

1 MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
2 mbohn@bohnlawfirm.com
LAW OFFICES OF
3 MICHAEL F. BOHN, ESQ., LTD.
2260 Corporate Circle, Suite 480
4 Henderson, Nevada 89074
(702) 642-3113 / (702) 642-9766 FAX
5 Attorney for plaintiff/appellant
Saticoy Bay LLC Series 4641 Viareggio Ct
6

Electronically Filed
Jul 14 2021 07:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

7
8 SUPREME COURT
9 STATE OF NEVADA

10
11 SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

CASE NO.: 82449

12 Appellant,

13 vs.

14 NATIONSTAR MORTGAGE LLC,

15
16 Respondent.
17

18 **APPELLANT'S APPENDIX 4**
19
20

21 Michael F. Bohn, Esq.
Law Office of Michael F. Bohn, Esq., Ltd.
22 2260 Corporate Circle, Suite 140
Henderson, Nevada 89074
23 (702) 642-3113/ (702) 642-9766 FAX
Attorney for Appellant Saticoy Bay LLC
24 Series 4641 Viareggio Ct
25
26
27
28

INDEX TO APPENDIX 4

Volume	Date Filed	Document	Bates Stamp
4	08/10/17	Nationstar's Opposition to Plaintiff's Motion for Summary Judgment	AA-000658- AA-000814

ALPHABETICAL INDEX TO APPELLANT'S APPENDIXES

Volume	Date Filed	Document	Bates Stamp
1	10/16/13	Affidavit of Service for Cooper Castle Law Firm	AA-000008
1	10/16/13	Affidavit of Service for Monique Guillory	AA-000009
1	10/29/13	Affidavit of Service for Nationstar Mortgage, LLC	AA-000010
10	02/03/21	Case Appeal Statement	AA-001894- AA-001896
1	09/25/13	Complaint	AA-000001- AA-000007
1	11/19/13	Default as to Monique Guillory	AA-000011
5	09/25/17	Default Judgment Against Defendant Monique Guillory	AA-000983- AA-000985
7	12/19/17	Defendant/Counterclaimant Nationstar Mortgage, LLC's Amended Opposition to Plaintiff's Motion for Summary Judgment	AA-001161- AA-001317
5	09/12/17	Findings of Fact, Conclusions of Law, and Judgment	AA-000955- AA-000967
8	11/02/20	Minute Order	AA-001457- AA-001459
2	04/29/15	Motion to Dismiss Counterclaimant Nationstar Mortgage, LLC's Counterclaim as to Counter-Defendant/Third Party Defendant Naples Community	AA-000333- AA-000394
3	07/31/17	Motion for Default Judgment Against Defendant Monique Guillory	AA-000647- AA-000657

1	5	08/29//17	Motion for Voluntary Dismissal Against Defendant Cooper Castle Law Firm, LLP	AA-000951- AA-000954
2				
3	1	03/13/15	Nationstar's Answer to Complaint and Counterclaim	AA-000016- AA-000167
4				
5	8	01/07/19	Nationstar Mortgage LLC's Case Appeal Statement	AA-001450- AA-001453
6	8	12/11/18	Nationstar Mortgage LLC's Findings of Fact, Conclusions of Law, and Judgment	AA-001431- AA-001436
7				
8	10	12/08/20	Nationstar Mortgage LLC's Reply Supporting Its Summary Judgment Motion	AA-001823- AA-001839
9				
10	9	11/09/20	Nationstar Mortgage LLC's Summary Judgment Motion	AA-001460- AA-001668
11	5	10/02/17	Nationstar's Motion for Reconsideration, Motion for Relief, and Motion to Alter or Amend Judgment	AA-000991- AA-001011
12				
13	2	04/20/15	Nationstar's Opposition to Motion to Dismiss Counterclaim and Countermotion for Summary Judgment	AA-000198- AA-000332
14				
15	2	05/19/15	Nationstar's Opposition to Naples Community Homeowners Association's Motion to Dismiss Counterclaim	AA-000408- AA-000447
16				
17	4	08/10/17	Nationstar's Opposition to Plaintiff's Motion for Summary Judgment	AA-000658- AA-000814
18				
19	5	08/10/17	Nationstar's Request for Judicial Notice	AA-000815- AA-000950
20				
21	8	01/07/19	Notice of Appeal	AA-001447- AA-001449
22				
23	10	02/03/21	Notice of Appeal	AA-001891- AA-001893
24	5	09/26/17	Notice of Entry of Default Judgment	AA-000986- AA-000990
25	5	09/13/17	Notice of Entry of Judgment	AA-000968- AA-000982
26				
27	8	12/14/18	Notice of Entry of Nationstar Mortgage LLC's Findings of Fact, Conclusions of Law, and Judgment	AA-001437- AA-001446
28				

1	5	10/05/17	Notice of Entry of Order	AA-001014- AA-001017
2	10	12/28/20	Notice of Entry of Order Denying	AA-001850- AA-001863
3			Saticoy Bay LLC Series 4641	
4			Viareggio Ct's Summary Judgment	
5	10	01/05/21	Notice of Entry of Order Granting	AA-001874- AA-001887
6			Nationstar Mortgage LLC's Motion	
7			for Summary Judgment	
8	10	01/06/21	Notice of Release of Lis Pendens	AA-001888- AA-001890
9	3	08/12/15	Order to Dismiss Without Prejudice	AA-000469- AA-000477
10			Countclaimant Nationstar Mortgage,	
11			LLC's Counterclaim as to Counter-	
12			Defendant/Third Party Defendant	
13			Naples Community Homeowners	
14			Association Only	
15	10	12/28/20	Order Denying Saticoy Bay LLC	AA-001840- AA-001849
16			Series 4641 Viareggio Ct's Summary	
17			Judgment Motion	
18	1	04/15/14	Order Granting Countermotion to Stay	AA-000012- AA-000013
19	1	02/12/15	Order Granting Motion to Lift Stay	AA-000014- AA-000015
20	5	10/05/17	Order Granting Motion for Voluntary	AA-001012- AA-001013
21			Dismissal	
22	10	01/04/21	Order Granting Nationstar Mortgage	AA-001864- AA-001873
23			LLC's Motion for Summary Judgment	
24	3	07/28/15	Order Granting Plaintiff's Motion to	AA-000454- AA-000468
25			Dismiss and Denying Nationstar	
26			Mortgage, LLC's Countermotion for	
27			Summary Judgment	
28	8	09/28/20	Order Setting Further Proceedings	AA-001454- AA-001456
29	1	03/19/15	Plaintiff's Motion to Dismiss	AA-000168- AA-000197
30			Counterclaim	
31	3	05/11/17	Plaintiff's Motion for Summary	AA-000478- AA-000646
32			Judgment	
33	5	10/07/17	Plaintiff's Opposition to Nationstar's	AA-001018- AA-001024
34			Motion for Reconsideration, Motion	
35			for Relief, and Motion to Alter or	
36			Amend Judgment	

1	10	11/25/20	Plaintiff's Opposition to Nationstar Mortgage LLC's Summary Judgment Motion	AA-001669- AA-001822
2				
3	2	05/04/15	Reply in Support of Plaintiff's Motion to Dismiss Counterclaim and Opposition to Countermotion for Summary Judgment	AA-000395- AA-000407
4				
5	3	06/11/15	Reply Brief in Support of Motion to Dismiss Counterclaimant Nationstar Mortgage, LLC's Counterclaim as to Counter-Defendant/Third Party Defendant Naples Community Homeowners Association Only	AA-000448- AA-000453
6				
7				
8	8	01/11/18	Reply to Opposition to Motion for Summary Judgment	AA-001318- AA-001430
9				
10	6	12/19/17	Request for Judicial Notice in Support of Nationstar's Amended Opposition to Plaintiff's Motion for Summary Judgment	AA-001025- AA-001160
11				
12				

13

14

15

16

17

18

19

20

21

22

23

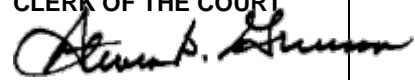
24

25

26

27

28



OPPS

WRIGHT, FINLAY & ZAK, LLP

Dana Jonathon Nitz, Esq.

Nevada Bar No. 0050

Regina A. Habermas, Esq.

Nevada Bar No. 8481

7785 W. Sahara Avenue, Suite 200

Las Vegas, NV 89117

Tel: (702) 475-7964; Fax: (702) 946-1345

dnitz@wrightlegal.net

rhahermas@wrightlegal.net

Attorneys for Defendant/Counter-Claimant, NATIONSTAR MORTGAGE, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

Plaintiff,

vs.

NATIONSTAR MORTGAGE, LLC; COOPER
CASTLE LAW FIRM, LLP; and MONIQUE
GUILLORY,

Defendants.

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

vs.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

Case No.: A-13-689240-C

Dept. No.: V

**DEFENDANT/COUNTERCLAIMANT
NATIONSTAR MORTGAGE, LLC'S
OPPOSITION TO PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

Defendant/Counterclaimant Nationstar Mortgage, LLC ("Nationstar"), by and through its attorneys of record, Dana Jonathon Nitz Esq. and Regina A. Habermas, Esq. of the law firm of Wright, Finlay & Zak, LLP, hereby submits its Opposition to Plaintiff/Counter-Defendant

AA000658

1 Saticoy Bay LLC Series 4641 Viareggio Ct (“Saticoy Bay”) Motion for Summary Judgment (the
2 “Motion”).

3 This Opposition is based on the following Memorandum of Points and Authorities, the
4 Request for Judicial Notice filed concurrently herewith, all papers and pleadings on file herein,
5 all facts judicially noticed, and on any oral or documentary evidence that may be presented at a
6 hearing on this matter.

7 DATED this 9th day of August, 2017.

8 WRIGHT, FINLAY & ZAK, LLP

9 /s/ Regina A. Habermas, Esq.

10 Dana Jonathon Nitz, Esq.

11 Nevada Bar No. 0050

12 Regina A. Habermas, Esq.

13 Nevada Bar No. 8481

14 7785 W. Sahara Avenue, Suite 200

15 Las Vegas, NV 89117

16 *Attorneys for Defendant/Counter-Claimant,*

17 *NATIONSTAR MORTGAGE, LLC*

18 MEMORANDUM OF POINTS AND AUTHORITIES

19 INTRODUCTION

20 Plaintiff Saticoy Bay LLC Series 4641 Viareggio (“Saticoy Bay”) alleges that it
21 purchased property at a homeowners’ association foreclosure sale (“HOA Sale”), which it
22 contends extinguished a deed of trust then encumbering the property. Saticoy Bay relies on NRS
23 § 116.3116(2) (“State Foreclosure Statute”), which allows properly conducted HOA Sales to
24 extinguish all junior interests. However at the time of the HOA Sale, Nationstar Mortgage, LLC
25 was beneficiary of record of that deed of trust as a contractually authorized servicer of Federal
26 Home Loan Mortgage Corporation (“Freddie Mac”), which owned the deed of trust and therefore
27 had a property interest in the collateral. As this Court and other state and federal courts already
28 have held in nearly 30 related cases, a federal statute protected Freddie Mac’s interest,
precluding Saticoy Bay from acquiring a free and clear interest. *See, e.g., Nevada Sandcastles,*
LLC, v. Nationstar Mortg., LLC, No. A-14-701775-C (Nev. Dist. Ct. Dec. 21, 2016); *A&I LLC*
Series 3 v. Lowry, No. A-13-691529-C (Nev. Dist. Ct. May 31, 2016).

AA000659

Specifically, the Housing and Economic Recovery Act of 2008 (“HERA”) provides that while Freddie Mac is in conservatorship of the Federal Housing Finance Agency (“FHFA”), none of its property “shall be subject to . . . foreclosure . . . without the consent of [FHFA].” 12 U.S.C. § 4617(j)(3) (the “Federal Foreclosure Bar”). Here, Freddie Mac has been in FHFA conservatorship at all relevant times, and FHFA did not consent to the extinguishment of Freddie Mac’s property interest. Under the Supremacy Clause, the Federal Foreclosure Bar preempts the State Foreclosure Statute, and the HOA Sale did not extinguish Freddie Mac’s interest.

Saticoy Bay’s Motion ignores controlling precedent regarding HERA and repeats many of the same arguments that this Court and others have already rejected in related cases. As such, Saticoy Bay’s arguments provide no basis for this Court to hold differently, and should therefore be rejected.

Saticoy Bay’s Motion for Summary Judgment also fails on several other grounds. First, Saticoy Bay is not a bona fide purchaser. Second, the HOA Sale was not commercially reasonable. Finally, the Nevada Supreme Court decision Shadow Wood Homeowners Assoc. Inc., v. New York Community Bancorp, Inc., 132 Nev., Adv. Op. 5, 2016 Nev. LEXIS 5, *20 (Jan. 28, 2016) (“Shadow Wood”), affirmatively states that despite the language of NRS 116.3116, the foreclosure deed recitals are not conclusive proof that the HOA foreclosure sale was valid.

For all these reasons, Saticoy Bay’s claims fail as a matter of law.

BACKGROUND

I. The Secondary Mortgage Market

In 1970, Congress chartered Freddie Mac to facilitate the nationwide secondary mortgage market, and thereby to enhance the equitable distribution of mortgage credit throughout the nation. *See City of Spokane v. Fannie Mae*, 775 F.3d 1113, 1114 (9th Cir. 2014). Freddie Mac’s federal statutory charter authorizes it to purchase and deal only in secured “mortgages,” not unsecured loans. *See* 12 U.S.C. §§ 1451(d), 1454; *see also Lightfoot v. Cendant Mortg. Corp.*, 580 U.S. ___, 2017 WL 182911, at *3 (Jan. 18, 2017) (discussing similarly situated Fannie Mae’s role as a purchaser of mortgages); *Perry Capital LLC v. Mhuichin*, No. 14-5243, 2017 WL

1 677589, at *2 (D.C. Cir. Feb. 21, 2017) (same). Freddie Mac has purchased millions of
2 mortgages nationwide, including hundreds of thousands of mortgages in Nevada.

3 While Freddie Mac fills this role in the market, it is not in the business of managing the
4 mortgages themselves, such as handling day-to-day borrower communications. Rather, like
5 other investors in loans, Freddie Mac contracts with servicers to act on its behalf, and these
6 servicers often are assigned deeds of trust as record beneficiary to facilitate their efficient
7 management of those loans. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034,
8 1038-39 (9th Cir. 2011) (describing how loan owners contract with servicers and the servicers’
9 role); Restatement (Third) of Prop.: Mortgages § 5.4 cmt. c (“Restatement”) (discussing the
10 common practice where investors in the secondary mortgage market designate their servicer to
11 be assignee of the mortgage); Freddie Mac’s Single-Family Seller/Servicer Guide (“Guide”) at
12 1101.2(a) (discussing Freddie Mac’s relationship with servicers to manage the loans Freddie
13 Mac purchases).¹ The Nevada Supreme Court has recognized the importance of these
14 relationships by adopting the Restatement approach. *See In re Montierth*, 131 Nev. Adv. Op. 55,
15 354 P.3d 648, 650-51 (2015). *Montierth* holds that when a loan owner has an agent or
16 contractual relationship with an entity who acts as the beneficiary of record of a deed of trust, the
17 loan owner (though not the recorded beneficiary) maintains a secured property interest. *Id.*

18 Freddie Mac and its servicers also work with Mortgage Electronic Registration System
19 (“MERS”). The Ninth Circuit has noted that while “MERS, as the ‘nominee’ of the lender and
20 of any assignee of the lender, is designated . . . as the ‘beneficiary’ . . . under the deed of trust,” a
21 “lender *owns* the home loan borrower’s . . . promissory note.” *In re Mortg. Elec. Registration*

22
23 ¹ The Guide is publicly available on Freddie Mac’s website. An interactive version is
24 available at www.freddiemac.com/singlefamily/guide, and archived prior versions of the Guide
25 are available at www.freddiemac.com/singlefamily/guide/bulletins/snapshot.html. While the
26 cited sections of the Guide have been amended over the course of Freddie Mac’s ownership of
27 the Loan, none of these amendments have materially changed the relevant sections. A static,
28 PDF copy of the most recent version of the Guide is available at <http://www.allregs.com/tpl/Viewform.aspx?formid=00051757&formtype=agency>. The Court can also take judicial notice
of the Guide because it “is not subject to reasonable dispute.” *Nev. Rev. Stat.* § 47.130.
Multiple courts have taken judicial notice of these Guides in litigation concerning mortgage
loans. *See, e.g., Charest v. Fannie Mae*, 9 F. Supp. 3d 114, 118 & n.1 (D. Mass. 2014); *Cirino v.*

1 *Sys., Inc.*, 754 F.3d 772, 776 (9th Cir. 2014) (emphasis added). The “obvious advantage” of the
2 system is that “it allows residential lenders to avoid the bother and expense of recording every
3 change of *ownership* of promissory notes.” *Id.* at 776-77 (emphasis added); *see also Higgins v.*
4 *BAC Home Loans Servicing, LP*, 793 F.3d 688, 689 (6th Cir. 2015) (holding that sale of note to
5 new owner while MERS remains beneficiary of record of a mortgage does not trigger Kentucky
6 recordation requirement). The true owner of the loan is the lender, its successor, or its
7 assignee—not MERS. *See Cervantes*, 656 F.3d at 1039.

8 **II. FHFA and Freddie Mac in Conservatorship**

9 In July 2008, Congress passed the Housing and Economic Recovery Act of 2008, Pub. L.
10 No. 110-289, 122 Stat. 2654 (codified as 12 U.S.C. § 4511 *et seq.*), which established FHFA.
11 FHFA is an independent federal agency with regulatory and oversight authority over Freddie
12 Mac, Federal National Mortgage Association (“Fannie Mae”), and the Federal Home Loan
13 Banks. In September 2008, FHFA placed Freddie Mac and Fannie Mae (together, “the
14 Enterprises”) into conservatorships “for the purpose of reorganizing, rehabilitating, or winding
15 up [their] affairs.” 12 U.S.C. § 4617(a)(2). Congress authorized the Conservator “to undertake
16 extraordinary economic measures” out of a concern that “a default by Fannie and Freddie would
17 imperil the already fragile national economy.” *Perry*, 2017 WL 677589, at *2. Accordingly,
18 Congress granted FHFA an array of powers, privileges, and exemptions from otherwise
19 applicable laws when acting as Conservator. Among these is a section providing that “[n]o
20 property” of FHFA conservatorships “shall be subject to . . . foreclosure . . . without the consent
21 of [FHFA].” 12 U.S.C. § 4617(j)(3).

22 The Conservator has stated that it supports invocation of the Federal Foreclosure Bar by
23 “authorized servicers” such as Nationstar in litigation such as this one: “FHFA supports the
24 reliance on Title 12 United States Code Section 4617(j)(3) in litigation by authorized servicers of
25 [Freddie Mac] to preclude the purported involuntary extinguishment of [Freddie Mac]’s interest
26
27

28 AA000662

Bank of Am., N.A., No. CV 13-8829, 2014 WL 9894432, at *7 (C.D. Cal. Oct. 1, 2014).

1 by an HOA foreclosure sale.”²

2 **III. Statement of Undisputed Facts**

3 **A. The Subject Property, Note, and Deed of Trust**

4 A Deed of Trust listing Monique Guillory as the borrower (“Borrower”) and First
5 Magnus Financial Corporation as the lender (“Lender”), and MERS, as beneficiary solely as
6 nominee for Lender and Lender’s successors and assigns, was executed on January 19, 2007, and
7 recorded on January 25, 2007.³

8 The Deed of Trust granted Lender a security interest in real property known as 4641
9 Viareggio Court, Las Vegas, Nevada 89147 (the “Property”) to secure the repayment of a loan in
10 the original amount of \$258,400.00 to the Borrower (the “Loan”).⁴

11 Freddie Mac purchased the Loan and thereby obtained a property interest in the Deed of
12 Trust on or about March 29, 2007. Freddie Mac maintained that ownership at the time of the
13 HOA Sale on August 22, 2013.⁵

14 On February 11, 2011, MERS recorded an assignment of the Deed of Trust to Aurora
15 Loan Services LLC (“Aurora”).⁶

16 On October 18, 2012, Aurora recorded an assignment of the Deed of Trust to Nationstar
17 Mortgage, LLC (“Nationstar”).⁷

20 ² See FHFA, Statement on Servicer Reliance on the Housing and Economic Recovery Act of
21 2008 in Foreclosures Involving Homeownership Associations (Aug. 28, 2015),
22 [http://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Authorized-Enterprise-](http://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Authorized-Enterprise-Servicers-Reliance.pdf)
23 [Servicers-Reliance.pdf](http://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Authorized-Enterprise-Servicers-Reliance.pdf), a true and correct copy of which is attached to the Request for Judicial
Notice in Support of Opposition to Plaintiff’s Motion for Summary Judgment (“RJN”), filed
concurrently herewith, as **Exhibit A**.

24 ³ A true and correct copy of the Deed of Trust recorded in the Clark County Recorder’s Office as
25 Book and Instrument Number 20070125-0003583 is attached to the RJN as **Exhibit B**. All other
recordings identified hereafter were recorded in the same manner and method.

26 ⁴ *Id.*

27 ⁵ See Declaration of Freddie Mac, ¶ 5.c., attached hereto as **Exhibit C**.

28 ⁶ A true and correct copy of the Corporate Assignment of Deed of Trust Nevada recorded as
Book and Instrument Number 20110211-0002654 is attached to the RJN as **Exhibit D**.
AA000663

⁷ A true and correct copy of the Assignment of Deed of Trust Nevada recorded as Book and
Instrument Number 20121018-0000833 is attached to the RJN as **Exhibit E**.

1 At the time of the HOA Sale on August 22, 2013, Nationstar was the servicer of the Loan
2 for Freddie Mac.⁸

3 **B. Freddie Mac's Contract with Its Servicers, Including Nationstar**

4 1. The relationship between Nationstar, as the servicer of the Loan, and Freddie
5 Mac, as owner of the Loan, is governed by the Guide, a central governing document for Freddie
6 Mac's relationship with servicers nationwide. Among other things, the Guide provides that
7 Freddie Mac's servicers may act as record beneficiaries for the deeds of trust owned by Freddie
8 Mac and requires that servicers assign these deeds of trust to Freddie Mac upon Freddie Mac's
9 demand.⁹

10 The Guide provides that:

11 For each Mortgage purchased by Freddie Mac, the Seller and the
12 Servicer agree that Freddie Mac may, at any time and without
13 limitation, require the Seller or the Servicer, at the Seller's or the
14 Servicer's expense, to make such endorsements to and assignments
and recordations of any of the Mortgage documents so as to reflect the
interests of Freddie Mac.¹⁰

15 The Guide also provides that:

16 The Seller/Servicer is not required to prepare an assignment of the
17 Security Instrument to Freddie Mac. However, *Freddie Mac may, at
18 its sole discretion and at any time, require a Seller/Servicer, at the
Seller/Servicer's expense, to prepare, execute and/or record
assignments of the Security Instrument to Freddie Mac.*¹¹

19 The Guide authorizes servicers to foreclose on the Deed of Trust on behalf of Freddie
20 Mac.¹²

21 _____
22 ⁸ See **Exhibit C**, ¶ 5.i.

23 ⁹ See Servicing Guide at 1101.2(a), current version, attached hereto as **Exhibit F** and Servicing
24 Guide at 1.2, version in effect at time of the HOA Sale, attached hereto as **Exhibit G**. See also
Declaration of Freddie Mac, **Exhibit C**.

25 ¹⁰ See Servicing Guide at 1301.10, current version, attached hereto as **Exhibit F**, and Servicing
26 Guide at 6.6, version in effect at time of the HOA Sale, attached hereto as **Exhibit G**.

27 ¹¹ See Servicing Guide at 6301.6, current version, attached hereto as **Exhibit F**, and Servicing
28 Guide at 22.14, version in effect at time of the HOA Sale, attached hereto as **Exhibit G**.
(Emphasis added).

¹² See e.g. Servicing Guide at 8105.3, 9301.1, 9301.12 and 9401.1, current versions, attached
hereto as **Exhibit F**, and Servicing Guide at 54.4, 66.1, 66.20, 66.17, 67.6, versions in effect at
time of the HOA Sale, attached hereto as **Exhibit G**.

1 Accordingly, the Guide also provides for a temporary transfer of possession of the note
2 when necessary for servicing, including foreclosure.¹³ However, when in “physical or
3 constructive possession of a Note,” the Servicer must “follow prudent business practices” to
4 ensure that the note is “identif[ied] as a Freddie Mac asset.” *Id.* at 8107.1(b). Furthermore,
5 when transferring documents in a mortgage file, including a note, the servicer must ensure the
6 receiver acknowledges that the note is “Freddie Mac’s property.”¹⁴

7 The Guide also includes chapters regarding how and when servicers should manage
8 litigation on behalf of Freddie Mac.¹⁵ See Guide at 9402.2 (“Routine and non-routine
9 litigation”), 9501 (“Selection, Retention and Management of Law Firms for Freddie Mac Default
10 Legal Matters.”). Included among the “non-routine” litigation that servicers are obligated to
11 manage on behalf of Freddie Mac is that concerning “[a]ny issue involving Freddie Mac’s
12 conservatorship.” Guide at 9402.2.

13 The Guide provides that:

14 All documents in the Mortgage file, . . . and all other documents and
15 records related to the Mortgage of whatever kind or description . . .
16 will be, and will remain at all times, the property of Freddie Mac. All
of these records and Mortgage data in the possession of the Servicer
are retained by the Servicer in a custodial capacity only.¹⁶

17 The Guide provides that a transferee servicer undertakes all responsibilities under the
18 Guide.¹⁷

19 Finally, the Guide provides that:
20
21

22 ¹³ See Servicing Guide at 8107.1, 8107.2, 9301.11, current version, attached hereto as **Exhibit F**,
23 and Servicing Guide at 18.4, 18.6, 66.20, version in effect at time of the HOA Sale, attached
hereto as **Exhibit G**.

24 ¹⁴ See Servicing Guide at 3302.5, current version, attached hereto as **Exhibit F**, and Servicing
25 Guide at 52.7, version in effect at time of the HOA Sale, attached hereto as **Exhibit G**.

26 ¹⁵ See Servicing Guide at 9402.2 and 9501, current versions, attached hereto as **Exhibit F**, and
Servicing Guide at 67.17, version in effect at time of the HOA Sale, attached hereto as
Exhibit G.

27 ¹⁶ See Servicing Guide at 1201.9, current version, attached hereto as **Exhibit F**, and Servicing
28 Guide at 52.5, version in effect at time of the HOA Sale, attached hereto as **Exhibit G**.

¹⁷ See Servicing Guide at 7101.15, current version, attached hereto as **Exhibit F**, and Servicing
Guide at 56.15, version in effect at time of the HOA Sale, attached hereto as **Exhibit G**.

1 When a Transfer of Servicing occurs, the Transferor Servicer may not
2 . . . further endorse the Note, but must prepare and complete
assignments

3 To prepare and complete an assignment of a Security Instrument for a
4 Subsequent Transfer of Servicing for a Mortgage not registered with
MERS, the Transferor Servicer must . . . [a]ssign the Security
5 Instrument to the Transferee Servicer and record the assignment.¹⁸

6 **C. The HOA Foreclosure Sale and Saticoy Bay's Purported Acquisition of the
Property.**

7 On July 30, 2007, Naples Community Homeowners Association (the "HOA"), by its
8 foreclosure agent, Red Rock Financial Services ("Red Rock") initiated a non-judicial foreclosure
9 by recording a Lien for Delinquent Assessments.¹⁹

10 On November 9, 2007, a Release of Lien for Delinquent Assessments was recorded,
11 which stated the Lien for Delinquent Assessments recorded on July 30, 2007 was released and
12 satisfied.²⁰

13 On August 18, 2011, the HOA by its foreclosure agent, Leach Johnson Song & Gruchow
14 (the "HOA Trustee") initiated a second non-judicial foreclosure by recording a Notice of
15 Delinquent Assessment Lien.²¹

16 On January 24, 2012, a Notice of Default and Election to Sell Real Property to Satisfy
17 Notice of Delinquent Assessment Lien was recorded against the Property by the HOA Trustee on
18 behalf of the HOA.²²

19 On July 30, 2012, a Notice of Foreclosure Sale Under Notice of Delinquent Assessment
20 Lien was recorded against the Property by the HOA Trustee on behalf of the HOA.²³

21
22
23 ¹⁸ See Servicing Guide at 7101.6, current version, attached hereto as **Exhibit F**, and Servicing
Guide at 56.7, version in effect at time of the HOA Sale, attached hereto as **Exhibit G**.

24 ¹⁹ A true and correct copy of the Lien for Delinquent Assessments recorded as Book and
Instrument No. 20070730-0000902 is attached to the RJN as **Exhibit H**.

25 ²⁰ A true and correct copy of the Release of Lien for Delinquent Assessments recorded as Book
and Instrument No. 20071109-0001010 is attached to the RJN as **Exhibit I**.

26 ²¹ A true and correct copy of the Notice of Delinquent Assessment Lien recorded as Book and
Instrument No. 20110818-0002904 is attached to the RJN as **Exhibit J**.

27 ²² A true and correct copy of the Notice of Default and Election to Sell Real Property to Satisfy
28 Notice of Delinquent Assessment Lien recorded as Book and Instrument No. 20120124-0000764
is attached to the RJN as **Exhibit K**.

1 On September 6, 2013, a Foreclosure Deed was recorded against the Property.²⁴ The
2 Foreclosure Deed states that the Property was sold in an HOA foreclosure sale on August 22,
3 2013 to Saticoy Bay with a purchase price of \$5,563.00.

4 At no time did the Conservator consent to the HOA Sale extinguishing or foreclosing
5 Freddie Mac's interest in the Property.²⁵

6 **MOTION FOR SUMMARY JUDGMENT LEGAL STANDARD**

7 The primary purpose of a summary judgment procedure is to secure a "just, speedy, and
8 inexpensive determination of any action." *Albatross Shipping Corp. v. Stewart*, 326 F.2d 208,
9 211 (5th Cir. 1964);²⁶ accord *McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 121
10 Nev. 812, 815, 123 P.3d 748, 750 (2005). Although summary judgment may not be used to
11 deprive litigants of trials on the merits where material factual doubts exist, summary proceedings
12 promote judicial economy and reduce litigation expenses associated with actions clearly lacking
13 in merit. *Id.* Summary judgment enables the trial court to "avoid a needless trial when an
14 appropriate showing is made in advance that there is no genuine issue of fact to be tried." *Id.*
15 (quoting *Coray v. Hom*, 80 Nev. 39, 40-41, 389 P.2d 76, 77 (1964)).

16 "Summary judgment is appropriate if, when viewed in the light most favorable to the
17 nonmoving party, the record reveals there are no genuine issues of material fact and the moving
18 party is entitled to judgment as a matter of law." *DTJ Design, Inc. v. First Republic Bank*, 130
19 Nev. Adv. Op. 5, 318 P.3d 709, 710 (2014) (citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev.

21
22 ²³ A true and correct copy of the Notice of Foreclosure Sale Under Notice of Delinquent
23 Assessment Lien recorded as Book and Instrument No. 20120730-0001448 is attached to the
24 RJN as **Exhibit L**.

25 ²⁴ A true and correct copy of the Foreclosure Deed recorded as Book and Instrument
26 No. 20130906-0000930 is attached to the RJN as **Exhibit M**.

27 ²⁵ See FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr. 21, 2015),
28 www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx, attached to the RJN as **Exhibit N**.

²⁶ "The Nevada Supreme Court considers federal law interpreting the Federal Rules of Civil
Procedure, 'because the Nevada Rules of Civil Procedure are based in large part upon their
federal counterparts.'" *Barbara Ann Hollier Trust v. Shack*, 356 P.3d 1085, 1089 (Nev. Aug. 6,
2015) (quoting *Executive Management, Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 782,
786 (2002)).

1 706, 713, 57 P.3d 82, 87 (2002)). The plain language of Rule 56(c) “mandates the entry of
2 summary judgment, after adequate time for discovery and upon motion, against a party who fails
3 to make a showing sufficient to establish the existence of an element essential to that party’s
4 case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*,
5 477 U.S. 317, 323, 106 S.Ct. 2548, 2552 (1986) (adopted by *Wood v. Safeway, Inc.*, 121 Nev.
6 724, 731, 121 P.3d 1026, 1031 (2005)). In such a situation, there can be “no genuine issue as to
7 any material fact” because a complete failure of proof concerning an essential element of the
8 nonmoving party’s case necessarily renders all other facts immaterial. *Id.*

9 While the party moving for summary judgment must make the initial showing that no
10 genuine issue of material fact exists, where, as here, the non-moving party will bear the burden
11 of persuasion at trial, the party moving for summary judgment need only: “(1) submit[] evidence
12 that negates an essential element of the nonmoving party’s claim, or (2) ‘point[] out ... that there
13 is an absence of evidence to support the nonmoving party’s case.’” *Francis v. Wynn Las Vegas,*
14 *LLC*, 127 Nev. Adv. Op. 60, 262 P.3d 705, 714 (2011). Once this showing is met, summary
15 judgment must be granted unless “the nonmoving party [can] transcend the pleadings and, by
16 affidavit or other admissible evidence, introduce specific facts that show a genuine issue of
17 material fact.” *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 603, 172 P.3d 131,
18 134 (2007).

19 Parties resisting summary judgment cannot stand on their pleadings once the movant has
20 submitted affidavits or other similar materials. N.R.C.P. 56(e). Affidavits which do not
21 affirmatively demonstrate personal knowledge are insufficient. *Id.*; accord *Coblentz v. Hotel*
22 *Employees & Rest. Employees Union Welfare Fund*, 112 Nev. 1161, 1172, 925 P.2d 496, 502
23 (1996); see also *British Airways Bd. v. Boeing Co.*, 585 F.2d 946, 952 (9th. Cir. 1978) (applying
24 analogous federal rule). Likewise, “legal memoranda and oral argument are not evidence and do
25 not create issues of fact capable of defeating an otherwise valid motion for summary judgment.”
26 *British Airways*, 585 F.2d at 952; accord N.R.C.P. 56(e).

27 Though inferences are to be drawn in favor of the non-moving party, an opponent to
28 summary judgment must show that he can produce evidence at trial to support his claim. *Van*

AA000668

1 *Cleave v. Kietz-Mill Minit Mart*, 97 Nev. 414, 417, 633 P.2d 1220, 1222 (1981). The Nevada
2 Supreme Court has rejected the “slightest doubt” standard, under which any dispute as to the
3 relevant facts defeats summary judgment. *Wood v. Safeway*, 121 Nev. at 731, 121 P.3d at 1031.
4 A party resisting summary judgment “is not entitled to build a case on the gossamer threads of
5 whimsy, speculation, and conjecture.” *Collins v. Union Fed. Savings & Loan*, 99 Nev. 284, 302,
6 622 P.2d 610, 621 (1983) (quoting *Hahn v. Sargent*, 523 F.2d 461, 467 (1st Cir. 1975)). Rather,
7 the non-moving party must demonstrate specific facts as opposed to general allegations and
8 conclusions. *LaMantia v. Redisi*, 118 Nev. 27, 29, 38 P.3d 877, 879 (2002); *Wayment v. Holmes*,
9 112 Nev. 232, 237, 912 P.2d 816, 819 (1996). Indeed, an opposing party “is not entitled to have
10 [a] motion for summary judgment denied on the mere hope that at trial he will be able to
11 discredit movant’s evidence; he must at the hearing be able to point out to the court something
12 indicating the existence of a triable issue of fact.” *Hickman v. Meadow Wood Reno*, 96 Nev.
13 782, 784, 617 P.2d 871, 872 (1980) (quoting *Thomas v. Bokelman*, 86 Nev. 10, 14, 462 P.2d
14 1020, 1022-23 (1970)); *see also Aldabe v. Adams*, 81 Nev. 280, 285, 402 P.2d 34, 37 (1965)
15 (“The word ‘genuine’ has moral overtones; it does not mean a fabricated issue.”) (overruled on
16 other grounds by *Siragusa v. Brown*, 114 Nev. 1384, 971 P.2d 801 (1996)); *Elizabeth E. v. ADT*
17 *Sec. Sys. W.*, 108 Nev. 889, 892, 839 P.2d 1308, 1310 (1992).

18 **ARGUMENT**

19 **I. The Federal Foreclosure Bar Defeats Saticoy Bay’s Claim to an Interest in the** 20 **Property Free and Clear of the Deed of Trust**

21 **A. The Federal Foreclosure Bar Preempts Contrary State Law**

22 A federal statute expressly preempts contrary law when it “explicitly manifests
23 Congress’s intent to displace state law.” *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1022 (9th
24 Cir. 2013). This is the case here: the text of HERA declares that “[n]o property of the Agency
25 shall be subject to levy, attachment, garnishment, foreclosure, or sale.” 12 U.S.C. § 4617(j)(3).
26 The Federal Foreclosure Bar automatically bars any nonconsensual limitation or extinguishment
27 through foreclosure of any interest in property held by Freddie Mac while in conservatorship.
28 All of these “adverse actions . . . could otherwise be imposed on FHFA’s property under state
law. Accordingly, Congress’s creation of these protections clearly manifests its intent to

AA000669

1 displace state law.” *Skylights v. Byron*, 112 F. Supp. 3d 1145, 1153 (D. Nev. 2015). Indeed, at
2 least twenty related cases in the U.S. District Court of Nevada follow *Skylights* on the point.²⁷
3 Similarly, Nevada state courts have resolved similar claims in favor of Freddie Mac, Fannie
4 Mae, and their servicers in sixteen cases.²⁸

5
6 ²⁷ See also *Elmer v. Freddie Mac*, No. 2:14-cv-01999-GMN-NJK, 2015 WL 4393051 (D.
7 Nev. July 14, 2015); *Premier One Holdings, Inc. v. Fannie Mae*, No. 2:14-cv-02128-GMN-NJK,
8 2015 WL 4276169 (D. Nev. July 14, 2015); *Williston Inv. Grp., LLC v. JP Morgan Chase Bank*,
9 *NA*, No. 2:14-cv-02038-GMN-PAL, 2015 WL 4276144 (D. Nev. July 14, 2015); *My Glob. Vill.,*
10 *LLC v. Fannie Mae*, No. 2:15-cv-00211-RCJ-NJK, 2015 WL 4523501 (D. Nev. July 27, 2015);
11 *1597 Ashfield Valley Trust v. Fannie Mae*, No. 2:14-cv-02123-JCM, 2015 WL 4581220 (D. Nev.
12 July 28, 2015); *Fannie Mae v. SFR Invs. Pool 1, LLC*, No. 2:14-CV-2046-JAD-PAL, 2015 WL
13 5723647 (D. Nev. Sept. 29, 2015); *Saticoy Bay, LLC Series 1702 Empire Mine v. Fannie Mae*,
14 No. 2:14-CV-01975-KJD-NJK, 2015 WL 5709484 (D. Nev. Sept. 29, 2015); *Berezovsky v.*
15 *Moniz*, No. 2:15-cv-01186-GMN-GWF, 2015 WL 8780198 (D. Nev. Dec. 15, 2015);
16 *Opportunity Homes, LLC v. Freddie Mac*, 169 F. Supp. 3d 1073 (D. Nev. 2016); *FHFA v. SFR*
17 *Investments Pool 1, LLC*, No. 2:15-cv-1338-GMN-CWH, 2016 WL 2350121 (D. Nev. May 2,
18 2016); *G & P Inv. Enters., LLC v. Wells Fargo Bank, N.A.*, No. 2:15-cv-0907-JCM-NJK, 2016
19 WL 4370055 (D. Nev. Aug. 4, 2016); *Saticoy Bay LLC, Series 2714 Snapdragon v. Flagstar*
20 *Bank, FSB*, No. 2-13-CV-1589-JCM-VCF, 2016 WL 1064463 (D. Nev. Mar. 17, 2016); *Koronik*
21 *v. Nationstar Mortg. LLC*, No. 2:13-CV-2060-GMN-GWF, 2016 WL 7493961 (D. Nev. Dec. 30,
22 2016); *Nevada Sand Castles, LLC v. Green Tree Servicing LLC*, No. 2:15-CV-0588-GMN-VCF,
23 2017 WL 701361 (D. Nev. Feb. 22, 2017); *Alessi & Koenig, LLC v. Dolan, Jr.*, No. 2:15-cv-
24 00805-JCM-CWH, 2017 WL 773872 (D. Nev. Feb. 27, 2017); *FHFA v. Nevada New Builds,*
25 *LLC*, No. 2:16-cv-1188-GMN-CWH, 2017 WL 888480 (D. Nev. Mar. 6, 2017); *LN Mgmt. LLC*
26 *v. Pfeiffer*, No. 2:13-cv-1934-JCM-PAL, 2017 WL 955184 (D. Nev. Mar. 9, 2017); *Order, Vita*
27 *Bella Homeowners Ass’n v. Fannie Mae*, No. 2:15-cv-0515-JCM-VCF (D. Nev. Mar. 9, 2017)
28 (ECF No. 54); *JP Morgan Chase Bank, N.A. v. Las Vegas Dev’t Grp., LLC*, No. 2:15-cv-1701-
JCM-VCF, 2017 WL 937722 (D. Nev. Mar. 9, 2017); *Freddie Mac v. Donel*, No. 2:16-cv-176,
2017 WL 2692403 (D. Nev. June 21, 2017).

²⁸ *Saticoy Bay LLC Series 9641 Christine View vs. Fannie Mae*, No. A-13-690924-C (Nev.
Dist. Ct. Dec. 8, 2015); *5312 La Quinta Hills LLC, vs. BAC Home Loans Serv’g LP*, No. A-13-
693427-C (Nev. Dist. Ct. Jan. 6, 2016); *NV West Servicing LLC v. Bank of America, N.A.*, No.
A-14-705996-C (Nev. Dist. Ct. Jan. 25, 2016); *Fort Apache Homes, Inc. vs. JPMorgan Chase*
Bank, N.A., No. A-13-691166-C (Nev. Dist. Ct. Feb. 5, 2016); *RLP-Buckwood Court, LLC, v.*
GMAC Mortg., LLC, No. A-13-686438-C, (Nev. Dist. Ct. May 24, 2016); *A&I LLC Series 3 v.*
Lowry, No. A-13-691529-C (Nev. Dist. Ct. May 31, 2016); *Gavirati v. Washington Mutual*
Bank, FA, No. A-13-690263-C (Nev. Dist. Ct. Sept. 1, 2016); *Nevada New Builds, LLC v.*
Nationstar Mortg. LLC, No. A-14-704924-C (Nev. Dist. Ct. Sept. 27, 2016); *Daisy Trust v.*
Wells Fargo, No. A-13-679095-C (Oct. 14, 2016); *SFR Inv. Pool 1, LLC v. Green Tree*
Servicing, LLC, No. A-13-680704 (Nev. Dist. Ct. Nov. 17, 2016); *Summit Canyon Resources*
LLC v. Kraemer, No. A-15-714882-C (Nev. Dist. Ct. Nov. 22, 2016); *Nevada Sandcastles, LLC,*
v. Nationstar Mortg., LLC, No. A-14-701775-C (Nev. Dist. Ct. Dec. 21, 2016); *Saticoy Bay LLC*

1 The Federal Foreclosure Bar also preempts the State Foreclosure Statute under a theory
2 of conflict preemption because “state law is naturally preempted to the extent of any conflict
3 with a federal statute.” *Valle del Sol*, 732 F.3d at 1023 (quoting *Crosby v. Nat’l Foreign Trade*
4 *Council*, 530 U.S. 363, 372 (2000)). “[U]nder the Supremacy Clause . . . any state law, however
5 clearly within a State’s acknowledged power, which interferes with or is contrary to federal law,
6 must yield.” *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 108 (1992) (internal
7 quotations and citations omitted). Congress’s clear and manifest purpose in enacting Section
8 4617(j)(3) was to protect FHFA conservatorships from actions, such as the HOA Sale, that
9 otherwise would deprive them of their interests in property. Similarly, a court evaluating another
10 provision of HERA held that it preempted certain state laws because “[e]xposure to state law
11 claims would undermine the FHFA’s ability to establish uniform and consistent standards for the
12 regulated entities. . . . If [p]laintiffs’ state claims were not preempted, liability based on these
13 claims would create obstacles to the accomplishment of the policy goals set forth in [HERA].”
14 *California ex rel. Harris v. FHFA*, No. 10-cv-03084, 2011 WL 3794942, at *16 (N.D. Cal. Aug.
15 26, 2011).

16 **B. The Federal Foreclosure Bar Protected Freddie Mac’s Property Interest**

17 To successfully invoke the Federal Foreclosure Bar’s protection, Nationstar needs to
18 establish two things: first, that Freddie Mac owned the Loan at the time of the HOA Sale, and
19 second, that ownership of the Loan was a property interest covered by the Federal Foreclosure
20 Bar’s protection. Nationstar satisfies both here. Furthermore, while it is not Nationstar’s burden
21 to establish this fact, it is undisputed that FHFA has not consented to the extinguishment of
22 Freddie Mac’s property interest in this case.

23
24
25 *Series 338 Flying Colt v. Nationstar Mortg., LLC*, No. A-13-684192-C (Nev. Dist. Ct. Dec. 21,
26 2016); *Honeybadgers Holdings LLC v. Karimi*, No. A-15-718824-C (Nev. Dist. Ct. Mar. 22,
27 2017); *Choctaw Avenue Trust v. JPMorgan Chase Bank N.A.*, No. A-12-667762-C (Nev. Dist.
28 Ct. June 12, 2017); *Saticoy Bay LLC Series 4930 Miners Ridge v. JPMorgan Chase Bank N.A.*,
No. A-13-681090-C (Nev. Dist. Ct. June 27, 2017). Nationstar does not cite these cases as
precedential authority but rather, consistent with Nev. R. App. P. 36(c)(3), cites them for their
persuasive value.

1 **1. Freddie Mac Had a Property Interest at the Time of the HOA Sale**

2 On or about March 29, 2007, Freddie Mac purchased the Loan, and thereby acquired
3 ownership of both the promissory note and the Deed of Trust.²⁹ Freddie Mac maintained that
4 ownership at the time of the HOA Sale, while Nationstar acted as Freddie Mac’s authorized loan
5 servicer and beneficiary of record of the Deed of Trust for the Loan.³⁰ As Freddie Mac’s
6 servicer of the Loan, Nationstar was in a contractual relationship with Freddie Mac requiring
7 Nationstar, upon Freddie Mac’s request, to assign all of its interest to Freddie Mac. Under
8 Nevada law, Freddie Mac owned the Deed of Trust and thereby maintained a property interest in
9 the underlying collateral at the time of the HOA Sale in August 2013.

10 Freddie Mac’s acquisition and continued ownership of the Loan at the time of the HOA
11 Sale are amply supported by the business records data derived from MIDAS, a database that
12 Freddie Mac uses in its everyday business to track millions of loans that it acquires and owns
13 nationwide. Under the applicable rules of evidence, business records are, by their nature,
14 admissible to prove the truth of their contents when introduced by a qualified witness, as they are
15 here. *See* NRS 51.135; Fed. R. Evid. 803 (advisory committee’s note to 1972 proposed rules)
16 (noting that business records, including electronic database records, have “unusual reliability”).

17 **a. Freddie Mac Owned the Note and Deed of Trust Under**
18 **Nevada Law**

19 **(i) Nevada Adopts the Restatement Approach that**
20 **Acknowledges the Loan Owner-Servicer Relationship**

21 Under Nevada law, when Freddie Mac purchased the Loan on or about October
22 March 22, 1996, Freddie Mac acquired ownership of the note and Deed of Trust. Nevada law
23 incorporates the Restatement, which describes the typical arrangement between investors in
24 mortgages, such as Freddie Mac, and their servicers:

25 Institutional purchasers of loans in the secondary mortgage market often
26 designate a third party, not the originating mortgagee, to collect payments
27 on and otherwise “service” the loan for the investor. In such cases the
28 promissory note is typically transferred to the purchaser, but an
assignment of the mortgage from the originating mortgagee *to the servicer*

29 *See Exhibit C, ¶ 5.c., attached hereto.*

30 *Id.*, ¶ 5.i.

AA000672

1 may be executed and recorded. This assignment is convenient because it
2 facilitates actions that the servicer might take, such as releasing the
3 mortgage, at the instruction of the purchaser. The servicer may or may not
4 execute a further unrecorded assignment of the mortgage to the purchaser.

5 Restatement § 5.4 cmt. c (emphasis added). The Restatement then emphasizes that this
6 arrangement preserves the investor's ownership interest:

7 *It is clear in this situation that the owner of both the note and mortgage is*
8 *the investor and not the servicer. This follows from the express*
9 *agreement to this effect that exists among the parties involved. The same*
10 *result would be reached if the note and mortgage were originally*
11 *transferred to the institutional purchaser, who thereafter designated*
12 *another party as servicer and executed and recorded a mortgage*
13 *assignment to that party for convenience while retaining the promissory*
14 *note.*

15 *Id.* (emphasis added). Thus, the Restatement acknowledges that the assignment of a deed of trust
16 to a servicer does not alter the fact that the purchaser of the loan remains the owner of the note
17 and deed of trust. The Restatement approach also is a recognition of the realities of the mortgage
18 industry: Freddie Mac and Fannie Mae can more efficiently support the national secondary
19 mortgage market if they can contract with servicers to manage loans without relinquishing
20 ownership of deeds of trust.

21 The Nevada Supreme Court reaffirmed that it adopted the entirety of the Restatement
22 approach, and specifically cited to the sections cited above. *See Montierth*, 354 P.3d at 650-51.
23 *Montierth* explained that where the record beneficiary of the deed of trust has contractual or
24 agency authority to foreclose on the note owner's behalf, the note owner maintains a property
25 interest in the collateral. *See id.*

26 The court applied the Restatement to a situation where MERS, as nominee for the
27 original lender and its successors and assigns, served as record beneficiary of a deed of trust,
28 while Deutsche Bank had acquired the related promissory note from the original lender. *Id.* at
649. The Nevada Supreme Court concluded that the relationship between MERS and Deutsche
Bank, wherein MERS had authority to foreclose on Deutsche Bank's behalf, ensured that
Deutsche Bank remained a "secured creditor" with a "fully-secured, first priority deed" that
could be enforced. *Id.* at 650-51. Deutsche Bank, like Freddie Mac here, accordingly retained a
property interest while another entity was beneficiary of record of the deed of trust.

AA000673

1 The Nevada Supreme Court’s recent decision in *Nationstar Mortgage, LLC v. SFR*
2 *Investments Pool 1, LLC*, No. 69400, 2017 WL 2709806 (Nev. June 22, 2017), confirms that
3 *Montierth* is applicable in the context of the servicer-loan owner relationship. The court quotes
4 *Montierth* and cites the Restatement in the context of clarifying that a loan servicer can take
5 action, including litigation, related to a mortgage on behalf of the loan owner. *See id.* at *2.
6 Accordingly, any argument that *Montierth* should be limited to relationships between a loan
7 owner and MERS fails.

8 Since *Montierth*, courts have recognized that when the entity appearing as record
9 beneficiary of a deed of trust is MERS or a servicer in a contractual relationship with the loan
10 owner, the loan owner retains a secured property interest under Nevada law. *See, e.g.,*
11 *Berezovsky*, 2015 WL 8780198, at *3; *G & P Inv.*, 2016 WL 4370055; *Koronik*, 2016 WL
12 7493961, at *1; *Nevada Sand Castles*, 2017 WL 701361; *FHFA v. SFR*, 2016 WL 2350121, at
13 *6 (granting FHFA, Fannie Mae, and Freddie Mac summary judgment regarding five properties);
14 *Nevada New Builds*, 2017 WL 888480 (granting FHFA, and Fannie Mae summary judgment
15 regarding three properties). This Court should do the same here.

16 (ii) **Nevada Adopts the Uniform Commercial Code, Which**
17 **Is Consistent with the Restatement Approach**

18 The Restatement approach, acknowledging that different entities might be *owner* or
19 *record beneficiary* of a deed of trust, is consistent with Nevada’s adoption of Uniform
20 Commercial Code Article 3, which provides that “[a] person may be a person entitled to enforce
21 [a promissory note] even though the person is not the owner of the [that note].” Nev. Rev. Stat.
22 § 104.3301. A “person entitled to enforce” a note may be a “holder” of the note or even a
23 “nonholder in possession of the [note] who has the rights of the holder.” *Id.* Accordingly, “the
24 status of holder merely pertains to one who may enforce the debt and is a separate concept from
25 that of ownership.” *Thomas v. BAC Home Loans Servicing, LP*, No. 56587, 2011 WL 6743044,
26 at *3 n.9 (Nev. Dec. 20, 2011). That is because “[o]wnership rights in instruments may be
27 determined by principles of the law of property . . . which do not depend upon whether the
28 instrument was transferred.” UCC § 3-203 cmt. 1. For that reason, the transfer of a note has no

bearing on ownership, but instead “vests in the transferee any right of the transferor to enforce the instrument.” Nev. Rev. Stat. § 104.3203.³¹

In fact, the Nevada Supreme Court has applied this principle in a similar circumstance, where Freddie Mac claimed to own a note while BAC was the holder of the note and the record beneficiary of the associated deed of trust. The court held there was nothing inconsistent with this situation under Nevada law. *See Thomas*, 2011 WL 6743044, at *1, 3 & n.9. Here, too, there is nothing inconsistent with Freddie Mac being the owner of the note and the Deed of Trust, while Nationstar its servicer, was beneficiary of record of the Deed of Trust.

b. The Guide Confirms that Freddie Mac Retains Ownership of the Deed of Trust While Freddie Mac’s Servicer Is Record Beneficiary

The Guide serves as a central document governing the contractual relationship between Freddie Mac and its servicers nationwide, including Nationstar.³²

Reflecting the principles of Nevada law discussed *supra*, the Guide provides that a servicer may act as the beneficiary of record while Freddie Mac maintains ownership of the deed of trust and can “compel an assignment of the deed of trust.” *Montierth*, 354 P.3d at 651. For example, the Guide provides that “Freddie Mac may, at any time and without limitation, require the Seller or the Servicer ... to make such ... assignments and recordations of any of the Mortgage documents so as to reflect the interests of Freddie Mac.” Guide at 1301.10; *see also* Guide at 6301.6 (similar).³³

³¹ Similarly, Uniform Commercial Code Article 9 provides that “[t]he attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security, mortgage or other lien.” NRS § 104.9203(7). Thus, “a transferee of a mortgage note” such as Freddie Mac “whose property right in the note has attached also automatically *has an attached property right in the mortgage* that secures the note.” Report of the Permanent Editorial Board for the UCC, Application of the UCC to Selected Issues Relating to Mortgage Notes at 14 (Nov. 14, 2011) (emphasis added).

³² *See* Guide at 1101.2(a) in **Exhibit F**.

³³ Relatedly, the Guide also discusses transfers of servicing rights and requires servicers to complete assignments of deeds of trust depending on the circumstances of those transfers. If the transferor servicer is the beneficiary of record, the transferor servicer must prepare and record an assignment to the transferee servicer. *See* Guide at 7101.6. This occurred, for example, when

1 The provisions of the Guide demonstrate that Freddie Mac and its loan servicers maintain
2 the type of relationship described in the Restatement and *Montierth*. The Guide authorizes
3 servicers to protect the interests of Freddie Mac in the Loan, including in foreclosure
4 proceedings.³⁴ Nevertheless, the Guide is clear that ownership always lies with Freddie Mac.
5 For example, “[a]ll documents in the Mortgage file, . . . and all other documents and records
6 related to the Mortgage of whatever kind or description . . . will be, and will remain at all times,
7 the property of Freddie Mac.”³⁵

8 Thus, under Nevada law and pursuant to the Guide, the fact that Freddie Mac’s servicer
9 Nationstar was the beneficiary of record of the Deed of Trust at the time of the HOA Sale, does
10 not negate the fact that Freddie Mac remained the owner of the note and the Deed of Trust at that
11 time. Accordingly, the Federal Foreclosure Bar, which protects Freddie Mac’s property
12 interests, protected the Deed of Trust from extinguishment, and Freddie Mac continued to own
13 both the Deed of Trust and the note after the HOA Sale.

14 **c. A Loan Owner Does Not Sacrifice Its Property Interest by**
15 **Having a Contractually Authorized Representative Serve as**
16 **Record Beneficiary**

17 Any contention by Saticoy Bay that the Deed of Trust must have been recorded in
18 Freddie Mac’s name, instead of the name of Freddie Mac’s servicers, such as Nationstar, is
19 incorrect as a matter of law. *Montierth* confirms that there is no rule that every deed of trust
20 must be recorded *in its owner’s name* for the owner to have a valid, secured, interest. *Montierth*,
21 354 P.3d at 650-51.

22 The relevant facts in this case are materially the same as those in both *Montierth* and in
23 the section of the Restatement cited by *Montierth*: (i) the owner of the note was not reflected in
24 the public record, though the lien itself was recorded; (ii) the owner of the note had a contractual
25 or agency relationship with the beneficiary of record; and (iii) the beneficiary of record had

26
27 Aurora assigned the Deed of Trust to Nationstar, the current servicer, while Freddie Mac
maintained its ownership interest.

28 ³⁴ See Guide at 8107.1, 8107.2, 9301.11 in **Exhibit F**.

AA000676

³⁵ See Guide at 1201.9 in **Exhibit F**; see also *Id.* at 3302.5, 8107.1(b).

1 authority to foreclose on the owner’s behalf. That was precisely the scenario here: Nationstar
2 was the record beneficiary of the Deed of Trust and the contractually authorized servicer of the
3 Loan on behalf of Freddie Mac. These authorities make clear that the loan owner has a property
4 interest under these circumstances. Therefore, under the holding of *Montierth*, Freddie Mac was
5 a “secured creditor,” with an “interest [that] was secured” and that can be enforced, meaning that
6 it retains a property interest in the collateral. *Id.* at 651, 653. In other words, a “secured interest”
7 is a property interest, which is all that is necessary for the Federal Foreclosure Bar to apply.

8 If Nevada’s recording statutes required all *loan ownership* interests to be recorded, a loan
9 owner would always also need to serve as beneficiary of record of a deed of trust. Under such a
10 rule, the loan owner in *Montierth* would not have had a secured property interest, and the Nevada
11 Supreme Court would have ruled that MERS could not act as record beneficiary as nominee for
12 the lender. But *Montierth* made the opposite ruling, consistent with *Higgins* and with a number
13 of Ninth Circuit decisions regarding MERS and its role in the consumer mortgage industry. *See*
14 *In re Mortgage Elec. Registration Sys., Inc.*, 754 F.3d 772, 776-77 (9th Cir. 2014); *Cervantes v.*
15 *Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1038-39 (9th Cir. 2011).

16 **d. Saticoy Bay Cannot Rely on the Bona Fide Purchaser Statutes**
17 **to Avoid Freddie Mac’s Protected Deed of Trust**

18 It is anticipated that Saticoy Bay will argue that even if Freddie Mac had a property
19 interest under Nevada law, Nevada’s bona fide purchaser laws would still allow it to claim a
20 free and clear interest because the Deed of Trust was not recorded in Freddie Mac’s name.
21 However, Saticoy Bay is not a bona fide purchaser. Saticoy Bay does not deny that the Deed
22 of Trust or its assignments to Freddie Mac’s servicer had been properly recorded. These
23 documents properly documented the security interest to put third parties on notice. Therefore,
24 Plaintiff had “actual knowledge, constructive notice of, or reasonable cause to know that there
25 exists...adverse rights, title, or interest to, the real property.” NRS 111.180.

26 Accordingly, it is immaterial whether Nevada’s statutes render an *unrecorded* deed of
27 trust invalid against a subsequent bona fide purchaser—the Deed of Trust that Freddie Mac
28 owned was recorded at the time of the HOA Sale. There is no requirement in the Nevada
recording or bona fide purchaser statutes that require an HOA sale purchaser get notice of the

1 owner of the note and Deed of Trust. The recording statutes require only that the lien's
2 existence and the identity of the beneficiary of record with whom one could communicate
3 about the lien be in the record.³⁶ At the time of the HOA Sale, the relevant security interest, the
4 Deed of Trust, was recorded, and Saticoy Bay is charged with notice that the Deed of Trust
5 encumbered the Property.

6 Furthermore, Saticoy Bay cannot dispute that it was dealing in a highly regulated
7 industry in which Freddie Mac and Fannie Mae are by far the largest actors—especially in the
8 aftermath of the recent housing crisis. In 2008, the Enterprises' "mortgage portfolios had a
9 combined value of \$5 trillion and accounted for nearly half of the United States mortgage
10 market." *Perry Capital LLC v. Mnuchin*, 848 F.3d 1072, 1083 (D.C. Cir. 2017). Since 2012,
11 "Fannie and Freddie, among other things, collectively purchased at least 11 million
12 mortgages." *Id.* Parties engaged in a regulated business cannot plausibly claim ignorance of
13 the relevant law. *See del Junco v. Conover*, 682 F.2d 1338, 1342 (9th Cir. 1982); *United States*
14 *v. Int'l Minerals & Chem. Corp.*, 402 U.S. 558, 565 (1971) ("[W]here . . . the probability of
15 regulation is so great," one operating in that business "must be presumed to be aware of the
16 regulation."). Saticoy Bay cannot deny that Fannie Mae or Freddie Mac's ownership of the
17 Deed of Trust was a foreseeable risk that it took in purchasing the Property at a discount at the
18 HOA Sale.

19 At bottom, Saticoy Bay's problem is of its own making; Saticoy Bay did not research
20 the law concerning its purchase of the Property, and therefore did not know that the Federal
21 Foreclosure Bar might apply to protect the Deed of Trust from extinguishment. But whether
22 Saticoy Bay was consciously aware of the Federal Foreclosure Bar or understood how it could
23 affect its rights has no bearing on the merits of this case. "All citizens are presumptively
24 charged with knowledge of the law." *Atkins v. Parker*, 472 U.S. 115, 130 (1985).

25 Indeed, the United States Supreme Court has rejected an analogous challenge to a
26 statute allowing enforcement of an unrecorded lien that the affected party (a secured lender
27 who repossessed property subject to the lien) might reasonably expect, but had no practical

28 AA000678

³⁶ *See supra* at I.B.1.c.

1 means of confirming. *See Int'l Harvester Credit Corp. v. Goodrich*, 350 U.S. 537 (1956).
2 That case concerned a motor carrier's failure to pay a New York state highway tax, and the
3 state's effort to impose and enforce a lien on the trucks used by the carrier. *Id.* at 538-42.
4 When New York attempted to enforce its lien, the carrier's trucks had since been repossessed
5 by a truck vendor. *Id.* at 542. While the Supreme Court recognized that the vendor had no
6 knowledge of the government's lien prior to the conditional sale or the later repossession,³⁷ the
7 Court upheld the state's tax lien, suggesting that the vendor had subjected itself to the
8 possibility of a lien when it entered into an agreement where a carrier would operate its trucks
9 in New York. *Id.* at 541, 544-46.

10 Any suggestion by Saticoy Bay that the application of the Federal Foreclosure Bar here
11 is unfair elides the fact that Saticoy Bay's purchase of the Property at the HOA Sale was a
12 conscious gamble, just as the vendor in *International Harvester* took a risk in selling trucks in
13 New York. Prior to this Court's *SFR Investments* decision in September 2014, federal and state
14 courts differed on whether a properly conducted foreclosure on an HOA superlien could
15 extinguish a first deed of trust, and "purchasing property at an HOA foreclosure sale was a
16 risky investment, akin to purchasing a lawsuit." *Bourne Valley Court Trust v. Wells Fargo*
17 *Bank, N.A.*, 80 F. Supp. 3d 1131, 1136 (D. Nev. 2015).

18 Moreover, even if Nevada's bona fide purchaser statutes were read to protect Saticoy Bay
19 from Freddie Mac's property interest because Freddie Mac's servicer appeared as the Deed of
20 Trust's record beneficiary, the bona fide purchaser statutes would be preempted by the Federal
21 Foreclosure Bar. The conflict between the Federal Foreclosure Bar and the bona fide purchaser
22 statutes, as Saticoy Bay would interpret them, is obvious. The Federal Foreclosure Bar
23 automatically bars any nonconsensual extinguishment through foreclosure of any interest in
24 property held by Freddie Mac while in conservatorship. 12 U.S.C. § 4617(j)(3). However,
25 Saticoy Bay's re-interpreted bona fide purchaser laws would allow state HOA lien sales to
26

27 ³⁷ Indeed, the dissent focused on this point, noting that the vendor had no practical means of
28 avoiding the tax lien "except by avoiding such sales" in the first place. *Id.* at 550 (Frankfurter,
J., dissenting). State employees were prohibited by law from informing the vendor that the
trucks were subject to a tax lien. *Id.* at 541 n.7.

1 extinguish Freddie Mac’s property interests whenever the associated deed of trust appeared in
2 the name of Freddie Mac’s servicer, an arrangement (as discussed *supra*) otherwise permitted
3 under Nevada law. Federal law thus precludes what state law would permit: extinguishment of
4 the Freddie Mac conservatorship’s deed-of-trust interest.

5 **2. The Federal Foreclosure Bar’s Protection Extends to Freddie Mac’s Property**
6 **Interest Here**

7 **a. The Federal Foreclosure Bar Provides Broad Protection to**
8 **Freddie Mac’s Lien Interests**

9 Federal law defines the scope of property interests protected by statutes such as the
10 Federal Foreclosure Bar broadly. *See Matagorda Cty. v. Russell Law*, 19 F.3d 215, 221 (5th Cir.
11 1994). Courts have repeatedly held that mortgage liens constitute property for purposes of the
12 analogous FDIC statute, 12 U.S.C. § 1825(b)(2).³⁸ “[T]he term ‘property’ in § 1825(b)(2)
13 encompasses all forms of interest in property, including mortgages and other liens.” *Simon v.*
14 *Cebrick*, 53 F.3d 17, 20 (3d Cir. 1995). This reflects Congress’s intent to provide the greatest
15 possible scope of protection to Freddie Mac and Fannie Mae in the midst of a severe housing
16 crisis. *Cf. Cambridge Capital Corp. v. Halcon Enters., Inc.*, 842 F. Supp. 499, 503 (S.D. Fla.
17 1993) (“This Court need look no further than [Section 1825(b)(2)] itself to determine that
18 Congress has expressed its intent that no property of the FDIC—fee or lien—be subject to
19 foreclosure without the FDIC’s consent.”); *Trembling Prairie Land Co. v. Verspoor*, 145 F.3d
20 686, 691 (5th Cir. 1998) (“In deference to the will of Congress, we hold that the tax sale at issue
21 was conducted without the consent of the FDIC . . . [and] violated 12 U.S.C. § 1825(b)(2).”).
22 Therefore, Freddie Mac’s interest here—ownership of both the Deed of Trust and the note—was
23 a protected property interest under the Federal Foreclosure Bar.

24 **a. The Federal Foreclosure Bar Extends to Freddie Mac When It**
25 **Is Under FHFA’s Conservatorship**

26 The Federal Foreclosure Bar necessarily protects the Deed of Trust because the

27 ³⁸ When analyzing HERA’s provisions, courts have frequently turned to precedent
28 interpreting FDIC’s analogous receivership authority. *See, e.g., Cts. of Sonoma v. FHFA*, 710
F.3d 987, 993 (9th Cir. 2013); *In re Fed. Home Loan Mortg. Corp. Derivative Litig.*, 643 F.
Supp. 2d 790, 795 (E.D. Va. 2009), *aff’d sub nom. La. Mun. Police Emps. Ret. Sys. v. FHFA*,

1 Conservator has succeeded by law to all of Freddie Mac’s “rights, titles, powers, and privileges,”
2 12 U.S.C. § 4617(b)(2)(A)(i). “Accordingly, the property of [Freddie Mac] effectively becomes
3 the property of FHFA once it assumes the role of conservator, and that property is protected by
4 section 4617(j)’s exemptions.” *Skylights*, 112 F. Supp. 3d at 1155. This interpretation is
5 supported by the text and structure of HERA. *See id.* Section 4617 concerns FHFA’s
6 “[a]uthority over” Freddie Mac and Fannie Mae when they are “critically undercapitalized” and
7 thus must be placed into conservatorship or receivership. Furthermore, the protections of
8 Section 4617(j)(3) apply in “any case in which [FHFA] is acting as a conservator or a receiver.”
9 12 U.S.C. § 4617(j)(1).

10 Indeed, courts uniformly have rejected any argument that the immunities provided by
11 Section 4617(j) do not apply to the property of Freddie Mac or Fannie Mae while in FHFA
12 conservatorship. *See Skylights*, 112 F. Supp. 3d at 1155 (collecting cases); *Nevada v.*
13 *Countrywide Home Loans Servicing, LP*, 812 F. Supp. 2d 1211, 1218 (D. Nev. 2011) (“[W]hile
14 under the conservatorship with the FHFA, Fannie Mae is statutorily exempt from taxes,
15 penalties, and fines to the same extent that the FHFA is.”); *FHFA v. City of Chicago*, 962 F.
16 Supp. 2d 1044, 1064 (N.D. Ill. 2013) (argument is “meritless”). Courts have also rejected
17 similar arguments in the context of FDIC receiverships. *See, e.g., In re Cty. of Orange*, 262 F.3d
18 1014, 1020 (9th Cir. 2001); *Cty. of Fairfax v. FDIC*, Civ. A. No. 92-0858, 1993 WL 62247, at *4
19 (D.D.C. Feb. 26, 1993).

20 **3. FHFA Did Not Consent to the Extinguishment of the Deed of Trust**

21 Because Freddie Mac had a protected property interest at the time of the HOA Sale, the
22 Federal Foreclosure Bar precluded Saticoy Bay from acquiring free-and-clear title unless Saticoy
23 Bay obtained FHFA’s consent to the extinguishment of Freddie Mac’s interest. Saticoy Bay
24 cannot show that it received such consent. To the contrary, the Conservator has publicly
25 announced that it “has not consented, and will not consent in the future, to the foreclosure or
26 other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in
27

28 AA000681

434 F. App’x 188 (4th Cir. 2011).

1 connection with HOA foreclosures of super-priority liens.”³⁹ Accordingly, the Federal
2 Foreclosure Bar protected Freddie Mac’s interest, and the HOA Sale could not have extinguished
3 the Deed of Trust.

4 **C. Nationstar May Assert the Federal Foreclosure Bar to Protect Its Interest**
5 **and Freddie Mac’s Interest in the Deed of Trust**

6 The Federal Foreclosure Bar works automatically by operation of law, protecting the
7 Deed of Trust and thereby limiting the property rights Saticoy Bay could have acquired in the
8 HOA Sale. When the Federal Foreclosure Bar prevented the extinguishment of the Deed of
9 Trust, it did not merely preserve Freddie Mac’s ownership interest; it also preserved Nationstar’s
10 parallel interests.⁴⁰ Accordingly, Nationstar has standing because (1) Nationstar’s interest in the
11 Deed of Trust as beneficiary of record is preserved when the Federal Foreclosure Bar applies,
12 and (2) Nationstar has a contractual relationship as servicer to protect Freddie Mac’s interest in
litigation relating to the Loan.

13 The Nevada Supreme Court recently adopted this position in *Nationstar*, 133 Nev. Adv.
14 Op. 34, 2017 WL 2709806. *Nationstar* holds that “the servicer of a loan owned by [an
15 Enterprise] may argue that the Federal Foreclosure Bar preempts NRS 116.3116, and that neither
16 [the Enterprise] nor the FHFA need be joined as a party.” *Id.* at *2. The Nevada Supreme Court
17 cited *Montierth*, which recognizes that when a noteholder authorizes the beneficiary of record of
18 a deed of trust to enforce the deed of trust, the beneficiary of record may do so. *See* 354 P.3d at
19 651 (citing Restatement § 5.4 cmt. c).

20 Saticoy Bay may argue that private litigants cannot use the Supremacy Clause to displace
21 state law. However, *Nationstar* directly rejected this argument; there is no bar against private
22 parties raising a federal preemption argument. *Nationstar* held that “private parties,” like
23

24 ³⁹ *See Exhibit N*, attached to the RJN. This public statement on a government website is subject
25 to judicial notice. *See Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998-99 (9th Cir. 2010).

26 ⁴⁰ For example, in a related case, a federal court granted Fannie Mae’s servicer summary
27 judgment against an HOA sale purchaser’s claims because, when the “Court determined that
28 Fannie Mae’s interest in the Property was not extinguished,” this meant that the servicer’s
interest also “was not affected” by the HOA Sale. *See Order, Saticoy Bay, LLC Series 1702*
Empire Mine v. Fannie Mae, No. 2:14-CV-01975-KJD-NJK, slip op. at 3 (D. Nev. Sept. 29,
2015) (ECF No. 129).

1 Nationstar here, “may argue federal law preempts state law.” *Id.* at *3 (citing *Munoz v. Branch*
2 *Banking & Trust Co., Inc.*, 131 Nev. Adv. Op. 23, 348 P.3d 689, 690 (2015)). The Nevada
3 Supreme Court emphasized that SFR’s reliance, similar to Saticoy Bay’s, on *Armstrong* is
4 “misplaced” because servicers are “not attempting to use the Supremacy Clause to assert a cause
5 of action.” 2017 WL 2709806 at *3. Rather, in *Nationstar* and similar cases such as this one,
6 servicers invoke the Federal Foreclosure Bar as a rule of decision to resolve a claim properly
7 before the court, and in such circumstances, “*judges are bound by federal law.*” *Id.* (quoting
8 *Armstrong*, 135 S. Ct. at 1384 (emphasis original)).

9 The evidence in this case confirms that Freddie Mac is the owner of the Loan and that
10 Nationstar is Freddie Mac’s contractually authorized servicer.⁴¹ Pursuant to its contract with
11 Freddie Mac, Nationstar has the authority to represent Freddie Mac’s interests in litigation with
12 respect to the loans it services. *See, e.g.*, Guide at 8105.3, 9301.1, 9301.12, 9401.1, 9402.2-4,
13 Chapter 9500. Furthermore, the Conservator has publicly supported invocation of the Federal
14 Foreclosure Bar by servicers in litigation such as this one.⁴² Saticoy Bay can present no contrary
15 evidence to create a genuine dispute about these facts. Accordingly, Nationstar may invoke the
16 Federal Foreclosure Bar in this litigation without joining Freddie Mac or FHFA as a party.

17 **II. Saticoy Bay Is Not a Bona Fide Purchaser**

18 Saticoy Bay repeatedly asserts it is a bona fide purchaser and therefore entitled to
19 summary judgment in its favor. In support of its position, Saticoy Bay cites cases dating back
20 to the 1800’s that have no application or correlation to the instant case. Saticoy Bay was a
21 sophisticated investor, well advised of the inherent risks of purchasing properties at HOA
22 foreclosure sales when it purchased its purported interest in the Property. The evidence
23 demonstrates Saticoy Bay was not a bona fide purchaser, if it does not establish as a matter of
24 law that it was not. Saticoy Bay suggests that it did not have notice of any defect in the HOA
25 Sale. That is not the correct standard for analyzing bona fide purchaser status and such
26 argument should be disregarded by the Court. What is considered is whether the purchaser had
27

28 ⁴¹ *See* **Exhibit C**, attached hereto and **Exhibit E**, attached to the RJN.

⁴² *See* **Exhibit A**, attached to the RJN.

AA000683

1 “notice of the prior equity” and “competing legal or equitable claims.” *Shadow Wood*, 132
2 Nev. Adv. Op. 5 at*30, 366 P.3d at 1115; *25 Corp., Inc. v. Eisenman Chem. Co.*, 101 Nev. 664,
3 675, 709 P.2d 164, 172 (1985).

4 “A subsequent purchaser is bona fide under common law principles if it takes the
5 property ‘for a valuable consideration and without notice of the prior equity, and without notice
6 of facts which upon diligent inquiry would be indicated and from which notice would be
7 imputed to him, if he failed to make such inquiry.’” *Shadow Wood Homeowners Association v.*
8 *New York Community Bank*, 132 Nev. Adv. Rep. 5, 366 P.3d 1105, 1115 (2016) (“*Shadow*
9 *Wood*”). “The bona fide doctrine protects a subsequent purchaser’s title against competing
10 legal or equitable claims of which the purchaser had no notice at the time of the conveyance.”
11 *25 Corp.*, 101 Nev. at 675, 709 P.2d at 172 (1985) (citing 77 Am. Jur. 2d Vendor and Purchaser
12 § 633 at 754 (1975)). However, the buyer must be acting in good faith to be a bona fide
13 purchaser. *See Berger v. Fredericks*, 95 Nev. 183, 188, 591 P.2d 246, 249 (1979).

14 Moreover, a duty to inquire before purchasing a property arises “when the
15 circumstances are such that a purchaser is in possession of facts which would lead a reasonable
16 man in his position to make an investigation that would advise him of the existence of prior
17 unrecorded rights.” *Berger*, 591 P.2d 246, 249. Under such circumstances, the purchaser “has
18 notice of whatever the search would disclose.” *Id.* In addition, Saticoy Bay cannot be a bona
19 fide purchaser if it purchased the Property with notice of another party’s interest in the
20 property. *See Hewitt v. Glaser Land & Livestock Co.*, 97 Nev. 207, 208, 626 P.2d 628, 628-
21 629 (1981). Saticoy Bay purchased the Property with knowledge of the existence of the senior
22 Deed of Trust and the Mortgage Protection Clause for a number of reasons.

23 First, the recording statute deems Saticoy to have knowledge of a prior recorded
24 interest. Recording statutes provide “constructive notice” of the existence of an outstanding
25 interest in land, thereby putting a prospective purchaser on notice that he may not be getting all
26 he expected. “Constructive notice is that which is imparted to a person upon strictly legal
27 inference of matter which he necessarily ought to know, or which, by the exercise of ordinary
28 diligence, he might know.” *Allison Steel Mfg. Co. v. Mennonite, Inc.*, 80 Nev. 494, 497, 471

AA000684

1 P.2d 666, 668 (1970) (quoting 8 Thompson on Real Property § 4293, at 245 16). Under the
2 Nevada recording act, “A subsequent purchaser with notice, actual or constructive, of an
3 interest in the land superior to that which he is purchasing is not a purchaser in good faith, and
4 not entitled to the protection of the recording act.” 86 Nev. at 499, 471 P.2d at 669. Nevada’s
5 recording statute, NRS 111.320, provides:

6 Every such conveyance or instrument of writing, acknowledged or proved and
7 certified, and recorded in the manner prescribed in this chapter or in NRS 105.010
8 to 105.080, inclusive, must from the time of filing the same with the Secretary of
9 State or recorder for record, impart notice to all persons of the contents thereof;
and subsequent purchasers and mortgagees shall be deemed to purchase and take
with notice.

10 Saticoy Bay bought the Property after the CC&Rs were recorded, and after the Deed of
11 Trust was recorded in the Clark County Recorder’s Office. Saticoy Bay therefore purchased
12 the Property with record notice of both the Mortgage Protection Clause and the senior Deed of
13 Trust. The CC&Rs applicable to this Property state:

14 Notwithstanding all other provisions hereof, no lien created under this Article 7,
15 nor the enforcement of any provision of this Declaration shall defeat or render
16 invalid the rights of the Beneficiary under any Recorded First Deed of Trust
17 encumbering a Unit, made in good faith and for value;.... The lien of the
assessments, including interest and costs, shall be subordinate to the lien of any
First Mortgage upon the Unit....⁴³

18 Second, NRS Chapter 116 deems Saticoy Bay to have purchased the Property subject to
19 the CC&Rs. NRS 116.310312(7) provides as follows: “A person who purchases or acquires a
20 unit at a foreclosure sale pursuant to NRS 40.430 or a trustee’s sale pursuant to NRS 107.080 is
21 bound by the governing documents of the association and shall maintain the exterior of the unit
22 in accordance with the governing documents pursuant to this chapter.”

23 A person who buys property at a foreclosure sale cannot pick and choose which parts of
24 the CC&Rs are applicable to it. Saticoy Bay is bound by the provisions of the CC&Rs, which
25 include the Mortgage Protection Clause.

26 Third, Saticoy Bay is deemed to have knowledge of the CC&Rs and the Mortgage
27

28 ⁴³ See Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for
Naples, Section 7.8, attached to the RJN as **Exhibit O**.

AA000685

1 Protection Clause under the common law. “The authorities are unanimous in holding that [the
2 purchaser] has notice of whatever the search would disclose.” *Berger*, 591 P.2d 246, 249. In
3 addition to the record notice discussed above, Saticoy Bay was also on inquiry notice because
4 the foreclosure documents themselves stated the HOA Sale was being conducted pursuant to
5 the CC&Rs.

6 Finally, *Shadow Wood* allows for the “bona fide purchaser” status to be challenged by a
7 lienholder. Saticoy Bay cannot claim to be a bona fide purchaser because it is a professional
8 property purchaser on notice of the Deed of Trust. The status of SFR Investments Pool I, LLC,
9 another professional property purchaser, was adjudicated in *Nationstar Mortgage, LLC, v.*
10 *Hometown West II Homeowners Association et al.*, U.S. District Court, District of Nevada, Case
11 No. 2:15-cv-01232-RCJ-NJK, 2016 WL 3660112 *7-8 (July 8, 2016),⁴⁴ where the court granted
12 the bank summary judgment, ruling as follows:

13 SFR had constructive notice of the DOT at the time of the HOA sale because the
14 DOT had been recorded, see Nev. Rev. Stat. § 111.315, and the Foreclosure Deed
was of course not recorded before the DOT. The general BFP rule in Nevada is:

15 Any purchaser who purchases an estate or interest in any real property in
16 good faith and for valuable consideration and who does not have actual
17 knowledge, constructive notice of, or reasonable cause to know that there
exists a defect in, or adverse rights, title or interest to, the real property is a
18 bona fide purchaser.

19 Nev. Rev. Stat. § 111.180(1). Even assuming the issue were whether SFR had
20 notice not only of the DOT but also of the legal possibility that the DOT might
21 survive the HOA foreclosure sale, SFR was not an innocent purchaser in this
22 regard.... SFR was on inquiry notice of the continuing vitality of the DOT,
23 especially considering that the sale price was a tiny fraction of the value of the
24 Property and it knew the winning bidder was to take a trustee's deed without
25 warranty. (Citation omitted.) And any inquiry to the HOA or its agent alone was
insufficient as a matter of law.... The law was not clear at the time of the sale that
26 the sale would extinguish the DOT, and a reasonable purchaser therefore would
27 have perceived a serious risk that it would not. ...SFR cannot be said to be a BFP
28 as against the DOT under these circumstances.

For these same reasons, Saticoy Bay is not a bona fide purchaser in this case, and its
Motion should be denied.

AA000686

⁴⁴ A copy of the order is attached hereto as **Exhibit P**.

1 **III. The HOA Sale Was Commercially Unreasonable**

2 The HOA Sale was void because it was commercially unreasonable. Saticoy Bay
3 purchased the Property at the HOA Sale for \$5,563.⁴⁵ Yet, as demonstrated by the un rebutted
4 opinion of Nationstar’s expert, the Property was worth \$175,000 at the time of the HOA Sale.⁴⁶
5 As such, Saticoy Bay paid less than 4% of the value of the Property, a grossly inadequate price.
6 In *Shadow Wood*, the Nevada Supreme Court determined that commercial reasonableness is a
7 valid ground for setting aside an HOA foreclosure sale. The Court also noted the inadequacy of
8 the price paid by the buyer at an HOA foreclosure sale was to be considered in evaluating the
9 commercial reasonableness of such a sale.

10 The HOA Sale in this matter was not conducted in good faith and was not commercially
11 reasonable. Even if an HOA sale could otherwise eliminate the Deed of Trust, which it cannot,
12 the sale in this case would be void as commercially unreasonable if it did eliminate the senior
13 Deed of Trust. While the *Shadow Wood* Court stated, 366 P.3d at 1112, that “demonstrating
14 that an association sold a property at its foreclosure sale for an inadequate price is not enough to
15 set aside that sale; there must also be a showing of fraud, unfairness, or oppression,” the Court
16 nonetheless made clear that a *grossly* inadequate sale price in and of itself is sufficient. The
17 decision recognized the Restatement (Third) of Prop.: Mortgages § 8.3 ant. B (1997), position
18 that while “[g]ross inadequacy cannot be precisely defined in terms of a specific percentage of
19 fair market value [, g]enerally . . . a court is warranted in invalidating a sale where the price is
20 less than 20 percent of fair market value and, absent other foreclosure defects, is usually not
21 warranted in invalidating a sale that yields in excess of that amount.” **In other words, this**
22 **Court can invalidate the HOA Sale if the purchase price is less than 20 percent of fair**
23 **market value without more, and this Court can invalidate the HOA Sale if the purchase**
24 **price is more than 20 percent of fair market value if there are “other foreclosure defects.”**

25 The Court then evaluated the sale in that case and determined the price did not meet the
26 Restatement definition of “grossly inadequate price” because the purchase price reflected 23

27
28 ⁴⁵ See **Exhibit EE**.

⁴⁶ See Appraisal, attached hereto as **Exhibit Q**.

1 percent of fair market value. Footnote 3 again recognized the 20 per cent threshold: “The
2 \$11,018.39 sale price is slightly more than 20 percent of that estimate, so it does not affect the
3 analysis in the text.” The *Shadow Wood* decision thus reaffirmed the concept that a sale can be
4 set aside if it is not commercially reasonable. The decision also made clear that the sale can be
5 set aside if (1) the purchase price is less than 20 per cent of fair market value at the time of the
6 sale; or (2) the purchase price is more than 20 percent of the purchase price and there are other
7 foreclosure defects. Here, the HOA Sale was commercially unreasonable as demonstrated by
8 the fact that Saticoy Bay paid less than 4% of the value for the Property.

9 “Commercial reasonableness” has been interpreted in several Nevada cases, including
10 *Levers v. Rio King Land & Inv. Co.*, 93 Nev. 95, 560 P.2d 917 (1977); *Dennison v. Allen Group*
11 *Leasing Corp.*, 110 Nev. 181, 871 P.2d 288 (1994); and *Savage Canst., Inc. v. Challenge-Cook*
12 *Bros., Inc.*, 102 Nev. 34 (1986). Of particular importance here, in this Opposition, is the passage
13 from *Levers*, 93 Nev. at 98-99, 560 P.2d at 919-20:

14 A wide discrepancy between the sale price and the value of the collateral compels
15 close scrutiny into the commercial reasonableness of the sale. **This is especially**
16 **true where, as here, the secured party purchases the collateral and**
17 **subsequently resells it for a vastly greater amount than was credited to the**
18 **debtor.** (Citations omitted; emphasis added.)

19 Nationstar maintains that a showing of fraud, oppression or unfairness is not required if
20 the purchase price is less than 20% of the fair market value or grossly inadequate as it was here.
21 Saticoy Bay relies on *BFP v. Resolution Trust Corporation*, 511 U.S. 531, 545, 114 S. Ct. 1757
22 (1994) to argue that fair market value is not the correct measure of commercial
23 unreasonableness. This argument is incorrect.

24 First, it is directly contradicted by *Shadow Wood* which set the standard as “fair market
25 value.” The *Shadow Wood* Court held that ‘a court is warranted in invalidating a sale where the
26 price is less than 20 percent of *fair market value* and, absent other foreclosure defects, is usually
27 not warranted in invalidating a sale that yields in excess of that amount.” *Shadow Wood*, 366
28 P.3d at 114 (emphasis added). This is consistent with common sense. If the foreclosure sale
price was de facto commercially reasonable, the logical extension of Saticoy Bay’s argument, no
analysis of the price would ever be necessary. The fact *Shadow Wood* authorizes and sets

AA000688

1 guidelines for a commercial reasonableness analysis, which requires consideration of the sales
2 price paid at the foreclosure sale, indicates the foreclosure sale price is not always commercially
3 reasonable.

4 Second, Saticoy Bay's reliance on *BFP v. Resolution Trust Corporation* is misplaced on
5 its face because the HOA failed to comply with all requirements of Nevada law during the sale
6 process. As discussed by the *BFP* court, any discussion of "reasonably equivalent value" is
7 limited to situations where "**all the requirements of the State's foreclosure law have been**
8 **complied with.**" 511 U.S. 531, 545, 114 S. Ct. 1757 (1994) (emphasis added). Here, Nationstar
9 presents evidence that all requirements of law were NOT complied with. For example, the
10 foreclosure notices include improper amounts. Accordingly, Saticoy Bay's argument regarding
11 "sufficient sums at foreclosure sale" has no bearing in this case.

12 Saticoy Bay also argues that the grossly inadequate price paid at the HOA Sale must be
13 coupled with fraud, oppression or unfairness in the HOA Sale. Saticoy Bay is wrong. As an
14 initial matter, if such a showing were required, Nationstar would merely need to show "very
15 slight additional evidence of unfairness or irregularity.'" *Golden v. Tomiyasu*, 387 P.2d 989, 995
16 (1963) (citing *Odell v. Cox*, 151 Cal. 70, 90 P. 194 (1907)). That standard is more than met in
17 this case. First, there is oppression and unfairness because the HOA put the world – including
18 Nationstar, Saticoy Bay and any other prospective bidders on constructive notice in its CC&Rs
19 that the HOA's foreclosure would not disturb the first Deed of Trust. *See ZYZZX2 v. Dizon*, No.
20 13-cv-1307-JCM-PAL, 2016 WL 1181666 (D. Nev. Mar. 25, 2016) (holding that proceeding to
21 sale despite mortgage protection provisions in the CC&Rs necessarily chills bidding and results
22 in unfairness). The fact this misrepresentation exists infuses unfairness and fraud through every
23 element of the HOA Sale process. Second, the HOA clearly made no effort to obtain the best
24 price or protect other lienholders when it accepted payment of the grossly inadequate price paid
25 by Saticoy Bay. Finally, the HOA's Notice of Delinquent Assessment Lien, Notice of Default,
26 and Notice of Sale do not identify any super-priority lien, and include improper collection fees
27 and costs.

28 Any one of these factors is sufficient in and of itself to show fraud, unfairness and

AA000689

1 oppression. The cumulative effect reflects an HOA Sale with multiple defects, which was
2 commercially unreasonable. At a minimum, material disputed facts exist as to the commercial
3 reasonableness of the sale, and Saticoy Bay's Motion must be denied.

4 **IV. Saticoy Bay's "Conclusive Presumption" Arguments Have Been Rejected by the**
5 **Nevada Supreme Court**

6 Saticoy Bay argues that the Foreclosure Deed recitals establish a conclusive presumption
7 that Saticoy bay obtained title free and clear of the Deed of Trust. However, in *Shadow Wood*,
8 the Nevada Supreme Court rejected the argument that the recitals in a foreclosure deed are
9 conclusive. After extensively examining the basis and history of NRS 116.31166, the *Shadow*
10 *Wood* Court concluded,

11 [W]hile it is possible to read a conclusive recital statute like NRS 116.31166 as
12 conclusively establishing a default justifying foreclosure when, in fact, no default
13 occurred, **such a reading would be "breathhtakingly broad" and "is probably**
14 **legislatively unintended** [internal citations omitted]....History and basic rules of
15 statutory interpretation confirm our view that **courts retain the power to grant**
16 **equitable relief from a defective foreclosure sale when appropriate despite**
17 **NRS 116.31166**...The long-standing and broad inherent power of a court to sit in
18 equity and quiet title, including setting aside a foreclosure sale if the
19 circumstances support such action, the fact that the recitals made conclusive by
20 operation of NRS 116.31166 implicate compliance only with the statutory
21 prerequisites to foreclosure, and the foreign precedent cited under which equitable
22 relief may still be available in the face of the conclusive recitals, at least in cases
23 involving fraud, lead us to the conclusion that **the Legislature, through NRS**
24 **116.31166's enactment, did not eliminate the equitable authority of the courts**
25 **to consider quiet title actions when an HOA's foreclosure deed contains**
26 **conclusive recitals.**

27 366 P.3d at 1110-12 (emphasis added).

28 Saticoy Bay also claims that Nationstar cannot obtain equitable relief because it can be
compensated with money damages. However, this assertion regarding an "adequate" remedy
of damages in lieu of rescission misunderstands the nature of Nationstar's interest and
arguments. The "loss" Nationstar is seeking to prevent is the secured interest against the
Property, which should not be extinguished based on the defects in the HOA Sale. Damages
will not adequately address the loss of the secured interest in property.

Moreover, the cases cited by Saticoy are inapposite to this situation and run contrary to
existing Nevada Supreme Court precedent. First, in *Shadow Wood*, this Court ruled that a

1 rescission of the HOA Sale on equitable grounds may be proper if the totality of the
2 circumstances weighs in favor of it. *Shadow Wood* provided for the equitable remedy of setting
3 aside the sale without regard to whether there was a remedy at law in damages. This is
4 consistent with other cases the Court has decided. *See, e.g., Wells Fargo v. Premier One*, Case
5 No. 67873 (June 22, 2016) (beneficiary of deed of trust has standing to assert commercial
6 reasonableness to set aside association sale); *SFR Investments Pool 1 LLC v. Green Tree*
7 *Servicing, LLC*, Case No. 68324 (Oct. 18, 2016) (beneficiary of deed of trust “clearly has
8 standing under Nevada law to argue that the HOA sale was invalid as a means of protecting its
9 deed of trust” upon association’s violation of homeowner’s bankruptcy stay). Further, with
10 respect to the *Moeller* case cited by Saticoy, other California case law indicates that legal
11 damages is an inadequate remedy in real property disputes, thus justifying equitable relief. *See*
12 *Morrison v. Land*, 169 Cal. 580, 586-587 (1915).

13 Saticoy Bay’s position is directly contrary to the Supreme Court’s decision in *Shadow*
14 *Wood* holding that the deed recitals *do not* eliminate the beneficiary’s right to contest the sale
15 and are not conclusive proof the required foreclosure notices were provided. Under *Shadow*
16 *Wood*, the deed recitals are **not conclusive** of the matters recited therein and the Motion should
17 be denied.

18 **V. The Failure of NRS Chapter 116 to Require Actual Notice to Lenders Violates**
19 **Constitutional Due Process Rights and Renders the Statute Facially**
20 **Unconstitutional**

21 Nationstar recognizes that the recent opinion issued by the Nevada Supreme Court in
22 *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, a Division of Wells*
23 *Fargo Bank, N.A.*, 133 Nev. Adv. Op. 5 (Jan. 26, 2017) (“*Saticoy Bay*”) impacts the question of
24 whether NRS Chapter 116 violates constitutional due process. However, this opinion is contrary
25 to the United States Court of Appeals for the Ninth Circuit’s opinion in *Bourne Valley Court*
26 *Trust v. Wells Fargo Bank, N.A.*, Case No. 15-15233 (“*Bourne Valley*”), which found that NRS
27 Chapter 116 was facially unconstitutional under the Fourteenth Amendment to the United States
28 Constitution. Nationstar notes that a Petition for Writ of Certiorari in the *Bourne Valley* decision
was submitted to the United States Supreme Court and subsequently denied. However, in light

AA000691

1 of the split between the state and federal courts and the procedural posture of those cases,
2 Nationstar presents the following argument addressing due process in order to preserve the issue
3 for appeal, and not for any improper purpose or to deceive the Court.

4 **A. The Fatal Flaw of NRS Chapter 116 is Lack of Notice to Lenders**

5 The fatal flaw of NRS Chapter 116 – which *SFR* did not address – is that none of its
6 express notice provisions provide for mandatory notice to lenders;⁴⁷ despite the fact that their
7 property rights are directly threatened by an HOA’s non-judicial foreclosure. Instead of
8 mandating notice to lenders, the statutes provide various “opt-in” provisions that would allow
9 “any person with an interest” to request notice in advance of a foreclosure sale by submitting a
10 written notice request to the HOA. Thus, under the statutes, the affirmative duty is on the lender
11 to request notice, not on the HOA to provide notice. This is true even when the lender has a prior
12 recorded interest. Such facially defective notice requirements establish the constitutional
13 infirmity of NRS 116.3116 and necessitate setting aside the HOA sale and deciding the case as a
14 matter of law in favor of Nationstar.

15 Of significance, on August 12, 2016, the United States Court of Appeals for the Ninth
16 Circuit, in *Bourne Valley*, found that NRS Chapter 116, as it was prior to the amendments
17 effective October 1, 2015, is facially unconstitutional because it violates due process under the
18 Fourteenth Amendment to the United States Constitution. The Court stated,

19 Before it takes an action that will adversely “affect an interest in life, liberty, or
20 property . . . , a State must provide “notice reasonably calculated, under all
21 circumstances, to apprise interested parties of the pendency of the action and
22 afford them an opportunity to present their objections.”” *Mennonite Bd. of*
23 *Missions v. Adams*, 462 U.S. 791, 795 (1983) (quoting *Mullane v. Central*
24 *Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Moreover, “[n]otice by
25 mail or other means as certain to ensure actual notice is a minimum constitutional
precondition to a proceeding which will adversely affect the liberty or property
interests of *any* party, whether unlettered or well versed in commercial practice, if
its name and address are reasonably ascertainable.” *Id.* at 800 (emphasis in
original).

26 The Court focused on the “opt-in” provisions of NRS Chapter 116’s statutory foreclosure
27

28 ⁴⁷ Nationstar uses the term “lender” to include the original lender, or a subsequent investor,
servicer, or beneficiary of the first Deed of Trust at issue.

1 scheme, and found that they violate the constitutional rights of mortgage lenders, holding:

2 Like the provision at issue in *Small Engine Shop, Inc. v. Cascio*, 878 F.2d 883
3 (5th Cir. 1989), the Statute shifted the burden of ensuring adequate notice from
4 the foreclosing homeowners' association to a mortgage lender. It did so without
5 regard for: (1) whether the mortgage lender was aware that the homeowner had
6 defaulted on her dues to the homeowners' association, (2) whether the mortgage
7 lender's interest had been recorded such that it would have been easily
discoverable through a title search, or (3) whether the homeowners' association
had made any effort whatsoever to contact the mortgage lender. In our view, such
a scheme was not constitutional.

8 *Bourne Valley*, at p. 10. The Court rejected the argument that NRS 107.090 should be read into
9 the Statute (through operation of NRS 116.31168(1)) and that its provisions cure the deficiency
10 identified because to do so would impermissibly render the express notice provisions of Chapter
11 116 – specifically, NRS 116.31163 NRS 116.31165 – entirely superfluous, in contravention of
12 the holding of *S. Nev. Homebuilders Ass'n v. Clark County*, 121 Nev. 446, 117 P.3d 171, 173
13 (Nev. 2005) (a statute must be interpreted “in a way that would not render words or phrases
14 superfluous or make a provision nugatory”) (internal quotation marks omitted).

15 The *Bourne Valley* Court also noted, at fn. 4, that the Nevada Legislature, through S.B.
16 306 (2015), recently amended the Statute, requiring homeowners' associations to provide holders
17 of first deeds of trust (and all others with recorded interests) with notice of default and notice of
18 sale even when notice has not been requested. This amendment provides “further evidence that
19 the version of the Statute applicable in this action did not require notice unless it was requested.
20 If the Statute already required homeowners' associations affirmatively to provide notice, there
21 would have been no need for the amendment.” *Id.*

22 **B. Due Process Requires That Lienholders Receive Notice Prior to Foreclosure**

23 The due process provisions of the U.S. Constitution require that “at a minimum, [the]
24 deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for
25 hearing appropriate to the nature of the case.” *Mullane v. Central Hanover Bank & Trust Co.*,
26 339 U.S. 306, 314 (1950).⁴⁸ The United States Supreme Court has established the well-settled

27
28 ⁴⁸ The Nevada Supreme Court has “consistently relied upon the [United States] Supreme Court’s
holdings interpreting the federal Due Process Clause to define the fundamental liberties protected

1 rule that state action⁴⁹ affecting real property must be accompanied by notice of the action. “An
2 elementary and fundamental requirement of due process ... is notice reasonably calculated,
3 under all circumstances, to apprise interested parties of the pendency of the action and afford
4 them an opportunity to present their objections.” *Tulsa Prof. Collection Services, Inc. v. Pope*,
5 485 U.S. 478, 484 (1988). The Court made this point particularly clear in *Mennonite Bd. of*
6 *Missions v. Adams*, holding that any party with an interest in real property subject to deprivation
7 must receive actual notice of the event that causes the deprivation. 465 U.S. 791 (1983).
8 Moreover, “[n]otice by mail or other means as certain to ensure actual notice is a minimum
9 constitutional precondition to a proceeding which will adversely affect the liberty or property
10 interests of any party, whether unlettered or well versed in commercial practice.” *Mennonite*, 462
11 U.S. at 798. While diligence may differ depending on the context, *Mennonite* requires that
12 reasonable steps be taken to provide actual notice to interested parties. 462 U.S. at 795-800.

13 **1. Statutory “Opt-In” Notice Provisions Do Not Satisfy Federal Due Process**
14 **Requirements**

15 “Opt-in” notice provisions have repeatedly been held to violate Constitutional due
16 process requirements. In the years following the *Mullane* and *Mennonite* decisions, several states
17 attempted to circumvent notice requirements when real property was at issue. Among the most
18 popular was the use of an “opt in” provision – meaning that a state’s foreclosure statute would
19 require no notice to interested parties unless that interested party affirmatively requested such
20 notice, as is the case here. For example, in *Small Engine Shop, Inc. v. Cascio*, 878 F.2d 883, 893
21 (5th Cir. 1989), the Fifth Circuit analyzed Louisiana’s “opt in” clause and concluded it did not

22
23 under Nevada’s due process clause.” *State v. Eighth Jud Dist. Ct. (Logan D.)*, 129, Nev. Ad. Op.
24 52, 306 P.3d 369, 377 (2013); *Hernandez v. Bennett-Haron*, 128 Nev. 580, 586, 287 P.3d 305,
25 310 (2012) (holding that “the similarities between the due process clauses contained in the
26 United States and Nevada Constitutions, permit us to look to federal precedent for guidance as
27 we determine whether the procedures utilized ... are consistent with the due process clause set
28 forth in the Article 1, Section 8(5) of the Nevada Constitution.”) (citing *Rodriguez v. Dist. Ct.*,
120 Nev. 798, 808 n. 22, 102 P.3d 41, 48 n. 22 (2004) (“[t]he language in Article I, Section 8(5)
of the Nevada Constitution mirrors the Due Process Clauses of the Fifth and Fourteenth
Amendments to the United States Constitution”)).

AA000694
⁴⁹ The *Bourne Valley* Court concluded that the “state action requirement” was met in the same
circumstances as those presented in this case. *Bourne Valley*, at p. 12.

1 satisfy due process requirements because it did not mandate notice to all interested parties.
2 Instead, just like NRS Chapter 116, it required an individual or entity to affirmatively request
3 notice. *Id.* at 885-86. This “burden-shifting” was at the center of the controversy. The court
4 applied *Mennonite* and *Mullane* and held that the statute failed *Mennonite*’s allocation of notice
5 burdens. *Id.* at 890. Thus, where a statute’s sole notice provision is a burden-shifting “opt-in”
6 provision, like NRS Chapter 116, the statute is unconstitutional because it does not meet Federal
7 due process requirements.

8 **2. Nevada’s “Opt-In” Statute Does Not Satisfy the Minimum Notice Requirements**
9 **Mandated by the Supreme Court, Rendering the Statutes Void and**
10 **Unenforceable**

11 NRS Chapter 116 does not include any express or mandatory notice provision requiring
12 notice to the lender. This is the primary constitutional defect. While the statutes expressly
13 address notice requirements in four separate provisions, none of them mandate actual notice to
14 the lender. Instead, each requires the lender to “opt in” and affirmatively request notice, as
15 detailed below.

16 NRS 116.31162 governs the mailing of notice of delinquent assessments but only to “the
17 unit’s owner or his or her successor in interest.” It does not require that an HOA provide any
18 notice to the lender of the delinquent assessment, in violation of due process requirements.

19 NRS 116.31163 governs the mailing of the notice of default and election to sell but only
20 to “Each person who has requested notice pursuant to NRS 107.090 or 116.31168; [and] Any
21 holder of a recorded security interest encumbering the unit’s owner’s interest who has notified
22 the association, 30 days before the recordation of the notice of default, of the existence of the
23 security interest.” This express notice provision does not require mandatory notice to the lender,
24 again in violation of basic due process requirements, and each subsection instead governs how to
25 “opt in” and request notice. Reference therein to NRS 107.090 and 116.31168 does not save this
26 provision, as both govern a request for notice (and further fail as detailed below).

27 NRS 116.31165, governs mailing the notice of sale, but again only to

28 Each person entitled to receive a copy of the notice of default and election to sell
notice under NRS 116.31163; [and] The holder of a recorded security interest ...
if [it] has notified the association, before the mailing of the notice of sale, of the

1 existence of the security interest....

2 This third notice provision does not mandate affirmative, actual notice to the lender, again in
3 violation of due process.

4 NRS 116.31168, “Foreclosure of liens: Requests by interested persons for notice of
5 default and election to sell...,” also unconstitutionally shifts the burden to lenders, requiring they
6 “opt in” to receive notice of foreclosure as under NRS 107.090 “as if a deed of trust were being
7 foreclosed” with a *request* that “must identify the lien by stating the names of the unit’s owner
8 and the common-interest community.” Moreover, NRS 116.31168 applies only to a notice of
9 default and election to sell and does not apply to any other form of notice – specifically, the
10 notice of trustee’s sale.

11 The reference in NRS 116.31168 to NRS 107.090(3) (notice of default) and (4) (notice of
12 sale) does not save the statute since these sections cannot apply to lenders for purposes of notice
13 because their interest is not “*subordinate* to the deed of trust” (emphasis added) – their interest *is*
14 the deed of trust. This inconsistency makes it unlikely that any HOA or its foreclosure trustee
15 would understand they must give notice to the holder of that first deed of trust. As the dissent in
16 *SFR* acknowledged, “The means employed must be such as one desirous of actually informing the
17 absentee might reasonably adopt to accomplish it.” 334 P.3d at 422 (citing *Mullane*, 339 U.S. at
18 315). NRS 116.31162-116.31168 fail this requirement.

19 In summary, the homeowner is entitled to notice of delinquent assessments, notice of
20 default and election to sell and notice of sale under NRS 116.31162(1)(a), NRS 116.31162(1)(b)
21 and (3)(b) and NRS 116.31165. Any holder a recorded security interest is **entitled to notice** of
22 default and election to sell and notice of sale under NRS 116.31163, NRS 116.311635(1)(b)(1)
23 and (b)(2) and NRS 116.31168 and NRS 107.090 **if they opt-in**. And all “person[s] with an
24 interest whose interest or claimed interest is *subordinate* to the deed of trust” (emphasis added)
25 are entitled to notice of default and election to sell and notice of sale under NRS 116.31168 and
26 NRS 107.090 – in other words, all lienholders subordinate to the holder of the first secured
27 interests. Incorporation of NRS 107.090 provides due process to all lienholders subordinate to
28 the first deed of trust, but does nothing to require notice to the ~~holder of the first deed of trust~~
Use of the phrase “subordinate to the deed of trust” is plain and unequivocal and is not subject to

1 any alternative construction of the statute. Rather than being plainly contrary to the intent of the
2 legislature,”⁵⁰ this plain reading is entirely *consistent* with the legislative intent, which, by NRS
3 116.3116(2)(b), recognizes the superiority of the “*first* security interest on the unit” (emphasis
4 added) and no other.

5 As to holders of first secured interests, NRS Chapter 116’s notice provisions are
6 constitutionally flawed, rendering the statutes invalid on their face. Accordingly, Saticoy Bay
7 cannot prevail on any of its claims against Nationstar since its claim to title is founded on a
8 statutory scheme that is facially unconstitutional. Instead, judgment should be entered in favor
9 of Nationstar as a matter of law.

10 **3. The Facial Unconstitutionality of Nevada’s “Opt-In” Statute Undermines any** 11 **Argument Based upon Actual Notice**

12 Saticoy Bay asserts Nationstar received actual notice of the sale based upon certain
13 presumptions contained in the Nevada Revised Statutes. However, Saticoy Bay admits these are
14 disputable rather than conclusive presumptions. More importantly, this argument is a red herring
15 and whether Nationstar was mailed, or ever even received any of the alleged mailings, plays no
16 role in a facial due process challenge. “**A successful facial challenge invalidates a law in all of**
17 **its applications, ‘forbid[ding]’ any enforcement of it.”** *Platinum Sports Ltd. v. Snyder*, 715
18 F.3d 615, 617 (6th Cir. 2013) (emphasis added); *Wuchter v. Pizzutti*, 276 U.S. 13, 24 (1928)
19 (“[Notice] [n]ot having been directed by the statute it cannot, therefore, supply constitutional
20 validity to the statute or to service under it.”); *Garcia-Rubiera v. Calderon*, 570 F.3d 443, 456
21 (1st Cir. 2009) (sustaining facial attack on notice provisions and holding that “**actual notice**
22 **cannot defeat [facial] due process claim**”) (emphasis added). Accordingly, Nationstar
23 respectfully requests that this Court disregard Saticoy Bay’s argument as irrelevant and deny the
24 Motion.

25
26
27
28 ⁵⁰ *Id.*

1 **CONCLUSION**

2 For these reasons, the Court should deny Saticoy Bay's request for summary judgment
3 and instead enter a declaration that Saticoy Bay's interest in the Property, if any, is subject to the
4 Deed of Trust.

5 DATED this 9th day of August, 2017.

6 WRIGHT, FINLAY & ZAK, LLP

7 /s/ Regina A. Habermas, Esq.

8 Dana Jonathon Nitz, Esq., NV Bar No. 0050

9 Regina A. Habermas, Esq., NV Bar No. 8481

7785 W. Sahara Avenue, Suite 200

10 Las Vegas, NV 89117

11 *Attorneys for Defendant/Counter-Claimant,*

Nationstar Mortgage, LLC

12 **CERTIFICATE OF SERVICE**

13 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of WRIGHT, FINLAY &
14 ZAK, LLP, and that on this 9th day of August, 2017, I did cause a true copy of
15 **DEFENDANT/COUNTERCLAIMANT NATIONSTAR MORTGAGE, LLC'S**
16 **OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** to be e-served
17 through the Eighth Judicial District EFP system pursuant to NECFR 9, addressed as follows:

18
19 Eserve Contact . office@bohnlawfirm.com

20 Michael F Bohn Esq . mbohn@bohnlawfirm.com

21 Mark Hutchings mhutchings@houser-law.com

Victoria Campbell vcampbell@houser-law.com

22
23 /s/ Regina A. Habermas

24 An Employee of WRIGHT, FINLAY & ZAK, LLP

25
26
27
28 AA000698

EXHIBIT C

EXHIBIT C

EXHIBIT C

AA000699

EXHIBIT 1

AA000700

1 - Default 3270 (172.24.166.229)

File Edit Transfer Font Options Tools View Window Help

```

F <==FUNCTION                LOAN BASIC INQUIRY                DAU288IE    0091
PAGE 1 OF 2                  (DAU0010S)                02/22/17 1344

LOAN NUMBER      : [REDACTED] 0007      SSR LOAN NBR      : [REDACTED] 7549
SERVICER NBR     : 157386              ORIG AMT PRIN     : 250,400
SELLER NBR       : 623509              PURCHASE UPB      : 250,400.00
APPROVAL STATE   : NV                  INT BRG UPB       : 0.00
FHLMC REGION     : 01                  DFRD UPB          : 0.00
PRODUCT          : K58                  NOTE RATE         : 00.375
GROUP NBR        : S524761              PART. PCT.        : 1.00
CONTRACT NBR     : 0703216037           FUNDING DATE (YYMMDD) : 070329
LOAN DATA TYPE  : 5                    NOTE DATE (YYMMDD)  : 070117
LOAN TYPE        : 3                    MATURITY DATE (YYMMDD) : 070201
LOAN PROPERTY TYPE : P1                  LOAN ACCTNG NET YIELD : [REDACTED]
LOAN STATUS      : 3                    PAY OFF DATE (YYMMDD) : 000000
OWNERSHIP CODE   : W                    PAY OFF TYPE       :
REF CODE         : 0012                  LTV RATIO          : 0.00
LOAN ORIGINATOR  :                      ASSOC FM LOAN NBR   : 000000000
APPR ST LIC      :                      LN ORIGINATION COMPANY :
LAST CHG DATE (YYMMDD) : 170202          MOD/CONV DATE (YYMMDD) : 170301
F - PAGE FORWARD  R - RETURN TO LOAN DATABASE INQUIRY ONLY MENU
M - RETURN TO LOAN / GROUP / POOL DATABASES INQUIRY ONLY MENU
PF4/16 GSE/HMDA

```

Sess-1: 172.24.166.229 FMAC2035 1/2

1 - Default 3270 (172.24.166.229)

File Edit Transfer Font Options Tools View Window Help

```

F <==FUNCTION                LOAN BASIC INQUIRY                DAU288IE    0091
PAGE 2 OF 2                  (DAU0010S)                02/22/17 1344

LOAN NUMBER      : [REDACTED] 0007

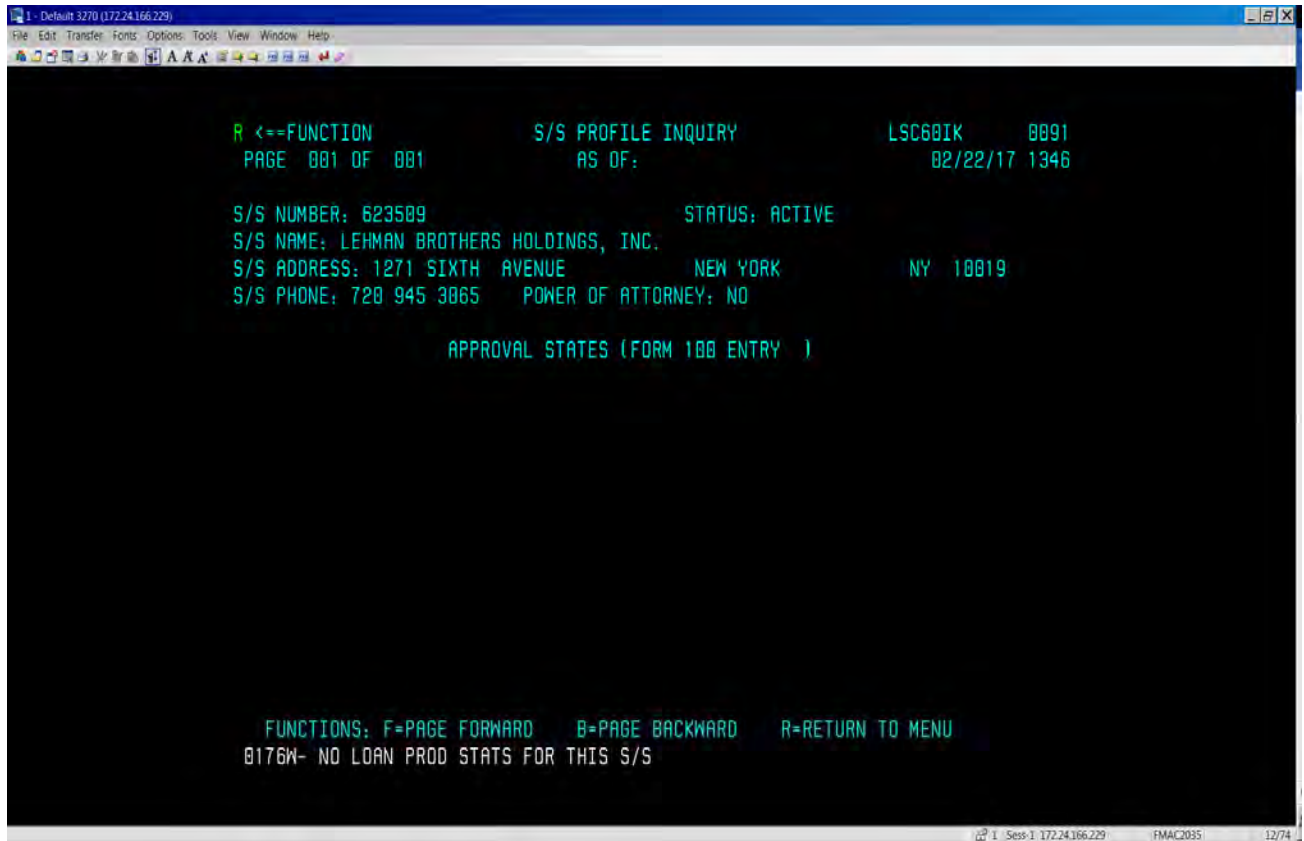
BORROWER NAME    : GUILLORY, MONIQUE
PROPERTY STREET   : 4641 VIAREGGIO COURT
CITY              : LAS VEGAS
STATE             : NV
ZIP               : 891470000
CENSUS TRACT     :
INDEX SOURCE      : 007
INDEX VALUE       : 00.000
ADJ. PERIOD       : 06
ADJ. NOTE RATE    : 00.000
LL SERV FEE       : 00.250
CAP AMOUNT        : 0.0
FLEX MONTHS       : 000
FLEX PAYMT DATE (YYMMDD) : 000000
ORIG COMMITMENT FEE TAX : 000000.00
LOAN DATE INTEREST PAID TO : 070301
MONTHLY PRIN AND INT   : 001803.42
BALLOON TERM          : 000
DATE BALLOON DUE (YYMMDD) : 000000
SF MORTGAGE INS CODE   : 000
GUAR MORTGAGE INS CODE :
INITIAL ADJ. DATE (YYMMDD) : 000000
DISCOUNT             : 00000.00
PREMIUM               : 00000.00
R - RETURN TO LOAN DATABASE INQUIRY ONLY MENU
M - RETURN TO LOAN / GROUP / POOL DATABASES INQUIRY ONLY MENU
PF4/16 GSE/HMDA

```

Sess-1: 172.24.166.229 FMAC2035 1/2

EXHIBIT 2

AA000702



AA000703

EXHIBIT 3

AA000704

Loan StatusManager TOS Summary Report

Report generated on Wednesday, February 22, 2017 at 1:50 pm.

SQL returned 1 rows

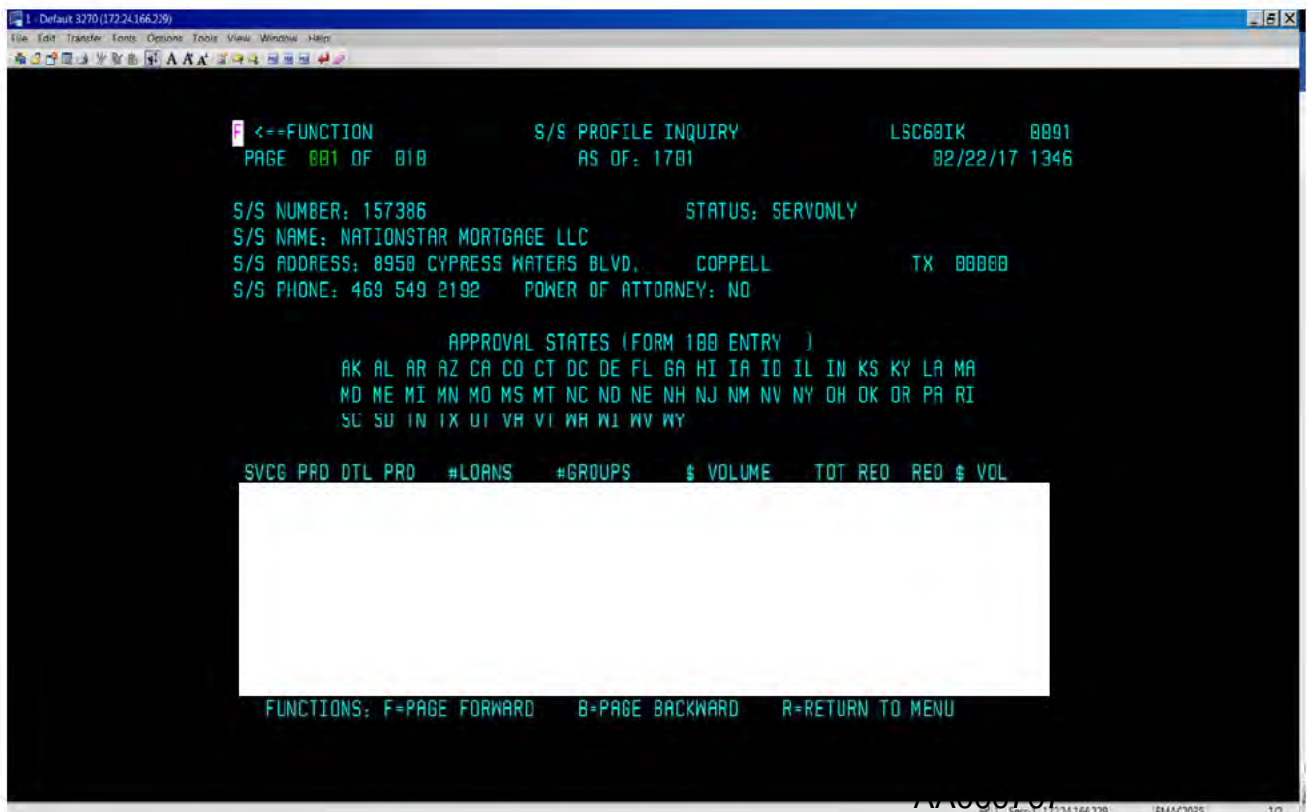
Fhlmc Loan Number: [REDACTED] 0087							
Date Requested	Status	Status Date	Date Effective	Servicer From	Servicer To	Servicer Family From	Servicer Family To
06/19/2012	APPROVED	06/25/2012	06/16/2012	623509 - LEHMAN BROTHERS HOLDINGS, INC.	157386 - NATIONSTAR MORTGAGE LLC	623509 - LEHMAN BROTHERS HOLDINGS, INC.	152360 - NATIONSTAR MORTGAGE LLC



AA000705

EXHIBIT 4

AA000706



172-24166-229

100 1 1 3600 1 172-24166-229

PMAC2035

12

EXHIBIT 5

AA000708

Loan StatusManager Mortgage Payment History Report

Report generated on Wednesday, February 22, 2017 at 1:51 pm.

SQL returned 120 rows

Fhlmc Loan Number: [REDACTED] 0087														
Accounting Cycle	Date Reported	Date DDLPI Reported	Last Payment Received	Principal Due	Interest Due	Ending UPB	Negam Balance	Prepay Penalty	Proceeds	ANY Rate	Note Rate	Code Exception	Date Exception	Monthly P&I Due Date
02/15/2017	02/16/2017	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00	[REDACTED]	3.625%			02/21/2017
01/15/2017	01/17/2017	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			01/19/2017
12/15/2016	12/16/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			12/20/2016
11/15/2016	11/17/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			11/18/2016
10/15/2016	10/18/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			10/19/2016
09/15/2016	09/20/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			09/20/2016
08/15/2016	08/18/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			08/18/2016
07/15/2016	07/19/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			07/20/2016
06/15/2016	06/20/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			06/20/2016
05/15/2016	05/17/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			05/18/2016
04/15/2016	04/20/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			04/20/2016
03/15/2016	03/18/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			03/18/2016
02/15/2016	02/18/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%			02/18/2016
01/15/2016	01/21/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%			01/21/2016
12/15/2015	12/18/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%			12/18/2015
11/15/2015	11/17/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%			11/18/2015
10/15/2015	10/20/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%			10/20/2015
09/15/2015	09/18/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%			09/18/2015
08/15/2015	08/19/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	AA000709		08/19/2015
07/15/2015	07/20/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%			07/20/2015

06/15/2015	06/19/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	06/18/2015
05/15/2015	05/20/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	05/20/2015
04/15/2015	04/17/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	04/20/2015
03/15/2015	03/17/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	03/18/2015
02/15/2015	02/18/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	02/19/2015
01/15/2015	01/21/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	01/21/2015
12/15/2014	12/17/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	12/18/2014
11/15/2014	11/19/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	11/19/2014
10/15/2014	10/17/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	10/20/2014
09/15/2014	09/18/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	09/18/2014
08/15/2014	08/20/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	08/20/2014
07/15/2014	07/18/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	07/18/2014
06/15/2014	06/19/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	06/18/2014
05/15/2014	05/20/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	05/20/2014
04/15/2014	04/18/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	04/18/2014
03/15/2014	03/19/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	03/19/2014
02/15/2014	02/20/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	02/20/2014
01/15/2014	01/22/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	01/21/2014
12/15/2013	12/18/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	12/18/2013
11/15/2013	11/20/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	11/20/2013
10/15/2013	10/18/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	10/18/2013
09/15/2013	09/18/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	09/18/2013
08/15/2013	08/19/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%	08/20/2013
07/15/2013	07/17/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%	07/18/2013
06/15/2013	06/19/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%	06/19/2013
05/15/2013	05/20/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%	05/20/2013
04/15/2013	04/18/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%	04/18/2013
03/15/2013	03/19/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%	03/20/2013

AA000710


02/15/2013	02/20/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	02/21/2013
01/15/2013	01/17/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	01/18/2013
12/15/2012	12/18/2012	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	12/19/2012
11/15/2012	11/19/2012	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	11/20/2012
10/15/2012	10/17/2012	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	10/18/2012
09/15/2012	09/18/2012	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	09/19/2012
08/15/2012	08/17/2012	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	08/20/2012
07/15/2012	07/17/2012	05/01/2010	06/22/2012	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	07/18/2012
06/15/2012	06/19/2012	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	06/20/2012
05/15/2012	05/17/2012	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	05/18/2012
04/15/2012	04/17/2012	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	04/18/2012
03/15/2012	03/19/2012	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	03/20/2012
02/15/2012	02/17/2012	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	02/21/2012
01/15/2012	01/17/2012	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	01/19/2012
12/15/2011	12/19/2011	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	12/20/2011
11/15/2011	11/17/2011	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	11/18/2011
10/15/2011	10/18/2011	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	10/19/2011
09/15/2011	09/19/2011	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	09/20/2011
08/15/2011	08/17/2011	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	08/18/2011
07/15/2011	07/19/2011	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	07/20/2011
06/15/2011	06/17/2011	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	06/20/2011
05/15/2011	05/17/2011	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	05/18/2011
04/15/2011	04/19/2011	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	04/20/2011
03/15/2011	03/17/2011	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	03/18/2011
02/15/2011	02/17/2011	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	02/18/2011
01/15/2011	01/18/2011	05/01/2010	05/17/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	01/20/2011
12/15/2010	12/17/2010	05/01/2010	05/17/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	12/20/2010

AA000711
 Inactive
 loan

11/15/2010	11/17/2010	05/01/2010	05/17/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	11/18/2010
10/15/2010	10/19/2010	05/01/2010	05/17/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	10/20/2010
09/15/2010	09/17/2010	05/01/2010	05/17/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	09/20/2010
08/15/2010	08/17/2010	05/01/2010	05/17/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	08/18/2010
07/15/2010	07/19/2010	05/01/2010	05/17/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	07/20/2010
06/15/2010	06/17/2010	05/01/2010	05/17/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	06/18/2010
05/15/2010	05/18/2010	04/01/2010	04/16/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	05/19/2010
04/15/2010	04/19/2010	03/01/2010	03/16/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	04/20/2010
03/15/2010	03/17/2010	02/01/2010	02/16/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	03/18/2010
02/15/2010	02/16/2010	01/01/2010	01/18/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	02/18/2010
01/15/2010	01/19/2010	12/01/2009	12/10/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	01/21/2010
12/15/2009	12/17/2009	12/01/2009	12/10/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	12/18/2009
11/15/2009	11/17/2009	11/01/2009	11/13/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	11/18/2009
10/15/2009	10/19/2009	10/01/2009	10/14/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	10/20/2009
09/15/2009	09/17/2009	09/01/2009	09/10/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	09/18/2009
08/15/2009	08/18/2009	08/01/2009	08/14/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	08/19/2009
07/15/2009	07/17/2009	07/01/2009	07/13/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	07/20/2009
06/15/2009	06/18/2009	05/01/2009	05/15/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	06/18/2009
05/15/2009	05/19/2009	05/01/2009	05/15/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	05/20/2009
04/15/2009	04/17/2009	03/01/2009	03/16/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	04/20/2009
03/15/2009	03/17/2009	02/01/2009	02/13/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	03/18/2009
02/15/2009	02/17/2009	02/01/2009	02/13/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	02/19/2009
01/15/2009	01/20/2009	12/01/2008	12/15/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	01/21/2009
12/15/2008	12/17/2008	12/01/2008	12/15/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	12/18/2008
11/15/2008	11/18/2008	10/01/2008	10/16/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	11/19/2008
10/15/2008	10/17/2008	09/01/2008	09/16/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	10/20/2008
09/15/2008	09/17/2008	08/01/2008	08/15/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	09/18/2008

AA000712

08/15/2008	08/19/2008	08/01/2008	08/15/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	08/20/2008
07/15/2008	07/17/2008	06/01/2008	06/16/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	07/18/2008
06/15/2008	06/17/2008	05/01/2008	05/15/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	06/18/2008
05/15/2008	05/19/2008	05/01/2008	05/15/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	05/20/2008
04/15/2008	04/17/2008	04/01/2008	04/14/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	04/18/2008
03/15/2008	03/18/2008	03/01/2008	03/14/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	03/19/2008
02/15/2008	02/19/2008	02/01/2008	02/13/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	02/21/2008
01/15/2008	01/17/2008	01/01/2008	01/07/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	01/18/2008
12/15/2007	12/18/2007	12/01/2007	12/10/2007	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	12/19/2007
11/15/2007	11/19/2007	11/01/2007	11/12/2007	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	11/20/2007
10/15/2007	10/17/2007	10/01/2007	10/08/2007	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	10/18/2007
09/15/2007	09/19/2007	09/01/2007	09/06/2007	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	09/19/2007
08/15/2007	08/17/2007	08/01/2007	08/03/2007	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	08/20/2007
07/15/2007	07/17/2007	06/01/2007	06/15/2007	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	07/18/2007
06/15/2007	06/19/2007	06/01/2007	06/15/2007	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	06/20/2007
05/15/2007	05/17/2007	05/01/2007	05/14/2007	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	05/18/2007
04/15/2007	04/17/2007	04/01/2007	04/12/2007	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	04/18/2007
03/15/2007	04/03/2007			\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	

 [Download Data to an Excel Spreadsheet](#)

AA000713

EXHIBIT F

EXHIBIT F

EXHIBIT F

AA000714

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Freddie Mac - Seller/Servicer Relationship / Series 1000: General Contract Terms / Topic 1100: The Guide / Chapter 1101: The Guide / 1101.2: Legal effect of the Guide and other Purchase Documents (03/02/16)

1101.2: Legal effect of the Guide and other Purchase Documents (03/02/16)

(a) Status as a contract

(i) Effect of the Guide and other Purchase Documents

The Guide governs the business relationship between a Seller/Servicer and Freddie Mac relating to the sale and Servicing of Mortgages. Each Seller/Servicer must complete and submit a Form 16SF, Annual Eligibility Certification Report, that certifies that the Seller/Servicer has access to the Electronic version of the Guide as an Electronic Record, as those terms are defined in Chapter 1401, and is in compliance with all requirements of the Purchase Documents.

In connection with the sale of Mortgages to Freddie Mac, the Seller/Servicer agrees that each transaction is governed by the Guide, the applicable Purchase Contract and all other Purchase Documents.

A Seller/Servicer must service all Mortgages that the Seller/Servicer has sold to Freddie Mac and/or has agreed to service for Freddie Mac in accordance with the standards set forth in the Seller/Servicer's Purchase Documents. All of a Seller/Servicer's obligations to service Mortgages for Freddie Mac are considered to constitute, and must be performed pursuant to a unitary, indivisible master Servicing contract, and the Servicing obligations assumed pursuant to any contract to sell Mortgages to Freddie Mac are deemed to be merged into, and must be performed pursuant to, such unitary, indivisible master Servicing contract.

A Seller/Servicer acknowledges that Freddie Mac's agreement to purchase Mortgages from the Seller/Servicer pursuant to any individual Purchase Contract is based upon the Seller/Servicer's agreement that the Mortgages purchased will be serviced by the Seller/Servicer pursuant to the unitary, indivisible master Servicing contract. The Seller/Servicer agrees that any failure to service any Mortgage in accordance with the terms of the unitary, indivisible master Servicing contract, or any breach of any of the Seller/Servicer's obligations under any aspect of the unitary, indivisible master Servicing contract, shall be deemed to constitute a breach of the entire contract and shall entitle Freddie Mac to terminate all or a portion of the Servicing. The termination of a portion of the Servicing shall not alter the unitary, indivisible nature of the Servicing contract.

If a Servicer who services Mortgages for Freddie Mac is not also the Seller of the Mortgages to Freddie Mac, the Servicer must agree to service Mortgages for Freddie Mac by separate agreement, which incorporates the applicable Purchase Documents. In such case, the separate agreement shall be deemed to be one of the "Purchase Documents" that constitute the unitary, indivisible master Servicing contract.

In addition, in certain cases, a Seller and/or Servicer who uses certain Freddie Mac services will, by virtue of the provisions of the Guide, be deemed to have agreed upon certain terms and conditions related to such services and their use.

(ii) Amendments to the Guide

Freddie Mac may, in its sole discretion, amend or supplement the Guide from time to time. Amendments to the Guide may be a paper Record or an Electronic Record, as those terms are defined in Chapter 1401. The Guide may not be amended orally. Freddie Mac may amend the Guide by:

AA000715

- Publishing Bulletins, which apply to all Sellers/Servicers, or
- Entering into a Purchase Contract or other written or Electronic agreement, which applies to the Seller/Servicer that is a party to the Purchase Contract or agreement

Bulletins expressly amend, supplement, revise or terminate specific provisions of the

Guide. An amendment, supplement, revision or termination of a provision in the Guide is effective as of the date specified by Freddie Mac in the applicable Bulletin.

A Purchase Contract or other written agreement or Electronic agreement amends or supplements specific provisions of the Guide for purposes of such Purchase Contract or other agreement, as applicable. Such amendments or supplements to the Guide are effective as of the date specified in the Purchase Contract or other agreement. See Section 1501.2(d) for information about how amendments and supplements to the Guide amend or otherwise apply to a Seller's Purchase Contracts and other Purchase Documents.

(iii) Publication of Guide and Bulletins

The Guide is posted on the AllRegs® web site of Ellie Mae, Inc., which operates the AllRegs brand ("AllRegs") and which posts the Guide under license from and with the express permission of Freddie Mac. AllRegs is the exclusive third-party electronic publisher of the Guide. Seller/Service providers also can access the Guide on the AllRegs web site by using the link on FreddieMac.com.

Freddie Mac makes no representation or warranty regarding availability, features or functionality of the AllRegs web site.

By using the web site, Seller/Service providers acknowledge and agree (individually and on behalf of the entity for which they access the Guide) neither Freddie Mac nor AllRegs shall be liable to them (or the entity for which they access the Guide) for any losses or damages whatsoever resulting directly or indirectly from Freddie Mac's designation of the Guide as found on the AllRegs web site as the official Electronic version, as an Electronic Record, and AllRegs expressly disclaims any warranty as to the results to be obtained by Seller/Service providers (and the entity for which Seller/Service providers access the Guide) from use of the AllRegs web site, and AllRegs shall not be liable to Seller/Service providers (and the entity for which Seller/Service providers access the Guide) for any damages arising directly or indirectly out of the use of the AllRegs web site by them (and the entity for which they access the Guide).

Bulletins are published on AllRegs and FreddieMac.com. A Seller/Service provider with an AllRegs subscription may receive notice of Bulletins directly from AllRegs. If a Seller/Service provider does not receive notice of Bulletins through AllRegs, the Seller/Service provider must take the steps necessary to receive the applicable Freddie Mac Single-Family Update e-mails, which will notify Seller/Service provider of Bulletin publications. A Seller/Service provider's failure to take the appropriate steps to receive notices of Bulletins does not relieve the Seller/Service provider of its legal obligations to comply with the terms of the Bulletins.

(iv) Effective Date

The effective date of each section of the Guide is located at the beginning of each section, to the right of the section number and name.

(b) Reliance

By entering into a Purchase Contract or into the unitary, indivisible master Servicing contract with Freddie Mac, the Seller/Service provider acknowledges that it is not relying upon Freddie Mac or any employee, agent or representative thereof, in making its decision to enter into the contract and that it has relied upon the advice and counsel of its own employees, agents and representatives as to the regulatory, business, corporate, tax, accounting and other consequences of entering into and performing its obligations under a Purchase Contract or the unitary, indivisible master Servicing contract.

AA000716

(c) Assignments; security interests

A Seller/Servicer shall not, in whole or in part, assign, sell, convey, hypothecate, pledge or in any other way or transfer, conditionally or otherwise, or grant a security interest in, any of its obligations, rights or interest under any Purchase Contract or under the unitary, indivisible master Servicing contract, including any of its rights or obligations under this Guide or any of the Purchase Documents, without Freddie Mac's prior written consent. Any purported or attempted assignment or transfer of, or grant of a security interest in, any such obligations, rights or interest is prohibited and shall be null and void.

Freddie Mac has the unconditional right to sell, assign, convey, hypothecate, pledge or in any way transfer, in whole or in part, its rights and interest under the Purchase Documents with respect to any Mortgage it purchases. Freddie Mac has the right to direct the Servicer to send remittances, notices, reports and other communications to any party designated by Freddie Mac and may designate any such party to exercise any and all of Freddie Mac's rights hereunder.

(d) Notice**(i) Seller/Servicer notices to Freddie Mac**

Except as otherwise provided in the Guide or other Purchase Documents, any communication, advice, consent, document, notice or direction given, made, sent or withdrawn by the Seller/Servicer pursuant to the Purchase Documents must be in writing and will be deemed to have been duly given to and received by Freddie Mac on the day such communication, advice, consent, document, notice or direction is actually received by Freddie Mac at the address specified below:

Address: In writing to Freddie Mac **(see Directory 1)** by first class mail

Other addresses may be substituted for the above upon notice of the substitution.

(ii) Freddie Mac notices to Seller/Servicer

Any communication, advice, consent, document, notice or direction given, made, sent or withdrawn by Freddie Mac pursuant to the Purchase Documents may be in writing or may be in electronic form in accordance with Chapter 1401. Such notice will be deemed to have been duly given to the Seller/Servicer on the date such communication, advice, consent, document, notice or direction is:

- Received in writing by first class mail by the Seller/Servicer at the address set forth in the Purchase Documents, or
- Received in electronic form (e-mail) as an Electronic Record by the Seller/Servicer's computer information processing system at its Internet e-mail address provided to Freddie Mac by the Seller/Servicer, or
- Received in electronic form (facsimile) as a Record or Electronic Record by the Seller/Servicer's electronic facsimile machine or system at the facsimile telephone number provided to Freddie Mac by the Seller/Servicer

Other addresses may be substituted for the above upon notice of the substitution.

(e) Severability

If any provision of this Guide shall be held invalid, the legality and enforceability of all remaining provisions shall not in any way be affected or impaired thereby, and this Guide shall be interpreted as if such invalid provision were not contained herein.

(f) Defined terms

Initial capitalization of words in the Guide generally denotes terms that are defined in (i) the Glossary, (ii) the chapter in which capitalized words appear, or (iii) ~~AA000745~~ ~~AA000745~~ referenced chapter.

(g) Construction of the Guide

This Guide shall not be construed against Freddie Mac as being the drafter hereof.

(h) Entire agreement

This Guide, including the exhibits attached to the Guide and all Purchase Documents incorporated by reference in the Guide, constitutes the entire understanding between Freddie Mac and the Seller/Servicer and supersedes all other agreements, covenants, representations, warranties, understandings and communications between the parties, whether oral or written or Electronic, with respect to the transactions contemplated by the Guide.

(i) Governing law

This Guide shall be construed, and the rights and obligations of Freddie Mac and the Seller/Servicer hereunder determined, in accordance with the laws of the United States. Insofar as there may be no applicable precedent, and insofar as to do so would not frustrate any provision of this Guide or the transactions governed thereby, the laws of the State of New York shall be deemed reflective of the laws of the United States.

(j) Copyright

The Guide (including related supplements and Bulletins) and Industry Letters are copyrighted. Limited permission to reproduce the Guide is granted to Seller/Servicers strictly for their own use in originating and selling Mortgages to, and in Servicing Mortgages for, Freddie Mac. No part of the Guide may be reproduced for any other reason (in any form or by any means) without the express written permission of Freddie Mac. Requests for such permission to reproduce the Guide must be sent to Freddie Mac **(see Directory 1)**.

Requests will be reviewed and answered by Freddie Mac in the ordinary course of business.

Freddie Mac reserves the right to revoke permission to reproduce the Guide upon 60 days' notice to any and all Seller/Servicers. Under no circumstances will Freddie Mac permit the Guide to be reproduced by any Electronic or mechanical means, including, but not limited to, reproduction in, or as a component of, any information storage and retrieval system.

(k) Headings and design features

Headings and design features are written for convenience of reference only and do not constitute a part of this Purchase Document.

AA000718

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Freddie Mac - Seller/Servicer Relationship / Series 1000: General Contract Terms / Topic 1200: General Freddie Mac Policies / Chapter 1201: General Freddie Mac Policies / 1201.9: The Mortgage file, Mortgage data and related records (03/02/16)

1201.9: The Mortgage file, Mortgage data and related records (03/02/16)

(a) Ownership

All documents in the Mortgage file, all data related to Mortgages owned or guaranteed by Freddie Mac to which the Servicer obtains access in connection with any agreement with Freddie Mac, including, without limitation, data in the documents in the Mortgage file (collectively, Mortgage data) and all other documents and records related to the Mortgage of whatever kind or description (whether prepared or originated by the Servicer or others, or whether prepared or maintained or held by the Servicer or others acting for and on behalf of the Servicer), including all current and historical computerized data files, will be, and will remain at all times, the property of Freddie Mac. All of these records and Mortgage data in the possession of the Servicer are retained by the Servicer in a custodial capacity only.

(b) Permitted use of Mortgage data

The Servicer may use these records and Mortgage data only for the following purposes:

- Servicing Mortgages (and, in compliance with the provisions of the Guide, retaining subservicers to service Mortgages) on behalf of, and in the interest of, Freddie Mac
- As background information for the Servicer's use related to marketing or cross-selling of the Servicer's own primary market products and services in compliance with applicable laws, provided that such marketing and cross-selling does not involve disclosure of these records or Mortgage data to any third parties, other than vendors assisting the Servicer in its marketing activities who are themselves bound by these requirements
- As necessary to enable a vendor to provide analytic services to the Servicer with respect to the Servicer's Servicing portfolio, for the Servicer's internal use only, provided the vendor is bound by these requirements, and
- As necessary to enable the Servicer to comply with its obligations under applicable law including, without limitation, any disclosures required in connection with audits by regulatory agencies with jurisdiction over the Servicer's operations

Except as expressly authorized by Freddie Mac in writing, Servicers may not use or disclose, or authorize or permit third parties to use or disclose, these records or Mortgage data for any other purpose, including, without limitation, resale or licensing of Mortgage data, either alone or with other data. See Section 8101.8, for additional requirements related to confidentiality.

AA000719

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Freddie Mac - Seller/Servicer Relationship / Series 1000: General Contract Terms / Topic 1300: General Responsibilities of the Seller/Servicer / Chapter 1301: General Responsibilities of the Seller/Servicer / 1301.10: Survival of warranties; remedies (03/02/16)

1301.10: Survival of warranties; remedies (03/02/16)

The warranties and representations in the Purchase Documents for any Mortgage purchased by Freddie Mac survive payment of the purchase price by Freddie Mac. The warranties and representations are not affected by any investigation made by, or on behalf of, Freddie Mac, except when expressly waived in writing by Freddie Mac.

When any party has purchased a Mortgage from Freddie Mac that Freddie Mac previously purchased from a Seller, Freddie Mac may exercise any rights or remedies at law or in equity on behalf of the party to the extent that the party does not affirmatively do so. Freddie Mac may also exercise its discretion to disqualify or suspend a Seller or a Servicer pursuant to Chapter 2301 or Section 9102.1.

For each Mortgage purchased by Freddie Mac, the Seller and the Servicer agree that Freddie Mac may, at any time and without limitation, require the Seller or the Servicer, at the Seller's or the Servicer's expense, to make such endorsements to and assignments and recordations of any of the Mortgage documents so as to reflect the interests of Freddie Mac and/or its successors and assigns.

AA000720

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Freddie Mac - Seller/Servicer Relationship / Series 3000: Risk Management and Remedies / Topic 3300: Mortgage File Contents and Retention / Chapter 3302: Mortgage File Retention / 3302.5: Transfer of file custody; security of file information (03/02/16)

3302.5: Transfer of file custody; security of file information (03/02/16)

Freddie Mac may at any time require the Servicer to deliver the following documents to a Document Custodian approved by Freddie Mac or a transferee designated by Freddie Mac:

- Any original Note, Security Instrument, assignment and modifying instrument still in the Servicer's custody
- Any Mortgage file, document within a Mortgage file or other related documents and records in the Servicer's or its Document Custodian's custody, whether maintained as originals or as copies in accordance with Section 3302.2

The Servicer may, without Freddie Mac's prior approval, entrust custody of all or part of the Mortgage file to the Document Custodian holding Notes and assignments under Section 2202.2. When requested, the Servicer must be able to identify to Freddie Mac those file items held by the Document Custodian and document to Freddie Mac the Document Custodian's acknowledgment that such file items:

- Are Freddie Mac's property
- Will be maintained by the Document Custodian according to standards at least equal to those set in this chapter
- Will be maintained in such a way as to ensure the security and confidentiality of the information; protect against anticipated threats or hazards to the security or integrity of the information; and protect against unauthorized access to or use of such information
- Will be surrendered to Freddie Mac at any time Freddie Mac may request them

The Servicer agrees to indemnify Freddie Mac and hold Freddie Mac harmless for any loss, damage or expense (including court costs and reasonable attorney fees) that Freddie Mac may incur as a result of the Document Custodian's holding all or part of the Mortgage file.

The Servicer must maintain a copy (in a form allowable under Section 3302.2) of any original document that has been entrusted to the Document Custodian for safekeeping. If all or part of the Mortgage file is held by the Servicer's Document Custodian, the Servicer agrees to recover from the Document Custodian (at the Servicer's expense) and provide to Freddie Mac (at the place and within the time frame specified by Freddie Mac) any Document Custodian-held original document requested by Freddie Mac for the postfunding quality control detailed in Chapter 3301 or in conjunction with a Freddie Mac desktop or on-site review of the Servicer's Servicing operations.

AA000721

Freddie Mac Single Family / Single-Family Seller/Service Guide / Single-Family Seller/Service Guide / Selling / Series 6000: Selling and Delivery / Topic 6300: Delivery of All Mortgages / Chapter 6301: Documentation Delivery / 6301.6: Assignment of Security Instrument (03/02/16)

6301.6: Assignment of Security Instrument (03/02/16)

The Seller/Service is not required to prepare an assignment of the Security Instrument to Freddie Mac. However, Freddie Mac may, at its sole discretion and at any time, require a Seller/Service, at the Seller/Service's expense, to prepare, execute and/or record assignments of the Security Instrument to Freddie Mac.

If an assignment of the Security Instrument to Freddie Mac has been prepared, the Seller/Service must not record it unless directed to do so by Freddie Mac. Any statement in the assignment to the effect that the assignment is made without recourse will in no way affect the Seller/Service's repurchase obligations under the Purchase Documents.

For transfer or assignment of Freddie Mac's interest in the Mortgage, the Seller/Service shall prepare at its own expense any assignment necessary to transfer the Security Instrument to Freddie Mac's assignee, designee or transferee.

Intervening Assignments must be prepared in accordance with the requirements of this section.

NOTE: Special provisions for preparing assignments for Mortgages secured by Manufactured Homes located in certificate of title States where there is no provision for surrender and cancellation of the certificate of title are set forth in Section 5703.7(c), paragraph 3. Mortgages secured by Manufactured Homes located in certificate of title States where there is no provision for surrender and cancellation of the certificate of title may not be registered with MERS®.

(a) Mortgages not registered with MERS

For a Mortgage not registered with MERS, the Seller/Service must ensure that the chain of assignments is complete and recorded from the original mortgagee on the Security Instrument to the Seller. If the Seller concurrently or subsequently transfers the Servicing, an assignment to the new Service must be completed and recorded where required, thus keeping the chain complete.

If a State does not accept assignments for recordation, the Seller must so state in an affidavit maintained with the unrecorded assignment.

(b) Mortgages registered with MERS

For a Mortgage registered with MERS, if MERS is not the original mortgagee of record, the Seller/Service must ensure that:

- An assignment of the Security Instrument to MERS has been prepared, duly executed and recorded in all places necessary to perfect a First Lien security interest in the Mortgaged Premises in favor of MERS, solely as nominee for the lender named in the Security Instrument and the Note, and the lender's successors and assigns. Mortgages subsequently assigned to MERS in the States of Montana, Oregon and Washington are not eligible for sale to Freddie Mac.
- The chain of assignments is complete and recorded from the original mortgagee to MERS

If the Seller/Service concurrently or subsequently transfers the Servicing of a Mortgage registered with MERS, no further assignments are required if the Transferee Service is a MERS Member. If the Transferee Service is not a MERS Member, or if the Mortgage has not been, or is no longer, registered with MERS, the Seller/Service must complete the assignments in accordance with the requirements in Section 6301.6(a).

AA000722

(c) Mortgages registered with MERS naming MERS as original mortgagee of record

No assignments are required for a Mortgage registered with MERS if:

- The Mortgage is originated naming MERS as the original mortgagee of record, solely as nominee for the lender named in the Security Instrument and the Note, and the lender's successors and assigns, and
- The Seller/Servicer has ensured that the Security Instrument is properly executed, acknowledged, delivered and recorded in all places necessary to perfect a First Lien security interest in the Mortgaged Premises in favor of MERS, solely as nominee for the lender named in the Security Instrument and the Note, and the lender's successors and assigns

(d) Concurrent Transfers of Servicing

If the Mortgage is registered with MERS, and the Transferee Seller/Servicer is not a MERS Member, then the requirements for Mortgages not registered with MERS must be followed.

For a Concurrent Transfer of Servicing when a Mortgage is registered with MERS:

- The Transferor Servicer must notify MERS of the Transfer of Servicing and reflect such Transfer of Servicing on the MERS System
- The Transferee Seller/Servicer must follow the document custodial procedures in Section 7101.9, and deliver the assignments to the Transferee Document Custodian to be verified and certified in accordance with the requirements of Section 6304.2, unless the Transferee Seller/Servicer has elected to retain all assignments for MERS-registered Mortgages in the Mortgage files. The Transferee Seller/Servicer must also supply its Document Custodian with any documentation necessary for the Document Custodian to determine whether the Seller/Servicer has elected to hold all assignments in the Mortgage files.

For a Concurrent Transfer of Servicing when a Mortgage is not registered with MERS:

- The Transferor Seller must record any Intervening Assignments to complete the chain of assignments from the original mortgagee to the Transferor Seller, in accordance with Section 6301.6(a)
- The Transferor Servicer must then assign the Security Instruments to the Transferee Servicer and record the assignments
- The Transferee Servicer must follow the document custodial procedures set forth in Section 7101.9, and deliver the assignments to the Transferee Document Custodian, to be verified and certified in accordance with the requirements of Section 6304.2

Special provisions for Concurrent Transfers of Servicing of Mortgages secured by Manufactured Homes located in certificate of title States where there is no provision for surrender and cancellation of the certificate of title are set forth in Section 5703.7(c), paragraph 3.

AA000723

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 7000: Transfers of Servicing / Topic 7100: Transfers of Servicing / Chapter 7101: Transfers of Servicing / 7101.6: Endorsement of Notes and assignment of Security Instruments related to Transfers of Servicing (03/02/16)

7101.6: Endorsement of Notes and assignment of Security Instruments related to Transfers of Servicing (03/02/16)

When a Mortgage is sold to Freddie Mac, the Seller must endorse the Note in blank in accordance with Section 6301.3. When a Transfer of Servicing occurs, the Transferor Servicer may not complete the blank endorsement or further endorse the Note, but must prepare and complete assignments according to the following requirements:

(a) Concurrent Transfer of Servicing for a Mortgage not registered with MERS®

To prepare and complete assignment of the Security Instrument for a Concurrent Transfer of Servicing for a Mortgage not registered with MERS, the Transferor Servicer must:

- Record any Intervening Assignments to complete the chain of assignments to it from the original mortgagee, in accordance with Section 6301.6(a)
- Assign the Security Instruments to the Transferee Servicer, and record the assignment
- Follow the document custodial procedures set forth in Section 7101.9 and deliver the assignment to the Transferee Document Custodian to be verified in accordance with the requirements of Section 6304.2

See Section 6301.6(a) for additional information.

(b) Concurrent Transfer of Servicing for a Mortgage registered with MERS

To prepare and complete an assignment of the Security Instrument for a Concurrent Transfer of Servicing of a Mortgage that is registered with MERS:

- If the **Transferee Servicer is a MERS Member**, no further assignment is needed. The Transferor Servicer must notify MERS of the Transfer of Servicing.
- If the **Transferee Servicer is not a MERS Member**, then for a Concurrent Transfer of Servicing:
 - The Transferor Servicer must prepare and record an assignment of the Security Instrument (on behalf of MERS) from MERS to the Transferee Servicer
 - The Transferor Servicer must follow the document custodial procedures set forth in Section 7101.9, and deliver the assignment to the Transferee Document Custodian to be verified and certified in accordance with the requirements of Section 6304.2

See Section 6301.6(b) for additional information.

(c) Subsequent Transfer of Servicing for a Mortgage not registered with MERS

To prepare and complete an assignment of a Security Instrument for a Subsequent Transfer of Servicing for a Mortgage not registered with MERS, the Transferor Servicer must:

- Recover and destroy any original unrecorded assignments to Freddie Mac that may have been prepared
- Assign the Security Instrument to the Transferee Servicer and record the assignment
- Follow the document custody procedures set forth in Section 7101.9, and deliver assignment(s) to the Transferee Document Custodian to be verified and certified in accordance with the requirements of Section 6304.2

AA000724

If an original assignment to Freddie Mac was recorded, no additional assignment need be made.

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 7000: Transfers of Servicing / Topic 7100: Transfers of Servicing / Chapter 7101: Transfers of Servicing / 7101.15: Liabilities of the Transferor Servicer and Transferee Servicer (03/02/16)

7101.15: Liabilities of the Transferor Servicer and Transferee Servicer (03/02/16)

(a) Warranties

Except as stated in the following paragraph, for Transfer of Servicing requests received by Freddie Mac, the Transferee Servicer is liable to Freddie Mac for all sale and Servicing responsibilities, representations, covenants and warranties in the Purchase Documents with respect to the Mortgages and REO for which Servicing is transferred, whether or not the Transferor Servicer had such liability. The Transferee Servicer's assumption of responsibilities, representations, covenants and warranties upon transfer does not release the Transferor Servicer, any prior Servicer, or the original Seller of their responsibilities, representations, covenants and warranties with respect to the transferred Mortgages, their liability being joint and several with the Transferee Servicer. However, a Transferor Servicer does not assume such liability for Servicing violations occurring in all respects after the effective date of its transfer and based in all respects upon the actions or omissions of later Transferee Servicers.

For Mortgages sold through Gold Cash Xtra[®] and the Servicing Released Sales Process, the Seller remains solely liable to Freddie Mac for all sale representations, covenants and warranties in the Purchase Documents (sale representations and warranties) with respect to the Mortgages for which Servicing is transferred. The Transferee Servicer is liable to Freddie Mac for all servicing responsibilities, representations, covenants and warranties in the Purchase Documents with respect to the Mortgages for which Servicing is transferred. For subsequent Transfers of Servicing of such Mortgages:

- The Seller Transferor remains solely liable to Freddie Mac for all sale representations and warranties with respect to the Mortgages for which Servicing is transferred; and
- The subsequent Transferee Servicer is liable to Freddie Mac for all Servicing responsibilities, representations, covenants and warranties in the Purchase Documents with respect to the Mortgages and REO for which Servicing is transferred, but the Transferee Servicer's assumption of responsibilities, representations, covenants and warranties upon transfer does not release the subsequent Transferor Servicer or any prior Servicer of their responsibilities, representations, covenants and warranties with respect to Servicing of the transferred Mortgages, their liability being joint and several with the Transferee Servicer. However, a Transferor Servicer does not assume such liability for Servicing violations occurring in all respects after the effective date of its transfer and based in all respects upon the actions or omissions of later Transferee Servicers.

Note: For provisions applicable to the concurrent transfer of servicing rights of Mortgages sold to Freddie Mac through Gold Cash Xtra, see Exhibit 28, Loan Servicing Purchase and Sale Agreement.

(b) Hold harmless

The Transferor Servicer and the Transferee Servicer, jointly and severally, fully indemnify and agree to hold Freddie Mac, its successors and assigns, harmless from and against any and all losses, claims, demands, actions, suits, damages, costs and expenses (including reasonable attorney fees) of every nature and character that may arise or be made against or be incurred by Freddie Mac as a result of the Transferor Servicer's or the Transferee Servicer's failure to comply with applicable law or failure to comply with Freddie Mac's Servicing requirements as set forth in the Purchase Documents, including, but not limited to failure to provide the notices required by Section 7101.14, failure to make any payment to the appropriate parties for which Escrow is collected and failure to credit properly any payments received from Borrowers.

AA000725

(c) Servicing

The Transferee Servicer hereby agrees to service the Mortgages in accordance with the terms of the unitary, indivisible master Servicing contract comprising the Guide, applicable Bulletins, applicable users' guides and any other applicable Purchase Documents, all of which are fully incorporated herein by reference.

AA000726

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 8000: Servicing All Mortgages / Topic 8100: General Freddie Mac Servicing Policies / Chapter 8105: Servicing Compensation / 8105.3: Servicing obligations to be performed for the Servicing compensation (03/02/16)

8105.3: Servicing obligations to be performed for the Servicing compensation (03/02/16)

In consideration for the Servicing Spread, a Servicer is responsible for the performance of all of its Servicing obligations described in the Guide and other Purchase Documents for each of the Mortgages purchased by Freddie Mac. The Servicer's Servicing obligations compensated by the Servicing Spread include, among other things, undertaking all activities required to protect Freddie Mac's interest in the Mortgage in the event of a foreclosure of the property or a bankruptcy of the Borrower, such as:

- Preparing and delivering foreclosure and bankruptcy referrals to attorneys
- Providing all documents and information necessary for the attorneys to prosecute foreclosure or bankruptcy cases (including, but not limited to, missing documents such as Notes, title insurance policies, and Intervening Assignments)
- When necessary, paying for the preparation and recordation of missing documents, such as Intervening Assignments, necessary for the prosecution of foreclosure or bankruptcy cases
- Resolving any title issues that are the result of the Seller's or Servicer's action or inaction
- Managing attorneys, including but not limited to:
 - Collecting, receiving, processing, reviewing and paying attorneys' invoices
 - Supervising and providing necessary assistance to attorneys in the foreclosure and bankruptcy proceedings
 - Making available any monitoring, management, reporting, information and document delivery processes or systems, and paying the fees and costs for such processes or systems (refer to Section 9501.9 for information on connectivity and invoice processing systems)
- Continuing to work with the Borrower to resolve the delinquency through loss mitigation activities
- Handling the bankruptcy management activities specified in Chapter 9401

Nothing in the Guide is intended to prohibit a foreclosure or bankruptcy attorney from assisting a Servicer by working with a Borrower to facilitate a reinstatement of the Mortgage or loss mitigation activity.

AA000727

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 8000: Servicing All Mortgages / Topic 8100: General Freddie Mac Servicing Policies / Chapter 8107: Document Custody / 8107.1: Servicer responsibilities related to document custody (03/02/16)

8107.1: Servicer responsibilities related to document custody (03/02/16)

(a) Delivery of modifications to a Document Custodian

If a Note is subsequently modified, pursuant to the requirements of the Guide, the original modifying instrument must be delivered to the Document Custodian holding the original Note.

(b) Obtaining physical or constructive possession of documents

Seller/Servicers may need to obtain physical or constructive possession of a Note or other documents from a Document Custodian to take appropriate action in conjunction with the payoff, foreclosure, repurchase, substitution, conversion, modification or assumption of a Mortgage:

- To obtain physical or constructive possession of a Note and/or other documents from the Designated Custodian, the Seller/Servicer may complete and send the Form 1036, Request for Physical or Constructive Possession of Documents, or make an electronic request ("Web Release Request") using the Designated Custodian's specified Internet web site. Contact the Designated Custodian for further information (**see Directory 4**). The Seller/Servicer must promptly: (i) if physical possession was obtained by Seller/Servicer, return the Note and any other documents to the Designated Custodian when the reason for having physical possession is no longer required for Servicing the Mortgage (do not return the Note and any other documents to the Designated Custodian if the related Mortgage was repurchased or paid in full), or (ii) if constructive possession was obtained, send notice (a copy of the original Form 1036 with a notice of termination of constructive possession or otherwise as instructed by the Designated Custodian's specified Internet web site) to the Designated Custodian, when the reason for constructive possession is no longer required for Servicing the Mortgage. Seller/Servicers using the Designated Custodian's Internet web site Asset Repository and Collateral System (ARK) to request physical or constructive possession of Notes and other documents must include a copy of the 1036 Release Receipt Report when returning such items to the Designated Custodian. The Release Receipt Report can be electronically generated from the Designated Custodian's ARK web site.
- To obtain physical or constructive possession of a Note and/or other documents from a Document Custodian (excluding the Designated Custodian), the Seller/Servicer must complete Form 1036, and send the Form 1036 to the Document Custodian. The Seller/Servicer must promptly: (i) if physical possession was obtained by the Seller/Servicer, return the Note and any other documents to the Document Custodian when the reason for having physical possession is no longer required for Servicing the Mortgage (do not return the Note and any other documents to the Document Custodian if the related Mortgage was repurchased or paid in full), or (ii) if constructive possession was obtained by the Seller/Servicer, send notice (copy of the original Form 1036 with a request for termination of constructive possession) to the Document Custodian, when constructive possession is no longer required for Servicing the Mortgage.

Seller/Servicers must follow prudent business practices in protecting and safeguarding all Notes and documents physically transferred and delivered to them by the Document Custodian until these documents are returned to the Document Custodian. These practices include protection from external elements, such as fire, and identification as a Freddie Mac asset and segregation from other non-related documents.

See Section 8107.2(b) when Servicing a Mortgage with respect to which the Seller/Servicer is required to be in physical or constructive possession of the Note to take legal action, such as a Freddie Mac Default Legal Matter or other litigation (collectively, "Legal Action"), and the Document Custodian has physical custody of the Note.

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 8000: Servicing All Mortgages / Topic 8100: General Freddie Mac Servicing Policies / Chapter 8107: Document Custody / 8107.2: Document Custodian's custodial functions (03/02/16)

8107.2: Document Custodian's custodial functions (03/02/16)

(a) General duties

Each Document Custodian is responsible for maintaining custody of the original Notes and assignments, in trust, for the benefit of Freddie Mac by:

- Storing the original Notes and assignments in secure, fire-resistant facilities as required by Section 2202.2(b). If the Seller/Servicer delivers supplemental documents, such as original modifying instruments, the Document Custodian must place the supplemental documents with the related Note.
- Affixing the Freddie Mac loan number to the Note, if advised by the Seller/Servicer that Freddie Mac requires it. If the Note for a Mortgage contains the Freddie Mac loan number, changing the Freddie Mac loan number on a Note if advised in writing by the Seller/Servicer that Freddie Mac has changed the Freddie Mac loan number for the related Mortgage.

(b) Physical or constructive possession to take legal action

The Seller/Servicer may be required to be in physical or constructive possession of the Note to take legal action, such as a Freddie Mac Default Legal Matter or other litigation (collectively, "Legal Action"), in connection with Servicing a Mortgage. If the Seller/Servicer concludes that constructive possession is the appropriate type of possession for the Legal Action, the Seller/Servicer shall automatically, immediately and conclusively be deemed to be in constructive possession of the Note upon the earlier of: (i) that date such Legal Action commences, or (ii) the date the Document Custodian receives the Seller/Servicer's Form 1036 requesting constructive possession of the Note, until the Legal Action is concluded.

When the Document Custodian, during any such Legal Action, maintains physical custody of the Note, it does so in trust for the benefit of the Seller/Servicer. For the duration of the Legal Action, the Seller/Servicer shall be: (i) in constructive possession of the Note, (ii) the holder of the Note, (iii) entitled to enforce the Note, and (iv) duly authorized by Freddie Mac to take Legal Action in connection with Servicing the related Mortgage. When the Legal Action is concluded, the Document Custodian shall automatically and immediately cease maintaining physical custody of the Note, in trust, for the benefit of the Seller/Servicer and resume maintaining physical custody of the Note, in trust, for the benefit of Freddie Mac.

The Seller/Servicer must complete, sign and submit a Form 1036, or its equivalent, including the Designated Custodian's Web Release Request described in Section 8107.1(b) (Form 1036 and such the Designated Custodian's Web Release Request, collectively referred to herein as "Form 1036") requesting constructive possession from the Document Custodian or Designated Custodian, as applicable. The date that the constructive possession commences shall be the earlier of the date: (i) the Document Custodian receives the Form 1036 from the Seller/Servicer requesting constructive possession, or (ii) the Seller/Servicer commences the Legal Action. A single Form 1036 may be used to request multiple Notes, provided that each Note is separately listed and identified.

AA000729

(c) Delivery of possession of documents to the Seller/Servicer

The Seller/Servicer may require physical possession of a Note and other documents in connection with Servicing a Mortgage, including, but not limited to, bringing or defending a Legal Action or conducting a foreclosure or in connection with the maturity, prepayment, repurchase, substitution, conversion, modification or assumption of a Mortgage. In such circumstances, Freddie Mac will deliver physical possession of the Note to the Seller/Servicer as set forth in this Section 8107.2(c)

When Servicing a Mortgage with respect to which the Seller/Servicer is required to be in physical possession of the Note, the Seller/Servicer shall deliver a Form 1036 to the Document Custodian.

To use an Electronic, as defined in Chapter 1401 or system-generated version of the Form 1036, the Seller/Servicer must enter into an electronic transaction agreement with the Document Custodian that:

- Defines Electronic Signature and the type(s) of electronic transmission(s) permitted
- States the Document Custodian's requirements for accepting an Electronic Signature
- States the Seller/Servicer's requirements for maintaining and controlling access to Electronic Signature information
- Clearly assigns liability when the terms of the agreement are violated

In addition, the Seller/Servicer must provide, and the Document Custodian must retain, a list of the individuals designated by the Seller/Servicer to request the release of documents electronically. The list must be signed by an authorized officer of the Seller/Servicer and contain the notarized signatures of the Seller/Servicer's designated individuals.

An Electronic or system-generated Form 1036 must contain all of the information required on the paper Form 1036. A single electronic form may be used to request multiple Notes, provided that the Note is separately listed and identified.

Upon receipt of a signed Form 1036 from the Seller/Servicer, the Document Custodian maintaining physical custody of the Note, in trust, for the benefit of Freddie Mac, shall transfer and deliver physical possession of the Note to the Seller/Servicer. Upon receipt of the Note, the Seller/Servicer shall automatically, immediately and conclusively be deemed to be: (i) in physical possession of the Note, (ii) the holder of the Note, (iii) entitled to enforce the Note, and (iv) duly authorized by Freddie Mac to take Legal Action in connection with Servicing the related Mortgage.

If a document is no longer needed for the reason originally cited on the request, or when the Legal Action is concluded, the Seller/Servicer must promptly return the Note and related documents and a copy of the Form 1036 to the Document Custodian, or return the Note and related other documents required by the Designated Custodian. Upon receipt of the returned Note, the Document Custodian and/or Designated Custodian, as applicable, shall immediately resume maintaining physical custody of the Note, in trust, for the benefit of Freddie Mac, as set forth in the Custodial Agreement, and update its note tracking system to reflect receipt of the Note and any other documents.

Notes and related documents may be transported only by a nationally recognized commercial or bonded carrier or courier service.

See Section 8107.1(b) for additional information on returning Notes to the Document Custodian.

AA000730

(d) Form imaging and retention requirements

The Document Custodian must retain either the original or an imaged copy of the Form 1036 or its equivalent for at least three months after the date the Mortgage is paid off. The Document Custodian need not retain a Form 1034E, or Note Delivery Cover Sheet, after the related Mortgages have been certified.

Imaged copies of the forms are permitted, provided that:

- Such copies were made in the regular course of business pursuant to Document Custodian's written policy
- Each imaged copy accurately reproduces or forms a durable medium for reproducing the original document
- There is equipment to view or read and to reproduce the imaged copies into legible documents at the location where the imaged copies are maintained

The Document Custodian may destroy:

- Original Certification Schedules after making imaged copies that meet the above criteria
- Requests for Release after making imaged copies that meet the above criteria and updating Document Custodian's Note tracking system to indicate the date of and reason for release of the related documents
- All original or imaged copies of Certification Schedules and Requests for Release after expiration of the retention period

In disposing of such documents, the Document Custodian must have in place and follow procedures to ensure the confidentiality of Borrowers' private personal information and must use disposal methods that safeguard such confidentiality.

AA000731

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 9000: Servicing Default Management / Topic 9300: Foreclosure / Chapter 9301: Foreclosure / 9301.1: Foreclosures on Freddie Mac Mortgages (03/02/16)

9301.1: Foreclosures on Freddie Mac Mortgages (03/02/16)

The Servicer must refer to, manage and complete foreclosure in accordance with this chapter when there is no available alternative to foreclosure. Additionally, Freddie Mac requires the Servicer to manage the foreclosure process to acquire clear and marketable title to the property in a cost-effective, expeditious and efficient manner.

AA000732

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 9000: Servicing Default Management / Topic 9300: Foreclosure / Chapter 9301: Foreclosure / 9301.11: Obtaining the original Note (03/02/16)

9301.11: Obtaining the original Note (03/02/16)

If physical or constructive possession of the original Note is needed to perform the foreclosure, the Servicer must request the Note from the Document Custodian maintaining the Note by submitting to the Document Custodian a completed Form 1036, Request for Physical or Constructive Possession of Documents, or an electronic or system-generated version of the form (or, in the case of the Designated Custodian, a copy of the electronically generated 1036 Release Receipt Report) in accordance with the requirements of Section 8107.1(b).

If there is a full or partial reinstatement of the Mortgage, the Servicer must return the Note to the Document Custodian with either the original Form 1036 or a copy.

AA000733

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 9000: Servicing Default Management / Topic 9300: Foreclosure / Chapter 9301: Foreclosure / 9301.12: Foreclosing in the Servicer's name (03/02/16)

9301.12: Foreclosing in the Servicer's name (03/02/16)

(a) Conducting the foreclosure

The Servicer must instruct the foreclosure counsel to process the foreclosure in the Servicer's name and in a manner that would avoid any obligation to pay a transfer tax. However, the Servicer may instruct foreclosure counsel to conduct the foreclosure in Freddie Mac's name if applicable law:

- Precludes the Servicer from conducting the foreclosure in its name because it owns or services a subordinate Mortgage on the Mortgaged Premises, or
- Requires the foreclosure to be processed in Freddie Mac's name to avoid any obligation to pay a transfer tax and foreclosure counsel could not otherwise process the foreclosure in a manner that would successfully avoid imposition of the transfer tax obligation

For these special circumstances, the Servicer does not need to obtain written approval but must notify Freddie Mac within two Business Days of the Servicer's determination to foreclose in Freddie Mac's name and record the basis of the decision in the Mortgage file. All notifications must be sent via e-mail (**see Directory 5**). For all other circumstances in which the Servicer may need to instruct foreclosure counsel to conduct the foreclosure in Freddie Mac's name, the Servicer must obtain written approval from Freddie Mac (refer to Section 9402.2 regarding initiating legal actions on Freddie Mac's behalf).

When processing the foreclosure in Freddie Mac's name, all pleadings and related documents must comply with Section 9402.2(c). The Servicer remains obligated to notify Freddie Mac pursuant to Section 9501.12 in the event that any foreclosure conducted in Freddie Mac's name evolves into a non-routine litigation matter (see Section 9402.2).

When a Servicer conducts the foreclosure in Freddie Mac's name, the Servicer is not permitted to have the same foreclosure counsel represent the Servicer or another lien holder in the same proceeding. Freddie Mac does not consent to dual representation of Freddie Mac and another lien holder on the same property.

AA000734

(b) Executing documents

If Freddie Mac needs to execute a document for the Servicer to process the foreclosure, or execute a document related to a foreclosure sale, the Servicer must submit Form 105, Multipurpose Loan Servicing Transmittal, to Freddie Mac **(see Directory 5)** with all supporting documentation, which may include, but is not limited to, the last recorded document in the chain of title, and include the document Freddie Mac needs to execute.

If an assignment of the Security Instrument to Freddie Mac has been recorded and the Servicer is conducting the foreclosure in its name, then the Security Instrument must be assigned back to the Servicer before the foreclosure counsel files the first legal action. Refer to Section 9301.16 for an explanation of first legal action.

To have the Security Instrument assigned back to the Servicer, the Servicer must submit a completed assignment with a Request for Assistance Form (available at: <http://www.freddiemac.com/cim/docex.html>), to Freddie Mac **(see Directory 9)**. Freddie Mac will endeavor to execute the assignment and return it to the Servicer within 10-12 Business Days of receiving the documents.

If the Servicer is foreclosing on a Mortgage registered with MERS[®], the Servicer must prepare and execute (using the Servicer's employee who is a MERS authorized "signing officer") an assignment of the Security Instrument from MERS to the Servicer. The Servicer must record the prepared assignment where required by State law. State mandated recordings are non-reimbursable by Freddie Mac, are not considered part of the Freddie Mac allowable foreclosure counsel fees and must not be billed to the Borrower.

If the Mortgage is an FHA, Section 502 GRH or VA Mortgage, then the Servicer must follow FHA, RHS or VA guidelines to determine in whose name the foreclosure action should be brought.

Refer to Section 6301.6 for additional information on Freddie Mac's requirements for assignments of the Security Instrument.

AA000735

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 9000: Servicing Default Management / Topic 9400: Bankruptcy and Other Litigation Involving Freddie Mac-Owned or Guaranteed Mortgages / Chapter 9401: Bankruptcy / 9401.1: Bankruptcy (10/12/16)

9401.1: Bankruptcy (10/12/16)

This chapter provides Servicers with Freddie Mac's requirements for Servicing Mortgages subject to bankruptcy proceedings or litigation. The Servicer must take appropriate action to protect Freddie Mac's interest during bankruptcy proceedings in which the Borrower is the debtor.

(Refer to Chapter 9402 for requirements [for Servicing Mortgages subject to other litigation](#)).

Related Guide Bulletins	Issue Date
Bulletin 2016-13	July 13, 2016

AA000736

EXHIBIT P

EXHIBIT P

EXHIBIT P

AA000770

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

NATIONSTAR MORTGAGE, LLC,

Plaintiff,

vs.

HOMETOWN WEST II HOMEOWNERS
ASSOCIATION et al.,

Defendants.

2:15-cv-01232-RCJ-NJK

ORDER

This case arises out of a homeowner’s association foreclosure sale. Pending before the Court are three Motions for Summary Judgment (ECF Nos. 28–30).

I. FACTS AND PROCEDURAL HISTORY

In 2003, Third-Party Defendant David M. Holleb purchased real property at 3208 Bradford Hill Ave., North Las Vegas, Nevada, 89031 (the “Property”), giving the lender a promissory note in the amount of \$242,400 (the “Note”), secured by a first deed of trust (the “DOT”) against the Property. (*See* Compl. ¶¶ 8, 13, ECF No. 1). Plaintiff Nationstar Mortgage, LLC (“Nationstar”) became the beneficiary of the DOT by assignment in 2012. (*See id.* ¶ 14). Holleb defaulted on both the Note and his obligations to Defendant Hometown West II Homeowners Association (the “HOA”), and the HOA conducted a foreclosure sale on August

AA000771

13, 2013 at which Defendant SFR Investments Pool I, LLC (“SFR”) purchased the Property for \$13,000. (*Id.* ¶¶ 15, 17–29).

Nationstar sued the HOA and SFR in this Court for: (1) quiet title; (2) violation of the duty of good faith under Nevada Revised Statutes section (“NRS”) 116.1113; and (3) wrongful foreclosure.¹ SFR filed counterclaims and third-party claims for quiet title and slander of title.²

The HOA moved to dismiss the Complaint for failure to exhaust administrative remedies, and the Court denied the motion because the affirmative defense of non-exhaustion did not appear on the face of the Complaint. The Court noted that it would be inclined to grant summary judgment in part if the HOA could show that Nationstar had not sought mediation, as required under state law, as to Nationstar’s claim that the HOA failed to apply the CC&R in good faith under NRS 116.1113.

Three motions for summary judgment are now pending before the Court. First, Nationstar has moved for offensive summary judgment on its own claims and for defensive summary judgment against SFR’s counterclaims. Second, the HOA has moved for defensive summary judgment against Nationstar’s claims. Third, SFR has moved for offensive summary judgment on its counterclaims and third-party claims and for defensive summary judgment against Nationstar’s claims.

II. SUMMARY JUDGMENT STANDARDS

A court must grant summary judgment when “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.

¹ The fourth cause of action for injunctive relief is not an independent cause of action.

² The second cause of action for injunctive relief is not an independent cause of action. Also, although titled “crossclaims,” the claims against Holleb and Realty Mortgage Corp. (“RMC”) are in substance third-party claims because they are not brought against the HOA (SFR’s only co-Defendant).

1 Civ. P. 56(a). Material facts are those which may affect the outcome of the case. *See Anderson*
2 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is genuine if
3 there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *See*
4 *id.* A principal purpose of summary judgment is “to isolate and dispose of factually unsupported
5 claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

6 In determining summary judgment, a court uses a burden-shifting scheme. The moving
7 party must first satisfy its initial burden. “When the party moving for summary judgment would
8 bear the burden of proof at trial, it must come forward with evidence which would entitle it to a
9 directed verdict if the evidence went uncontroverted at trial.” *C.A.R. Transp. Brokerage Co. v.*
10 *Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citation and internal quotation marks
11 omitted). In contrast, when the nonmoving party bears the burden of proving the claim or
12 defense, the moving party can meet its burden in two ways: (1) by presenting evidence to negate
13 an essential element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving
14 party failed to make a showing sufficient to establish an element essential to that party’s case on
15 which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24.

16 If the moving party fails to meet its initial burden, summary judgment must be denied and
17 the court need not consider the nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*,
18 398 U.S. 144 (1970). If the moving party meets its initial burden, the burden then shifts to the
19 opposing party to establish a genuine issue of material fact. *See Matsushita Elec. Indus. Co. v.*
20 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute,
21 the opposing party need not establish a material issue of fact conclusively in its favor. It is
22 sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the
23 parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*
24

1 *Ass’n*, 809 F.2d 626, 631 (9th Cir. 1987). In other words, the nonmoving party cannot avoid
 2 summary judgment by relying solely on conclusory allegations unsupported by facts. *See Taylor*
 3 *v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go beyond the
 4 assertions and allegations of the pleadings and set forth specific facts by producing competent
 5 evidence that shows a genuine issue for trial. *See Fed. R. Civ. P. 56(e); Celotex Corp.*, 477 U.S.
 6 at 324.

7 At the summary judgment stage, a court’s function is not to weigh the evidence and
 8 determine the truth, but to determine whether there is a genuine issue for trial. *See Anderson*, 477
 9 U.S. at 249. The evidence of the nonmovant is “to be believed, and all justifiable inferences are
 10 to be drawn in his favor.” *Id.* at 255. But if the evidence of the nonmoving party is merely
 11 colorable or is not significantly probative, summary judgment may be granted. *See id.* at 249–50.
 12 Notably, facts are only viewed in the light most favorable to the nonmoving party where there is
 13 a genuine dispute about those facts. *Scott v. Harris*, 550 U.S. 372, 380 (2007). That is, even if
 14 the underlying claim contains a reasonableness test, where a party’s evidence is so clearly
 15 contradicted by the record as a whole that no reasonable jury could believe it, “a court should not
 16 adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Id.*

17 **III. ANALYSIS**

18 **A. Quiet Title**

19 **1. Equitable Issues**

20 **a. Tender of the Superpriority Amount Before Sale**

21 The Nevada Supreme Court recently ruled that an association’s foreclosure sale may be
 22 set aside under a court’s equitable powers notwithstanding any recitals on the foreclosure deed
 23 where there is a “grossly inadequate” sales price and “fraud, unfairness, or oppression.” *Shadow*
 24

1 *Wood Homeowners Assoc., Inc. v. N.Y. Cmty. Bancorp, Inc.*, 366 P.3d 1105, 1110–13 (Nev.
 2 2016). The Court remanded for further fact-finding in that case but noted that the general rule
 3 for gross inadequacy was 20% of fair market value, that the Court had in the past approved sales
 4 for as low as 28.5%, and that the apparent 23% ratio in the case before it was not “obviously”
 5 inadequate. *See id.* at 1112 (citing *Golden v. Tomiyasu*, 387 P.2d 989, 993 (Nev. 1963);
 6 Restatement (Third) of Prop.: Mortgages § 8.3 cmt. b (1997)). The Court noted that a
 7 foreclosing entity’s behavior with respect to a first mortgagee’s attempts to redeem the
 8 superpriority portion of an association lien before sale is relevant to fraud, unfairness, or
 9 oppression. *See id.* at 1113.

10 **i. Gross Inadequacy of Sale Price**

11 Nationstar has satisfied its initial burden as to gross inadequacy by providing evidence
 12 that the sale price was less than 6% the secured amount. (*See* DOT, ECF No. 28-1 (securing
 13 \$242,400); Trustee’s Deed upon Sale, ECF No. 28-6 (indicating a sale for \$13,000)). Even
 14 assuming no down payment and that the fair market value in 2013 was only half the 2003
 15 purchase price—a fair assessment for Nevada real property—the sale price was less than 11% of
 16 the fair market value, which is approximately half the amount generally required to avoid a
 17 finding of gross inadequacy. The fair market value of the Property would have to have been
 18 roughly \$65,000 or less in order for the sale in this case not to have been for a grossly inadequate
 19 price.

20 SFR does not appear to dispute the sale price but has provided an expert report indicating
 21 a \$13,000 fair market value. (*See* Brunson Decl. & Report, ECF No. 35-2). The Court finds that
 22 a reasonable jury could accept the theory put forth therein that the appropriate measure of market
 23 value should focus not on “traditional” sales of comparable properties but HOA foreclosure sales
 24

1 of comparable properties. Basically, the report concludes that because similar homes sold for
 2 similar amounts at similar HOA sales, the Property's fair market value was \$13,000. These are
 3 issues for a jury to sort out. The Court will not grant summary judgment to either side on the
 4 issue of gross inadequacy of the sale price.

5 **ii. Fraud, Unfairness, or Oppression**

6 The issue in this case is not fraud, but alleged unfairness and oppression. Proof of tender
 7 of the superpriority portion of a lien followed by a denial of the continuing validity of the first
 8 mortgage probably constitutes unfairness and oppression under Nevada law, especially where an
 9 HOA or its agent attempts to extract thousands of dollars in subpriority amounts from one whose
 10 interest is subordinate only to hundreds of dollars in superpriority amounts, under threat of a
 11 clouded several-hundred-thousand-dollar deed of trust. There is no evidence of a tender of the
 12 superpriority amount in this case, but Nationstar has provided other evidence of fraud,
 13 unfairness, or oppression under the *Shadow Wood* test. Nationstar notes that the mortgage
 14 protection clause of the CC&R misled potential buyers into thinking the DOT would survive the
 15 foreclosure sale, so no investors bothered to bid on the Property at a time when the DOT was
 16 undersecured. *See ZYZZX2 v. Dizon*, No. 2:13-cv-1307, 2016 WL 1181666, at *5 (D. Nev. Mar.
 17 25, 2016) (Mahan, J.) (finding that an HOA had misrepresented to the public the effect of its
 18 foreclosure sale on the first deed of trust via a mortgage protection clause in the CC&R, leading
 19 to a low sale price). There is enough evidence here through the mortgage protection clause for a
 20 reasonable jury to find fraud, unfairness, or oppression under this theory. The Court denies
 21 summary judgment to SFR on this claim.

22 **b. Commercial Unreasonableness of the Sale**

23 In addition to giving reasonable notice, a secured party must, after default,
 24 proceed in a commercially reasonable manner to dispose of collateral. Every

1 aspect of the disposition, including the method, manner, time, place, and terms,
2 must be commercially reasonable. Although the price obtained at the sale is not
3 the sole determinative factor, nevertheless, it is one of the relevant factors in
4 determining whether the sale was commercially reasonable. A wide discrepancy
5 between the sale price and the value of the collateral compels close scrutiny into
6 the commercial reasonableness of the sale.

7 *Levers v. Rio King Land & Inv. Co.*, 560 P.2d 917, 919–20 (Nev. 1977) (citations omitted).

8 Although related, this equitable rule is different from the equitable rule of *Shadow Wood*. The
9 *Levers* rule is concerned with the circumstances of the sale generally, as opposed to the treatment
10 of junior lienors in particular. Under *Shadow Wood*, gross inadequacy in price and “fraud,
11 unfairness, or oppression” to the junior lienor are two prongs of a conjunctive test. By contrast,
12 under *Levers* a discrepancy between the sale price and the value of the collateral is only one
13 factor in a totality-of-the-circumstances-type test, although a “wide” discrepancy triggers closer
14 scrutiny of the reasonableness of other aspects of the sale. There is a wide discrepancy here, and
15 given the lack of notice of the sale to Nationstar, the Court will reserve this claim to a jury.

16 **2. Due Process**

17 **a. Nationstar’s Claim**

18 The Court of Appeals has ruled that a state’s creation of non-judicial foreclosure statutes
19 alone does not sufficiently involve a state in a non-judicial foreclosure to implicate state action
20 unless some state actor such as a sheriff or court clerk has some direct involvement in the sale,
21 which is not alleged here. *See Apao v. Bank of N.Y.*, 324 F.3d 1091, 1093–94 (9th Cir. 2003);
22 *Charmicor v. Deaner*, 572 F.2d 694, 695–96 (9th Cir. 1978). The Court therefore grants
23 summary judgment against Nationstar’s quiet title claim on the due process issue.

24 **b. SFR’s Counterclaim**

Because SFR asks the Court to declare of the validity of the sale via its counterclaim, the
Due Process Clause of the Fifth Amendment is implicated under the rule of *Shelley v. Kraemer*,

AA000777

1 334 U.S. 1 (1948) if a lack of notice of the sale would have been constitutionally problematic
2 had a state entity conducted the sale. *See U.S. Bank N.A. v. SFR Invs. Pool I, LLC*, 124 F. Supp.
3 3d 1063, 1076–81 (D. Nev. 2015) (Jones, J.). Nationstar has satisfied its initial burden to point
4 out that there is no evidence of constitutionally sufficient notice of the sale having been given.
5 SFR has not adduced evidence tending to show that Nationstar was given constitutionally
6 sufficient notice of the HOA sale. SFR notes there was no state action in the foreclosure sale
7 itself. But although that prevents a direct Fourteenth Amendment claim by Nationstar, under
8 *Shelley* the Fifth Amendment is a valid defense to a quiet title claim like SFR’s in federal court.
9 *See id.* The Court cannot put the government’s imprimatur on the foreclosure in this case via a
10 civil judgment declaring it to have been valid. The Court therefore grants defensive summary
11 judgment to Nationstar against SFR’s counterclaim for quiet title under the Due Process Clause
12 of the Fifth Amendment.

13 **3. Retroactivity of *SFR Investments Pool I v. U.S. Bank***

14 The Court recently certified to the Nevada Supreme Court the following question: “Does
15 the rule of *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014) that
16 foreclosures under NRS 116.3116 extinguish first security interests apply retroactively to
17 foreclosures occurring prior to the date of that decision?” *See Christiana Trust v. K&P Homes*,
18 No. 2:15-cv-1534, 2016 WL 923091, at *2 (D. Nev. Mar. 9, 2016). Before certifying the
19 question, the Court anticipated that under Nevada law the decision was not retroactive. *See*
20 *Christiana Trust v. K&P Homes*, No. No. 2:15-cv-1534, 2015 WL 6962860, at *4–5 (D. Nev.
21 Nov. 9, 2015) (citing *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971); *Breithaupt v. USAA Prop.*
22 *& Cas. Ins. Co.*, 867 P.2d 402, 405 (Nev. 1994)). The Court will therefore not issue a ruling on

23 AA000778

1 the retroactivity issue at this time. If SFR prevails at trial, the Court will then determine whether
2 to stay judgment during the pendency of the Nevada Supreme Court's resolution of the issue.

3 **B. NRS 116.1113**

4 Nationstar alleges the HOA failed to apply the CC&R in good faith as required by NRS
5 116.1113. Such a determination requires the interpretation and application of the CC&R, which
6 means pre-suit mediation of the claim is required under NRS 38.310. As the Court previously
7 noted, the NRS 116.1113 claim therefore could not survive if a party could show the claim had
8 not been mediated. The Court refused to dismiss at that time because non-exhaustion is an
9 affirmative defense, so dismissal on that basis would be inappropriate where the defense did not
10 appear on the face of the pleading to be dismissed. The HOA has not addressed the mediation
11 issue in its summary judgment motion. Nationstar and the HOA simply ask for summary
12 judgment on the merits of the bad faith issue.

13 The basis of Nationstar's claim under NRS 116.1113 is that the CC&R subordinate the
14 HOA's lien to first mortgages, and it has provided evidence to this effect:

15 Mortgage Protection. Notwithstanding any other provision within this
16 Declaration, no lien created under this Article V or under any other Article of this
17 Declaration, nor any lien arising by reason of any breach of this Declaration, nor
18 the enforcement of any provision of this Declaration, shall defeat or render invalid
the rights of the beneficiary under any Recorded Mortgage of first and senior
priority now or hereafter upon a Lot, made in good faith and for value, perfected
before the date on which the assessment sought to be enforced became delinquent.

19 (CC&R § 5.08, Oct. 31, 2001, ECF No. 28-10). The DOT was recorded on June 2, 2005. (*See*
20 DOT 1, ECF No. 28-1). The assessment at issue here became delinquent in late 2011 or early
21 2012. (*See* Notice of Delinquent Assessment Lien, ECF No. 28-3 (indicating \$783.99 past due as
22 of May 7, 2012)). This provision would appear to preserve the first mortgage by prior

23 AA000779
24

1 contractual agreement notwithstanding the statutory default rule as interpreted by the Nevada
2 Supreme Court.

3 The HOA has adduced no contrary evidence but argues that because NRS 116.3103
4 required it to act in the best interests of the association, i.e., to conform to the business judgment
5 rule, and because it did not violate the business judgment rule when it foreclosed on the Property,
6 it cannot have violated NRS 116.1113. The Court rejects this argument. NRS 116.3103 imposes
7 the business judgment rule upon HOAs for the benefit of their members. HOAs must comply
8 with that statute, as well as with other statutes such as NRS 116.1113. An HOA may not escape
9 contractual or tort liability to outside parties by simply noting that its actions did not violate the
10 statutory duties owed to its members, as if NRS 116.3103 provided a ceiling of care as to all
11 duties potentially owed to all persons in all contexts.

12 Next, it is plain from the CC&R that first mortgagees are intended third-party
13 beneficiaries of the mortgage protection provision, so the HOA's argument that Nationstar as a
14 non-party to the CC&R has no standing to enforce it is not well taken. *See Canfora v. Coast*
15 *Hotels & Casinos, Inc.*, 121 P.3d 599, 605 (Nev. 2005) (quoting *Jones v. Aetna Cas. and Sur.*
16 *Co.*, 33 Cal. Rptr. 2d 291, 296 (1994)) ("Whether an individual is an intended third-party
17 beneficiary, however, depends on the parties' intent, 'gleaned from reading the contract as a
18 whole in light of the circumstances under which it was entered.'"); *Morelli v. Morelli*, 720 P.2d
19 704, 705–06 (Nev. 1986) (citing *Lipshie v. Tracy Inv. Co.*, 566 P.2d 819 (Nev. 1977)). The
20 mortgage protection provision was adopted in the 2001 CC&R a decade after NRS 116.3116 was
21 adopted. The drafters of the mortgage protection provision were presumably aware of the statute
22 and wished to eliminate any possibility of confusion over its application in favor of protecting
23 first mortgages.

AA000780

1 Finally, the HOA argues that NRS 116.1206 preempts the mortgage protection clause:

2 1. Any provision contained in a declaration, bylaw or other governing
3 document of a common-interest community that violates the provisions of this
chapter:

4 (a) Shall be deemed to conform with those provisions by operation of law,
5 and any such declaration, bylaw or other governing document is not required to be
amended to conform to those provisions.

6 Nev. Rev. Stat. § 116.1206(1), (1)(a). In other words, the HOA argues that NRS 116.1206
7 prevented the HOA from contracting around NRS 116.3116 via the mortgage protection clause.
8 But the relevant statutory provision did not become effective until October 1, 2003, *see* S.B. 100,
9 ch. 385, §§ 56, 93(2), 2003 Nev. Stat. 2224, 2255 (2003), and the mortgage protection clause
10 was in effect as of 2001. The version of NRS 116.1206(1) in effect when the mortgage
11 protection provision was adopted limited itself to CC&R provisions created before January 1,
12 1992. *See* Nev. Rev. Stat. § 116.1206(1) (1999). First mortgagees at that time had the right to
13 rely on mortgage protection provisions like the one at issue here when giving their mortgages.
14 The Court will not create Contract Clause issues by reading NRS 116.1206 to apply retroactively
15 so as to invalidate CC&R provisions adopted between January 1, 1992 and October 1, 2003. *Cf.*
16 *Eagle SPE NV I, Inc v. Kiley Ranch Cmtys.*, 5 F. Supp. 3d 1238, 1244–58 (D. Nev. 2014) (Jones,
17 J.).

18 There is no need to address the Contract Clause issue directly, because the 2003 statute
19 does not operate retroactively to limit the 2001 mortgage protection provision here with the
20 clarity required to overcome the presumption against retroactive effect. *See Sandpointe*
21 *Apartments v. Eighth Judicial Dist. Court*, 313 P.3d 849, 853 (Nev. 2013). Although the statute
22 indicates it is retroactive in one respect, it is only retroactive as against the underlying provision
23 the CC&R are alleged to violate. *See* Nev. Rev. Stat. § 116.1206(1)(b) (“*File superseded by the*
24 AA000781

provisions of this chapter, regardless of whether the provision contained in the declaration, bylaw or other governing document became effective *before the enactment of the provision of this chapter that is being violated.*” (emphasis added)). That aspect of retroactivity needn’t be invoked here, because the mortgage protection provision alleged to violate Chapter 116 post-dates the lien-priority statute. The important issue here is that NRS 116.1206(1)(b) is not itself retroactive. Parties to CC&R adopted on or after October 1, 2003 were on notice that they would bear the risk of changing regulations going forward. But parties to CC&R contracting before October 1, 2003 had an expectation of the continued vitality of their CC&R provisions without being subject to retroactive nullification by the state via the preemption of contractual clauses at odds with Chapter 116, regardless of the respective dates of the relevant CC&R clauses and conflicting statutes. NRS 116.1206 by its own terms is only retroactive with respect to “the enactment of the provision of this chapter that is being violated.” *Id.* That is, NRS 116.1206 applies to CC&R provisions adopted on or after October 1, 2003, regardless of the respective dates of the challenged CC&R provision and the provision of Chapter 116 that the CC&R provision is alleged to violate. But if the Court were to find that NRS 116.1206 applied also to CC&R provisions adopted before October 1, 2003, it would almost certainly create Contract Clause problems. And the legislative history indicates no intent for the statute to operate retroactively in that way. *See* <http://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/2003/SB100,2003.pdf>.

In summary, Nationstar is entitled to summary judgment on the claim under NRS 116.1113. The remaining question is the remedy. Potential remedies are the invalidation of the sale, or, if the buyer is a bona fide purchaser for value (“BFP”) and the sale cannot therefore in equity be undone, damages against the HOA. Invalidation of the sale is available, however,

AA000782

1 because SFR is not a BFP. SFR's Rule 30(b)(6) deponent admitted she and Chris Hardin, the
 2 manager of SFR, knew of the legal uncertainty of the priority as between deeds of trust and
 3 trustee's deeds at HOA foreclosure sales and realized that this uncertainty affected the price at
 4 auction. (*See* Kelso Dep. 28–30, ECF No. 33-2).

5 A BFP is a person who pays money for real property before obtaining notice of an earlier
 6 interest in the property. 5 Tiffany Real Property § 1262 & n.39.50 (3rd ed. 2015). The traditional
 7 common law rule of competing interests in real property is “first in time, first in right.” 11 David
 8 A. Thomas, *Thompson on Real Property* § 92.03, at 97 (2008) (citing Ralph W. Aigler, *The*
 9 *Operation of the Recording Acts*, 22 Mich. L. Rev. 405, 406 (1924) (“first in time was first in
 10 right because there was nothing left for the second transferee”)). The equity courts created
 11 exceptions to the traditional “first in time, first in right” rule. *Id.* § 92.03, at 98. Under the
 12 common law, absent estoppel, an earlier claim had priority over a later claim if both claims were
 13 legal claims (as opposed to equitable claims). *Id.* § 92.03, at 97. The same was true if both
 14 claims were equitable. *Id.* BFP status only mattered under the common law where the BFP had a
 15 legal claim and a competing earlier claim to the property was purely equitable. *Id.*

16 Today, the difference between legal and equitable claims does not matter as much as the
 17 policies behind recognizing BFP status or not in particular circumstances, and BFP-type
 18 exceptions to the common law rule of priority are governed by recording statutes, in any case. *Id.*
 19 § 92.03, at 98–99. Recording statutes are categorized as “race,” “notice,” or “race–notice”
 20 statutes. *Id.* § 92.08, at 158. Under notice statutes, an exception to the traditional “first in time”
 21 rule is codified for those who give value for an interest in land “without notice or knowledge” of
 22 an earlier competing interest. *Id.* § 92.08(b). Race–notice statutes additionally require the later
 23 grantee to record his interest before the earlier grantee. *Id.* § 92.08(c). Where notice matters, as
 24

1 under notice and race–notice statutes, one who takes title without warranty can be found to have
 2 had inquiry notice of prior unrecorded interests (and therefore not qualify as a BFP) because the
 3 grantor’s refusal to issue standard warranties of title should put a reasonable and prudent person
 4 on notice of potential competing interests. *Id.* § 92.09(c)(3)(C), at 191.

5 Nevada has a race–notice statute. *See* Nev. Rev. Stat. § 111.325 (“Every conveyance of
 6 real property within this State hereafter made, which shall not be recorded as provided in this
 7 chapter, shall be void as against any subsequent purchaser, in good faith and for a valuable
 8 consideration, of the same real property, or any portion thereof, where his or her own
 9 conveyance shall be first duly recorded.”). In other words, a later-obtained interest can prevail
 10 over an earlier-obtained interest in Nevada where the later purchaser has no knowledge of the
 11 previous interest and records his interest first. It is not genuinely disputed that neither of these
 12 elements is satisfied here. SFR had constructive notice of the DOT at the time of the HOA sale
 13 because the DOT had been recorded, *see* Nev. Rev. Stat. § 111.315, and the Foreclosure Deed
 14 was of course not recorded before the DOT. The general BFP rule in Nevada is:

15 Any purchaser who purchases an estate or interest in any real property in
 16 good faith and for valuable consideration and who does not have actual
 17 knowledge, constructive notice of, or reasonable cause to know that there exists a
 defect in, or adverse rights, title or interest to, the real property is a bona fide
 purchaser.

18 Nev. Rev. Stat. § 111.180(1). Even assuming the issue were whether SFR had notice not only of
 19 the DOT but also of the legal possibility that the DOT might survive the HOA foreclosure sale,
 20 SFR was not an innocent purchaser in this regard, as admitted by Kelso. Even without the
 21 admitted actual notice of the potential defect in the title, SFR was on inquiry notice of the
 22 continuing vitality of the DOT, especially considering that the sale price was a tiny fraction of
 23 the value of the Property and it knew the winning bidder was to take a trustee’s deed without
 24

warranty. *See Berge v. Fredericks*, 591 P.2d 246, 249–50 (Nev. 1979); 11 Thomas, *supra*, § 92.09, at 163 (“Persons who knew about or could have discovered the existence of prior adverse claims through reasonable investigations should not be protected.”). And any inquiry to the HOA or its agent alone was insufficient as a matter of law. *See id.* (noting that “reliance upon a vendor, or similar person with reason to conceal a prior grantee’s interest, does not constitute ‘adequate inquiry’”). The law was not clear at the time of the sale that the sale would extinguish the DOT, and a reasonable purchaser therefore would have perceived a serious risk that it would not. Indeed, SFR’s own appraisal expert has adamantly opined in other cases that the reason for low valuations at HOA foreclosure sales during the relevant time period was the near certainty of subsequent litigation over the continuing vitality of first deeds of trust and the high uncertainty of success on the issue. SFR cannot be said to be a BFP as against the DOT under these circumstances.

C. Wrongful Foreclosure

Wrongful foreclosure claims in the present context typically rely on an HOA’s alleged wrongful rejection of the tender of the superpriority amount of the default prior to the HOA foreclosure sale. In this case, Nationstar has provided no evidence of any tender or attempted tender. It appears to argue that the HOA’s foreclosure and subsequent position that the DOT was extinguished constitute wrongful foreclosure. It also notes that inadequacy of sales price can support a wrongful foreclosure action by a junior lienor:

If the real estate is unavailable because title has been acquired by a bona fide purchaser, the issue of price inadequacy may be raised by the mortgagor or a junior interest holder in a suit against the foreclosing mortgagee for damages for wrongful foreclosure.

Restatement (Third) of Prop.: Mortgages § 8.3 cmt. b (1997). The Court finds that the Nevada Supreme Court would likely entertain such a theory of wrongful foreclosure, as it has typically

AA000785

1 followed the Restatement. Moreover, the depression of the sales price via the mortgage
2 protection clause, as explained, *supra*, can likely support a claim for damages under a wrongful
3 foreclosure theory. The Court therefore denies summary judgment to the HOA on the wrongful
4 foreclosure claim.

5 **D. Slander of Title**

6 The elements of a claim for slander of title are: (1) that the words spoken were false; (2)
7 malice; and (3) special damages. *Rowland v. Lepire*, 662 P.2d 1332, 1335 (Nev. 1983). SFR
8 alleges Nationstar slandered SFR's title to the Property when Nationstar recorded certain
9 documents indicating that it still held a security interest against the Property, despite knowing
10 that the DOT had been extinguished by the HOA foreclosure sale. (*See* Countercl. ¶¶ 61–62,
11 ECF No. 10). SFR notes that the Nevada Supreme Court decided *SFR Investments Pool I, LLC*
12 on September 18, 2014. The alleged slander was Nationstar's February 4, 2015 recording of a
13 Request for Notice, which stated an interest in the Property. (*See id.* ¶ 37). But Nationstar has
14 provided evidence showing a good faith belief in the continuing vitality of the DOT based on the
15 mortgage protection clause and the alleged invalidity of the sale under both *Shadow Wood* and
16 *Levers*. The Court grants summary judgment to Nationstar on this claim. At a minimum, its
17 implied claim of a lien against the Property was true under NRS 116.1113 alone.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

AA000786

CONCLUSION

IT IS HEREBY ORDERED that Nationstar's Motion for Summary Judgment (ECF No. 28) is GRANTED IN PART and DENIED IN PART. Nationstar is entitled to offensive summary judgment on its claim against the HOA under NRS 116.1113 and defensive summary judgment against SFR's counterclaims for quiet title and slander of title. The motion is otherwise denied.

IT IS FURTHER ORDERED that the HOA's Motion for Summary Judgment (ECF No. 29) is DENIED.

IT IS FURTHER ORDERED that SFR's Motion for Summary Judgment (ECF No. 30) is GRANTED IN PART and DENIED IN PART. SFR is entitled to defensive summary judgment against Nationstar's claim for quiet title insofar as that claim is based on the Due Process Clause of the Fourteenth Amendment and offensive summary judgment on its third-party claims against Holleb and RMC, who have not responded. The motion is otherwise denied.

Nationstar's claims for wrongful foreclosure against the HOA and for quiet title against SFR under *Shadow Wood* and *Levers* remain for trial.

IT IS SO ORDERED.

Dated this 7th day of July, 2016.



ROBERT C. JONES
United States District Judge

AA000787

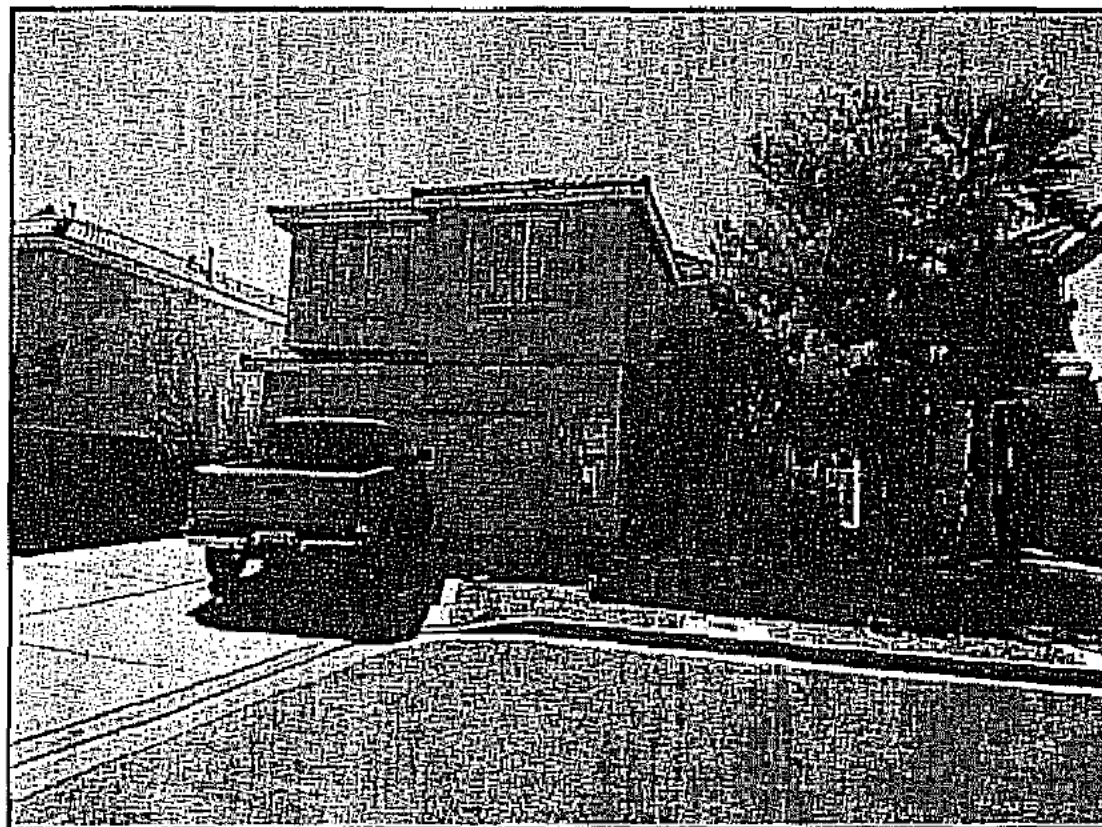
EXHIBIT Q

EXHIBIT Q

EXHIBIT Q

AA000788

APPRAISAL OF REAL PROPERTY



LOCATED AT

4641 Viareggio Court
Las Vegas, NV 89147
Conquistador Tompkins - Unit 2 Plat Book 93 Page 1 Lot 70 Block 1

FOR

Wright Firley & Zak
7785 W Sahara Avenue, Ste 200
Las Vegas, NV 89117

AS OF

August 22, 2013

BY

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

AA000789

WFZ00452

September 30, 2015

Wright Finlay & Zak
7785 W Sahara Avenue, Ste 200
Las Vegas, NV 89117

Re: Property: 4641 Viareggio Court
Las Vegas, NV 89147
Borrower: N/A
File No.: 4641 Viareggio Ct

Opinion of Value: \$ 175,000
Effective Date: August 22, 2013

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

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

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

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

The opinion assumes the date/time of value to be prior to the HOA lien transfer on the same date and assumes the property to be in average condition and professionally marketed and under normal terms.

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

Thank you for the opportunity to service your appraisal needs.

Sincerely,



R. Scott Dugan, SRA
License or Certification #: A.0000166-CG
State: NV Expires: 05/31/2017
appraisals@rsdugan.com

AA000790

WFZ00453

Client	Wright Finlay & Zak	File No. 4641 Viareggio			
Property Address	4641 Viareggio Court				
City	Las Vegas	County	Clark	State	NV
				Zip Code	89147
Borrower/Client	N/A				

TABLE OF CONTENTS

Cover Page	1
Letter of Transmittal	2
GP Residential	3
Additional Comparables 4-6	6
Explanatory Comments	7
Market Area Overview	9
Key Housing Indicators - Market Conditions	10
Case Study - Market Conditions	11
Rodin - Las Vegas Market Overview - Market Conditions	12
Assessor's Page - Page 1	13
Assessor's Page - Page 2	14
Location Map	15
Plot Map	16
Building Sketch	17
Subject Photos	18
Comparable Photos 1-3	19
Comparable Photos 4-6	20
Clarification of Scope of Work	21
GP Residential Certifications Addendum	24

RESIDENTIAL APPRAISAL REPORT

File No: 4641 Viareggio Ct

Property Address: 4641 Viareggio Court	City: Las Vegas	State: NV	Zip Code: 89147
County: Clark	Legal Description: Conquistador Tompkins - Unit 2 Plat Book 93 Page 1 Lot 70 Block 1		
Assessor's Parcel #: 163-19-311-015			
Tax Year: 2013	R.E. Taxes: \$ N/A	Special Assessments: \$ 0	Borrower (if applicable): N/A
Current Owner of Record: Monique Guillory	Occupant: <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant <input type="checkbox"/> Vacant <input type="checkbox"/> Manufactured Housing		
Project Type: <input checked="" type="checkbox"/> PUD <input type="checkbox"/> Condominium <input type="checkbox"/> Cooperative <input type="checkbox"/> Other (describe)	HOA: \$ 70	<input type="checkbox"/> per year <input checked="" type="checkbox"/> per month	
Market Area Name: Conquistador Tompkins - SW Las Vegas	Map Reference: 62-A2	Census Tract: 58.47	
The purpose of this appraisal is to develop an opinion of: <input checked="" type="checkbox"/> Market Value (as defined), or <input type="checkbox"/> other type of value (describe)			
This report reflects the following value (if not current, see comments): <input type="checkbox"/> Current (the inspection date is the Effective Date) <input checked="" type="checkbox"/> Retrospective <input type="checkbox"/> Prospective			
Approaches developed for this appraisal: <input checked="" type="checkbox"/> Sales Comparison Approach <input type="checkbox"/> Cost Approach <input type="checkbox"/> Income Approach (See Reconciliation Comments and Scope of Work)			
Property Rights Appraised: <input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold <input type="checkbox"/> Leased Fee <input type="checkbox"/> Other (describe)			
Intended Use: Provide a Retrospective Market Value opinion for litigation involving the HOA foreclosure of the subject property. For definitions, refer to the attached Explanatory Comments - Retrospective Value and Definition of Value section in the Residential Certifications Addendum.			
Intended User(s) (by name or type): Wright Finlay & Zak and/or legal professionals associated with this case.			
Client: Wright Finlay & Zak	Address: 7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117		
Appraiser: R. Scott Dugan, SRA	Address: 8930 W Tropicana Avenue, Suite 1, Las Vegas, NV 89147		
Location: <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban <input type="checkbox"/> Rural	Predominant Occupancy: <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant <input type="checkbox"/> Vacant (0-5%) <input type="checkbox"/> Vacant (>5%)	One-Unit Housing PRICE AGE \$ (000) (yrs) 90 Low 1 350 High 13 170 Prod 11	Present Land Use One-Unit 60% 2-4 Unit 0% Multi-Unit 15% Comm'l 10% Vacant 15%
Built up: <input checked="" type="checkbox"/> Over 75% <input type="checkbox"/> 25-75% <input type="checkbox"/> Under 25%	Growth rate: <input type="checkbox"/> Rapid <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Slow	Property values: <input checked="" type="checkbox"/> Increasing <input type="checkbox"/> Stable <input type="checkbox"/> Declining	Change in Land Use <input checked="" type="checkbox"/> Not Likely <input type="checkbox"/> Likely * <input type="checkbox"/> In Process *
Demand/Supply: <input type="checkbox"/> Shortage <input checked="" type="checkbox"/> In Balance <input type="checkbox"/> Over Supply	Marketing time: <input checked="" type="checkbox"/> Under 3 Mos. <input type="checkbox"/> 3-6 Mos. <input type="checkbox"/> Over 6 Mos.	* To: _____	
Market Area Boundaries, Description, and Market Conditions (including support for the above characteristics and trends): Russell Rd - S, 215 Beltway - E, Flamingo Rd - N, and Hualapai Way - W. The subject project of Conquistador Tompkins is located near the central western edge of the MPC of Spring Valley, an unincorporated township, located in Clark County. There are a variety of residential tract housing with supporting services in the immediate area. The subject is within 1 to 3 +/- miles of major shopping/office/medical/school facilities, which includes the Grand Flamingo Center and Tropicana Bellway Center, Southern Hills Hospital & Medical Center, Bishop Gorman High School and Summerlin Mesa's 19 Acre Park. 7 to 10 +/- miles to the E and NE is the CBD and Resort Corridor (key employment centers) with good freeway and major street access. Currently prices are increasing in this market segment. Refer to - Explanatory Comments, market conditions, etc.			
Dimensions: 40 x 114	Site Area: .10 Acre (4,356 Sq Ft)		
Zoning Classification: R-2	Description: Medium Density Residential		
Zoning Compliance: <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Legal nonconforming (grandfathered) <input type="checkbox"/> Illegal <input type="checkbox"/> No zoning			
Are CC&Rs applicable? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown Have the documents been reviewed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Ground Rent (if applicable) \$ N/A			
Highest & Best Use as Improved: <input checked="" type="checkbox"/> Present use, or <input type="checkbox"/> Other use (explain) The highest and best use is limited to single-family residential via zoning, master plan and CC&R's.			
Actual Use as of Effective Date: Single Family Residential Use as appraised in this report: Single Family Residential			
Summary of Highest & Best Use: The subject is zoned residential and limited to residential uses by zoning and CC&R's, with no other uses permitted. There is sufficient demand and therefore the current use is the Highest & Best Use.			
Utilities Public Other Provider/Description	Off-site Improvements Type	Public Private	Topography Built Up Pad
Electricity <input checked="" type="checkbox"/> NV Energy	Street Asphalt	<input type="checkbox"/> <input checked="" type="checkbox"/>	Size Typical for Area
Gas <input checked="" type="checkbox"/> SW Gas	Curb/Gutter Concrete	<input type="checkbox"/> <input checked="" type="checkbox"/>	Shape Rectangular/CDS
Water <input checked="" type="checkbox"/> LLVWD	Sidewalk None	<input type="checkbox"/> <input checked="" type="checkbox"/>	Drainage Appears Adequate
Sanitary Sewer <input checked="" type="checkbox"/> Clark County	Street Lights Electric	<input type="checkbox"/> <input checked="" type="checkbox"/>	View Residential (Vacant Land)
Storm Sewer <input checked="" type="checkbox"/> Clark County	Alley None	<input type="checkbox"/> <input checked="" type="checkbox"/>	
Other site elements: <input type="checkbox"/> Inside Lot <input type="checkbox"/> Corner Lot <input checked="" type="checkbox"/> Cul de Sac <input checked="" type="checkbox"/> Underground Utilities <input type="checkbox"/> Other (describe)			
FEMA Spec'l Flood Hazard Area <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No FEMA Flood Zone X FEMA Map # 32003C2650F FEMA Map Date 11/16/2011			
Site Comments: The subject is typical for residences in the area with no adverse site conditions observed at the time of inspection. The site appears to have normal utility easements and setbacks. The subject backs to vacant land, which is presently zoned residential and has a planned use of office professional (not negative).			
General Description	Exterior Description	Foundation	Basement <input checked="" type="checkbox"/> None
# of Units One <input type="checkbox"/> Acc. Unit	Foundation Concrete/Avg	Slab Concrete	Heating Yes
# of Stories Two	Exterior Walls Stucco/Avg	Crawl Space None	Type FWA
Type <input checked="" type="checkbox"/> Det. <input type="checkbox"/> Att. <input type="checkbox"/>	Roof Surface Tile/Avg	Basement None	Fuel Gas
Design (Style) Ranch/2-Story	Gutters & Downsp. None	Sump Pump <input type="checkbox"/> None	Cooling Yes
<input checked="" type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> Und. Cons.	Window Type Insulated/Avg	Dampers <input type="checkbox"/> None	Central Yes
Actual Age (Yrs.) 12	Storm/Seams None	Settlement None	Other None
Effective Age (Yrs.) 12	Interior Description	Appliances	Car Storage <input type="checkbox"/> None
Floors Exterior Only	Refrigerator <input type="checkbox"/>	Attic <input type="checkbox"/> None	Garage # of cars (Tol.)
Walls Exterior Only	Range/Oven <input checked="" type="checkbox"/>	Stairs <input type="checkbox"/>	Attach. _____
Trim/Finish Exterior Only	Disposal <input checked="" type="checkbox"/>	Drop Stair <input type="checkbox"/>	Detach. _____
Bath Floor Exterior Only	Dishwasher <input checked="" type="checkbox"/>	Scuttle <input checked="" type="checkbox"/>	BL-In _____
Bath Wainscot Exterior Only	Fan/Hood <input checked="" type="checkbox"/>	Doorway <input type="checkbox"/>	Carport _____
Doors Exterior Only	Microwave <input checked="" type="checkbox"/>	Floor <input type="checkbox"/>	Driveway Yes
	Washer/Dryer <input type="checkbox"/>	Heated <input type="checkbox"/>	Surface Concrete
	Finished <input type="checkbox"/>	Pool None	
		Spa None	
Finished area above grade contains: 6 Rooms 3 Bedrooms 2.5 Bath(s) 1,644 Square Feet of Gross Living Area Above Grade			
Additional features: The property has standard features and amenities for this submarket.			
Describe the condition of the property (including physical, functional and external obsolescence): As of the physical date of inspection, the subject exterior was in overall average condition. In that this is a retrospective assignment per client request, the appraiser invokes the following Extraordinary Assumptions as of the effective date of inspection indicated within this report: 1) the condition of the interior was at minimum average 2) no obsolescence affected the interior improvements (missing kitchen appliances or bath fixtures, no AC, etc.). If one or more of these are found to be false, it could alter the value opinion and/or other conclusions in this report. Refer to the Explanatory Comments - definition of Extraordinary Assumption. For further information regarding the improvements, please refer to the photographs included in this report.			

RESIDENTIAL APPRAISAL REPORT

File No.: 4641 Viareggio Ct

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

Data Source(s): Public Records

1st Prior Subject Sale/Transfer
Date:
Price:
Source(s):

2nd Prior Subject Sale/Transfer
Date:
Price:
Source(s):

Analysis of sale/transfer history and/or any current agreement of sale/leasing: Local MLS and public records were used as sources for the Transfer History section, as applicable. Refer to Explanatory Comments - Sale History

Comparable sales/transfers - If comparables used sold previously within the date range of reporting guidelines, every reasonable effort was made to analyze the data to ensure that none were questionable transactions. As applicable, refer to the Summary of Sales Comparison Approach.

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

FEATURE	SUBJECT	COMPARABLE SALE # 1	COMPARABLE SALE # 2	COMPARABLE SALE # 3
Address	4641 Viareggio Court Las Vegas, NV 89147	10123 Flaggstaff Butte Avenue Las Vegas, NV 89148	9971 Canyon Peak Drive Las Vegas, NV 89147	10050 Hermit Rapids Avenue Las Vegas, NV 89148
Proximity to Subject		0.57 miles S	0.28 miles SE	0.48 miles S
Sale Price	\$	\$ 189,900	\$ 170,000	\$ 182,500
Sale Price/GLA	\$ /sq.ft.	\$ 117.73 /sq.ft.	\$ 123.82 /sq.ft.	\$ 113.14 /sq.ft.
Data Source(s)	MLS-Pub Records	MLS-Pub Records DOM 2	MLS-Pub Records DOM 86	MLS-Pub Records DOM 2
Verification Source(s)	Public Records	Doc# 201308260;1425	Doc# 201307110;1110	Doc# 201307100;3259
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	DESCRIPTION	DESCRIPTION
Sales or Financing		Traditional	Traditional	Traditional
Concessions		CASH \$0	CASH \$0	CASH \$0
Date of Sale/Time		08/28/2013	07/11/2013	07/10/2013
Rights Appraised	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Location	Comp Tompkins/GI	Grandbrooke/NoGI	Tompkins GC/GI	Grandbrooke/NoGI
Site	4,356 SF/CDS	4,356 SF/CDS	5,227 SF/Interior	3,920 SF/Interior
View	Residential	Residential	Residential	Residential
Design (Style)	Ranch/2-Story	Ranch/2-Story	Ranch/1-Story	Ranch/2-Story
Quality of Construction	Stucco	Stucco	Stucco	Stucco
Age	2001	2002	2001	2001
Condition	Average	Average-Good	Average	Good/Part Renov
Above Grade	Total Bdrms Baths	Total Bdrms Baths	Total Bdrms Baths	Total Bdrms Baths
Room Count	6 3 2.5	7 3 2.5	6 3 2	7 3 2.5
Gross Living Area	1,544 sq.ft.	1,613 sq.ft.	1,373 sq.ft.	1,613 sq.ft.
Basement & Finished	None	None	None	None
Rooms Below Grade	None	None	None	None
Functional Utility	Average	Average	Average	Average
Heating/Cooling	Central	Central	Central	Central
Energy Efficient Homes	Standard	Standard	Standard	Standard
Garage/Carport	2 Car Garage	2 Car Garage	2 Car Garage	2 Car Garage
Porch/Patio/Deck	L/S, Patio	L/S, C/Patio	L/S, Patio	L/S, C/Patio
Pool Package	None	Pool	None	None
Contract Date	None	08/08/2013	06/21/2013	08/20/2013
Net Adjustment (Total)		\$ -18,600	\$ 3,400	\$ -7,800
Adjusted Sale Price of Comparables		\$ 173,300	\$ 173,400	\$ 174,700

Summary of Sales Comparison Approach In consideration of the above market transactions and current market conditions, greatest consideration is placed on the Sales Comparison Approach to Value. The value opinion is correlated at \$175,000. The package price per square foot of \$113 (rounded) includes land plus improvements. The comparable closed transactions indicate a package price from \$109 to \$138. The subject's package price is supported by the unadjusted sale price divided by gross living area of the comparables utilized which in the appraiser's determination would reasonably compete with the subject property. Gross comparison of the data did not support adjustments for minor variations in lot, site, age, bath, or patio. While these minor variations were noted, in most cases a consistent value difference indication between the sales could not be isolated. The adjusted range of comparable pricing brackets and supports the value conclusion. The subject's central tendency is \$175,000 (rounded) and is considered reasonable in support of the final conclusion of value. Refer to Explanatory Comments - Sales Comparison Approach comments.

Indicated Value by Sales Comparison Approach \$ 175,000

RESIDENTIAL APPRAISAL REPORT

File No.: 4641 Viareggio Ct

COST APPROACH	COST APPROACH TO VALUE (If developed) <input checked="" type="checkbox"/> The Cost Approach was not developed for this appraisal.	
	Provide adequate information for replication of the following cost figures and calculations.	
	Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value): <u>The Cost Approach is not applicable due to building design and inability to construct a single unit. The subject improvements and site were constructed with some degree of "economy of scale" (multiple units - single developer) as a small tract subdivision. The cost approach is based upon the theory of a buyer being able to "build a substitute property" as opposed to buying the subject property. In this case, a buyer would not have this option for several reasons: 1) economy of scale and 2) the inability to purchase a small finished building site in the same general location as the subject. These and other conditions render the cost approach unreliable.</u>	
	ESTIMATED <input type="checkbox"/> REPRODUCTION OR <input type="checkbox"/> REPLACEMENT COST NEW	OPINION OF SITE VALUE = \$
	Source of cost data:	DWELLING Sq. Ft. @ \$ = \$
	Quoted from cost service: Effective date of cost data:	Sq. Ft. @ \$ = \$
	Comments on Cost Approach (gross living area calculations, depreciation, etc.):	Sq. Ft. @ \$ = \$
	Refer to the above section on site value.	Sq. Ft. @ \$ = \$
		Sq. Ft. @ \$ = \$
		Sq. Ft. @ \$ = \$
INCOME APPROACH	Estimated Remaining Economic Life (If required): 60 Years	
	INDICATED VALUE BY COST APPROACH = \$	
	INCOME APPROACH TO VALUE (If developed) <input checked="" type="checkbox"/> The Income Approach was not developed for this appraisal.	
	Estimated Monthly Market Rent \$ N/A	X Gross Rent Multiplier N/A = \$ N/A
	Indicated Value by Income Approach	
	Summary of Income Approach (including support for market rent and GRM): <u>Often, there will be homes in the subject neighborhood that are rented. However, rental of homes in a neighborhood does not determine the reliability and credibility of the income approach. Homes can be rented below or above market rate and subsequent sales of these units produce GRMs from those sales that may be misleading. This is the case with the subject property. The rental and GRM data is too inconsistent from which to complete a reliable income approach.</u>	
PROJECT INFORMATION FOR PUDs (If applicable)	<input checked="" type="checkbox"/> The Subject is part of a Planned Unit Development.	
	Legal Name of Project: <u>Conquistador Tompkins</u>	
	Describe common elements and recreational facilities: <u>Gated entry, private streets, perimeter fencing, and enforcement of CC&R's.</u>	
RECONCILIATION	Indicated Value by Sales Comparison Approach \$ 175,000 Cost Approach (If developed) \$ N/A Income Approach (If developed) \$ N/A	
	Final Reconciliation: <u>The value opinion is based upon direct sales comparison and considers a 30 to 90 day concurrent marketing and exposure period of the improvements. The cost and income approaches were not applied for the reasons stated within those areas. The value opinion is based upon the extraordinary assumptions referenced below and assumes all systems (mechanical, electrical, plumbing, structural, roof, etc.) are operational and functioning correctly. The appraiser is not a home inspector and anyone relying on this report should not consider this appraisal as a home inspection. Please read the report in its entirety for a full understanding of the techniques and logic employed.</u>	
	This appraisal is made <input checked="" type="checkbox"/> "as is", <input type="checkbox"/> subject to completion per plans and specifications on the basis of a Hypothetical Condition that the improvements have been completed, <input type="checkbox"/> subject to the following repairs or alterations on the basis of a Hypothetical Condition that the repairs or alterations have been completed, <input type="checkbox"/> subject to the following required inspection based on the Extraordinary Assumption that the condition or deficiency does not require alteration or repair. <u>This is a retrospective value opinion based upon a drive-by inspection and subject to the stated extraordinary assumption(s) elsewhere within this report along with the specific assignment conditions.</u>	
	<input checked="" type="checkbox"/> This report is also subject to other Hypothetical Conditions and/or Extraordinary Assumptions as specified in the attached addenda.	
	Based on the degree of inspection of the subject property, as indicated below, defined Scope of Work, Statement of Assumptions and Limiting Conditions, and Appraiser's Certifications, my (our) Opinion of the Market Value (or other specified value type), as defined herein, of the real property that is the subject of this report is: \$ 175,000, as of: August 22, 2013, which is the effective date of this appraisal.	
	If indicated above, this Opinion of Value is subject to Hypothetical Conditions and/or Extraordinary Assumptions included in this report. See attached addenda.	
	A true and complete copy of this report contains 25 pages, including exhibits which are considered an integral part of the report. This appraisal report may not be properly understood without reference to the information contained in the complete report.	
	Attached Exhibits:	
	<input checked="" type="checkbox"/> Letter of Transmittal <input checked="" type="checkbox"/> Explanatory Comments <input checked="" type="checkbox"/> Photos <input checked="" type="checkbox"/> GP-Res Certs/Addenda <input type="checkbox"/> <input checked="" type="checkbox"/> Extraordinary Assumptions <input checked="" type="checkbox"/> Market Conditions/Graph(s) <input checked="" type="checkbox"/> Assessor Pages <input type="checkbox"/> <input checked="" type="checkbox"/> Additional Sales <input checked="" type="checkbox"/> Map, Plat, Sketch Addenda <input checked="" type="checkbox"/> GP-Res Certs/Addenda <input type="checkbox"/>	
	Client Contact: <u>Wright Finlay & Zak</u> Client Name: <u>Wright Finlay & Zak</u>	
E-Mail: <u>blouper@wrightlegal.net</u> Address: <u>7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117</u>		
SIGNATURES	APPRaiser	
	SUPERVISORY APPRAISER (If required) or CO-APPRAISER (If applicable)	
	Appraiser Name: <u>R. Scott Dugan, SRA</u>	
	Supervisory or Co-Appraiser Name: _____	
	Company: <u>R. Scott Dugan Appraisal Company, Inc.</u>	
	Company: _____	
	Phone: <u>702-876-2000</u> Fax: <u>702-253-1888</u>	
	Phone: _____ Fax: _____	
	E-Mail: <u>appraisals@rsdugan.com</u>	
	E-Mail: _____	
Date of Report (Signature): <u>September 30, 2015</u>		
Date of Report (Signature): _____		
License or Certification #: <u>A0000168-CG</u> State: <u>NV</u>		
License or Certification #: _____ State: _____		
Designation: <u>SRA</u>		
Designation: _____		
Expiration Date of License or Certification: <u>05/31/2017</u>		
Expiration Date of License or Certification: _____		
Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input checked="" type="checkbox"/> Exterior Only <input type="checkbox"/> None		
Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input type="checkbox"/> Exterior Only <input type="checkbox"/> None		
Date of Inspection: <u>September 20, 2015</u>		
Date of Inspection: _____		

RESIDENTIAL

Copyright © 2017 by a la mode, Inc. This form may be reproduced unmodified without written permission; however, a la mode, Inc. must be acknowledged and credited. Form GPRES2 — "WinTOTAL" appraisal software by a la mode, Inc. — 1-800-ALAMODE

3/2007

WFZ00457

ADDITIONAL COMPARABLE SALES

File No.: 4641 Viareggio Ct.

FEATURE	SUBJECT	COMPARABLE SALE #4		COMPARABLE SALE #5		COMPARABLE SALE #6	
Address	4641 Viareggio Court Las Vegas, NV 89147	10088 Canyon Dunes Avenue Las Vegas, NV 89147		10077 Basalt Hollow Avenue Las Vegas, NV 89148		10076 San Gervasio Avenue Las Vegas, NV 89147	
Proximity to Subject		0.10 miles SE		0.53 miles S		0.10 miles NE	
Sale Price	\$	\$ 190,000		\$ 181,000		\$ 178,000	
Sale Price/GIA	\$ /sq.ft.	\$ 138.38 /sq.ft.		\$ 108.90 /sq.ft.		\$ 114.91 /sq.ft.	
Data Source(s)	MLS-Pub Records	MLS-Pub Records DOM 12		MLS-Pub Records DOM 4		MLS-Pub Records DOM 1	
Verification Source(s)	Public Records	Doc# 201306280:4566		Doc# 201306130:2182		Doc# 201304180:1744	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) \$ Adjust.	DESCRIPTION	+(-) \$ Adjust.	DESCRIPTION	+(-) \$ Adjust.
Sales or Financing Concessions		Traditional FHA \$0		Traditional CONV \$0		Traditional CASH \$0	
Date of Sale/Time		06/28/2013		06/13/2013		04/18/2013	
Rights Appraised	Fee Simple	Fee Simple		Fee Simple		Fee Simple	
Location	Conq Tompkins/GI	Conq Tompkins/GI		Grandbrooke/NoGI	+7,300	Conq Tompkins/GI	
Site	4,356 SF/GDS	6,534 SF/Interior		4,792 SF/Corner		4,356 SF/Interior	
View	Residential	Residential		Residential		Residential	
Design (Style)	Ranch/2-Story	Ranch/1-Story	-7,600	Ranch/2-Story		Ranch/2-Story	
Quality of Construction	Stucco	Stucco		Stucco		Stucco	
Age	2001	2001		2001		2001	
Condition	Average	Average-Good	-6,900	Average		Average/Good	-7,900
Above Grade Room Count	Total Bdrms Baths	Total Bdrms Baths		Total Bdrms Baths		Total Bdrms Baths	
	6 3 2.5	6 3 2		6 3 2.5		6 3 2.5	
Gross Living Area	1,544 sq.ft.	1,373 sq.ft.	+6,800	1,662 sq.ft.	-4,700	1,549 sq.ft.	0
Basement & Finished Rooms Below Grade	None	None		None		None	
Functional Utility	Average	Average		Average		Average	
Heating/Cooling	Central	Central		Central		Central	
Energy Efficient Items	Standard	Standard		Standard		Standard	
Garage/Carport	2 Car Garage	2 Car Garage		2 Car Garage		2 Car Garage	
Porch/Patio/Deck	U/S, Patio	U/S, C/Patio		U/S, C/Patio		U/S, Patio	
Pool Package	None	Pool/Spa	-15,200	Pool	-14,500	None	
Contract Date	None	04/23/2013	+7,600	05/07/2013	+5,400	04/05/2013	+7,100
Net Adjustment (Total)		<input type="checkbox"/> + <input checked="" type="checkbox"/> -	\$ -15,300	<input type="checkbox"/> + <input checked="" type="checkbox"/> -	\$ -6,500	<input type="checkbox"/> + <input checked="" type="checkbox"/> -	\$ -800
Adjusted Sale Price of Comparables			\$ 174,700		\$ 174,500		\$ 177,200

Summary of Sales Comparison Approach The comparable sales were on the market 2, 86, 2, 12, 4, and 1 days, respectively. Data was verified through MLS and public records, and the appraiser was able to determine that there appeared to be no significant sales concessions, special financing, or other considerations unless noted in the report.

Computer four reported a transfer on 05/20/2011 for \$132,900.

Explanatory Comments

File No. 4641 Viareggio Ct

Client	Wright Finlay & Zak				
Property Address	4641 Viareggio Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89147
Former Client	N/A				

EXTRAORDINARY ASSUMPTION:

USPAP provides the following definition for "extraordinary assumption":

Defined as an assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser's opinions or conclusions.

Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. (USPAP, 2014-2015 Edition)

This report was completed without an interior inspection of the subject. External sources including, but not limited to, information from a drive-by street inspection, appraiser's files, county records, and or multiple listing service data were relied upon for information used to describe the improvements and or condition of the subject.

As indicated on page 1 of this report, if the assumptions invoked are found to be false, it could alter the value opinion and or other conclusions in this report. As such, the appraiser reserves the right to amend the value opinion and or conclusions based on new or revised information.

Retrospective Value: is generally defined as "A value opinion effective as of a specified historical date. The term does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiation, deficiency judgments, estate tax, and condemnation. Inclusion of the type of value with this term is appropriate, e.g., "retrospective market value opinion." Source: Appraisal Institute, The Dictionary of Real Estate Appraisal, 5th ed. (Chicago: Appraisal Institute, 2010).

The final value within this appraisal assignment represents a "Retrospective" Market Value opinion as of the date of the HOA sale, August 22, 2013, the effective date of this report. The physical exterior inspection of the subject property was performed on September 20, 2015.

Sale History: Per county records, there has been no recorded transfer of title or ownership for the subject property within the past three years. As of the effective date of this appraisal, the subject has not, within the last 12 months, been offered for sale through the Las Vegas Board of Realtor's Multiple Listing Service.

Comments on Sales Comparison Approach: The comparables utilized in this report range in gross living area from 1,373 to 1,662 square feet. Due to the limited number of comparable sales available from within the subject's tract, comparable sales from nearby tracts were also used in this analysis.

AA000796

WFZ00459

Explanatory Comments

File No. 4641 Viareggio Ct

Client	Wright Finlay & Zak				
Property Address	4641 Viareggio Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89147
Borrower/Client	N/A				

If supported, individual line item adjustments were made to the comparable, to reflect the market recognized contribution of key attributes or factors present or absent, when contrasted to the subject property. The contribution of big ticket items (location, age/condition, quality, site, view, GLA, swim features, etc.) were adjusted on a line item basis. Minor value features (fireplaces, solar screens, storage sheds, etc.), that may appeal to some buyers, typically are not significant enough in their contribution to isolate as a single line item adjustment. In such cases, the presence of such items in the comparables were contrasted to the similar or offsetting items in the subject and factored into the reconciliation and final value opinion. Minor value features and or others, i.e., external factors lacking adjustment support, may not have been noted in the grid.

Comparables one, two and six back to either an exterior surface street, vacant land, or flood channel. The externalities may or may not have been factors in the sales of these properties. There was no apparent value impact between the sales, thus, adjustments for these comparisons were not deemed warranted.

Comparison of the sales supported reasonable adjustments for the following market recognized differences: non-gated projects and one-story design each at 4% of sale price; condition of average-good and good/part renovated at \$5 and \$10 per square foot of (GLA), with the average-good rated properties recognized for better overall condition, and the good/part renovated home described as having new two-tone paint, carpet, etc.; GLA at \$40 per square foot; and pool and pool/spa, each at 8% of sale price, where in this price range and location a pool/spa does not contribute a greater amount to value than a pool without spa.

Comparables were adjusted at 1% of the sale price per month based on contract date, to reflect increasing market conditions during this period. This generally is consistent with price changes in this market segment.

In developing the value opinion, the sales comparison approach was weighted. This approach considers and analyzes listings (active, pending sales, expired, etc.), along with closed sales, to determine the value opinion, factors affecting the market and the market direction or trends. This permits reconciliation of the trends and value indicators to form an opinion reflective of market conditions as of the date of value.

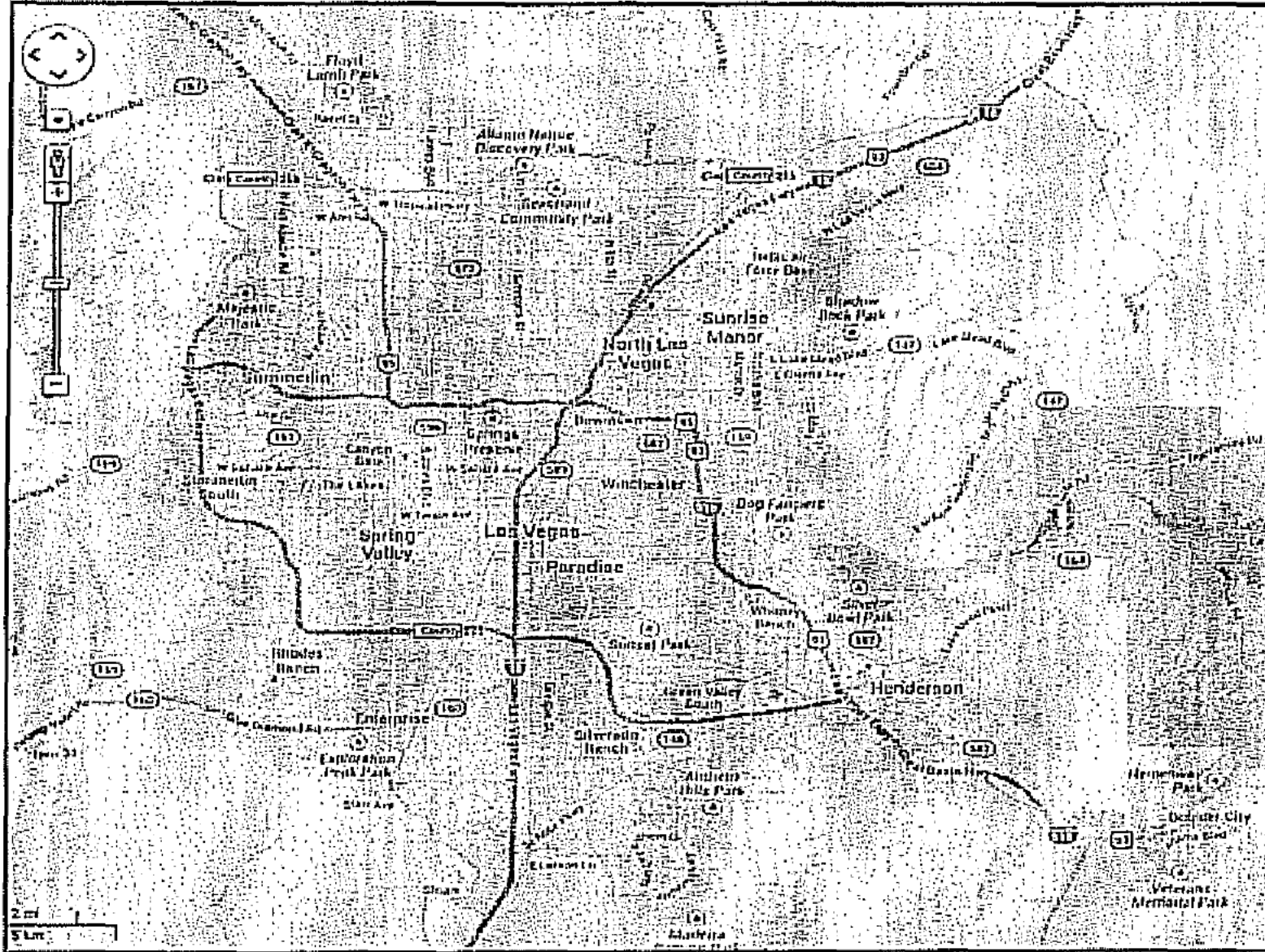
Private Road: The road agreement has not been reviewed by this appraiser. The property clearly has access over a private road due to evidence of a gated entry noted at time of inspection. We believe its use is legal and permitted, however, no title report or maintenance agreement was furnished. No liability is implied by this office regarding the road agreement. If desired, the client should obtain a copy of the Covenants, Codes, and Restrictions (CC&R'S) to confirm that the Home Owner's Association (HOA) maintains the private streets.

AA000797

WFZ00460

Market Area Overview

Client	Wright Finlay & Zak				
Property Address	4641 Viareggio Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89147
Borrower/Client	N/A				



General Area Description: The economy revolves around the Las Vegas Strip and Downtown Casino center along with key employment centers such as Nellis AFB, McCarran International Airport, numerous satellite retail, office and industrial districts that employ and service a base of 2-million people. The valley covers over 600+ square miles and includes parts of unincorporated Clark County, the cities of Las Vegas, North Las Vegas and Henderson. The unincorporated county areas within the valley have "Las Vegas" addresses and access to public services, making them transparent local to residents.

The valley is compact and can be crossed from any location in less than 1 hour. Buyer preferences are less dependent on location and more a function of personal choice, neighborhood attributes and housing types. The valley is divided into seven market areas (NW, NC, NE, SW, SC, SE and Henderson), each of which is further defined by political jurisdictions along with any number of master-planned communities a buyer would consider as a neighborhood, with emphasis on lifestyle, amenities and name recognition.

Key Factors influencing Housing Market Trends In the area: People buy or sell based on affordability, investment potential or relocation. From 2004-2007, the market was influenced by speculation. From 2007 through 2012, the market declined severely, influenced by REOs, short sales and investor activity. The market over-corrected from the peak to the bottom, creating an imbalance between "market value" and "economic value." Investors recognized the "economic imbalance" (the spread between the monthly payment vs. the monthly market rent for the same property) and used "all cash sales" to dominate the market for several years.

While investors remain active in the market, recently we are seeing "end users" (owner occupants) take a greater participation in the market. End users also include second homebuyers and long-term investors that purchase homes for rental and cash flow. Unlike investors that buy and flip homes over short periods, end users are more sensitive to shifts in financing.

As interest rates move up from their historically low levels, pricing (and therefore values) will adjust as the market attempts to sort itself out and find balance. Until normal market level balances are reached (relationship between rents and mortgage payments or economic value reaches sale price), it is likely the market will experience some fluctuation between similar units at the neighborhood level.

Key Housing Indicators - Market Conditions

Client	Wright Finlay & Zak					
Property Address	4641 Viareggio Court					
City	Las Vegas	County	Clark	State	NV	Zip Code 89147
Borrower/Client	N/A					

The key indicators below show the relationships between employment, housing prices, affordability and movement in the market. Effective housing demand is a combination of supply, price and monthly payment.

LAS VEGAS VALLEY MARKET OVERVIEW - June 2013						
	2008	2009	2010	2011	2012	2013-YTD
Job Growth - Annual	12,300	-38,051	-10,384	-8,179	27,009	17,200
SFR Median Sale Price	\$222,500	\$140,000	\$135,347	\$124,750	\$132,393	\$164,000
Interest Rate %	6.03	5.01	4.75	3.88	3.94	4.37
PI with 80% LTV - No MI	\$1,071	\$602	\$565	\$470	\$502	\$652
PI with 95% LTV-with MI	\$1,398	\$794	\$744	\$628	\$671	\$871
3 BR Metro Avg. Apt Rent	\$1,105	\$1,014	\$977	\$964	\$934	\$946
Metro SFR Median Rent	\$1,250	\$1,195	\$1,113	\$1,115	\$1,095	\$1,098
GLVARMLS SFR Annual Activity - 2013 is YTD through June						
Listings Total Year - YTD	61,038	57,016	56,643	55,174	40,271	20,041
Listings W/O Offer Yr End - YTD		8,405	12,417	8,831	3,688	3,828
Sales	24,924	38,127	34,434	38,153	36,609	16,975
List to Sale Ratio	41%	67%	61%	69%	91%	85%
Med List Price (Annual & YTD)	\$189,500	\$149,900	\$135,000	\$128,500	\$145,000	\$169,000
Med Sale Price (Annual)	\$222,500	\$140,000	\$135,347	\$124,750	\$132,393	\$164,000
Average DOM	68	61	64	72	69	56
Case Shiller Jan 2000 = 100	131.4	104.38	99.2	90.48	102.19	Mar 114.61

Recent Trends: There are many reports covering the Las Vegas MSA (Metropolitan Statistical Area) that simply compare period to period and not "apples to apples." Dynamics affecting this type of data are:

2010: The market was dominated by sales of REOs, "all cash" to investors and liquidated at price points significantly below economic value (affordability), often 35%+/- or more below value. Physical condition ranged from average to poor.

2011: There was a shift from a market dominated by REOs to one dominated by short sales. Many short sales were in better condition and unlike 2010; lenders took an active participation in negotiations, increasing prices closer to economic value.

2012: Short sales remained dominant and investors (due to a lack of REO inventory) shifted to short sales. Legislation made it difficult for lenders to foreclose and REO inventory was limited.

2013: Observers indicate lenders are holding REO inventory (from 40,000 to 60,000 units), in effect, creating a temporary shortage. The effect of the shortage has been to increase demand and current prices. Upward shifts in mortgage rates may have a negative effect on demand from end users and could cause some cancellations in the new and resale housing market.

Observations and Conclusions: Statistical analysis and year over year or period-to-period comparison are not reliable as the data reflects multiple sales of the same property (but in different condition), in the same year and or subsequent year and often, a disproportionate mix of highly dissimilar sales (condition). This will give the appearance of "appreciation", when in essence you are comparing "apples to oranges." In years past, or normal years, the sales volume reflects sales of a single property to end users as opposed to sale resale of the same property.

Economic correction of prices requires a significant increase in employment. You cannot have a sustained recovery without improvement in employment. Investors are now buying and renting more units. Rentals are up 20% over 2011 and 34% over 2010. Employment is improving, but lagging behind other areas. The market has corrected to some degree, however, stabilized prices are not a reflection of a "price point market correction," but rather depend on an "economic correction in the market" or the ability of end users (long-term occupants) to buy.

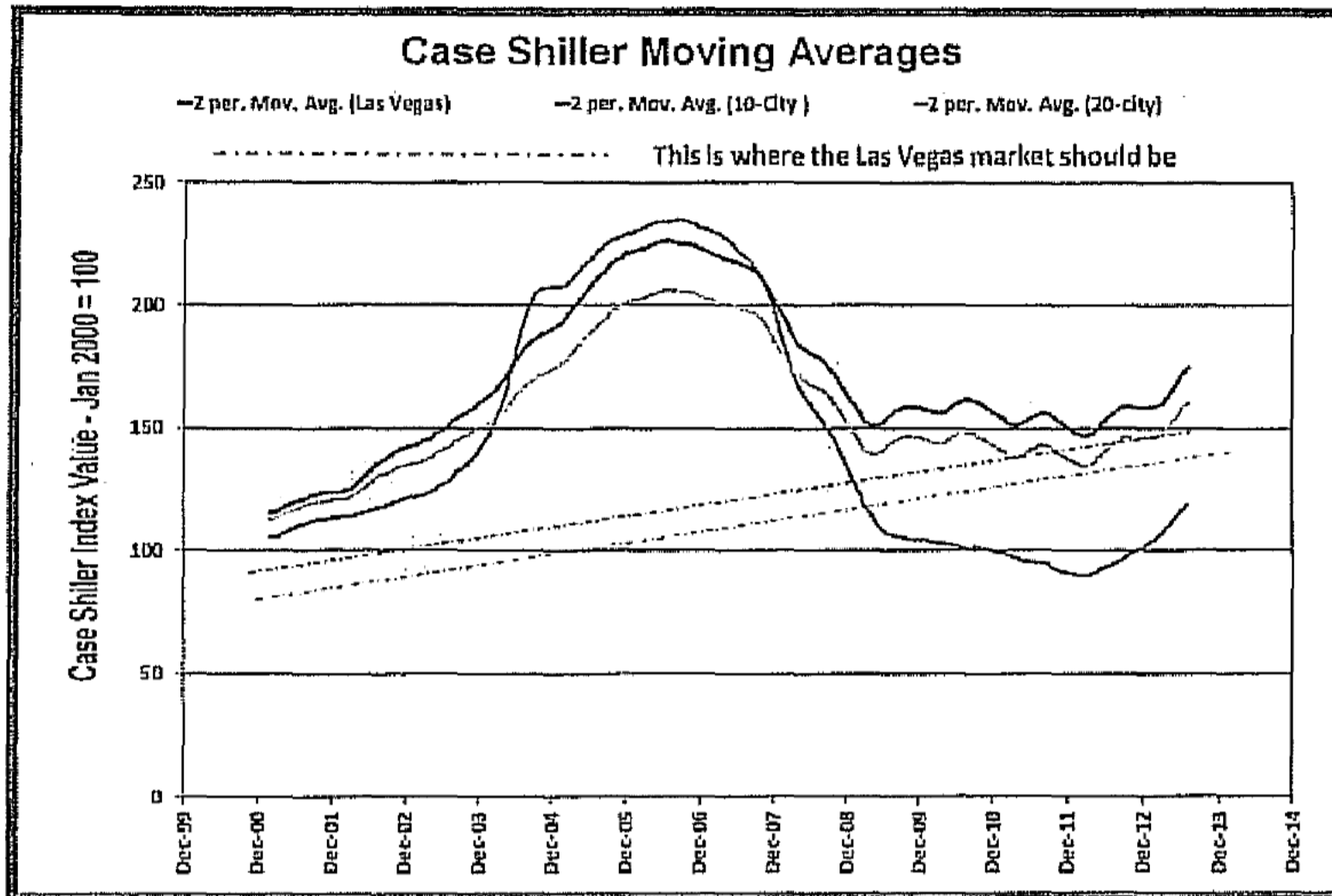
AA000799

WFZ00462

Case Shiller - Market Conditions

Client	Wright Finlay & Zak			
Property Address	4641 Viareggio Court			
City	Las Vegas	County	Clark	State NV Zip Code 89147
Broker/Client	N/A			

The Case Shiller Index compares Las Vegas to the 10 City and 20 City Averages. Historically, Las Vegas was below the 10 and 20 City Averages, however, during 2004-2007, Las Vegas exceeded these averages and the market correction began. By 2009, the Las Vegas market over-corrected as shown below and is now attempting to correct back to market norms.



As shown above, Las Vegas still is well below the 10 City and 20 City averages. Effectively, the housing market in Las Vegas remains well below where it should be if the housing market did not spin out of control in the mid 2000's. What we are seeing (current market conditions), is the market's attempt to correct.

Investors have dominated Las Vegas and other housing markets over the past several years because they realized what the rest of the market did not, housing in Las Vegas "economically under-valued." The combination of supply, purchasing power (interest rates) and utility (in many cases the condition of the property), made buying a home far more affordable than renting a home or an apartment. An investor could buy an "unoccupiable REO" for \$100,000, invest an additional \$25,000 in to it for repairs and sell it for \$160,000, all within 90 days and make a \$25,000 profit. Annualized, the \$25,000 becomes \$100,000 or an 80% annual return. This is why the majority of sales in many markets have been "all cash."

With historic low interest rates, even smaller profit margins, and holding onto and renting homes vs. fixing and flipping homes, makes economic sense to many investors. While single-family rentals are not averaging much more than Class A apartments, they are more attractive to renters (yards, features, size, garages, privacy, etc.), and the resale market value for housing is rising.

Market conditions is an adjustment for market changes over time, supply and demand conditions and other factors (short or long-term) affecting the market, including financing, affordability, etc. The increase or decrease in property values is the cause, and time is the measurement of the adjustment. During a market correction, there can be short-term spikes in market prices requiring a "market conditions" adjustment.

The Las Vegas housing market correction from 2006-2011, the excessive supply of homes (REO's and short sales) combined with unprecedented low interest rates, combined to create a buyer's market, essentially, conditions whereby buying a house is more affordable than renting one. The interest rates are so low, that an extra 10% increase in price is marginal in terms of additional monthly payment. We cannot project the sustainability of a market shift, only evidence an imbalance, to support a market conditions adjustment at this point.

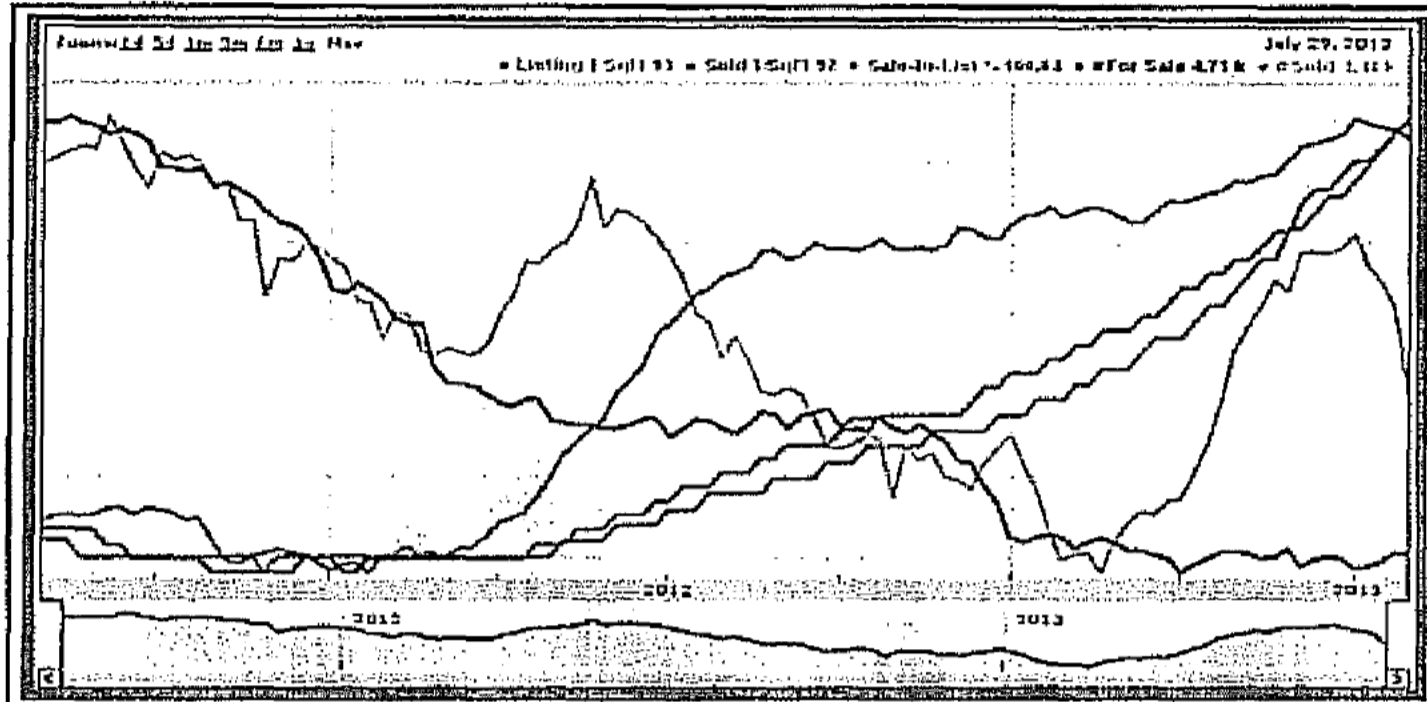
AA000800

WFZ00463

Redfin - Las Vegas Market Overview - Market Conditions

Client	Wright Finlay & Zak			
Property Address	4641 Viareggio Court			
City	Las Vegas	County	Clark	State NV Zip Code 89147
Borrower/Client	N/A			

The chart below from Redfin contrasts listing and sale activity in the Las Vegas Valley over the past 12 months.



Las Vegas and Nearby Cities

Area	Median Price	\$/SF	List/Sale Price Ratio
Las Vegas	\$160K	\$93	100.80%
Summerlin South	\$340K	\$158	99.00%
Spring Valley	\$172K	\$100	101.20%
Winchester	\$190K	\$118	98.10%
North Las Vegas	\$143K	\$76	102.00%
Whitney	\$105K	\$74	101.60%
Henderson	\$215K	\$109	101.00%
Boulder City	\$282K	\$151	97.6%

Measuring and Reporting Market Conditions: The appraiser's assignment is to identify the risk and place it into context of the market. It is the client's responsibility to measure and underwrite that risk. When reviewing the Las Vegas, NV market data, several things are clear. 1) Demand exceeds supply with demand bolstered by investors; 2) Purchasing power is greater than normal due to historically low interest rates; 3) Single family housing provides greater utility than apartments; and 4) Future supply is being held off the market.

This combination of factors acting in the market is creating a housing shortage and driving prices upwards, closing the gap between where we should have been and where we have been over the past few years. This is evident via multiple offers over list prices on many homes and shown in the Case-Shiller Index. The market is not in balance, therefore, this combination of influences (rates, investors, supply, demand) creates conditions that affect the market value criteria upon which this value opinion is based.

The intended user or anyone relying upon the value opinion should consider these factors and take steps to understand and mitigate the risk associated with unknown future market conditions, the speculative activities and influence of investors in the marketplace along with "shadow inventory" (REOs held by lenders). The key factors that influence value are supply and demand, interest rates and jobs. There is a difference between market value and investment value. Investors are active in this market area and effect current market trends and "prices". Value influences could easily shift and market prices (and eventually values) will shift as well.

Market movement and motivation: During a correction, sales may not reflect the actions of the "collective market" (as required by the definition of "market value"). Until equilibrium is reached, the market is not acting collectively, therefore, over the short-term, market value (most probable price), is tied to the individual market segment and the subject property's position in that segment. Reliability of statistical housing trends is affected by short-term shifts in supply and demand, investor activity and lender liquidations. This translates to sales data that is less reliable than it would be under balanced market conditions.

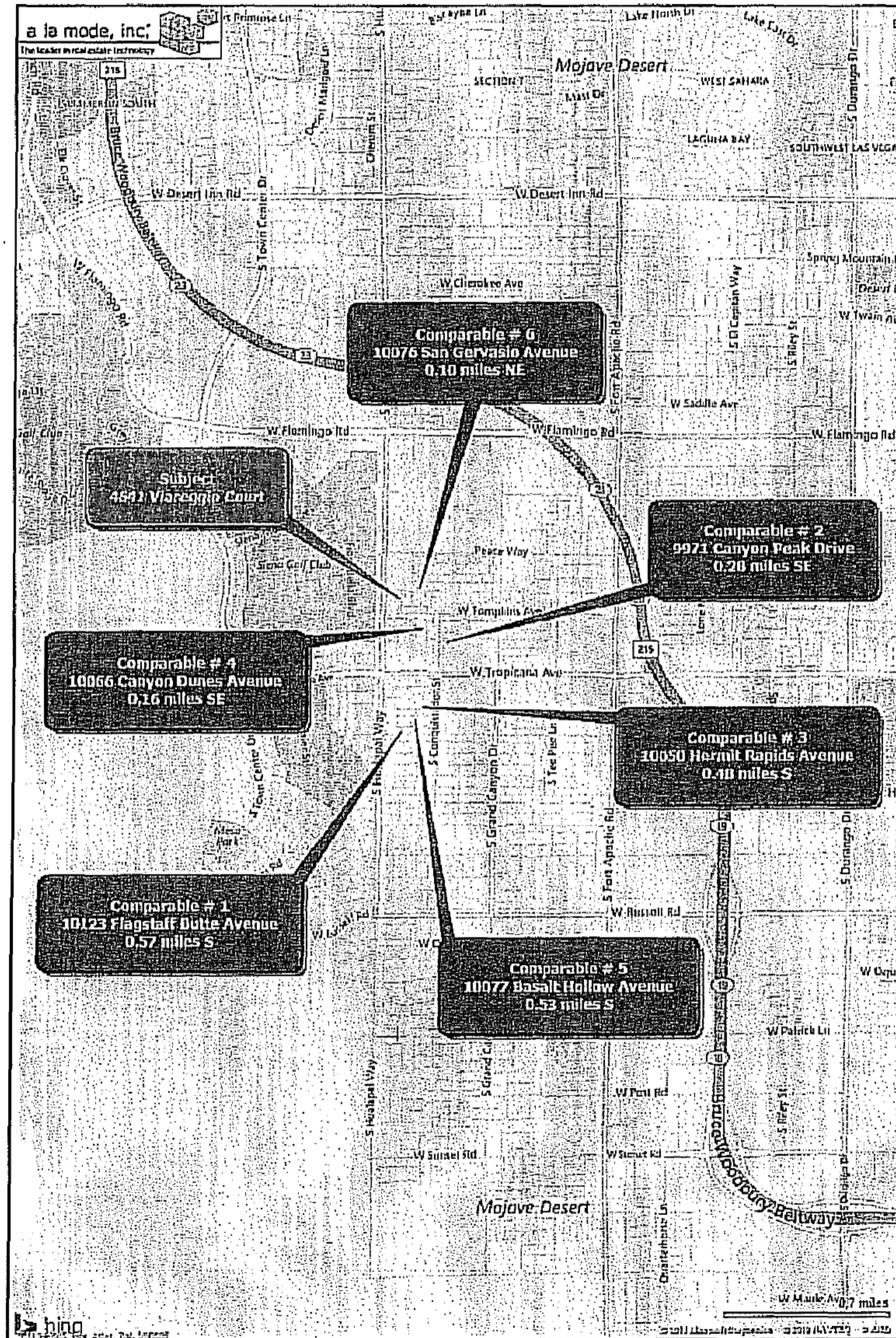
AA000801

WFZ00464

[illegible]

Location Map

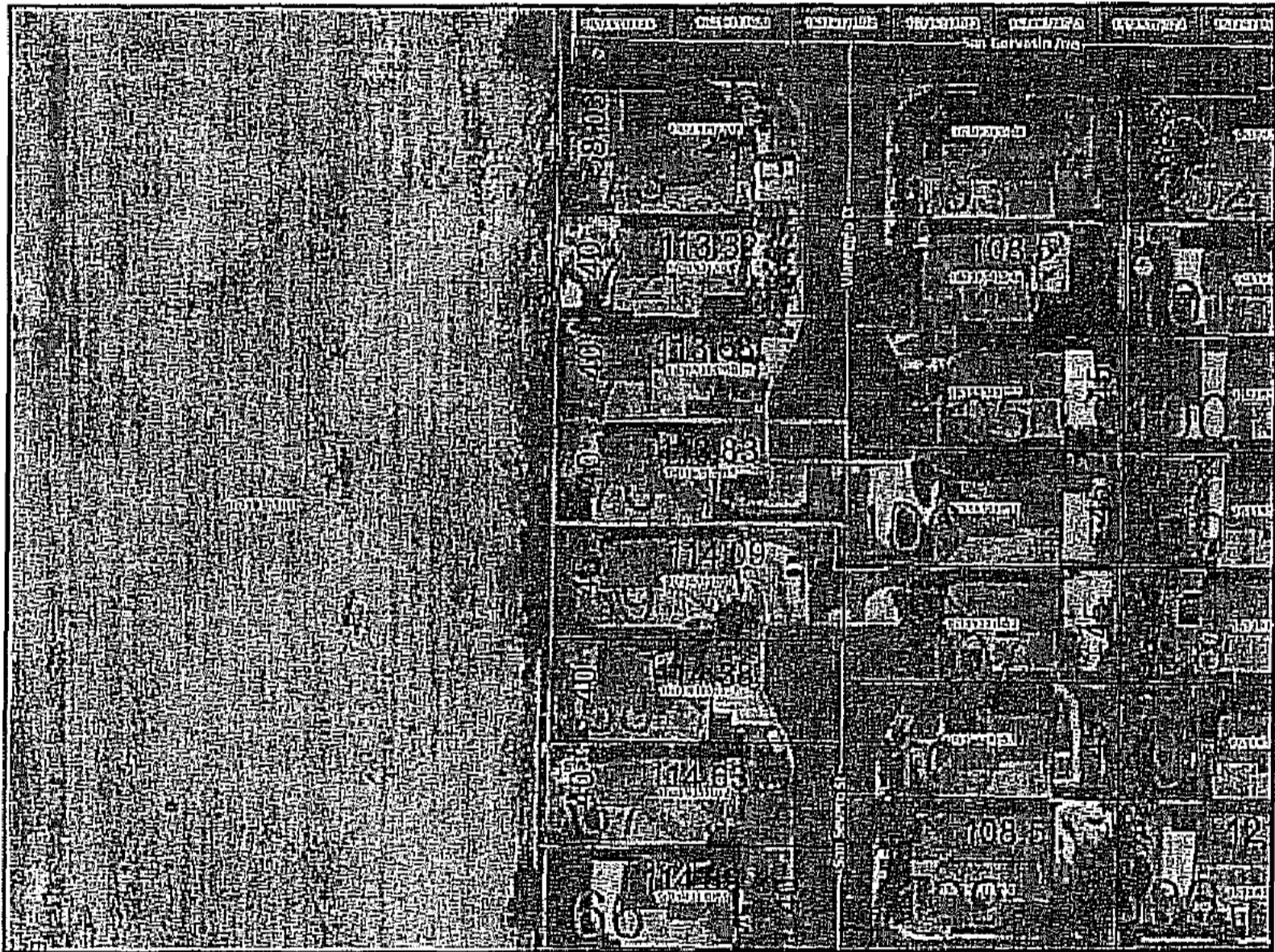
Client	Wright Finlay & Zak				
Property Address	4641 Viareggio Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89147
Borrower/Client	N/A				



AA000804

Plat Map

Client	Wright Finley & Zak				
Property Address	4641 Viareggio Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89147
Broker/Client	N/A				



Building Sketch

SKETCH/AREA TABLE ADDENDUM 163-19-311-015

611631931121501.AMF

APN 103-19-311-015

Address: 4041 Viceruggia Ct.

Q312 08-2000

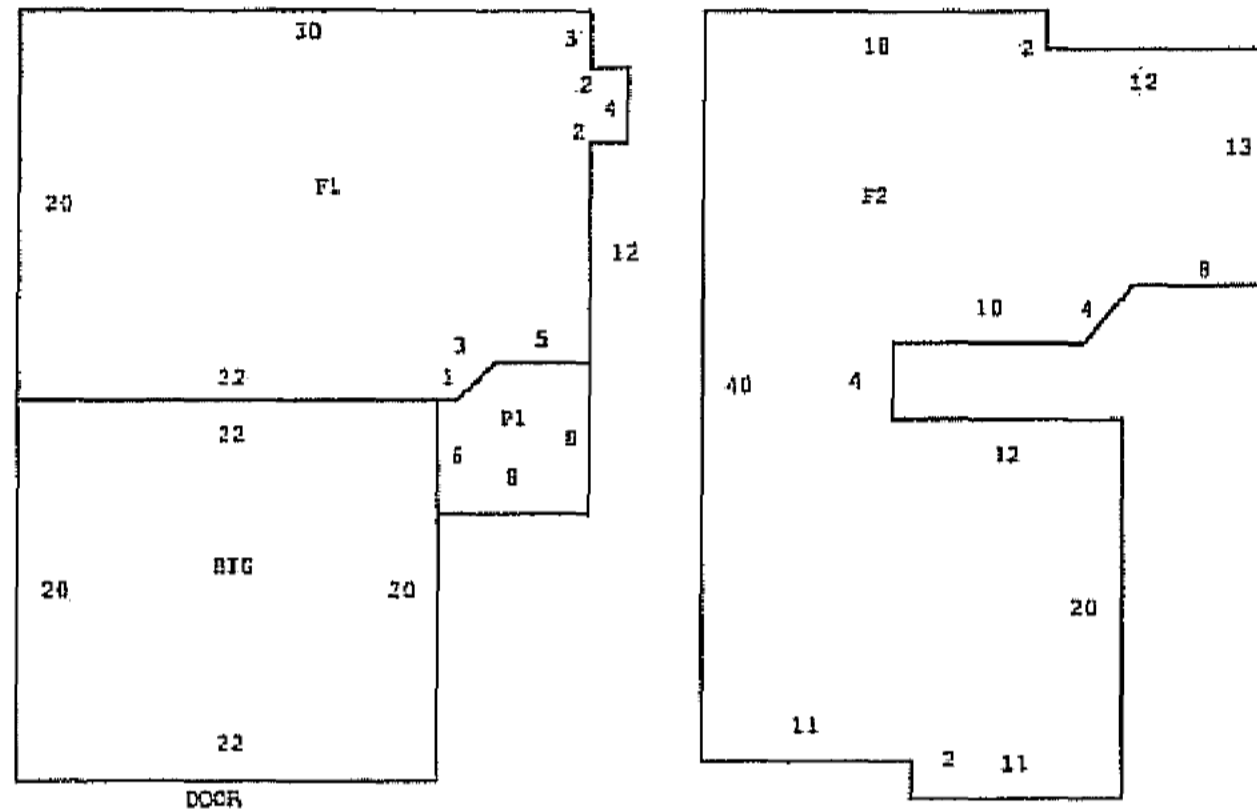
HA

LCR

Sub/Project NAPLES

N/A PERMA-BUILT HOMES

Drawn by # 124



Comments: This is for Tax Assessment Purposes Only. This drawing shows all possible options for this model. For specific parcel information please go to our web site at www.co.clack.wa.us/assessor/assessor.htm.

Scale: 1" = 12'

AREA CALCULATIONS SUMMARY					
Code	Description	Factor	Net Bldg	Perimeter	Net Totals
GLA1	F1	1.00	611.00	103.0	611.00
GLA2	F2	1.00	932.73	165.4	932.73
MLG	Built in Garage	1.00	440.00	84.0	440.00
PL	F1	1.00	60.00	30.8	60.00
Net LIVABLE Area (rounded w/ factors)					1544

COMMENTS	
FIXTURES	

Clark Darryl Leavitt

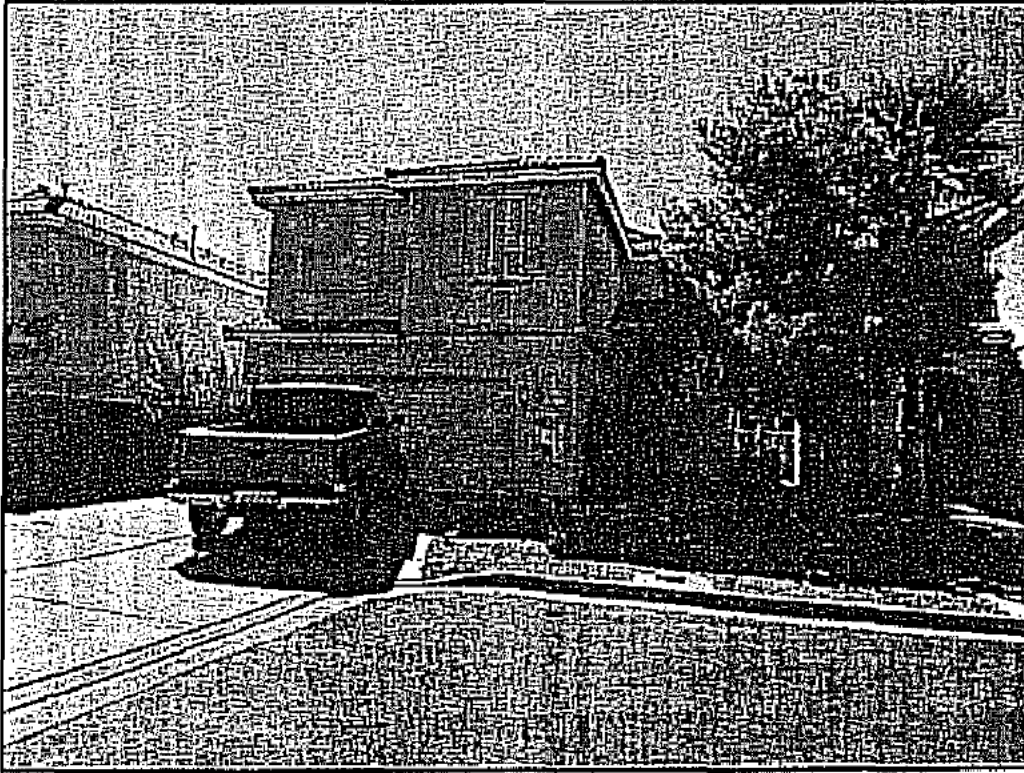
APR 20 1964

April 1974 - August 80

AA000806

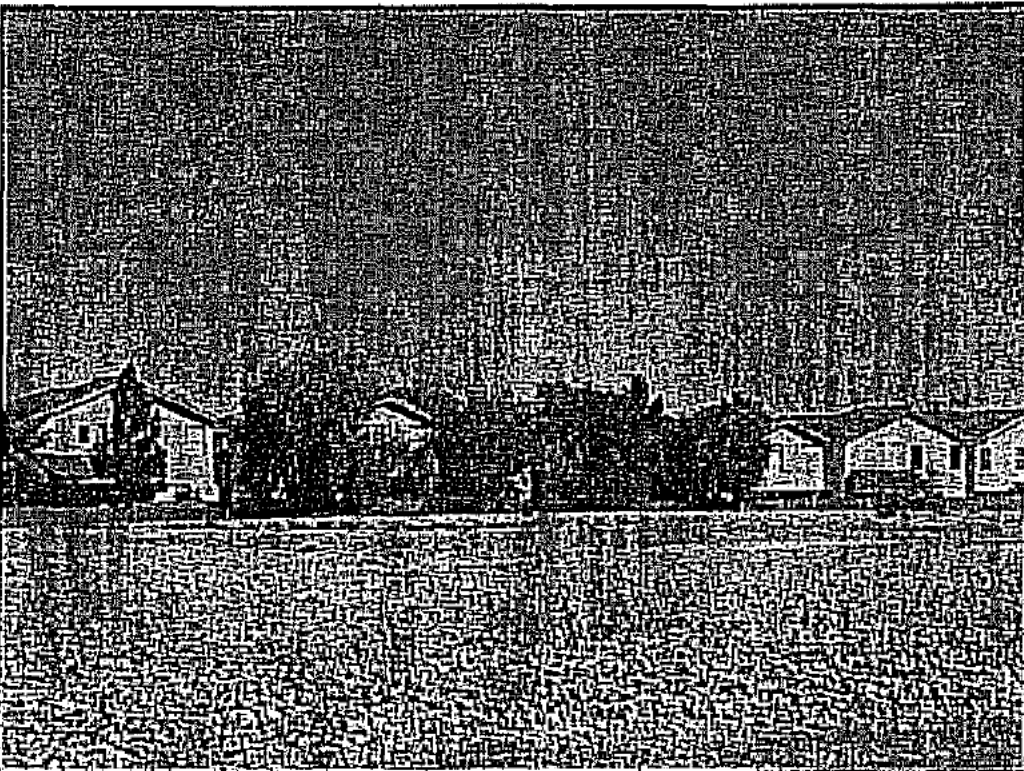
Subject Photo Page

Client	Wright Finlay & Zok				
Property Address	4641 Viareggio Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89147
Borrower/Client	N/A				

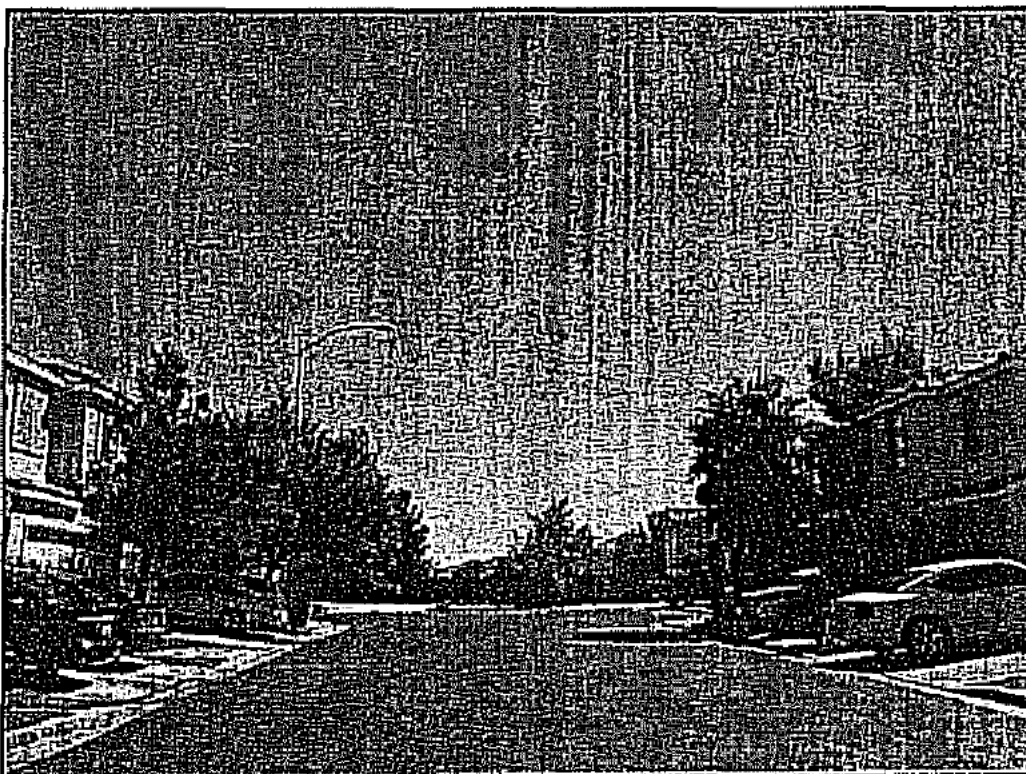


Subject Front

4641 Viareggio Court
Sales Price
Gross Living Area 1,544
Total Rooms 6
Total Bedrooms 3
Total Bathrooms 2.5
Location Conq Tompkins/Gl
View Residential
Site 4,356 SF/CDS
Quality Stucco
Age 2001



Abuts Vacant Land

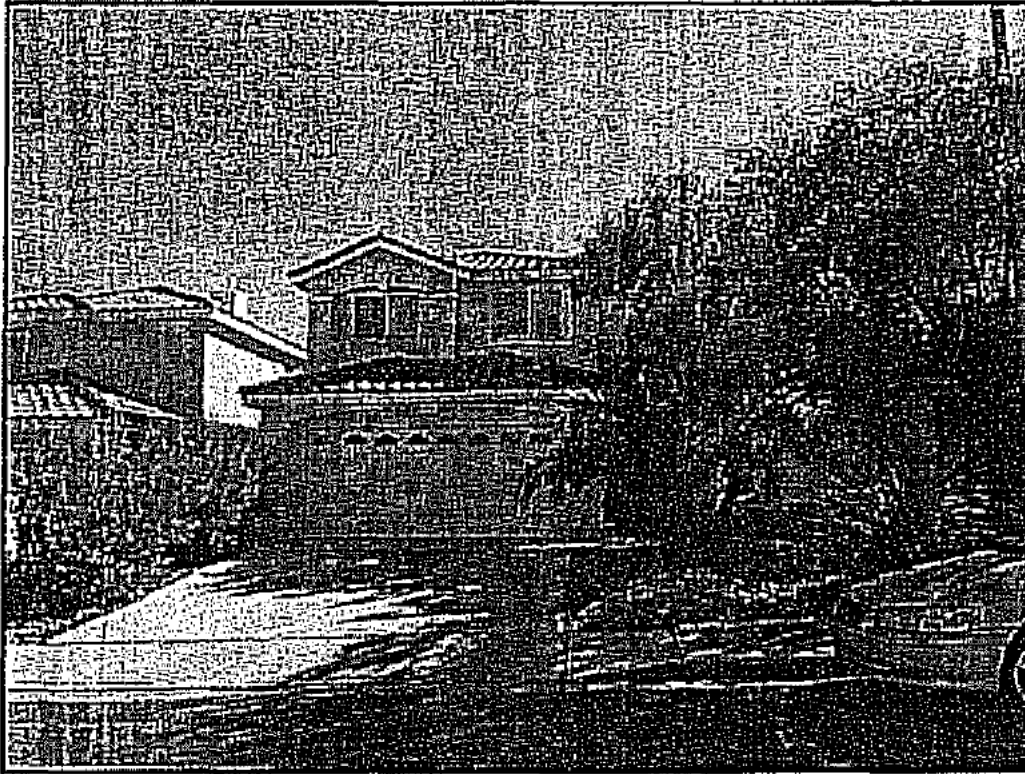


Subject Street

AA000807

Comparable Photo Page

Client	Wright Finlay & Zak				
Property Address	4641 Viareggio Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89147
Borrower/Client	N/A				



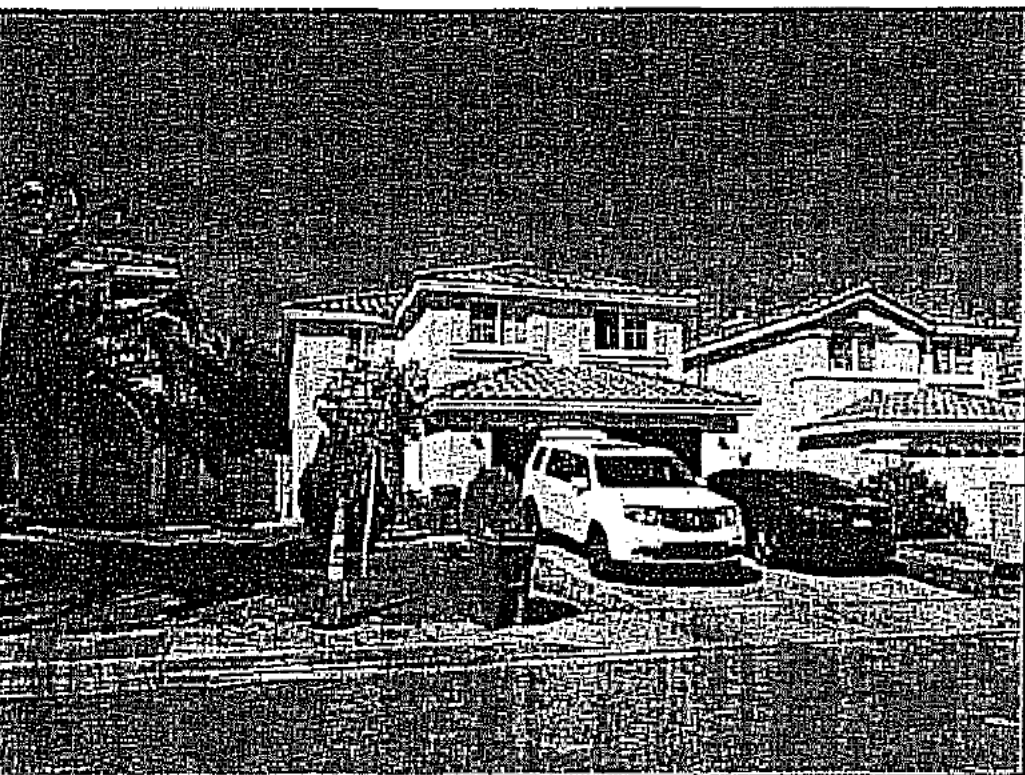
Comparable 1

18123 Flagstaff Butte Avenue
 Prox. to Subject 0.57 miles S
 Sales Price 189,900
 Gross Living Area 1,613
 Total Rooms 7
 Total Bedrooms 3
 Total Bathrooms 2.5
 Location Grandbrooke/NoGI
 View Residential
 Site 4,356 SF/CDS
 Quality Stucco
 Age 2002



Comparable 2

9971 Canyon Peak Drive
 Prox. to Subject 0.26 miles SE
 Sales Price 170,000
 Gross Living Area 1,373
 Total Rooms 6
 Total Bedrooms 3
 Total Bathrooms 2
 Location Tompkins GC/GI
 View Residential
 Site 5,227 SF/Interior
 Quality Stucco
 Age 2001



Comparable 3

10050 Hermit Rapids Avenue
 Prox. to Subject 0.48 miles S
 Sales Price 182,500
 Gross Living Area 1,613
 Total Rooms 7
 Total Bedrooms 3
 Total Bathrooms 2.5
 Location Grandbrooke/NoGI
 View Residential
 Site 3,920 SF/Interior
 Quality Stucco
 Age 2001

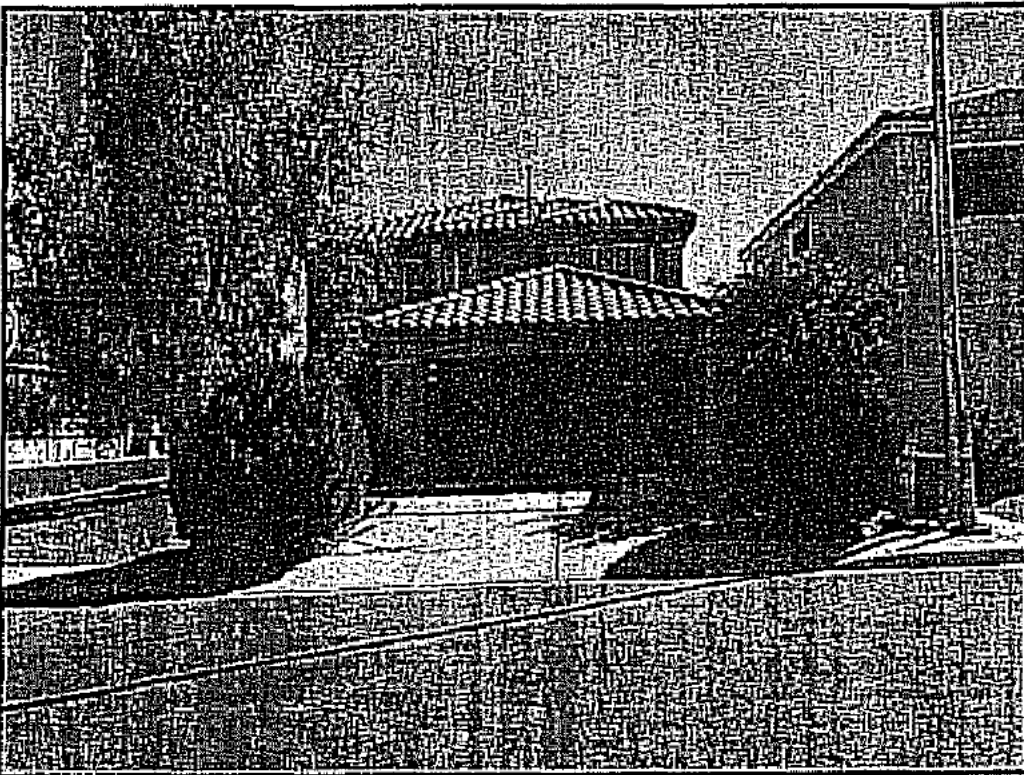
AA000808

Comparable Photo Page

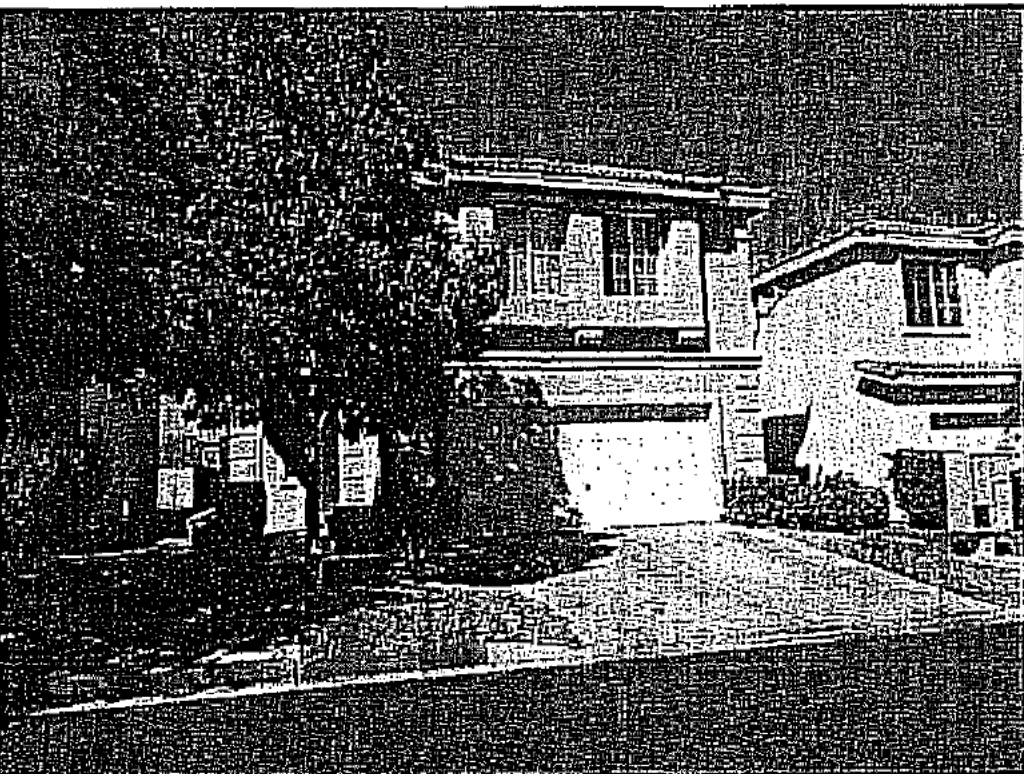
Client	Wright Finlay & Zak				
Property Address	4041 Viareggio Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89147
Borrower/Client	N/A				

**Comparable 4**

10066 Canyon Dunes Avenue
 Prox. to Subject 0.16 miles SE
 Sales Price 190,000
 Gross Living Area 1,373
 Total Rooms 6
 Total Bedrooms 3
 Total Bathrooms 2
 Location Conq Tompkins/Gl
 View Residential
 Site 6,634 SF/Interior
 Quality Stucco
 Age 2001

**Comparable 5**

10077 Basalt Hollow Avenue
 Prox. to Subject 0.53 miles S
 Sales Price 181,000
 Gross Living Area 1,662
 Total Rooms 6
 Total Bedrooms 3
 Total Bathrooms 2.5
 Location Grandbrooke/NoGl
 View Residential
 Site 4,792 SF/Corner
 Quality Stucco
 Age 2001

**Comparable 6**

10076 San Gervasio Avenue
 Prox. to Subject 0.10 miles NE
 Sales Price 178,000
 Gross Living Area 1,549
 Total Rooms 6
 Total Bedrooms 3
 Total Bathrooms 2.5
 Location Conq Tompkins/Gl
 View Residential
 Site 4,358 SF/Interior
 Quality Stucco
 Age 2001

AA000809

WFZ00472

Clarification of Scope of Work

File No. 4641 Viareggio Ct

Client	Wright Finlay & Zak			
Property Address	4641 Viareggio Court			
City	Las Vegas	County	Clark	State NV Zip Code 89147
Borrower/Client	N/A			

CLARIFICATION OF SCOPE OF WORK

(Rev. 09/08/2014)

This following, explanatory comments are not a modification of the assumptions, limiting conditions or certifications in the appraisal report, but a "clarification" of the appraiser's actions with respect to generally accepted appraisal practice and the requirements of this assignment. The intent is to clarify and document what the appraiser did and or did not do in order to develop the value opinion.

Limitations of the Assignment: The appraisal process is technical and therefore requires the intended user or anyone relying on the conclusions, to have a general understanding of the appraisal process to comprehend the limits of the applicability of the value opinion to the appraisal problem. Real estate is an "imperfect market" and one that can be affected by many factors. Therefore, supplemental reporting requirements and the realities of the market, including the reliability of the data sources, inability to verify key information and the reliance on information sources as being factual and accurate, can affect the conclusions within the report. Those relying on the report and its conclusions must understand and factor these limitations into their decisions regarding the subject property.

The "single point of value" (SPV) is based on the definition of value (stated within the report) which has criteria that may or may not be consistent in the marketplace. Value definitions often assume "knowledgeable buyers and sellers" or "no special motivations," when these and other criteria cannot be verified. For most assignments, guidelines require the selection and reporting of a SPV, taken from a range of value indicators that may vary high or low from the SPV due to factors that cannot be quantified or qualified within the constraints of the data, market conditions and time limits imposed in the development of the report and associated scope of work.

The SPV conclusion is a "benchmark" in time, provided at the request of the client and or intended user of this report and for the purpose stated. Anyone relying upon the conclusions should read the report in its entirety, to comprehend and accept the assignment conditions as suitable and reliable for their purpose. The definition of market value and its criteria is not universal in its application, nor consistent from one intended use to another.

This report was prepared to the intended user's requirements and only for their stated purpose. The analysis and conclusions are unique to that purpose and should not be relied upon for another purpose or use, even though they may seem similar. Decisions related to this property should only be made after properly considering all factors including information not within the report, but known or available to the reader and comprehending the process and guidelines that shape the appraisal process.

SCOPE OF WORK (SOW): Is "the type and extent of research and analysis in an assignment." This is specific to each appraisal given the appraisal problem and assignment conditions. The SOW is generally similar for most assignments, however, the property type or assignment conditions may require deviations from normal procedures. With some assignments, it is not possible to complete an interior inspection of the subject property. Likewise, with a retrospective date of value, the subject property and comparables may appear different than they were as of the effective value date.

For these and other reasons, this "clarification of scope of work" (COSOW) is intended as a guide to general tasks and analysis performed by the appraiser. These statements are a guide for comparison purposes (as part of the valuation process) and do not represent a detailed analysis of the physical or operational condition of these items. This report is not a home inspection. Any statement is advisory based only upon casual observation. The reader or intended user should not rely on this report to disclose hidden conditions and defects.

Complete Visual Inspection Includes: A visual inspection of only the readily accessible areas of the property and only those components that were clearly visible from the ground or floor level. List amenities, view readily observable interior and exterior areas, note quality of materials/workmanship and observe the general condition of improvements. Determine the building areas of the improvements; assess layout and utility of the property. Note the conformity to the market area. Perform a limited check and or observation of mechanical and electrical systems. Photograph interior/exterior, view site, observe and photograph each comparable from the street.

Complete Visual Inspection Does/Did NOT Include: Observation of spaces or areas not readily accessible to the typical visitor; building code compliance beyond obvious and apparent issues; testing or inspection of the well or septic system; mold and radon assessments; moving furniture or personal property; roof condition report beyond observation from the ground level.

No Interior Inspection: Some assignment conditions preclude inspection of the interior and or improvements on the site. Drive-by, review assignments, proposed construction and other assignment factors may affect the ability to view the improvements from the interior and at times, the exterior. In these cases, the appraiser has disclosed the "non-inspection" and used various sources of information to determine the property characteristics and condition as of the effective date of value. When applicable, these assignment conditions are stated in the report.

Inspect The Neighborhood: Observations were limited to driving through a representative number of streets in the area, reviewing maps and other data and observing comparables from the street to determine factors that may influence the value of the subject property. "Neighborhood" boundaries are not exact and are defined by the influence of physical, social, economic

AA000810

WFZ00473

Clarification of Scope of Work

File No. 4641 Viareggio Ct

Client	Wright Finlay & Zak			
Property Address	4641 Viareggio Court			
City	Las Vegas	County	Clark	State NV Zip Code 89147
Borrower/Client	N/A			

and governmental characteristics (the same criteria used to define census tracts). Over time, small areas merge and once distinct boundaries become less defined. Comparable data was selected based upon the area proximate to the subject that a buyer would consider directly competitive.

Repairs or Deterioration: Deficiency and livability are subjective terms. The value considers repair items that (in his/her opinion), affect safety, adequacy, and marketability of the property. Physical deterioration has not been itemized, but considered in the approaches to value.

Construction Defects: Construction defect issues (even when widely publicized) are not consistently reported in the MLS data. State law requires disclosure by the seller to a buyer of known defects and or prior issues. The definition of value assumes "informed buyer" and disclosure to the buyer is mandated by law. The analysis and conclusions presume the prices reported in the market data reflect the buyer's knowledge of prior or current defect related issues (if any).

Satisfactory Completion: The work will be completed as specified and consistent with the quality and workmanship associated with the quality classification identified and physical characteristics outlined within the report.

Cost Approach: Is applicable when the improvements are new or relatively new and when sufficient building sites are available to provide a buyer with a "construction alternative" to purchasing the subject. In areas where similar sites are not available and or in cases where the economy of scale from multi-unit construction is not available to a potential buyer, reliability of the cost approach is limited. Applicability of the cost approach in this assignment is specifically addressed in that section of the appraisal report.

If the cost approach was used it represents the "replacement cost estimate." If used, its inclusion was based on one of the following: request by the client; age requirement under FHA/HUD guidelines; or deemed appropriate for use by the appraiser for "valuation purposes." Regardless of the condition or reason for its use, it should not be relied upon for insurance purposes. The definition of "market value" used within this report is not consistent with the definition of "insurable value."

Income Approach: Is applicable when investors regularly acquire properties that are similarly desirable to the subject for the express purpose of the income they provide. While rentals may exist in any area, their presence alone is not proof of a viable rental and investor marketplace. Use or exclusion of the income approach is specifically addressed in that section of the appraisal report.

Gross Living Area (GLA): The Greater Las Vegas Association of Realtors ® MLS auto-populates the GLA from Clark County Assessor (CCAO) records. Assessors in Nevada are granted (by statute), leeway in determination of the GLA via several commonly employed methods to measure properties and typically rounds measurements to the nearest foot. Therefore, it is common to have variances between the "as measured" GLA by the appraiser and the "as reported" GLA from the CCAO. The GLVAR MLS handles more than 90% of the transactions in this area. Buyers and sellers rely on the MLS and therefore, the GLAs therein are the de-facto standard used by the market as a decision making factor. The appraiser deems the CCAO reported GLA as being reasonable and reliable for comparison purposes, regardless of any other standard used by builders, architects, agents, etc. The appraiser has considered these facts in the analysis and reconciled in the value opinion, only differences in GLA that would be "market recognized" and contribute to greater utility or function in the subject or comparable and greater value by the buying and selling public.

Extent of Data Research-Comparable Data: The appraiser used reasonably available information from city/county records, assessor's records, multiple listing service (MLS) data and visual observation to identify the relevant characteristics of the subject property. Comparables used were considered relevant to the analysis of subject property and applicable to the appraisal problem. The data was adjusted to the subject to reflect the market's reaction (if any and in terms of value contribution) to differences. Photographs taken by the appraiser are originals and un-altered, unless physical access was unavailable. In some cases, MLS photographs may be used to illustrate property conditions, views, etc.

Public and Private Data: The appraiser has access to public records and data available on the Internet, the Multiple Listing Service, various cost estimating services, flood data, maps and other property related information, along with private information and knowledge of the market that is pertinent and relevant for this assignment.

Adverse Factors: Based upon the standards of the party observing the property, a range of factors internal or external to the property may be "adverse" by their viewpoint. The appraiser noted factors that may affect the marketability and livability to potential buyers, based upon knowledge of the market and as evidenced by sales of properties with similar or comparable conditions. These items are noted in the report and the valuation approaches that were applied to the analysis. Some buyers in the market may consider factors such as drug labs, registered sex offenders, criminal activity, interim rehabilitation facilities, halfway houses or similar uses as "adverse". No attempt was made to investigate or discover such activities, unless such factors were readily apparent and obviously affecting the subject property as evidenced by market data. If the intended user or a reader has concerns in these areas, it is recommended that they secure this information from a reliable source.

AA000811

WFZ00474

Clarification of Scope of Work

File No. 4641 Viareggio Ct

Client	Wright Finlay & Zak				
Property Address	4641 Viareggio Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89147
Borrower/Client	N/A				

Easements: Major power transmission and distribution lines, railroad and other services related easements, including utility easements, limited common areas and conditions that grant others the right to access the subject property and or travel adjacent to the private areas of the subject property. The term adverse applies to individual perspective. It may or may not be negative, dependent upon the individual. One perspective may hold easements to be unappealing visually or disruptive. From another, such easements and corridors provide open space and ensure greater privacy (due to the size of the easement) from neighboring properties. Unless the easement affects the utility or use of the site or improvements, any impact was only considered from the perspective of marketability. In cases where the site abuts a major power transmission easement, the towers are generally centered within the right of-way and engineered to collapse within the easement. The effect or impact is inconsistent (as measured in the market) and therefore unless compelling evidence was found in comparable data, no adjustment was made, only the presence stated.

Valuation Methodology: The data presented in the report is considered to be the most relevant to the valuation of the subject property (and its market segment) based on its current occupancy and market environment. In areas influenced by foreclosure, short-sale and REO activity, and motivated (or impacted) by factors that cannot be qualified or quantified, the transactional characteristics of those sales may not fully meet the definition of market value criteria and therefore may be misleading. Verifications and drive-by inspections frequently reveal inconsistencies between the MLS and public records. Through this process, the appraiser can present the rationale supporting the final value opinion within the reconciliation and the reader can comprehend the logic and its application to the valuation process.

The Value Opinion: The value opinion may not be valid in another time-period. It is important for anyone relying on the report to comprehend the dynamic nature of real estate and the validity of the single value point or value range reported. The reported value is a benchmark or reference in time (as of a specific date) and subject to change (sometimes rapidly), based upon many factors including market conditions, interest rates, supply and demand. Therefore, anyone relying on the reported conclusions should first comprehend and accept the assignment conditions, assumptions, limiting conditions and other factors stated within the report as being suitable and reliable for their purpose and intended use.

Specific Reporting Guidelines: Market participants have unique appraisal reporting guidelines. The COSOW is supplemental to the forms stated scope of work, providing an overview of the appraiser's actions with respect to general appraisal practice and the stated requirements of the assignment. The intent is to clarify what the appraiser did and or did not do in order to develop the value opinion. Guidelines require the borrower receive a copy of the appraisal report, however, the borrower is not an intended user. The appraisal process and specific reporting requirements are highly technical and in most cases, beyond the comprehension of most readers. Anyone choosing to rely upon the appraisal should read the report in its entirety and if needed, consult with professionals that can assist them with understanding the basis of this report and the required reporting requirements, prior to making any decisions based upon the conclusions and or observations stated within.

Use of Electronic Appraisal Delivery Services: If the client directed that the appraiser transmit the content of this report via Appraisal Port or a similar delivery portal service, pursuant to user agreements, these services disclaim any warranty that the service provided will be error free and that these services may be subject to transmission errors. Accordingly, the client should make its own determination as to the accuracy and reliability of any such service they employ. The appraiser makes no representations and specifically disclaims any warranty regarding the accuracy or portrayal of content transmitted via Appraisal Port or any similar service or their reliability. The appraiser uses such technology at the specific direction and sole risk of the client. At its request, the client may obtain a true copy of the original report directly from the appraiser via email (PDF), mail or other means.

AA000812

WFZ00475

Assumptions, Limiting Conditions & Scope of Work

File No.: 4641 Viareggio Ct

Property Address: 4641 Viareggio Court

City: Las Vegas

State: NV

Zip Code: 89147

Client: Wright Finlay & Zak

Address: 7705 W Sahara Avenue, Ste 200, Las Vegas, NV 89117

Appraiser: R. Scott Dugan, SRA

Address: 6930 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147

STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS

- The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.
- The appraiser may have provided a sketch in the appraisal report to show approximate dimensions of the improvements, and any such sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size. Unless otherwise indicated, a Land Survey was not performed.
- If so indicated, the appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
- The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
- If the cost approach is included in this appraisal, the appraiser has estimated the value of the land in the cost approach at its highest and best use, and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used. Unless otherwise specifically indicated, the cost approach value is not an insurance value, and should not be used as such.
- The appraiser has noted in the appraisal report any adverse conditions (including, but not limited to, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property, or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property, or adverse environmental conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
- The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
- The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice, and any applicable federal, state or local laws.
- If this appraisal is indicated as subject to satisfactory completion, repairs, or alterations, the appraiser has based his or her appraisal report and valuation conclusion on the assumption that completion of the improvements will be performed in a workmanlike manner.
- An appraiser's client is the party (or parties) who engage an appraiser in a specific assignment. Any other party acquiring this report from the client does not become a party to the appraiser-client relationship. Any persons receiving this appraisal report because of disclosure requirements applicable to the appraiser's client do not become intended users of this report unless specifically identified by the client at the time of the assignment.
- The appraiser's written consent and approval must be obtained before this appraisal report can be conveyed by anyone to the public, through advertising, public relations, news, sales, or by means of any other media, or by its inclusion in a private or public database.
- An appraisal of real property is not a 'home inspection' and should not be construed as such. As part of the valuation process, the appraiser performs a non-invasive visual inventory that is not intended to reveal defects or detrimental conditions that are not readily apparent. The presence of such conditions or defects could adversely affect the appraiser's opinion of value. Clients with concerns about such potential negative factors are encouraged to engage the appropriate type of expert to investigate.

The Scope of Work is the type and extent of research and analyses performed in an appraisal assignment that is required to produce credible assignment results, given the nature of the appraisal problem, the specific requirements of the intended user(s) and the intended use of the appraisal report. Reliance upon this report, regardless of how acquired, by any party or for any use, other than those specified in this report by the Appraiser, is prohibited. The Opinion of Value that is the conclusion of this report is credible only within the context of the Scope of Work, Effective Date, the Date of Report, the Intended User(s), the Intended Use, the stated Assumptions and Limiting Conditions, any Hypothetical Conditions and/or Extraordinary Assumptions, and the Type of Value, as defined herein. The appraiser, appraisal firm, and related parties assume no obligation, liability, or accountability, and will not be responsible for any unauthorized use of this report or its conclusions.

Additional Comments (Scope of Work, Extraordinary Assumptions, Hypothetical Conditions, etc.):

Important - Please Read - The client should review this report in its entirety to gain a full awareness of the subject property, its market environment and to account for identified issues in their business decisions. This appraisal report includes comments, observations, exhibits, maps, explanatory comments, and addenda that are necessary for the reader to comprehend the relevant characteristics of the subject property. The Expanded Comments and Clarification of Scope of Work provides specifics as to the development of the appraisal along with exceptions that may have been necessary to complete a credible report.

INTENDED USE/USER:

The intended user of this appraisal report is the lender/client. No additional intended users are identified by the appraiser. This report contains sufficient information to enable the client to understand the report. Any other party receiving a copy of this report for any reason is not an intended user; nor does it result in an appraiser-client relationship. Use of this report by any other party(ies) is not intended by the appraiser.

SCOPE OF WORK:

In the normal course of business, the appraiser attempted to obtain an adequate amount of information regarding the subject and comparable properties. Some of the required standardized responses, especially those in which the appraiser has not had the opportunity to verify personally or measure, could mistakenly imply greater precision and reliability in the data than is factually correct or typical in the normal course of business. Consequently, this information should be considered an estimate unless otherwise noted by the appraiser.

Examples include condition and quality ratings, as well as comparable sales and listing data. Not every element of the subject property was viewable, and comparable property data was generally obtained from third-party sources (real estate agents, buyers, sellers, public records, and the Greater Las Vegas Board of Realtors Multiple Listing Service).

Certifications

File No.: 4641 Viareggio Ct

Property Address: 4641 Viareggio Court	City: Las Vegas	State: NV	Zip Code: 89147
Client: Wright Finlay & Zak	Address: 7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117		
Appraiser: R. Scott Dugan, SRA	Address: 8930 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147		

APPRAISER'S CERTIFICATION

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The credibility of this report, for the stated use by the stated user(s), of the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.
- I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.
- Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.
- Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification.

Additional Certifications:

Supplemental Certification: In compliance with the Ethics Rule of USPAP, I hereby certify that I have not performed any services with regard to the subject property within the 3-year period immediately preceding the engagement of this assignment.

Supplemental Certification: The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. As of the date of this report, I, R. Scott Dugan, SRA, Certified General Appraiser, have completed the continuing education program of the Appraisal Institute.

Definition of Market Value: (X) Market Value () Other Value


Source of Definition: FDIC Interagency Appraisal and Evaluation Guidelines (December 2, 2010) Appendix D

As defined in the Agencies' appraisal regulations, the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

*The definition of market value above is the most widely cited by federally regulated lending institutions, HUD and VA. Absent a specific definition from the client, this definition was used in the assignment.

Client Contact: Wright Finlay & Zak	Client Name: Wright Finlay & Zak
E-Mail: info@wfinlay.com	Address: 7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117

APPRAISER  Appraiser Name: R. Scott Dugan, SRA Company: R. Scott Dugan Appraisal Company, Inc. Phone: 702-876-2000 Fax: 702-253-1808 E-Mail: appraisals@rsdugan.com Date Report Signed: September 30, 2015 License or Certification #: A.0000166-CG State: NV Designation: SRA Expiration Date of License or Certification: 05/31/2017 Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input checked="" type="checkbox"/> Exterior Only <input type="checkbox"/> None Date of Inspection: September 20, 2015	SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable) Supervisory or Co-Appraiser Name: _____ Company: _____ Phone: _____ Fax: _____ E-Mail: _____ Date Report Signed: _____ License or Certification #: _____ State: _____ Designation: _____ Expiration Date of License or Certification: _____ Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input type="checkbox"/> Exterior Only <input type="checkbox"/> None Date of Inspection: _____
--	---



RESIDENTIAL

Copyright © 2007 by a la mode, Inc. This form may be reproduced unmodified without written permission. However, a la mode, Inc. must be acknowledged and credited.
 Form GPRES2AD — "WinTOTAL" appraisal software by a la mode, Inc. — 1-800-ALAMODE

3/2007

WFZ00477