure of the bank's tender.
13 However, at the time of the bank's tender, there was no requirement in NRS 116 which
14 required that the HOA or NAS provide notice of preforeclosure payment attempts. See
15 *generally*, NRS 116. Even as recently as April of 2019, the Nevada Supreme Court has
16 ruled that there is no misrepresentation by a collection company for not disclosing a
17 tender attempt. See *Noonan v. Bayview Loan Servicing, LLC*, 438 P.3d 335 (Nev.
18 2019) (unpublished) (affirming summary judgment of misrepresentation claim, in favor
19 of HOA collection company, where NRS 116 did not require disclosure of tender).

20 The *Noonan* ruling from the Nevada Supreme Court is consistent with prior
21 rulings that HOAs must comply with NRS 116 and that they have little leeway from the
22 procedure set forth by NRS 116. See *Nationstar Mortg., LLC v. Saticoy Bay LLC Series*
23 *2227 Shadow Canyon*, 405 P.3d 641, 645 (Nev. 2017), reh'g denied (Dec. 13, 2017),
24 reconsideration *en banc* denied (Feb. 23, 2018) ("an HOA has little autonomy in taking
25 extra-statutory efforts to increase the winning bid at the sale.")

26 In other words, the HOA and NAS are required to comply with the notice
27 requirements of NRS 116. Compliance means you are not required to add to the
28 requirements already stated in NRS 116. The complaint does not identify any authority

1 in NRS 116 which would indicate a defect in the compliance by NAS or the HOA.

2 Additionally, because: (1) NRS 116 (enacted in 1991), (2) the Notice of Sale
3 (recorded in Clark County and relied upon by all who would gaze upon it), and (3) the
4 Foreclosure Deed, all collectively disclaim deed warranties and covenants. Thus, any
5 purported reliance by the Plaintiff on the resulting Foreclosure Deed is unjustified and
6 cannot act as a basis for a misrepresentation claim, which requires justified reliance.
7 Essentially, "without warranty" means "*without* making any promises." If you purchase
8 the Property at this nonjudicial foreclosure sale pursuant to NRS 116, you will not
9 receive any deed warranties and you cannot reasonably rely on the Notice of Sale to
10 mean that you will receive title free and clear of any encumbrances. As noted above:

11 [T]he Notice of Sale clearly and accurately explained that the winning
12 bidder would receive a deed without warranty [so the notice] *cannot*
13 *reasonably be construed as suggesting that a first deed of trust would*
survive the foreclosure sale.

14 *First Mortg. Corp. v. Saticoy Bay LLC Series 1828 La Calera*, 432 P.3d 189 (Nev. 2018)
15 (table) (emphasis added). Intentional misrepresentation fails.

16 Negligent misrepresentation also fails, and requires:

- 17 [1] One who, in the course of his business, profession or employment, or
18 in any other [trans] action in which he has a pecuniary interest,
19 [2] supplies false information
20 [3] for the guidance of others in their business transactions,
21 [4] is subject to liability for pecuniary loss caused to them
[5] justifiable reliance upon the information, if
[6] he fails to exercise reasonable care or competence in obtaining or
communicating the information.

22 *Halcrow, Inc. v. Eighth Jud. Dist. Ct.*, 129 Nev. 394, 400, 302 P.3d 1148, 1153 (2013),
23 as corrected (Aug. 14, 2013) (enumeration formatting added).

24 However, as discussed above, NRS 116 did not require disclosure of a tender
25 and cannot be a basis for a misrepresentation claim. *Noonan v. Bayview Loan*
26 *Servicing, LLC*, 438 P.3d 335 (Nev. 2019) (unpublished). Additionally, there is no
27 requirement for a tender to be recorded. See *Bank of Am., N.A. v. SFR Investments*
28 *Pool 1, LLC*, 134 Nev. Adv. Op. 72, 427 P.3d 113, 119 (2018), as amended on denial of

reh'g (Nov. 13, 2018) (no requirement to record tender).

Here, there is no allegation that the HOA's or NAS's nonjudicial foreclosure notices did not comply with the requirements of NRS 116. There is no allegation that NRS 116 required NAS or the HOA to disclose the bank's letters. There was no negligent misrepresentation because the foreclosure notices complied with NRS 116, which indicate clearly that the foreclosure deed is without warranty. In other words, the only way the HOA or NAS could be liable for any misrepresentation based on an NRS 116 foreclosure, is if they promised to and attempted to convey the Property through a grant deed, or promised to include other deed warranties or covenants which are not permitted by NRS 116. The HOA made no such promises and could not as a matter of law because the HOA's rights under NRS 116 cannot be varied or waived. See *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. 742, 757, 334 P.3d 408, 419 (2014) ("NRS 116.1104 [] states that Chapter 116's "provisions may not be varied by agreement, and rights conferred by it may not be waived..."). Accordingly, the **deed without warranty** requirement in NRS 116 cannot be varied or waived, the HOA and NAS made no representations other than those required by NRS 116.

Therefore, the claims for both intentional and negligent misrepresentation fail and should be dismissed, or alternatively, in the absence of a genuine factual issue, summary judgment granted in favor of the HOA and NAS.

**E. COMPLIANCE WITH NRS 116 DOES NOT BREACH ANY DUTIES
REQUIRED BY NRS 116.1113**

The Plaintiff's claim for breach of the duty of good faith should be dismissed. The claim is based on NRS 116.1113 which the Plaintiff incorrectly argues must include a "duty of candor." (Compl. ¶72.) However, as discussed above, there was no requirement in NRS 116 to disclose a tender.

The complaint does not sufficiently state a claim based on NRS 116.1113, which states: "Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement." First, it cannot reasonably be disputed that

1 there is no contract between the HOA, NAS, and the Plaintiff. Thus, we must look to
2 duties "governed by this chapter." NRS 116.3103 sets forth the duties of the HOA to:
3 "act [] on behalf of the association...in the best interest of the association." Likewise, as
4 the HOA's collection company, NAS's duty is to the HOA. Other than complying with
5 NRS 116, there is no other duty stated in NRS 116. In the absence of a specific
6 violation of the statute, there can be no breach of duty claim against the HOA and NAS.

7 The Plaintiff was the high bidder. NAS complied with NRS 116 by issuing a
8 Foreclosure Deed, pursuant to NRS 116, which is, as a matter of law, without warranty.

9 As noted above, the HOA and NAS's requirements are to comply with NRS 116.
10 Generic allegations of a breach of an nonexistent duty of candor cannot rewrite an
11 HOA's duties which are specifically mandated by NRS 116. NRS 116, the Nevada
12 Legislature, the HOA, and NAS, promised to deliver a deed without warranty, and that's
13 what they delivered to Plaintiff. Plaintiff's efforts to rewrite NRS 116 should fail, and the
14 claim dismissed.

15 **F. CONSPIRACY FAILS AS A MATTER OF LAW**

16 To establish a claim for civil conspiracy, a plaintiff must show (1) that
17 Defendants, by acting in concert, intended to accomplish an unlawful objective for the
18 purpose of harming plaintiff; and (2) that plaintiff sustained damages resulting from
19 defendants' act or acts. *See Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*,
20 114 Nev. 1304, 971 P.2d 1251 (1999); *see also Dow Chemical Co. v. Mahlum*, 114
21 Nev. 1468, 970 P.2d 98 (1998). The Plaintiff cannot meet this evidentiary burden.

22 As a preliminary matter, there is nothing illegal about conducting a nonjudicial
23 foreclosure sale which is expressly authorized by NRS 116 and the CC&Rs. Thus, the
24 first required prong of Plaintiff's conspiracy claim is already disproven as a matter of
25 law. But if this Court continues its analysis, the claim becomes even weaker because
26 the Plaintiff has not established any damages resulting from the acquisition of the
27 Property via the nonjudicial foreclosure deed without warranty. The Plaintiff is still the
28 record owner of the Property.

1 Finally, there can be no conspiracy between the HOA and NAS under the
2 preclusive weight of the intra-corporate conspiracy doctrine, which stands for the
3 proposition that "agents and employees of a corporation cannot conspire with their
4 corporate principal or employer where they act in their official capacities on behalf of the
5 corporation and not as individuals for their individual advantage." See *Collins v. Union*
6 *Federal Sav. & Loan Ass'n*, 662 P.2d 610, 622, 99 Nev. 284, 303 (Nev.,1983).
7 Therefore, to sustain a claim for conspiracy against agents and their corporation, a
8 plaintiff must prove that one or more of the agents acted outside of the scope of their
9 employment "to render them a separate person for the purposes of conspiracy." See
10 *Faulkner v. Arkansas Children's Hosp.*, 69 S.W.3d 393, 407, 347 Ark. 941, 962
11 (Ark.,2002).

12 The Plaintiff has not alleged facts sufficient to meet this standard. To the
13 contrary, the Plaintiff has merely asserted that the HOA and NAS "acting together ...
14 reached an implicit or express agreement amongst themselves ...to withhold
15 information...." See Compl. ¶ 83. The Plaintiff makes no allegations whatsoever that
16 NAS acted outside of its scope as the HOA's agent or for its individual advantage. The
17 conspiracy claim fails and must be dismissed.

18 **G. A NONJUDICIAL FORECLOSURE SALE PURSUANT TO NRS 116**
19 **DOES NOT VIOLATE NRS 113**

20 The Plaintiff alleges that NRS 113 requires the HOA and NAS to disclose the
21 preforeclosure payment attempt. (Compl. ¶ 88.) However, a review of NRS 113
22 confirms that the requirements governed thereby do not apply to a nonjudicial
23 foreclosure sale by an HOA.

24 Plaintiff cites to NRS 113.130(4) for the position that the HOA must complete a
25 disclosure form. However, NRS 113 does not reference or incorporate NRS 116 and
26 NRS 116 does not reference or incorporate NRS 113.

27 The Nevada Supreme Court has stated, as noted above, that the NRS 116 sets
28 forth the requirements that an HOA must follow, and does not permit deviation from

1 those requirements. See *Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227*
2 *Shadow Canyon*, 405 P.3d 641, 645 (Nev. 2017), reh'g denied (Dec. 13, 2017),
3 reconsideration *en banc* denied (Feb. 23, 2018) ("an HOA has little autonomy in taking
4 extra-statutory efforts to increase the winning bid at the sale.") See also, *SFR*
5 *Investments Pool 1 v. U.S. Bank*, 130 Nev. 742, 754, 334 P.3d 408, 416 (2014)
6 ("Nevada's elaborate nonjudicial foreclosure provisions signal the Legislature's embrace
7 of nonjudicial foreclosure of HOA liens").

8 Other district courts have held that NRS 113 does not apply to foreclosures.
9 See, e.g., *Wiersma v HSBC Bank USA, N.A.*, No. A-11-635133-D, 2011 WL 7809096
10 (Nev. Dist. Ct. July 08, 2011) ("the requirements set forth by NRS 113.130(1) do not
11 apply to the sale or intended sale of residential property by foreclosure [under NRS
12 107]"). It makes sense because a nonjudicial foreclosure sale under NRS 116 results in
13 a deed *without warranty*. Thus, any disclosure (or nondisclosure) by an HOA at a
14 nonjudicial foreclosure sale might impermissibly add to the requirements of NRS 116.
15 NRS 116 does not reference a requirement of a Seller's Real Property Disclosure Form,
16 the Court should not create such a requirement.

17 Where NRS 116 incorporates requirements from other chapters, it does so
18 expressly. For example, NRS 116.310312 expressly references both NRS 40.430 and
19 NRS 107.080 and NRS 17.130, among others. NRS 113 likewise incorporates other
20 chapters, but NRS 116 is not among them. See NRS 113.135, referencing NRS 11.202
21 and NRS 40.600. Neither NRS 116 nor NRS 113 incorporate or reference each other.
22 There was no requirement for the HOA or NAS to disclose a preforeclosure payment
23 attempt. See *Noonan v. Bayview Loan Servicing, LLC*, 438 P.3d 335 (Nev. 2019)
24 (unpublished) (affirming summary judgment of misrepresentation claim, in favor of HOA
25 collection company, where NRS 116 did not require disclosure of tender), and no
26 requirement to record the tender.

27 Therefore, the claim for violation of NRS 113 should be dismissed for failure to
28 state a claim.

H. SPECIAL DAMAGES MUST BE DISMISSED

"[W]hen a party claims it has incurred attorney fees as foreseeable damages arising from tortious conduct or a breach of contract, such fees are considered special damages." *Sandy Valley Associates v. Sky Ranch Estates Owners Ass'n*, 35 P.3d 964, 969, 117 Nev. 948, 956 (Nev.,2001), overruled on other grounds by *Horgan v. Felton*, 123 Nev. 577 (Nev.,2007). "They must be pleaded as special damages in the complaint pursuant to NRCP 9(g) and proved by competent evidence just as any other element of damages." *Id.*, see also NRCP 9(g) ("When items of special damage are claimed, they shall be specifically stated.")

Both the fact of the damages and the amount of the damages are crucial to a claim of this nature. *Gramanz v. T-Shirts and Souvenirs, Inc.*, 111 Nev. 478, 484-485, 894 P.2d 342, 346-347 (1955); *Mort Wallin of Lake Tahoe, Inc. v. Commercial Cabinet Co., Inc.*, 105 Nev. 855, 857, 784 P.2d 954, 955 (1989); *Horgan v. Felton*, 170 P.3d 982 (2007). "As a practical matter, attorney fees are rarely awarded as damages simply because parties have a difficult time demonstrating that the fees were proximately and necessarily caused by the actions of the opposing party." *Sandy Valley Associates, Inc.*, 117 Nev. at 956. "[T]he mere fact that a party was forced to file or defend a lawsuit is insufficient to support an award of attorney's fees as damages." *Id.*

Here, the only place that special damages is even mentioned in the complaint is in the prayer for relief. See *Young v. Nevada Title Co.*, 744 P.2d 902, 905, 103 Nev. 436, 442 (Nev.,1987) (the mention of attorney's fees in a prayer for relief is insufficient).

Additionally, when it comes to cases involving disputes over real property, attorney's fees are only available as special damages for slander of title. *Horgan*, 170 P.3d at 988 ("Additionally, we retreat from our statement in [Sandy Valley] and earlier cases that attorney fees as damages may be recovered in action to quiet title or clarify title to real property. Such attorney fees are only available in real property matters only for slander of title").

1 This case is no exception. The Plaintiff has no slander of title claim in the
2 complaint, and therefore, there is no factual basis for this Court to award attorney's fees
3 as special damages and the claim must be dismissed.

4 **I. PUNITIVE DAMAGES MUST BE DISMISSED**

5 The Plaintiff is not entitled to punitive damages against the HOA. NRS
6 116.4117(5) specifically prohibits an award of punitive damages against a homeowners'
7 association. NRS 116.3117(5) ("Punitive damages may not be awarded against: (a) The
8 association ...") There are no exceptions to this statutory bar. *See generally id.* Even if
9 there were, the Plaintiff has not met the requirements of NRS 42.005, which requires
10 pleading of facts which establish, by clear and convincing evidence, "that the defendant
11 has been guilty of oppression, fraud or malice, express or implied..." NRS 42.005.
12 Giving Plaintiff every possible favorable inference, nothing is pled here which even
13 implies this level of scienter is present.

14 Under NRS 41.001, the term "fraud" means an intentional misrepresentation,
15 deception, or concealment of a material fact known to the person with the intent to
16 deprive another of his rights or property. NRS 42.001(2). "Malice, express or implied"
17 means conduct intended to injure a person or despicable conduct which a party
18 engages in with a conscious disregard of the rights or safety of another. NRS 42.001(3).
19 Oppression is defined in the same section as despicable conduct that subjects
20 someone to cruel and unjust hardship with conscious disregard of the rights of that
21 person. NRS 42.001(4). All of these definitions focus on "the knowledge of probably
22 harmful consequences ... and deliberate failure to act to avoid those consequences."
23 *Countrywide Home Loans, Inc. v. Thitchener*, 192 P.3d 243, 252, 124 Nev. 725, 739
24 (Nev.,2008), *citing* NRS 42.001(1).

25 As argued above, the Notice of Sale promised a no warranty deed, which was
26 provided pursuant to NRS 116 and which expressly state the deed is "without warranty."
27 No amount of post-federal case handwringing or creative argument can change the
28 effect of a sale pursuant to NRS 116. The prayer for punitive damages is improper as a

1 matter of law and should be dismissed.

2 **V. CONCLUSION**

3 For the above stated reasons, the HOA respectfully requests that the Court either
4 dismiss the complaint, for failure to comply with presuit mediation under NRS 38.310,
5 for failure to state a claim under NRCP 12(b)(5), or because there are no genuine
6 factual disputes, grant summary judgment in favor of the HOA and NAS.

7 Dated this 26th day of June, 2019.

8 LIPSON NEILSON P.C.

9
10 By: /s/ Peter E. Dunkley

11 KALEB D. ANDERSON, ESQ.

12 Nevada Bar No. 7582

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21 Attorneys for the Peccole Ranch Community
22 Association and Nevada Association Services,
23 Inc.
24
25
26
27
28

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 26th day of June 2019, service of the foregoing
3 **PECCOLE RANCH COMMUNITY ASSOCIATION'S AND NEVADA ASSOCIATION**
4 **SERVICES, INC., MOTION TO DISMISS OR FOR SUMMARY JUDGMENT** to the
5 Clerk's Office using the Odyssey eFileNV and Serve system for filing and transmittal to
6 the following Odyssey eFileNV and Serve registrants:

7 Roger P. Croteau, Esq.
8 Timothy E. Rhoda, Esq.
9 ROGER P. CROTEAU & ASSOCIATES,
10 LTD.
11 2810 W. Charleston Blvd. Ste.75
12 Las Vegas, NV 89148
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14 *Attorney for Plaintiff*

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

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EXHIBIT “A-1”

EXHIBIT “A-1”

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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

Plaintiff,

v.

PECCOLE RANCH COMMUNITY
ASSOCIATION, *et al.*,

Defendants.

Case No. 2:16-cv-00660-MMD-CWH

ORDER

AND ALL RELATED ACTIONS

I. SUMMARY

This case arises from the foreclosure sale of property to satisfy a homeowners' association ("HOA Sale") lien. Before the Court are three motions: Defendant Peccole Ranch Community Association's ("HOA") motion for summary judgment (ECF No. 70); Plaintiff and Counter-Defendant Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP, f/k/a Countrywide Home Loans Servicing, LP's motion for summary judgment (ECF No. 71); and Defendant and Counter-Claimant Saticoy Bay LLC Series 9720 Hitching Rail's ("Saticoy Bay") motion for summary judgment (ECF No. 72).¹ Because the Court agrees that Plaintiff properly tendered the superpriority amount, the Court will grant Plaintiff's motion for summary judgment, and deny Defendants' cross-motions as moot, resolving this case.

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¹The Court has reviewed the parties' responses (ECF Nos. 74, 78, 79, 80), and replies (ECF Nos. 77, 83, 85, 86). Defendant Nevada Association Services, Inc. ("NAS") neither filed its own motion for summary judgment, nor responded to any of the other parties' motions for summary judgment.

JA045

1 **II. RELEVANT BACKGROUND**

2 The following facts are undisputed unless otherwise indicated.

3 In April 2003, Edna E. Scott ("Borrower") obtained a loan for \$163,567 ("Loan")
4 and executed a note secured by a deed of trust ("DOT") on the real property located at
5 9720 Hitching Rail Drive, Las Vegas, Nevada, 89117 ("the Property"). (ECF No. 71-1 at
6 2-3.) Plaintiff acquired the DOT via an assignment recorded on November 14, 2011. (ECF
7 No. 71-2.)

8 Borrower failed to pay HOA assessments, and the HOA recorded a notice of
9 delinquent assessment lien on October 3, 2011, identifying the amount due to the HOA
10 to date as \$1,434.04, which included \$728.40 for "late fees, collection fees and interest."²
11 (ECF No. 71-3 at 2.) The HOA recorded a notice of default and election to sell on
12 December 29, 2011, identifying the amount due to the HOA to date as \$2,660.78. (ECF
13 No. 71-4.)

14 Plaintiff, acting through its agent (the law firm "Miles Bauer") requested from NAS
15 a calculation of the superpriority portion of the HOA's lien and offered to pay that amount.³
16 (ECF No. 71-5 at 3, 6-7.) While it never received a response from NAS, Plaintiff ultimately
17 calculated what it believed to be the sum of nine months of common assessments based
18 a statement of account from NAS on another property within the HOA and tendered that
19 amount, \$585 ("the Check"), on January 10, 2014.⁴ (*Id.* at 3, 9-13.) Miles Bauer's records
20 show the Check was "rejected." (*Id.* at 4, 15-19.)

21 ///

22 ///

23
24 ²The notice was recorded by NAS, acting as agent for the HOA. (ECF No. 71-3.)

25 ³Plaintiff offers the affidavit of Adam Kendis ("Kendis Affidavit"), a paralegal with
26 Miles Bauer, who authenticated Miles Bauer's business records and explained the
27 information contained within Miles Bauer's records attached to his affidavit. (ECF No. 71-
28 5 at 2-4.)

⁴The HOA also responded to one of Plaintiff's interrogatories that the monthly
assessment amount was \$65. (ECF No. 71-6 at 7-8.) Nine months of assessments is
therefore \$585.

1 The HOA recorded a notice of foreclosure sale on January 23, 2014. (ECF No. 71-
 2 7.) The HOA proceeded with the HOA Sale on February 14, 2014, and Saticoy Bay
 3 purchased the Property at the HOA Sale for \$51,500. (ECF No. 71-8.)

4 Plaintiff asserts claims for: (1) quiet title/declaratory judgment against all
 5 Defendants; (2) breach of NRS § 116.1113 against NAS and the HOA; (3) wrongful
 6 foreclosure against NAS and the HOA; and (4) injunctive relief against Saticoy Bay. (ECF
 7 No. 1 at 6-15.) Saticoy Bay asserts counterclaims for quiet title and declaratory relief.
 8 (ECF No. 8 at 5-6.)

9 III. LEGAL STANDARD

10 "The purpose of summary judgment is to avoid unnecessary trials when there is
 11 no dispute as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*,
 12 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the
 13 pleadings, the discovery and disclosure materials on file, and any affidavits "show that
 14 there is no genuine issue as to any material fact and that the moving party is entitled to a
 15 judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). An issue
 16 is "genuine" if there is a sufficient evidentiary basis on which a reasonable fact-finder
 17 could find for the nonmoving party and a dispute is "material" if it could affect the outcome
 18 of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
 19 (1986). Where reasonable minds could differ on the material facts at issue, however,
 20 summary judgment is not appropriate. See *id.* at 250-51. "The amount of evidence
 21 necessary to raise a genuine issue of material fact is enough 'to require a jury or judge to
 22 resolve the parties' differing versions of the truth at trial.'" *Aydin Corp. v. Loral Corp.*, 718
 23 F.2d 897, 902 (9th Cir. 1983) (quoting *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S. 253,
 24 288-89 (1968)). In evaluating a summary judgment motion, a court views all facts and
 25 draws all inferences in the light most favorable to the nonmoving party. See *Kaiser*
 26 *Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

27 The moving party bears the burden of showing that there are no genuine issues of
 28 material fact. See *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). Once

1 the moving party satisfies Rule 56's requirements, the burden shifts to the party resisting
2 the motion to "set forth specific facts showing that there is a genuine issue for trial."
3 *Anderson*, 477 U.S. at 256. The nonmoving party "may not rely on denials in the pleadings
4 but must produce specific evidence, through affidavits or admissible discovery material,
5 to show that the dispute exists," *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir.
6 1991), and "must do more than simply show that there is some metaphysical doubt as to
7 the material facts." *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 783 (9th Cir. 2002)
8 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)).
9 "The mere existence of a scintilla of evidence in support of the plaintiff's position will be
10 insufficient." *Anderson*, 477 U.S. at 252.

11 Further, "when parties submit cross-motions for summary judgment, '[e]ach motion
12 must be considered on its own merits.'" *Fair Hous. Council of Riverside Cty., Inc. v.*
13 *Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001) (citations omitted) (citation omitted).
14 "In fulfilling its duty to review each cross-motion separately, the court must review the
15 evidence submitted in support of each cross-motion." *Id.*

16 IV. DISCUSSION

17 Plaintiff argues it is entitled to summary judgment on its declaratory relief/quiet title
18 claim because, in pertinent part, Plaintiff tendered the superpriority portion of the HOA's
19 lien when Plaintiff's agent sent the Check to the HOA's agent. (ECF No. 71 at 5-8.) The
20 Court agrees that Plaintiff properly tendered the superpriority amount, and accordingly
21 declines to address the parties' other arguments in their motions for summary judgment
22 and corresponding responses.

23 In several recent decisions, the Nevada Supreme Court effectively put to rest the
24 issue of tender. For example, in *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d
25 113 (Nev.), *as amended on denial of reh'g* (Nov. 13, 2018), the Nevada Supreme Court
26 held "[a] valid tender of payment operates to discharge a lien or cure a default." *Id.* at 117,
27 121. And it reaffirmed that "that the superpriority portion of an HOA lien includes only
28 charges for maintenance and nuisance abatement, and nine months of unpaid

1 assessments." *Id.* at 117. More recently, the Nevada Supreme Court held that an offer to
2 pay the superpriority amount coupled with a rejection of that offer discharges the
3 superpriority portion of the HOA's lien, even if no money changed hands. See *Bank of*
4 *Am., N.A. v. Thomas Jessup, LLC Series VII*, Case No. 73785, — P.3d —, 2019 WL
5 1087513, at *1 (Mar. 7, 2019).

6 Here, Plaintiff tendered the superpriority amount. (ECF No. 70-5; see also ECF
7 No. 71-6 at 7-8 (stating the monthly assessment amount was \$65); ECF No. 71-12 at 7
8 (indicating Borrower did not owe any nuisance or abatement fees).) Thus, the HOA Sale
9 did not extinguish Plaintiff's DOT, even though the HOA rejected Plaintiff's tender. See
10 *Bank of America*, 427 P.3d at 121-22; see also *Thomas Jessup*, 2019 WL 1087513, at
11 *4.

12 Saticoy Bay's primary argument in opposition to Plaintiff's motion for summary
13 judgment is that Plaintiff had to record its tender in order for the tender to be effective
14 under the doctrine of equitable subrogation. (ECF No. 78 at 7.) However, despite Saticoy
15 Bay's statement to the contrary (*id.* at 2), the Nevada Supreme Court rejected the
16 argument that a tender payment must be recorded to be effective in *Bank of America*.
17 See 427 P.3d at 119-120. Further, as Plaintiff argues (ECF No. 86 at 3), equitable
18 subrogation does not apply to an HOA's lien because tender satisfies the superpriority
19 portion of the lien by operation of law. (*Id.* (quoting *Bank of America*, 427 P.3d at 120).)
20 Thus, the Court is not persuaded by that argument.

21 Saticoy Bay also takes issue with certain statements and conditions contained in
22 Plaintiff's letter that accompanied the Check. (ECF Nos. 78 at 10-12.) The HOA similarly
23 argues that the tender included conditions and the HOA was justified in rejecting the offer.
24 (ECF No. 74 at 6-8.) These arguments were also rejected by the Nevada Supreme Court
25 in *Bank of America*, 427 P.3d at 118-119. And the reasons for rejecting the offer do not
26 figure into the Court's analysis. The fact of rejection, coupled with an offer to pay the
27 superpriority amount, is sufficient to discharge the superpriority portion of the HOA's lien.
28 See *Thomas Jessup*, 2019 WL 1087513, at *4.

1 Further, Saticoy Bay challenges the evidence Plaintiff offers to support its tender
2 argument. In particular, Saticoy Bay attacks an affidavit of Douglas E. Miles. (ECF No. 78
3 at 17-20.) However, Plaintiff supported its tender argument with the Kendis Affidavit, not
4 an affidavit from Douglas E. Miles. (ECF No. 71-5.) To the extent Saticoy Bay is
5 attempting to argue that the documents attached to the Kendis Affidavit are not properly
6 authenticated, contained inadmissible hearsay, or that the affidavit was not made based
7 upon personal knowledge, the Court disagrees. The Court instead agrees with Plaintiff
8 that it has presented admissible evidence to demonstrate that it tendered the superpriority
9 amount and the HOA rejected its tender. (ECF No. 86 at 7-11.) The Kendis Affidavit
10 properly authenticated the documents offered and explained what the screenshot of Miles
11 Bauer's case management notes reflects. Kendis need not have personal knowledge that
12 NAS returned the Check to attest that Miles Bauer's case management note reflects that
13 the Check was returned. Further, Saticoy Bay has not offered any admissible evidence
14 to create a genuine issue of material fact regarding whether Plaintiff tendered the Check
15 and NAS rejected it.

16 In sum, the Court finds that Plaintiff has demonstrated entitlement to summary
17 judgment on its first claim for relief. In its Complaint, Plaintiff primarily requests a
18 declaration that its DOT survived the HOA Sale. (See ECF No. 1 at 15.) Given that Plaintiff
19 has received the relief it requested, the Court dismisses Plaintiff's remaining claims as
20 moot. Further, the Court denies the HOA and Saticoy Bay's motions for summary
21 judgment (ECF Nos. 70, 72) as moot because it grants Plaintiff's motion. While NAS did
22 not respond to Plaintiff's motion, the Court *sua sponte* grants summary judgment in favor
23 of Plaintiff and against NAS on Plaintiff's first claim for relief and dismisses Plaintiff's
24 remaining claims against NAS for the same reason. See *Albino v. Baca*, 747 F.3d 1162,
25 1176 (9th Cir. 2014) ("[D]istrict courts are widely acknowledged to possess the power to
26 enter summary judgments *sua sponte*, so long as the losing party was on notice that she
27 had to come forward with all of her evidence.") (citation omitted). Similarly, the Court
28

1 grants summary judgment to Plaintiff on Saticoy Bay's quiet title counterclaim. (ECF No.
2 8 at 5-6.)

3 **V. CONCLUSION**

4 The Court notes that the parties made several arguments and cited to several
5 cases not discussed above. The Court has reviewed these arguments and cases and
6 determines that they do not warrant discussion as they do not affect the outcome of the
7 motions before the Court.

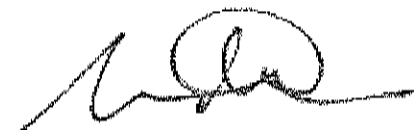
8 It is therefore ordered that Plaintiff's motion for summary judgment (ECF No. 71)
9 is granted as to Plaintiff's first claim for relief. The Court declares that Plaintiff's DOT
10 survived the HOA Sale and continues to encumber the Property. Plaintiff's remaining
11 claims are dismissed as moot.

12 It is further ordered that the HOA's motion for summary judgment (ECF No. 70) is
13 denied as moot.

14 It is further ordered that Saticoy Bay's motion for summary judgment (ECF No. 72)
15 is denied as moot.

16 The Clerk of Court is directed to enter judgment in Plaintiff's favor on its first claim
17 for relief, and on Saticoy Bay's quiet title counterclaim, in accordance with this order, and
18 close this case.

19 DATED THIS 19th day of March 2019.

20 

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MIRANDA M. DU
22 UNITED STATES DISTRICT JUDGE
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EXHIBIT “A”

EXHIBIT “A”

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22
AFTER RECORDING MAIL TO:
REPUBLIC MORTGAGE LLC
9580 W. SAHARA AVE. #200163-06-110-095
LAS VEGAS, NV 89117

APN#163-06-110-095
MAIL TO STATE TO
EDNA E. SCOTT
9720 HITCHCOCK RAIL DR
LAS VEGAS, NV 89117
ESC. H. 246436

[Space Above This Line For Recording Data]

State of Nevada

DEED OF TRUST

FHA Case No.

332-4148765-703

AP# 903SCOSF2849101
LN# 2849101

MIN 1001253-0000005678-0

THIS DEED OF TRUST ("Security Instrument") is made on
The Grantor is EDNA E SCOTT, AN UNMARRIED WOMAN

April 25, 2003

("Borrower"). The trustee is LAND TITLE OF NEVADA, INC.

("Trustee"). 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. Republic Mortgage LLC, Nevada LLC

("Lender") is organized and existing under the laws of Nevada, and
has an address of 1401 N. Green Valley Pkwy #250, Henderson, NV 89074

Borrower owes Lender the principal sum of
One Hundred Sixty Three Thousand Five Hundred Sixty Seven and no/100
Dollars (U.S. \$ 163,567.00).

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 May 1, 2033

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



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of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to the Trustee, in trust, with power of sale, the following described property located in

CLARK

County, Nevada:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

which has the address of 9720 HITCHING RAIL DRIVE
LAS VEGAS.

[City], Nevada

89117

[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 seized 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.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

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. Section 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.

Initialed: 

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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:

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- (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 successor 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.

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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 and without charge to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs.

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 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. \$ LENDER MAY CHARGE MAXIMUM ASSUMPTION FEE ALLOWABLE BY HUD.

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

☐

Growing Equity Rider

☐

Other [specify]

☒

Planned Unit Development Rider

☐

Graduated Payment Rider

20030430
02222

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.
Witnesses:

EDNA E SCOTT (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

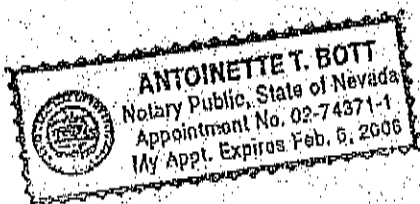
(Seal)
-Borrower

STATE OF NEVADA
COUNTY OF CLARK

This instrument was acknowledged before me on
EDNA E SCOTT

4-25-03

by



My Commission Expires: 2-6-06

20030430
.02222

EXHIBIT "A"

Legal Description

PARCEL ONE (1):

LOT TWO HUNDRED SIXTY Seven (267) IN BLOCK FOUR (4), OF ASCOT PARK, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 49 OF PLATS, PAGE 19, AND AMENDED BY THAT CERTAIN CERTIFICATE OF AMENDMENT RECORDED APRIL 8, 1991 IN BOOK 910408 AS DOCUMENT NO. 00888, BOTH IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL TWO (2):

A NON EXCLUSIVE EASEMENT APPURTENANT TO PARCEL ONE (1) FOR INGRESS, EGRESS AND OF ENJOYMENT IN AND TO THE COMMON AREA, PRIVATE PARK AND PRIVATE STREETS AS SHOWN AND DELINEATED UPON THE PLAT OF ASCOT PARK, ON FILE IN BOOK 49 OF PLATS, PAGE 19, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL THREE (3):

A NON EXCLUSIVE EASEMENT APPURTENANT TO PARCEL ONE (1) FOR INGRESS, EGRESS AND ENJOYMENT IN AND TO THE COMMON AREAS OF PECCOLE RANCH AS SHOWN BY MAP THEREOF ON FILE IN BOOK 44 OF PLATS, PAGE 72, PECCOLE RANCH - UNIT 2, ON FILE IN BOOK 45 OF PLATS, PAGE 83, AND AS SET FORTH AND DEFINED IN THE AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, ASSESSMENTS, CHARGES, SERVITUDES, LIENS, RESERVATIONS AND EASEMENTS FOR PECCOLE RANCH, RECORDED AUGUST 27, 1990 IN BOOK 900827 AS DOCUMENT NO. 00428, AS SAME MAY FROM TIME TO TIME BE AMENDED AND OR SUPPLEMENTED, ALL IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

RECORDER'S MEMO
POSSIBLE POOR RECORD DUE TO
QUALITY OF ORIGINAL DOCUMENT

JA061

20030430
02222

LOAN NO. 2849101
APPL. NO. 903SCOSF2849101

FHA Case No.
332-4148765-703

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 25th day of April, 2003, 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 Republic Mortgage LLC, Nevada LLC

("Lender") of the same date and covering the Property described in the Security Instrument and located at:

9720 HITCHING RAIL DRIVE, LAS VEGAS, NV 89117

[Property Address]

The Property Address is a part of a planned unit development ("PUD") known as ASCOT PARK

[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 this 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.

JA062

20030430
02222

LOAN NO. 2849101
APPL NO. 903SCOSF2849101

- 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, the 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.

(Seal)	<i>Edna E Scott</i>	(Seal)
Borrower	EDNA E SCOTT	Borrower
(Seal)		(Seal)
Borrower		Borrower
(Seal)		(Seal)
Borrower		Borrower
(Seal)		(Seal)
Borrower		Borrower

ELP-569 (0601)

Page 2 of 2

***** CLARK COUNTY, NEVADA *****
FRANCES DEANE, RECORDER
RECORDED AT REQUEST OF: LAND TITLE OF NEVADA
04-30-2003 12:47 JBR PAGE COUNT: 11
OFFICIAL RECORDS
BOOK/INSTR: 20030430-02222 FEE: 24.00
RPTT: .00

JA063

Recording Requested By:
Bank of America
Prepared By: Danilo Cuenca
888-603-9011
When recorded mail to:
CoreLogic
450 E. Boundary St.
Attn: Release Dept.
Chapin, SC 29036



DocID# 5852748787615108

Tax ID: 163-06-110-095

Property Address:

9720 Hitching Rail Dr

Las Vegas, NV 89117-6614

NV0-ADT 15470661 11/8/2011

Inst #: 201111140001989

Fees: \$18.00

N/C Fee: \$25.00

11/14/2011 09:11:30 AM

Receipt #: 976269

Requestor:

CORELOGIC

Recorded By: BJB Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

This space for Recorder's use

MIN #: 1001253-0000005678-0

MERS Phone #: 888-679-6377

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is 3300 S.W. 34th Avenue, Suite 101 Ocala, FL 34474 does hereby grant, sell, assign, transfer and convey unto BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP whose address is 451 7TH ST.SW #B-133, WASHINGTON DC 20410 all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender: REPUBLIC MORTGAGE LLC, NEVADA LLC

Made By: EDNA E SCOTT, AN UNMARRIED WOMAN

Trustee: LAND TITLE OF NEVADA, INC.

Date of Deed of Trust: 4/25/2003 Original Loan Amount: \$163,567.00

Recorded in Clark County, NV on: 4/30/2003, book N/A, page N/A and instrument number 20030430-02222

I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons.

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Deed of Trust to be executed on

11/8/11

MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.

By: 

Swarupa Slee Vice President

State of California
County of Ventura

On 11-8-2011 before me, Takayuki E. Uto, Notary Public, personally appeared
SWAYNE SUE

, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

[Signature]
Notary Public: TAKAYUKI E. UTO
My Commission Expires: 3-27-2013

(Seal)

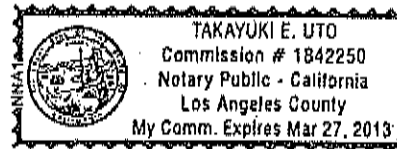


EXHIBIT “B”

EXHIBIT “B”

9 0 0 3 2 7 0 0 4 2 3

legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Nevada. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot or Parcel shall operate to transfer the Membership(s) appurtenant to said Lot or Parcel to the new Owner thereof.

6.9 Adjustment in Votes of Class B Member. As all or any portion of the Additional Property of Peccole Ranch comes within the scope of this Master Declaration by Supplemental Declaration pursuant to the provisions of Section 14 hereof, an appropriate adjustment to the votes entitled to be cast by the Declarant will be made based upon the additional Property Interests thereby acquired by Declarant.

6.10 Suspension of Voting Rights. Any Member who fails to pay the annual Assessments, Special Assessments or Maintenance Charges provided herein within sixty (60) days of the due date thereof, shall have all voting rights as provided herein suspended until such amounts plus any accrued interests and/or penalties are paid in full.

7. COVENANT FOR ASSESSMENTS AND CREATION OF LIEN.

7.1 Creation of Lien and Personal Obligation of Assessments and Maintenance Charges. The Declarant, for each Lot and Parcel established within Peccole Ranch, hereby covenants and agrees, and each Owner by acceptance of a Deed therefor (whether or not it shall be so expressed in such Deed)

1 0 0 0 2 7 0 0 4 2 3

is deemed to covenant and agree, to pay to the Association the following assessments and charges: (1) Annual Assessments established by this Section 7, (2) Special Assessments for capital improvements or other extraordinary expenses or costs established by this Section 7, (3) Maintenance Charges established by Section 10, all such Assessments to be established and collected as hereinafter provided. The Annual Assessments, Special Assessments, and Maintenance Charges, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Lot or Parcel and shall be a continuing servitude and lien upon the Lot or Parcel against which each such Assessment is made. The Annual and Special Assessments against each Lot or Parcel shall be based on the number of Memberships appurtenant to the Lot or Parcel (including, without limitation, Memberships attributable to Dwelling Units, Condominium Units and/or Rental Apartments located on such Lot or Parcel). The lien for each unpaid Assessment is created and attached to each Lot or Parcel at the beginning of each Assessment period and shall continue to be a lien against such Lot or Parcel until paid (the "Assessment Lien"). The Assessment Lien may be enforced by foreclosure of the lien on the defaulting Owner's Lot by the Association in like manner as a mortgage on real property. The costs and expenses for filing any notice of lien and the foreclosure action shall be added to the Assessment for the Lot against which it is filed and collected as part thereof. Each such Annual and Special

JA068

9 3 0 3 2 7 0 0 4 2 3

Assessment, and Maintenance Charge, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot or Parcel at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

7.2 Annual Assessments. In order to provide for the uses and purposes specified in Section 9, including the establishment of replacement and maintenance reserves, the Board in each year, shall assess against each Lot and Parcel an Annual Assessment. The amount of the Annual Assessment, subject to the provisions of this Section 7, shall be in the sole discretion of the Board but shall be determined with the objective of fulfilling the Association's obligations under this Declaration and providing for the uses and purposes specified in Section 9.

7.3 Uniform Rate of Assessment. The amount of any Annual or Special Assessment against each Lot and Parcel shall be fixed at a uniform rate per Membership, except that the following Owners shall pay during the periods specified below, only a portion of the Annual Assessment otherwise attributable to their Memberships, as follows:

- (a) The Owner of a Lot shall pay only 25% of the Annual Assessment attributable to his Membership until the earlier of (i) the completion of the Dwelling Unit on the Lot or (ii) six months from the commencement

EXHIBIT “C”

EXHIBIT “C”

Inst #: 201401230002378

Fees: \$18.00

N/C Fee: \$0.00

01/23/2014 10:51:51 AM

Receipt #: 1910528

Requestor:

TITLE SOLUTIONS, INC.

Recorded By: CYV Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only
and avoid printing in the 1" margins of document)

APN# 1103-06-110-095

(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrealprop/owner.aspx>)

TITLE OF DOCUMENT
(DO NOT Abbreviate)

Notice of Foreclosure Sale

Document Title on cover page must appear EXACTLY as the first page of the
document to be recorded.

RECORDING REQUESTED BY:

Nevada Association Services

RETURN TO: Name Nevada Association Services

Address 6224 W. Desert Inn Road

City/State/Zip Las Vegas, NV 89146

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name _____

Address _____

City/State/Zip _____

This page provides additional information required by NRS 111.312 Sections 1-2.

An additional recording fee of \$1.00 will apply.

To print this document properly—do not use page scaling.

JA071

APN # 163-06-110-095
Peccole Ranch Community Association

NAS # N68453

NOTICE OF FORECLOSURE SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL NEVADA ASSOCIATION SERVICES, INC. AT (702) 804-8885. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

YOU ARE IN DEFAULT UNDER A DELINQUENT ASSESSMENT LIEN, September 28, 2011. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE IS HEREBY GIVEN THAT on 2/14/2014 at 10:00 am at the front entrance to the Nevada Association Services, Inc. 6224 West Desert Inn Road, Las Vegas, Nevada, under the power of sale pursuant to the terms of those certain covenants conditions and restrictions recorded on August 27, 1990 as instrument number 00428 Book 900827 of official records of Clark County, and as amended, Nevada Association Services, Inc., as duly appointed agent under that certain Delinquent Assessment Lien, recorded on October 3, 2011 as document number 0000458 Book 20111003 of the official records of said county, will sell at public auction to the highest bidder, for lawful money of the United States, all right, title, and interest in the following commonly known property known as: 9720 Hitching Post Drive, Las Vegas, NV 89117. Said property is legally described as: Ascot Park, Plat Book 49, Page 19, Lot 267, Block 4, official records of Clark County, Nevada.

The owner(s) of said property as of the date of the recording of said lien is purported to be: Greta Scott

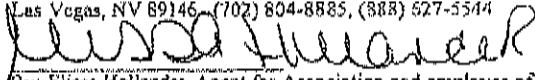
The undersigned agent disclaims any liability for incorrectness of the street address and other common designations, if any, shown herein. The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, or encumbrances, or obligations to satisfy any secured or unsecured liens. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$6,614.00. Payment must be in cash or a cashier's check drawn on a state or national bank, check drawn on a state or federal savings and loan association, savings association or savings bank and authorized to do business in the State of Nevada. The Notice of Default and Election to Sell the described property was recorded on 12/29/2011 as instrument number 0004054 Book 20111229 in the official records of Clark County.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

January 22, 2014

When Recorded Mail To:
Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146

Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146 (702) 804-8885, (888) 627-5544


By: Bliss Hollander, Agent for Association and employee of
Nevada Association Services, Inc.

JA072

EXHIBIT “D”

EXHIBIT “D”

Inst #: 201402180002910
Fees: \$18.00 N/C Fee: \$0.00
RPTT: \$887.40 Ex: #
02/18/2014 03:14:24 PM
Receipt #: 1935738
Requestor:
TITLE SOLUTIONS, INC.
Recorded By: RNS Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

Please mail tax statement and
when recorded mail to:
Saticoy Bay LLC Series 9720 Hitching Rail
P.O. Box 36208
Las Vegas, NV 89133

FORECLOSURE DEED

APN # 163-06-110-095
Lawyers Title of Nevada #08607390

NAS # N68453

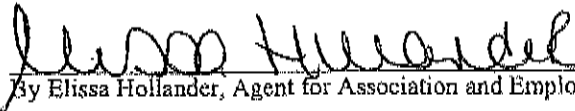
The undersigned declares:

Nevada Association Services, Inc., herein called agent (for the Peccole Ranch Community Association), was the duly appointed agent under that certain Notice of Delinquent Assessment Lien, recorded October 3, 2011 as instrument number 0000458 Book 20111003, in Clark County. The previous owner as reflected on said lien is Greta Scott. Nevada Association Services, Inc. as agent for Peccole Ranch Community Association does hereby grant and convey, but without warranty expressed or implied to: Saticoy Bay LLC Series 9720 Hitching Rail (herein called grantee), pursuant to NRS 116.31162, 116.31163 and 116.31164, all its right, title and interest in and to that certain property legally described as: Ascot Park, Plat Book 49, Page 19, Lot 267, Block 4 Clark County

AGENT STATES THAT:

This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Peccole Ranch Community Association governing documents (CC&R's) and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 12/29/2011 as instrument # 0004054 Book 20111229 which was recorded in the office of the recorder of said county. Nevada Association Services, Inc. has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Peccole Ranch Community Association at public auction on 2/14/2014, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale, became the purchaser of said property and paid therefore to said agent the amount bid \$51,500.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: February 14, 2014



By Elissa Hollander, Agent for Association and Employee of Nevada Association Services

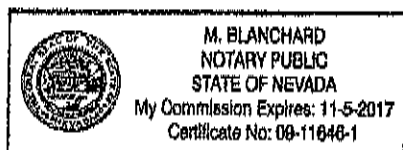
JA074

STATE OF NEVADA)
COUNTY OF CLARK)

On February 14, 2014, before me, M. Blanchard, personally appeared Elissa Hollander personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.
WITNESS my hand and seal.

(Seal)

(Signature)



M. Blanchard

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 163-06-110-095
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 \$ 51,500.00
b. Deed in Lieu of Foreclosure Only (value of property (_____))
c. Transfer Tax Value: \$ 173,617.00
d. Real Property Transfer Tax Due \$ 887.40

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 [Signature] Capacity: NAS Employee/Agent for HOA
Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Nevada Association Services
Address: 6224 W. Desert Inn Road
City: Las Vegas
State: NV Zip: 89146

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Savvy Boy LLC Series
9728 Hushing Rd
Address: P.O. Box 36208
City: Las Vegas
State: NV Zip: 89133

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Title Solutions Inc Escrow # _____
Address: 2552 Walnut Ave #220
City: Tulsa State: CA Zip: 92780

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT “E”

EXHIBIT “E”

**United States District Court
District of Nevada (Las Vegas)
CIVIL DOCKET FOR CASE #: 2:16-cv-00660-MMD-CWH**

Bank of America, N.A. v. Peccole Ranch Community Association
et al

Assigned to: Judge Miranda M. Du

Referred to: Magistrate Judge Carl W. Hoffman

Cause: 28:1332 Diversity-Injunctive & Declaratory Relief

Date Filed: 03/25/2016

Date Terminated: 03/19/2019

Jury Demand: None

Nature of Suit: 290 Real Property: Other

Jurisdiction: Diversity

Plaintiff

Bank of America, N.A.

Successor by Merger to BAC Home Loans

Servicing, LP

formerly known as

Countrywide Home Loans Servicing, LP

represented by **Jamie K Combs**

Akerman LLP

1635 Village Center Circle, Suite 200

Las Vegas, NV 89134

702-634-5007

Fax: 702-380-8572

Email: jamie.combs@akerman.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

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ATTORNEY TO BE NOTICED

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TERMINATED: 01/03/2019

Matthew I Knepper

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7028256060

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TERMINATED: 02/09/2017

Miles N Clark

Knepper & Clark LLC

JA078

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ATTORNEY TO BE NOTICED

V.

Defendant

Peccole Ranch Community Association

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TERMINATED: 05/24/2016

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TERMINATED: 05/24/2016

Defendant

**Saticoy Bay, LLC Series 9720 Hitching
Rail**

represented by **Michael F. Bohn**
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TERMINATED: 07/31/2018

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Defendant

Nevada Association Services, Inc.

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Email: chrisyerg@gmail.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Counter Claimant

**Saticoy Bay, LLC Series 9720 Hitching
Rail**
[8] Counterclaim

represented by **Michael F. Bohn**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Adam R Trippiedi
(See above for address)
ATTORNEY TO BE NOTICED

Charles Geisendorf
(See above for address)
TERMINATED: 07/31/2018

Nikoll Nikci
(See above for address)
ATTORNEY TO BE NOTICED

V.

Counter Defendant

JA081

Bank of America, N.A.
*Successor by Merger to BAC Home Loans
Servicing, LP; ; [8] Counterclaim*

represented by **Jamie K Combs**
(See above for address)
ATTORNEY TO BE NOTICED

Karen A Whelan
(See above for address)
TERMINATED: 01/03/2019

Matthew I Knepper
(See above for address)
TERMINATED: 02/09/2017

Miles N Clark
(See above for address)
TERMINATED: 02/07/2017

Rebekkah B Bodoff
(See above for address)
TERMINATED: 01/03/2019

William S. Habdas
(See above for address)
ATTORNEY TO BE NOTICED

Ariel E. Stern
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/25/2016	<u>1</u>	COMPLAINT against Nevada Association Services, Inc., Peccole Ranch Community Association, Saticoy Bay, LLC Series 9720 Hitching Rail (Filing fee \$400 receipt number 0978-4052459), filed by Bank of America, N.A.. Certificate of Interested Parties due by 4/4/2016. Proof of service due by 6/23/2016. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Civil Cover Sheet, # <u>3</u> Summons, # <u>4</u> Summons, # <u>5</u> Summons) (Stern, Ariel) (Entered: 03/25/2016)
03/25/2016	<u>2</u>	CERTIFICATE of Interested Parties filed by Bank of America, N.A.that identifies all parties that have an interest in the outcome of this case. Corporate Parent Bank of America Corporation, Other Affiliate BAC North America Holding Company, Other Affiliate NB Holdings Corp., Other Affiliate BANA Holding Corp. for Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP added. . (Stern, Ariel) (Entered: 03/25/2016)
03/25/2016	<u>3</u>	NOTICE of Lis Pendens; filed by Plaintiff Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP. (Stern, Ariel) (Entered: 03/25/2016)
03/25/2016		Case assigned to Judge Miranda M. Du and Magistrate Judge Carl W. Hoffman. (TR) (Entered: 03/25/2016)
03/25/2016	<u>4</u>	NOTICE PURSUANT TO LOCAL RULE IB 2-2: In accordance with 28 USC § 636(c) and FRCP 73, the parties in this action are provided with a link to the "AO 85 Notice of Availability, Consent, and Order of Reference - Exercise of Jurisdiction by a U.S. Magistrate Judge" form on the Court's website - www.nvd.uscourts.gov . AO 85 Consent forms should NOT be electronically filed. Upon consent of all parties, counsel are

JA082

		advised to manually file the form with the Clerk's Office. (A copy of form AO 85 has been mailed to parties not receiving electronic service.) NOTICE OF GENERAL ORDER 2013-1 AND OPPORTUNITY FOR EXPEDITED TRIAL SETTING: The parties in this action are provided with a link to General Order 2013-1 and the USDC Short Trial Rules on the Court's website - www.nvd.uscourts.gov . If the parties agree that this action can be ready for trial within 180 days and that a trial of this matter would take three (3) days or less, the parties should consider participation in the USDC Short Trial Program. If the parties wish to be considered for entry into the Court's Short Trial Program, they should execute and electronically file with USDC Short Trial Form 4(a)(1) or Form 4(a)(2). (no image attached) (TR) (Entered: 03/25/2016)
03/25/2016	<u>5</u>	Summons Issued as to All Defendants re <u>1</u> Complaint. (TR) (Entered: 03/25/2016)
03/28/2016	<u>6</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Miranda M. Du, on 3/28/2016. By Deputy Clerk: Peggie Vannozzi. This case has been assigned to the Honorable Miranda M. Du. Judge Du's Civil Standing Order is posted on the U.S. District Court, District of Nevada public website and may be accessed directly via this hyperlink: www.nvd.uscourts.gov (no image attached) (Copies have been distributed pursuant to the NEF - PAV) (Entered: 03/28/2016)
04/08/2016	<u>7</u>	SUMMONS Returned Executed by Bank of America, N.A. re <u>5</u> Summons Issued. Nevada Association Services, Inc. served on 3/28/2016, answer due 4/18/2016. (Stern, Ariel) (Entered: 04/08/2016)
04/19/2016	<u>8</u>	ANSWER to <u>1</u> Complaint, (Certificate of Interested Parties due by 4/29/2016., Discovery Plan/Scheduling Order due by 6/3/2016.), COUNTERCLAIM against Bank of America, N.A. filed by Saticoy Bay, LLC Series 9720 Hitching Rail.(Bohn, Michael) (Entered: 04/19/2016)
04/19/2016	<u>9</u>	CERTIFICATE of Interested Parties filed by Saticoy Bay, LLC Series 9720 Hitching Rail that identifies all parties that have an interest in the outcome of this case. Corporate Parent Resources Group, LLC, Other Affiliate Iyad Haddad for Saticoy Bay, LLC Series 9720 Hitching Rail added. . (Bohn, Michael) (Entered: 04/19/2016)
04/19/2016	<u>10</u>	ANSWER to <u>1</u> Complaint, filed by Peccole Ranch Community Association.(Kerr, Gregory) (Entered: 04/19/2016)
04/19/2016	<u>11</u>	CERTIFICATE of Interested Parties filed by Peccole Ranch Community Association. There are no known interested parties other than those participating in the case . (Kerr, Gregory) (Entered: 04/19/2016)
05/11/2016	<u>12</u>	ANSWER to <u>8</u> Answer to Complaint,, Counterclaim, filed by Bank of America, N.A., Bank of America, N.A..(Stern, Ariel) (Entered: 05/11/2016)
05/19/2016	<u>13</u>	STIPULATION FOR EXTENSION OF TIME (First Request) re <u>1</u> Complaint, ; by Defendant Nevada Association Services, Inc.. (Yergensen, Christopher) (Entered: 05/19/2016)
05/20/2016	<u>14</u>	MOTION to Substitute Attorney by Defendant Peccole Ranch Community Association. (Dunkley, Peter) (Entered: 05/20/2016)
05/22/2016	<u>15</u>	ORDER ON STIPULATION re ECF NO. <u>13</u> STIPULATION FOR EXTENSION OF TIME (First Request) re ECF No. <u>1</u> Complaint. Nevada Association Services, Inc.

		answer/responsive pleading due 6/7/2016. Signed by Magistrate Judge Carl W. Hoffman on 5/20/16. (Copies have been distributed pursuant to the NEF - JC) (Entered: 05/23/2016)
05/24/2016	<u>16</u>	ORDER granting <u>14</u> Motion to Substitute Attorney. Lipson Neilson Cole PC substituted for Wolf Rifkin Shapiro LLP as attorneys for Peccole Ranch Community Assn. Signed by Magistrate Judge Carl W. Hoffman on 5/24/2016. (Copies have been distributed pursuant to the NEF - KR) (Entered: 05/25/2016)
05/25/2016	<u>17</u>	CERTIFICATE of Interested Parties filed by Saticoy Bay, LLC Series 9720 Hitching Rail that identifies all parties that have an interest in the outcome of this case. Corporate Parent Resources Group, LLC, Other Affiliate Iyad Haddad, Other Affiliate Bay Harbort Trust for Saticoy Bay, LLC Series 9720 Hitching Rail added. <i>Amended</i> . (Bohn, Michael) (Entered: 05/25/2016)
06/01/2016	<u>18</u>	MOTION for Summary Judgment by Defendant Peccole Ranch Community Association. Responses due by 6/25/2016. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit)(Dunkley, Peter) (Entered: 06/01/2016)
06/03/2016	<u>19</u>	JOINDER to <u>18</u> Motion for Summary Judgment ; filed by Defendant Nevada Association Services, Inc.. (Yergensen, Christopher) (Entered: 06/03/2016)
06/22/2016	<u>20</u>	CERTIFICATE of Interested Parties filed by Nevada Association Services, Inc. that identifies all parties that have an interest in the outcome of this case. Corporate Parent RockTower Capital, Inc., a Nevada corporation, Other Affiliate Jeff Finn, Other Affiliate Lawrence Selevan, Other Affiliate Kenn Davin, Other Affiliate Kathryn Kaplan, Other Affiliate David Groelinger, Other Affiliate Brian Kaplan, Other Affiliate Shawn Campbell, Other Affiliate Josh Egert, Other Affiliate Joel Just, Other Affiliate Lee Bowden, Other Affiliate Stanley Browne, Other Affiliate Jay Parker for Nevada Association Services, Inc. added. . (Yergensen, Christopher) (Entered: 06/22/2016)
06/27/2016	<u>21</u>	RESPONSE to <u>18</u> Motion for Summary Judgment, filed by Plaintiff Bank of America, N.A., Counter Defendant Bank of America, N.A.. Replies due by 7/14/2016. (Attachments: # <u>1</u> Exhibit Deed of Trust - April 25, 2003, # <u>2</u> Exhibit Assignment of Deed of Trust November 8, 2011, # <u>3</u> Exhibit Notice of Default and Election to Sell Under Homeowners Assessment Lien December 27, 2011, # <u>4</u> Exhibit Miles Bauer Affidavit with Exhibits February 18, 2015, # <u>5</u> Exhibit Notice of Foreclosure Sale January 22, 2014, # <u>6</u> Exhibit Foreclosure Deed February 14, 2014, # <u>7</u> Exhibit Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Peccole Ranch, # <u>8</u> Exhibit Declaration of Miles N. Clark in Support of Bank of America, N.A.'s Request for Rule 56(d) Relief)(Clark, Miles) (Entered: 06/27/2016)
07/14/2016	<u>22</u>	REPLY to Response to <u>18</u> Motion for Summary Judgment filed by Defendant Peccole Ranch Community Association. (Dunkley, Peter) (Entered: 07/14/2016)
07/22/2016	<u>23</u>	PROPOSED Discovery Plan/Scheduling Order filed by Plaintiff Bank of America, N.A. . (Clark, Miles) (Entered: 07/22/2016)
07/25/2016	<u>24</u>	SCHEDULING ORDER re ECF No. <u>23</u> Proposed Discovery Plan/Scheduling Order. Discovery due by 10/17/2016. Motions due by 11/15/2016. Proposed Joint Pretrial Order due by 12/15/2016. Signed by Magistrate Judge Carl W. Hoffman on 7/25/16. (Copies have been distributed pursuant to the NEF - JC) (Entered: 07/25/2016)
07/25/2016	<u>25</u>	NOTICE PURSUANT TO LOCAL RULE IB 2-2: In accordance with 28 USC § 636(c) and FRCP 73, the parties in this action are provided with a link to the "AO 85 Notice of Availability, Consent, and Order of Reference - Exercise of Jurisdiction by a U.S. Magistrate Judge" form on the Court's website - www.nvd.uscourts.gov . AO 85 Consent forms should NOT be electronically filed. Upon consent of all parties, counsel are

		advised to manually file the form with the Clerk's Office. (A copy of form AO 85 has been mailed to parties not receiving electronic service.)
		NOTICE OF GENERAL ORDER 2013-1 AND OPPORTUNITY FOR EXPEDITED TRIAL SETTING: The parties in this action are provided with a link to General Order 2013-1 and the USDC Short Trial Rules on the Court's website - www.nvd.uscourts.gov . If the parties agree that this action can be ready for trial within 180 days and that a trial of this matter would take three (3) days or less, the parties should consider participation in the USDC Short Trial Program. If the parties wish to be considered for entry into the Court's Short Trial Program, they should execute and electronically file with USDC Short Trial Form 4(a)(1) or Form 4(a)(2). (no image attached) (JC) (Entered: 07/25/2016)
08/16/2016	<u>26</u>	SUMMONS Returned Executed by Bank of America, N.A., Bank of America, N.A. re <u>1</u> Complaint,. Peccole Ranch Community Association served on 3/29/2016, answer due 4/19/2016. (Bodoff, Rebekkah) (Entered: 08/16/2016)
08/16/2016	<u>27</u>	SUMMONS Returned Executed by Bank of America, N.A., Bank of America, N.A. re <u>1</u> Complaint,. Saticoy Bay, LLC Series 9720 Hitching Rail served on 3/29/2016, answer due 4/19/2016; Saticoy Bay, LLC Series 9720 Hitching Rail served on 3/29/2016, answer due 4/19/2016. (Bodoff, Rebekkah) (Entered: 08/16/2016)
08/17/2016	<u>28</u>	Joint STATUS REPORT by Plaintiff Bank of America, N.A., Counter Defendant Bank of America, N.A.. (Bodoff, Rebekkah) (Entered: 08/17/2016)
08/19/2016	<u>29</u>	ORDER Staying Case Pending Issuance of Mandate in <i>Bourne Valley Court Trust v. Wells Fargo Bank</i> and Denying Pending Motions without Prejudice. Signed by Judge Miranda M. Du on 8/19/2016. (Copies have been distributed pursuant to the NEF - DRM) (Entered: 08/19/2016)
01/19/2017	<u>30</u>	ORDER lifting temporary stay. Pending motions that were denied without prejudice when the stay was imposed may be refiled within 30 days. Signed by Judge Miranda M. Du on 1/19/2017. (Copies have been distributed pursuant to the NEF - KR) (Entered: 01/19/2017)
02/07/2017	<u>31</u>	MOTION to Stay <i>Partially</i> by Plaintiff Bank of America, N.A., Counter Defendant Bank of America, N.A.. (Bodoff, Rebekkah) (Entered: 02/07/2017)
02/07/2017	<u>32</u>	MOTION to remove attorney(s) Miles N. Clark from the Electronic Service List in this case, by Plaintiff Bank of America, N.A.. (Bodoff, Rebekkah) (Entered: 02/07/2017)
02/09/2017	<u>33</u>	ORDER granting ECF No. <u>32</u> Motion to Remove Attorney Miles N. Clark from Electronic Service List. Signed by Magistrate Judge Carl W. Hoffman on 2/9/2017. (Copies have been distributed pursuant to the NEF - KR) (Entered: 02/09/2017)
02/17/2017	<u>34</u>	MOTION for Summary Judgment <i>Renewed</i> by Defendant Peccole Ranch Community Association. Responses due by 3/10/2017. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(Dunkley, Peter) (Entered: 02/17/2017)
02/21/2017	<u>35</u>	RESPONSE to <u>31</u> Motion to Stay, filed by Defendant Peccole Ranch Community Association. Replies due by 2/28/2017. (Dunkley, Peter) (Entered: 02/21/2017)
02/22/2017	<u>36</u>	RESPONSE to <u>31</u> Motion to Stay, filed by Defendant Saticoy Bay, LLC Series 9720 Hitching Rail. Replies due by 3/1/2017. (Bohn, Michael) (Entered: 02/22/2017)
03/10/2017	<u>37</u>	STIPULATION and Order to Stay Litigation Pending Final Resolution of Petition(s) for Writ of Certiorari to United States Supreme Court by Plaintiff Bank of America, N.A., Counter Defendant Bank of America, N.A.. (Bodoff, Rebekkah) (Entered: 03/10/2017)
03/13/2017	<u>38</u>	ORDER approving ECF No. <u>37</u> Stipulation and Order to Stay Litigation Pending Final Resolution of Petition(s) for Writ of Certiorari to United States Supreme Court by Plaintiff

		Bank of America, N.A., Counter Defendant Bank of America, N.A. Please see document for specifics. Plaintiff's motion to withdraw its Motion for Partial Stay (ECF No. <u>31</u>) contained in the stipulation and order to stay, is granted. Signed by Judge Miranda M. Du on 3/13/2017. (Copies have been distributed pursuant to the NEF - PAV) (Entered: 03/13/2017)
03/13/2017	<u>39</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Miranda M. Du, on 3/13/2017. By Deputy Clerk: Peggie Vannozzi. It is ordered: Defendants' motion for summary judgment is denied, with leave to refile within 10 days after the stay is lifted. (Copies have been distributed pursuant to the NEF - PAV) (Entered: 03/13/2017)
04/05/2017	<u>40</u>	NOTICE of Appearance by attorney William Shane Habdas on behalf of Plaintiff Bank of America, N.A.. (Habdas, William) (Entered: 04/05/2017)
05/26/2017	<u>41</u>	NOTICE of Appearance by attorney Jamie K Combs on behalf of Plaintiff Bank of America, N.A.. (Combs, Jamie) (Entered: 05/26/2017)
07/21/2017	<u>42</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Miranda M. Du, on 7/21/2017. By Deputy Clerk: Peggie Vannozzi. In light of the U.S. Supreme Court's denial of the petition for writ of certiorari in <i>Bourne Valley Court Trust v. Wells Fargo Bank, N.A.</i> on June 26, 2017, it ordered that the stay is lifted. (no image attached) (Copies have been distributed pursuant to the NEF - PAV) (Entered: 07/21/2017)
07/28/2017	<u>43</u>	MOTION for Summary Judgment by Defendant Peccole Ranch Community Association. Responses due by 8/18/2017. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(Dunkley, Peter) (Entered: 07/28/2017)
08/01/2017	<u>44</u>	MOTION to Substitute Attorney by Counter Claimant Saticoy Bay, LLC Series 9720 Hitching Rail, Defendant Saticoy Bay, LLC Series 9720 Hitching Rail. (Geisendorf, Charles) (Entered: 08/01/2017)
08/02/2017	<u>45</u>	ORDER granting ECF No. <u>44</u> Motion to Substitute Attorney : Attorney Charles L. Giesendorf of Geisendorf & Vilkin, PLLC substituted in the place and stead of attorney Michael F. Bohn of The Law Offices of Michael F. Bohn, Esa., Ltd. for Saticoy Bay LLC Series 9720 Hitching Rail. (Attorney Michael F. Bohn terminated; CM/ECF E-notice turned off.) Signed by Magistrate Judge Carl W. Hoffman on 8/2/2017. (Copies have been distributed pursuant to the NEF - DRM) (Entered: 08/03/2017)
08/16/2017	<u>46</u>	MOTION for Partial Summary Judgment by Plaintiff Bank of America, N.A., Counter Defendant Bank of America, N.A.. Responses due by 9/6/2017. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G) (Bodoff, Rebekkah) (Entered: 08/16/2017)
08/16/2017	<u>47</u>	MOTION to Stay re <u>46</u> Motion for Partial Summary Judgment, <i>Partial Pending Ruling</i> by Plaintiff Bank of America, N.A., Counter Defendant Bank of America, N.A.. (Bodoff, Rebekkah) (Entered: 08/16/2017)
08/18/2017	<u>48</u>	RESPONSE to <u>43</u> Motion for Summary Judgment, filed by Plaintiff Bank of America, N.A.. Replies due by 9/1/2017. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H)(Bodoff, Rebekkah) (Entered: 08/18/2017)
09/01/2017	<u>49</u>	REPLY to Response to <u>43</u> Motion for Summary Judgment filed by Defendant Peccole Ranch Community Association. (Dunkley, Peter) (Entered: 09/01/2017)
09/06/2017	<u>50</u>	RESPONSE to <u>46</u> Motion for Partial Summary Judgment,, filed by Defendant Saticoy Bay, LLC Series 9720 Hitching Rail. Replies due by 9/20/2017. (Attachments: # <u>1</u> Exhibit) (Geisendorf, Charles) (Entered: 09/06/2017)

09/06/2017	<u>51</u>	MOTION Countermotion for Relief Under Fed.R.Civ.P 56(d) by Defendant Saticoy Bay, LLC Series 9720 Hitching Rail. Responses due by 9/20/2017. (Attachments: # <u>1</u> Exhibit) (Geisendorf, Charles) (Entered: 09/06/2017)
09/06/2017	<u>52</u>	RESPONSE to <u>46</u> Motion for Partial Summary Judgment,, filed by Defendant Peccole Ranch Community Association. Replies due by 9/20/2017. (Attachments: # <u>1</u> Exhibit A) (Dunkley, Peter) (Entered: 09/06/2017)
09/20/2017	<u>53</u>	NOTICE of Appearance by attorney Karen A Whelan on behalf of Plaintiff Bank of America, N.A.. (Whelan, Karen) (Entered: 09/20/2017)
09/20/2017	<u>54</u>	REPLY to Response to <u>46</u> Motion for Partial Summary Judgment, filed by Plaintiff Bank of America, N.A.. (Whelan, Karen) (Entered: 09/20/2017)
10/17/2017	<u>55</u>	MINUTE ORDER IN CHAMBERS of the Honorable Magistrate Judge Carl W. Hoffman, on 10/17/2017. IT IS ORDERED that <u>47</u> Bank of America's Motion for Partial Stay Pending Ruling on Its Motion for Partial Summary Judgment, which is unopposed, is GRANTED. (Copies have been distributed pursuant to the NEF - LAA) (Entered: 10/17/2017)
11/27/2017	<u>56</u>	NOTICE <i>Of Change Of Address</i> by Bank of America, N.A., Bank of America, N.A.. (Whelan, Karen) (Entered: 11/27/2017)
01/22/2018	<u>57</u>	ORDER granting in part and denying in part ECF No. <u>51</u> Rule 56(d) Motion; action temporarily stayed until resolution of the certified question in Nev. S. Ct. Case No. 72931; parties are permitted to conduct limited discovery on whether actual notice was provided; parties are directed to file (2) status reports within 5 days from completion of said discovery and 5 days from resolution of certified question; denying without prejudice ECF Nos. <u>43</u> Motion for Summary Judgment and <u>46</u> Motion for Partial Summary Judgment and may be refiled within (30) days from the date the stay is lifted. Signed by Judge Miranda M. Du on 1/22/2018. (Copies have been distributed pursuant to the NEF - KW) (Entered: 01/22/2018)
04/03/2018	<u>58</u>	Joint STATUS REPORT by Plaintiff Bank of America, N.A.. (Whelan, Karen) (Entered: 04/03/2018)
05/02/2018	<u>59</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Miranda M. Du on 5/2/2018. Please take notice that Judge Du has made changes to her Civil Standing Order. The most current Civil Standing Order is posted on the U.S. District Court, District of Nevada public website and may be accessed directly via this hyperlink: www.nvd.uscourts.gov (no image attached) (Copies have been distributed pursuant to the NEF - PAV) (Entered: 05/02/2018)
07/30/2018	<u>60</u>	MOTION to Substitute Attorney Michael F. Bohn in for Attorney Charles L. Geisendorf by Counter Claimant Saticoy Bay, LLC Series 9720 Hitching Rail, Defendant Saticoy Bay, LLC Series 9720 Hitching Rail. (Bohn, Michael) (Entered: 07/30/2018)
07/31/2018	<u>61</u>	ORDER granting ECF No. <u>60</u> Motion to Substitute Attorney Michael F. Bohn in for Attorney Charles L. Geisendorf on behalf of Saticoy Bay, LLC Series 9720 Hitching Rail. Signed by Magistrate Judge Carl W. Hoffman on 7/31/2018.(Copies have been distributed pursuant to the NEF - LH) (Entered: 07/31/2018)
08/07/2018	<u>62</u>	Joint STATUS REPORT by Plaintiff Bank of America, N.A.. (Whelan, Karen) (Entered: 08/07/2018)

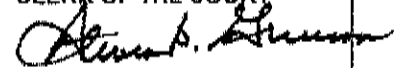
JA087

08/09/2018	<u>63</u>	ORDER LIFTING STAY OF THE CASE. The Court has reviewed the Status Report (ECF No. <u>62</u>) submitted by the parties as ordered in the order staying case (ECF No. <u>57</u> .) The stay is lifted. Signed by Judge Miranda M. Du on 8/9/2018. (no image attached) (Copies have been distributed pursuant to the NEF - PAV) (Entered: 08/09/2018)
09/04/2018	<u>64</u>	PROPOSED Discovery Plan/Scheduling Order by Plaintiff Bank of America, N.A. [<i>Proposed Joint Stipulated Discovery Plan / Amended Scheduling Order</i>] (Whelan, Karen) (Entered: 09/04/2018)
09/05/2018	<u>65</u>	SCHEDULING ORDER pursuant to ECF No. <u>64</u> Proposed Discovery Plan/Scheduling Order. Discovery due by 11/30/2018 . Dispositive Motions due by 1/2/2019 . Proposed Joint Pretrial Order due by 2/1/2019 . Signed by Magistrate Judge Carl W. Hoffman on 9/5/2018. (Copies have been distributed pursuant to the NEF - KW) (Entered: 09/06/2018)
09/06/2018	<u>66</u>	NOTICE PURSUANT TO LOCAL RULE IB 2-2: In accordance with 28 USC § 636(c) and FRCP 73, the parties in this action are provided with a link to the "AO 85 Notice of Availability, Consent, and Order of Reference - Exercise of Jurisdiction by a U.S. Magistrate Judge" form on the Court's website - www.nvd.uscourts.gov . AO 85 Consent forms should NOT be electronically filed. Upon consent of all parties, counsel are advised to manually file the form with the Clerk's Office. (A copy of form AO 85 has been mailed to parties not receiving electronic service.) NOTICE OF GENERAL ORDER 2013-1 AND OPPORTUNITY FOR EXPEDITED TRIAL SETTING: The parties in this action are provided with a link to General Order 2013-1 and the USDC Short Trial Rules on the Court's website - www.nvd.uscourts.gov . If the parties agree that this action can be ready for trial within 180 days and that a trial of this matter would take 3 days or less, the parties should consider participation in the USDC Short Trial Program. If the parties wish to be considered for entry into the Court's Short Trial Program, they should execute and electronically file with USDC Short Trial Form 4(a)(1) or Form 4(a)(2). (no image attached) (KW) (Entered: 09/06/2018)
10/09/2018	<u>67</u>	MOTION to remove attorney Charles L. Geisendorf from the Electronic Service List in this case by Counter Claimant Saticoy Bay, LLC Series 9720 Hitching Rail, Defendant Saticoy Bay, LLC Series 9720 Hitching Rail. (Geisendorf, Charles) (Entered: 10/09/2018)
10/11/2018	<u>68</u>	ORDER granting ECF No. <u>67</u> Motion to remove attorney Charles L. Geisendorf from the Electronic Service List in this case. Signed by Magistrate Judge Carl W. Hoffman on 10/11/2018. (Copies have been distributed pursuant to the NEF - LH) (Entered: 10/11/2018)
12/28/2018	<u>69</u>	MOTION to remove attorney Karen A. Whelan Esq. and Rebekkah B. Bodoff Esq. from the Electronic Service List in this case by Plaintiff Bank of America, N.A.. (Wittig, Donna) (Entered: 12/28/2018)
01/02/2019	<u>70</u>	MOTION for Summary Judgment by Defendant Peccole Ranch Community Association. Responses due by 1/23/2019. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F) (Dunkley, Peter) (Entered: 01/02/2019)
01/02/2019	<u>71</u>	MOTION for Summary Judgment by Plaintiff Bank of America, N.A.. Responses due by 1/23/2019. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M) (Wittig, Donna) (Entered: 01/02/2019)
01/02/2019	<u>72</u>	MOTION for Summary Judgment by Defendant Saticoy Bay, LLC Series 9720 Hitching Rail. Responses due by 1/23/2019. (Attachments: # <u>1</u> Affidavit Iyad Haddad, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G, # <u>9</u> Exhibit H, # <u>10</u> Exhibit I, # <u>11</u> Exhibit J, # <u>12</u> Exhibit K, # <u>13</u> Exhibit L, # <u>14</u> Exhibit M) (Bohn, Michael) (Entered: 01/02/2019)

01/03/2019	<u>73</u>	ORDER granting ECF No. <u>69</u> Motion to Remove Attorneys Karen A. Whelan Esq. and Rebekkah B. Bodoff Esq. from Electronic Service List. Signed by Magistrate Judge Carl W. Hoffman on 1/3/2019.(Copies have been distributed pursuant to the NEF - DRM) (Entered: 01/03/2019)
01/22/2019	<u>74</u>	RESPONSE to <u>71</u> Motion for Summary Judgment, by Defendant Peccole Ranch Community Association. Replies due by 2/5/2019. (Dunkley, Peter) (Entered: 01/22/2019)
01/23/2019	<u>75</u>	STIPULATION FOR EXTENSION OF TIME (First Request) <i>to Extend Opposition Deadlines to Motions for Summary Judgment</i> re <u>71</u> Motion for Summary Judgment, <u>72</u> Motion for Summary Judgment, <u>70</u> Motion for Summary Judgment, by Plaintiff Bank of America, N.A.. (Wittig, Donna) (Entered: 01/23/2019)
01/23/2019	<u>76</u>	ORDER granting ECF No. <u>75</u> Stipulation : Response/Opposition to ECF Nos. <u>70</u> , <u>71</u> , <u>72</u> Motions for Summary Judgment due by 2/6/2019. Signed by Judge Miranda M. Du on 1/23/2019. (Copies have been distributed pursuant to the NEF - DRM) (Entered: 01/24/2019)
02/04/2019	<u>77</u>	REPLY to Response to <u>71</u> Motion for Summary Judgment, by Plaintiff Bank of America, N.A.. (Wittig, Donna) (Entered: 02/04/2019)
02/06/2019	<u>78</u>	RESPONSE to <u>71</u> Motion for Summary Judgment, by Defendant Saticoy Bay, LLC Series 9720 Hitching Rail. Replies due by 2/20/2019. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C) (Bohn, Michael) (Entered: 02/06/2019)
02/06/2019	<u>79</u>	RESPONSE to <u>72</u> Motion for Summary Judgment, by Plaintiff Bank of America, N.A.. Replies due by 2/20/2019. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B) (Wittig, Donna) (Entered: 02/06/2019)
02/06/2019	<u>80</u>	RESPONSE to <u>70</u> Motion for Summary Judgment, by Plaintiff Bank of America, N.A.. Replies due by 2/20/2019. (Wittig, Donna) (Entered: 02/06/2019)
02/19/2019	<u>81</u>	STIPULATION FOR EXTENSION OF TIME (First Request) <i>for the Parties to File Replies</i> re <u>71</u> Motion for Summary Judgment, <u>72</u> Motion for Summary Judgment, <u>70</u> Motion for Summary Judgment, by Plaintiff Bank of America, N.A.. (Wittig, Donna) (Entered: 02/19/2019)
02/20/2019	<u>82</u>	ORDER granting ECF No. <u>81</u> Stipulation to Extend the Parties' Deadline to File Replies to ECF Nos. <u>70</u> / <u>71</u> / <u>72</u> Motions for Summary Judgment. Replies due by 3/6/2019 . Signed by Judge Miranda M. Du on 2/20/2019. (Copies have been distributed pursuant to the NEF - KW) (Entered: 02/21/2019)
03/04/2019	<u>83</u>	REPLY to <u>80</u> Response by Defendant Peccole Ranch Community Association. (Dunkley, Peter) Modified on 3/4/2019 add link to motion <u>70</u> (WJ). (Entered: 03/04/2019)
03/04/2019	<u>84</u>	CLERK'S NOTICE Regarding Local Rule IC 2-2(d). ECF No. <u>83</u> was not filed pursuant to LR IC 2-2(d). Documents must be linked to the document to which they pertain in the electronic filing system. The Clerk has modified the entry to properly establish the docket-entry relationship. Attorney is advised to properly link all further filed documents. (no image attached) (WJ) (Entered: 03/04/2019)
03/06/2019	<u>85</u>	REPLY to Response to <u>72</u> Motion for Summary Judgment, by Defendant Saticoy Bay, LLC Series 9720 Hitching Rail. (Bohn, Michael) (Entered: 03/06/2019)
03/06/2019	<u>86</u>	REPLY to Response to <u>71</u> Motion for Summary Judgment, by Plaintiff Bank of America, N.A.. (Attachments: # <u>1</u> Exhibit A) (Wittig, Donna) (Entered: 03/06/2019)
03/19/2019	<u>87</u>	ORDERED that Plaintiff's motion for summary judgment (ECF No. <u>71</u>) is granted as to Plaintiff's first claim for relief. The Court declares that Plaintiff's DOT survived the HOA

		Sale and continues to encumber the Property. Plaintiff's remaining claims are dismissed as moot. It is further ordered that the HOA's motion for summary judgment (ECF No. <u>70</u>) is denied as moot . It is further ordered that Saticoy Bay's motion for summary judgment (ECF No. <u>72</u>) is denied as moot . The Clerk of Court is directed to enter judgment in Plaintiff's favor on its first claim for relief, and on Saticoy Bay's quiet title counterclaim, in accordance with this order, and close this case. Signed by Judge Miranda M. Du on 3/19/2019. (Copies have been distributed pursuant to the NEF - DRM) (Entered: 03/20/2019)
03/20/2019	<u>88</u>	JUDGMENT in favor of Plaintiff, Bank of America, N.A.. Signed by Clerk of Court Debra K. Kempf on 3/20/2019. (Copies have been distributed pursuant to the NEF - DRM) (Main Document 88 replaced on 3/20/2019 to correct caption typo) (DRM). (Entered: 03/20/2019)

PACER Service Center			
Transaction Receipt			
04/29/2019 14:28:28			
PACER Login:	lnpc3910:2669458:0	Client Code:	
Description:	Docket Report	Search Criteria:	2:16-cv-00660-MMD-CWH
Billable Pages:	12	Cost:	1.20



1 **OMD**
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DISTRICT COURT
CLARK COUNTY, NEVADA

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

14 Plaintiff,

15 vs.

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

Case No.: A-19-791797-C
Dept. No. XV

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OPPOSITION TO MOTION TO DISMISS

21 COMES NOW, Plaintiff, SATICOY BAY LLC SERIES 9720 HITCHING RAIL, by and
22 through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby presents its
23 Opposition to Defendant, Peccole Ranch Community Association's Motion to Dismiss (the
24 "HOA's Motion").

25 //

26 //

27 //

28 //

1 This Opposition is made and based upon the attached Memorandum of Points and Authorities,
2 the papers and pleadings on file herein, and any oral argument that this Honorable Court may
3 entertain at the time of hearing of this matter.

4 DATED this 2nd day of September, 2019

5 ROGER P. CROTEAU & ASSOCIATES, LTD.

6 /s/ Roger P. Croteau
7 ROGER P. CROTEAU, ESQ.
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9 2810 W. Charleston Blvd., Ste. 75
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11 (702) 254-7775
12 *Attorney for Plaintiff*

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **INTRODUCTION**

15 Nevada law, NRS 116 *et seq.*, governs the collection of assessments, charges, fines and
16 other sums that may be due in a common ownership interest community or homeowners'
17 association concerning real property that comprise the members of the homeowners' association.
18 In such a scheme, the developer generally establishes the Covenants, Conditions and Restrictions
19 ("CC&Rs"), along with the general governing documents that are recorded when the common-
20 interest community is formed and run with the real property so long as the homeowner's
21 association is in existence. The filing and recording of the CC&Rs establishes the priority date of
22 collection subject to NRS 116.3116. As such, homeowners' associations have the right to charge
23 real property owners within the common-interest community for assessments to cover the
24 homeowner's associations' expenses as outlined in the CC&Rs for maintaining, governing and/or
25 improving the community among other things. When the sums due pursuant to the CC&Rs are
26 not paid, such as assessments and other expenses, the homeowner's association under NRS 116
27 *et seq.* may impose a lien against the real property which it governs, and thereafter foreclose upon
28 that real property subject to the CC&Rs in a non-judicial foreclosure sale.

Though non-judicial foreclosure sales in the State of Nevada are generally governed by

1 NRS 107 *et seq.*; however, the legislature in 1991 enacted NRS 116, as amended, to specifically
2 address the special needs of homeowners' associations to enforce their liens against real property
3 owners in the common-interest community to ensure the survival of the homeowner's
4 association. Pursuant to NRS 116, certain unique modifications to the general statutory scheme
5 of NRS 107 *et seq.* were enacted by the legislature. It is the unique features of NRS 116 *et seq.*
6 that prompted Plaintiff's Complaint; specifically, the bifurcation of the Deed of Trust priority
7 into two pieces creating two very different legal and economic implications: (1) super-priority
8 and (2) sub-priority of the Deed of Trust secured by the real property.

9 In the pre-2015 version of NRS 116.3116 effective at the relevant time in this case, it
10 provides, in pertinent part:

11 NRS 116.3116 Liens against units for assessments.

12 1. The association has a lien on a unit for any construction penalty that is imposed
13 against the unit's owner pursuant to NRS 116.310305, any assessment levied
14 against that unit or any fines imposed against the unit's owner from the time the
15 construction penalty, assessment or fine becomes due. Unless the declaration
16 otherwise provides, any penalties, fees, charges, late charges, fines and interest
17 charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS
18 116.3102 are enforceable as assessments under this section. If an assessment is
19 payable in installments, the full amount of the assessment is a lien from the time
20 the first installment thereof becomes due.

21 2. A lien under this section is prior to all other liens and encumbrances on a unit
22 except:

23 (a) Liens and encumbrances recorded before the recordation of the declaration
24 and, in a cooperative, liens and encumbrances which the association creates,
25 assumes or takes subject to;

26 (b) A first security interest on the unit recorded before the date on which the
27 assessment sought to be enforced became delinquent or, in a cooperative, the first
28 security interest encumbering only the unit's owner's interest and perfected before
the date on which the assessment sought to be enforced became delinquent; and

(c) Liens for real estate taxes and other governmental assessments or charges
against the unit or cooperative.

The lien is also prior to all security interests described in paragraph (b) 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, unless federal

1 regulations adopted by the Federal Home Loan Mortgage Corporation or the
2 Federal National Mortgage Association require a shorter period of priority for the
3 lien. If federal regulations adopted by the Federal Home Loan Mortgage
4 Corporation or the Federal National Mortgage Association require a shorter period
5 of priority for the lien, the period during which the lien is prior to all security
6 interests described in paragraph (b) must be determined in accordance with those
7 federal regulations, except that notwithstanding the provisions of the federal
8 regulations, the period of priority for the lien must not be less than the 6 months
9 immediately preceding institution of an action to enforce the lien. This subsection
10 does not affect the priority of mechanics' or materialmen's liens, or the priority of
11 liens for other assessments made by the association.

12 * * *

13 In *SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408 (Nev. 2014) the Nevada Supreme
14 Court stated:

15 As to first deeds of trust, NRS 116.3116(2) thus splits an HOA lien into two
16 pieces, a superpriority piece and a subpriority piece. The superpriority piece,
17 consisting of the last nine months of unpaid HOA dues and maintenance and
18 nuisance-abatement charges, is "prior to" a first deed of trust. The subpriority
19 piece, consisting of all other HOA fees or assessments, is subordinate to a first
20 deed of trust. See *SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d at 411 ("SFR
21 Investments").

22 NRS 116.3116(2)(b) makes a homeowner's association's lien for assessments junior to a
23 Deed of Trust beneficiary's secured interest in the real property; with one limited exception,
24 provided for in NRS 116.3116(2)(c), a homeowner's association's lien is senior in priority to a
25 Deed of Trust beneficiary's secured interest "to the extent of any charges incurred by the
26 association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for
27 common expenses based on the periodic budget adopted by the association pursuant to NRS
28 116.3115 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). In
Nevada, when a homeowners association properly forecloses upon a lien containing a Super
Priority lien component, such foreclosure extinguishes a Deed of Trust. If the homeowner's
association does not properly foreclose on a Super Priority homeowner's association lien or the
Super Priority portion is paid before the foreclosure sale, the homeowner's association
foreclosure sale does not extinguish the Deed of Trust.

The facts as alleged in this Complaint create an issue of first impression in the State of
Nevada. As the court is aware, the statutory foreclosure scheme of NRS 116.3116 and related

1 sections creates unique bifurcated priority liens related to the Deed of Trust. Under NRS 107,
2 non-judicial foreclosure sales where the bidders at NRS 107 *et seq.* sales have available public
3 information regarding the priority of the deed of trust being foreclosed, the priority of the Deed
4 of Trust at the homeowner's association foreclosure sale cannot be determined by a bidder at the
5 homeowner's association foreclosure sale from a review of public information, record searches,
6 title reports or other means commonly and regularly relied upon by bidders in NRS 107 *et seq.*
7 sales.

8 Generally, foreclosure trustees in NRS 107 *et seq.* sales have no duty to the bidders of the
9 property being foreclosed upon. The body of common law has developed from the precept that
10 information exists in the public domain to conduct reasonable due diligence under the
11 circumstances to properly inform a potential bidder, however, that information is not available
12 under any circumstances to the bidder in a NRS 116 *et seq.* sale.

13 This case focuses on the duties and obligations owed by a homeowner's association by
14 and through its agent, the foreclosure trustee to inform the bidders at the foreclosure sale as to the
15 bifurcated status of the Deed of Trust secured by the property. The question is with or without
16 inquiry from an NRS 116 bidder and certainly to the actual purchaser of the homeowner's
17 foreclosure sale, does that homeowner's association and/or its foreclosure trustee have an
18 obligation of good faith and candor to the NRS 116 foreclosure bidders to disclose any attempted
19 and/or actual tender of the Super Priority lien amounts, thereby rendering the sale subject to the
20 Deed of Trust or not?

21 STATEMENT OF FACTS

- 22 1. Plaintiff, Saticoy Bay, LLC, Series 9720 Hitching Rail ("*Saticoy Bay*"), is the current
23 owner of real property located at 9720 Hitching Rail, Las Vegas Nevada 89117 (APN
24 163-06-110-095) (the "*Property*"). *Complaint* ¶2
- 25 2. Saticoy acquired title to the Property by Foreclosure Deed dated February 14, 2014, by
26 and through a homeowners association lien foreclosure sale conducted on February 14,
27 2014 ("*HOA Foreclosure Sale*"), by Nevada Association Services, Inc., ("*HOA Trustee*"),
28 on behalf of Peccole Ranch Community Association, ("*HOA*"). The Foreclosure Deed

- 1 was recorded in the Clark County Recorder's Office on February 18, 2014 ("*HOA*
2 *Foreclosure Deed*"). *Complaint* ¶3
- 3 3. Under Nevada law, homeowner's associations have the right to charge property owners
4 residing within the community assessments to cover the homeowner's associations'
5 expenses for maintaining or improving the community, among other things. *Complaint* ¶8
- 6 4. When the assessments are not paid, the homeowner's association may impose a lien
7 against real property which it governs and thereafter foreclose on such lien. *Complaint* ¶9
- 8 5. NRS 116.3116 makes a homeowner's association's lien for assessments junior to a first
9 deed of trust beneficiary's secured interest in the property, with one limited exception; a
10 homeowner's association's lien is senior to a deed of trust beneficiary's secured interest
11 "to the extent of any charges incurred by the association on a unit pursuant to NRS
12 116.310312 and to the extent of the assessments for common expenses based on the
13 periodic budget adopted by the association pursuant to NRS 116.3115 which would have
14 become due in the absence of acceleration during the 9 months immediately preceding
15 institution of an action to enforce the lien." NRS 116.3116(2)(c). *Complaint* ¶10
- 16 6. In Nevada, when a homeowners association properly forecloses upon a lien containing a
17 Super Priority lien component, such foreclosure extinguishes a first deed of trust.
18 *Complaint* ¶11
- 19 7. On or about April 25, 2003, Edna Scott, an unmarried woman (the "*Former Owner*")
20 refinanced the Property. Former Owner obtained a loan secured by the Property from
21 Republic Mortgage, LLC ("*Lender*"), that is evidenced by a deed of trust between the
22 Former Owner and Lender, recorded against the Property on April 30, 2003 ("*Loan*"), for
23 the loan amount of \$163,567.00 ("*Deed of Trust*"). The Deed of Trust provides that
24 Mortgage Electronic Registration Services ("*MERS*") is beneficiary, as nominee for
25 Lender and Lender's successors and assigns. The Deed of Trust was in the amount of
26 \$163,567.00, and the Deed of Trust was recorded in the Clark County Recorder's office
27 on April 30, 2003. *Complaint* ¶12
- 28 8. The Former Owner executed a Planned Unit Development Rider along with the Deed of

- 1 Trust on April 25, 2003. *Complaint ¶13*
- 2 9. On November 8, 2011, Republic Mortgage, LLC, assigned its beneficial interest by
- 3 Assignment of Deed of Trust to Bank of America, N.A. ("BANA" and/or "Lender") and
- 4 recorded the document in Clark County Recorder's Office on November 14, 2011.
- 5 *Complaint ¶14*
- 6 10. The Former Owner of the Property failed to pay to HOA all amounts due to pursuant to
- 7 HOA's governing documents. *Complaint ¶15*
- 8 11. Accordingly, on October 3, 2011, HOA Trustee, on behalf of HOA, recorded a Notice of
- 9 Delinquent Assessment Lien ("*HOA Lien*"). The HOA Lien stated that the amount due to
- 10 the HOA was \$1,434.04, as of September 28, 2011, plus continuing assessments, interest,
- 11 late charges, costs, and attorney's fees. *Complaint ¶16*
- 12 12. On December 29, 2011, HOA Trustee, on behalf of the HOA, recorded a Notice of
- 13 Default and Election to Sell Under Homeowners Association Lien ("*NOD*") against the
- 14 Property. The NOD stated the amount due to the HOA was \$2,660.78 as of December 27,
- 15 2011, plus continuing assessments, late fees, collection fees, interest and attorney's fees
- 16 and costs. *Complaint ¶17*
- 17 13. On or about December 4, 2013, after the NOD was recorded, BANA, through counsel
- 18 Miles, Bauer, Bergstrom & Winters, LLP ("*Miles Bauer*") contacted the HOA Trustee
- 19 and HOA via U.S. Mail and requested adequate proof of the super priority amount of
- 20 assessments by providing a breakdown of up to nine (9) months of common HOA
- 21 assessments in order for BANA to calculate the Super Priority Lien Amount in an
- 22 ostensible attempt to determine the amount the HOA Lien entitled to super priority
- 23 ("*Super Priority Lien Amount*"). *Complaint ¶18*
- 24 14. Miles Bauer requested the HOA arrears in an attempt to pay the Super Priority Lien
- 25 Amount of the HOA Lien. *Complaint ¶19*
- 26 15. Miles Bauer used a Statement of Account from HOA Trustee, for a different property in
- 27 the same HOA to determine an estimated payment of the Super Priority Lien Amount
- 28 good faith payoff. *Complaint ¶20*

- 1 16. On January 10, 2014, BANA, through Miles Bauer, provided a payment of \$585.00 to the
2 HOA Trustee, which included payment of up to nine months of delinquent assessments
3 (the "Attempted Payment"). *Complaint ¶21*
- 4 17. HOA Trustee, on behalf of the HOA, rejected BANA's Attempted Payment of
5 \$585.00. *Complaint ¶22*
- 6 18. On January 23, 2014, HOA Trustee, on behalf of the HOA, recorded a Notice of Sale
7 against the Property ("NOS"). The NOS provided that the total amount due the HOA was
8 \$6,614.20 and set a sale date for the Property of February 14, 2014, at 10:00 A.M., to be
9 held at Nevada Association Services. *Complaint ¶23*
- 10 19. On February 14, 2014, HOA Trustee then proceeded to non-judicial foreclosure sale on
11 the Property and recorded the HOA Foreclosure Deed on February 18, 2014, which stated
12 that the HOA Trustee sold the HOA's interest in the Property to the Plaintiff at the HOA
13 Foreclosure Sale for the highest bid amount of \$51,500.00. *Complaint ¶24*
- 14 20. The Foreclosure Sale created excess proceeds. *Complaint ¶25*
- 15 21. After the Notice of Default was recorded, BANA, the purported holder of the Deed of
16 Trust recorded against the Property, through its counsel, Miles Bauer, contacted HOA
17 Trustee and HOA and requested all amounts due the HOA by the Former Owners, upon
18 information and belief, Miles Bauer requested the sums due to the HOA by the Former
19 Owners so it could calculate the breakdown of up to nine (9) months of common HOA
20 assessments in order for BANA to calculate the Super Priority Lien Amount in an
21 ostensible attempt to determine the amount of the HOA Lien entitled to Super Priority
22 over the Deed of Trust. *Complaint ¶26*
- 23 22. In none of the recorded documents, nor in any other notice recorded with the Clark
24 County Recorder's Office, did HOA and/or HOA Trustee specify or disclose that any
25 individual or entity, including but not limited to BANA, had attempted to pay any portion
26 of the HOA Lien in advance of the HOA Foreclosure Sale. *Complaint ¶27*
- 27 23. Plaintiff appeared at the HOA Foreclosure Sale and presented the prevailing bid in the
28 amount of \$51,500.00, thereby purchasing the Property for said amount. *Complaint ¶28*

- 1 24. Neither HOA nor HOA Trustee informed or advised the bidders and potential bidders at
2 the HOA Foreclosure Sale, either orally or in writing, that any individual or entity had
3 attempted to pay the Super Priority Lien Amount. *Complaint ¶29*
- 4 25. As of the HOA Foreclosure Sale, the debt owed to Lender by the Former Owner of the
5 Property pursuant to the Loan secured by the Deed of Trust significantly exceeded the fair
6 market value of the Property at the time of the HOA Foreclosure Sale. *Complaint ¶30*
- 7 26. Lender alleges that its Attempted Payment of the Super Priority Lien Amount served to
8 satisfy and discharge the Super Priority Lien Amount, thereby changing the priority of the
9 HOA Lien vis a vis the Deed of Trust. *Complaint ¶31*
- 10 27. Lender alleges that as a result of its Attempted Payment of the Super Priority Lien
11 Amount, the purchaser of the Property, the Plaintiff, at the HOA Foreclosure Sale
12 acquired title to the Property subject to the Deed of Trust. *Complaint ¶32*
- 13 28. If the bidders and potential bidders at the HOA Foreclosure Sale were aware that an
14 individual or entity had attempted to pay the Super Priority Lien Amount and/or by means
15 of the Attempted Payment prior to the HOA Foreclosure Sale and that the Property was
16 therefore ostensibly being sold subject to the Deed of Trust, the bidders and potential
17 bidders would not have bid on the Property. *Complaint ¶33*
- 18 29. Had the Property not been sold at the HOA Foreclosure Sale, HOA and HOA Trustee
19 would not have received payment, interest, fees, collection costs and assessments related
20 to the Property and these sums would have remained unpaid. *Complaint ¶34*
- 21 30. HOA Trustee acted as an agent of HOA. *Complaint ¶35*
- 22 31. HOA is responsible for the actions and inactions of HOA Trustee pursuant to the doctrine
23 of respondeat superior. *Complaint ¶36*
- 24 32. HOA and HOA Trustee conspired together to hide material information related to the
25 Property: the HOA Lien; the Attempted Payment of the Super Priority Lien Amount; the
26 rejection of such payment or Attempted Payment; and the priority of the HOA Lien vis a
27 vis the Deed of Trust, from the bidders and potential bidders at the HOA Foreclosure
28 Sale. *Complaint ¶37*

- 1 33. The information related to any Attempted Payment or payments made by Lender, BANA,
2 the homeowner or others to the Super Priority Lien Amount was not recorded and would
3 only be known by BANA, Lender, the HOA and HOA Trustees. *Complaint ¶38*
- 4 34. HOA and HOA Trustee conspired to withhold and hide the aforementioned information
5 for their own economic gain and to the detriment of the bidders and potential bidders at
6 the HOA Foreclosure Sale. *Complaint ¶39*
- 7 35. It was Plaintiff's practice and procedure that when it would attend NRS 116 sales, by and
8 through its Trustee, at all times relevant to this case, the Trustee would attempt to
9 ascertain whether anyone had attempted to or did tender any payment regarding the
10 homeowner association's lien, including but not limited to the Attempted Payment. *See*
11 Declaration of Eddie Haddad attached hereto as Exhibit 1, and incorporated herein by
12 reference (the "*Declaration*").
- 13 36. At all time relevant to this matter, if the Plaintiff had learned of a "tender" either having
14 been attempted or made, the Plaintiff would not purchase the Property offered in that
15 HOA Foreclosure Sale. *See Declaration.*
- 16 37. BANA first disclosed the Attempted Payment by BANA/Lender to the HOA Trustee in
17 BANA's Complaint, filed on March 25, 2016, and served on the Plaintiff after March 25,
18 2016 ("*Discovery*") in the United States District Court Case No. 2:16-cv-00660 (the
19 "*Case*"). *Complaint ¶40, See Exhibit 2.*

20 PROCEDURAL BACKGROUND

21 In the Case, BANA sued the HOA, the HOA Trustee and Saticoy Bay. In the Case,
22 Lender brought claims for Quiet Title / Declaratory Judgment against all Defendants, Breach of
23 NRS 116.1113 against the HOA and HOA Trustee, Wrongful Foreclosure against the HOA and
24 HOA Trustee, and Injunctive Relief against Saticoy Bay. *See Exhibit 2.* Saticoy counterclaimed
25 against the Lender for quiet title and declaratory relief claims. Saticoy did not elect to sue the
26 HOA and/or the HOA Trustee in the Case. None of the allegations set forth in this Complaint
27 would require a compulsory claim by Saticoy in the Case against the HOA and/or HOA Trustee.
28 Saticoy filed this Complaint on March 26, 2019 to preserve its three (3) year statute of limitations

1 pursuant to NRS 11.190 (a) - (d). The Case Court upheld BANA's tender by the Attempted
2 Payment and determined that the Deed of Trust survived.

3 LEGAL ARGUMENT

4 A. STATEMENT OF THE LAW

5 A complaint should not be dismissed for insufficiency, for failure to state a cause of
6 action, unless it appears to a certainty that the Plaintiff is entitled to no relief under any set of
7 facts which could be proven in support of the claim. *Zalk-Josephs Co. V. Wells Cargo, Inc.*, 81
8 Nev. 163,400 P.2d 621 (1965). On a motion to dismiss for failure to state a claim for relief, the
9 trial court, and the Supreme Court must draw every fair intendment in favor of the plaintiff.
10 *Merluzi v. Larson*, 96 Nev. 409, 610 P.2d 739 (1980), overruled on the other grounds, 106 Nev.
11 568, 796 P.2d 592 (1990). When tested by a subdivision (b)(5) motion to dismiss for failure to
12 state a claim upon which relief can be granted the allegations of the complaint must be accepted
13 as true. *Hynds Plumbing & Heating Co. V. Clark County School District*, 94 Nev. 776, 587 P.2d
14 131 (1978). A trial court may dismiss a complaint **only if it appears to a certainty that a**
15 **plaintiff can prove no set of facts which would entitle him to relief**; all allegations pled must
16 be accepted as true. *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993) (Emphasis added).
17 In the event that a motion asserting N.R.C.P. §12(b)(5) presents matters outside the pleading
18 which are not excluded by the court, the motion shall be treated as one for summary judgment
19 and disposed of as provided in N.R.C.P. §56. See N.R.C.P. §12(b).

20 Pursuant to N.R.C.P. §56, two substantive requirements must be met before a Court may
21 grant a motion for summary judgment: (1) there must be no genuine issue as to any material fact;
22 and, (2) the moving party must be entitled to judgment as a matter of law. *Fyssakis v. Knight*
23 *Equipment Corp.*, 108 N.v. 212, 826 P.2d 570 (1992). Summary judgment is appropriate under
24 NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits,
25 if any, that are properly before the court demonstrate that no genuine issue of material fact exists,
26 and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway*, 121 NEV.
27 Adv. Op. 73, 121 P.3d 1026 (October, 2005) citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev.
28 at 713, 57 P.3d at 87 (2003). In deciding whether these requirements have been met, the Court

1 must first determine, in the light most favorable to the non-moving party "whether issues of
2 material fact exist, thus precluding judgment by summary proceeding." *National Union Fire Ins.*
3 *Co. of Pittsburgh v. Pratt & Whitney Canada, Inc.*, 107 Nev. 535, 815 P.2d 601, 602 (1991).

4 The Nevada Supreme Court has indicated that Summary Judgment is a drastic remedy
5 and that the trial judges should exercise great care in granting such motions. *Pine v. Leavitt*, 84
6 Nev. 507, 445 P.2d 942 (1968); *Oliver v. Barrick Goldstrike Mines*, 111 Nev. 1338, 905 P.2d
7 168 (1995). "Actions for declaratory relief are governed by the same liberal pleading standards
8 that are applied in other civil actions." See *Breliant v. Preferred Equities Corp.*, 109 Nev. 842,
9 846, 858 P.2d 1258, 1260-61 (1993). "The formal sufficiency of a claim is governed by NRCP
10 8(a), which requires only that the claim, shall contain (1) a short and plain statement of the claim
11 showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to
12 which he deems himself entitled." See *id.* (quoting NRCP 8(a)).

13 Based upon the facts asserted in Plaintiff's Complaint, which must be taken as true, the
14 Court should deny the HOA's Motion. Further, should the Court conclude that the HOA's
15 Motion should be evaluated as a Motion for Summary Judgment or Partial Summary Judgment,
16 the Court should also deny the HOA's Motion as genuine issues of material fact remain and
17 Defendants are not entitled to judgment as a matter of law.

18 **B. SATICOY'S CLAIMS ARE NOT SUBJECT TO DISMISSAL FOR LACK OF**
19 **MEDIATION PURSUANT TO NRS 38.310**

20 Saticoy's allegations in the Complaint relate to matters up to and including Saticoy's
21 purchase of the Property at the HOA Foreclosure Sale. Saticoy's allegations as pled in the
22 Complaint include four (4) causes of action: (1) Intentional, or alternatively, Negligent
23 Misrepresentation; (2) NRS 116.1113 Breach of Duty of Good Faith and Candor; (3) Civil
24 Conspiracy among the HOA and the HOA Trustee; and (4) Violation of NRS 113, *et seq.*
25 Against Defendants. These allegations do not implicate the mediation provisions of NRS 38.310.
26 The provisions of NRS 38.310 provides as follows:

27 1. No civil action based upon a claim relating to:

28 (a) The interpretation, application or enforcement of any covenants, conditions
or restrictions applicable to residential property or any bylaws, rules or regulations

1 adopted by an association; or

2 (b) The procedures used for increasing, decreasing or imposing additional
3 assessments upon residential property, may be commenced in any court in this
4 State unless the action has been submitted to mediation or, if the parties agree, has
5 been referred to a program pursuant to the provisions of NRS 38.300 to 38.360,
6 inclusive, and, if the civil action concerns real estate within a planned community
7 subject to the provisions of chapter 116 of NRS or real estate within a
8 condominium hotel subject to the provisions of chapter 116B of NRS, all
9 administrative procedures specified in any covenants, conditions or restrictions
10 applicable to the property or in any bylaws, rules and regulations of an association
11 have been exhausted.

12 2. A court shall dismiss any civil action which is commenced in violation of
13 the provisions of subsection 1.

14 NRS 38.300 provides that:

15 1. "Assessments" means:

16 (a) Any charge which an association may impose against an owner of
17 residential property pursuant to a declaration of covenants, conditions and
18 restrictions, including any late charges, interest and costs of collecting the
19 charges; and

20 (b) Any penalties, fines, fees and other charges which may be imposed by an
21 association pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS
22 116.3102 or subsections 10, 11 and 12 of NRS 116B.420.

23 3. "Civil action" includes an action for money damages or equitable relief. The
24 term does not include an action in equity for injunctive relief in which there is an
25 immediate threat of irreparable harm, or an action relating to the title to
26 residential property.

27 5. "Program" means a program established by the Division under which a
28 person, including, without limitation, a referee or hearing officer, can render
29 decisions on disputes relating to:

30 (a) The interpretation, application or enforcement of any covenants, conditions
31 or restrictions applicable to residential property or any bylaws, rules or regulations
32 adopted by an association; or

33 (b) The procedures used for increasing, decreasing or imposing additional
34 assessments upon residential property.

35 Emphasis added.

36 The prohibition of filing a civil action absent a mediation pursuant to NRS 38.310 relate
37 to two (2) types of claims against the HOA. The first type of a "civil action" that must be
38 mediated relates to the "interpretation, application or enforcement of the CC&R's that has
39 nothing to do with the allegations of this Complaint. As pled, Saticoy alleges that the HOA by

1 and through the HOA Trustee as its agent, intentionally or negligently misrepresented at the time
2 of the HOA Foreclosure Sale that no tender of the Super Priority Lien Amount and/or Attempted
3 Payment had occurred. Saticoy does not require an interpretation of the CC&R's, but it does ask
4 this Court to interpret the statutory and common law mandates pursuant to NRS 116 concerning
5 its misrepresentation claim and NRS 116.1113 claim for good faith and candor in the
6 performance of obligations and its duties. In addition, the Court will be required to determine if
7 NRS 113.130 and NRS 113 *et seq.* generally mandates that the HOA and the HOA Trustee
8 provide disclosures as discussed further herein.

9 The second type of claim that requires mediation pursuant to NRS 38.310 are claims
10 based upon the "procedures used for increasing, decreasing or imposing additional
11 assessments..." that has nothing to do with the claims raised in this Complaint.

12 Finally, NRS 38.300(3) provides that a "civil action" is not deemed to be an action
13 relating to the title to residential property. Though the damages alleged by Saticoy are related to
14 the Deed of Trust not being extinguished, it is analogous in the sense that the Property is over
15 encumbered and subject to foreclosure by the Lender pursuant to the unextinguished Deed of
16 Trust based upon the Attempted Payment.

17 Contrary to the HOA's allegations that the Court lacks subject matter jurisdiction, NRS
18 38.310 is not applicable to the instant litigation and does not divest the Court of jurisdiction in
19 this case. The Court does not need to even review the CC&Rs to adjudicate the claims in this
20 case, it must look to NRS 116 *et seq.* and NRS 113 *et seq.* to interpret the statute and the
21 common law. In the thousands of cases brought during the period when the courts have toiled
22 with interpreting NRS 116, Plaintiff is unaware of any previous assertion of NRS 38.300 *et seq.*
23 as a bar or even as needing a mandated premediation before filing a civil action.

24 The HOA cites *McKnight Family, LLP v. Adept Mgmt.*, 310 P.3d 555, 129 Nev. 610
25 (Nev. 2013), as controlling in this case. The *McKnight* holding was based upon a lien for
26 delinquent assessments that allegedly was improperly calculated and wrongfully asserted by the
27 HOA and did require interpretation of the CC&R's since it was a dispute "under NRS 116 after a
28 dispute over allegedly unpaid assessments." *Id* at 557. In *McKnight*, the Court noted that "an

1 action is exempt from the NRS 38.310 requirements if the action relates to an individual's right
2 to possess his or her property." *Id* at 558. *McKnight* citing *Hamm v. Arrowcreek Homeowner's*
3 *Assn*, 124 Nev. 290, 183 P.3d 895(2008), stated that in *Hamm* the Court "determined that a threat
4 of foreclosure constitutes a danger of irreparable harm because the land is unique." *McKnight* at
5 558 (quoting *Hamm* at 297).

6 In *McKnight*, the claims all emanated from the failure of the unit owner to pay
7 assessments and the homeowner's association's subsequent foreclosure of the Property against a
8 homeowner/member of the homeowner's association. The negligence claims in *McKnight*
9 concerned the payments Mr. McKnight made to the homeowner's association. *Id* at 558. Mr.
10 McKnight's breach of contract claims related to the obligations and duties set forth in the
11 homeowner's association's CC&Rs. *Id*. Mr. McKnight and homeowner's association are parties
12 to the CC&R's and do have a contractual relationship. The allegations of this Complaint do not
13 sound in breach of contract as the alleged misconduct occurred during the sale, pursuant to
14 violations of statutes. Mr. McKnight also brought a wrongful foreclosure action based upon the
15 dispute regarding unpaid assessments, but that claim was based upon the homeowner's
16 association's failure to adhere with the provisions of the CC&Rs, and in that circumstance would
17 be governed by NRS 38.310. For all matters raised in this Complaint, Saticoy was not a party to
18 the CC&Rs until the HOA Foreclosure Sale was completed. The Compliant does not seek
19 damages from its involvement with the HOA or governing CC&Rs, but to matters leading up to
20 and including the HOA Foreclosure Sale.

21 The Court is asked in this case to interpret the mandates of NRS 116.1113 and NRS
22 113.130 and their related sections along with common law to determine if the HOA Trustee, as
23 agent for the HOA, had a duty to third-party bidders at the Foreclosure Sale to disclose any
24 "tender" of the Super Priority Lien Amount and/or Attempted Payment to the HOA Trustee
25 and/or the HOA or their respective obligations to provide the mandated disclosures under NRS
26 113.130 that would obligate the HOA and HOA Trustee to disclose relevant information to
27 Saticoy Bay. NRS 38.310 is not implicated in the allegations of this Complaint. Also of note,
28 NRS 38.310 is simply not applicable to the allegations against the HOA Trustee.

1 **C. THE HOA HAS A DUTY TO DISCLOSE THE ATTEMPTED PAYMENT TO**
2 **THE PURCHASER AT AN HOA FORECLOSURE SALE**

3 The Defendants have a duty to disclose the Attempted Payment to a Purchaser at the
4 HOA Foreclosure Sale pursuant to NRS 116.1113 and NRS 113.130. At the time and place of
5 the HOA Foreclosure Sale, the HOA, by and through its agent, the HOA Trustee, enters into a
6 sale contract by the function of the auction conducted by the HOA. Inherently, the material
7 aspects of the factors affecting the lien priority of the secured debt that are only known solely to
8 the HOA, HOA Trustee, Lender and BANA are material to the HOA Lien being foreclosed upon
9 and must be disclosed to the HOA Foreclosure Sale bidders. To infer otherwise, would destroy
10 the statutory scheme of NRS 116 sales.

11 The disclosure of the Attempted Payment to Saticoy Bay is a material fact that the HOA
12 and HOA Trust were obligated to disclose to the Plaintiff. As the Supreme Court of Nevada
13 provided in *Noonan v. Bayview Loan Servicing, LLC*, 2019 Nev. Unpub. LEXIS 428 p. 2-3, 438
14 P.3d 335, 2019 WL 1552690 (April 8, 2019, Nevada):

15 Finally, the Noonans challenge the district court's summary judgment in favor of
16 Hampton & Hampton Collections, LLC, on their negligent misrepresentation and
17 deceptive trade practices claims. Summary judgment was inappropriate on the
18 negligent misrepresentation claim because Hampton neither made an affirmative
19 false statement nor omitted a material fact it was bound to disclose. See *Hulerow,*
20 *Inc. v. Eighth Judicial Dist. Court*, 129 Nev 394, 400, 302 P.2d 1148, 1153
21 (2013) (providing the elements for a negligent misrepresentation claim); *Nelson v.*
22 *Heer*, 123 Nev. 217, 225, 163 P.3d. 420, 426 (2007) ("[The suppression or
23 omission of material fact which a party is bound in good faith to disclose is
24 equivalent to a false representation." (internal quotation marks omitted)).
25 Compare NRS 116.31162(1)(b)(3)(II) (2017) (requiring an HOA to disclose if
26 tender of the superpriority portion of the lien has been made), with NRS
27 116.31162 (2013)¹ (not requiring any such disclosure). The Noonans' deceptive
28 trade practices claim fails under NRS 598.092(8) for the same reason.

29 In this case, Plaintiff has alleged that it attempted to ascertain whether any tender
30 payment of any type, including the Attempted Payment, was made by any party to the HOA
31 and/or HOA Trustee before the HOA Foreclosure Sale, without any success. The Noonan court
32 stated that the "...Hampton neither made an affirmative false statement nor omitted a material
33 fact it was bound to disclose." *Id.* The *Noonan* decision rendered a factual determination on a

¹This was the version of the statute in place at the time of the HOA Foreclosure Sale.

1 material fact question of whether Hampton & Hampton made "an affirmative false statement nor
2 omitted a material fact it was bound to disclose" in the case. Like *Noonan*, the facts of this case
3 require such a factual determination that precludes dismissal. The *Noonan* court does not
4 consider the arguments reviewed and presented herein on NRS 116.1113 and NRS 113.130 and
5 its analysis.

6 In *Bank of America, N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113; 2018 Nev. LEXIS 73;
7 134 Nev. Adv. Rep. 72 (2018), the Nevada Supreme Court determined that a tendering bank has
8 no obligation to disclose but that is not the case with the HOA and the HOA Trustee. *In Bank of*
9 *America, N.A.*, the Court addressed the issue of whether the bank, the party making the tender,
10 had a duty to record a partial reconveyance or other recorded document to be placed in the chain
11 of title to the property of its secured lien to acknowledge the tender by the bank. *Id.* The Court
12 opined as follows:

13 NRS 111.315 states that "[e]very conveyance of real property, and every
14 instrument of writing setting forth an agreement to convey any real property, or
15 whereby any real property may be affected, proved acknowledged and certified in
16 the manner prescribed in this chapter . . . shall be recorded . . ." NRS 111.010
17 defines conveyance as "every instrument in writing, except a last will and
18 testament . . . by which any estate or interest in lands is created, alienated,
19 assigned or surrendered." Thus, when an interest in land is created, alienated,
20 assigned, or surrendered, the instrument documenting the transaction must be
21 recorded.

22 By its plain text, NRS 111.315 does not apply to Bank of America's tender.
23 Tendering the superpriority portion of an HOA lien does not create, alienate,
24 assign, or surrender an interest in land. Rather, it preserves a pre-existing interest,
25 which does not require recording. See Baxter Dunaway, *Interests and*
26 *Conveyances Outside Acts—Recordable Interests*, 4 L. of Distressed Real Est. §
27 40:8 (2018) ("[D]ocuments which do not create or transfer interests in land are
28 often held to be nonrecordable; the records, after all, are not a public bulletin
board."). SFR's argument that the tender was an instrument affecting real property
is unpersuasive. NRS 111.315 pertains to written instruments "setting forth an
agreement . . . whereby any real property may be affected . . . in the manner
prescribed in this chapter . . ." (Emphasis added.) NRS Chapter 111 governs the
creation, alienation, assignment, or surrendering of property interests, and their
subsequent recording. Bank of America's tender did not bring about any of these
actions, and therefore did not affect the property as prescribed in NRS Chapter
111. Accordingly, NRS 111.315 did not require Bank of America to record its
tender.

NRS 106.220 provides that "[a]ny instrument by which any mortgage or deed of
trust of, lien upon or interest in real property is subordinated or waived as to
priority, must . . . be recorded . . ." The statute further states that "[t]he instrument
is not enforceable under this chapter or chapter 107 of NRS unless and until it is

1 recorded." HN10 NRS Chapter 106 does not define instrument as used in NRS
2 106.220, but Black's Law Dictionary defines the term as "[a] written [*120] legal
3 document that defines rights, duties, entitlements, or liabilities, such as a statute,
4 contract, will, promissory note, or share certificate." Instrument, Black's Law
5 Dictionary (10th ed. 2014). Thus, NRS 106.220 applies when a written legal
6 document subordinates or waives the priority of a mortgage, deed of trust, lien, or
7 interest in real property.

8 The changes in the lien priority caused by Bank of America's tender do not invoke
9 NRS 106.220's recording requirements. Generally, the creation and release of a
10 lien cause priority changes in a property's interests as a result of a written legal
11 document. But Bank of America's tender cured the default and prevented
12 foreclosure as to the superpriority portion of the HOA's lien by operation of law.
13 Sec. NRS 116.3116; 53 C.J.S. Liens § 14 (2017) ("A statutory lien is created and
14 defined by the legislature. The character, operation and [*12] extent of a
15 statutory lien are ascertained solely from the terms of the statute."). NRS Chapter
16 116's statutory scheme allows banks to tender the payment needed to satisfy the
17 superpriority portion of the HOA lien and maintain its senior interest as the first
18 deed of trust holder. NRS 116.3116(1)-(3); see also Unif. Common Interest
19 Ownership Act (UCIOA) § 3-116 cmt. (amended 2008), 7 pt. 2 U.L.A. 124 (2009)
20 ("As a practical matter, secured lenders will most likely pay the [9] months'
21 assessments demanded by the association rather than having the association
22 foreclose on the unit."). Thus, under the split-lien scheme, tender of the
23 superpriority portion of an HOA lien satisfies that portion of the lien by operation
24 of law. Because the lien is not discharged by using an instrument, NRS Chapter
25 106 does not apply. *Bank of America, N.A.*, 427 P.3d 119-120.

26 The concept dealt with by the Court in *Bank of America, N.A.* was that the bank need do nothing
27 other than pay the Super Priority Lien Amount portion of the HOA Lien to preserve its interest as
28 nothing changes at that point for the bank. In other words, the HOA Lien is not an event that
occurs to divest the bank of its security interest in the Property if it pays the superpriority portion
of the HOA Lien. The party that needs to acknowledge the Attempted Payment is the HOA and
HOA Trustee as they are offering the Property for sale to the bidders at the HOA Foreclosure
Sale.

29 **D. DEFENDANTS FAILED TO CONDUCT THEIR OBLIGATIONS IN GOOD**
30 **FAITH UNDER NRS 116.1113.**

31 The Court should deny the HOA's Motion, because Plaintiff's Complaint adequately
32 states claims for relief consistent with their obligation of good faith, honesty-in-fact, reasonable
33 standards of fair dealing and candor pursuant to NRS §116.1113 and NRS 113.130. The HOA
34 argues that Plaintiff fails to cite to any provision within NRS Chapter 116 that contains an
35 obligation or duty of good faith to the Purchaser, thus alleging that NRS §116.1113 is not
36 implicated. However, Plaintiff respectfully disagrees. NRS §116.1113 is not only implicated but

1 clearly governs the parties' performance. Even if claims under NRS 113.130 are deemed to not
2 be timely filed, the mandates of NRS 113.130 constitute a breach of the HOA Foreclosure Deed
3 referencing that the HOA Trustee "has complied with all requirements of law, including but not
4 limited to..." See Exhibit D to the HOA's Motion.

5 NRS §116.1113 provides, "[e]very contract or duty governed by this chapter imposes an
6 obligation of good faith in its performance or enforcement." NRS 116.1113 provides that in
7 every contract or duty governed by [NRS 116] the actions of the HOA and the HOA Trustee
8 leading up to and including the HOA Foreclosure Sale provide that a duty of good faith regarding
9 the HOA's performance in its enforcement of the provisions included in NRS Chapter 116
10 constitute the foreclosure sale and selling the Property to a purchaser that will eventually be a
11 member of the HOA. Plaintiff alleges that the HOA and the HOA Trustee's actions were not
12 conducted in good faith. See Complaint. Plaintiff further alleges that the HOA and the HOA
13 Trustee intentionally and/or negligently misrepresented the conditions present at the time it
14 conducted the HOA Foreclosure Sale. See Complaint.

15 The duties of good faith and fair dealing go hand and hand with the duty of candor. For
16 example, the Restatement (Second) of Contracts, § 205, expressly provides that "every contract
17 imposes upon each party a duty of good faith and fair dealing in its performance and in its
18 enforcement." Restat. 2d of Contracts, § 205 (2nd 1981). Comment (d) to Section 205 further
19 suggests: "fair dealing may require more than honesty." Accordingly, the duty of candor is an
20 integral component of the duty of fair dealing. Though a contract interpretation, it has application
21 in the HOA Foreclosure Sale.

22 Nevada's HOA lien statute, NRS Chapter 116.3116, is modeled after the Uniform
23 Common Interest Ownership Act of 1982 (hereinafter "*UCIOA*"), § 3-116, 7 U.L.A., part II
24 121-24 (2009) (amended 1994, 2008), which Nevada adopted in 1991, see NRS 116.001. The
25 purpose of the UCIOA is "to make uniform the law with respect to the subject of this chapter
26 among states enacting it." NRS 116.1109(2). *See Carrington Mortg. Holdings, LLC v. R*
27 *Ventures VIII, LLC*, 419 P.3d 703, 2018 Nev. LEXIS 47, 134 Nev. Adv. Rep. 46, 2018 WL
28 3015114 (Nev. 2018).

1 In *Carrington Mortg. Holdings, LLC*, 419 P.3d at 705, the Nevada Supreme Court made
2 clear that it would turn to case law from other jurisdictions to support its conclusions interpreting
3 the UCOIA. The Nevada courts should follow the lead set by Minnesota in holding that the
4 UCOIA imposed the duty of fair dealing which encompasses the duty of candor. For example,
5 the Minnesota Appeals Court stated that, under the Minnesota Common Interest Ownership Act,
6 which is likewise modeled after the UCOIA just as Nevada's NRS 116 *et seq.* good faith "means
7 observance of two standards: 'honesty in fact', and observance of reasonable standards of fair
8 dealing." *Horodenski v. Lyndale Green Townhome Ass'n, Inc.*, 804 N.W.2d 366, 373 (Minn.
9 App. 2011) (quoting UCOIA, 1982, § 1-113 & cmt.). See *Dean v. CMPJ Enters., LLC*, 2018
10 Minn. App. Unpub. LEXIS 642, 2018 WL 3614146 (Minn. App. 2018).

11 Turning the UCOIA with comments from the drafters of the UCOIA; the UCOIA
12 provided comment to the provision at issue herein as follows:

13 **SECTION 1-113. OBLIGATION OF GOOD FAITH.** Every contract or duty
14 governed by this [act] imposes an obligation of good faith in its performance or
enforcement.

15 **Comment**

16 This section sets forth a basic principle running throughout this Act: in transactions
17 involving common interest communities, good faith is required in the performance
18 and enforcement of all agreements and duties. Good faith, as used in this Act, means
19 observance of two standards: "honesty in fact," and observance of reasonable
standards of fair dealing. While the term is not defined, the term is derived from and
used in the same manner as in Section 1-201 of the Uniform Simplification of Land
Transfers Act, and Sections 2-103(i)(b) and 7-404 of the Uniform Commercial Code.

20 Section 1-113 of the UCOIA became NRS 116.1113 verbatim. It is clear that the authors
21 of the UCOIA intended the definition of "good faith" to include two (2) standards: (1) honest-in-
22 fact, and (2) observance of reasonable standards of fair dealing. As other jurisdictions have
23 addressed these issues an obligation of candor has been adopted by other jurisdictions that have
24 adopted the UCOIA.

25 The Nevada courts should further follow the lead of Delaware in recognizing that the
26 duty of fair dealing obviously includes the duty of candor. The Delaware courts have concluded
27 that part of "fair dealing" is the obvious duty of candor.

28 Part of fair dealing is the obvious duty of candor. Moreover, one possessing superior
knowledge may not mislead any stockholder by use of corporate information to which the

latter is not privy. *Lank v. Steiner*, Del. Supr., 43 Del. Ch. 262, 224 A.2d 242, 244 (1966). Delaware has long imposed this duty even upon persons who are not corporate officers or directors, but who nonetheless are privy to matters of interest or significance to their company.

See *Weinberger v. Uop*, 457 A.2d 701, (Del. 1983); see also, *Brophy v. Cities Service Co.*, Del. Ch., 31 Del. Ch. 241, 70 A.2d 5, 7 (Del. 1949).

Part of fair dealing is the obvious duty of candor. *Lynch v. Vickers Energy Corp.*, Del. Supr., 383 A.2d 278, 281 (Del. 1977) (*Lynch I*). See also, *Weinberger v. Uop*, 457 A.2d 701, 710, 1983 Del. LEXIS 371, *26 (Del. 1983). The duty of candor is one of the elementary principles of fair dealing. See *Mills Acquisition Co. v. MacMillan, Inc.*, 559 A.2d 1261, 1989 Del. LEXIS 149, Fed. Sec. L. Rep. (CCH) P94,401 (Del. 1989). See also, *Holten v. Std. Parking Corp.*, 98 F. Supp. 3d 444, 2015 U.S. Dist. LEXIS 39152 (Conn. 2015). Compare *Osowski v. Howard*, 2011 WI App 155, ¶ 17, 337 Wis. 2d 736, 807 N.W.2d 33 (WI App. Ct. 2011) where the Wisconsin Appeals Court noted that the duty of fair dealing is a guarantee by each party that he or she "will not intentionally and purposely do anything to prevent the other party from carrying out his or her part of the agreement, or do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." See *Osowski v. Howard*, 2011 WI App 155, ¶ 17, 337 Wis. 2d 736, 807 N.W.2d 33. See also, *Tang v. C.A.R.S. Prot. Plus, Inc.*, 2007 WI App 134, ¶41, 301 Wis. 2d 752, 734 N.W.2d 169 (quoting *Metropolitan Ventures, LLC v. GEA Assocs.*, 2006 WI 71, ¶35, 291 Wis. 2d 393, 717 N.W.2d 58).

Moreover, the official comments by the drafters of the UCIOA provide important guidance in construing NRS §116.1113. See *Chase Plaza Condo. Ass'n v. JP Morgan Chase Bank, N.A.*, 98 A.3d 166, 175, 2014 D.C. App. LEXIS 317, *20-21 (D.C. 2014). See generally, e.g., *Alvord Inv., LLC v. Zoning Bd. of Appeals*, 282 Conn. 393, 920 A.2d 1000, 2007 Conn. LEXIS 193; *Cantonbury Heights Condominium Assn., Inc. v. Local Land Development, LLC*, 273 Conn. 724, 739-40, 873 A.2d 898 (2005); *W & D Acquisition, LLC v. First Union National Bank*, 262 Conn. 704, 712-13, 817 A.2d 91 (2003); *Platt v. Aspenwood Condo. Ass'n, Inc.*, 214 P.3d 1060, 1063-64 (Colo. App. 2009) (relying on drafters' comments to UCOIA for guidance in

1 interpreting state statute modeled on UCOIA; "We accept the intent of the drafters of a uniform
2 act as the [legislature's] intent when it adopts that uniform act.") (internal quotation marks
3 omitted); *Hunt Club Condos., Inc. v. Mac-Gray Servs., Inc.*, 2006 W1 App 167, 295 Wis. 2d 780,
4 721 N.W.2d 117, 123-25 (Wis. Ct. App. 2006)(official and published comments are "valid
5 indicator" of legislature's intent in enacting corresponding statute); *Univ. Commons Riverside*
6 *Home Owners Ass'n v. Univ. Commons Morgantown, LLC*, 230 W. Va. 589, 741 S.E.2d 613,
7 2013 W. Va. LEXIS 264 *16; *Will v. Mill Condo. Owners' Ass'n*, 2004 VT 22, 176 Vt. 380, 848
8 A.2d 336, 2004 Vt. LEXIS 26 (turned to commentary to interpret state statute modeled on
9 UCOIA). In the present matter, UCIOA § 1-113 cmt (1982) explicitly imposes a duty of good
10 faith, which includes the duty of candor, and this Court should rely upon the comment consistent
11 with the above cited case law.

12 Simply put, the HOA and/or the HOA Trustee could have made a simple announcement
13 that unequivocally stated that the Property was being sold subject to the Deed of Trust to all
14 potential bidders present and/or interested in bidding on the Property at the time of the HOA
15 Foreclosure Sale or even disclosed the Attempted Payment. Conversely, the HOA Trustee could
16 have disclosed that the Super Priority Lien Amount had been satisfied prior to the HOA
17 Foreclosure Sale by the Attempted Payment or at least provide information to the potential
18 bidders of the HOA Trustee's rejection of the Attempted Payment, but it did not. Neither the
19 HOA nor the HOA Trustee did so. The HOA or the HOA Trustee could have provided notice to
20 all potential bidders, and/or the public at large, in their actions leading up to the HOA
21 Foreclosure Sale, such as including a phrase concerning the absence of any Super Priority portion
22 of the HOA Lien being foreclosed upon within any and/or all of the notices recorded against the
23 Property and/or advertising the sale, or it would have announced that fact at the sale. Similarly,
24 neither the HOA nor the HOA Trustee did so, as that would have had the effect of chilling the
25 sale.

26 At the time of the HOA Foreclosure Sale, only three parties knew of BANA's Attempted
27 Payment; specifically, the HOA, the HOA Trustee and BANA/Lender. Moreover, these same
28 parties knew of BANA's subsequent attempt to satisfy the Super Priority piece of the HOA Lien

1 via the letter from Miles Bauer to the HOA. This letter was sent directly to the HOA Trustee and
2 in response to the HOA's recording of the NOD, in this case. Arguably, the HOA and the HOA
3 Trustee knew that the Attempted Payment may be deemed to have satisfied the HOA Lien, which
4 was determined to extinguish any Super Priority Lien Amount piece of the HOA Lien. The HOA
5 and the HOA Trustee knew that fact and intentionally failed to disclose that material fact to the
6 bidders at the HOA Foreclosure Sale. Frankly, the HOA and HOA Trustee knew or should have
7 known that such an omission would drastically affect the outcome of the HOA Foreclosure Sale.
8 The Lender/BANA had no duty to disclose the Attempted Payment, but the HOA and the HOA
9 Trustee did. An intentional failure to disclose BANA's Attempted Payment had the effect of
10 causing the Property to sell at the HOA Foreclosure Sale. Therefore, Plaintiff has alleged that the
11 HOA and the HOA Trustee conspired together to intentionally withhold information regarding
12 BANA's Attempted Payment of the HOA Lien that effectively defraud the public and/or
13 potential bidders concerning the HOA Foreclosure Sale.

14 The purpose underlying NRS 116 is to remove a nonperforming homeowner (meaning a
15 homeowner not paying his/her HOA dues) from a property and to replace him/her with a
16 performing homeowner, thereby relieving the homeowners association and its members of the
17 burden of paying the obligations of the nonperforming individual. To accept the HOA's
18 contention that it did not intentionally or negligently misrepresent the HOA Foreclosure Sale by
19 omitting the Attempted Payment by Lender of the Super Priority Lien Amount of the HOA Lien,
20 with at a minimum an announcement, and that it was under no contract or duty to operate under
21 good faith and with candor to disclose such a material fact when asked by potential bidders as
22 mandated by NRS 116 *et seq* and/or NRS 113 *et seq.*, would serve to emasculate NRS 116's
23 mandate of good faith and render it completely meaningless and ineffective. Why would any
24 person or entity purchase a property at an HOA foreclosure sale knowing that he or she would
25 thereafter be stripped of ownership of the property upon foreclosure by a secured lender? Such a
26 foreclosure could conceivably take place days or weeks after the HOA foreclosure sale. In the
27 vast majority of cases, the answer to this question is quite simply that he or she would not. Thus,
28 lacking any market for the sale of real property securing HOA liens, the homeowners

1 associations and their members would be forced to continue to support those homeowners who
2 choose not to pay their HOA dues. Indeed, the homeowners association would not have any
3 reason to even credit bid the HOA lien at the time of sale. If the homeowners association were to
4 carry out a sale and acquire the subject property for a credit bid, there would still be no party
5 paying the HOA dues. Furthermore, the homeowners association would thereafter be required to
6 pay for taxes, insurance and other maintenance related to the property. The payment of these
7 expenses would constitute a further burden for the homeowners association and its members that
8 they can ill afford.

9 The plain language of NRS 116.1113 does not limit the good faith obligation to those in
10 contractual privity. The HOA and/or HOA Trustee are not given authority to conceal material
11 facts from potential bidders in their efforts to sell the real property to reap the sale proceeds to
12 fund their foreclosure expenses.

13 The obligations of good faith under NRS 116.1113 applies to a "Purchaser" at the
14 foreclosure sale. NRS 116.31166(3) provides that title vests in the Purchaser:

15 NRS 116.31166 Foreclosure of liens: Effect of recitals in deed; **purchaser** not
16 responsible for proper application of purchase money; title vested in **purchaser**
17 without equity or right of redemption.

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

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

21 (b) The clapsing of the 90 days; and

22 (c) The giving of notice of sale,
23 are conclusive proof of the matters recited.

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

28 3. The sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests
in the **purchaser** the title of the unit's owner without equity or right of
redemption. (Emphasis added).

Purchaser is defined under NRS 116.31166 as follows:

NRS 116.079 "Purchaser" defined. "Purchaser" means a person, other than a
declarant or a dealer, who by means of a voluntary transfer acquires a legal or
equitable interest in a unit other than a leasehold interest (including options to
renew) of less than 20 years, or as security for an obligation.

The relationship of the HOA Trustee as an agent for the HOA created a new contract at the HOA Foreclosure Sale for the sale of a "unit" to a "Purchaser" that as a result of its purchase shall become a member of the HOA. If it is not a contract then it is in performance of the HOA and HOA Trustee's duties pursuant to NRS 116 *et seq.*

In the foreclosure section of NRS 116.3116 to NRS 116.3118, the term Purchaser refers to purchasers at an HOA Foreclosure Sale in addition to direct sales and as such the obligation of good faith under NRS 116.1113 operates to encompass a successful bidder. NRS 116.1108 provides for the application of general principles of law to the HOA Foreclosure Sale and the Purchaser as stated below:

NRS 116.1108 Supplemental general principles of law applicable. The principles of law and equity, including the law of corporations, the law of unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter.

NRS 116.1108 actually cites the issues raised in the Complaint as "supplemental general principles of law applicable" to NRS 116 *et seq.* The concepts of "law and equity," "law of real property," "principal and agent," "fraud, misrepresentation," "mistake" are all at the basis of the claims asserted in the Complaint. Additionally, Saticoy incorporates the arguments regarding NRS 113 *et seq.* disclosures as further violations by the HOA and HOA Trustee of their good faith and candor obligations.

E. SATICOY BAY RELIED UPON THE RECITAL - THE HOA FORECLOSURE DEED

The HOA Foreclosure Sale was performed pursuant to NRS 116.31162 - NRS 116.31168, Plaintiff reasonably relied upon the recitals included in the HOA Foreclosure Deed that stated that the foreclosure was in compliance with NRS 116, *et seq.* See *Nationstar Mortg., LLC v. SFR Investments Pool 1, LLC, No. 70653*, 2017 Nev. App. Unpub. LEXIS 229, 2017 WL 1423938, at *2 (Nev. App. Apr. 17, 2017) ("And because the recitals were conclusive evidence, the district court did not err in finding that no genuine issues of material fact remained regarding whether the foreclosure sale was proper and granting summary judgment in favor of SFR.").

1 Therefore, pursuant to *SFR Investments*, NRS 116.3116, and the recorded Foreclosure Deed in
2 favor of SFR, the foreclosure sale was proper and extinguished the Deed of Trust. *Bank of Am.,*
3 *N.A. v. Sonrisa Homeowners Ass'n.*, 2018 U.S. Dist. LEXIS 118720 (July 17, 2018). *Id.*

4 Here, Plaintiff had no reason to question the recitals contained in the HOA Foreclosure
5 Deed and recorded documents. The foreclosure of the HOA Lien is presumably valid based upon
6 the recitations in the HOA Foreclosure Deed. In *Nationstar Mortgage*, the Nevada Supreme
7 Court explained the foreclosure procedure:

8 A trustee's deed reciting compliance with the notice provision of NRS 116.31162
9 through NRS 116.31168 "is conclusive" as to the recitals "against the unit's
10 former owner, his or her heirs and assigns, and all other persons." NRS
11 116.31166(2). And, "[t]he sale of a unit pursuant to NRS 116.31162, 116.31163
and 116.31164 vests in the purchaser the title of the unit's owner without equity
or right of redemption." NRS 116.31166(3).

12 *Id.* at 411-412. (Emphasis added.) As such, there would have been no reason to question the
13 legitimacy of the foreclosure sale based exclusively upon the recorded documents. At foreclosure
14 sales conducted pursuant to NRS 116, bidders, potential bidders and buyers do not have access to
15 any more information than is recorded. Plaintiff's reliance on the recitals in the Foreclosure Deed
16 was reasonable and foreseeable. Specifically, the HOA Foreclosure Deed asserted that the HOA
17 Trustee complied with "all requirements of law, including, but not limited to..." is a
18 representation and warranty, but it did not. See Exhibit 3.

19 However, Defendant's lack of good faith and candor in conducting the HOA Foreclosure
20 Sale was not immediately evident. It was concealed. It was only upon receipt of the Case on the
21 Discovery, as asserted in the Complaint, that Plaintiff discovered the facts giving rise to its
22 Complaint. Accordingly, application of the discovery rule tolls the statute of limitations and
23 Plaintiff's claims are filed timely and are not time barred.

24 The Plaintiff relied upon the recitals contained within the HOA Foreclosure Deed. Under
25 Nevada law, the HOA foreclosure sale and the resulting foreclosure deed are both presumed valid.
26 NRS 47.250(16)-(18) (stating that disputable presumptions exist "that the law has been obeyed"
27 "that a trustee or other person, whose duty it was to convey real property to a particular person,
28

1 has actually conveyed to that person, when such presumption is necessary to perfect the title of
2 such person or a successor in interest"; "that private transactions have been fair and regular"; and
3 "that the ordinary course of business has been followed."). Accordingly, the Plaintiff possessed a
4 good faith belief that the HOA and/or the HOA Trustee's actions taken in the ordinary course of
5 business had been followed, and that the HOA Foreclosure Sale was fair and regular.

6 Here, Plaintiff is the Purchaser from the HOA Foreclosure Sale. The HOA and/or the
7 HOA Trustee's actions leading up to and at the HOA Foreclosure Sale intentionally obstructed
8 Plaintiff's opportunity to conduct its own due diligence regarding the Property, and ultimately
9 affected Plaintiff's decision whether to actually submit a bid on the Property or not. Had Plaintiff
10 known that it was purchasing the Property subject to the Deed of Trust, Plaintiff never would have
11 submitted a bid in the first place, thus avoiding this entire controversy. See Declaration.

12 Neither the HOA nor the HOA Trustee ever disclosed that Lender had in fact provided the
13 Attempted Payment of the HOA Lien to the HOA Trustee. As a result, the Plaintiff could not have
14 discovered on its own whether or not the Property was being sold subject to the Deed of Trust
15 without either first commencing a quiet title action against Lender or having the Lender file suit.

16 The 2015 Legislature did revise NRS 116 to codify what the case law has interpreted. For
17 example, the jurisdictions utilizing the UCOIA have determined that candor is an additional
18 requirement implicitly contained in the good faith mandate of NRS 116.1113. Prior to the
19 amendments to NRS 116 in 2015, the HOA and the HOA Trustee were required to be truthful in
20 their contracts and duties and to follow the law as set forth in NRS 116 *et seq.* and NRS 113 *et*
21 *seq.* The 2015 amendments just made a bright line for the parties to rely upon by mandating that
22 HOA/HOA Trustee record a substitution of the Super Priority Lien Amount.

23
24 **F. SATICOY'S CLAIMS FOR MISREPRESENTATION/FRAUD AND VIOLATION**
25 **OF NRS 113, 130 ARE VIABLE CLAIMS AND DO NOT FAIL AS A MATTER OF**
26 **LAW**

27 The HOA intentionally/negligently made the determination not to disclose the Attempted
28 Payment despite its actual knowledge to the contrary known only to the HOA, HOA Trustee and
Lender. In *Foster v. Dingwall*, 126 Nev.56, 69 227 P.3d 1042,1052, 2010 LEXIS 5, 26, 126 Nev.

1 Adv. Rep. 6 (2010), the court defined that elements of intentional misrepresentation as:

2 Intentional misrepresentation is established by three factors: (1) a false
3 representation that is made with either knowledge or belief that it is false or
4 without a sufficient foundation, (2) an intent to induce another's reliance, and (3)
5 damages that result from this reliance.

6 With respect to the false representation element, the suppression or omission "of a
7 material fact which a party is bound in good faith to disclose is equivalent to a false
8 representation, since it constitutes an indirect representation that such fact does not
9 exist." And, with respect to the damage element, this court has concluded that the
10 damages alleged must be proximately caused by reliance on the original
11 misrepresentation or omission. Proximate cause limits liability to foreseeable
12 consequences that are reasonably connected to both the defendant's
13 misrepresentation or omission and the harm that the misrepresentation or omission
14 created.

15 The Court in *Foster* provided that the omission of a material fact such as the Lender's
16 Attempted Payment of the HOA Lien may be deemed to be a false representation which the
17 Defendants are bound by the mandates of NRS 116.1113 and NRS 113.130 to disclose to
18 potential bidders under the obligation and duty of good faith and candor, and should be obligated
19 to disclose upon reasonable inquiry from potential bidders at the HOA Foreclosure Sale. The
20 HOA Trustee conducting the sale that had actual knowledge of the Attempted Payment and other
21 certain material facts is an intentional omission in not disclosing the Attempted Payment that is
22 equivalent to a false representation under the facts of this case.

23 Saticoy has identified that the HOA, by and through its agent, the HOA Trustee,
24 intentionally did not disclose the Attempted Payment to Saticoy or the potential bidders at the
25 HOA Foreclosure Sale. Unlike NRS 107 *et seq.* sales, NRS 116 *et seq.* sales provide for a super
26 and sub-priority lien portion of the Deed of Trust. Absent of the recording of any notice of
27 payment of the Super Priority Lien Amount, as is mandated with the NRS 116 amendments in
28 2015, the only way Saticoy and/or potential bidders at the HOA Foreclosure Sale would know if
any party tendered the Super Priority Lien Amount and/or Attempted Payment is if the HOA
and/or the HOA Trustee informed the bidders of the Attempted Payment with or without inquiry
from potential bidders. It is clear from the facts of this case that the HOA Trustee was aware of
the Attempted Payment and its rejection by the HOA Trustee.

1 Since the HOA Trustee is the disclosed agent of the HOA, the HOA is imputed with
2 knowledge held by the HOA Trustee (See Complaint). In the foregoing allegations, Plaintiff sets
3 forth the duty, breach of that duty, improper purpose, failure to make a statement regarding the
4 Attempted Payment, the material omission of the Attempted Payment, the breach of the obligation
5 of good faith and candor, the failure to provide notice pursuant to NRS 113 *et seq.* and the
6 damages suffered by Saticoy. See Declaration.

7 In this case, the HOA is not guilty of a false representation, but it is guilty of intentionally
8 not disclosing a material fact regarding the payment of the Attempted Payment concerning the
9 Deed of Trust that it was required to do and thereby making a material omission of a fact subject
10 to this claim. As Mr. Haddad provided in his Declaration, he relied upon the non-disclosure of the
11 Attempted Payment to indicate that no tender had been attempted or accomplished.

12 The HOA and/or the HOA Trustee's actions leading up to and at the HOA Foreclosure
13 Sale intentionally obstructed Plaintiff's opportunity to conduct its own due diligence regarding the
14 Property and specifically the priority of the lien being foreclosed upon, and ultimately affected
15 Plaintiff's decision whether to actually submit a bid on the Property or not. See Plaintiff's
16 Complaint ¶¶ 28, 30, 31, 32, 34, 35, 36, 38, 39, 40, 41, 43, 44, 45, 47, 48, 49, 50, 51, 52, 56, 58,
17 59, 60, 62, 63, 64, 65, 66, and 67, See Exhibit 4. Had Plaintiff known that it was purchasing the
18 Property subject to the Deed of Trust, Plaintiff would have never submitted a bid in the first place,
19 thus avoiding this entire controversy. See Declaration. Plaintiff's Complaint adequately pleads
20 this fact and such fact must be taken as true in evaluating HOA's Motion. See Exhibit 4.

21 In the present case, at the time of the Foreclosure Sale, the HOA and HOA Trustee knew
22 that the Lender had made the Attempted Payment of the HOA Lien but did not inform the bidders.
23 Neither the HOA nor the HOA Trustee ever disclosed that Lender had in fact made the Attempted
24 Payment of the HOA Lien. Plaintiff's Complaint adequately pleads this fact as set forth herein.
25 See Exhibit 4.

26 At the time the Case was begun, Plaintiff believed that the Foreclosure Sale was conducted
27 properly pursuant to the Recitals in the Foreclosure Deed and that the Deed of Trust was
28

1 extinguished. As Mr. Haddad stated in his Declaration, he would attempt to inquire and ask if any
2 sums had been paid or offered to satisfy the Super Priority Lien Amount.

3 It is not Saticoy's duty to prove that the HOA Trustee believed it had a duty to disclose the
4 existence of the Attempted Payment and/or tender or believed that the rejection of the tender had
5 any impact on its statutory right to foreclose on its HOA Lien. It is Saticoy's claim that the HOA
6 and the HOA Trustee had a duty to the bidding public to disclose information known to it, so
7 Saticoy and the other bidders could decide whether to purchase the Property at the HOA
8 Foreclosure Sale. The HOA and HOA Trustee intentionally, whether on a mistaken belief or not
9 of the effectiveness of the tender, failed to disclose the Attempted Payment, so they would not
10 chill the sale of the Property for their own economic gain.

11 **G. AN HOA FORECLOSURE DEED DOES MAKE CERTAIN REPRESENTATIONS**
12 **REGARDLESS OF THE "WITHOUT WARRANTY" LIMITATION.**

13 Defendant argues that the Property was sold at the HOA Foreclosure Sale "without
14 warranty," pursuant to NRS 116.31164(3)(a)..." See HOA's Motion, page 13, lines 8-12. The
15 HOA and HOA Trustee have an obligation of good faith, candor and complying with "all
16 applicable law, including but not limited to..." at the time of the HOA Foreclosure Sale which
17 they collectively did not. The HOA Foreclosure Deed provides that "... Nevada Association
18 Services, Inc. [HOA Trustee] has complied with all requirements of law including, but not limited
19 to, the elapsing of 90 days, mailing of copies of the [HOA Lien] and [NOD] and the posting and
20 publication of the [NOS]." See Exhibit 4. It is Plaintiff's contention that the HOA and HOA
21 Trustee, as outlined in the HOA Foreclosure Deed, that the HOA and HOA Trustee did not
22 comply with all "requirements of law", and as a result breached its representations and warranties
23 contained in the HOA Foreclosure Deed. The HOA and HOA Trustee cannot intentionally
24 withhold information known only to Lender, the HOA and HOA Trustee that materially, adversely
25 affects, the Purchasers as defined under NRS 116 and NRS 113, Saticoy, as to the value and
26 nature of the bifurcated lien status of the Deed of Trust. Of matters not specifically known to the
27 HOA and HOA Trustee at the time of the HOA Foreclosure Sale that cannot be adduced by a
28

1 public records review as occurs in NRS 107 foreclosure sales, Plaintiff would concede that
2 Defendant would not be liable. However, in the instant case, the HOA and HOA Trustee are the
3 actual parties with the information regarding the Attempted Payment and had an obligation to
4 inform the Plaintiff. This fact alone constitutes sufficient proof that the HOA, by and through its
5 agent, the HOA Trustee, intentionally failed to disclose the Attempted Payment that it was
6 required to do pursuant to NRS 116.1113 and NRS 113.130.

7 The Defendants have a duty to disclose the Attempted Payment to a Purchaser, as defined
8 in NRS 116.079, at an HOA Foreclosure Sale pursuant to NRS 116.1113. At the time and place
9 of the HOA Foreclosure Sale, the HOA, by and through its agent, the HOA Trustee, enters into a
10 sale governed by a statute, NRS 116, by the function of the auction conducted by the HOA
11 Trustee. Inherently, the material aspects of the factors affecting the lien priority of the secured
12 debt that are only known solely to the HOA, HOA Trustee and Lender are material to the HOA
13 Lien being foreclosed upon and must be disclosed to the HOA Foreclosure Sale bidders. To infer
14 otherwise, would destroy the statutory scheme of NRS 116 sales.

15 A common argument among all parties to the HOA litigation has been the low prices
16 adduced at the HOA Foreclosure Sales for the real property sold. Typically, the low sales prices
17 have been driven by the mountain of litigation that has occurred over the last years seeking to
18 define the rights and obligations of the various parties. To hold that the HOA does not have a
19 duty to disclose information know only to the HOA and the HOA Trustee that materially affects
20 the value of what a willing buyer would be willing to pay for the real property offered at auction
21 that relates directly to the status and priority of the Deed of Trust. Essentially, the Defendants are
22 alleging that the HOA will sell to the highest cash bidder the real property without any way for the
23 bidder to know if it will acquire the real property free and clear of the Deed of Trust or subject
24 thereto. This would effectively forever destroy the HOA Foreclosure Sale process under NRS
25 116.3116.

26 As additional proof of the intentional/negligent misrepresentation, and its
27 misrepresentation in the HOA Foreclosure Deed that provides that the HOA and its HOA Trustee
28

1 complied with all requirements of law, the HOA and HOA Trustee are obligated to follow the
2 disclosures mandated by NRS 113 *et seq.* The HOA asserts that NRS 116 governs the foreclosure
3 and collection efforts of common-interest ownership communities and it does. NRS 113 is not
4 generally applicable to NRS 107 foreclosure sales but does have certain provisions that do apply
5 in NRS 107 foreclosure sales. By statute, NRS 113 is not exempted from NRS 116 foreclosure
6 sales, to the extent that the HOA and the HOA Trustee, as agent for the HOA, have specific
7 knowledge of the facts required for disclosure. If the legislature's intended to exempt NRS 116
8 sales from the mandates of NRS 113, it could have easily done so, but it did not! Pursuant to NRS
9 113, *et seq.*, the HOA and the HOA Trustee must disclose the Attempted Payment and/or any
10 payments made or attempted to be made by Lender, the Former Owner, or any agents of any other
11 party to the bidders and Plaintiff at the HOA Foreclosure Sale. NRS 113.130 provides as follows:

12 NRS 113.130 Completion and service of disclosure form before conveyance of
13 property; discovery or worsening of defect after service of form; exceptions;
14 waiver.

15 1. Except as otherwise provided in subsection 2:

16 (a) At least 10 days before residential property is conveyed to a purchaser:

17 (1) The seller shall complete a disclosure form regarding the residential
18 property; and

19 (2) The seller or the seller's agent shall serve the purchaser or the
20 purchaser's agent with the completed disclosure form.

21 (b) If, after service of the completed disclosure form but before conveyance of the
22 property to the purchaser, a seller or the seller's agent discovers a new defect in the
23 residential property that was not identified on the completed disclosure form or
24 discovers that a defect identified on the completed disclosure form has become
25 worse than was indicated on the form, the seller or the seller's agent shall inform
26 the purchaser or the purchaser's agent of that fact, in writing, as soon as practicable
27 after the discovery of that fact but in no event later than the conveyance of the
28 property to the purchaser. If the seller does not agree to repair or replace the defect,
the purchaser may:

(1) Rescind the agreement to purchase the property; or

(2) Close escrow and accept the property with the defect as revealed by the
seller or the seller's agent without further recourse.

2. Subsection 1 does not apply to a sale or intended sale of residential property:

(a) By foreclosure pursuant to chapter 107 of NRS.

(b) Between any co-owners of the property, spouses or persons related within the
third degree of consanguinity.

1 (c) Which is the first sale of a residence that was constructed by a licensed
2 contractor.

3 (d) By a person who takes temporary possession or control of or title to the
4 property solely to facilitate the sale of the property on behalf of a person who
5 relocates to another county, state or country before title to the property is
6 transferred to a purchaser.

7
8 3. A purchaser of residential property may not waive any of the requirements of
9 subsection 1. A seller of residential property may not require a purchaser to waive any of
10 the requirements of subsection 1 as a condition of sale or for any other purpose.

11 4. If a sale or intended sale of residential property is exempted from the requirements of
12 subsection 1 pursuant to paragraph (a) of subsection 2, the trustee and the beneficiary of
13 the deed of trust shall, not later than at the time of the conveyance of the property to the
14 purchaser of the residential property, or upon the request of the purchaser of the residential
15 property, provide:

16 (a) Written notice to the purchaser of any defects in the property of which the
17 trustee or beneficiary, respectively, is aware; and

18 (b) If any defects are repaired or replaced or attempted to be repaired or replaced,
19 the contact information of any asset management company who provided asset
20 management services for the property. The asset management company shall
21 provide a service report to the purchaser upon request.

22 5. As used in this section:

23 (a) "Seller" includes, without limitation, a client as defined in NRS 645H.060.

24 (b) "Service report" has the meaning ascribed to it in NRS 645H.150.

25 Emphasis added.

26 As used in NRS 113, the term "Defect" means a condition that materially affects the value
27 or use of the residential property in an adverse manner. NRS 113.100(1).

28 The HOA and HOA Trustee are required to and must provide a Seller's Real Property
Disclosure Form ("*SRPDF*") [attached hereto as Exhibit 5] to the "Purchaser" as defined in NRS
116, *et seq.*, at the time of the HOA Foreclosure Sale; however, if it is deemed to be exempted, it
still must provide information known to it at the time of the HOA Foreclosure Sale. NRS 116 *et*
seq. foreclosure sales are not exempt from the mandates of NRS 113 *et seq.*

To the extent known to the HOA, and the HOA Trustee, as the agent of the HOA, 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 5.

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 defined as a "defect" in NRS 113.100(1). In this case, if the Super Priority Lien Amount is paid, or if the Attempted Payment is rejected, causing the Property to be sold subject to the Deed of Trust, it would have a materially adverse affect on the overall value of the Property, and therefore, must be disclosed in the SRPDF by the HOA and the HOA Trustee at least by the HOA Foreclosure Sale.

Section 9(c) - (e) of the SRPDF would provide notice of any payments made by Lender or others on the HOA Lien.

Section 11 of the SRPDF generally deals with the disclosure of the condition of the title to the Property that would only be known by the HOA and the HOA Trustee.

Pursuant to Nevada Real Estate Division's ("NRED"), Residential Disclosure Guide (the

1 "Guide") [attached hereto as Exhibit 6], the Guide provides at page 20 that the HOA and HOA
2 Trustee shall provide the following to the purchaser/Saticoy at the HOA Foreclosure Sale:

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

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

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

- 15 • written notice of any defects of which the trustee or
16 beneficiary is aware

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

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

25 Pursuant to NRS 113.130(4), the HOA and HOA Trustee are required to provide the
26 information set forth in the SRPDF to Saticoy at the HOA Foreclosure Sale and no later than the
27 drop of the gavel.

28 The HOA and the HOA Trustee did not provide an SRPDF to the Plaintiff at the HOA
Foreclosure Sale nor did it provide any information orally. The foregoing demonstrates that the
HOA and the HOA Trustee had a duty and obligation to disclose the Attempted Payment to the
Purchaser, Saticoy at the HOA Foreclosure Sale. Failure to make the foregoing disclosures is a
breach of duty of good faith and candor and a duty owed by the HOA Trustee under NRS 116, *et*
seq. and NRS 113.130. The HOA and HOA Trustee's duty is codified pursuant to NRS 113 *et*

1 *seq.* and was breached in this case. In addition, until the Discovery in the Case, Plaintiff had no
2 way of knowing that the HOA and the HOA Trustee breached its obligations pursuant to NRS
3 113.130.

4 As a result of the HOA and HOA Trustee's failure and breach of their duty of good faith
5 and candor pursuant to NRS 116 in not disclosing the Attempted Payment and to provide Saticoy
6 with the mandated SRPDF and disclosures required therein that were known to the HOA and
7 HOA Trustee, Saticoy has been economically damaged.

8 **H. PLAINTIFF'S CIVIL CONSPIRACY CLAIM DOES NOT FAIL AS A**
9 **MATTER OF LAW**

10 The HOA hired the HOA Trustee as its collection agent, a disclosed agency by the HOA.
11 From the facts of this case, the HOA Trustee wanted to be paid its foreclosure fees and did so at
12 all costs to Saticoy. If the Property did not sell at the HOA Foreclosure Sale, the HOA Trustee
13 may not have been paid for its services.

14 The HOA is responsible for the acts of the HOA Trustee under the doctrine of respondent
15 superior. Any allegation by the HOA asserting that the HOA Trustee did not inform the HOA of
16 the Attempted Payment does not relieve it from liability under the facts of this case.

17 At a minimum, discovery will be required to develop the foregoing claims alleged by
18 Saticoy. The State of Nevada is a notice pleading jurisdiction, and Saticoy has alleged facts
19 sufficient to conduct discovery to ascertain the merits of the claim. To that end, Saticoy requests
20 NRCP 56(d) relief to conduct discovery in this matter to develop the factual evidence in this case,
21 not from the Case as the focus in this matter is different.

22 Saticoy filed its Complaint in this matter timely. It did so to preserve its claims against the
23 HOA and the HOA Trustee pursuant to NRS 11.190's three (3) year statute of limitations 11.190
24 (a) and (d). On March 19, 2019, the Case court ruled that the Property was sold at the HOA
25 Foreclosure Sale subject to the Deed of Trust. See Exhibit 7.

26 **H. SATICOY'S CLAIMS FOR SPECIAL DAMAGES WILL BE DETERMINED AT**
27 **TIME OF TRIAL**

28 The attorney fees and costs allegations as set forth in each cause of action references any

1 claims that may be able to be adduced from the discovery in this case and/or the CC&R's if the
2 HOA is successful in its argument under NRS 30.310. Pursuant to NRS 116.4117(6), "the court
3 may award reasonable attorney's fees to the prevailing party" if the matter is subject to the
4 CC&R's, which will be a factual determination by the Court.

5 **I. SATICOY'S CLAIMS FOR PUNITIVE DAMAGES ARE NOT PRECLUDED IN**
6 **THIS CASE**

7 As it relates to the HOA, punitive damages are allowed pursuant to NRS 116.4117 in
8 certain cases as follows:

9 1. Subject to the requirements set forth in subsection 2, if a declarant, community
10 manager or any other person subject to this chapter fails to comply with any of its
11 provisions or any provision of the declaration or bylaws, any person or class of
persons suffering actual damages from the failure to comply may bring a civil
action for damages or other appropriate relief.

12 2. Subject to the requirements set forth in NRS 38.310 and except as otherwise
13 provided in NRS 116.3111, a civil action for damages or other appropriate relief
for a failure or refusal to comply with any provision of this chapter or the
governing documents of an association may be brought:

14 (a) By the association against:

- 15 (1) A declarant;
16 (2) A community manager; or
(3) A unit's owner.

17 (b) By a unit's owner against:

- 18 (1) The association;
(2) A declarant; or
19 (3) Another unit's owner of the association.

20 (c) By a class of units' owners constituting at least 10 percent of the total
number of voting members of the association against a community manager.

21 3. Members of the executive board are not personally liable to the victims of
22 crimes occurring on the property.

23 4. Except as otherwise provided in subsection 5, punitive damages may be
24 awarded for a willful and material failure to comply with any provision of this
25 chapter if the failure is established by clear and convincing evidence.

26 5. Punitive damages may not be awarded against:

- 27 (a) The association;
(b) The members of the executive board for acts or omissions that occur in
their official capacity as members of the executive board; or
28 (c) The officers of the association for acts or omissions that occur in their

1 capacity as officers of the association.

2 6. The court may award reasonable attorney's fees to the prevailing party.

3
4 7. The civil remedy provided by this section is in addition to, and not exclusive
5 of, any other available remedy or penalty.

6 8. The provisions of this section do not prohibit the Commission from taking
7 any disciplinary action against a member of an executive board pursuant to NRS
116.745 to 116.795, inclusive.

8 Emphasis added.

9 Punitive damages are an available award under NRS 116.4117(4)-(5); however, it is on a
10 case by case analysis and to be determined by the Court after the introduction of evidence.

11 **J. THE FEDERAL COURT ORDER IN THE CASE DOES NOT PRECLUDE NOR
12 ADDRESS PLAINTIFF'S CLAIMS AGAINST THE HOA AND HOA TRUSTEE**

13 In the Case, the Lender asserted claims for Quiet Title/Declaratory Relief against the
14 HOA, HOA Trustee and Plaintiff, Breach of NRS 116.1113 against the HOA Trustee and HOA,
15 Wrongful Foreclosure against the HOA and the HOA Trustee and Injunctive Relief against
16 Plaintiff. See Exhibit 2. Plaintiff counterclaimed against the Lender for Quiet Title and
17 Declaratory Relief. See Exhibit 2. Plaintiff did not sue the HOA and/or the HOA Trustee. Plaintiff
18 does not allege that the HOA Foreclosure Sale was "defective" in its process as notices and
19 procedures were followed. Plaintiff's claims are unique to the HOA and HOA Trustee and
20 different than Lender's allegations.

21 The Case Order granted Lender's Motion for Summary Judgment on its Quiet
22 Title/Declaratory Relief claims, and "dismissed the Lender's remaining claims as moot." See
23 Exhibit 7. The issues raised in the Case have not been adjudicated nor even claimed by Plaintiff in
24 the Case. As such, any discussion for "claim preclusion" is inappropriate and inapplicable.

25 The Lender filed the Complaint in the Case Court. At that time, Plaintiff was unaware of
26 the Attempted Payment and the violations of NRS 113.130. Plaintiff discovered these issues as
27 the Case proceeded. Based upon the "tender" case law at the Nevada Supreme Court, the Case
28 Court resolved the quiet title/declaratory relief claims brought by the Lender and did not address

1 any claims related to the HOA and the HOA Trustee.

2 Plaintiff asserts herein claims for misrepresentation, breach of NRS 116.1113, breach of
3 NRS 113.130, and conspiracy by the HOA and the HOA Trustee. Arguably, the Lender alleged a
4 breach of NRS 116.1113, but none of the other causes of action. The present case does not include
5 the Lender, and, therefore, does not contain the same parties to the Case. Finally, Plaintiff, a
6 Defendant in the Case, is now the Plaintiff against its former co-Defendants.

7 The Case Court ruled that the Deed of Trust was not extinguished because of the
8 Attempted Payment by the Lender. This case focuses on Plaintiff's damages as a result of the Case
9 Court's Order. See Exhibit 7. Claim preclusion does not prevent the allegations and claims of this
10 case from proceeding.

11 **CONCLUSION**

12 Based upon the foregoing, this Court must deny the HOA's Motion. The Plaintiff has
13 stated valid claims for relief. Furthermore, an analysis of the applicable statutes and corresponding
14 authorities indicates that the position endorsed by the Plaintiff is the only position that is sensible.
15 No good cause exists to dismiss the Plaintiff's Complaint.

16 DATED this 2nd day of September, 2019.

17 ROGER P. CROTEAU & ASSOCIATES, LTD.

18
19 /s/ Roger P. Croteau
20 ROGER P. CROTEAU, ESQ.

21 Nevada Bar No. 4958
22 2810 W. Charleston Blvd., Ste. 75
23 Las Vegas, Nevada 89148
24 (702) 254-7775

25 *Attorney for Plaintiff*
26
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CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 2nd day of September, 2019, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

X VIA ELECTRONIC SERVICE: through the Eighth Judicial District Court's Odyssey e-file and serve system.

Nevada Association Services - Defendant

Susan Moses susamm@nas-inc.com

Brandon E. Wood brandon@nas-inc.com

Peccole Ranch Community Association - Defendant

Peter Dunkley pdunkley@lipsonneilson.com

Sydney Ochoa sochoa@lipsonneilson.com

____ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

____ VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.

____ VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Jennifer Lee

An employee of ROGER P. CROTEAU &
ASSOCIATES, LTD

EXHIBIT 1

EXHIBIT 1

DECLARATION OF EDDIE HADDAD

EDDIE HADDAD, being first duly sworn, deposes and says:

I, Eddie Haddad, being first duly sworn, deposes and says as follows: I am a resident of the State of Nevada. I am the Manager of the Resources Group, LLC, that is the Trustee of the Bay Harbor Trust. Bay Harbor Trust is the Manager of Saticoy Bay, LLC, Series 9720 Hitching Rail ("*Saticoy Bay*"). Saticoy Bay purchased the Property at the HOA Foreclosure Sale. In my capacity as set forth above, I have reviewed the foregoing Opposition to HOA's Motion. Of the facts asserted therein, I know them to be true of my own knowledge or they are true to the best of my knowledge and recollection.

I further provide that it was my practice and procedure, as set forth herein, that when I would attend NRS 116 sales at all times relevant to this case, I would attempt to ascertain whether anyone had attempted to or did tender any payment regarding the homeowner association's lien. If I learned that a "tender" had either been attempted or made, I would not purchase the property offered in that foreclosure sale. I would and did rely on whatever recital and/or announcements that were made at the HOA Foreclosure Sale. I also relied on the HOA Foreclosure Deed that provided that the HOA and HOA Trustee complied with all requirements of law.

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

Executed this 2nd day of September, 2019.

/s/ Eddie Haddad
EDDIE HADDAD

EXHIBIT 2

EXHIBIT 2

1 ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
2 MATTHEW I. KNEPPER, ESQ.
Nevada Bar No. 12796
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6 matthew.knepper@akerman.com

7 *Attorneys for Plaintiff*

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

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

Case No.: 2:16 cv 00660

COMPLAINT

12 Plaintiff,

13 vs.

14 PECCOLE RANCH COMMUNITY
ASSOCIATION; SATICOY BAY, LLC SERIES
9720 HITCHING RAIL AKA SATICOY BAY,
15 LLC; and NEVADA ASSOCIATION
SERVICES, INC.,

16 Defendants.

17 Plaintiff Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP
18 f/k/a Countrywide Home Loans Servicing, LP (BANA) complains as follows:

19 PARTIES AND JURISDICTION

20 1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332. BANA is a
21 citizen of North Carolina and on information and belief none of the defendants is a citizen of North
22 Carolina. The amount in controversy exceeds \$75,000.

23 2. Bank of America, N.A. is a national bank with its principal place of business in
24 Charlotte, North Carolina. Therefore, pursuant to 28 U.S.C. § 1348, for purposes of diversity
25 jurisdiction, Bank of America, N.A. is deemed to be a citizen of the state of North Carolina. *See*
26 *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303, 318 (2006) (holding that national banks are citizens
27 of the states where their designated main office is located for purposes of citizenship under 28
28

(37476937;2)

AKERMAN LLP
1160 TOWN CENTER DRIVE, SUITE 330
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1 U.S.C. § 1348). The diversity of citizenship requirement is met. Defendants Peccole Ranch
2 Community Association (Peccole Ranch), Saticoy Bay, LLC Series 9720 Hitching Rail aka Saticoy
3 Bay, LLC (Saticoy Bay) and Nevada Association Services, Inc. (NAS) are, on information and
4 belief and from all publicly available sources, not citizens of North Carolina. The amount in
5 controversy requirement is met. BANA seeks a declaration that its deed of trust, which secures a
6 loan with a principal balance of \$144,989.95, was not extinguished by a homeowner's association
7 non-judicial foreclosure sale that is the basis for Saticoy Bay's claim to title to the real property sub
8 judice.

9 3. Defendant Peccole Ranch is a Nevada non-profit co-op corporation. BANA is
10 informed and believes and therefore alleges Peccole Ranch is the purported beneficiary under an
11 alleged homeowners' association lien recorded October 3, 2011. BANA is informed and believes
12 and therefore alleges HOA foreclosed on the lien on February 14, 2014.

13 4. Defendant Saticoy Bay is a Nevada limited liability company. On information and
14 belief, Bay Harbor Trust is the only member of Saticoy Bay. Bay Harbor Trust is, on information
15 and belief, a Nevada trust of which Iyad Haddad is the trustee. Upon information and belief, Iyad
16 Haddad is a citizen of Nevada. BANA is informed and believes and therefore alleges Saticoy Bay
17 purchased the property at the HOA foreclosure sale, acquiring title via a foreclosure deed recorded
18 February 18, 2014.

19 5. Defendant NAS is a Nevada corporation. BANA is informed and believes and
20 therefore alleges NAS conducted the foreclosure at issue in this case on behalf of Peccole Ranch.

21 6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332 for reasons
22 stated above.

23 7. Venue is proper in this Court under 28 U.S.C. §1391. The property that is the subject
24 of this action is located at 9720 Hitching Rail Drive, Las Vegas, Nevada 89117 (the property).
25 Venue is proper in this Court under 28 U.S.C. § 1391(1) and (2) because this action seeks to
26 determine an interest in property located within Clark County, Nevada and because this lawsuit
27 arises out of a foreclosure of real property located within Nevada.

28 (37476937;2)

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8. The pre-litigation dispute resolution process set forth in NRS 38.300 et seq. is not applicable to this action and cannot restrict the jurisdiction of this court. To the extent any requirement of the statute is applicable to any portion of the claims asserted herein, that requirement has been constructively exhausted and further resort to administrative remedies would be futile because BANA submitted a demand for mediation to Nevada Real Estate Division (NRED) on or about November 5, 2015, but NRED has failed to schedule the mediation in the time period required by NRS 38.330(1).

GENERAL ALLEGATIONS

9. Under Nevada state law, homeowners' associations have the right to charge property owners residing within the community assessments to cover the homeowners' associations' expenses for maintaining or improving the community, among other things.

10. When these assessments go unpaid, the association may impose a lien and then foreclose on a lien if the assessments remain unpaid.

11. NRS Chapter 116 generally provides a non-judicial foreclosure scheme for a homeowners' association to conduct a non-judicial foreclosure where the unit owner fails to pay its monthly assessments.

12. NRS 116.3116 makes a homeowners' association lien for assessments junior to a first deed of trust beneficiary's secured interest in the property, with one limited exception: a homeowners' association lien is senior to a first 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).

The Deed of Trust and Assignment

13. On or about April 25, 2003, Edna E. Scott (Scott) obtained a loan from Republic Mortgage LLC, Nevada LLC in the amount of \$163,567.00 evidenced by a note and secured by a

1 deed of trust (the senior deed of trust) recorded April 30, 2003. A true and correct copy of the
2 senior deed of trust is recorded with the Clark County Recorder as Instrument No. 20030438-
3 02222.

4 14. The note and the senior deed of trust are insured by the Federal Housing
5 Administration (FHA). Pursuant to the FHA insurance, the lender was required to submit a monthly
6 mortgage insurance payment to the FHA. FHA monthly mortgage insurance premiums were paid by
7 either Scott, BANA or its predecessor in interest beginning June 5, 2003.

8 15. The senior deed of trust was assigned to BANA via an assignment of deed of trust. A
9 true and correct copy of the assignment is recorded with the Clark County Recorder as Instrument
10 No. 201111140001989.

11 The HOA Lien and Foreclosure

12 16. Upon information and belief, Scott failed to pay Peccole Ranch all amounts due to it.
13 On October 3, 2011, Peccole Ranch, through its agent, NAS, recorded a notice of delinquent
14 assessment lien. Per the notice, the amount due to Peccole Ranch was \$1,434.04, which "includes
15 late fees, collection fees and interest in the amount of \$728.40." A true and correct copy of the
16 notice of lien is recorded with the Clark County Recorder as Instrument No. 201110030000458.

17 17. On December 29, 2011, Peccole Ranch, through its agent NAS, recorded a notice of
18 default and election to sell to satisfy the delinquent assessment lien. The notice states the amount
19 due to Peccole Ranch was \$2,660.78, but does not specify whether it includes dues, interest, fees and
20 collection costs in addition to assessments. A true and correct copy of the notice of default is
21 recorded with the Clark County Recorder as Instrument No. 201112290004054. The notice of
22 default also does not specify the super-priority amount claimed by Peccole Ranch and fails to
23 describe the "deficiency in payment" required by NRS 116.31162(1)(b)(1).

24 18. On January 23, 2014, Peccole Ranch, through its agent NAS, recorded a notice of
25 trustee's sale. The trustee's sale was scheduled for February 14, 2014. The notice states the amount
26 due to Peccole Ranch was \$6,614.00, which includes the "total amount of the unpaid balance of the
27 obligation secured by the property to be sold and reasonable estimated costs, expenses and advances
28

(37476937;2)

JA137

1 at the time of the initial publication of the Notice of Sale." A true and correct copy of the notice of
2 sale is recorded with the Clark County Recorder as Instrument No. 201401230002378. The notice
3 of sale does not identify the super-priority amount claimed by Peccole Ranch and fails to describe
4 the "deficiency in payment" required by NRS 116.311635(3)(a).

5 19. In none of the recorded documents nor in any notice did Peccole Ranch and/or its
6 agent provide notice of the purported super-priority lien amount, where to pay the amount, how to
7 pay the amount, or the consequences for failure to do so.

8 20. In none of the recorded documents nor in any notice did Peccole Ranch and/or its
9 agent specify whether it was foreclosing on the super-priority portion of its lien, if any, or on the
10 sub-priority portion of its lien.

11 21. In none of the recorded documents nor in any notice did Peccole Ranch and/or its
12 agent specify the senior deed of trust would be extinguished by Peccole Ranch's foreclosure.

13 22. In none of the recorded documents nor in any notice did Peccole Ranch and/or its
14 agent identify any way by which the beneficiary under the senior deed of trust could satisfy the
15 super-priority portion of Peccole Ranch's claimed lien.

16 23. The deficiencies in the notices notwithstanding, on or about January 10, 2014, after
17 Peccole Ranch recorded its notice of default, BANA remitted payment to Peccole Ranch, through its
18 agent NAS, to satisfy the super-priority amount owed to Peccole Ranch.

19 24. On December 4, 2013, BANA requested a ledger from Peccole Ranch, through its
20 agent NAS, identifying the super-priority amount allegedly owed to Peccole Ranch. Peccole Ranch
21 refused to provide a ledger, failing completely to respond to the request.

22 25. BANA and its counsel were forced to attempt to calculate the super-priority amount
23 claimed by Peccole Ranch by reference to a ledger from another property in the same community,
24 provided earlier by Peccole Ranch's agent NAS.

25 26. Based on the monthly assessment amount identified in Peccole Ranch's ledger,
26 BANA accurately calculated the true super-priority amount as \$585.00, the sum of nine-months of
27 common assessments as identified in Peccole Ranch's ledger, and tendered that amount to Peccole
28

(37476937;2)

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1 Ranch, through its agent NAS, on January 10, 2014. A true and correct copy of Peccole Ranch's
2 ledger and BANA's tender letter are attached as Exhibit 1. Peccole Ranch refused BANA's tender.

3 27. Despite BANA satisfying the super-priority amount of Peccole Ranch's lien, Peccole
4 Ranch recorded a notice of foreclosure sale on January 23, 2014 and proceeded to foreclosure.

5 28. Peccole Ranch foreclosed on the property on or about February 14, 2014. A
6 foreclosure deed in favor of Saticoy Bay was recorded February 18, 2014. A true and correct copy
7 of the foreclosure deed is recorded with the Clark County Recorder as Instrument No.
8 201402180002910.

9 29. Upon information and belief, NAS wrote in the foreclosure deed that the sale price at
10 the February 14, 2014 foreclosure sale was \$51,500.00. Peccole Ranch's sale of the property to
11 Saticoy Bay for thirty-five percent (35%) of the value of the unpaid principal balance on the senior
12 deed of trust, and, on information and belief, for a similarly diminutive percentage of the property's
13 fair market value, is commercially unreasonable and not in good faith as required by NRS 116.1113.

14 FIRST CAUSE OF ACTION

15 (Quiet Title/Declaratory Judgment Against All Defendants)

16 30. BANA repeats and re-alleges the preceding paragraphs as though fully set forth
17 herein and incorporates the same by reference.

18 31. Pursuant to 28 U.S.C. § 2201 and NRS 30.040 *et seq.*, this Court is empowered to
19 declare the rights of parties and other legal relations of parties regarding the property.

20 32. An actual controversy has arisen between BANA and defendants regarding the
21 property. The senior deed of trust is a first secured interest on the property. As a result of the
22 February 14, 2014 HOA foreclosure sale, Saticoy Bay claims an interest in the property, and on
23 information and belief, asserts Saticoy Bay owns the property free and clear of the senior deed of
24 trust.

25 33. BANA's FHA insured interest in the senior deed of trust encumbering the property
26 constitutes an interest in real property.

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28 (37476937;2)

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JA139

1 34. BANA is entitled to a declaration that Peccole Ranch's foreclosure did not extinguish
2 the senior deed of trust, or, alternatively, Peccole Ranch's foreclosure is void.

3 NRS Chapter 116 Violates BANA's Right to Procedural Due Process

4 35. BANA asserts that Chapter 116 of the Nevada Revised Statutes' scheme of HOA
5 super priority non-judicial foreclosure violates BANA's procedural due process rights under the state
6 and federal constitutions.

7 36. The Fourteenth Amendment of the United States Constitution and Article 1, Sec. 8, of
8 the Nevada Constitution protect BANA from being deprived of its deed of trust in violation of
9 procedural due process guarantees of notice and an opportunity to be heard.

10 37. BANA asserts that there is no way to apply Nevada's scheme of non-judicial HOA
11 super priority foreclosure that complies with Nevada and the United States' respective guarantees of
12 procedural due process.

13 38. The Nevada Constitution does not expressly set forth a state action
14 requirement. Even if it did, and consistent with the state action requirements of the Federal
15 Constitution, the state of Nevada has become sufficiently intertwined with HOA foreclosure such
16 that state and federal procedural due process protections for BANA's deed of trust apply, to wit:

17 a) The super priority lien did not exist at common law, but rather is imposed by
18 statute.

19 b) In order to conserve governmental resources and fund the quasi-governmental
20 HOA, Nevada's legislature made super priority mandatory, expanded the super-priority
21 duration from six to nine months, and declared it could not contractually subordinate its lien
22 by provisions within a HOA's covenants, conditions, and restrictions

23 c) The super priority lien has no nexus whatsoever to a private agreement
24 between the Peccole Ranch and BANA, but, again, is imposed by legislative enactment.

25 d) Nevada and Clark County mandated the creation of Peccole Ranch as a quasi-
26 governmental entity to perform governmental functions including maintaining the common
27 open spaces and private streets within the Peccole Ranch community.
28

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1 39. Since the state of Nevada is responsible for the creation of the super priority lien and
2 has made it mandatory, then Nevada's HOA super priority foreclosure scheme is the result of state
3 action subject to procedural due process safeguards.

4 40. On its face, Nevada's scheme of non-judicial HOA super priority foreclosure lacks
5 any pre deprivation notice requirements or post deprivation redemption options that are necessary
6 components of due process.

7 a) NRS 116.31162 and NRS 116.311635 do not require that an HOA provide
8 BANA with written notice of the sum that constitutes the super priority portion of the
9 assessment lien.

10 b) Chapter 116 of NRS seeks to insulate its scheme of super priority non-judicial
11 foreclosure by failing to provide any post-sale right of equity or redemption.

12 c) Chapter 116 of NRS fails to provide BANA with a statutorily enforceable
13 mechanism to compel an HOA to inform BANA of the sum of the HOA super priority
14 amount.

15 41. As applied, the HOA non-judicial foreclosure violated state and federal procedural
16 due process protections for BANA's deed of trust since BANA was not provided with any notice its
17 physical delivery of a check for 9 months of assessments did not redeem the deed of trust's priority
18 prior to the HOA foreclosure.

19 42. BANA requests that this Court void the HOA foreclosure sale or declare that Saticoy
20 Bay's title was acquired subject to the senior deed of trust because NRS 116's scheme of HOA super
21 priority foreclosure violates the procedural process clauses of the Fourteenth Amendment of the
22 United States Constitution and Article 1, Sec. 8, of the Nevada Constitution.

23 *The Supremacy Clause Bars Extinguishment of the Senior Deed of Trust*

24 43. The foreclosure sale did not extinguish the senior deed of trust because the
25 extinguishment of the senior deed of trust is barred by the Supremacy Clause of the United States
26 Constitution. Alternatively, the foreclosure sale is void.

1 44. The senior deed of trust is insured pursuant to Single Family Mortgage Insurance
2 Program.

3 45. The federal rules, regulations, and letters that implement, govern, and interpret this
4 FHA insurance program are found at 24 C.F.R. Part 203, the various HUD Mortgage Letters, and
5 HUD's Handbook, as amended from time to time.

6 46. In order to incentivize private lenders to participate in the Single Family Mortgage
7 Insurance Program, participation in the program is risk free to lenders as exemplified by the
8 following:

9 a) Lenders cannot lose their insurance interest by failing to adhere to HUD's
10 servicing regulations;

11 b) Lenders are also not required to expend funds to service the mortgage that
12 HUD has not agreed to reimburse;

13 c) HUD through its program of reimbursements to participating lenders also
14 regulates what amounts to be paid to homeowner's associations, when these amounts should
15 be paid, and by what means they should be paid; and

16 d) Lenders are permitted to convey title to HUD, even where the property's title
17 is subject to a homeowner's association lien, where the HOA is uncooperative and non-
18 responsive concerning the amount of payment it is demanding to release its lien.

19 47. HUD's regulations are necessary to ensure that the Single Family Mortgage Insurance
20 Program is both risk-free to participating lenders and that the Mutual Mortgage Insurance Fund is
21 sustainable.

22 48. Chapter 116 of the Nevada Revised Statutes' scheme of non-judicial foreclosure that
23 allows for the foreclosure of a super priority lien stands as an obstacle to the accomplishment and
24 execution of the full purposes and objectives of Congress under the National Housing Act's Single
25 Family Mortgage Insurance Program and Mutual Mortgage Insurance Fund.

26 49. NRS Chapter 116 must yield to the federally insured senior deed of trust under the
27 Supremacy Clause.

28 {37476937;2}

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Additional Reasons the HOA Foreclosure Sale Did Not Extinguish the Senior Deed of Trust

50. The HOA sale is void or did not extinguish the senior deed of trust for additional reasons stated below.

51. The foreclosure sale did not extinguish the senior deed of trust because the recorded notices, even if they were in fact provided, failed to describe the lien in sufficient detail as required by Nevada law, including, without limitation: whether the deficiency included a "super-priority" component, the amount of the super-priority component, how the super-priority component was calculated, when payment on the super-priority component was required, where payment was to be made or the consequences for failure to pay the super-priority component. Alternatively, the foreclosure sale is void.

52. The foreclosure sale did not extinguish the senior deed of trust because BANA tendered and satisfied the super-priority amount and Peccole Ranch wrongfully rejected the tender. Alternatively, the foreclosure sale is void.

53. The foreclosure sale did not extinguish the senior deed of trust because the sale was commercially unreasonable or otherwise failed to comply with the good faith requirement of NRS 116.1113 in several respects, including, without limitation, the lack of sufficient notice, Peccole Ranch's wrongful rejection of the tender, the sale of the property for a fraction of the loan balance or actual market value of the property, a foreclosure that was not calculated to promote an equitable sales prices for the property or to attract proper prospective purchasers, and a foreclosure sale that was designed and/or intended to result in maximum profit for Peccole Ranch, its agent, and Saticoy Bay at the sale without regard to the rights and interest of those who have an interest in the loan and made the purchase of the property possible in the first place. Alternatively, the foreclosure sale is void.

54. The foreclosure sale did not extinguish the senior deed of trust because otherwise the sale would violate BANA's rights to due process, as a result of Peccole Ranch's failure to provide sufficient notice of the super-priority component of Peccole Ranch's lien, the manner and method to satisfy it, and the consequences for failing to do so. Alternatively, the foreclosure sale is void.

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JA143

1 63. In making the representation in the CC&Rs that its lien would be subordinate to a
2 senior deed of trust, Peccole Ranch and its agent NAS undertook a duty to inform lenders and loan
3 servicers like BANA that its representation regarding the priority of liens in the CC&Rs was false,
4 and to give BANA a reasonable opportunity to protect their interests in the property.

5 64. Peccole Ranch and its agent NAS also undertook a duty to identify the super-priority
6 amount to lenders and loan servicers like BANA, to notify it that its security interest was at risk, and
7 to provide an opportunity to satisfy the super-priority amount to protect its security interest in the
8 property.
9

10 65. Peccole Ranch and its agent NAS breached their duty of good faith by not complying
11 with the obligations in the CC&Rs that its lien would be subordinate to the senior deed of trust, by
12 not informing BANA that its representation in the CC&Rs regarding the priority of liens was false,
13 by not identifying the super-priority amount of its lien for BANA, by not notifying BANA that its
14 security interest was at risk, by rejecting BANA's attempt to tender the super-priority amount, and by
15 obstructing BANA's ability to protect its security interest in the property.
16

17 66. Peccole Ranch's recorded CC&Rs also contained an enforcement clause related to
18 the collection of unpaid assessments. Under the enforcement clause Peccole Ranch's foreclosure
19 must be conducted in accordance with Nevada law relating to the foreclosure of realty mortgages
20 and deeds of trust. On information and belief, Peccole Ranch and its agent NAS did not conduct the
21 HOA foreclosure sale in accordance with the requirements of the Nevada Revised Statutes related to
22 foreclosure of realty mortgages and deeds of trust. Peccole Ranch and its agent NAS breached their
23 duty of good faith by not complying with the obligations in the CC&Rs regarding foreclosure of its
24 lien.
25

26 67. If it is determined Peccole Ranch's sale extinguished the senior deed of trust
27 notwithstanding the deficiencies, violations, and improper actions described herein, Peccole Ranch's
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1 and its agent NAS's breach of their obligation of good faith will cause BANA to suffer general and
2 special damages in the amount equal to the fair market value of the property or the unpaid principal
3 balance of the loan at issue, plus interest, at the time of the HOA sale, whichever is greater.

4 68. BANA was required to retain an attorney to prosecute this action, and is therefore
5 entitled to collect its reasonable attorneys' fees and costs.

6
7 THIRD CAUSE OF ACTION

8 (Wrongful Foreclosure against Peccole Ranch and NAS)

9 69. BANA repeats and re-alleges the preceding paragraphs as though fully set forth
10 herein and incorporates the same by reference.

11 70. To the extent defendants contend or the Court concludes Peccole Ranch's foreclosure
12 sale extinguished the senior deed of trust, the foreclosure was wrongful.

13 71. Because Peccole Ranch and its agent NAS failed to give adequate notice and an
14 opportunity to cure the deficiency, the foreclosure was wrongful to the extent any defendant
15 contends it extinguished the senior deed of trust.

16 72. Because BANA satisfied the super-priority portion of Peccole Ranch's lien prior to
17 the foreclosure sale there was no default in the super-priority component of Peccole Ranch's lien at
18 the time of the foreclosure sale and the foreclosure was wrongful to the extent any defendant
19 contends it extinguished the senior deed of trust.

20 73. Because Peccole Ranch and its agent NAS sold the property for a grossly inadequate
21 amount, compared to the value of the property and amount of outstanding liens defendants contend
22 were extinguished by the foreclosure sale, the foreclosure was wrongful to the extent any defendant
23 contends it extinguished the senior deed of trust.

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28 (37476937;2)

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JA146

1 74. Because Peccole Ranch and its agent NAS violated the representation in the CC&Rs
2 that its lien would be subordinate to a senior deed of trust, the foreclosure was wrongful to the extent
3 any defendant contends it extinguished the senior deed of trust.

4 75. Because Peccole Ranch and its agent NAS violated the good faith requirements of
5 NRS 116.1113, the foreclosure was wrongful to the extent any defendant contends it extinguished
6 the senior deed of trust.

7 76. If it is determined Peccole Ranch's foreclosure sale extinguished the senior deed of
8 trust notwithstanding the deficiencies, violations, and improper actions described herein, Peccole
9 Ranch's and its agent NAS's actions will cause BANA to suffer general and special damages in the
10 amount equal to the fair market value of the property or the unpaid principal balance of the loan at
11 issue, plus interest, at the time of the sale, whichever is greater.

12 77. BANA was required to retain an attorney to prosecute this action, and is therefore
13 entitled to collect its reasonable attorneys' fees and costs.

14 FOURTH CAUSE OF ACTION

15 (Injunctive Relief against Saticoy Bay)

16 78. BANA repeats and re-alleges the preceding paragraphs as though fully set forth
17 herein and incorporates the same by reference.

18 79. BANA disputes Saticoy Bay's claim it owns the property free and clear of the senior
19 deed of trust.

20 80. Any sale or transfer of the property by Saticoy Bay, prior to a judicial determination
21 concerning the respective rights and interests of the parties to this case, may be rendered invalid if
22 the senior deed of trust still encumbers the property in first position and was not extinguished by the
23 HOA sale.

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28 {37476937;2}

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1 81. BANA has a substantial likelihood of success on the merits of the complaint, and
2 damages would not adequately compensate for the irreparable harm of the loss of title to a bona fide
3 purchaser or loss of the first position priority status secured by the property.

4 82. BANA has no adequate remedy at law due to the uniqueness of the property involved
5 in this case and the risk of the loss of the senior security interest.

6 83. BANA is entitled to a preliminary injunction prohibiting Saticoy Bay, or its
7 successors, assigns, or agents, from conducting any sale, transfer, or encumbrance of the property
8 that is claimed to be superior to the senior deed of trust or not subject to the senior deed of trust.

9 84. BANA is entitled to a preliminary injunction requiring Saticoy Bay to pay all taxes,
10 insurance and homeowner's association dues during the pendency of this action.

11
12 PRAAYER FOR RELIEF

13 BANA requests the Court grant the following relief:

14 1. An order declaring that Saticoy Bay purchased the property subject to BANA's senior
15 deed of trust;

16 2. In the alternative, an order that the HOA foreclosure sale, and any resulting
17 foreclosure deed, was void ab initio;

18 3. In the alternative, an order requiring Peccole Ranch and NAS to pay BANA all
19 amounts by which it was damaged as a result of Peccole Ranch's and NAS's wrongful foreclosure
20 and/or violation of the good faith provisions of NRS § 116.1113;

21 4. A preliminary injunction prohibiting Saticoy Bay, its successors, assigns, or agents
22 from conducting any sale, transfer, or encumbrance of the property that is claimed to be superior to
23 the senior deed of trust or not subject to the senior deed of trust;

24 5. A preliminary injunction requiring Saticoy Bay to pay all taxes, insurance, and
25 homeowner's association dues during the pendency of this action;

26 6. Reasonable attorneys' fees as special damages and the costs of suit; and
27
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7. For such other and further relief the Court deems proper.

DATED March 25, 2016.

AKERMAN LLP

/s/ Ariel E. Stern

Ariel E. Stern, Esq.

Nevada Bar No. 8276

Matthew I. Knepper, Esq.

Nevada Bar No. 12796

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

Attorneys for Plaintiff

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EXHIBIT 1

EXHIBIT 1



1528 Derbyside Drive

Peccole Ranch Community Association

Account No. 80781

NAS 3864669

Assessments, Late Fees, Interest,
Attorney's Fees & Collection CostsDates of Delinquency:
08/01/2010-10/31/2011

Amount	Amount	Amount
(Monthly)	(CURRENT)	(TOTAL)
NAS 3864669	NAS 3864669	NAS 3864669
8/1/2010	8/1/2010	8/1/2010
10/31/2011	10/31/2011	10/31/2011
Balance Forward	135.22	0.00
Assessment Amount	65.00	0.00
No. of Periods Delinquent	15	0
Total Assessments Due	975.00	0.00
Late Fee Amount	22.50	0.00
No. of Periods Late Fees Incurred	15	0
Total Late Fees Incurred	337.50	0.00
Interest Due	0.00	0.00
Amount In-Lien	0.00	0.00
Misc.: Certified Mail	30.00	0.00
Management Co. Fee: Admin Fee	0.00	0.00
Management Company (2)	0.00	0.00
Demand Letter	0.00	1.50
Notice of Delinquent Assessment	0.00	32.50
Lien Violations Lien	0.00	0.00
Release of Notice of Delinquent	0.00	50.00
Assessment Lien Violations Lien	0.00	0.00
Mailing	0.00	0.00
Recording Costs	0.00	0.00
Amount in Notice of Default	0.00	75.00
Payment Plan Fee	0.00	0.00
Payment Plan Break Letter	0.00	0.00
Escrow Demand Fee	0.00	0.00
Notice of Default Fees	0.00	0.00
Title Report	0.00	0.00
Notice of Sale Fee	0.00	0.00
Posting & Publication Cost	0.00	0.00
Court Fee	0.00	0.00
Preparation of Sale	0.00	0.00
Conduct of Public Sale	0.00	0.00
Property Record Book	0.00	0.00
Subtotal	5153.32	5153.32

Credit	Date
Payment	8/22/2010
Payment to HOA	8/24/2011
(NAS)	
	(65.00)
	(1175.00)
	(0.00)
	(0.00)
	(0.00)
	(0.00)
	(0.00)
Interest	(0.00)
Late charges	(0.00)
Management Co	(0.00)
	(0.00)
NAS Fees	10/31/2011
NAS Costs	10/31/2011
	(520.30)
HOA TOTAL	556.98

13-41391
estimated
920 Hatching Road

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Also Admitted in Arizona
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KATHERINE G. HEIDBRINK
Also Admitted in Massachusetts
& New York

January 10, 2014

Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146

Re: *Property Address: 9720 Hitching Rail Drive*
LOAN #: [REDACTED]
MBBW File No. 13-H1391

Dear Sir/Madame:

As you may recall, this firm represents the interests of Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to the issues set forth herein. Nevada Association Services' (NAS) position has been to refuse my law firm's request for HOA payoff ledgers to allow BANA an opportunity to fulfill its Super-Priority Amount obligations. NAS' refusal allegedly stems from their concern of violating the Fair Debt Collection Practices Act (FDCPA). According to NAS, the FDCPA applies to NAS and how it conducts its business. Thus, if the homeowner is still the title owner and is a consumer as defined under the FDCPA, NAS is prohibited from supplying us payoff information unless BANA (despite being the beneficiary/servicer of the first deed of trust loan secured by the property) has written authorization from the homeowner.

As you are probably already aware, the State of Nevada Real Estate Division recently issued an Advisory Opinion addressing the components of the Super-Priority Amount that Nevada HOAs can recover.

Specifically, Nevada Real Estate Division's Advisory Opinion No. 13-01 regarding the "Super-Priority Lien" unequivocally states "The association's lien does not include 'costs of collecting' defined by NRS 116.310313, so the super-priority portion of the lien may not include such costs." Furthermore, said Advisory Opinion goes on to say: "The super-priority lien based on assessments may not exceed 9 months of assessments as reflected in the association's budget and it may not include penalties, fees, late charges, fines or interest."

The Real Estates Division's opinion also seems to suggest that an association can foreclose on its Super-Priority Lien and the first security interest holder will either pay the Super-Priority Lien or risk losing its security interest. Implicit in this reasoning, however, is that the HOA/HOA trustee such as NAS will have to provide the first security interest holder or their legal representative a payoff ledger containing the Super-Priority Amount in the first place despite NAS' position that the FDCPA prohibits them from doing so.

It is our position that NAS, your client and any subsequent purchaser at a NAS foreclosure sale has waived their right to claim our client's lien was wiped out as a result of an HOA sale due to NAS' refusal to provide a payoff ledger and thus the opportunity to pay the Super-Priority Amount in the first place.

As you'll recall, NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

JA152

...
any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

2. A lien under this section is prior to all other liens and encumbrances on a unit except:
(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

Based on said Advisory Opinion and Section 2(b), a portion of your HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment.

Despite your current refusal to provide HOA payoff ledgers, without first paying a fee of \$150.00, our client still wishes to make a good-faith attempt to fulfill BANA's obligations as the 1st lienholder by tendering to NAS an accurate estimate of the Super-Priority Amount. This good-faith estimate is based on prior payoff ledgers provided by NAS to our firm regarding the same HOA in question. Based on the most recent HOA payoff ledger provided by NAS in regards to this particular HOA, we estimate 9 months of common HOA assessments to be \$585.00.

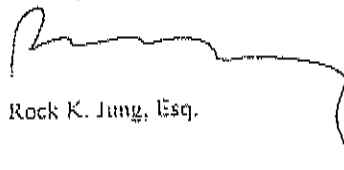
Thus, enclosed you will find a cashier's check made out to NEVADA ASSOCIATION SERVICES in the sum of \$585.00. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BANA's Super-Priority Amount obligations towards the HOA in regards to the real property located at 9720 Hitching Rail Drive have now been "paid in full".

Please note that my client may seek attorneys' fees and costs for any litigation caused by NAS' improper refusal to provide a payoff ledger and/or NAS' improper rejection of any payoff tender made pursuant to the Real Estate Division's recent Advisory Opinion.

Thank you for your prompt attention to this matter. If you have any questions or concerns, I may be reached by phone directly at (702) 942-0412.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Rock K. Jung, Esq.

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct Initials: NEG
 Payee: NEVADA ASSOCIATION SERVICES, Check #: 21181 Date: 1/7/2014 Amount: 585.00

Inv. Date	Reference #	Description	Inv. Amount	Case #	Mailor Description	Cost Amount
1/7/2014	9720 Hitching	HGA Fees	585.00			

Miles, Bauer, Bergstrom & Winters, LLP
 Trust Account
 1231 E. Dyer Road, #100
 Santa Ana, CA 92705
 Phone (714) 481-9100

Bank of America
 1400 N. Green Valley Parkway
 Henderson, NV 89074
 10-990120
 1020
 13-H1391

2/1/18
 1/7/2014
 Amount \$ 585.00

Check Void After 90 Days

pay \$ Five Hundred Eighty Five and No/100 Dollars
 to the order of

NEVADA ASSOCIATION SERVICES, INC.
 5225 W. Desert Inn Rd., Ste. A
 Las Vegas, NV 89146

1 MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
2 mbohn@bohnlawfirm.com
LAW OFFICES OF
3 MICHAEL F. BOHN, ESQ., LTD.
376 E. Warm Springs Rd., Ste. 140
4 Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX
5 Attorney for defendant Saticoy Bay LLC
6 Series 9720 Hitching Rail

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA
9

10 BANK OF AMERICA, N.A., SUCESSOR BY
MERGER TO BAC HOME LOANS SERVICING,
11 LP FKA COUNTRYWIDE HOME LOANS
SERVICING, LP,

12 Plaintiff,

13 vs.

14 PECCOLE RANCH COMMUNITY
ASSOCIATION, INC.; SATICOY BAY LLC
15 SERIES 9720 HITCHING RAIL AKA SATICOY
BAY, LLC; and NEVADA ASSOCIATION
16 SERVICES, INC.,

17 Defendants.

CASE NO.: 2:16-CV-00660

18 SATICOY BAY LLC SERIES 9720 HITCHING
19 RAIL,

20 Counterclaimant,

21 vs.

22 BANK OF AMERICA, N.A., SUCESSOR BY
MERGER TO BAC HOME LOANS SERVICING,
23 LP FKA COUNTRYWIDE HOME LOANS
SERVICING, LP,

24 Counterdefendant.
25

26 ANSWER AND COUNTERCLAIM

27 Defendant Saticoy Bay LLC Series 9720 Hitching Rail, by and through its attorney, Michael
28

F. Bohn, Esq., answers Plaintiff's Complaint on file herein as follows:

PARTIES AND JURISDICTION

1. Defendant is without sufficient information or knowledge upon which to admit or deny the allegations contained in paragraphs 1, 6, 7, and 8 of the complaint, and, upon that basis, denies the same.

2. Defendant admits the allegations contained in paragraphs 3, 4, and 5 of the complaint.

3. In answering paragraph 2 of the complaint, Defendant denies that the deed of trust was not extinguished by the homeowner's association non-judicial foreclosure sale but is without sufficient information or knowledge to admit the remainder of said paragraph which is therefore denied.

GENERAL ALLEGATIONS

4. Defendant admits the allegations contained in paragraphs 9, 10, 11, 12, 16, and 28 of the complaint.

5. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraphs 13, 14, 15, 23, 24, 25, and 26 of the complaint, and upon that basis, denies the same.

6. Defendant denies the allegations contained in paragraphs 17, 18, 19, 20, 21, 22, 27, and 29 of the complaint.

FIRST CAUSE OF ACTION

(Quiet Title/Declaratory Judgment Against All Defendants)

7. In answering paragraph 30, Defendant repeats and realleges its answers to paragraphs 1 through 29 of the complaint as if fully set forth at length herein.

8. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraphs 31, 44, 45, 46, and 47 of the complaint which are therefore denied.

9. Defendant denies the allegations contained in paragraphs 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 48, 49, 50, and 51, 52, 53, 54, 55, 56, 57, and 58 of the complaint.

SECOND CAUSE OF ACTION

(Breach of NRS 116.1113 against Peccole Ranch and NAS)

10. In answering paragraph 59, Defendant repeats and realleges its answers to paragraphs 1 through 58 of the complaint as if fully set forth at length herein.

11. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraphs 60, 61, 62, 63, 64, 65, 66, 67, and 68 of the complaint, and upon that basis, denies the same.

THIRD CAUSE OF ACTION

(Wrongful Foreclosure against Peccole Ranch and NAS)

12. In answering paragraph 69, Defendant repeats and realleges its answers to paragraphs 1 through 68 of the complaint as if fully set forth at length herein.

13. Defendant denies the allegations contained in paragraphs 70, 71, 72, 73, 74, and 75 of the complaint.

14. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraphs 76 and 77 of the complaint, and upon that basis, denies the same.

FOURTH CAUSE OF ACTION

(Injunctive Relief against Saticoy Bay)

15. In answering paragraph 70, Defendant repeats and realleges its answers to paragraphs 1 through 69 of the complaint as if fully set forth at length herein.

16. Defendant denies the allegations contained in paragraphs 79, 80, 81, 82, 83 and 84 of the complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The complaint fails to state a claim against answering defendant upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The plaintiff has failed to mitigate its damages.

THIRD AFFIRMATIVE DEFENSE

Plaintiff is guilty of laches and unclean hands.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, were caused by its own acts and omissions or by the acts or omissions of third parties over which defendant had no authority or control.

FIFTH AFFIRMATIVE DEFENSE

The plaintiff's claims are barred by the applicable statute of limitations.

SIXTH AFFIRMATIVE DEFENSE

The plaintiff's claims are barred by the doctrine of estoppel.

SEVENTH AFFIRMATIVE DEFENSE

The plaintiff assumed the risk of the damages of which it now complains.

EIGHTH AFFIRMATIVE DEFENSE

The plaintiff failed to exercise due care in its business dealings.

NINTH AFFIRMATIVE DEFENSE

The plaintiff's claims are barred by the doctrine of waiver.

TENTH AFFIRMATIVE DEFENSE

The plaintiff gave its consent, expressed or implied to the acts, omissions and/or conduct alleged of this answering defendant.

ELEVENTH AFFIRMATIVE DEFENSE

The plaintiff ratified the alleged acts of this answering defendant.

TWELFTH AFFIRMATIVE DEFENSE

The plaintiff expressly, impliedly and/or equitably released all rights against this answering defendant.

THIRTEENTH AFFIRMATIVE DEFENSE

The HOA Sale was conducted pursuant to statute and therefore extinguished Plaintiff's security interest in the property

FOURTEENTH AFFIRMATIVE DEFENSE

The defendant(s) is a bona fide purchaser for value without notice of any claims of any party or defects in title.

FIFTEENTH AFFIRMATIVE DEFENSE

The plaintiff has failed to include indispensable parties to this action.

SIXTEENTH AFFIRMATIVE DEFENSE

The plaintiff's claims are barred by the voluntary payment doctrine.

1 SEVENTEENTH AFFIRMATIVE DEFENSE

2 The plaintiff lacks standing to prosecute this action.

3 EIGHTEENTH AFFIRMATIVE DEFENSE

4 Defendant reserves the right to add additional affirmative defenses as new information currently
5 not known or available to defendant becomes known or knowable during the pendency of this action.

6 WHEREFORE, defendant prays as follows:

- 7 1. That the plaintiff take nothing by way of its complaint;
8 2. For an award of attorneys fees and costs; and
9 3. For such other and further relief as the Court may deem just and proper.

10 COUNTERCLAIM

11 Defendant/counterclaimant Saticoy Bay LLC Series 9720 Hitching Rail (hereinafter "Saticoy
12 Bay"), by and through its attorney, Michael F. Bohn, Esq. , alleges as its counterclaim against plaintiff,
13 Bank of America, N.A. as follows:

- 14 1. Defendant/counterclaimant Saticoy Bay is the owner of real property situated in Clark County,
15 Nevada commonly known as 9720 Hitching Rail, Las Vegas, Nevada, 89117 (APN 163-06-110-095).
16 2. Saticoy Bay obtained title to the property as a result of an HOA foreclosure sale conducted
17 by the Peccole Ranch Community Association as evidenced by the foreclosure deed recorded with the
18 Clark County Recorder on February 18, 2014 as Instrument No. 201402180002910.
19 3. The title held by Saticoy Bay arises from the foreclosure of an HOA lien arising from a
20 delinquency in assessments due from the former owner to the HOA pursuant to NRS Chapter 116.
21 4. Plaintiff/counterdefendant is the purported assigned beneficiary of a deed of trust which was
22 originally recorded as an encumbrance against the subject property on April 25, 2003.

23 FIRST CLAIM FOR RELIEF

24 (Quiet Title)

25 5. Saticoy Bay repeats the allegations contained in paragraphs 1 through 4 of its counterclaim
26 as if fully set forth at length herein.

27 6. The deed of trust and any other security interest of plaintiff/counterdefendant in the subject
28 property at issue in this case has been extinguished by reason of the HOA foreclosure sale which

1 occurred as a result of the failure of the former owner of the subject property or the failure of any
2 other interested party, such as plaintiff, to cure the delinquency in assessments due and owing to the
3 Peccole Ranch Community Association pursuant to NRS Chapter 116.

4 7. Saticoy Bay is entitled to a determination from this court, pursuant to NRS 40.010, that
5 Saticoy Bay is the rightful owner of the property and that as a result of the HOA foreclosure sale,
6 plaintiff/counterdefendant has no right, title, interest or claim to the subject property.

7 8. Saticoy Bay is entitled to an award of attorneys fees and costs.

8 **SECOND CLAIM FOR RELIEF**

9 **(Declaratory Relief)**

10 9. Saticoy Bay repeats the allegations contained in paragraphs 1 through 8 of its counterclaim
11 as if fully set forth at length herein.

12 10. Saticoy Bay seeks a declaration from this court, pursuant to NRS 40.010, that title to the
13 property vested in Saticoy Bay is free and clear of all liens and encumbrances, that the
14 plaintiff/counterdefendant has no estate, right, title or interest in the property, and that
15 plaintiff/counterdefendant is forever enjoined from asserting any estate, title, right, interest, or claim
16 to the subject property adverse to Saticoy Bay.

17 11. Saticoy Bay is entitled to an award of attorneys fees and costs.

18 WHEREFORE, Saticoy Bay prays for Judgment as follows:

19 1. For a determination and declaration that Saticoy Bay is the rightful holder of title to the
20 property, free and clear of all liens, encumbrances, and claims of the plaintiff/counterdefendant.

21 2. For a determination and declaration that the plaintiff/counterdefendant has no estate, right,
22 title, interest or claim in the property.

23 3. For a judgment forever enjoining the plaintiff/counterdefendant from asserting any estate,
24 right, title, interest or claim in the property; and

25 /////

26 /////

27 /////

28

1 4. For such other and further relief as the Court may deem just and proper in the premises.

2 DATED this 19th day of April 2016.

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

5
6 By: /s/ Michael F. Bohn, Esq./
MICHAEL F. BOHN, ESQ.
7 Nevada Bar No. 1641
376 E. Warm Springs Rd., Ste. 140
8 Las Vegas, Nevada 89119
Attorney for defendant Saticoy Bay LLC
9 Series 9720 Hitching Rail
10
11
12
13

14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on the 19th day of April, 2016, I electronically transmitted the above
16 **ANSWER AND COUNTERCLAIM** to the Clerk's Office using the CM/ECF System for filing and
17 transmittal of a Notice of Electronic Filing to the following counsel of record:

18
19 Ariel E. Stern, Esq.
Matthew Knepper, Esq.
20 Akerman LLP
1160 Town Center Drive, Suite 330
21 Las Vegas, Nevada 89144
Attorney for plaintiff
22

23
24 /s/ Marc Sameroff/
An employee of Law Offices of
25 Michael F. Bohn, Esq., Ltd.
26
27
28

EXHIBIT 3

EXHIBIT 3

Inst #: 201402180002910
Fees: \$18.00 N/C Fee: \$0.00
RPTT: \$887.40 Ex: #
02/18/2014 03:14:24 PM
Receipt #: 1935738
Requestor:
TITLE SOLUTIONS, INC.
Recorded By: RNS Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

Please mail tax statement and
when recorded mail to:
Saticoy Bay LLC Series 9720 Hitching Rail
P.O. Box 36208
Las Vegas, NV 89133

FORECLOSURE DEED

APN # 163-06-110-095
Lawyers Title of Nevada #08607390

NAS # N68453


The undersigned declares:

Nevada Association Services, Inc., herein called agent (for the Peccole Ranch Community Association), was the duly appointed agent under that certain Notice of Delinquent Assessment Lien, recorded October 3, 2011 as instrument number 0000458 Book 20111003, in Clark County. The previous owner as reflected on said lien is Greta Scott. Nevada Association Services, Inc. as agent for Peccole Ranch Community Association does hereby grant and convey, but without warranty expressed or implied to: Saticoy Bay LLC Series 9720 Hitching Rail (herein called grantee), pursuant to NRS 116.31162, 116.31163 and 116.31164, all its right, title and interest in and to that certain property legally described as: Ascot Park, Plat Book 49, Page 19, Lot 267, Block 4 Clark County

AGENT STATES THAT:

This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Peccole Ranch Community Association governing documents (CC&R's) and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 12/29/2011 as instrument # 0004054 Book 20111229 which was recorded in the office of the recorder of said county. Nevada Association Services, Inc. has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Peccole Ranch Community Association at public auction on 2/14/2014, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale, became the purchaser of said property and paid therefore to said agent the amount bid \$51,500.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: February 14, 2014

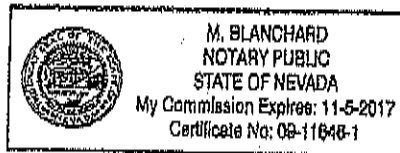

By Elissa Hollander, Agent for Association and Employee of Nevada Association Services

STATE OF NEVADA
COUNTY OF CLARK

On February 14, 2014, before me, M. Blanchard, personally appeared Elissa Hollander personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.
WITNESS my hand and seal.

(Seal)

(Signature)



M. Blanchard

JA164

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 163-06-110-095
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 \$ 51,500.00
b. Deed in Lieu of Foreclosure Only (value of property (_____))
c. Transfer Tax Value: \$ 173,617.00
d. Real Property Transfer Tax Due \$ 887.40

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 [Signature] Capacity: NAS Employee/Agent for HOA

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Nevada Association Services
Address: 6224 W. Desert Inn Road
City: Las Vegas
State: NV Zip: 89146

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Savita Bay LLC Series
9720 Rushing Rd
Address: P.O. Box 36208
City: Las Vegas
State: NV Zip: 89133

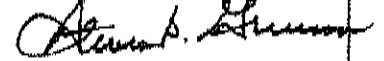
COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Title Solutions Inc Escrow # _____
Address: 2552 WALNUT AVE #220
City: TUSTIA State: CA Zip: 92780

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT 4

EXHIBIT 4



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.
7 2810 W. Charleston Blvd., Ste. 75
8 Las Vegas, Nevada 89148
9 (702) 254-7775 (telephone)
10 (702) 228-7719 (facsimile)
11 croteaulaw@croteaulaw.com
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,

18 Defendants

Case No.:
Dept. No.:

20 COMPLAINT

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

24 PARTIES AND JURISDICTION

- 25 1. Plaintiff, Saticoy Bay, LLC, Series 9720 Hitching Rail ("Saticoy Bay"), is a Nevada series
26 limited liability company, authorized to do business and doing business in the County of
27 Clark, State of Nevada.
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 116.3103(2) 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

- 1 Property. The NOD stated the amount due to the HOA was \$2,660.78 as of December 27,
2 2011, plus continuing assessments, late fees, collection fees, interest and attorney's fees
3 and costs.
- 4 18. On or about December 4, 2013, after the NOD was recorded, BANA, through counsel
5 Miles, Bauer, Bergstrom & Winters, LLP ("*Miles Bauer*") contacted the HOA Trustee
6 and HOA via U.S. Mail and requested adequate proof of the super priority amount of
7 assessments by providing a breakdown of up to nine (9) months of common HOA
8 assessments in order for BANA to calculate the Super Priority Lien Amount in an
9 ostensible attempt to determine the amount the HOA Lien entitled to super-priority
10 ("*Super-Priority Lien Amount*").
- 11 19. Upon information and belief, Miles Bauer requested the HOA arrears in an attempt to pay
12 the Super-Priority Lien Amount of the HOA Lien.
- 13 20. Miles Bauer used a Statement of Account from HOA Trustee, for a different property in
14 the same HOA to determine an estimated payment of the Super-Priority Lien Amount
15 good faith payoff.
- 16 21. On January 10, 2014, BANA, through Miles Bauer, provided a payment of \$585.00 to the
17 HOA Trustee, which included payment of up to nine months of delinquent assessments
18 (the "*Attempted Payment*").
- 19 22. HOA Trustee, on behalf of the HOA, rejected BANA's Attempted Payment of \$585.00.
- 20 23. On January 23, 2014, HOA Trustee, on behalf of the HOA, recorded a Notice of Sale
21 against the Property ("*NOS*"). The NOS provided that the total amount due the HOA was
22 \$6,614.20 and set a sale date for the Property of February 14, 2014, at 10:00 A.M., to be
23 held at Nevada Association Services.
- 24 24. On February 14, 2014, HOA Trustee then proceeded to non-judicial foreclosure sale on
25 the Property and recorded the HOA Foreclosure Deed on February 18, 2014, which stated
26 that the HOA Trustee sold the HOA's interest in the Property to the Plaintiff at the HOA
27 Foreclosure Sale for the highest bid amount of \$51,500.00.
- 28 25. The Foreclosure Sale created excess proceeds.

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

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

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

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

8 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

- 26 (a) Common Interest Community Declaration and Bylaws
27 available?
28 (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 18th 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 113.149*).

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 113.130*).

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"/>	Build-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"/>
Bathroom(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

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

Seller's Initials

Buyer's Initials

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 40.605 (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 ☐ Canceled ☐
 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 2 of this form.

Seller's Initials _____

Buyer's Initials _____

[illegible]

University Heights

EXHIBIT 5

EXHIBIT 5

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 N/A (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"/>
Bath tub(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

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

Seller(s) Initials

Buyer(s) Initials

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

[illegible]

Buyer(s) Initials

Buyers and sellers of residential property are advised to seek the advice of an attorney concerning their rights and obligations as set forth in Chapter 113 of the Nevada Revised Statutes regarding the seller's obligation to execute the Nevada Real Estate Division's approved "Seller's Real Property Disclosure Form". For your convenience, Chapter 113 of the Nevada Revised Statutes provides as follows:

CONDITION OF RESIDENTIAL PROPERTY OFFERED FOR SALE

NRS 113.100 Definitions. As used in NRS 113.100 to 113.150, inclusive, unless the context otherwise requires:

1. "Defect" means a condition that materially affects the value or use of residential property in an adverse manner.
 2. "Disclosure form" means a form that complies with the regulations adopted pursuant to NRS 113.120.
 3. "Dwelling unit" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one person who maintains a household or by two or more persons who maintain a common household.
 4. "Residential property" means any land in this state to which is affixed not less than one nor more than four dwelling units.
 5. "Seller" means a person who sells or intends to sell any residential property.
- (Added to NRS by 1995, 842; A 1999, 1446)

NRS 113.110 Conditions required for "conveyance of property" and to complete service of document. For the purposes of NRS 113.100 to 113.150, inclusive:

1. A "conveyance of property" occurs:
 - (a) Upon the closure of any escrow opened for the conveyance; or
 - (b) If an escrow has not been opened for the conveyance, when the purchaser of the property receives the deed of conveyance.
 2. Service of a document is complete:
 - (a) Upon personal delivery of the document to the person being served; or
 - (b) Three days after the document is mailed, postage prepaid, to the person being served at his last known address.
- (Added to NRS by 1995, 844)

NRS 113.120 Regulations prescribing format and contents of form for disclosing condition of property. The Real Estate Division of the Department of Business and Industry shall adopt regulations prescribing the format and contents of a form for disclosing the condition of residential property offered for sale. The regulations must ensure that the form:

1. Provides for an evaluation of the condition of any electrical, heating, cooling, plumbing and sewer systems on the property, and of the condition of any other aspects of the property which affect its use or value, and allows the seller of the property to indicate whether or not each of those systems and other aspects of the property has a defect of which the seller is aware.
 2. Provides notice:
 - (a) Of the provisions of NRS 113.140 and subsection 5 of NRS 113.150.
 - (b) That the disclosures set forth in the form are made by the seller and not by his agent.
 - (c) That the seller's agent, and the agent of the purchaser or potential purchaser of the residential property, may reveal the completed form and its contents to any purchaser or potential purchaser of the residential property.
- (Added to NRS by 1995, 842)

NRS 113.130 Completion and service of disclosure form before conveyance of property; discovery or worsening of defect after service of form; exceptions; waiver.

1. Except as otherwise provided in subsection 2:
 - (a) At least 10 days before residential property is conveyed to a purchaser:
 - (1) The seller shall complete a disclosure form regarding the residential property; and
 - (2) The seller or the seller's agent shall serve the purchaser or the purchaser's agent with the completed disclosure form.
 - (b) If, after service of the completed disclosure form but before conveyance of the property to the purchaser, a seller or the seller's agent discovers a new defect in the residential property that was not identified on the completed disclosure form or discovers that a defect identified on the completed disclosure form has become worse than was indicated on the form, the seller or the seller's agent shall inform the purchaser or the purchaser's agent of that fact, in writing, as soon as practicable after the discovery of that fact but in no event later than the conveyance of the property to the purchaser. If the seller does not agree to repair or replace the defect, the purchaser may:
 - (1) Rescind the agreement to purchase the property; or
 - (2) Close escrow and accept the property with the defect as revealed by the seller or the seller's agent without further recourse.
2. Subsection 1 does not apply to a sale or intended sale of residential property:
 - (a) By foreclosure pursuant to chapter 107 of NRS.
 - (b) Between any co-owners of the property, spouses or persons related within the third degree of consanguinity.
 - (c) Which is the first sale of a residence that was constructed by a licensed contractor.
 - (d) By a person who takes temporary possession or control of or title to the property solely to facilitate the sale of the property on behalf of a person who relocates to another county, state or country before title to the property is transferred to a purchaser.
3. A purchaser of residential property may not waive any of the requirements of subsection 1. A seller of residential property may not require a purchaser to waive any of the requirements of subsection 1 as a condition of sale or for any other purpose.
4. If a sale or intended sale of residential property is exempted from the requirements of subsection 1 pursuant to paragraph (a) of subsection 2, the trustee and the beneficiary of the deed of trust shall, not later than at the time of the conveyance of the property to the purchaser of the residential property, or upon the request of the purchaser of the residential property, provide:
 - (a) Written notice to the purchaser of any defects in the property of which the trustee or beneficiary, respectively, is aware; and
 - (b) If any defects are repaired or replaced or attempted to be repaired or replaced, the contact information of any asset management company who provided asset management services for the property. The asset management company shall provide a service report to the purchaser upon request.

5. As used in this section:

- (a) "Seller" includes, without limitation, a client as defined in NRS 645H.060.
 - (b) "Service report" has the meaning ascribed to it in NRS 645H.150.
- (Added to NRS by 1995, 842; A 1997, 349; 2003, 1339; 2005, 598; 2011, 2832)

Seller(s) Initials

Buyer(s) Initials

NRS 113.135 Certain sellers to provide copies of certain provisions of NRS and give notice of certain soil reports; initial purchaser entitled to rescind sales agreement in certain circumstances; waiver of right to rescind.

1. Upon signing a sales agreement with the initial purchaser of residential property that was not occupied by the purchaser for more than 120 days after substantial completion of the construction of the residential property, the seller shall:

(a) Provide to the initial purchaser a copy of NRS 11.202 to 11.206, inclusive, and 40.600 to 40.695, inclusive;

(b) Notify the initial purchaser of any soil report prepared for the residential property or for the subdivision in which the residential property is located; and

(c) If requested in writing by the initial purchaser not later than 5 days after signing the sales agreement, provide to the purchaser without cost each report described in paragraph (b) not later than 5 days after the seller receives the written request.

2. Not later than 20 days after receipt of all reports pursuant to paragraph (c) of subsection 1, the initial purchaser may rescind the sales agreement.

3. The initial purchaser may waive his right to rescind the sales agreement pursuant to subsection 2. Such a waiver is effective only if it is made in a written document that is signed by the purchaser.

(Added to NRS by 1999, 1446)

NRS 113.140 Disclosure of unknown defect not required; form does not constitute warranty; duty of buyer and prospective buyer to exercise reasonable care.

1. NRS 113.130 does not require a seller to disclose a defect in residential property of which he is not aware.

2. A completed disclosure form does not constitute an express or implied warranty regarding any condition of residential property.

3. Neither this chapter nor chapter 645 of NRS relieves a buyer or prospective buyer of the duty to exercise reasonable care to protect himself.

(Added to NRS by 1995, 843; A 2001, 2896)

NRS 113.150 Remedies for seller's delayed disclosure or nondisclosure of defects in property; waiver.

1. If a seller or the seller's agent fails to serve a completed disclosure form in accordance with the requirements of NRS 113.130, the purchaser may, at any time before the conveyance of the property to the purchaser, rescind the agreement to purchase the property without any penalties.

2. If, before the conveyance of the property to the purchaser, a seller or the seller's agent informs the purchaser or the purchaser's agent, through the disclosure form or another written notice, of a defect in the property of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser may:

(a) Rescind the agreement to purchase the property at any time before the conveyance of the property to the purchaser; or

(b) Close escrow and accept the property with the defect as revealed by the seller or the seller's agent without further recourse.

3. Rescission of an agreement pursuant to subsection 2 is effective only if made in writing, notarized and served not later than 4 working days after the date on which the purchaser is informed of the defect:

(a) On the holder of any escrow opened for the conveyance; or

(b) If an escrow has not been opened for the conveyance, on the seller or the seller's agent.

4. Except as otherwise provided in subsection 5, if a seller conveys residential property to a purchaser without complying with the requirements of NRS 113.130 or otherwise providing the purchaser or the purchaser's agent with written notice of all defects in the property of which the seller is aware, and there is a defect in the property of which the seller was aware before the property was conveyed to the purchaser and of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser is entitled to recover from the seller treble the amount necessary to repair or replace the defective part of the property, together with court costs and reasonable attorney's fees. An action to enforce the provisions of this subsection must be commenced not later than 1 year after the purchaser discovers or reasonably should have discovered the defect or 2 years after the conveyance of the property to the purchaser, whichever occurs later.

5. A purchaser may not recover damages from a seller pursuant to subsection 4 on the basis of an error or omission in the disclosure form that was caused by the seller's reliance upon information provided to the seller by:

(a) An officer or employee of this State or any political subdivision of this State in the ordinary course of his or her duties; or

(b) A contractor, engineer, land surveyor, certified inspector as defined in NRS 645D.040 or pesticide applicator, who was authorized to practice that profession in this State at the time the information was provided.

6. A purchaser of residential property may waive any of his or her rights under this section. Any such waiver is effective only if it is made in a written document that is signed by the purchaser and notarized.

(Added to NRS by 1995, 843; A 1997, 350, 1797)

The above information provided on pages one (1), two (2) and three (3) of this disclosure form is true and correct to the best of seller's knowledge as of the date set forth on page one (1). **SELLER HAS DUTY TO DISCLOSE TO BUYER AS NEW DEFECTS ARE DISCOVERED AND/OR KNOWN DEFECTS BECOME WORSE (See NRS 113.130(1)(b)).**

Seller(s): _____ Date: _____

Seller(s): _____ Date: _____

BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO MORE FULLY DETERMINE THE CONDITION OF THE PROPERTY AND ITS ENVIRONMENTAL STATUS. Buyer(s) has/have read and acknowledge(s) receipt of a copy of this Seller's Real Property Disclosure Form and copy of NRS Chapter 113.100-150, inclusive, attached hereto as pages four (4) and five (5).

Buyer(s): _____ Date: _____

Buyer(s): _____ Date: _____

EXHIBIT 6

EXHIBIT 6

DUTIES OWED BY A
NEVADA LICENSEE

IMPACT FEES

SOIL REPORT

COMMON-INTEREST
COMMUNITIES

LIEN FOR DEFERRED
TAXES

OPEN RANGE

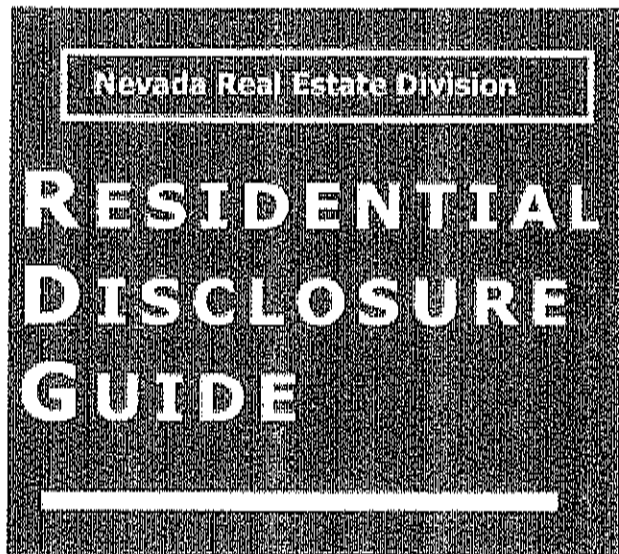
SELLER'S REAL PROPERTY
DISCLOSURE

USED MOBILE HOMES

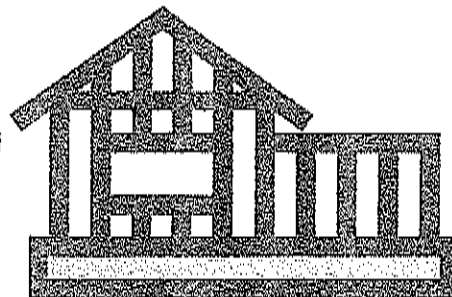
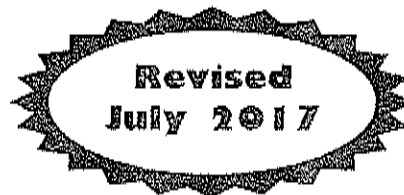
RESIDENTIAL POOL SAFETY
AND DROWNING PREVENTION

ENVIRONMENTAL HAZARDS

SEWER AND WATER
RATES



*A few things you need to know
before buying or selling a home
in Nevada.*



State of Nevada
Department of Business & Industry
Real Estate Division

Introduction

The Department of Business and Industry—Nevada Real Estate Division has developed this booklet to increase consumer awareness and understanding of disclosures that may be required by a buyer or seller during the sale or purchase of a residential property in the State of Nevada.

In almost every real estate transaction, some form of written disclosure is required. For example, real estate licensees must disclose if they are related to a party in the transaction or affiliated with the lender involved in approving the loan for that particular transaction. Sellers, for instance, are responsible for disclosing material facts, data and other information relating to the property they are attempting to sell. And buyers, in some cases, must disclose if they are choosing to waive their 10-day opportunity to conduct a risk assessment of lead hazards.

These are only a few examples of what must be disclosed during a real estate transaction. While it is not possible to outline which disclosures are needed in every situation, as each real estate transaction is unique, this booklet contains discussions on the most commonly required state, federal and local disclosures.

References to real estate licensees and the sale of residential properties in this booklet apply only to the state of Nevada. This guide, however, does not specifically address vacant land or commercial properties.

We hope that you will find this booklet helpful and that it becomes a valuable resource during your real estate transaction. For more information, please visit our website at <http://red.nv.gov>.

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Common-Interest Communities and Condominium Hotels

⇒ Purpose of Disclosure

The purpose of the information statement required when purchasing a home or unit in a common-interest community or a condominium hotel is to make the buyer aware of all rights, obligations and other aspects related to owning a unit within a common-interest community (also known as a homeowner's association) or a condominium hotel. The statement makes buyers aware that use of their units can be restricted by the Declaration or CC&R's. It also alerts buyers that foreclosure of the unit is possible for failure to pay assessments.

⇒ Who must provide the disclosure?

The seller must, at seller's expense, provide an information statement with the sale of any unit within a common-interest community or condominium hotel. The statement is entitled "*BEFORE YOU PURCHASE PROPERTY IN A [COMMON-INTEREST COMMUNITY] [CONDOMINIUM HOTEL] DID YOU KNOW...*"

⇒ When is it due?

In a transaction requiring a public offering statement (further detailed below), the information statement is part of the public offering statement and is due no later than the date an offer to purchase becomes binding on the buyer. If the unit has not been inspected by the buyer, the buyer will have 5 calendar days to cancel the contract from the date of execution.

In a resale transaction, the information statement is part of the resale package. A buyer has 5 calendar days to cancel the contract after receipt of the resale package. It is good practice to provide the information statement no later than 5 days before the contract becomes binding on the buyer in any type of transaction.

Common-Interest Communities and Condominium Hotels

⇒ Additional Information

Public Offering Statement

If the property is a new unit in a common-interest community or a condominium hotel, or if the community is subject to any developmental rights, or contains converted buildings or contains units which may be in a time share, or is registered with the Securities and Exchange Commission, the buyer must also be provided with a **Public Offering Statement** disclosing applicable information, including:

- development rights of contractors
- construction schedule
- description of proposed improvements
- mechanical & electrical installations
- initial or special fees
- number & identity of units in timeshare

Unless the buyer has personally inspected the unit, the buyer may cancel the contract to purchase, by written notice, until midnight of the fifth calendar day following the date of execution of the contract. This provision must be stated in the contract.

Resale Package

In transactions involving the resale of a unit previously sold by the developer, a resale package must be provided to the buyer at the expense of the seller. In addition to the information statement; the resale package includes the following: the declaration, bylaws, rules and regulations, monthly assessments, unpaid assessments of any kind, current operating budget, financial statement, reserve summary, unsatisfied judgments, and status of any pending legal actions.

(Continued on next page...)

Common-Interest Communities and Condominium Hotels

(Continued from previous page...)

Transfer Fees

Do not pertain to Condominium Hotels

The resale package for a home or unit in a common-interest community must also include a statement of any transfer fees, transaction fees or any other fees associated with the resale of a unit.

Unpaid Obligations

Do not pertain to Condominium Hotels

The resale package for a home or unit in a common-interest community must also include a statement from the association setting forth the amount of the monthly assessment for common expenses and any unpaid obligations that are due from the selling unit's owner, including management fees, transfer fees, fines, penalties, interest, collection costs, foreclosure fees and attorney's fee. Please be advised that while the resale package includes this information, changes to the law in 2013 no longer allow a seller or buyer to rely on this statement as accurate. The seller must obtain a "statement of demand" which is separate from the resale package.

Delivery of Resale Package

An association or hotel unit owner has 10 days to provide the resale package after a request. If the documents are not provided within 10 days the buyer is not liable for any delinquent assessment. The resale package should be delivered as soon as practicable. Unless the buyer has accepted conveyance of the unit, the buyer may cancel the contract to purchase, by written notice, until midnight of the fifth calendar day following receipt of the resale package. This provision must be stated in the contract.

Common-Interest Communities and Condominium Hotels

Statement of Demand

Does not pertain to Condominium Hotels

The statement of fees and assessments in the resale package may not be relied upon. It is necessary for any seller to purchase a statement of demand from the association and provide it to the buyer. The statement of demand may be requested by the unit owner, his or her representative or the holder of a security interest on the unit. A statement of demand from the association sets forth the current outstanding assessments, fees and unpaid obligations, including foreclosure fees and attorney's fees due from the seller. The statement of demand remains effective for the period specified in the demand which must not be less than 15 business days from the date of delivery by the association to the seller. The association may provide a corrected statement of demand prior to the sale. Payment of the amount set forth in the statement of demand constitutes full payment of the amount due from the seller.

[NRS 116 governs Common-Interest Communities;
NRS 116B governs Condominium Hotels]

For more information:

Form: Before You Purchase Property in a Common-Interest Community Did You Know... or Before You Purchase Property in a Condominium Hotel Did You Know...

Website: <http://red.nv.gov/uploadedFiles/rednvgov/Content/Forms/584.pdf>
or <http://red.nv.gov/uploadedFiles/rednvgov/Content/Forms/584a.pdf>

NRS: 116.4101-116.412; NAC: 116.151, 116.465, 116.470

NRS: 116B.725-116B.795; NAC: 116B.500-116B.530

Consent to Act

⇒ Purpose of Disclosure

The purpose of the Consent to Act form is for the licensee to obtain the written consent to act for more than one party in a transaction.

⇒ Who must provide the disclosure?

The licensee must provide this form to all parties in the transaction if he seeks to act for more than one party.

⇒ When is it due?

If a licensee makes such a disclosure, the consent must be obtained from all parties before the licensee may continue to act in his capacity as an agent.

⇒ Additional Information

The written consent must include:

1. A description of the real estate transaction;
2. A statement that the licensee is acting for two or more parties to the transaction and that, in acting for these parties, the licensee has a conflict of interest;
3. A statement that the licensee will not disclose any confidential information for 1 year after the revocation or termination of the brokerage agreement unless he is required to do so per court order or he is given written permission by that party;
4. A statement that a party is not required to consent to the licensee acting on his behalf;
5. A statement that the party is giving his consent without coercion and understands the terms of the consent given.

For more information:

Form: Consent to Act

Website: <http://red.nv.gov/uploadedFiles/rednv.gov/Content/Forms/524.pdf>

NRS: 645.252-254

Construction Defects

⇒ Purpose of Disclosure

The purpose of disclosures relating to construction defects is to make the buyer aware of any construction defects in the property.

⇒ Who must provide the disclosure?

If there is a construction defect, the contractor must disclose the information in understandable language that is underlined and in bold-faced type with capital letters. If the property is or has been the subject of a construction defect claim or lawsuit, the seller must provide the following information to the buyer:

- copies of all notices given to contractor
- expert opinions obtained by claimant
- terms of settlement or order of judgment
- detailed report of all repairs

⇒ When is it due?

Construction defects must be disclosed to the buyer before purchase of the residence. If the property is or has been the subject of a defect claim or lawsuit, the information must be disclosed 30 days before close of escrow, or if escrow is less than 30 days, then immediately upon signing the sales agreement. If a claim is made while in escrow, the disclosure must be made within 24 hours of notice of complaint.

⇒ Additional Information

If the property is located within a common-interest community and is the subject of a defect claim or lawsuit, this information must be disclosed in the buyer's **resale package** (see Common-Interest Communities).

For more information:

NRS: 40.640, 40.688

Duties Owed By a Nevada Real Estate Licensee

⇒ Purpose of Disclosure

The purpose of the Duties Owed form is to make the buyer or seller aware of obligations owed by a real estate licensee to all parties involved in the transaction.

⇒ Who must provide the disclosure?

A licensee who acts as an agent in a real estate transaction must disclose to each party for whom the licensee is acting as an agent and any unrepresented party all duties owed to the parties and the licensee's relationship as an agent to each party in the transaction.

⇒ When is it due?

The disclosure form must be presented to the client before any documents are signed by the client.

⇒ Additional Information

A Nevada licensee who has entered into a brokerage agreement to represent a client in a real estate transaction shall:

1. Exercise reasonable skill and care to carry out the terms of the brokerage agreement and the licensee's duties in the brokerage agreement;
2. Not disclose, except to the licensee's broker, confidential information relating to a client for 1 year after the revocation or termination of the brokerage agreement, unless licensee is required to do so by court order or the client gives written permission;
3. Seek a sale, purchase, option, rental or lease of real property at the price and terms stated in the brokerage agreement or at a price acceptable to the client;
4. Present all offers made to or by the client as soon as practicable, unless the client chooses to waive the duty of the licensee to present all offers and signs a waiver of the duty on a form prescribed by the Division;

Duties Owed By a Nevada Real Estate Licensee

5. Disclose to the client material facts of which the licensee has knowledge concerning the real estate transaction;
6. Advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee; and
7. Account to the client for all money and property the licensee receives in which the client may have an interest.

⇒ Waiver of Duty to Present All Offers

Authorization to Negotiate Directly with Seller

A client may choose to waive the broker's duty to present all offers by signing a waiver on a form, the "Waiver Form," prescribed by the Division. Concurrent with the option of a client to waive the duty of his/her broker to present all offers is the form "Authorization to Negotiate Directly with Seller," which gives permission in writing to authorize a licensee to negotiate a sale or lease directly with a seller. Both forms must be utilized and signed by a client who waives the duty to present all offers.

Otherwise, a licensee for a buyer does not have the permission of the seller's broker to present offers or negotiate with the sellers directly.

For more information:

Form: [Duties Owed By a Nevada Real Estate Licensee](#)

Website: <http://red.nv.gov/uploadedFiles/red/nv.gov/Content/Forms/525.pdf>

NRS: [645.193](#); [645.252](#)-[645.254](#)

Impact Fees

⇒ Purpose of Disclosure

The seller of any property must give notice of any impact fees that may be imposed upon the buyer.

An impact fee is a charge imposed by a local government on new development (i.e., the construction, reconstruction, redevelopment, conversion, alteration, relocation or enlargement of any structure which increases the number of service units) to finance some of the costs attributable to the new development.

⇒ Who must provide the disclosure?

A seller who has knowledge of the impact fee must give written notice to the buyer, including the amount of the impact fee and the name of the local government imposing the fee.

⇒ When is it due?

The notice must be provided to the buyer before the property is conveyed.

⇒ Additional Information

If the seller fails to give this notice, the seller is liable to the buyer for the amount of the impact fee.

For more information:

NRS: 278B.320

Lien for Deferred Taxes

⇒ Purpose of Disclosure

If there are deferred taxes that have not been paid at the time the property is sold or transferred, the buyer must be notified in writing that there is a lien for deferred taxes on the property.

⇒ Who must provide the disclosure?

The seller must notify the buyer of the lien.

⇒ When is it due?

The lien must be disclosed at the time the property is sold or transferred.

⇒ Additional Information

The owner of the property on the date the deferred taxes become due is liable for the deferred taxes.

For more information:

NRS: 361A.290

Manufactured Housing— Used Manufactured/Mobile Homes

⇒ Purpose of Disclosure

The purpose of the Used Manufactured/Mobile Home disclosure is to make the buyer aware that a used manufactured or mobile home that has not been converted to real property is personal property and subject to personal property taxes.

⇒ Who must provide the disclosure?

The real estate licensee shall provide the form to the purchaser as soon as practicable, but before title is transferred.

⇒ Additional Information

This disclosure also informs the purchaser that title will not pass unless the county assessor's endorsement is placed on the face of the title, verifying that taxes have been paid in full.

The disclosure also instructs the consumer to submit certain documents to Nevada's Manufactured Housing Division and the county assessor within 45 days after the sale is complete and before a certificate of ownership will be issued.

For more information:

Form: [Used Manufactured/Mobile Home Disclosure](#)

Website: [Manufactured Housing Division](#)

NRS: [645.258](#), [489.521](#), [489.531](#), [489.541](#)

Manufactured Housing— Manufactured Home Parks

⇒ Purpose of Disclosure

The purpose of the disclosure relating to placing or buying a manufactured or mobile home in a manufactured home park is to make the buyer aware that he may be subject to approval by the landlord of the manufactured home park if the manufactured or mobile home will remain in the park.

⇒ Who must provide the disclosure?

If the landlord requires approval of a prospective buyer and tenant, the landlord must post a sign which is clearly readable at the entrance of the park which advises consumers that before a manufactured home in the park is sold, the buyer and tenant must be approved by the landlord.

⇒ Additional Information

If the property will remain in the manufactured home park, make sure you have a lease agreement with the park manager and that you know the park's rules and regulations.

Remember: the seller or a manufactured home dealer cannot promise that you'll be accepted as a tenant in a particular manufactured home park. You must apply for the lease yourself and should do so before finalizing the purchase of your home. The landlord must approve or deny a completed application from a prospective buyer and tenant within 10 days after the date the application is submitted.

For more information:

Website: [Manufactured Housing Division—Placing or Buying Your Home in a Rental Community](#)

NRS: [118B.170](#)

Open Range Disclosure

⇒ Purpose of Disclosure

The purpose of the Open Range Disclosure is to inform the prospective buyer of a home or an improved or unimproved lot adjacent to open range that livestock are permitted to graze or roam on the property. Open range means all unenclosed land outside of cities and towns upon which cattle, sheep or other domestic animals by custom, license, lease or permit are grazed or permitted to roam. It also serves to inform the prospective buyer that the parcel may be subject to county or State claims of right-of-way, (commonly referred to as R.S. 2477 rights-of-way) including rights-of-way that may be unrecorded, undocumented or unsurveyed; and used by miners, ranchers, hunters or others, for access or recreational use, in a manner which interferes with the use and enjoyment of the parcel.

⇒ Who must provide the disclosure?

A seller must disclose, in writing, to a potential buyer of property adjacent to open range, that livestock grazing on the open range are permitted to enter the property; and that the parcel may be subject to county or State claims of right-of-way.

⇒ When is it due?

The disclosure must be provided to the potential buyer, with the requirement that the buyer sign the disclosure form acknowledging the date of receipt of the original disclosure document, before the sales agreement is signed.

Open Range Disclosure

⇒ Additional Information

The disclosure acknowledges fencing the property to keep livestock out and recognizes the property owner's entitlement to damages if livestock enter a fenced property but warns against harming roaming livestock even on a fenced property.

The law requires that the seller retain a copy of the disclosure document that has been signed by the buyer acknowledging the date of receipt of the document, provide a copy to the buyer, and record the original disclosure document containing the buyer's signature and the seller's notarized signature in the office of the county recorder in the county where the property is located.

For more information:

Form: [Open Range Disclosure](#)

Website: <http://red.nv.gov/uploadedFiles/rednv.gov/Content/Forms/551.pdf>

NRS: [113.065](#); [568.355](#)

Private Transfer Fee Obligation

⇒ Purpose of Disclosure

The purpose of the disclosure is to make the buyer aware that the property is subject to a Private Transfer Fee Obligation (PTFO) which will require the buyer, upon conveyance of the property by the seller, to pay either a one-time fixed amount or a one-time percentage of the purchase price to a third party payee.

⇒ Who Must Provide the Disclosure?

The seller of a property that is subject to a PTFO must provide the disclosure as a written statement that discloses the existence of and describes the PTFO, and includes language substantially similar to the legislatively-prescribed notice informing the buyer that the PTFO may lower the value of the property and that the laws of this State prohibit the enforcement of certain PTFOs created on or after May 20, 2011.

⇒ When is it due?

The disclosure must be provided to the potential buyer before the conveyance of the property.

⇒ Additional Information

The notice regarding the existence of a PTFO in the seller's disclosure must be in substantially the following form:

A private transfer fee obligation has been created with respect to this property. The private transfer fee obligation may lower the value of this property. The laws of this State prohibit the enforcement of certain private transfer fee obligations that are created on or after May 20, 2011 and impose certain notice requirements with respect to private transfer fee obligations that were created before May 20, 2011.

For more information:

NRS: [111.825-111.880](http://www.nrs.state.nv.us/legislation/nrs/nrs111.htm)

Seller's Real Property Disclosure

⇒ Purpose of Disclosure

The purpose of the Seller's Real Property Disclosure form is to make the buyer aware of the overall condition of the property before it is transferred. This disclosure is not a guarantee nor does it take the place of an inspection. In some cases a Seller has never lived on the property and may have no knowledge of the condition of the property. The Buyer is advised to obtain an independent inspection performed by a properly licensed home inspector. This form is not required for new home sales.

⇒ Who must provide the disclosure?

The seller must complete the "Seller's Real Property Disclosure" form, detailing the condition of the property, known defects, and any other aspects of the property which may affect its use or value. A real estate licensee, unless he is the seller of the property, may not complete this form.

The form must be fully and properly completed. If the seller has no knowledge, "no" is an appropriate answer to the "Are you aware ..." questions. Each question must be answered with a mark in the corresponding "yes", "no" or in some cases "n/a" box. Explanations of any "yes" answers, and a properly executed signature by the seller, are also required. The buyer may only sign the form after full and proper completion by the seller.

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).

(Continued on next page...)

Seller's Real Property Disclosure

(Continued from previous page...)

⇒ When is it due?

The disclosure must be delivered to the buyer at least 10 days prior to conveyance of the property.

⇒ Additional Information

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; and
- the contact information of any asset management company who provided asset management services, if any defects are repaired or replaced or attempted to be repaired or replaced. The asset management company shall provide a service report to the purchaser upon request.

Seller's Real Property Disclosure

If a Seller requests a Buyer to waive his rights or legal remedies under NRS 113.150 or otherwise, the Buyer should contact an attorney for advice regarding the legal consequences. A real estate licensee cannot explain the legal consequences of waiving a Buyer's legal rights or remedies.

EFFECTIVE JULY, 2017 the form includes the following 2 additional disclosures:

- whether solar panels are installed on the subject property. If yes, then disclose whether the solar panels are leased, owned or financed.
- whether the property is a participant in any conservation easement such as the Southern Nevada Water Authority's Water Smart Landscape Program. Seller shall inform the buyer about conservation easements or the potential for other types of conservation easements as required by the statutory language below:

Conservation Easements: The subject property ____ is OR ____ is not subject to a Restrictive Covenant and Conservation Easement established by Nevada Revised Statute 111.390-440 such as the Southern Nevada Water Authority's Water Smart Landscape Program.

For more information:

Form: Seller's Real Property Disclosure

Website: <http://red.nv.gov/uploadedFiles/rednv.gov/Content/Forms/S47.pdf>

NRS: 113.130; 113.140; 113.150

NRS: 111.390-440

Water & Sewer Rates

⇒ Purpose of Disclosure

The purpose of the disclosure relating to water and sewer rates is to inform the buyer of a previously unsold home or improved lot of public utility rates when service is for more than 25 but fewer than 2,000 customers.

⇒ Who must provide the disclosure?

The seller must post a notice, which shows the current or projected rates, in a conspicuous place on the property.

⇒ When is it due?

The notice must be posted and a copy provided to the buyer before the home is sold.

⇒ Additional Information

The notice must contain the name, address and telephone number of the public utility and the Division of Consumer Complaint Resolution of the Public Utilities Commission of Nevada.

For more information:

NRS: 113.060

Lead-Based Paint

⇒ Purpose of Disclosure

The purpose of the lead-based paint disclosure is to make the buyer aware that the residential property (if built prior to 1978) may present exposure to lead.

⇒ Who must provide the disclosure?

Federal law requires that the seller disclose any known presence of lead-based paint hazards and provide the buyer with the EPA disclosure booklet, "Protect Your Family From Lead in Your Home," along with any other available records and/or reports.

⇒ When is it due?

The disclosure is on a federally prescribed form and must be made as a condition of the sale before conveyance of the property.

⇒ Additional Information

On the disclosure form, the buyer must acknowledge receipt of the EPA disclosure booklet and copies of lead reports, if available. Additionally, the buyer will receive a 10-day opportunity to conduct a risk assessment or may choose to waive this opportunity.

For more information:

Form: Disclosure of Information on Lead-Based Paint

Website: Environmental Protection Agency (Lead)

Phone: National Lead Information Center 1-800-424-LEAD

Pool Safety and Drowning Prevention Disclosure

⇒ Purpose of Disclosure

The purpose of the Southern Nevada Health District's pool safety and drowning prevention disclosure is to make the buyer aware of the risk of death by drowning in private and public pools particularly for children 4 years or younger.

⇒ Who must provide the disclosure?

The information is provided by the Nevada Real Estate Division (NRED) in agreement with the Southern Nevada Health District (SNHD) to promote SNHD's efforts to inform the public on drowning prevention.

⇒ When is it due?

The disclosure will be provided to the buyer before the sales agreement is signed by way of the Residential Disclosure Guide in which it is contained. The buyer is advised to visit SNHD's website:

<http://www.southernnevadahealthdistrict.org/health-topics/drowning-prevention.php>.

⇒ Additional Information

Drowning is the leading cause of unintentional injury death in Clark County for children four years of age and under. The majority of drowning deaths occur in the family pool. Preventable mistakes include leaving a child unattended near a body of water in which a child's nose and mouth can be submerged.

More information on drowning facts, preventable mistakes, how to be prepared to prevent a drowning, pool security, drowning statistics, adult supervision and more can be obtained at SNHD's website at <http://www.southernnevadahealthdistrict.org/health-topics/drowning-prevention.php> and <http://www.gethealthyclarkcounty.org/be-safe/index.php>.

Miscellaneous Disclosures

Depending upon the transaction, the following disclosures may also be required from a buyer, seller or licensee:

⇒ AIRPORT NOISE

Buyers should investigate the impact of airport flight paths and the noise levels at different times of the day over that property.

⇒ BUILDING & ZONING CODES

The purpose of the building and zoning disclosure is to inform the buyer of transportation beltways and/or planned or anticipated land use within proximity of the subject property of which the seller has knowledge.

For more information on building and zoning codes, contact your local jurisdiction.

⇒ ENVIRONMENTAL HAZARDS

Although the seller is required to disclose the presence of environmental hazards, a statement that the seller is not aware of a defect or hazard does not mean that it does not exist. **It is the buyer's responsibility to be informed and take additional steps to further investigate.** Some potential hazards that may be found in Nevada include:

- **Radon** (www.epa.gov/radon)
- **Floods** (<http://www.floodsmart.gov>)
- **Methamphetamine Labs** (NRS 40.770 & 489.776)
- **Wood-Burning Devices** (<http://www.epa.gov/iaq/pubs/combust.html>)

(Continued on next page...)

Miscellaneous Disclosures

(Continued from previous page...)

- **Underground Storage Tanks** (<http://epa.gov/oust/index.htm>)
- **Septic Systems** (<http://water.epa.gov/infrastructure/septic/>)
- **Wells** (<http://water.epa.gov/drink/info/well/index.cfm>)
- **Land and Cleanup** (<http://www2.epa.gov/learn-issues/learn-about-land-and-cleanup>)
- **Groundwater** (<http://water.epa.gov/drink/resources/topics.cfm>)
- **Public Pools & Spas** (<http://www.poolsafely.gov/>)
- **Molds and Moisture** (<http://www.epa.gov/mold/>)

For more information on environmental hazards, visit:
www.epa.gov.

⇒ GAMING

Initial Purchaser in New Construction Only

If there is a gaming district near the property, the seller must disclose information which includes a copy of the most recent gaming enterprise district map, the location of the nearest gaming enterprise district, and notice that the map is subject to change. This disclosure is required for Nevada counties with population over 400,000.

The information must be provided at least 24 hours before the seller signs the sales agreement. The buyer may waive the 24-hour period.

The seller must retain a copy of the disclosure.

For more information on gaming, see: NRS 113.080

Miscellaneous Disclosures

⇒ HOME INSPECTIONS

When obtaining an FHA-insured loan, this disclosure informs the buyer about the limits of the Federal Housing Administration appraisal inspection and suggests the buyer obtain a home inspection to evaluate the physical condition of the property prior to purchase. The form is entitled, "For Your Protection: Get a Home Inspection."

*For more information on FHA home inspections, visit:
www.hud.gov.*

⇒ MILITARY ACTIVITIES

The purpose of the Military Activities Disclosure is to make the purchaser of residential property aware of planned or anticipated military activity within the proximity of the property. Counties in which the military files Military Activities Plans include Clark County, Washoe County, Churchill County and Mineral County.

For more information on military activities plans in these counties, contact the local municipal jurisdiction or the Public Information Officer of the Military Installation in your county.

⇒ LICENSEE DISCLOSURES

In addition to the "Consent to Act" and the "Duties Owed by a Nevada Real Estate Licensee" forms (see pages 8 & 10), a real estate licensee is required to disclose other information such as his relationship to one or more parties in the transaction and/or having a personal interest in the property.

For more information regarding duties and disclosures owed by a licensee, see: [NRS 645.252-645.254](#), [NAC 645.637](#) and [NAC 645.640](#).

(Continued on next page...)

Miscellaneous Disclosures

(Continued from previous page...)

⇒ **ROAD MAINTENANCE DISTRICT**

The sale of residential property within a road maintenance district is prohibited unless the seller provides notice to the purchaser, including the amount of assessments for the last two years. If the district has been in existence for less than 2 years before notice is provided to the purchaser, then the amount of assessments shall be given for the period since the district was created.

For more information, see: NRS 320.130.

⇒ **SOIL REPORT (New Construction Only)**

If the property has not been occupied by the buyer more than 120 days before completion, the seller must give notice of any soil report prepared for the property or for the subdivision in which the property is located.

The seller must provide such notice upon signing the sales agreement.

Upon receiving the notice, the buyer must submit a written request within 5 days for a copy of the actual report. The seller must provide a free report to the buyer within 5 days of receiving such request.

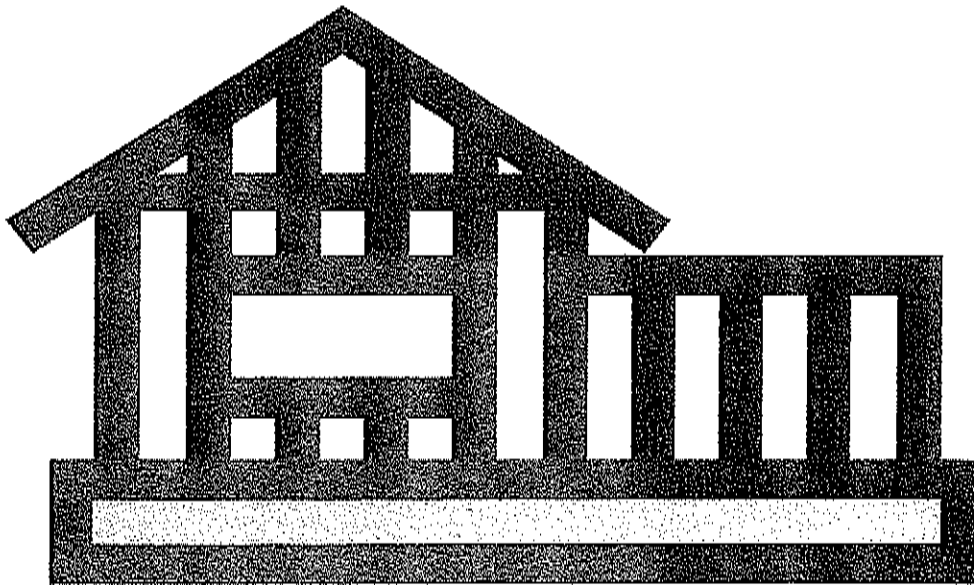
Upon receiving the soil report, the buyer has 20 days to rescind the sales agreement. This rescission right may be waived, in writing, by the buyer.

For more information, see: NRS 113.135.

Contact Information

<p>Nevada Real Estate Division (LV) 3300 W Sahara Avenue, Suite 350 Las Vegas, NV 89102 Phone: (702) 486-4033 Fax: (702) 486-4275 Email: realest@red.nv.gov Website: http://red.nv.gov</p>	<p>Nevada Real Estate Division (CC) 1818 E. College Parkway, Suite 110 Carson City, NV 89706-7986 Phone: (775) 684-1900 Fax: (775) 687-4868 Email: realest@red.nv.gov Website: http://red.nv.gov</p>
<p>Manufactured Housing Division (LV) 3300 W Sahara Avenue, Suite 320 Las Vegas, NV 89102 Phone: (702) 486-4135 Fax: (702) 486-4309 Email: nmhd@mhd.state.nv.us Website: http://mhd.nv.gov</p>	<p>Manufactured Housing Division (CC) 1830 E. College Pkwy., #120 Carson City, Nevada 89706 Phone: (775) 684-2940 Fax: (775) 684-2949 Email: nmhd@mhd.state.nv.us Website: http://mhd.nv.gov</p>
<p>Ombudsman Office (Common-Interest Communities) 3300 W Sahara Avenue, Suite 325 Las Vegas, NV 89102 Phone: (702) 486-4480 Toll Free: (877) 829-9907 Fax: (702) 486-4520 Email: CICombudsman@red.nv.gov Website: http://red.nv.gov/cic/</p>	<p>U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, N.W. Washington, DC 20460 Phone: (202) 272-0167 Website: www.epa.gov</p>
<p>National Lead Information Center 422 South Clinton Avenue Rochester, NY 14620 Phone: (800) 424-LEAD Fax: (585) 232-3111 Website: http://www2.epa.gov/lead/forms/lead-hotline-national-lead-information-center</p>	<p>Department of Health and Human Services -- Center for Disease Control & Prevention 1600 Clifton Road Atlanta, GA 30333 Phone: 800-CDC-INFO (800-232-4636) Website: www.cdc.gov</p>
<p>U.S. Consumer Product Safety Commission 4330 East West Highway Bethesda, MD 20814 Phone: (301) 504-7923 Fax: (301) 504-0124 Website: www.cpsc.gov</p>	

Nevada Real Estate Division



July 2017

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Nevada Real Estate Division



State of Nevada
Department of
Business & Industry
Real Estate Division

RESIDENTIAL DISCLOSURE GUIDE

I/We acknowledge that I/we have received a copy of the
Residential Disclosure Guide.

DATE _____

Christopher Hardin

Client—Print Name

Client—Signature

Client—Print Name

Client—Signature

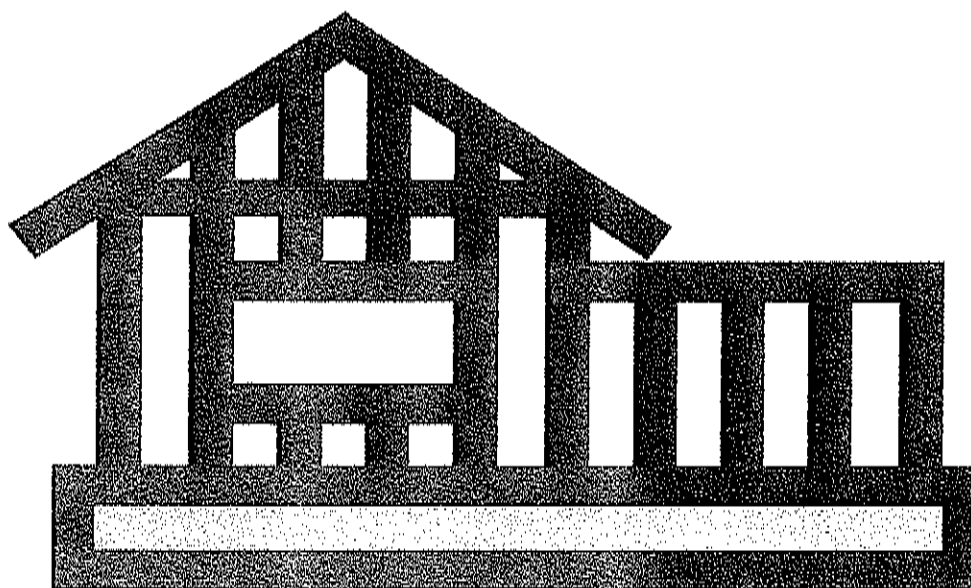
Make copy of page for additional signatures.

Retain original or copy in each transaction file.

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JA223

Nevada Real Estate Division



July 2017

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JA224

EXHIBIT 7

EXHIBIT 7

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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

Plaintiff,

v.

PECCOLE RANCH COMMUNITY
ASSOCIATION, *et al.*,

Defendants.

Case No. 2:16-cv-00660-MMD-CWH

ORDER

AND ALL RELATED ACTIONS

I. SUMMARY

This case arises from the foreclosure sale of property to satisfy a homeowners' association ("HOA Sale") lien. Before the Court are three motions: Defendant Peccole Ranch Community Association's ("HOA") motion for summary judgment (ECF No. 70); Plaintiff and Counter-Defendant Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP, f/k/a Countrywide Home Loans Servicing, LP's motion for summary judgment (ECF No. 71); and Defendant and Counter-Claimant Saticoy Bay LLC Series 9720 Hitching Rail's ("Saticoy Bay") motion for summary judgment (ECF No. 72).¹ Because the Court agrees that Plaintiff properly tendered the superpriority amount, the Court will grant Plaintiff's motion for summary judgment, and deny Defendants' cross-motions as moot, resolving this case.

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¹The Court has reviewed the parties' responses (ECF Nos. 74, 78, 79, 80), and replies (ECF Nos. 77, 83, 85, 86). Defendant Nevada Association Services, Inc. ("NAS") neither filed its own motion for summary judgment, nor responded to any of the other parties' motions for summary judgment.

1 **II. RELEVANT BACKGROUND**

2 The following facts are undisputed unless otherwise indicated.

3 In April 2003, Edna E. Scott ("Borrower") obtained a loan for \$163,567 ("Loan")
4 and executed a note secured by a deed of trust ("DOT") on the real property located at
5 9720 Hitching Rail Drive, Las Vegas, Nevada, 89117 ("the Property"). (ECF No. 71-1 at
6 2-3.) Plaintiff acquired the DOT via an assignment recorded on November 14, 2011. (ECF
7 No. 71-2.)

8 Borrower failed to pay HOA assessments, and the HOA recorded a notice of
9 delinquent assessment lien on October 3, 2011, identifying the amount due to the HOA
10 to date as \$1,434.04, which included \$728.40 for "late fees, collection fees and interest."²
11 (ECF No. 71-3 at 2.) The HOA recorded a notice of default and election to sell on
12 December 29, 2011, identifying the amount due to the HOA to date as \$2,660.78. (ECF
13 No. 71-4.)

14 Plaintiff, acting through its agent (the law firm "Miles Bauer") requested from NAS
15 a calculation of the superpriority portion of the HOA's lien and offered to pay that amount.³
16 (ECF No. 71-5 at 3, 6-7.) While it never received a response from NAS, Plaintiff ultimately
17 calculated what it believed to be the sum of nine months of common assessments based
18 a statement of account from NAS on another property within the HOA and tendered that
19 amount, \$585 ("the Check"), on January 10, 2014.⁴ (*Id.* at 3, 9-13.) Miles Bauer's records
20 show the Check was "rejected." (*Id.* at 4, 15-19.)

21 ///

22 ///

23
24 ²The notice was recorded by NAS, acting as agent for the HOA. (ECF No. 71-3.)

25 ³Plaintiff offers the affidavit of Adam Kendis ("Kendis Affidavit"), a paralegal with
26 Miles Bauer, who authenticated Miles Bauer's business records and explained the
27 information contained within Miles Bauer's records attached to his affidavit. (ECF No. 71-
28 5 at 2-4.)

28 ⁴The HOA also responded to one of Plaintiff's interrogatories that the monthly
assessment amount was \$65. (ECF No. 71-6 at 7-8.) Nine months of assessments is
therefore \$585.

1 The HOA recorded a notice of foreclosure sale on January 23, 2014. (ECF No. 71-
2 7.) The HOA proceeded with the HOA Sale on February 14, 2014, and Saticoy Bay
3 purchased the Property at the HOA Sale for \$51,500. (ECF No. 71-8.)

4 Plaintiff asserts claims for: (1) quiet title/declaratory judgment against all
5 Defendants; (2) breach of NRS § 116.1113 against NAS and the HOA; (3) wrongful
6 foreclosure against NAS and the HOA; and (4) injunctive relief against Saticoy Bay. (ECF
7 No. 1 at 6-15.) Saticoy Bay asserts counterclaims for quiet title and declaratory relief.
8 (ECF No. 8 at 5-6.)

9 **III. LEGAL STANDARD**

10 "The purpose of summary judgment is to avoid unnecessary trials when there is
11 no dispute as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*,
12 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the
13 pleadings, the discovery and disclosure materials on file, and any affidavits "show that
14 there is no genuine issue as to any material fact and that the moving party is entitled to a
15 judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). An issue
16 is "genuine" if there is a sufficient evidentiary basis on which a reasonable fact-finder
17 could find for the nonmoving party and a dispute is "material" if it could affect the outcome
18 of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
19 (1986). Where reasonable minds could differ on the material facts at issue, however,
20 summary judgment is not appropriate. *See id.* at 250-51. "The amount of evidence
21 necessary to raise a genuine issue of material fact is enough 'to require a jury or judge to
22 resolve the parties' differing versions of the truth at trial.'" *Aydin Corp. v. Loral Corp.*, 718
23 F.2d 897, 902 (9th Cir. 1983) (quoting *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S. 253,
24 288-89 (1968)). In evaluating a summary judgment motion, a court views all facts and
25 draws all inferences in the light most favorable to the nonmoving party. *See Kaiser*
26 *Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

27 The moving party bears the burden of showing that there are no genuine issues of
28 material fact. *See Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). Once

1 the moving party satisfies Rule 56's requirements, the burden shifts to the party resisting
2 the motion to "set forth specific facts showing that there is a genuine issue for trial."
3 *Anderson*, 477 U.S. at 256. The nonmoving party "may not rely on denials in the pleadings
4 but must produce specific evidence, through affidavits or admissible discovery material,
5 to show that the dispute exists," *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir.
6 1991), and "must do more than simply show that there is some metaphysical doubt as to
7 the material facts." *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 783 (9th Cir. 2002)
8 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)).
9 "The mere existence of a scintilla of evidence in support of the plaintiff's position will be
10 insufficient." *Anderson*, 477 U.S. at 252.

11 Further, "when parties submit cross-motions for summary judgment, '[e]ach motion
12 must be considered on its own merits.'" *Fair Hous. Council of Riverside Cty., Inc. v.*
13 *Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001) (citations omitted) (citation omitted).
14 "In fulfilling its duty to review each cross-motion separately, the court must review the
15 evidence submitted in support of each cross-motion." *Id.*

16 IV. DISCUSSION

17 Plaintiff argues it is entitled to summary judgment on its declaratory relief/quiet title
18 claim because, in pertinent part, Plaintiff tendered the superpriority portion of the HOA's
19 lien when Plaintiff's agent sent the Check to the HOA's agent. (ECF No. 71 at 5-8.) The
20 Court agrees that Plaintiff properly tendered the superpriority amount, and accordingly
21 declines to address the parties' other arguments in their motions for summary judgment
22 and corresponding responses.

23 In several recent decisions, the Nevada Supreme Court effectively put to rest the
24 issue of tender. For example, in *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d
25 113 (Nev.), *as amended on denial of reh'g* (Nov. 13, 2018), the Nevada Supreme Court
26 held "[a] valid tender of payment operates to discharge a lien or cure a default." *Id.* at 117,
27 121. And it reaffirmed that "that the superpriority portion of an HOA lien includes only
28 charges for maintenance and nuisance abatement, and nine months of unpaid

1 assessments.” *Id.* at 117. More recently, the Nevada Supreme Court held that an offer to
2 pay the superpriority amount coupled with a rejection of that offer discharges the
3 superpriority portion of the HOA’s lien, even if no money changed hands. See *Bank of*
4 *Am., N.A. v. Thomas Jessup, LLC Series VII*, Case No. 73785, — P.3d —, 2019 WL
5 1087513, at *1 (Mar. 7, 2019).

6 Here, Plaintiff tendered the superpriority amount. (ECF No. 70-5; see also ECF
7 No. 71-6 at 7-8 (stating the monthly assessment amount was \$65); ECF No. 71-12 at 7
8 (indicating Borrower did not owe any nuisance or abatement fees).) Thus, the HOA Sale
9 did not extinguish Plaintiff’s DOT, even though the HOA rejected Plaintiff’s tender. See
10 *Bank of America*, 427 P.3d at 121-22; see also *Thomas Jessup*, 2019 WL 1087513, at
11 *4.

12 Saticoy Bay’s primary argument in opposition to Plaintiff’s motion for summary
13 judgment is that Plaintiff had to record its tender in order for the tender to be effective
14 under the doctrine of equitable subrogation. (ECF No. 78 at 7.) However, despite Saticoy
15 Bay’s statement to the contrary (*id.* at 2), the Nevada Supreme Court rejected the
16 argument that a tender payment must be recorded to be effective in *Bank of America*.
17 See 427 P.3d at 119-120. Further, as Plaintiff argues (ECF No. 86 at 3), equitable
18 subrogation does not apply to an HOA’s lien because tender satisfies the superpriority
19 portion of the lien by operation of law. (*Id.* (quoting *Bank of America*, 427 P.3d at 120).)
20 Thus, the Court is not persuaded by that argument.

21 Saticoy Bay also takes issue with certain statements and conditions contained in
22 Plaintiff’s letter that accompanied the Check. (ECF Nos. 78 at 10-12.) The HOA similarly
23 argues that the tender included conditions and the HOA was justified in rejecting the offer.
24 (ECF No. 74 at 6-8.) These arguments were also rejected by the Nevada Supreme Court
25 in *Bank of America*, 427 P.3d at 118-119. And the reasons for rejecting the offer do not
26 figure into the Court’s analysis. The fact of rejection, coupled with an offer to pay the
27 superpriority amount, is sufficient to discharge the superpriority portion of the HOA’s lien.
28 See *Thomas Jessup*, 2019 WL 1087513, at *4.

1 Further, Saticoy Bay challenges the evidence Plaintiff offers to support its tender
2 argument. In particular, Saticoy Bay attacks an affidavit of Douglas E. Miles. (ECF No. 78
3 at 17-20.) However, Plaintiff supported its tender argument with the Kendis Affidavit, not
4 an affidavit from Douglas E. Miles. (ECF No. 71-5.) To the extent Saticoy Bay is
5 attempting to argue that the documents attached to the Kendis Affidavit are not properly
6 authenticated, contained inadmissible hearsay, or that the affidavit was not made based
7 upon personal knowledge, the Court disagrees. The Court instead agrees with Plaintiff
8 that it has presented admissible evidence to demonstrate that it tendered the superpriority
9 amount and the HOA rejected its tender. (ECF No. 86 at 7-11.) The Kendis Affidavit
10 properly authenticated the documents offered and explained what the screenshot of Miles
11 Bauer's case management notes reflects. Kendis need not have personal knowledge that
12 NAS returned the Check to attest that Miles Bauer's case management note reflects that
13 the Check was returned. Further, Saticoy Bay has not offered any admissible evidence
14 to create a genuine issue of material fact regarding whether Plaintiff tendered the Check
15 and NAS rejected it.

16 In sum, the Court finds that Plaintiff has demonstrated entitlement to summary
17 judgment on its first claim for relief. In its Complaint, Plaintiff primarily requests a
18 declaration that its DOT survived the HOA Sale. (See ECF No. 1 at 15.) Given that Plaintiff
19 has received the relief it requested, the Court dismisses Plaintiff's remaining claims as
20 moot. Further, the Court denies the HOA and Saticoy Bay's motions for summary
21 judgment (ECF Nos. 70, 72) as moot because it grants Plaintiff's motion. While NAS did
22 not respond to Plaintiff's motion, the Court *sua sponte* grants summary judgment in favor
23 of Plaintiff and against NAS on Plaintiff's first claim for relief and dismisses Plaintiff's
24 remaining claims against NAS for the same reason. See *Albino v. Baca*, 747 F.3d 1162,
25 1176 (9th Cir. 2014) ("[D]istrict courts are widely acknowledged to possess the power to
26 enter summary judgments *sua sponte*, so long as the losing party was on notice that she
27 had to come forward with all of her evidence.") (citation omitted). Similarly, the Court
28

1 grants summary judgment to Plaintiff on Saticoy Bay's quiet title counterclaim. (ECF No.
2 8 at 5-6.)

3 **V. CONCLUSION**

4 The Court notes that the parties made several arguments and cited to several
5 cases not discussed above. The Court has reviewed these arguments and cases and
6 determines that they do not warrant discussion as they do not affect the outcome of the
7 motions before the Court.

8 It is therefore ordered that Plaintiff's motion for summary judgment (ECF No. 71)
9 is granted as to Plaintiff's first claim for relief. The Court declares that Plaintiff's DOT
10 survived the HOA Sale and continues to encumber the Property. Plaintiff's remaining
11 claims are dismissed as moot.

12 It is further ordered that the HOA's motion for summary judgment (ECF No. 70) is
13 denied as moot.

14 It is further ordered that Saticoy Bay's motion for summary judgment (ECF No. 72)
15 is denied as moot.

16 The Clerk of Court is directed to enter judgment in Plaintiff's favor on its first claim
17 for relief, and on Saticoy Bay's quiet title counterclaim, in accordance with this order, and
18 close this case.

19 DATED THIS 19th day of March 2019.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE