

IN THE SUPREME COURT OF THE STATE OF NEVADA

<p>RIVER GLIDER AVENUE TRUST</p> <p style="text-align: center;">Appellant,</p> <p>v.</p> <p>HARBOR COVER HOMEOWNERS ASSOCIATION; and NEVADA ASSOCIATION SERVICES, INC.</p> <p style="text-align: center;">Respondents.</p>	<p>No.: 83689</p> <p style="text-align: center;">DOCKETING STATEMENT CIVIL APPEALS</p>
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Electronically Filed
Nov 18 2021 03:50 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District Eighth Department 20

County Clark Judge The Honorable Eric Johnson

District Ct. Case No. . A-20-819781-C

2. Attorney filing this docketing statement:

Attorney Christopher L. Benner Telephone (702) 254-7775

Firm Roger P. Croteau & Associates

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

Client(s) RIVER GLIDER AVENUE TRUST

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

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

Attorney Kaleb D. Anderson, Esq; Peter E. Dunkley, Esq.

Telephone (702) 382-1500

Firm Lipson Nielson, P.C.

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

Client(s) Harbor Cove Homeowners Association ("HOA")

Attorney Brandon E. Wood

Telephone: 702-804-8885

Firm: In House Counsel for Nevada Association Services ("NAS")

Address 6625 S. Valley View Blvd. Suite 300, Las Vegas, NV 89118

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

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

- ☐ Other disposition (specify): _____
- ☐ Dismissal
 - ☐ Lack of jurisdiction
 - ☐ Failure to state a claim
 - ☐ Failure to prosecute
- ☐ Other (specify): _____
- ☐ Divorce Decree:
 - ☐ Original ☐ Modification

5. Does this appeal rise issues concerning any of the following? No

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

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

None.

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

None

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

The instant action relates to real property that was the subject of a homeowners' association lien foreclosure sale pursuant to NRS Chapter 116, which occurred on May 11, 2012. The district court dismissed all claims against Defendants, with prejudice.

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

Pursuant to NRS Chapter 116 and NRS 116.1113, does the HOA by and through its agent, NAS, owe a duty of good faith and candor in its conducting of the NRS Chapter 116 foreclosure sale, especially if the bidders at the sale have inquired, or attempted to inquire, as to any payments to the underlying lien? Specifically, are the HOA and NAS required to disclosed to interested bidders, upon inquiry by a bidder prior to the sale, that a portion of the lien being foreclosed upon has been partially satisfied prior to the sale, with inquiry from the bidders? If they do have any obligation of good faith and candor in their dealings at the HOA Foreclosure Sale, does that obligation extend to NRS Chapter 116 foreclosure sale bidders and purchasers?

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

- a) DAISY TR. VS. GREEN VALLEY S. OWNERS ASS'N NO. 1, 83477
- b) DAISY TR. VS. EL CAPITAN RANCH LANDSCAPE MAINT. ASS'N, 83404
- c) OLIVER SAGEBRUSH DR. TR. VS. NEV. ASS'N SERVS., INC, 83238
- d) DAISY TR. VS. GREEN VALLEY S. OWNERS ASS'N NO. 1, 82611
- e) SATICOY BAY LLC SERIES 6387 HAMILTON GROVE V. SUNRISE, 83669

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

- ☒ N/A
- ☐ Yes
- ☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues? No

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first impression
- ☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

Is so, explain

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

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

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

Was it a bench or jury trial? _____

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

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from: September 21, 2021

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

Date written notice of entry of judgment or order was served: September 23, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

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

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____
Was Service by:

☐ Delivery

☐ Mail/Electronic/Fax

19. Date notice of appeal filed: October 20, 2021.

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

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

SUBSTANTIVE APPEALABILITY

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

(a)

☒ NRAP 3A(b)(1) ☐ NRS 38.205

☐ NRAP 3A(b)(2) ☐ NRS 233B.150

☐ NRAP 3A(b)(3) ☐ NRS 703.376

☐ Other (specify) _____

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

Appellant is appealing from the granting of the Respondent's Motion for Summary Judgment.

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

(a) Parties:

Plaintiff/Appellant RIVER GLIDER AVENUE TRUST

Defendant/Respondents: HARBOR COVE HOMEOWNERS ASSOCIATION; and NEVADA ASSOCIATION SERVICES, INC.

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

N/A

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

Appellant sought damages for (I) intentional and/or negligent misrepresentation, (II) breach of the duty of good faith under NRS 116.1113, (III) civil conspiracy, and (IV) Violation of NRS Chapter 113. All claims were dismissed by Order granting Harbor Cove Homeowner's Association's Renewed Motion for Summary Judgment, and NAS' Joinder thereto, on September 21, 2021. No other claims by any other party were made.

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

N/A

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

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

- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

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

RIVER GLIDER AVENUE TRUST

Name of appellant

Christopher L. Benner

Name of counsel of record

November 18, 2021

Date

/s/Christopher L. Benner, Esq

Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on November 18, 2021, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

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

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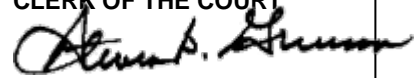
November 18, 2021,

/s/ Joe Koehle

An employee of Roger P. Croteau & Associates

EXHIBIT 1

EXHIBIT 1



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CASE NO: A-20-819781-C
Department 20

DISTRICT COURT

CLARK COUNTY, NEVADA

RIVER GLIDER AVENUE TRUST,

Plaintiff,

vs.

HARBOR COVE HOMEOWNERS
ASSOCIATION; and NEVADA
ASSOCIATION SERVICES, INC.,

Defendants.

Case No:
Dept No:

COMPLAINT

Plaintiff River Glider Avenue Trust (“**Plaintiff**”), by and through its attorneys, Roger P. Croteau & Associates, Ltd., hereby complains and alleges as follows:

PARTIES AND JURISDICTION

At all times relevant to this matter, Plaintiff was and is a Nevada trust, licensed to do business and doing business in the County of Clark, State of Nevada.

1. Plaintiff is the current owner of real property located at 8112 Lake Hills Drive Las Vegas, Nevada 89128 (APN: 138-16-213-034) (the “**Property**”).

1 2. Plaintiff acquired title to the Property by and through a Grant, Bargain, Sale Deed
2 from Lake Hills Drive Trust, which acquired the Property via Foreclosure Deed following a
3 homeowners' association lien foreclosure sale conducted on May 11, 2012 (the "**HOA Foreclosure**
4 **Sale**"), by Defendant Nevada Association Services, Inc., a Nevada company, authorized to do
5 business and doing business in Clark County, State of Nevada (the "**HOA Trustee**"), on behalf of
6 Defendant Harbor Cove Homeowners Association, a Nevada domestic non-profit corporation (the
7 "**HOA**").

8
9 3. The Foreclosure Deed was recorded in the Clark County Recorder's Office on May
10 17, 2012 (the "**HOA Foreclosure Deed**").

11
12 4. Upon information and belief, HOA is a Nevada common interest community
13 association or unit owners' association as defined in NRS 116.011, is organized and existing under
14 the laws of the State of Nevada, and transacts business in the State of Nevada.

15 5. Upon information and belief, HOA Trustee is a debt collection agency doing
16 business in the State of Nevada and is organized and existing under the laws of the State of
17 Delaware.

18 6. Venue is proper in Clark County, Nevada pursuant to NRS 13.040.

19 7. The exercise of jurisdiction by this Court over the parties in this civil action is proper
20 pursuant to NRS 14.065.

21
22 **GENERAL ALLEGATIONS**

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

1 9. When the assessments are not paid, a homeowners' association may impose a lien
2 against real property which it governs and thereafter foreclose on such lien.

3 10. NRS 116.3116 makes a homeowners' association's lien for assessments junior to a
4 first deed of trust beneficiary's secured interest in the property, with one limited exception; a
5 homeowners' association's lien is senior to a deed of trust beneficiary's secured interest "to the
6 extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the
7 extent of the assessments for common expenses based on the periodic budget adopted by the
8 association pursuant to NRS 116.3115 which would have become due in the absence of acceleration
9 during the 9 months immediately preceding institution of an action to enforce the lien." NRS
10 116.3116(2)(c).

11
12 11. In Nevada, when a homeowners' association properly forecloses upon a lien
13 containing a superpriority lien component, such foreclosure extinguishes a first deed of trust.

14 12. On or about April 19, 2005, Thomas D. Miller (the "**Former Owner**") purchased the
15 Property. Thereafter, the Former Owner obtained a loan for the Property from Cameron Financial
16 Group, Inc. ("**Lender**"),¹ that was evidenced by a promissory note and secured by a deed of trust
17 between the Former Owner and Lender, recorded against the Property on March 27, 2007, for the
18 loan amount of \$631,000.00 (the "**Deed of Trust**").

19 13. The Deed of Trust indicated that Mortgage Electronic Registration Systems, Inc.
20 ("**MERS**") "is acting solely as a nominee for Lender and Lender's successors and assigns."

21 14. The Former Owner also executed a Planned Unit Development Rider along with the
22 Deed of Trust.

23
24
25
26
27
28 ¹ This term applies to the Lender and any assignees of the Deed of Trust.

1 15. Upon information and belief, the Former Owner of the Property failed to pay to the
2 HOA all amounts due pursuant to the HOA's governing documents.

3 16. On July 26, 2010, HOA Trustee, on behalf of HOA, recorded a Notice of Delinquent
4 Assessment Lien (the "**NODAL**"). The NODAL stated that the amount due to the HOA was
5 \$1,032.01, plus continuing assessments, interest, late charges, costs, and attorney's fees (the "**HOA**
6 **Lien**").

7 17. On September 3, 2010, HOA Trustee, on behalf of HOA, recorded a Notice of
8 Default and Election to Sell Under Homeowners Association Lien (the "**NOD**"). The NOD stated
9 that the HOA Lien amount was \$2,110.87.
10

11 18. Upon information and belief, in April 2011, the Former Owner offered a settlement
12 of the HOA Lien in the amount of \$1,232.88, which was accepted by the HOA. The Former Owner
13 made the payment by check dated May 27, 2011 (the "**Attempted Payment**"). Of the Former
14 Owner's Attempted Payment, the HOA credited \$500.00 to his assessment account on June 11, 2011
15 and \$400.00 to his assessment account on August 30, 2011, which cured the amount of the HOA
16 Lien entitled to priority over the Deed of Trust ("**Super-Priority Lien Amount**").
17

18 19. On March 30, 2012, MERS assigned the Deed of Trust to Aurora Bank FSB
19 ("**Aurora**") via Corporation Assignment of Deed of Trust, which was recorded against the Property
20 on April 19, 2012.
21

22 20. On April 16, 2012, HOA Trustee, on behalf of the HOA, recorded a Notice of
23 Foreclosure Sale against the Property ("**NOS**"). The NOS stated that the total amount due the HOA
24 was \$3,346.53 and set a sale date for the Property of May 11, 2012, at 10:00 a.m., to be held at
25 Nevada Legal News.
26
27
28

1 21. On August 27, 2012, the Deed of Trust was assigned to Nationstar Mortgage, LLC
2 (“**Nationstar**”) via Assignment of Deed of Trust, which was recorded against the Property on
3 August 31, 2012.

4 22. Despite the Former Owner’s Attempted Payment, on May 11, 2012, HOA Trustee
5 then proceeded to non-judicial foreclosure sale on the Property and recorded the HOA Foreclosure
6 Deed, which stated that the HOA Trustee sold the HOA’s interest in the Property to Lake Hills Drive
7 Trust at the HOA Foreclosure Sale for the highest bid amount of \$5,500.00.

8 23. The HOA Foreclosure Deed states that HOA Trustee “has complied with all
9 requirements of law ...”

10 24. In none of the recorded documents, nor in any other notice recorded with the Clark
11 County Recorder’s Office, did HOA and/or HOA Trustee specify or disclose that any individual or
12 entity, including but not limited to the Former Owner, had attempted to pay any portion of the HOA
13 Lien in advance of the HOA Foreclosure Sale.

14 25. Neither HOA nor HOA Trustee informed or advised the bidders and potential bidders
15 at the HOA Foreclosure Sale, either orally or in writing, that any individual or entity had attempted
16 to pay the Super-Priority Lien Amount.

17 26. Upon information and belief, the debt owed to Lender by the Former Owner of the
18 Property pursuant to the loan secured by the Deed of Trust significantly exceeded the fair market
19 value of the Property at the time of the HOA Foreclosure Sale.

20 27. Upon information and belief, Lender alleges that the Former Owner’s Attempted
21 Payment of the Super-Priority Lien Amount served to satisfy and discharge the Super-Priority Lien
22 Amount, thereby changing the priority of the HOA Lien vis a vis the Deed of Trust.

1 28. Upon information and belief, Lender alleges that as a result of the Former Owner's
2 Attempted Payment of the Super-Priority Lien Amount, the purchaser of the Property at the HOA
3 Foreclosure Sale acquired title to the Property subject to the Deed of Trust.

4 29. Upon information and belief, if the bidders and potential bidders at the HOA
5 Foreclosure Sale were aware that an individual or entity had attempted to pay the Super-Priority
6 Lien Amount and/or by means of the Attempted Payment prior to the HOA Foreclosure Sale and
7 that the Property was therefore ostensibly being sold subject to the Deed of Trust, the bidders and
8 potential bidders would not have bid on the Property.

9 30. Had the Property not been sold at the HOA Foreclosure Sale, HOA and HOA Trustee
10 would not have received payment, interest, fees, collection costs and assessments related to the
11 Property and these sums would have remained unpaid.

12 31. HOA Trustee acted as an agent of HOA.

13 32. HOA is responsible for the actions and inactions of HOA Trustee pursuant to the
14 doctrine of respondeat superior.

15 33. HOA and HOA Trustee conspired together to hide material information related to
16 the Property: the HOA Lien; the Attempted Payment of the Super-Priority Lien Amount; the
17 acceptance of such payment or Attempted Payment; and the priority of the HOA Lien vis a vis the
18 Deed of Trust, from the bidders and potential bidders at the HOA Foreclosure Sale.

19 34. The information related to any Attempted Payment or payments made by the Former
20 Owner, Lender, or others to the Super-Priority Lien Amount, was not recorded and would only be
21 known by the Former Owner, Lender, the HOA, and HOA Trustee.

1 35. Upon information and belief, HOA and HOA Trustee conspired to withhold and hide
2 the aforementioned information for their own economic gain and to the detriment of the bidders and
3 potential bidders at the HOA Foreclosure Sale.

4 36. As part of Plaintiff's practice and procedure in both NRS Chapter 107 and NRS
5 Chapter 116 foreclosure sales, Plaintiff would call the foreclosing agent/HOA Trustee and confirm
6 whether the sale was going forward on the scheduled date; and in the context of an NRS Chapter
7 116 foreclosure sale, Plaintiff would ask if anyone had paid anything on the account.

8 37. Plaintiff would contact the HOA Trustee prior to the HOA Foreclosure Sale to
9 determine if the Property would in fact be sold on the date stated in the NOS, obtain the opening
10 bid, so Plaintiff could determine the amount of funds necessary for the auction and inquire if any
11 payments had been made; however, Plaintiff never inquired if the "Super-Priority Lien Amount"
12 had been paid.

13 38. At all times relevant to this matter, if Plaintiff learned of a "tender" or payment either
14 having been attempted or made, Plaintiff would not purchase the Property offered in that HOA
15 Foreclosure Sale.

16 39. Iyad Haddad was the trustee of the Lake Hills Drive Trust and Plaintiff at all relevant
17 times and the conveyance of title ownership of the Property from Lake Hills Drive Trust to Plaintiff
18 was done for estate planning purposes. As such, there has always been a unity of interest between
19 Lake Hills Drive Trust, Plaintiff, and the Property such that Plaintiff can raise the claims in this
20 Complaint.

21 40. Plaintiff reasonably relied upon the HOA and/or HOA Trustee's material omission
22 of "tender" of the Super-Priority Lien Amount and/or the Attempted Payment when Plaintiff
23 purchased the Property.

FIRST CLAIM FOR RELIEF

(Intentional, or Alternatively Negligent, Misrepresentation)

43. At no point in time did Defendants disclose to the bidders and potential bidders at the HOA Foreclosure Sale the fact that any individual or entity had attempted to pay the Super-Priority Lien Amount or provided the Attempted Payment.

45. By accepting the Attempted Payment of the Super-Priority Lien Amount from the Former Owner, HOA received funds in satisfaction of the entire HOA Lien, rather than only the Super-Priority Lien Amount.

47. Neither HOA nor HOA Trustee recorded any notice nor provided any written or oral disclosure to the bidders and potential bidders at the HOA Foreclosure Sale regarding any Attempted Payment of the Super-Priority Lien Amount by the Former Owner or any individual or entity.

1 48. HOA and HOA Trustee desired that the bidders and potential bidders at the HOA
2 Foreclosure Sale believe that the HOA Lien included amounts entitled to superpriority over the
3 Deed of Trust and that the Deed of Trust would thus be extinguished as a result of the HOA
4 Foreclosure Sale for their own economic gain.

5
6 49. As a result of their desire that the bidders and potential bidders at the HOA
7 Foreclosure Sale believed that the HOA Lien included amounts entitled to priority over the Deed of
8 Trust, and that the Deed of Trust would thus be extinguished as a result of the HOA Foreclosure
9 Sale, HOA and HOA Trustee intentionally failed to disclose material information related to the
10 Attempted Payment of the Super-Priority Lien Amount by the Former Owner and did so for their
11 own economic gain.

12
13 50. Alternatively, HOA and HOA Trustee were grossly negligent by failing to disclose
14 material information related to the Attempted Payment of the Super-Priority Lien Amount.

15 51. Upon information and belief, if HOA Trustee and/or HOA had disclosed the
16 Attempted Payment of the Super-Priority Lien Amount to the bidders and potential bidders at the
17 HOA Foreclosure Sale, such bidders and potential bidders would not have bid upon the Property at
18 the HOA Foreclosure Sale.

19
20 52. Given the facts of this case now known to Plaintiff, Lake Hills Drive Trust would
21 not have bid on the Property.

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

24 54. Upon information and belief, if the Property had not been sold at the HOA
25 Foreclosure Sale, HOA Trustee would not have received payment for the work that it performed on
26 behalf of HOA in association with the HOA Foreclosure Sale and related proceedings.
27
28

1 55. Lake Hills Drive Trust attended the sale as a ready, willing, and able buyer without
2 knowledge of the Attempted Payment.

3 56. Lake Hills Drive Trust would not have purchased the Property if it had been informed
4 that any individual or entity had paid or attempted to pay the Super-Priority Lien Amount or any
5 amount in advance of the HOA Foreclosure Sale.
6

7 57. As a direct result of HOA and HOA Trustee's acceptance of the Attempted Payment
8 of the Super-Priority Lien Amount, and their subsequent intentional or grossly negligent failure to
9 advise the bidders and potential bidders at the HOA Foreclosure Sale of the facts related thereto,
10 Lake Hills Drive Trust presented the prevailing bid at the HOA Foreclosure Sale and thereby
11 purchased the Property.
12

13 58. HOA and HOA Trustee each profited from their intentional and/or negligent
14 misrepresentations and material omissions at the time of the HOA Foreclosure Sale by failing and
15 refusing to disclose the Attempted Payment of the Super-Priority Lien Amount.

16 59. HOA and HOA Trustee materially misrepresented the facts by hiding and failing to
17 advise bidders and potential bidders at the HOA Foreclosure Sale of information known solely to
18 the HOA and/or HOA Trustee that was not publicly available which ostensibly changed the priority
19 of Deed of Trust vis a vis the HOA Lien.
20

21 60. HOA and HOA Trustee solely possessed information related to the Attempted
22 Payment of the Super-Priority Lien Amount prior to and at the time of the HOA Foreclosure Sale,
23 and they intentionally withheld such information for their own economic gain.
24

25 61. Alternatively, HOA and HOA Trustee were grossly negligent when they withheld
26 information from the bidders and purchaser at the HOA Foreclosure Sale related to the Attempted
27 Payment of the Super-Priority Lien Amount.
28

1 62. Plaintiff reasonably relied upon HOA and HOA Trustee's intentional or grossly
2 negligent failure to disclose the Attempted Payment of the Super-Priority Lien Amount.

3 63. HOA and HOA Trustee intended that the bidders and potential bidders at the HOA
4 Foreclosure Sale would rely on the lack of notice of the Attempted Payment of the Super-Priority
5 Lien Amount at the time of the HOA Sale and that their failure to disclose such information
6 promoted the sale of the Property.

7 64. HOA and HOA Trustee further intended that their failure of refusal to inform bidders
8 and potential bidders at the HOA Foreclosure Sale of the Attempted Payment of the Super-Priority
9 Lien Amount would lead such bidders and potential bidders to believe that the Deed of Trust was
10 subordinate to the HOA Lien and not being sold subject to the Deed of Trust.

11 65. The HOA and the HOA Trustee had a duty to disclose the Attempted Payment of the
12 Super-Priority Lien Amount.

13 66. The HOA and the HOA Trustee breached that duty to disclose to Lake Hills Drive
14 Trust the Attempted Payment by the Former Owner.

15 67. As a result of the HOA and HOA Trustee's breach of their duties of care, honesty in
16 fact, good faith, and candor to bidders at the HOA Foreclosure Sale for their own economic gain,
17 Plaintiff has been economically damaged in many aspects.

18 68. If the Property is subject to the Deed of Trust, the funds paid by Lake Hills Drive
19 Trust and Plaintiff to purchase, maintain, operate, and/or litigate various cases and generally manage
20 the Property would be lost along with the opportunity of purchasing other available property offered
21 for sale where a superpriority payment had not been attempted, thereby allowing Lake Hills Drive
22 Trust the opportunity to purchase a property free and clear of the deed of trust and all other liens.
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69. As a direct and proximate result of the actions of Defendants, it has become necessary for Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.

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

SECOND CLAIM FOR RELIEF

(Breach of the Duty of Good Faith)

71. Plaintiff repeats and realleges each and every allegation contained above as if set forth fully herein.

72. NRS 116.1113 provides that every contract or duty governed by NRS Chapter 116, Nevada's version of the Uniform Common-Interest Ownership Uniform Act ("UCIOA"), must be performed in good faith in its performance or enforcement.

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

74. Pursuant to the drafter's comments of the UCIOA, Section 1-113 of the UCIOA, codified as NRS 116.1113, provides that:

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

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

75. Prior to the HOA Foreclosure Sale of the Property, the Former Owner paid the Super-Priority Lien Amount to HOA or HOA Trustee by the Attempted Payment.

76. Upon information and belief, HOA Trustee, acting on behalf of HOA, accepted the Attempted Payment.

77. HOA and HOA Trustee's acceptance of the Attempted Payment and subsequent failure and refusal to inform the bidders and potential bidders at the HOA Foreclosure Sale served to breach their duty of good faith, fair dealings, honesty in fact, and candor pursuant to NRS Chapter 116.

78. HOA and the HOA Trustee owed a duty of good faith, fair dealings, honesty in fact, and candor to Lake Hills Drive Trust.

79. By virtue of their actions and inactions, HOA and HOA Trustee substantially benefitted economically to the detriment of Lake Hills Drive Trust and Plaintiff.

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

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

THIRD CLAIM FOR RELIEF

(Conspiracy)

82. Plaintiff repeats and re-alleges each and every allegation contained above as if set forth fully herein.

83. Defendants knew or should have known of the Attempted Payment of the Super-Priority Lien Amount.

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

1 85. Defendants knew or should have known that their actions and omissions would
2 economically harm the successful bidder and purchaser of the Property and benefit Defendants. To
3 further their conspiracy, upon information and belief, Defendants accepted the Attempted Payment
4 for the purpose of obtaining more remuneration than they would have otherwise obtained at a sale
5 of the subpriority portion of the HOA Lien.
6

7 86. As a direct and proximate result of the actions of Defendants, it has become necessary
8 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.
9

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

12 **FOURTH CLAIM FOR RELIEF**

13 (Violation of NRS Chapter 113)

14 88. Plaintiff repeats and realleges each and every allegation contained above as if set
15 forth fully herein.

16 89. Pursuant to NRS Chapter 113, Defendants must disclose the Attempted Payment
17 and/or any payments made or attempted to be made by Lender, the Former Owner, or any agents of
18 any other party to the bidders and Plaintiff at the HOA Foreclosure Sale.
19

20 90. Defendants were required, but failed, to provide a Seller's Real Property Disclosure
21 Form ("SRPDF") to the "Purchaser," as defined in NRS Chapter 116, at the time of the HOA
22 Foreclosure Sale.

23 91. Defendants were a "seller" under NRS Chapter 113.

24 92. NRS Chapter 116 foreclosure sales are not exempt from the disclosure mandates of
25 NRS Chapter 113.
26
27
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1 93. Defendants were required, but failed, to complete and answer the questions posed in
2 the SRPDF in its entirety, but specifically, Section 9, Common Interest Communities, disclosures
3 (a) - (f), and Section 11, that provide as follows:

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

7 (a) Common Interest Community Declaration and Bylaws available?

8 (b) Any periodic or recurring association fees?

9 (c) Any unpaid assessments, fines or liens, and any warnings or notices
10 that may give rise to an assessment, fine or lien?

11 (d) Any litigation, arbitration, or mediation related to property or
12 common areas?

13 (e) Any assessments associated with the property (excluding property
14 tax)?

15 (f) Any construction, modification, alterations, or repairs made without
16 required approval from the appropriate Common Interest Community
17 board or committee?

18 ...

19 11. Any other conditions or aspects of the property which materially affect its value
20 or use in an adverse manner? (Emphasis added)

21 See SRPDF, Form 547, attached hereto as Ex. 1.

22 94. Section 11 of the SRPDF relates directly to information known to Defendants that
23 materially affects the value of the Property, and in this case, if the Super-Priority Lien Amount is
24 paid, or if the Attempted Payment is rejected/accepted, it would have a material, adverse effect on
25 the overall value of the Property, and therefore, must be disclosed to the Purchaser in the SRPDF
26 by Defendants.
27
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1 95. Defendants' response to Section 9(c) - (e) of the SRPDF would have provided notice
2 to Lake Hills Drive Trust of any payments made by Lender, Former Owner, or others on the HOA
3 Lien.

4 96. Defendants' response to Section 11 of the SRPDF generally deals with the disclosure
5 of the condition of the title to the Property related to the status of the Deed of Trust and the
6 Attempted Payment that would only be known by Defendants.

7 97. Nevada Real Estate Division's ("**NRED**"), Residential Disclosure Guide (the
8 "**Guide**"), Ex. 2, provides at page 20 that Defendants shall provide, even in an NRS Chapter 107
9 foreclosure sale, the following to the purchaser/Plaintiff at the HOA Foreclosure Sale:

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

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

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

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

22 98. If Defendants fail to provide the SRPDF to the Plaintiff/purchaser at the time of the
23 HOA Foreclosure Sale, the Guide explains that:

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

 99. Pursuant to NRS 113.130, Defendants were required, but failed, to provide the
information set forth in the SRPDF to Lake Hills Drive Trust at the HOA Foreclosure Sale.

100. Defendants did not provide an SRPDF to Lake Hills Drive Trust prior to, or at, the HOA Foreclosure Sale.

101. As a result of Defendants' failure to provide Plaintiff with the mandated SRPDF, and disclosures required therein, that were known to Defendants, Plaintiff has been economically damaged.

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

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

WHEREFORE, Plaintiff prays for relief as follows:

1. For damages to be proven at trial in excess of \$15,000;
2. For punitive damages in an amount to be determined at trial;
3. For an award of reasonable attorneys' fees as special damages, and otherwise under Nevada law;
4. For pre-judgment and post-judgment interest at the statutory rate of interest; and
5. For such other and further relief that the Court deems just and proper.

Dated this 18th day of August, 2020.

ROGER P. CROTEAU & ASSOCIATES, LTD

/s/ Chet A. Glover

Roger P. Croteau, Esq.

Nevada Bar No. 4958

Chet A. Glover, Esq.

Nevada Bar No. 10054

2810 W. Charleston Blvd., Ste. 75

Las Vegas, Nevada 89102

Attorney for Plaintiff

EXHIBIT 1

EXHIBIT 1

SELLER'S REAL PROPERTY DISCLOSURE FORM

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

Date _____

Do you currently occupy or have you ever occupied this property?

<u>YES</u>	<u>NO</u>
<input type="checkbox"/>	<input type="checkbox"/>

Property address _____

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

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

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

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

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

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

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

Seller(s) Initials

Buyer(s) Initials

Property conditions, improvements and additional information: YES NO N/A

Are you aware of any of the following?:

1. Structure:

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

2. Land / Foundation:

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

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

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

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

6. Environmental:

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

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

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

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

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

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

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

12. Lead-Based Paint: Was the property constructed on or before 12/31/77? ☐ ☐

(If yes, additional Federal EPA notification and disclosure documents are required)

13. Water source: Municipal ☐ Community Well ☐ Domestic Well ☐ Other ☐

If Community Well: State Engineer Well Permit # _____ Revocable ☐ Permanent ☐ Cancelled ☐

Use of community and domestic wells may be subject to change. Contact the Nevada Division of Water Resources for more information regarding the future use of this well.

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

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

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

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

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

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

Seller(s) Initials

Buyer(s) Initials

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Buyer(s) Initials

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

CONDITION OF RESIDENTIAL PROPERTY OFFERED FOR SALE

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

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

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

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

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

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

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

1. Except as otherwise provided in subsection 2:
 - (a) At least 10 days before residential property is conveyed to a purchaser:
 - (1) The seller shall complete a disclosure form regarding the residential property; and
 - (2) The seller or the seller's agent shall serve the purchaser or the purchaser's agent with the completed disclosure form.
 - (b) If, after service of the completed disclosure form but before conveyance of the property to the purchaser, a seller or the seller's agent discovers a new defect in the residential property that was not identified on the completed disclosure form or discovers that a defect identified on the completed disclosure form has become worse than was indicated on the form, the seller or the seller's agent shall inform the purchaser or the purchaser's agent of that fact, in writing, as soon as practicable after the discovery of that fact but in no event later than the conveyance of the property to the purchaser. If the seller does not agree to repair or replace the defect, the purchaser may:
 - (1) Rescind the agreement to purchase the property; or
 - (2) Close escrow and accept the property with the defect as revealed by the seller or the seller's agent without further recourse.
 2. Subsection 1 does not apply to a sale or intended sale of residential property:
 - (a) By foreclosure pursuant to chapter 107 of NRS.
 - (b) Between any co-owners of the property, spouses or persons related within the third degree of consanguinity.
 - (c) Which is the first sale of a residence that was constructed by a licensed contractor.
 - (d) By a person who takes temporary possession or control of or title to the property solely to facilitate the sale of the property on behalf of a person who relocates to another county, state or country before title to the property is transferred to a purchaser.
 3. A purchaser of residential property may not waive any of the requirements of subsection 1. A seller of residential property may not require a purchaser to waive any of the requirements of subsection 1 as a condition of sale or for any other purpose.
 4. If a sale or intended sale of residential property is exempted from the requirements of subsection 1 pursuant to paragraph (a) of subsection 2, the trustee and the beneficiary of the deed of trust shall, not later than at the time of the conveyance of the property to the purchaser of the residential property, or upon the request of the purchaser of the residential property, provide:
 - (a) Written notice to the purchaser of any defects in the property of which the trustee or beneficiary, respectively, is aware; and
 - (b) If any defects are repaired or replaced or attempted to be repaired or replaced, the contact information of any asset management company who provided asset management services for the property. The asset management company shall provide a service report to the purchaser upon request.
 5. As used in this section:
 - (a) "Seller" includes, without limitation, a client as defined in NRS 645H.060.
 - (b) "Service report" has the meaning ascribed to it in NRS 645H.150.
- (Added to NRS by 1995, 842; A 1997, 349; 2003, 1339; 2005, 598; 2011, 2832)

Seller(s) Initials

Buyer(s) Initials

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

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

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

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

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

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

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

(Added to NRS by 1999, 1446)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Seller(s): _____ Date: _____

Seller(s): _____ Date: _____

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

Buyer(s): _____ Date: _____

Buyer(s): _____ Date: _____

EXHIBIT 2

EXHIBIT 2

DUTIES OWED BY A
NEVADA LICENSEE

IMPACT FEES

SOIL REPORT

COMMON-INTEREST
COMMUNITIES

LIEN FOR DEFERRED
TAXES

OPEN RANGE

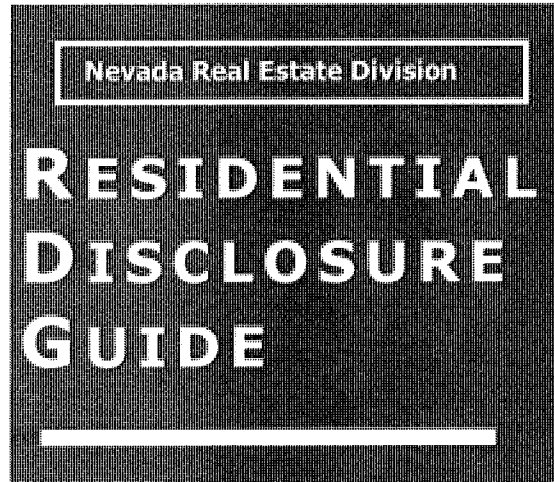
SELLER'S REAL PROPERTY
DISCLOSURE

USED MOBILE HOMES

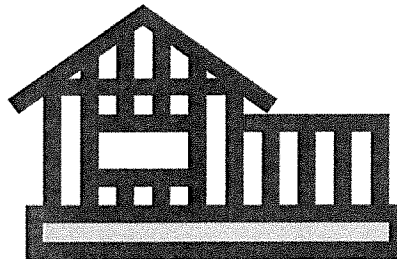
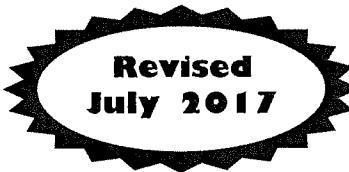
RESIDENTIAL POOL SAFETY
AND DROWNING PREVENTION

ENVIRONMENTAL HAZARDS

SEWER AND WATER
RATES



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



State of Nevada
Department of Business & Industry
Real Estate Division

Introduction

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

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

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

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

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

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Common-Interest Communities and Condominium Hotels

⇒ Purpose of Disclosure

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

⇒ Who must provide the disclosure?

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

⇒ When is it due?

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

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

Common-Interest Communities and Condominium Hotels

⇒ Additional Information

Public Offering Statement

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

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

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

Resale Package

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

(Continued on next page...)

Common-Interest Communities and Condominium Hotels

(Continued from previous page...)

Transfer Fees

Do not pertain to Condominium Hotels

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

Unpaid Obligations

Do not pertain to Condominium Hotels

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

Delivery of Resale Package

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

Common-Interest Communities and Condominium Hotels

Statement of Demand

Does not pertain to Condominium Hotels

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

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

For more information:

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

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

NRS: 116.4101-116.412; NAC: 116.151, 116.465, 116.470
NRS: 116B.725-116B.795; NAC: 116B.500-116B.530

Consent to Act

⇒ Purpose of Disclosure

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

⇒ Who must provide the disclosure?

The licensee must provide this form to all parties in the transaction if he seeks to act for more than one party.

⇒ When is it due?

If a licensee makes such a disclosure, the consent must be obtained from all parties before the licensee may continue to act in his capacity as an agent.

⇒ Additional Information

The written consent must include:

1. A description of the real estate transaction;
2. A statement that the licensee is acting for two or more parties to the transaction and that, in acting for these parties, the licensee has a conflict of interest;
3. A statement that the licensee will not disclose any confidential information for 1 year after the revocation or termination of the brokerage agreement unless he is required to do so per court order or he is given written permission by that party;
4. A statement that a party is not required to consent to the licensee acting on his behalf;
5. A statement that the party is giving his consent without coercion and understands the terms of the consent given.

For more information:

Form: Consent to Act

Website: <http://red.nv.gov/uploadedFiles/rednvgov/Content/Forms/524.pdf>

NRS: 645.252-254

Construction Defects

⇒ Purpose of Disclosure

The purpose of disclosures relating to construction defects is to make the buyer aware of any construction defects in the property.

⇒ Who must provide the disclosure?

If there is a construction defect, the contractor must disclose the information in understandable language that is underlined and in bold-faced type with capital letters. If the property is or has been the subject of a construction defect claim or lawsuit, the seller must provide the following information to the buyer:

- copies of all notices given to contractor
- expert opinions obtained by claimant
- terms of settlement or order of judgment
- detailed report of all repairs

⇒ When is it due?

Construction defects must be disclosed to the buyer before purchase of the residence. If the property is or has been the subject of a defect claim or lawsuit, the information must be disclosed 30 days before close of escrow, or if escrow is less than 30 days, then immediately upon signing the sales agreement. If a claim is made while in escrow, the disclosure must be made within 24 hours of notice of complaint.

⇒ Additional Information

If the property is located within a common-interest community and is the subject of a defect claim or lawsuit, this information must be disclosed in the buyer's **resale package** (see Common-Interest Communities).

For more information:

NRS: 40.640, 40.688

Duties Owed By a Nevada Real Estate Licensee

⇒ Purpose of Disclosure

The purpose of the Duties Owed form is to make the buyer or seller aware of obligations owed by a real estate licensee to all parties involved in the transaction.

⇒ Who must provide the disclosure?

A licensee who acts as an agent in a real estate transaction must disclose to each party for whom the licensee is acting as an agent and any unrepresented party all duties owed to the parties and the licensee's relationship as an agent to each party in the transaction.

⇒ When is it due?

The disclosure form must be presented to the client before any documents are signed by the client.

⇒ Additional Information

A Nevada licensee who has entered into a brokerage agreement to represent a client in a real estate transaction shall:

1. Exercise reasonable skill and care to carry out the terms of the brokerage agreement and the licensee's duties in the brokerage agreement;
2. Not disclose, except to the licensee's broker, confidential information relating to a client for 1 year after the revocation or termination of the brokerage agreement, unless licensee is required to do so by court order or the client gives written permission;
3. Seek a sale, purchase, option, rental or lease of real property at the price and terms stated in the brokerage agreement or at a price acceptable to the client;
4. Present all offers made to or by the client as soon as practicable, unless the client chooses to waive the duty of the licensee to present all offers and signs a waiver of the duty on a form prescribed by the Division;

Duties Owed By a Nevada Real Estate Licensee

5. Disclose to the client material facts of which the licensee has knowledge concerning the real estate transaction;
6. Advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee; and
7. Account to the client for all money and property the licensee receives in which the client may have an interest.

⇒ Waiver of Duty to Present All Offers

Authorization to Negotiate Directly with Seller

A client may choose to waive the broker's duty to present all offers by signing a waiver on a form, the "Waiver Form," prescribed by the Division. Concurrent with the option of a client to waive the duty of his/her broker to present all offers is the form "Authorization to Negotiate Directly with Seller," which gives permission in writing to authorize a licensee to negotiate a sale or lease directly with a seller. Both forms must be utilized and signed by a client who waives the duty to present all offers. Otherwise, a licensee for a buyer does not have the permission of the seller's broker to present offers or negotiate with the sellers directly.

For more information:

Form: Duties Owed By a Nevada Real Estate Licensee

Website: <http://red.nv.gov/uploadedFiles/rednvgov/Content/Forms/525.pdf>

NRS: 645.193; 645.252-645.254

Impact Fees

⇒ Purpose of Disclosure

The seller of any property must give notice of any impact fees that may be imposed upon the buyer.

An impact fee is a charge imposed by a local government on new development (i.e., the construction, reconstruction, redevelopment, conversion, alteration, relocation or enlargement of any structure which increases the number of service units) to finance some of the costs attributable to the new development.

⇒ Who must provide the disclosure?

A seller who has knowledge of the impact fee must give written notice to the buyer, including the amount of the impact fee and the name of the local government imposing the fee.

⇒ When is it due?

The notice must be provided to the buyer before the property is conveyed.

⇒ Additional Information

If the seller fails to give this notice, the seller is liable to the buyer for the amount of the impact fee.

For more information:

NRS: 278B.320

Lien for Deferred Taxes

⇒ Purpose of Disclosure

If there are deferred taxes that have not been paid at the time the property is sold or transferred, the buyer must be notified in writing that there is a lien for deferred taxes on the property.

⇒ Who must provide the disclosure?

The seller must notify the buyer of the lien.

⇒ When is it due?

The lien must be disclosed at the time the property is sold or transferred.

⇒ Additional Information

The owner of the property on the date the deferred taxes become due is liable for the deferred taxes.

For more information:

NRS: 361A.290

Manufactured Housing— Used Manufactured/Mobile Homes

⇒ Purpose of Disclosure

The purpose of the Used Manufactured/Mobile Home disclosure is to make the buyer aware that a used manufactured or mobile home that has not been converted to real property is personal property and subject to personal property taxes.

⇒ Who must provide the disclosure?

The real estate licensee shall provide the form to the purchaser as soon as practicable, but before title is transferred.

⇒ Additional Information

This disclosure also informs the purchaser that title will not pass unless the county assessor's endorsement is placed on the face of the title, verifying that taxes have been paid in full.

The disclosure also instructs the consumer to submit certain documents to Nevada's Manufactured Housing Division and the county assessor within 45 days after the sale is complete and before a certificate of ownership will be issued.

For more information:

Form: [Used Manufactured/Mobile Home Disclosure](#)

Website: [Manufactured Housing Division](#)

NRS: [645.258](#), [489.521](#), [489.531](#), [489.541](#)

Manufactured Housing— Manufactured Home Parks

⇒ Purpose of Disclosure

The purpose of the disclosure relating to placing or buying a manufactured or mobile home in a manufactured home park is to make the buyer aware that he may be subject to approval by the landlord of the manufactured home park if the manufactured or mobile home will remain in the park.

⇒ Who must provide the disclosure?

If the landlord requires approval of a prospective buyer and tenant, the landlord must post a sign which is clearly readable at the entrance of the park which advises consumers that before a manufactured home in the park is sold, the buyer and tenant must be approved by the landlord.

⇒ Additional Information

If the property will remain in the manufactured home park, make sure you have a lease agreement with the park manager and that you know the park's rules and regulations.

Remember: the seller or a manufactured home dealer cannot promise that you'll be accepted as a tenant in a particular manufactured home park. You must apply for the lease yourself and should do so before finalizing the purchase of your home. The landlord must approve or deny a completed application from a prospective buyer and tenant within 10 days after the date the application is submitted.

For more information:

Website: [Manufactured Housing Division—Placing or Buying Your Home in a Rental Community](#)

NRS: [118B.170](#)

Open Range Disclosure

⇒ Purpose of Disclosure

The purpose of the Open Range Disclosure is to inform the prospective buyer of a home or an improved or unimproved lot adjacent to open range that livestock are permitted to graze or roam on the property. Open range means all unenclosed land outside of cities and towns upon which cattle, sheep or other domestic animals by custom, license, lease or permit are grazed or permitted to roam. It also serves to inform the prospective buyer that the parcel may be subject to county or State claims of right-of-way, (commonly referred to as R.S. 2477 rights-of-way) including rights-of-way that may be unrecorded, undocumented or unsurveyed; and used by miners, ranchers, hunters or others, for access or recreational use, in a manner which interferes with the use and enjoyment of the parcel.

⇒ Who must provide the disclosure?

A seller must disclose, in writing, to a potential buyer of property adjacent to open range, that livestock grazing on the open range are permitted to enter the property; and that the parcel may be subject to county or State claims of right-of-way.

⇒ When is it due?

The disclosure must be provided to the potential buyer, with the requirement that the buyer sign the disclosure form acknowledging the date of receipt of the original disclosure document, before the sales agreement is signed.

Open Range Disclosure

⇒ Additional Information

The disclosure acknowledges fencing the property to keep livestock out and recognizes the property owner's entitlement to damages if livestock enter a fenced property but warns against harming roaming livestock even on a fenced property.

The law requires that the seller retain a copy of the disclosure document that has been signed by the buyer acknowledging the date of receipt of the document, provide a copy to the buyer, and record the original disclosure document containing the buyer's signature and the seller's notarized signature in the office of the county recorder in the county where the property is located.

For more information:

Form: [Open Range Disclosure](#)

Website: <http://red.nv.gov/uploadedFiles/rednv.gov/Content/Forms/551.pdf>

NRS: [113.065](#); [568.355](#)

Private Transfer Fee Obligation

⇒ Purpose of Disclosure

The purpose of the disclosure is to make the buyer aware that the property is subject to a Private Transfer Fee Obligation (PTFO) which will require the buyer, upon conveyance of the property by the seller, to pay either a one-time fixed amount or a one-time percentage of the purchase price to a third party payee.

⇒ Who Must Provide the Disclosure?

The seller of a property that is subject to a PTFO must provide the disclosure as a written statement that discloses the existence of and describes the PTFO, and includes language substantially similar to the legislatively-prescribed notice informing the buyer that the PTFO may lower the value of the property and that the laws of this State prohibit the enforcement of certain PTFOs created on or after May 20, 2011.

⇒ When is it due?

The disclosure must be provided to the potential buyer before the conveyance of the property.

⇒ Additional Information

The notice regarding the existence of a PTFO in the seller's disclosure must be in substantially the following form:

A private transfer fee obligation has been created with respect to this property. The private transfer fee obligation may lower the value of this property. The laws of this State prohibit the enforcement of certain private transfer fee obligations that are created on or after May 20, 2011 and impose certain notice requirements with respect to private transfer fee obligations that were created before May 20, 2011.

For more information:

NRS: [111.825-111.880](#)

Seller's Real Property Disclosure

⇒ Purpose of Disclosure

The purpose of the Seller's Real Property Disclosure form is to make the buyer aware of the overall condition of the property before it is transferred. This disclosure is not a guarantee nor does it take the place of an inspection. In some cases a Seller has never lived on the property and may have no knowledge of the condition of the property. The Buyer is advised to obtain an independent inspection performed by a properly licensed home inspector. This form is not required for new home sales.

⇒ Who must provide the disclosure?

The seller must complete the "Seller's Real Property Disclosure" form, detailing the condition of the property, known defects, and any other aspects of the property which may affect its use or value. A real estate licensee, unless he is the seller of the property, may not complete this form.

The form must be fully and properly completed. If the seller has no knowledge, "no" is an appropriate answer to the "Are you aware ..." questions. Each question must be answered with a mark in the corresponding "yes", "no" or in some cases "n/a" box. Explanations of any "yes" answers, and a properly executed signature by the seller, are also required. The buyer may only sign the form after full and proper completion by the seller.

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

(Continued on next page...)

Seller's Real Property Disclosure

(Continued from previous page...)

⇒ When is it due?

The disclosure must be delivered to the buyer at least 10 days prior to conveyance of the property.

⇒ Additional Information

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

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

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

- written notice of any defects of which the trustee or beneficiary is aware; and
- the contact information of any asset management company who provided asset management services, if any defects are repaired or replaced or attempted to be repaired or replaced. The asset management company shall provide a service report to the purchaser upon request.

Seller's Real Property Disclosure

If a Seller requests a Buyer to waive his rights or legal remedies under NRS 113.150 or otherwise, the Buyer should contact an attorney for advice regarding the legal consequences. A real estate licensee cannot explain the legal consequences of waiving a Buyer's legal rights or remedies.

EFFECTIVE JULY, 2017 the form includes the following 2 additional disclosures:

- whether solar panels are installed on the subject property. If yes, then disclose whether the solar panels are leased, owned or financed.
- whether the property is a participant in any conservation easement such as the Southern Nevada Water Authority's Water Smart Landscape Program. Seller shall inform the buyer about conservation easements or the potential for other types of conservation easements as required by the statutory language below:

Conservation Easements: The subject property ____ is OR ____ is not subject to a Restrictive Covenant and Conservation Easement established by Nevada Revised Statute 111.390-440 such as the Southern Nevada Water Authority's Water Smart Landscape Program.

For more information:

Form: [Seller's Real Property Disclosure](#)

Website: <http://red.nv.gov/uploadedFiles/rednvgov/Content/Forms/547.pdf>

NRS: [113.130](#); [113.140](#); [113.150](#)

NRS: [111.390-440](#)

Water & Sewer Rates

⇒ Purpose of Disclosure

The purpose of the disclosure relating to water and sewer rates is to inform the buyer of a previously unsold home or improved lot of public utility rates when service is for more than 25 but fewer than 2,000 customers.

⇒ Who must provide the disclosure?

The seller must post a notice, which shows the current or projected rates, in a conspicuous place on the property.

⇒ When is it due?

The notice must be posted and a copy provided to the buyer before the home is sold.

⇒ Additional Information

The notice must contain the name, address and telephone number of the public utility and the Division of Consumer Complaint Resolution of the Public Utilities Commission of Nevada.

For more information:

NRS: 113.060

Lead-Based Paint

⇒ Purpose of Disclosure

The purpose of the lead-based paint disclosure is to make the buyer aware that the residential property (if built prior to 1978) may present exposure to lead.

⇒ Who must provide the disclosure?

Federal law requires that the seller disclose any known presence of lead-based paint hazards and provide the buyer with the EPA disclosure booklet, "Protect Your Family From Lead in Your Home," along with any other available records and/or reports.

⇒ When is it due?

The disclosure is on a federally prescribed form and must be made as a condition of the sale before conveyance of the property.

⇒ Additional Information

On the disclosure form, the buyer must acknowledge receipt of the EPA disclosure booklet and copies of lead reports, if available. Additionally, the buyer will receive a 10-day opportunity to conduct a risk assessment or may choose to waive this opportunity.

For more information:

Form: [Disclosure of Information on Lead-Based Paint](#)

Website: [Environmental Protection Agency \(Lead\)](#)

Phone: National Lead Information Center 1-800-424-LEAD

Pool Safety and Drowning Prevention Disclosure

⇒ Purpose of Disclosure

The purpose of the Southern Nevada Health District's pool safety and drowning prevention disclosure is to make the buyer aware of the risk of death by drowning in private and public pools particularly for children 4 years or younger.

⇒ Who must provide the disclosure?

The information is provided by the Nevada Real Estate Division (NRED) in agreement with the Southern Nevada Health District (SNHD) to promote SNHD's efforts to inform the public on drowning prevention.

⇒ When is it due?

The disclosure will be provided to the buyer before the sales agreement is signed by way of the Residential Disclosure Guide in which it is contained. The buyer is advised to visit SNHD's website:

<http://www.southernnevadahealthdistrict.org/health-topics/drowning-prevention.php>.

⇒ Additional Information

Drowning is the leading cause of unintentional injury death in Clark County for children four years of age and under. The majority of drowning deaths occur in the family pool. Preventable mistakes include leaving a child unattended near a body of water in which a child's nose and mouth can be submerged.

More information on drowning facts, preventable mistakes, how to be prepared to prevent a drowning, pool security, drowning statistics, adult supervision and more can be obtained at SNHD's website at <http://www.southernnevadahealthdistrict.org/health-topics/drowning-prevention.php> and <http://www.getthehealthyclarkcounty.org/be-safe/index.php>.

Miscellaneous Disclosures

Depending upon the transaction, the following disclosures may also be required from a buyer, seller or licensee:

⇒ AIRPORT NOISE

Buyers should investigate the impact of airport flight paths and the noise levels at different times of the day over that property.

⇒ BUILDING & ZONING CODES

The purpose of the building and zoning disclosure is to inform the buyer of transportation beltways and/or planned or anticipated land use within proximity of the subject property of which the seller has knowledge.

For more information on building and zoning codes, contact your local jurisdiction.

⇒ ENVIRONMENTAL HAZARDS

Although the seller is required to disclose the presence of environmental hazards, a statement that the seller is not aware of a defect or hazard does not mean that it does not exist. **It is the buyer's responsibility to be informed and take additional steps to further investigate.** Some potential hazards that may be found in Nevada include:

- **Radon** (www.epa.gov/radon)
- **Floods** (<http://www.floodsmart.gov>)
- **Methamphetamine Labs** ([NRS 40.770](#) & [489.776](#))
- **Wood-Burning Devices** (<http://www.epa.gov/iaq/pubs/combust.html>)

(Continued on next page...)

Miscellaneous Disclosures

(Continued from previous page...)

- **Underground Storage Tanks** (<http://epa.gov/oust/index.htm>)
- **Septic Systems** (<http://water.epa.gov/infrastructure/septic/>)
- **Wells** (<http://water.epa.gov/drink/info/well/index.cfm>)
- **Land and Cleanup** (<http://www2.epa.gov/learn-issues/learn-about-land-and-cleanup>)
- **Groundwater** (<http://water.epa.gov/drink/resources/topics.cfm>)
- **Public Pools & Spas** (<http://www.poolsafely.gov/>)
- **Molds and Moisture** (<http://www.epa.gov/mold/>)

For more information on environmental hazards, visit:
www.epa.gov.

⇒ GAMING

Initial Purchaser in New Construction Only

If there is a gaming district near the property, the seller must disclose information which includes a copy of the most recent gaming enterprise district map, the location of the nearest gaming enterprise district, and notice that the map is subject to change. This disclosure is required for Nevada counties with population over 400,000.

The information must be provided at least 24 hours before the seller signs the sales agreement. The buyer may waive the 24-hour period.

The seller must retain a copy of the disclosure.

For more information on gaming, see: NRS 113.080

Miscellaneous Disclosures

⇒ HOME INSPECTIONS

When obtaining an FHA-insured loan, this disclosure informs the buyer about the limits of the Federal Housing Administration appraisal inspection and suggests the buyer obtain a home inspection to evaluate the physical condition of the property prior to purchase. The form is entitled, "For Your Protection: Get a Home Inspection."

*For more information on FHA home inspections, visit:
www.hud.gov.*

⇒ MILITARY ACTIVITIES

The purpose of the Military Activities Disclosure is to make the purchaser of residential property aware of planned or anticipated military activity within the proximity of the property. Counties in which the military files Military Activities Plans include Clark County, Washoe County, Churchill County and Mineral County.

For more information on military activities plans in these counties, contact the local municipal jurisdiction or the Public Information Officer of the Military Installation in your county.

⇒ LICENSEE DISCLOSURES

In addition to the "Consent to Act" and the "Duties Owed by a Nevada Real Estate Licensee" forms (see pages 8 & 10), a real estate licensee is required to disclose other information such as his relationship to one or more parties in the transaction and/or having a personal interest in the property.

For more information regarding duties and disclosures owed by a licensee, see: [NRS 645.252-645.254](#), [NAC 645.637](#) and [NAC 645.640](#).

(Continued on next page...)

Miscellaneous Disclosures

(Continued from previous page...)

⇒ **ROAD MAINTENANCE DISTRICT**

The sale of residential property within a road maintenance district is prohibited unless the seller provides notice to the purchaser, including the amount of assessments for the last two years. If the district has been in existence for less than 2 years before notice is provided to the purchaser, then the amount of assessments shall be given for the period since the district was created.

For more information, see: NRS 320.130.

⇒ **SOIL REPORT (New Construction Only)**

If the property has not been occupied by the buyer more than 120 days before completion, the seller must give notice of any soil report prepared for the property or for the subdivision in which the property is located.

The seller must provide such notice upon signing the sales agreement.

Upon receiving the notice, the buyer must submit a written request within 5 days for a copy of the actual report. The seller must provide a free report to the buyer within 5 days of receiving such request.

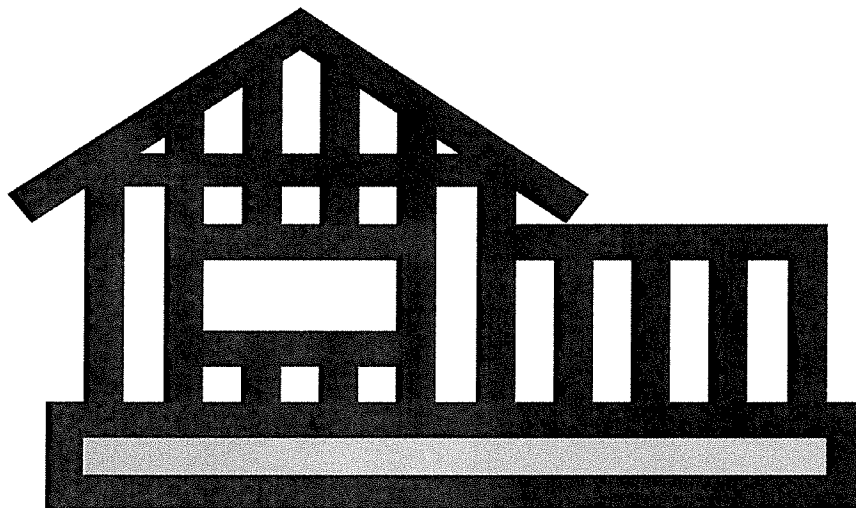
Upon receiving the soil report, the buyer has 20 days to rescind the sales agreement. This rescission right may be waived, in writing, by the buyer.

For more information, see: NRS 113.135.

Contact Information

Nevada Real Estate Division (LV) 3300 W Sahara Avenue, Suite 350 Las Vegas, NV 89102 Phone: (702) 486-4033 Fax: (702) 486-4275 Email: realest@red.nv.gov Website: http://red.nv.gov	Nevada Real Estate Division (CC) 1818 E. College Parkway, Suite 110 Carson City, NV 89706-7986 Phone: (775) 684-1900 Fax: (775) 687-4868 Email: realest@red.nv.gov Website: http://red.nv.gov
Manufactured Housing Division (LV) 3300 W Sahara Avenue, Suite 320 Las Vegas, NV 89102 Phone: (702) 486-4135 Fax: (702) 486-4309 Email: nmhd@mhd.state.nv.us Website: http://mhd.nv.gov	Manufactured Housing Division (CC) 1830 E. College Pkwy., #120 Carson City, Nevada 89706 Phone: (775) 684-2940 Fax: (775) 684-2949 Email: nmhd@mhd.state.nv.us Website: http://mhd.nv.gov
Ombudsman Office (Common-Interest Communities) 3300 W Sahara Avenue, Suite 325 Las Vegas, NV 89102 Phone: (702) 486-4480 Toll Free: (877) 829-9907 Fax: (702) 486-4520 Email: CIOmbudsman@red.nv.gov Website: http://red.nv.gov/cic/	U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, N.W. Washington, DC 20460 Phone: (202) 272-0167 Website: www.epa.gov
National Lead Information Center 422 South Clinton Avenue Rochester, NY 14620 Phone: (800) 424-LEAD Fax: (585) 232-3111 Website: http://www2.epa.gov/lead/forms/lead-hotline-national-lead-information-center	Department of Health and Human Services – Center for Disease Control & Prevention 1600 Clifton Road Atlanta, GA 30333 Phone: 800-CDC-INFO (800-232-4636) Website: www.cdc.gov
U.S. Consumer Product Safety Commission 4330 East West Highway Bethesda, MD 20814 Phone: (301) 504-7923 Fax: (301) 504-0124 Website: www.cpsc.gov	

Nevada Real Estate Division



Nevada Real Estate Division



RESIDENTIAL DISCLOSURE GUIDE

**State of Nevada
Department of
Business & Industry
Real Estate Division**

I/We acknowledge that I/we have received a copy of the
Residential Disclosure Guide.

DATE _____

Client—Print Name

Client—Signature

Client—Print Name

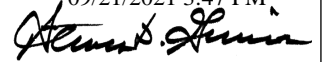
Client—Signature

Make copy of page for additional signatures.

Retain original or copy in each transaction file.

EXHIBIT 2

EXHIBIT 2


CLERK OF THE COURT

LIPSON NEILSON P.C.
KALEB D. ANDERSON, ESQ.
Nevada Bar No. 7582
PETER E. DUNKLEY, ESQ.
Nevada Bar No. 11110
9900 Covington Cross Drive, Ste. 120
Las Vegas, Nevada 89144
(702) 382-1500 phone
(702) 382-1512 fax
kanderson@lipsonneilson.com
pdunkley@lipsonneilson.com
Attorneys for Defendants Harbor Cove Homeowners Association

DISTRICT COURT
CLARK COUNTY, NEVADA

RIVER GLIDER AVENUE TRUST,

Plaintiff,

vs.

HARBOR COVE HOMEOWNERS
ASSOCIATION; and NEVADA
ASSOCIATION SERVICES, INC.,

Defendants.

CASE NO.: A-20-819781-C

DEPT. NO.: 20

[PROPOSED]

**ORDER ON HARBOR COVE
HOMEOWNERS ASSOCIATION'S
RENEWED, MOTION FOR SUMMARY
JUDGMENT**

**Hearing Date: September 8, 2021
Hearing Time: 8:30 A.M.**

Before the Court is Defendant Harbor Cove Homeowners Association's (the "HOA"), Renewed Motion for Summary Judgment, and Nevada Association Services, Inc.'s ("NAS") joinder. Plaintiff, River Glider Avenue Trust, filed a response. The HOA replied.

On December 14, 2020, the Court dismissed claims for civil conspiracy and violation of NRS 113. The remaining claims, misrepresentation and violation of duty of good faith under NRS 116.1113 were subsequently sent to arbitration. After discovery, the HOA re filed the Renewed Motion for Summary Judgment.

On September 8, 2021, the Renewed Motion for Summary judgment came up for hearing. The Court considered the pleadings, exhibits, including orders from case A-13-

683467-C and Appeal No. 76683 (the "Prior Litigation"), as well as argument from counsel. In light of the Prior Litigation, the Court takes judicial notice of facts and law from the Prior Litigation. See NRS 47.130 (judicial notice may be taken of facts); NRS 47.140 (judicial notice may be taken of the Nevada Revised Statutes); NRS 47.150(2) (the court "shall take judicial notice if requested by a party and supplied with the necessary information"). *Andolino v. State*, 99 Nev. 346, 351, 662 P.2d 631, 633 (1983) (mandatory judicial notice appropriate where necessary information related to prior decision and order made part of record). See also, *Mack v. Estate of Mack*, 125 Nev. 80, 91-92, 206 P.3d 98, 106 (2009) (providing the court may take judicial notice of facts in a different case when the moving party establishes a valid reason for doing so.) See also, *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980) (explaining that "a court may take judicial notice of its own records in other cases"). This matter was set for an arbitration to take place on September 15, 2021. However, the HOA timely filed the Renewed Motion for Summary Judgment on July 22, 2021. See NAR 4(E) (dispositive motions may be filed no later than 45 days prior to the arbitration). The Court finds and rules as follows:

FINDINGS OF FACT

1. River Glider Avenue Trust purchased the Property at the valid nonjudicial foreclosures sale for \$5,500.00 on May 11, 2012.

2. Before the nonjudicial foreclosure sale, the prior owner of the Property had satisfied the super-priority portion of the HOA's lien.

3. Thus, the nonjudicial foreclosure sale was valid and conveyed the Property to the Plaintiff *subject to* the existing deed of trust.

4. Plaintiff alleges that its manager, on either May 10, 2012, or May 11, 2012, called NAS to inquire regarding the status of the lien. Plaintiff admits it has no corroborating records of the alleged call.

5. NAS testified, that when a third-party calls NAS about a homeowner's account: "NAS informed such individuals or entities that NAS is prohibited by federal law from disclosing collection account details without receiving (1) written consent from the

debtor to communicate with the third-party, (2) express permission of a court of competent jurisdiction, or (3) unless reasonably necessary to effectuate a postjudgment judicial remedy.” (Declaration of Susan Moses.)

6. NAS produced its telephone log, which confirmed that NAS did not receive any phone calls, from anyone regarding this Property, on May 10, 2012, or May 11, 2012.

7. If any findings of fact are more properly considered conclusions of law, they should be so construed.

CONCLUSIONS OF LAW

1. “Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). The party moving for summary judgment bears the initial burden of production to show the absence of a genuine issue of material fact. *Cuzze v. Univ. & Comm. College System of Nevada*, 172 P.3d 131, 134 (Nev. 2007). Where “the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party’s claim, or (2) ‘pointing out . . . that there is an absence of evidence to support the nonmoving party’s case.’” *Id.* (citations omitted).

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

1 An issue is only genuine if there is a sufficient evidentiary basis for a reasonable jury
2 to return a verdict for the non-moving party. See *Anderson*, 477 U.S. at 248 (1986).
3 Further, a dispute will only preclude the entry of summary judgment if it could affect the
4 outcome of the suit under governing law. *Id.* “The amount of evidence necessary to raise a
5 genuine issue of material fact is enough to require a judge or jury to resolve the parties’
6 differing versions of the truth at trial.” *Id.* at 249. In evaluating a summary judgment, a court
7 views all facts and draws all inferences in a light most favorable to the non-moving party.
8 *Wood v. Safeway, Inc.*, 121 Nev. 724, 729 (2005). If there are no genuine issues of fact,
9 the movant’s burden is not evidentiary because the facts are not disputed, but the court has
10 the obligation to resolve the legal dispute between the parties as a matter of law. *Gulf Ins.*
11 *Co. v. First Bank*, 2009 WL 1953444 *2 (E.D.Cal.2009) (citing *Asuncion v. Dist. Dir. of U.S.*
12 *Immigration & Naturalization Serv.*, 427 F.2d 523, 524 (9th Cir.1970)).

13 Where claims are unsubstantiated, the Nevada Supreme Court has stated: “trial
14 courts should not be reluctant in dispensing with such claims, as they are instructive of the
15 type of litigation that summary judgment is meant to obviate.” *Boesiger v. Desert*
16 *Appraisals, Ltd. Liab. Co.*, 444 P.3d 436, 440-41 (Nev. 2019).

17 2. Judicial Notice—as noted above, this court may take judicial notice of matters
18 of fact that are generally known or that are “[c]apable of accurate and ready determination
19 by resort to sources whose accuracy cannot reasonably be questioned’ when requested by
20 a party. NRS 47.130; NRS 47.150. Records of other courts are sources whose accuracy
21 cannot reasonably be questioned. *Occhiuto v. Occhiuto*, 97 Nev. 143, 145, 625 P.2d 568,
22 569 (1981). A court may take judicial notice of records from other cases if there is a close
23 relationship between the cases, and issues within the case justify taking judicial notice of
24 the prior case. *Id.*

25 The Court finds the District Court’s Order and the Nevada Supreme Court’s Order of
26 Affirmance, from the Prior Litigation, are closely related to this case in that the Prior
27 Litigation involves the same Property, the same nonjudicial foreclosure sale, and made
28 express findings regarding issues raised in this lawsuit, and therefore takes judicial notice

of the facts and law from the Prior Litigation.

MISREPRESENTATION

3. To prevail on a misrepresentation claim, Plaintiff must establish the following elements: (1) defendant supplied information while in the course of its business; (2) the information was false; (3) the information was supplied for the guidance of the plaintiff in its business transactions; (4) defendant must have failed to exercise reasonable care or competence in obtaining or communicating the information; (5) plaintiff must have justifiably relied upon the information by taking action or refraining from it; and (6) plaintiff sustained damage as a result of his reliance upon the accuracy of the information. *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 449, 956 P.2d 1382, 1387 (1998).

4. Here, the alleged misrepresentation was by omission. Plaintiff alleged he called NAS prior to the nonjudicial foreclosure sale, but that NAS did not respond.

5. However, in addition to the absence of competent evidence which would establish an actual phone call, on the alleged *estimated* dates of the alleged phone call, May 10 or May 11, 2012, NRS 116 did not require any extra-statutory disclosures beyond the publicly recorded nonjudicial foreclosure notices. See *Noonan v. Bayview Loan Servicing, LLC*, 438 P.3d 335 (Nev. 2019) (unpublished) (affirming summary judgment because there was no “affirmative false statement nor omitted a material fact it was bound to disclose.” See also *Saticoy Bay v. Genevieve Court Homeowners Ass’n*, No. 80135, 2020 Nev. Unpub. LEXIS 1000, at *1 (Oct. 16, 2020) (no duty to disclose); see also, *Saticoy Bay v. Silverstone Ranch Cmty. Ass’n*, No. 80039, 2020 Nev. Unpub. LEXIS 993, at *1 (Oct. 16, 2020) (no duty to disclose, and NRS 113 does not apply to create such a disclosure); see also, *Saticoy Bay Llc Series 10007 Liberty View v. S. Terrace Homeowners Ass’n*, 484 P.3d 276 (Nev. 2021) (same, issued April 16, 2021); see also, *Bay v. Tripoly*, 482 P.3d 699 (Nev. 2021) (same, issued March 26, 2021); see also, *Saticoy Bay Llc Series 3237 v. Aliante Master Ass’n*, 480 P.3d 836 (Nev. 2021) (same, issued February 16, 2021); see also, *Saticoy Bay v. Sunrise Ridge Master Homeowners Association*, 478 P.3d 870 (Nev. 2021) (same, issued January 15, 2021).

1 5. Therefore, because there was no duty to respond to a phone call in 2012,
2 whether or not the alleged phone call happened is immaterial and cannot be a basis for a
3 misrepresentation claim. See *Wood v. Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026,
4 1030 (2005) (only material fact disputes will preclude summary judgment).

5 **VIOLATION OF GOOD FAITH UNDER NRS 116.1113**

6 8. NRS 116.1113 states: “Every contract or duty governed by this chapter
7 imposes an obligation of good faith in its performance or enforcement.”

8 9. An HOA’s duties are proscribed by NRS 116.

9 10. It is undisputed that there was no defect in the HOA’s (or NAS’s) compliance
10 with NRS 116 regarding the nonjudicial foreclosure process. See *generally*, Prior Litigation.

11 11. Additionally, nothing in NRS 116.1113, in effect in May of 2012 imposed a
12 duty to disclose any preforeclosure payments. See Misrepresentation discussion, *supra*.
13 Compare, NRS 116.31162(1)(b)(3)(11) (2017) (requiring an HOA to disclose if tender of the
14 superpriority portion of the lien) with NRS 116.31162 (2005) (no disclosure requirement).

15 12. Neither the HOA nor NAS was required to disclose the existence of a pre-sale
16 payment. See NRS 116 (2005).

17 13. In the absence of a duty to disclose, there is no breach of a duty. See *Bay v.*
18 *Tripoly*, 482 P.3d 699 (Nev. 2021) (unpublished) (affirming dismissal of breach of duty of
19 good faith claim).

20 14. Therefore, the claim fails.

21 15. If any conclusions of law are more properly considered findings of fact, they
22 should be so construed.

23 **ORDER**

24 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** the claims for civil
25 conspiracy and violation of NRS 113 were **DISMISSED**, with prejudice, on December 14,
26 2020. With respect to the claims for misrepresentation and breach of duty of good faith,

27 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the HOA’s Renewed
28 Motion for Summary Judgment is **GRANTED**, in favor of the HOA;

Renee Rittenhouse

From: Brandon Wood <brandon@nas-inc.com>
Sent: Friday, September 17, 2021 1:07 PM
To: Renee Rittenhouse; 'Chris Benner'
Cc: Peter Dunkley
Subject: RE: harbor cover Proposed Order

No objections. You may use my electronic signature.

Best,

Brandon E. Wood, Esq.

Nevada Association Services, Inc.
6625 S. Valley View Blvd. Suite 300
Las Vegas, NV 89118
702-804-8885 Office
702-804-8887 Fax

Our office hours are Monday – Thursday 9-5, Friday 9-4:30 and closed for lunch from 12-1 daily. There is a drop-box available for payments in front of our office during normal business hours and lunch.



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From: Renee Rittenhouse <RRittenhouse@lipsonneilson.com>
Sent: Wednesday, September 15, 2021 2:03 PM
To: Brandon Wood <brandon@nas-inc.com>; 'Chris Benner' <chris@croteaulaw.com>
Cc: Peter Dunkley <PDunkley@lipsonneilson.com>
Subject: RE: harbor cover Proposed Order

Good Afternoon:

Please see the Proposed Order on Harbor Cove's Renewed MSJ. Please let our office know if you have corrections, comments, or would like to request revisions. If you are fine with the Order as attached, please confirm in an e-mail in order for us to send to the Judge for signature and filing.

Thank you,

LAW OFFICES



Renee M. Rittenhouse
Legal Assistant to Janeen V. Isaacson, Esq.
and Peter E. Dunkley, Esq.
Lipson Neilson
9900 Covington Cross Drive, Suite 120
Las Vegas, NV 89144
(702) 382-1500
(702) 382-1512 (fax)
E-Mail: rrittenhouse@lipsonneilson.com
Website: www.lipsonneilson.com
OFFICES IN NEVADA, MICHIGAN, ARIZONA & COLORADO

From: Peter Dunkley <PDunkley@lipsonneilson.com>
Sent: Thursday, September 9, 2021 12:57 PM
To: Brandon Wood <brandon@nas-inc.com>; 'Chris Benner' <chris@croteaulaw.com>
Cc: Renee Rittenhouse <RRittenhouse@lipsonneilson.com>
Subject: harbor cover Proposed Order

Hello,

The court wanted something in MS Word for red-lining. Please let me know if you have corrections, comments, or would like to request revisions.

Thanks!



Peter E. Dunkley, Esq.
1 E. Liberty Street, Suite 600
Reno, NV 89501
Telephone: (775) 420-1197
Fax: (702) 382-1512
E-Mail: pdunkley@lipsonneilson.com
Website: www.lipsonneilson.com
Offices in Nevada, Michigan, Arizona, and Colorado

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Renee Rittenhouse

From: Chris Benner <chris@croteaulaw.com>
Sent: Friday, September 17, 2021 12:53 PM
To: Renee Rittenhouse; Brandon Wood
Cc: Peter Dunkley
Subject: RE: harbor cover Proposed Order

You may add my e-signature.

Christopher L. Benner, Esq.
Roger P. Croteau & Associates
2810 Charleston Boulevard, No. H-75
Las Vegas, NV 89102
(702) 254-7775
chris@croteaulaw.com

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Thank you,



Renee M. Rittenhouse
Legal Assistant to Janeen V. Isaacson, Esq.
and Peter E. Dunkley, Esq.
Lipson Neilson
9900 Covington Cross Drive, Suite 120
Las Vegas, NV 89144

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Thanks!



Peter E. Dunkley, Esq.
1 E. Liberty Street, Suite 600
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 River Glider Avenue Trust,
7 Plaintiff(s)

CASE NO: A-20-819781-C

8 vs.

DEPT. NO. Department 20

9 Harbor Cover Homeowners
10 Association, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Granting Summary Judgment was served via the court's
15 electronic eFile system to all recipients registered for e-Service on the above entitled case as
16 listed below:

17 Service Date: 9/21/2021

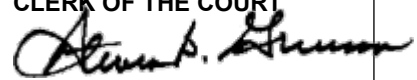
18 Susana Nutt	snutt@lipsonneilson.com
19 Renee Rittenhouse	rrittenhouse@lipsonneilson.com
20 Peter Dunkley	pdunkley@lipsonneilson.com
21 Brandon Wood	brandon@nas-inc.com
22 Roger Croteau	croteaulaw@croteaulaw.com
23 Susan Moses	susanm@nas-inc.com
24 Croteau Admin	receptionist@croteaulaw.com
25 Sydney Ochoa	sochoa@lipsonneilson.com
26 Charlie Luh	arbitration@luhlaw.com
27 Christopher Benner	chris@croteaulaw.com

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EXHIBIT 3

EXHIBIT 3



LIPSON NEILSON P.C.
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Attorneys for Defendants Harbor Cove Homeowners Association

DISTRICT COURT

CLARK COUNTY, NEVADA

RIVER GLIDER AVENUE TRUST,

Plaintiff,

vs.

HARBOR COVE HOMEOWNERS
ASSOCIATION; and NEVADA
ASSOCIATION SERVICES, INC.,

Defendants.

CASE NO.: A-20-819781-C

DEPT. NO.: 20

NOTICE OF ENTRY OF ORDER

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1 PLEASE TAKE NOTICE that the **ORDER ON HARBOR COVE HOMEOWNERS**
2 **ASSOCIATION'S RENEWED MOTION FOR SUMMARY JUDGMENT** filed with the court
3 this 21st day of September, 2021, a true and correct copy of which is attached hereto.

4 Dated this 23rd day of September, 2021.

5 LIPSON NEILSON, P.C.

6 By: /s/ Peter E. Dunkley

7 KALEB D. ANDERSON, ESQ.

8 Nevada Bar No. 7582

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17 *Attorneys for Defendants Harbor Cove HOA*
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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of September, 2021, an electronic copy of the following **NOTICE OF ENTRY OF ORDER** was filed and e-served via the Court's electronic service system to all persons who have registered for e-service in this case:

Roger Croteau, Esq.
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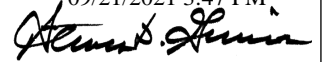
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*Attorney for Defendant Nevada Association
Services, Inc.*

/s/ Sydney Ochoa

An Employee of LIPSON NEILSON P.C.


CLERK OF THE COURT

LIPSON NEILSON P.C.
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DISTRICT COURT
CLARK COUNTY, NEVADA

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Plaintiff,

vs.

HARBOR COVE HOMEOWNERS
ASSOCIATION; and NEVADA
ASSOCIATION SERVICES, INC.,

Defendants.

CASE NO.: A-20-819781-C

DEPT. NO.: 20

[PROPOSED]

**ORDER ON HARBOR COVE
HOMEOWNERS ASSOCIATION'S
RENEWED, MOTION FOR SUMMARY
JUDGMENT**

**Hearing Date: September 8, 2021
Hearing Time: 8:30 A.M.**

Before the Court is Defendant Harbor Cove Homeowners Association's (the "HOA"), Renewed Motion for Summary Judgment, and Nevada Association Services, Inc.'s ("NAS") joinder. Plaintiff, River Glider Avenue Trust, filed a response. The HOA replied.

On December 14, 2020, the Court dismissed claims for civil conspiracy and violation of NRS 113. The remaining claims, misrepresentation and violation of duty of good faith under NRS 116.1113 were subsequently sent to arbitration. After discovery, the HOA re filed the Renewed Motion for Summary Judgment.

On September 8, 2021, the Renewed Motion for Summary judgment came up for hearing. The Court considered the pleadings, exhibits, including orders from case A-13-

683467-C and Appeal No. 76683 (the "Prior Litigation"), as well as argument from counsel. In light of the Prior Litigation, the Court takes judicial notice of facts and law from the Prior Litigation. See NRS 47.130 (judicial notice may be taken of facts); NRS 47.140 (judicial notice may be taken of the Nevada Revised Statutes); NRS 47.150(2) (the court "shall take judicial notice if requested by a party and supplied with the necessary information"). *Andolino v. State*, 99 Nev. 346, 351, 662 P.2d 631, 633 (1983) (mandatory judicial notice appropriate where necessary information related to prior decision and order made part of record). See also, *Mack v. Estate of Mack*, 125 Nev. 80, 91-92, 206 P.3d 98, 106 (2009) (providing the court may take judicial notice of facts in a different case when the moving party establishes a valid reason for doing so.) See also, *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980) (explaining that "a court may take judicial notice of its own records in other cases"). This matter was set for an arbitration to take place on September 15, 2021. However, the HOA timely filed the Renewed Motion for Summary Judgment on July 22, 2021. See NAR 4(E) (dispositive motions may be filed no later than 45 days prior to the arbitration). The Court finds and rules as follows:

FINDINGS OF FACT

1. River Glider Avenue Trust purchased the Property at the valid nonjudicial foreclosures sale for \$5,500.00 on May 11, 2012.

2. Before the nonjudicial foreclosure sale, the prior owner of the Property had satisfied the super-priority portion of the HOA's lien.

3. Thus, the nonjudicial foreclosure sale was valid and conveyed the Property to the Plaintiff *subject to* the existing deed of trust.

4. Plaintiff alleges that its manager, on either May 10, 2012, or May 11, 2012, called NAS to inquire regarding the status of the lien. Plaintiff admits it has no corroborating records of the alleged call.

5. NAS testified, that when a third-party calls NAS about a homeowner's account: "NAS informed such individuals or entities that NAS is prohibited by federal law from disclosing collection account details without receiving (1) written consent from the

debtor to communicate with the third-party, (2) express permission of a court of competent jurisdiction, or (3) unless reasonably necessary to effectuate a postjudgment judicial remedy.” (Declaration of Susan Moses.)

6. NAS produced its telephone log, which confirmed that NAS did not receive any phone calls, from anyone regarding this Property, on May 10, 2012, or May 11, 2012.

7. If any findings of fact are more properly considered conclusions of law, they should be so construed.

CONCLUSIONS OF LAW

1. “Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). The party moving for summary judgment bears the initial burden of production to show the absence of a genuine issue of material fact. *Cuzze v. Univ. & Comm. College System of Nevada*, 172 P.3d 131, 134 (Nev. 2007). Where “the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party’s claim, or (2) ‘pointing out . . . that there is an absence of evidence to support the nonmoving party’s case.’” *Id.* (citations omitted).

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

1 An issue is only genuine if there is a sufficient evidentiary basis for a reasonable jury
2 to return a verdict for the non-moving party. See *Anderson*, 477 U.S. at 248 (1986).
3 Further, a dispute will only preclude the entry of summary judgment if it could affect the
4 outcome of the suit under governing law. *Id.* “The amount of evidence necessary to raise a
5 genuine issue of material fact is enough to require a judge or jury to resolve the parties’
6 differing versions of the truth at trial.” *Id.* at 249. In evaluating a summary judgment, a court
7 views all facts and draws all inferences in a light most favorable to the non-moving party.
8 *Wood v. Safeway, Inc.*, 121 Nev. 724, 729 (2005). If there are no genuine issues of fact,
9 the movant’s burden is not evidentiary because the facts are not disputed, but the court has
10 the obligation to resolve the legal dispute between the parties as a matter of law. *Gulf Ins.*
11 *Co. v. First Bank*, 2009 WL 1953444 *2 (E.D.Cal.2009) (citing *Asuncion v. Dist. Dir. of U.S.*
12 *Immigration & Naturalization Serv.*, 427 F.2d 523, 524 (9th Cir.1970)).

13 Where claims are unsubstantiated, the Nevada Supreme Court has stated: “trial
14 courts should not be reluctant in dispensing with such claims, as they are instructive of the
15 type of litigation that summary judgment is meant to obviate.” *Boesiger v. Desert*
16 *Appraisals, Ltd. Liab. Co.*, 444 P.3d 436, 440-41 (Nev. 2019).

17 2. Judicial Notice—as noted above, this court may take judicial notice of matters
18 of fact that are generally known or that are “[c]apable of accurate and ready determination
19 by resort to sources whose accuracy cannot reasonably be questioned’ when requested by
20 a party. NRS 47.130; NRS 47.150. Records of other courts are sources whose accuracy
21 cannot reasonably be questioned. *Occhiuto v. Occhiuto*, 97 Nev. 143, 145, 625 P.2d 568,
22 569 (1981). A court may take judicial notice of records from other cases if there is a close
23 relationship between the cases, and issues within the case justify taking judicial notice of
24 the prior case. *Id.*

25 The Court finds the District Court’s Order and the Nevada Supreme Court’s Order of
26 Affirmance, from the Prior Litigation, are closely related to this case in that the Prior
27 Litigation involves the same Property, the same nonjudicial foreclosure sale, and made
28 express findings regarding issues raised in this lawsuit, and therefore takes judicial notice

of the facts and law from the Prior Litigation.

MISREPRESENTATION

3. To prevail on a misrepresentation claim, Plaintiff must establish the following elements: (1) defendant supplied information while in the course of its business; (2) the information was false; (3) the information was supplied for the guidance of the plaintiff in its business transactions; (4) defendant must have failed to exercise reasonable care or competence in obtaining or communicating the information; (5) plaintiff must have justifiably relied upon the information by taking action or refraining from it; and (6) plaintiff sustained damage as a result of his reliance upon the accuracy of the information. *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 449, 956 P.2d 1382, 1387 (1998).

4. Here, the alleged misrepresentation was by omission. Plaintiff alleged he called NAS prior to the nonjudicial foreclosure sale, but that NAS did not respond.

5. However, in addition to the absence of competent evidence which would establish an actual phone call, on the alleged *estimated* dates of the alleged phone call, May 10 or May 11, 2012, NRS 116 did not require any extra-statutory disclosures beyond the publicly recorded nonjudicial foreclosure notices. See *Noonan v. Bayview Loan Servicing, LLC*, 438 P.3d 335 (Nev. 2019) (unpublished) (affirming summary judgment because there was no “affirmative false statement nor omitted a material fact it was bound to disclose.” See also *Saticoy Bay v. Genevieve Court Homeowners Ass’n*, No. 80135, 2020 Nev. Unpub. LEXIS 1000, at *1 (Oct. 16, 2020) (no duty to disclose); see also, *Saticoy Bay v. Silverstone Ranch Cmty. Ass’n*, No. 80039, 2020 Nev. Unpub. LEXIS 993, at *1 (Oct. 16, 2020) (no duty to disclose, and NRS 113 does not apply to create such a disclosure); see also, *Saticoy Bay Llc Series 10007 Liberty View v. S. Terrace Homeowners Ass’n*, 484 P.3d 276 (Nev. 2021) (same, issued April 16, 2021); see also, *Bay v. Tripoly*, 482 P.3d 699 (Nev. 2021) (same, issued March 26, 2021); see also, *Saticoy Bay Llc Series 3237 v. Aliante Master Ass’n*, 480 P.3d 836 (Nev. 2021) (same, issued February 16, 2021); see also, *Saticoy Bay v. Sunrise Ridge Master Homeowners Association*, 478 P.3d 870 (Nev. 2021) (same, issued January 15, 2021).

1 5. Therefore, because there was no duty to respond to a phone call in 2012,
2 whether or not the alleged phone call happened is immaterial and cannot be a basis for a
3 misrepresentation claim. See *Wood v. Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026,
4 1030 (2005) (only material fact disputes will preclude summary judgment).

5 **VIOLATION OF GOOD FAITH UNDER NRS 116.1113**

6 8. NRS 116.1113 states: “Every contract or duty governed by this chapter
7 imposes an obligation of good faith in its performance or enforcement.”

8 9. An HOA’s duties are proscribed by NRS 116.

9 10. It is undisputed that there was no defect in the HOA’s (or NAS’s) compliance
10 with NRS 116 regarding the nonjudicial foreclosure process. See *generally*, Prior Litigation.

11 11. Additionally, nothing in NRS 116.1113, in effect in May of 2012 imposed a
12 duty to disclose any preforeclosure payments. See Misrepresentation discussion, *supra*.
13 Compare, NRS 116.31162(1)(b)(3)(11) (2017) (requiring an HOA to disclose if tender of the
14 superpriority portion of the lien) with NRS 116.31162 (2005) (no disclosure requirement).

15 12. Neither the HOA nor NAS was required to disclose the existence of a pre-sale
16 payment. See NRS 116 (2005).

17 13. In the absence of a duty to disclose, there is no breach of a duty. See *Bay v.*
18 *Tripoly*, 482 P.3d 699 (Nev. 2021) (unpublished) (affirming dismissal of breach of duty of
19 good faith claim).

20 14. Therefore, the claim fails.

21 15. If any conclusions of law are more properly considered findings of fact, they
22 should be so construed.

23 **ORDER**

24 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** the claims for civil
25 conspiracy and violation of NRS 113 were **DISMISSED**, with prejudice, on December 14,
26 2020. With respect to the claims for misrepresentation and breach of duty of good faith,

27 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the HOA’s Renewed
28 Motion for Summary Judgment is **GRANTED**, in favor of the HOA;

Renee Rittenhouse

From: Brandon Wood <brandon@nas-inc.com>
Sent: Friday, September 17, 2021 1:07 PM
To: Renee Rittenhouse; 'Chris Benner'
Cc: Peter Dunkley
Subject: RE: harbor cover Proposed Order

No objections. You may use my electronic signature.

Best,

Brandon E. Wood, Esq.

Nevada Association Services, Inc.
6625 S. Valley View Blvd. Suite 300
Las Vegas, NV 89118
702-804-8885 Office
702-804-8887 Fax

Our office hours are Monday – Thursday 9-5, Friday 9-4:30 and closed for lunch from 12-1 daily. There is a drop-box available for payments in front of our office during normal business hours and lunch.



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From: Renee Rittenhouse <RRittenhouse@lipsonneilson.com>
Sent: Wednesday, September 15, 2021 2:03 PM
To: Brandon Wood <brandon@nas-inc.com>; 'Chris Benner' <chris@croteaulaw.com>
Cc: Peter Dunkley <PDunkley@lipsonneilson.com>
Subject: RE: harbor cover Proposed Order

Good Afternoon:

Please see the Proposed Order on Harbor Cove's Renewed MSJ. Please let our office know if you have corrections, comments, or would like to request revisions. If you are fine with the Order as attached, please confirm in an e-mail in order for us to send to the Judge for signature and filing.

Thank you,

LAW OFFICES



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and Peter E. Dunkley, Esq.
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OFFICES IN NEVADA, MICHIGAN, ARIZONA & COLORADO

From: Peter Dunkley <PDunkley@lipsonneilson.com>
Sent: Thursday, September 9, 2021 12:57 PM
To: Brandon Wood <brandon@nas-inc.com>; 'Chris Benner' <chris@croteaulaw.com>
Cc: Renee Rittenhouse <RRittenhouse@lipsonneilson.com>
Subject: harbor cover Proposed Order

Hello,

The court wanted something in MS Word for red-lining. Please let me know if you have corrections, comments, or would like to request revisions.

Thanks!



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Renee Rittenhouse

From: Chris Benner <chris@croteaulaw.com>
Sent: Friday, September 17, 2021 12:53 PM
To: Renee Rittenhouse; Brandon Wood
Cc: Peter Dunkley
Subject: RE: harbor cover Proposed Order

You may add my e-signature.

Christopher L. Benner, Esq.
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Thank you,



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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 River Glider Avenue Trust,
7 Plaintiff(s)

CASE NO: A-20-819781-C

8 vs.

DEPT. NO. Department 20

9 Harbor Cover Homeowners
10 Association, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Granting Summary Judgment was served via the court's
15 electronic eFile system to all recipients registered for e-Service on the above entitled case as
16 listed below:

17 Service Date: 9/21/2021

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