

**IN THE SUPREME COURT OF NEVADA**

DAISY TRUST, A NEVADA TRUST

Appellant,

v.

GREEN VALLEY SOUTH OWNERS  
ASSOCIATION NO. 1, A NEVADA  
NON-PROFIT CORPORATION;  
AND NEVADA ASSOCIATION  
SERVICES, A DOMESTIC  
CORPORATION

Respondents.

Supreme Court Case No. 82611

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**JOINT APPENDIX**

**VOLUME 1**

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**INDEX OF APPENDIX – CHRONOLOGICAL**

| <b><u>DATE</u></b> | <b><u>DOCUMENT</u></b>   | <b><u>VOLUME</u></b> | <b><u>PAGE</u></b> |
|--------------------|--|----------------------|--------------------|
| 03/15/2019         | Complaint  | 1                    | JA001-18           |
| 03/21/2019         | Affidavit of Service-Nevada Association Services   | 1                    | JA0019             |
| 03/21/2019         | Affidavit of Service-Los Prados Community Association  | 1                    | JA0020             |
| 03/21/2019         | Affidavit of Service-Green Valley South Owners Association No. 1   | 1                    | JA0021             |
| 04/05/2019         | Green Valley South Owners Association No 1's Answer to Plaintiff's Complaint   | 1                    | JA0022-27          |
| 09/20/2019         | Defendant Green Valley South Owners' Association's Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment  | 1                    | JA0028-85          |
| 10/18/2019         | Nevada Association Services, INC.'s Joinder to Defendant Green Valley South Owners' Association's Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment                         | 1                    | JA0086-88          |
| 10/29/2019         | Plaintiff's Opposition to Green Valley South Owners Association's Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment and Nevada Association Services, INC.'s Joinder Thereto | 1                    | JA0089-205         |
| 12/03/2019         | Defendant Green Valley South Owners' Association's Reply to Daisy Trust's Opposition to Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment                                   | 1                    | JA0206-217         |
| 12/10/2019         | Transcript of Proceedings  | 1                    | JA0218-237         |
| 02/07/2020         | Order Granting in Part Defendant Green Valley South Homeowners Association's Motion to Dismiss   | 1                    | JA0238-239         |

|            |  |   |            |
|------------|--|---|------------|
| 02/07/2020 | Notice of Entry of Order   | 2 | JA0240-244 |
| 05/01/2020 | Nevada Association Services, INC.'s Answer to Complaint  | 2 | JA0245-254 |
| 10/25/2020 | Defendant Green Valley South Owners' Association's Renewed Motion to Dismiss, or Alternatively, Motion for Summary Judgment  | 2 | JA0255-294 |
| 10/29/2020 | Nevada Association Services, INC.'s Joinder to Defendant Green Valley South Owners' Association's Renewed Motion to Dismiss, or Alternatively, Motion for Summary Judgment                                 | 2 | JA0295-297 |
| 11/09/2020 | Plaintiff's Opposition to Green Valley South Owners Association's Renewed Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment and Nevada Association Services, INC.'s Joinder Thereto | 2 | JA0298-415 |
| 11/24/2020 | Defendant Green Valley South Owners' Association's Reply to Daisey Trust's Opposition to Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment  | 3 | JA416-566  |
| 12/1/2020  | Transcript of Proceedings  | 3 | JA0567-595 |
| 02/05/2021 | Findings of Fact, Conclusions of Law and Order on Defendant Green Valley South Owner's Association's Motion to Dismiss, or Alternatively Motion for Summary Judgment                                       | 3 | JA0596-612 |
| 02/16/2021 | Notice of Entry of Findings of Fact, Conclusions of Law and Order on Defendant Green Valley South Owner's Association's Motion to Dismiss, or Alternatively Motion for Summary Judgment                    | 3 | JA0613-632 |

|            |                  |   |            |
|------------|------------------|---|------------|
| 03/09/2021 | Notice of Appeal | 3 | JA0633-635 |
|------------|------------------|---|------------|

### **INDEX OF APPENDIX – ALPHABETICAL**

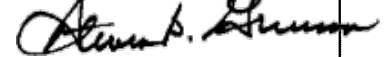
| <b><u>DATE</u></b> | <b><u>DOCUMENT</u></b>   | <b><u>VOLUME</u></b> | <b><u>PAGE</u></b> |
|--------------------|--|----------------------|--------------------|
| 3/21/2019          | Affidavit of Service-Green Valley South Owners Association No. 1   | 1                    | JA0021             |
| 3/21/2019          | Affidavit of Service-Los Prados Community Association  | 1                    | JA0020             |
| 3/21/2019          | Affidavit of Service-Nevada Association Services   | 1                    | JA0019             |
| 3/15/2019          | Complaint  | 1                    | JA001-18           |
| 9/20/2019          | Defendant Green Valley South Owners' Association's Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment  | 1                    | JA0028-85          |
| 10/25/2020         | Defendant Green Valley South Owners' Association's Renewed Motion to Dismiss, or Alternatively, Motion for Summary Judgment  | 2                    | JA0255-294         |
| 12/3/2019          | Defendant Green Valley South Owners' Association's Reply to Daisey Trust's Opposition to Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment    | 1                    | JA0206-217         |
| 11/24/2020         | Defendant Green Valley South Owners' Association's Reply to Daisey Trust's Opposition to Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment    | 3                    | JA416-566          |
| 2/5/2021           | Findings of Fact, Conclusions of Law and Order on Defendant Green Valley South Owner's Association's Motion to Dismiss, or Alternatively Motion for Summary Judgment | 3                    | JA0596-612         |

|            |  |   |            |
|------------|--|---|------------|
| 4/5/2019   | Green Valley South Owners Association No 1's Answer to Plaintiff's Complaint   | 1 | JA0022-27  |
| 5/1/2020   | Nevada Association Services, INC.'s Answer to Complaint  | 2 | JA0245-254 |
| 10/18/2019 | Nevada Association Services, INC.'s Joinder to Defendant Green Valley South Owners' Association's Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment                         | 1 | JA0086-88  |
| 10/29/2020 | Nevada Association Services, INC.'s Joinder to Defendant Green Valley South Owners' Association's Renewed Motion to Dismiss, or Alternatively, Motion for Summary Judgment                         | 2 | JA0295-297 |
| 3/9/2021   | Notice of Appeal   | 3 | JA0633-635 |
| 2/16/2021  | Notice of Entry of Findings of Fact, Conclusions of Law and Order on Defendant Green Valley South Owner's Association's Motion to Dismiss, or Alternatively Motion for Summary Judgment            | 3 | JA0613-632 |
| 2/7/2020   | Notice of Entry of Order   | 2 | JA0240-244 |
| 2/7/2020   | Order Granting in Part Defendant Green Valley South Homeowners Association's Motion to Dismiss   | 1 | JA0238-239 |
| 10/29/2019 | Plaintiff's Opposition to Green Valley South Owners Association's Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment and Nevada Association Services, INC.'s Joinder Thereto | 1 | JA0089-205 |
| 11/9/2020  | Plaintiff's Opposition to Green Valley South Owners Association's Renewed Motion to Dismiss, or  | 2 | JA0298-415 |

|            |  |   |            |
|------------|--|---|------------|
|            | Alternatively, Motion for Partial Summary Judgment and Nevada Association Services, INC.'s Joinder Thereto |   |            |
| 12/10/2019 | Transcript of Proceedings  | 1 | JA0218-237 |
| 12/1/2020  | Transcript of Proceedings  | 3 | JA0567-595 |

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CASE NO: A-19-791254-C  
Department 8

DISTRICT COURT  
CLARK COUNTY, NEVADA

DAISY TRUST, a Nevada trust,  
Plaintiff,

Case No.:  
Dept. No.:

vs.

GREEN VALLEY SOUTH OWNERS  
ASSOCIATION NO. 1 and NEVADA  
ASSOCIATION SERVICES, INC., a domestic  
corporation;  
Defendants.

**COMPLAINT**

COMES NOW, Plaintiff, Daisy Trust, by and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby complains and alleges against Defendants as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff, Daisy Trust ("*Trust*"), is a Nevada trust, authorized to do business and doing business in the County of Clark, State of Nevada.
2. Daisy Trust is the current owner of real property located at 137 Elegante Way, Henderson, Nevada 89074 (APN 177-13-214-086) (the "*Property*").

3. Daisy Trust acquired title to the Property by Foreclosure Deed dated September 7, 2012, by and through a homeowners association lien foreclosure sale conducted on August 31, 2012 (“*HOA Foreclosure Sale*”), by Nevada Association Services, Inc., a Nevada corporation, authorized to do business and doing business in Clark County, State of Nevada (“*HOA Trustee*”), on behalf of Green Valley South Owners Association No. 1, a Nevada domestic non-profit corporation (“*HOA*”). The HOA Foreclosure Deed was recorded in the Clark County Recorder’s Office on September 7, 2012 (“*HOA Foreclosure Deed*”).
4. Upon information and belief, HOA is a Nevada common interest community association or unit owners’ association as defined in NRS 116.011, is organized and existing under the laws of the State of Nevada, and transacts business in the State of Nevada.
5. Upon information and belief, HOA Trustee is a debt collection agency doing business in the State of Nevada, and is organized and existing under the laws of the State of Nevada.
6. Venue is proper in Clark County, Nevada pursuant to NRS 13.040.
7. The exercise of jurisdiction by this Court over the parties in this civil action is proper pursuant to NRS 14.065.

#### GENERAL ALLEGATIONS

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

1 adopted by the association pursuant to NRS 116.3115 which would have become due in the  
2 absence of acceleration during the 9 months immediately preceding institution of an action to  
3 enforce the lien.” NRS 116.3116(2)(c).

4 11. In Nevada, when a homeowners association properly forecloses upon a lien containing a  
5 super-priority lien component, such foreclosure extinguishes a first deed of trust.

6 12. On or about June 5, 2008, Dennis L. Scott, an unmarried man, (“*the Former Owner*”)  
7 purchased the Property and obtained a purchase money loan secured by the Property from  
8 CTX Mortgage Company, LLC, a Delaware corporation (“*Lender*”), that is evidenced by a  
9 deed of trust between the Former Owner and Lender, recorded against the Property on June  
10 27, 2008, for the loan amount of \$179,188.00 (“*Deed of Trust*”). The Deed of Trust provides  
11 that Mortgage Electronic Registration Services (“*MERS*”) is beneficiary, as nominee for  
12 Lender and Lender’s successors and assigns. The Deed of Trust was in the amount of  
13 \$179,188.00, and the Deed of Trust was recorded in the Clark County Recorder’s Office on  
14 June 27, 2008.

15 13. The Former Owner executed Planned Unit Development Riders along with the Deed of  
16 Trust, effective as of June 23, 2008.

17 14. On September 26, 2011, MERS, on behalf of Lender, assigned its beneficial interest by  
18 Assignment of Deed of Trust to Bank of America, N.A. (“*BANA*”) and recorded the  
19 document in Clark County Recorder’s Office on October 5, 2011.

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

21 15. Upon information and belief, the Former Owner of the Property failed to pay to HOA all  
22 amounts due to pursuant to HOA’s governing documents.

23 16. Accordingly, on August 23, 2011, HOA Trustee, on behalf of HOA, recorded a Notice of  
24 Delinquent Assessment Lien (“*HOA Lien*”). The HOA Lien stated that the amount due to the  
25 HOA was \$818.70, as of August 18, 2011, plus interest, late charges, costs, fees and other  
26 charges.

27 17. On November 18, 2011, HOA, through HOA Trustee, recorded a Notice of Default and  
28 Election to Sell Under Homeowners Association Lien (“*NOD*”) against the Property. The

- 1 NOD stated the amount due to the HOA was \$1,819.50 as of November 16, 2011. plus  
2 accruing assessments, interest, costs and attorney's fees.
- 3 18. Upon information and belief, after the NOD was recorded, on December 19, 2011, BANA,  
4 through Miles, Bauer, Bergstrom & Winters ("*Miles Bauer*") contacted the HOA Trustee and  
5 requested a ledger identifying the Super-Priority Lien Amount, comprising of up to 9 months  
6 of delinquent assessments that were owed to the HOA as of the HOA Lien ("*Super Priority*  
7 *Lien Amount*").
- 8 19. Upon information and belief, Miles Bauer requested the HOA arrears in an attempt to pay the  
9 Super-Priority Lien Amount of the HOA Lien.
- 10 20. In an Affidavit of Adam Kendis of Miles Bauer, he provided that he could not locate a  
11 response from the HOA and HOA Trustee to the "December 19, 2011, Miles Bauer letter to  
12 the HOA, care of the HOA Trustee."
- 13 21. The Affidavit stated that Miles Bauer used a Statement of Account from Nevada Association  
14 Services, Inc., for a different property in the same HOA to determine a good faith payoff.
- 15 22. On February 2, 2012, BANA, through Miles Bauer, provided a payment of \$882.00 to the  
16 HOA Trustee, which included payment of up to nine months of delinquent assessments (the  
17 "*Attempted Payment*").
- 18 23. HOA Trustee, on behalf of the HOA, rejected BANA's Attempted Payment of \$882.00.
- 19 24. On April 23, 2012, HOA Trustee, on behalf of the HOA, recorded a Notice of Sale against  
20 the Property ("*NOS*"). The NOS provided that the total amount due the HOA was \$2,946.17  
21 and set a sale date for the Property of May 18, 2012, at 10:00 A.M., to be held at Nevada  
22 Legal News, 930 So. Fourth Street, Las Vegas, Nevada.
- 23 25. On August 31, 2012, HOA Trustee then proceeded to non-judicial foreclosure sale on the  
24 Property and recorded the HOA Foreclosure Deed on September 7, 2012, which stated that  
25 the HOA Trustee sold the HOA's interest in the Property to the Plaintiff at the Foreclosure  
26 Sale for the highest bid amount of \$3,555.00.
- 27 26. The Foreclosure Sale created excess proceeds.
- 28

- 1 27. After the Notice of Default was recorded, BANA, the purported holder of the Deed of Trust  
2 recorded against the Property, through its counsel, Miles Bauer, contacted HOA Trustee and  
3 HOA and requested all amounts due the HOA by the Former Owner, upon information and  
4 belief, Miles Bauer requested the sums due to the HOA by the Former Owner so it could  
5 calculate the breakdown of up to nine (9) months of common HOA assessments in order for  
6 BANA to calculate the Super Priority Lien Amount in an ostensible attempt to determine the  
7 amount of the HOA Lien entitled to super-priority over the Deed of Trust.
- 8 28. In none of the recorded documents, nor in any other notice recorded with the Clark County  
9 Recorder's Office, did HOA and/or HOA Trustee specify or disclose that any individual or  
10 entity, including but not limited to BANA, had attempted to pay any portion of the HOA Lien  
11 in advance of the HOA Foreclosure Sale.
- 12 29. Plaintiff appeared at the HOA Foreclosure Sale and presented the prevailing bid in the  
13 amount of \$3,555.00, thereby purchasing the Property for said amount.
- 14 30. Neither HOA nor HOA Trustee informed or advised the bidders and potential bidders at the  
15 HOA Foreclosure Sale, either orally or in writing, that any individual or entity had attempted  
16 to pay the Super-Priority Lien Amount.
- 17 31. Upon information and belief, the debt owed to Lender by the Former Owner of the Property  
18 pursuant to the loan secured by the Deed of Trust significantly exceeded the fair market value  
19 of the Property at the time of the HOA Foreclosure Sale.
- 20 32. Upon information and belief, Lender alleges that its Attempted Payment of the Super-Priority  
21 Lien Amount served to satisfy and discharge the Super-Priority Lien Amount, thereby  
22 changing the priority of the HOA Lien vis a vis the Deed of Trust.
- 23 33. Upon information and belief, Lender alleges that as a result of its Attempted Payment of the  
24 Super-Priority Lien Amount, the purchaser of the Property at the HOA Foreclosure Sale  
25 acquired title to the Property subject to the Deed of Trust.
- 26 34. Upon information and belief, if the bidders and potential bidders at the HOA Foreclosure  
27 Sale were aware that an individual or entity had attempted to pay the Super-Priority Lien  
28 Amount and/or by means of the Attempted Payment prior to the HOA Foreclosure Sale and

1 that the Property was therefore ostensibly being sold subject to the Deed of Trust, the bidders  
2 and potential bidders would not have bid on the Property.

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

6 36. HOA Trustee acted as an agent of HOA.

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

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

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

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

19 41. BANA first disclosed the Attempted Payment by BANA/Lender to the HOA Trustee in  
20 BANA's Complaint, filed on February 29, 2016, but not served on the Plaintiff until March  
21 16, 2016 ("*Discovery*") in the United States District Court Case No. 2:16-CV-00424 (the  
22 "*Case*").

23 **FIRST CAUSE OF ACTION**

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

25 **Against the HOA and HOA Trustee)**

26 42. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 41  
27 hereof as if set forth fully herein.  
28

- 1 43. At no point in time did HOA or HOA Trustee disclose to the bidders and potential bidders at  
2 the HOA Foreclosure Sale the fact that any individual or entity had attempted to pay the  
3 Super-Priority Lien Amount or provided the Attempted Payment.
- 4 44. By rejecting the Attempted Payment of the Super-Priority Lien Amount from Lender and/or  
5 Miles Bauer, HOA Trustee provided itself with the opportunity to perform and profit from  
6 many additional services on behalf of HOA related to the Property and proceedings related to  
7 the HOA Foreclosure Sale.
- 8 45. By rejecting the Attempted Payment of the Super-Priority Lien Amount from Lender and/or  
9 Miles Bauer, HOA received funds in satisfaction of the entire HOA Lien, rather than only the  
10 Super-Priority Lien Amount.
- 11 46. Consequently, HOA and HOA Trustee received substantial benefit as a result of their  
12 rejection of the Attempted Payment of the Super-Priority Lien Amount from Lender and  
13 intentionally failing to disclose that information to the Plaintiff or the other bidders.
- 14 47. Neither HOA nor HOA Trustee recorded any notice nor provided any written or oral  
15 disclosure to the bidders and potential bidders at the HOA Foreclosure Sale regarding any  
16 Attempted Payment of the Super-Priority Lien Amount by Lender or any individual or entity.
- 17 48. HOA and HOA Trustee desired that the bidders and potential bidders at the HOA Foreclosure  
18 Sale believe that the HOA Lien included amounts entitled to super-priority over the Deed of  
19 Trust and that the Deed of Trust would thus be extinguished as a result of the HOA  
20 Foreclosure Sale for their own economic gain.
- 21 49. As a result of their desire that the bidders and potential bidders at the HOA Foreclosure Sale  
22 believe that the HOA Lien included amounts entitled to super-priority over the Deed of Trust  
23 and that the Deed of Trust would thus be extinguished as a result of the HOA Foreclosure  
24 Sale, HOA and HOA Trustee intentionally failed to disclose material information related to  
25 the Attempted Payment of the Super-Priority Lien Amount by Lender and did so for their  
26 own economic gain.
- 27 50. Alternatively, HOA and HOA Trustee were grossly negligent by failing to disclose material  
28 information related to the Attempted Payment of the Super-Priority Lien Amount.

- 1 51. Upon information and belief, if HOA Trustee and/or HOA had disclosed the Attempted  
2 Payment of the Super-Priority Lien Amount to the bidders and potential bidders at the HOA  
3 Foreclosure Sale, such bidders and potential bidders would not have bid upon the Property at  
4 the HOA Foreclosure Sale.
- 5 52. Given the facts of this case now known to Plaintiff, Plaintiff would not have bid on the  
6 Property.
- 7 53. Upon information and belief, if the Property had not been sold at the HOA Foreclosure Sale,  
8 HOA would not have received funds in satisfaction of the HOA Lien.
- 9 54. Upon information and belief, if the Property had not been sold at the HOA Foreclosure Sale,  
10 HOA Trustee would not have received payment for the work that it performed on behalf of  
11 HOA in association with the HOA Foreclosure Sale and related proceedings.
- 12 55. Plaintiff attended the sale as a ready, willing and able buyer without knowledge of the  
13 Attempted Payment.
- 14 56. Plaintiff would not have purchased the Property if it had been informed that any individual or  
15 entity had paid or attempted to pay the Super-Priority Lien Amount in advance of the HOA  
16 Foreclosure Sale.
- 17 57. As a direct result of HOA and HOA Trustee's rejection of the Attempted Payment of the  
18 Super-Priority Lien Amount and their subsequent intentional or grossly negligent failure to  
19 advise the bidders and potential bidders at the HOA Foreclosure Sale of the facts related  
20 thereto, Plaintiff presented the prevailing bid at the HOA Foreclosure Sale and thereby  
21 purchased the Property.
- 22 58. HOA and HOA Trustee each profited from their intentional and/or negligent  
23 misrepresentations and material omissions at the time of the HOA Foreclosure Sale by failing  
24 and refusing to disclose the Attempted Payment of the Super-Priority Lien Amount.
- 25 59. HOA and HOA Trustee materially misrepresented the facts by hiding and failing to advise  
26 bidders and potential bidders at the HOA Foreclosure Sale of information known solely to the  
27 HOA and/or HOA Trustee that was not publicly available which ostensibly changed the  
28 priority of Deed of Trust vis a vis the HOA Lien.

- 1 60. HOA and HOA Trustee solely possessed information related to the Attempted Payment of the  
2 Super-Priority Lien Amount prior to and at the time of the HOA Foreclosure Sale, and  
3 intentionally withheld such information for their own economic gain.
- 4 61. Alternatively, HOA and HOA Trustee were gross negligently when it withheld information  
5 related to the Attempted Payment of the Super-Priority Lien Amount.
- 6 62. Plaintiff reasonably relied upon HOA and HOA Trustee's intentional or grossly negligent  
7 failure to disclose the Attempted Payment of the Super-Priority Lien Amount.
- 8 63. HOA and HOA Trustee intended that bidders and potential bidders at the HOA Foreclosure  
9 Sale would rely on the lack of notice of the Attempted Payment of the Super-Priority Lien  
10 Amount at the time of the HOA Sale and that their failure to disclose such information  
11 promoted the sale of the Property.
- 12 64. HOA and HOA Trustee further intended that their failure of refusal to inform bidders and  
13 potential bidders at the HOA Foreclosure Sale of the Attempted Payment of the Super-  
14 Priority Lien Amount would lead such bidders and potential bidders to believe that the Deed  
15 of Trust was subordinate to the HOA Lien and not being sold subject to the Deed of Trust.
- 16 65. The HOA and the HOA Trustee had a duty to disclose the Attempted Payment of the Super-  
17 Priority Lien Amount.
- 18 66. The HOA and the HOA Trustee breached that duty to disclose the Attempted Payment to  
19 Plaintiff.
- 20 67. As a result of the HOA and HOA Trustee's breach of its duty of care, duty of good faith and  
21 its duty of candor to bidders at the HOA Foreclosure Sale for its own economic gain, Plaintiff  
22 has been economically damaged in many aspects.
- 23 68. If the Property is subject to the Deed of Trust, the funds paid by Plaintiff to purchase,  
24 maintain, operate, litigate various cases and generally manage the Property would be lost  
25 along with the lost opportunity of purchasing other available property offered for sale where a  
26 super priority payment had not been attempted, thereby allowing Plaintiff the opportunity to  
27 purchase a property free and clear of the deed of trust and all other liens.  
28

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

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

## **SECOND CAUSE OF ACTION**

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

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

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

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

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

75. Thereafter, Lender, by and through Miles Bauer attempted to pay 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, rejected the Attempted Payment.

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

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

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

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

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

3 **THIRD CAUSE OF ACTION**

4 **(Conspiracy)**

5 82. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through  
6 81 as if set forth fully herein.

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

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

13 85. Defendants knew or should have known that their actions and omissions would injure the  
14 successful bidder and purchaser of the Property and benefit HOA and HOA Trustee. To  
15 further their conspiracy, upon information and belief, Defendants rejected the Attempted  
16 Payment for the purpose of obtaining more remuneration than they would have otherwise  
17 obtained at a sale of the subpriority portion of the HOA Lien.

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

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

22 **FOURTH CAUSE OF ACTION**

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

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

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

- 1 91. The HOA and HOA Trustee are required to and must provide a Seller's Real Property  
2 Disclosure Form ("*SRPDF*") to the "Purchaser" as defined in NRS 116, et seq., at the time of  
3 the HOA Foreclosure Sale.
- 4 92. NRS 116 et seq. foreclosure sales are not exempt from the mandates of NRS 113 et seq.
- 5 93. The HOA and HOA Trustee must complete and answer the questions posed in the SRPDF in  
6 its entirety, but specifically, Section 9, Common Interest Communities, disclosures (a) - (f),  
7 and Section 11, that provide as follows:
- 8 9. Common Interest Communities: Any "common areas" (facilities  
9 like pools, tennis courts, walkways or other areas co-owned with  
10 others) or a homeowner association which has any authority over the  
11 property?
- 12 (a) Common Interest Community Declaration and Bylaws  
13 available?
- 14 (b) Any periodic or recurring association fees?
- 15 (c) Any unpaid assessments, fines or liens, and any warnings or  
16 notices that may give rise to an assessment, fine or lien?
- 17 (d) Any litigation, arbitration, or mediation related to property or  
18 or common areas?
- 19 (e) Any assessments associated with the property (excluding  
20 property tax)?
- 21 (f) Any construction, modification, alterations, or repairs made  
22 without required approval from the appropriate Common  
23 Interest Community board or committee?
- 24 11. Any other conditions or aspects of the [P]roperty which materially affect  
25 its value or use in an adverse manner? (Emphasis added)
- 26 See SRPDF, Form 547, attached hereto as Exhibit 1.
- 27 94. Section 11 of the SRPDF relates directly to information known to the HOA and the HOA  
28 Trustee that materially affects the value of the Property, and in this case, if the Super Priority  
Lien Amount is paid, or if the Attempted Payment is rejected, it would have a material  
adverse affect on the overall value of the Property, and therefore, must be disclosed in the  
SRPDF by the HOA and the HOA Trustee when the SRPDF is completed and disclosed to  
the purchaser/the Trust.
95. The HOA Responses to Section 9(c) - (e) of the SRPDF would provide notice to the Plaintiff  
of any payments made by BANA or others on the HOA Lien.

96. The HOA Responses to Section 11 of the SRPDF generally deal with the disclosure of the condition of the title to the Property related to the status of the Deed of Trust and Attempted Payment that would only be known by the HOA and the HOA Trustee.

97. Pursuant to Nevada Real Estate Division's ("NRED"), Residential Disclosure Guide (the "Guide"), the Guide provides at page 20 that the HOA and HOA Trustee shall provide even in an NRS 107, et seq. sale, the following to the purchaser/the Trust at the HOA Foreclosure Sale:

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

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

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

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

...

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

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

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

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

///

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

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

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 \_\_\_\_\_ day of March, 2019.

ROGER P. CROTEAU & ASSOCIATES, LTD.

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

# EXHIBIT 1

## SELLER'S REAL PROPERTY DISCLOSURE FORM

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

Date \_\_\_\_\_

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

Property address

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

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

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

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

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

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

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

*Seller(s) Initials*

*Buwer(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

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

Buyer(s) Initials

*Steven D. Grierson*

1 AFFT  
2 Roger P. Croteau & Associates, Ltd.  
3 Roger P. Croteau, Esq.  
4 9120 W. Post Rd., Suite 101  
5 Las Vegas, NV 89148  
6 State Bar No.: 4958  
7 Attorney(s) for: Plaintiff

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 Daisy Trust  
11 Plaintiff(s),  
12 vs.  
13 Green Valley South Owners Association No. 1, et al.  
14 Defendant(s).

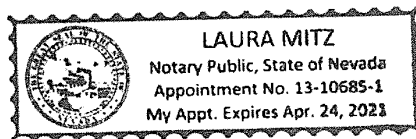
Case No.: A-19-791254-C

Dept. No.: 8

Date:  
Time:

AFFIDAVIT OF SERVICE

15 I, **Susan Kruse**, being duly sworn deposes and says: That at all time herein Affiant was and is a citizen of  
16 the United States, over 18 years of age, licensed to serve civil process in the state of Nevada under  
17 license #1926, and not a party to or interested in the proceeding in which this Affidavit is made. The  
18 Affiant received 1 copy of the: Summons; Complaint on the 15th day of March, 2019 and served the  
19 same on the 18th day of March, 2019 at 10:45am by serving the Defendant, Nevada Association  
20 Services, Inc., a domestic corporation, by personally delivering and leaving a copy at New address of  
21 Registered Agent, Chris Yergensen, Esq., 6625 S. Valley View Blvd., C300, Las Vegas, NV 89118  
22 with Stacy Dominguez, Front Desk, pursuant to NRS 14.020 as a person of suitable age and discretion  
23 at the above address, which address is the address of the resident agent as shown on the current  
24 certificate of designation filed with the Secretary of State.



24 State of Nevada, County of Clark  
25 SIGNED AND SWORN to before me on this  
26 19th day of March, 2019

27 By: Susan Kruse

28 Notary Public: *[Signature]*

*[Signature]*  
Affiant: Susan Kruse  
#: 1469

J & L Process Service, License # 1926  
Work Order No: 19-7185

*Steven D. Grierson*

1 **AFFT**

2 Roger P. Croteau & Associates, Ltd.  
3 Roger P. Croteau, Esq.  
4 9120 W. Post Rd., Suite 101  
5 Las Vegas, NV 89148  
6 State Bar No.: 4958  
7 Attorney(s) for: Plaintiff

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 Saticoy Bay, LLC, Series 5105 Kingsbridge Dr., a  
11 Nevada limited liability company

Case No.: A-19-791258-C

Dept. No.: 18

12 Plaintiff(s),

Date:  
Time:

13 vs.

14 Los Prados Community Association, Inc., a domestic  
15 non-profit cooperative corporation, et al.

16 Defendant(s).

**AFFIDAVIT OF SERVICE**

17 I, **Susan Kruse**, being duly sworn deposes and says: That at all time herein Affiant was and is a citizen of  
18 the United States, over 18 years of age, licensed to serve civil process in the state of Nevada under  
19 license #1926, and not a party to or interested in the proceeding in which this Affidavit is made. The  
20 Affiant received 1 copy of the: **Summons; Complaint** on the 15th day of **March, 2019** and served the  
21 same on the 18th day of **March, 2019** at 8:45am by serving the Defendant, **Los Prados Community**  
22 **Association, Inc., a domestic non-profit cooperative corporation**, by personally delivering and  
23 leaving a copy at **Registered Agent, Lori Martin, 5150 Los Prados Cir., Las Vegas, NV 89130** with **Julie**  
24 **Macias, Assistant**, pursuant to NRS 14.020 as a person of suitable age and discretion at the above  
25 address, which address is the address of the resident agent as shown on the current certificate of  
26 designation filed with the Secretary of State.



24 **State of Nevada, County of Clark**

SIGNED AND SWORN to before me on this

25 19th day of March, 2019

26 By: Susan Kruse

*Susan Kruse*  
Affiant: Susan Kruse  
#: 1469

27 *Laura Mitz*  
28 Notary Public:

J & L Process Service, License # 1926  
Work Order No: 19-7186

*Steven D. Grierson*

1 **AFFT**

2 Roger P. Croteau & Associates, Ltd.  
3 Roger P. Croteau, Esq.  
4 9120 W. Post Rd., Suite 101  
5 Las Vegas, NV 89148  
6 State Bar No.: 4958  
7 *Attorney(s) for: Plaintiff*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 Daisy Trust

11 Plaintiff(s),

12 vs.

13 Green Valley South Owners Association No. 1, et al.

14 Defendant(s).

Case No.: A-19-791254-C

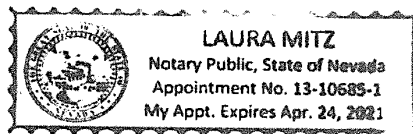
Dept. No.: 8

Date:

Time:

**AFFIDAVIT OF SERVICE**

15 I, **Diana Brown**, being duly sworn deposes and says: That at all time herein Affiant was and is a citizen of  
16 the United States, over 18 years of age, licensed to serve civil process in the state of Nevada under  
17 license #1926, and not a party to or interested in the proceeding in which this Affidavit is made. The  
18 Affiant received **1 copy** of the: **Summons; Complaint** on the **15th** day of **March, 2019** and served the  
19 same on the **18th** day of **March, 2019** at **4:23pm** by serving the **Defendant, Green Valley South**  
20 **Owners Association No. 1**, by personally delivering and leaving a copy at **Registered Agent, Taylor**  
21 **Association Management, 259 N. Pecos Rd., #100, Las Vegas, NV 89074** with **Stephanie Freeman,**  
22 **Community Manager**, pursuant to NRS 14.020 as a person of suitable age and discretion at the above  
23 address, which address is the address of the resident agent as shown on the current certificate of  
24 designation filed with the Secretary of State.



26 **State of Nevada, County of Clark**

27 **SIGNED AND SWORN to before me on this**

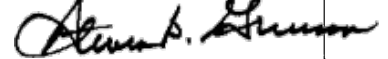
28 **19th** day of **March, 2019**

By: Diana Brown

*Laura Mitz*  
Notary Public:

*[Signature]*  
Affiant: Diana Brown  
#: R-033810

J & L Process Service, License # 1926  
Work Order No: 19-7184



**LIPSON NEILSON P.C.**  
J. WILLIAM EBERT, ESQ.  
Nevada Bar No. 2697  
JULIE FUNAI, ESQ.  
Nevada Bar No. 8725  
9900 Covington Cross Drive, Suite 120  
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[bebert@lipsonneilson.com](mailto:bebert@lipsonneilson.com)  
[jfunai@lipsonneilson.com](mailto:jfunai@lipsonneilson.com)  
*Attorneys for GREEN VALLEY SOUTH*  
*OWNERS ASSOCIATION NO. 1*

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

DAISY TRUST, a Nevada Trust;

Plaintiff,

vs.

GREEN VALLEY SOUTH OWNERS  
ASSOCIATION NO. 1 and NEVADA  
ASSOCIATION SERVICES, INC., a  
domestic corporation;

Defendants.

Case No.: A-19-791254-C  
Dept. No.: 8

**GREEN VALLEY SOUTH OWNERS  
ASSOCIATION NO. 1'S ANSWER TO  
PLAINTIFF'S COMPLAINT**

Defendant Green Valley South Owners Association No. 1, ("GVS" or "HOA"), by and through its counsel of record LIPSON NEILSON, P.C., hereby submits this answer to Daisy Trust's ("Daisy") Complaint as follows:

**PARTIES AND JURISDICTION**

1. GVS is without knowledge or information sufficient to form a belief as to the truth of the averment, and on that basis denies the following paragraphs: 1, 2, 3, 4, 5, 6, and 7.

**GENERAL ALLEGATIONS**

2. GVS is without knowledge or information sufficient to form a belief as to the truth of the averment, and on that basis denies the following paragraphs: 8, 9, 10,

11, 12, 13, and 14.

**The HOA Lien and Foreclosure**

3. GVS is without knowledge or information sufficient to form a belief as to the truth of the averment, and on that basis denies the following paragraphs: 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, and 41.

**FIRST CAUSE OF ACTION**

**(Intentional, or Alternatively Negligent, Misrepresentation Against the HOA and HOA Trustee)**

4. Answering Paragraph 42, GVS incorporates its answer to all preceding paragraphs as though set forth fully herein.

5. GVS is without knowledge or information sufficient to form a belief as to the truth of the averment, and on that basis denies the following paragraphs: 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, and 70.

**SECOND CAUSE OF ACTION**

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

6. Answering Paragraph 71, GVS incorporates its answer to all preceding paragraphs as though set forth fully herein.

7. GVS is without knowledge or information sufficient to form a belief as to the truth of the averment and on that basis denies the following paragraphs: 72, 73, 74, 75, 76, 77, 78, 79, 80, and 81.

**THIRD CAUSE OF ACTION**

**(Conspiracy)**

8. Answering Paragraph 82, GVS incorporates its answer to all preceding paragraphs as though set forth fully herein.

\\

1 9. GVS is without knowledge or information sufficient to form a belief as to  
2 the truth of the averment and on that basis denies the following paragraphs: 83, 84, 85,  
3 86, and 87.

4 **FOURTH CAUSE OF ACTION**

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

6 10. Answering Paragraph 89, GVS incorporates its answer to all preceding  
7 paragraphs as though set forth fully herein.

8 11. GVS is without knowledge or information sufficient to form a belief as to  
9 the truth of the averment and on that basis denies the following paragraphs: 90, 91, 92,  
10 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, and 103.

11 **AFFIRMATIVE DEFENSES**

12 GVS' investigation of these claims is ongoing. GVS waives no affirmative  
13 defenses and hereby reserves its right to amend this answer to include any additional  
14 applicable affirmative defenses.

15 **FIRST AFFIRMATIVE DEFENSE**

16 Daisy's claims fail to state a claim for which relief can be granted against the  
17 HOA.

18 **SECOND AFFIRMATIVE DEFENSE**

19 Daisy's claims are barred by the doctrines of laches, estoppel, waiver, unjust  
20 enrichment, and unclean hands.

21 **THIRD AFFIRMATIVE DEFENSE**

22 The alleged damages of Daisy, if any, were caused by the acts, omissions,  
23 negligence, or intentional conduct, and are the direct result of the lender's collective and  
24 utter failure to avail themselves to the remedies expressly stated within the DOT and  
25 Condominium Rider, namely, paying any lien which may attain priority and adding the  
26 payment to the underlying debt secured by the DOT.

27 \\\

28

**FOURTH AFFIRMATIVE DEFENSE**

The alleged damages, if any, were caused in whole or in part by the acts, omissions, negligence, or intentional conduct of and are the direct result of third parties over whom GVS had no control.

**FIFTH AFFIRMATIVE DEFENSE**

Daisy failed to mitigate its damages, if any.

**SIXTH AFFIRMATIVE DEFENSE**

The Complaint has failed to plead any acts or omissions of the HOA sufficient to warrant the consideration of attorneys' fees or costs of suit.

**SEVENTH AFFIRMATIVE DEFENSE**

Daisy is not entitled to equitable relief against GVS because Daisy, by purchasing the property, is subject to the CC&Rs.

**EIGHTH AFFIRMATIVE DEFENSE**

Daisy failed to join one or more indispensable parties.

**NINTH AFFIRMATIVE DEFENSE**

Prior to the foreclosure purchase, GVS owed no duty to Daisy and breached no duty to Daisy.

**TENTH AFFIRMATIVE DEFENSE**

The foreclosure sale of the HOA lien complied with the applicable statutes.

**ELEVENTH AFFIRMATIVE DEFENSE**

GVS owes no duty to junior lien holders or their predecessors or successors.

**TWELFTH AFFIRMATIVE DEFENSE**

There is not contract between Daisy and GVS.

**THIRTEENTH AFFIRMATIVE DEFENSE**

GVS incorporates Nev. R. Civ. P. 8 and 12 as if fully set forth herein and reserves the right to amend this answer, or seek leave of court to amend this answer to assert additional defenses if applicable.

**PRAYER FOR RELIEF**

WHEREFOR, GVS prays as follows:

1. Daisy takes nothing by way of the Complaint;
2. That the Complaint is dismissed with prejudice against GVS;
3. GVS be awarded costs of suit and reasonably attorney's fees; and
4. For any other further relief as the Court deems just.

DATED this 5<sup>th</sup> day April, 2019.

LIPSON NEILSON P.C.

By: /s/ Julie A. Funai

J. William Ebert, Esq. (Bar No. 2697)  
Julie Funai, Esq. (Bar No. 8725)  
9900 Covington Cross Dr., Suite 120  
Las Vegas, NV 89144  
702-382-1500  
*Attorneys for Green Valley South  
Owners Association No. 1*

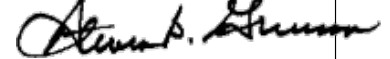
**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5(b) and Administrative Order 14-2, I certify that on the 5<sup>th</sup> day of April, 2019, I electronically transmitted the foregoing **GREEN VALLEY SOUTH OWNERS ASSOCIATON NO. 1'S ANSWER TO PLAINTIFF'S COMPLAINT** to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal to the following Odyssey E-File & Serve registrants:

Ariel E. Stern, Esq.  
Matthew I. Knepper, Esq.  
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**/s/ Debra Marquez**

An Employee of Lipson Neilson, P.C.



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*Attorneys for Defendant,  
Green Valley South Owner's Association*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

DAISEY TRUST, a Nevada trust  
Plaintiff,

vs.

GREEN VALLEY SOUTH OWNERS  
ASSOCIATION NO. 1, a Nevada non-  
profit corporation; and NEVADA  
ASSOCIATION SERVICES, INC., a  
domestic corporation;

Defendants.

Case No.: A-19-791254-C  
Dept.: XVIII

HEARING REQUESTED

**DEFENDANT GREEN VALLEY SOUTH  
OWNERS' ASSOCIATION'S MOTION  
TO DISMISS, OR ALTERNATIVELY,  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT**

COMES NOW, Defendant Green Valley South Owners' Association ("Defendant" or "Green Valley") by and through its counsel of record, LIPSON NEILSON P.C., and hereby submits its Motion to Dismiss, or alternatively, Motion for Partial Summary Judgment on Plaintiff Daisey Trust's Complaint ("Motion"). This Motion is made and based upon the following Memorandum of Points and Authorities, the papers and pleadings on file, and any oral argument that may be presented in this matter.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This matter arises from a non-judicial foreclosure sale conducted on real property located at 137 Elegante Way in Henderson, Nevada 89074 ("Property"). The sale took place on August 31, 2012, wherein the Property sold to Plaintiff Daisey Trust for \$3,555.00.

At the time of the sale, Bank of America, N.A. ("BANA") held an interest in a Deed of Trust encumbering the Property. Upon receiving a copy of the Notice of Sale recorded by Nevada Association Services, Inc. ("NAS") on behalf of Green Valley, BANA made a conditional tender of the superpriority portion of the delinquent assessment lien. NAS rejected the tender and proceeded with the sale.

Daisey Trust now alleges that Green Valley and NAS acted fraudulently, in violation of NRS 116, and with the intent to commit a conspiracy, by selling the Property without disclosing the existence of BANA's conditional tender. In support of these claims, Daisey Trust offers that Green Valley had either a contractual or statutory obligation to disclose the tender, that the non-warranty foreclosure deed is worthless because it violates NRS 116, and that it would not have purchased the Property had it known the tender existed.

For the following reasons, these arguments are without merit and the Court should dismiss Daisey Trust's complaint or enter partial summary judgment in Green Valley's favor on the Second and Third Causes of Action for Breach of NRS 116 and Conspiracy, as well as Daisey Trust's request for special and punitive damages.

**II. STATEMENT OF UNDISPUTED MATERIAL FACTS**

On or around June 5, 2008, Dennis L. Scott ("Borrower") obtained a loan to purchase the Property. See Complaint ¶¶ 12. The loan was secured by a Deed of Trust which was recorded with the Clark County recorder. *Id.* On September 26, 2011, MERS, on behalf of Lender, assigned its beneficial interest by Assignment of Deed of Trust to BANA. See Complaint ¶¶ 14.

1 Sometime after purchasing the Property, Borrower defaulted on his homeowners'  
2 assessments. See Complaint ¶ 15. Therefore, on or around August 23, 2011, Green  
3 Valley, through Nevada Association Services, Inc. ("NAS"), recorded a notice of  
4 delinquent assessment lien. *Id.* ¶ 16; see also Notice of Delinquent Assessment Lien,  
5 attached hereto as **Exhibit 1**.

6 On or around November 18, 2011, Green Valley, through NAS, recorded a notice  
7 of default and election to sell. See *Complaint* ¶ 17; see also Notice of Default and  
8 Election to Sell, attached hereto as **Exhibit 2**. On or around April 23, 2012, Green  
9 Valley, through NAS, recorded a Notice of Sale. See Complaint ¶ 24, see also Notice of  
10 Sale, attached hereto as **Exhibit 3**.

11 On or around December 19, 2011, BANA, through the law firm of Miles Bauer  
12 Bergstrom & Winters LLP ("Miles Bauer"), contacted NAS in response to the Notice of  
13 Sale and requested a pay off ledger for the Property. See Complaint ¶ 18; see also  
14 Miles Bauer Affidavit and Exhibits, attached collectively hereto as **Exhibit 4**.

15 On February 2, 2012, Miles Bauer sent NAS supplemental correspondence,  
16 wherein it offered to pay \$882 to discharge Green Valley's superpriority lien on the  
17 Property and included a check for that amount. See Complaint ¶ 22; see also Ex. 4.  
18 NAS rejected the offer on Green Valley's behalf. See *Complaint* ¶ 23.

19 On or around August 31, 2012, Green Valley, through NAS, foreclosed on the  
20 Property. See Complaint ¶ 25. A foreclosure deed in favor of Daisey Trust was recorded  
21 on September 7, 2012. *Id.*; see also Foreclosure Deed, attached hereto as **Exhibit 5**.

22 **III. RELEVANT PROCEDURAL BACKGROUND**

23 On February 29, 2016, BANA filed a lawsuit against Green Valley, NAS, and  
24 Daisey Trust in the United States District Court, District of Nevada, Case No. 2:16-cv-  
25 00424-JCM-PAL ("Federal Action"). The complaint alleged causes of action for Quiet  
26 Title/Declaratory Relief, Breach of NRS 116.1113, and Wrongful Foreclosure, and  
27 Injunctive Relief.

28 ///

1 Green Valley, Daisey Trust, and BANA filed competing motions for summary  
2 judgment. On February 1, 2019, the district court in the Federal Action issued an order  
3 granting summary judgment in Green Valley's favor on the causes of action of Breach of  
4 NRS 116 and Wrongful Foreclosure.

5 On May 13, 2019, after additional briefing by the parties, the district court in the  
6 Federal Action issued an order granting summary judgment in BANA's favor on its  
7 cause of action for quiet title finding that the deed of trust was not extinguished by the  
8 non-judicial foreclosure sale. An Amended Judgement was entered on the same date  
9 and the case was closed.

10 **IV. STANDARD OF REVIEW**

11 **A. NRCP 12(b)(5)**

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

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

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1           **B.     NRCP 56(b)**

2           “The purpose of summary judgment is to pierce the pleading and to assess the  
3 proof in order to see whether there is a genuine need for trial.” *Matushita Elec. Indus.*  
4 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Summary judgment is appropriate  
5 when the pleadings, the discovery and disclosure materials on file, and any affidavits  
6 “show [] that there is no genuine disputes as to any material fact and the movant is  
7 entitled to judgment as a matter of law.” Nev. R. Civ. P. 56(b); see also *Celotex v.*  
8 *Catrett*, 477 U.S. 317, 330 (1986); *Boland v. Nevada Rock & Sand Co.*, 111 Nev. 608,  
9 610, 894 P.2d 988 (1995).

10          To survive a motion for summary judgment, the non-moving party “may not rest  
11 upon the mere allegations or denials of [its] pleadings,” *Anderson v. Liberty Lobby, Inc.*,  
12 477 U.S. 242, 248 (1986), nor may it “simply show there is some metaphysical doubt as  
13 to the material facts.” *Matsushita Elec. Indus. Co.*, 475 U.S. at 586. It is the non-  
14 moving party’s burden to “come forward with specific facts showing that there is a  
15 genuine issue for trial.” *Id.* at 587; see also *Wood v. Safeway, Inc.*, 121 Nev. 724  
16 (2005), citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82  
17 (2002).

18          An issue is only genuine if there is a sufficient evidentiary basis for a reasonable  
19 jury to return a verdict for the non-moving party. See *Anderson*, 477 U.S. at 248 (1986).  
20 Further, a dispute will only preclude the entry of summary judgment if it could affect the  
21 outcome of the suit under governing law. *Id.* “The amount of evidence necessary to  
22 raise a genuine issue of material fact is enough to require a judge or jury to resolve the  
23 parties’ differing versions of the truth at trial.” *Id.* at 249. In evaluating a summary  
24 judgment motion, a court views all facts and draws all inferences in a light most  
25 favorable to the non-moving party. *Kaiser Cement Corp. v. Fischbach & Moore, Inc.*,  
26 793 F.2d 100, 1103 (9th Cir. 1986).

27       ///

28       ///

1 **V. LEGAL ARGUMENT**

2 **A. Daisey Trust's Claims for Intentional, or Alternatively Negligent**  
3 **Misrepresentation Fail as a Matter of Law.**

4 Daisey Trust has failed to alleged any facts to support a claim for  
5 misrepresentation and based on the undisputed facts of the case, cannot establish the  
6 required elements of the claim.

7 **i. Misrepresentation**

8 To establish a claim for misrepresentation, the plaintiff carries the burden of  
9 proving each of the following elements: (1) a false representation was made by the  
10 defendant; (2) defendant's knowledge or belief that its representation was false or that  
11 defendant has an insufficient basis of information for making the representation; (3)  
12 defendant intended to induce plaintiff to act or refrain from acting upon the  
13 misrepresentation; and (4) damage to the plaintiff as a result of relying on the  
14 misrepresentation. *Barmettler v. Reno Air, Inc.*, 956 P.2d 1382, 1386, 114 Nev. 441,  
15 447 (Nev.,1998); *Blanchard v. Blanchard*, 108 Nev. 908, 839 P.2d 1320 (1992). The  
16 circumstances that must be detailed in a complaint alleging fraud include averments as  
17 to time, place, identity of the parties involved, and the nature of the fraud or mistake,  
18 malice, intent, knowledge and other conditions of the mind of a person may be averred  
19 generally. *Brown v. Kellar*, 97 Nev. 582, 636 P.2d 874 (1981).

20 Daisey Trust has not identified a false representation made by Green Valley or  
21 NAS at or before the time of the sale. In fact, to the contrary, the Foreclosure Deed  
22 specifically indicates that the Property was sold "without warranty expressed or implied"  
23 as required by NRS 116.31164(3)(a) as it existed at the time of the sale. See Nev. Rev.  
24 Stat. § 116.31164(3)(a)("Make, execute and, after payment is made, deliver to the  
25 purchaser, or his or her successor or assign, **a deed without warranty** which conveys  
26 to the grantee all title of the unit's owner to the unit;"); see also Ex. 5.

27 Daisey Trust also fails to establish that Green Valley, through NAS, believed it  
28 had a duty to disclose the existence of the Miles Bauer tender or believed that rejection

1 of the tender had any impact on its statutory right to foreclose on its superpriority lien.

2 Although subsequent case law issued more than five years after the fact has  
3 established that NAS' position was incorrect, there is no evidence that NAS – at the  
4 time of the foreclosure proceedings – believed or had reason to believe that the tender  
5 discharged the superpriority lien. Perhaps most importantly, however, Daisey Trust  
6 cannot establish that the lack of disclosure of the Miles Bauer tender induced Mr.  
7 Haddad to act in a certain way at the time of the sale. See Complaint ¶¶ 52, 56. Absent  
8 a time machine, there are no facts that could be pled that would these allegations.

9 **B. Daisey Trust's Conspiracy Claim Fails as a Matter of Law.**

10 To establish a claim for civil conspiracy, a plaintiff must show (1) that  
11 Defendants, **by acting in concert**, intended to accomplish an unlawful objective for the  
12 purpose of harming plaintiff; and (2) that plaintiff sustained damages resulting from  
13 defendants' act or acts. See *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*,  
14 114 Nev. 1304, 971 P.2d 1251 (1999) (emphasis added); see also *Dow Chemical Co. v.*  
15 *Mahlum*, 114 Nev. 1468, 970 P.2d 98 (1998). Daisey Trust cannot meet this evidentiary  
16 burden.

17 There can be no conspiracy between Green Valley and NAS under the  
18 preclusive weight of the intra-corporate conspiracy doctrine, which stands for the  
19 proposition that "agents and employees of a corporation cannot conspire with their  
20 corporate principal or employer where they act in their official capacities on behalf of the  
21 corporation and not as individuals for their individual advantage." See *Collins v. Union*  
22 *Federal Sav. & Loan Ass'n*, 662 P.2d 610, 622, 99 Nev. 284, 303 (Nev.,1983).  
23 Therefore, to sustain a claim for conspiracy against agents and their corporation, a  
24 plaintiff must prove that one or more of the agents acted outside of the scope of their  
25 employment "to render them a separate person for the purposes of conspiracy." See  
26 *Faulkner v. Arkansas Children's Hosp.*, 69 S.W.3d 393, 407, 347 Ark. 941, 962  
27 (Ark.,2002).  
28

1           Daisey Trust has not plead facts sufficient to meet this standard. To the contrary,  
2           Daisey Trust plead that Green Valley and NAS, "acting together ... reached an implicit  
3           or express agreement amongst themselves whereby they agreed to withhold the  
4           information concerning the Attempted Payment of the Super-Priority Lien Amount..."  
5           See Complaint ¶ 84. It makes no allegations whatsoever that NAS acted outside of its  
6           scope as Green Valley's agent or for its individual advantage. Its conspiracy claim must  
7           be dismissed accordingly.

8           **C.     Daisey Trust's Claim for Breach of NRS 116.1113 Must Be Dismissed**  
9           **Because Green Valley, through NAS, complied with the**  
10           **Requirements of NRS 116 as They Existed at the Time of the Sale.**

11           In addition to misrepresentation and conspiracy, Daisey Trust alleges that Green  
12           Valley breached its duty of good faith under NRS 116.1113 by failing to disclose the  
13           existence of the Miles Bauer tender. See Complaint ¶¶ 71 – 81. This allegation is simply  
14           without merit.

15           It is true that NRS 116.1113 imposes a duty of good faith in the performance of  
16           every contract or duty governed by the statute. Nev. Rev. Stat. § 116.1113. However,  
17           the only "duties" owed to Daisey Trust are outlined in sections 116.3116 through  
18           116.31168. Green Valley complied with these duties by complying with all notice and  
19           recording requirements set forth in NRS 116 as it existed at the time of the sale Green  
20           Valley was not required to disclose the existence of a pre-sale tender of the  
21           superpriority portion of the lien.

22           Further, it was specifically prohibited from giving any purchaser at auction a so-  
23           called warranty deed. The only type of deed it could give to any purchaser was one  
24           made "without warranty" pursuant to NRS 116.31164(3)(a) ("Make, execute, and, after  
25           payment is made, deliver to the purchaser, or his or her successor or assign, a deed  
26           without warranty, which conveys to the grantee all title of the unit's owner to the unit.")

27           The 2015 Legislature substantially revised NRS 116, see 2015 Nev. Stat., Ch.  
28           266. Under the current version of the statute, an HOA is required to record satisfaction  
          of the superpriority lien at least 5 days before the date of sale. See Nev. Rev. Stat. §

1 116.31164(2). The current version of the statute, however, is not controlling here. The  
2 version that applies is the version that was in effect at the time of the events giving rise  
3 to this action. See generally *Sandpointe Apts. v. Eighth Jud. Dist. Ct.*, 313 P.3d 849,  
4 853 (Nev.,2013) ("Substantive statutes are presumed to only operate prospectively,  
5 unless it is clear that the drafters intended the statute to be applied retroactively."); see  
6 also *Landgraf v. USI Film Products*, 114 S.Ct. 1483, 1487, 511 U.S. 244, 245  
7 (U.S.Tex.,1994) ("The presumption against statutory retroactivity is founded upon  
8 elementary considerations of fairness dictating that individuals should have an  
9 opportunity to know what the law is and to conform their conduct accordingly.") Daisey  
10 Trust's claim for breach of NRS 116.1113 fails accordingly.

11 **D. Daisey Trust's Claim for Special Damages Must be Dismissed.**

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

20 Both the fact of the damages and the amount of the damages are crucial to a  
21 claim of this nature. *Gramanz v. T-Shirts and Souvenirs, Inc.*, 111 Nev. 478, 484-485,  
22 894 P.2d 342, 346-347 (1955); *Mort Wallin of Lake Tahoe, Inc. v. Commercial Cabinet*  
23 *Co., Inc.*, 105 Nev. 855, 857, 784 P.2d 954, 955 (1989); *Horgan v. Felton*, 170 P.3d 982  
24 (2007). "As a practical matter, attorney fees are rarely awarded as damages simply  
25 because parties have a difficult time demonstrating that the fees were proximately and  
26 necessarily caused by the actions of the opposing party." *Sandy Valley Associates, Inc.*,  
27 117 Nev. at 956. "[T]he mere fact that a party was forced to file or defend a lawsuit is  
28 insufficient to support an award of attorney's fees as damages." *Id.*

1 Here, the only place that special damages is even mentioned in Daisey Trust's  
2 complaint is in its prayer for relief. See *id.*, citing *Young v. Nevada Title Co.*, 744 P.2d  
3 902, 905, 103 Nev. 436, 442 (Nev.,1987) (the mention of attorney's fees as special  
4 damages in a prayer for relief is insufficient to meet the requirements of NRCP 9(g)).

5 More importantly, however, when it comes to cases involving disputes over real  
6 property, attorney's fees are only available as special damages for slander of title.  
7 *Horgan*, 170 P.3d at 988 ("Additionally, we retreat from our statement in [Sandy Valley]  
8 and earlier cases that attorney fees as damages may be recovered in action to quiet  
9 title or clarify title to real property. Such attorney fees are only available in real property  
10 matters only for slander of title"). The instant matter is no exception. Daisey Trust has  
11 not pled slander of title in its complaint, and therefore, there is no factual basis for this  
12 Court to award attorney's fees as special damages and its claim must be dismissed  
13 accordingly.

14 **E. Daisey Trust's Claim for Punitive Damages is Precluded as a Matter**  
15 **of Law.**

16 NRS 116.4117(5) specifically prohibits an award of punitive damages against a  
17 homeowners' association. Nev. Rev. Stat. § 116.3117(5) ("Punitive damages may not  
18 be awarded against: (a) The association ...") There are no exceptions to this statutory  
19 bar. See generally *id.* Even if there were, Daisey Trust has not met the requirements of  
20 NRS 42.005, which requires pleading of facts which establish, by clear and convincing  
21 evidence, "that the defendant has been guilty of oppression, fraud or malice, express or  
22 implied..." Nev. Rev. Stat. § 42.005. Giving Daisey Trust every possible favorable  
23 inference, nothing is pled here which even implies this level of scienter is present.

24 Under NRS 42.001, the term "fraud" means an intentional misrepresentation,  
25 deception, or concealment of a material fact known to the person with the intent to  
26 deprive another of his rights or property. Nev. Rev. Stat. § 42.001(2). "Malice, express  
27 or implied" means conduct intended to injure a person or despicable conduct which a  
28 party engages in with a conscious disregard of the rights or safety of another. Nev. Rev.

1 Stat. § 42.001(3). Oppression is defined in the same section as despicable conduct that  
2 subjects someone to cruel and unjust hardship with conscious disregard of the rights of  
3 that person. Nev. Rev. Stat. § 42.001(4). All of these definitions focus on “the  
4 knowledge of probably harmful consequences ... and deliberate failure to act to avoid  
5 those consequences.” *Countrywide Home Loans, Inc. v. Thitchener*, 192 P.3d 243, 252,  
6 124 Nev. 725, 739 (Nev.,2008), citing Nev. Rev. Stat. § 42.001(1).

7 There is no evidence in this matter that Green Valley or NAS acted in conscious  
8 disregard of Daisey Trust’s rights to the Property, or with the intent to misrepresent,  
9 deceive, or conceal information from third-party bidders at the foreclosure sale.  
10 Specifically, at the time of the foreclosure sale at issue in this lawsuit, there was no  
11 guidance from the Nevada legislature or the Supreme Court regarding the effect of a  
12 conditional, partial payment of the lien prior to the sale. The statute itself was not clear  
13 as to what amounts were considered part of the “super-priority lien” and as a result,  
14 NAS and most other collection agencies had different legal opinions than lenders as to  
15 the amount necessary to release the lien.

16 In the absence of any statutory requirements or guidance from the Supreme  
17 Court, there were no “probable harmful consequences” for Green Valley or NAS to  
18 consider, nor were there any deliberate acts to hide the existence of the Miles Bauer  
19 tender. In fact, the conventional wisdom at this time (and the only judicial opinion on the  
20 issue) was that the superpriority lien included nine months of assessments, plus late  
21 fees, interest, and costs of collection. See *Korbel Family Trust v. Spring Mountain*  
22 *Ranch Master Ass’n*, Case No. A523959, Eighth Judicial Court, Clark County, Nevada,  
23 Order of December 22, 2006 and *the Commission for Common Interest Communities*  
24 *and Condominium Hotels issued an advisory opinion, dated December 8, 2010*  
25 (indicating that an HOA may include collection costs in the super-priority portion of its  
26 lien). Against this background, an award of punitive damages is improper as a matter of  
27 law.

28 ///

1 **VI. CONCLUSION**

2 Based on the foregoing, Defendant Green Valley respectfully requests this Court  
3 dismiss Daisey Trust's claims with prejudice. The complaint does not support a claim  
4 upon which relief can be granted and there is no set of facts that can be pled which  
5 would support the allegations against the Green Valley based on the existing statutes  
6 and case law at the time of the sale.

7 DATED this 20<sup>th</sup> day of September, 2019.

8 LIPSON NEILSON P.C.

9 */s/ Janeen Isaacson*

10 By:

11 J. William Ebert, Esq. (Bar No. 2697)  
12 Janeen V. Isaacson, Esq. (Bar No. 6429)  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144

13 *Attorneys for Defendant,*  
14 *Green Valley South Owners Association*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and Administrative Order 14-2, on the 20<sup>th</sup> day of September, 2019, I electronically transmitted the foregoing **DEFENDANT GREEN VALLEY SOUTH OWNER'S ASSOCIATION'S MOTION TO DISMISS, OR ALTERNATIVELY, MOTION FOR PARTIAL SUMMARY JUDGMENT** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV& Serve registrants addressed to:

Roger P. Croteau, Esq.  
Timothy E. Rhoda, Esq.  
ROGER P. CROTEAU & ASSOCIATES, LTD.  
2810 W. Charleston Blvd., Suite 75  
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*Attorneys for Plaintiff,  
Daisy Trust*

*/s/ Renee M. Rittenhouse*

\_\_\_\_\_  
An Employee of LIPSON NEILSON P.C.

**EXHIBIT “1”**

**EXHIBIT “1”**

Inst #: 201108230000959  
Fees: \$14.00  
N/C Fee: \$0.00  
08/23/2011 09:09:42 AM  
Receipt #: 888346  
Requestor:  
NORTH AMERICAN TITLE  
COMPAN  
Recorded By: KGP Pgs: 1  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

### Accommodation

APN # 177-13-214-086  
# N67912

### NOTICE OF DELINQUENT ASSESSMENT LIEN

In accordance with Nevada Revised Statutes and the Association's declaration of Covenants Conditions and Restrictions (CC&Rs), recorded on August 13, 2009, as instrument number 0000782 Book 20090813, of the official records of Clark County, Nevada, the Green Valley South has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as 137 Elegante Way Henderson, NV 89074 particularly legally described as: Oakwood AMD, Plat Book 32, Page 61, Lot 33, Block 4 in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are):  
Dennis L. Scott

Mailing address(es):  
137 Elegante Way Henderson, NV 89074


\*Total amount due as of today's date is \$818.70.

This amount includes late fees, collection fees and interest in the amount of \$655.70

\* Additional monies will accrue under this claim at the rate of the claimant's regular assessments or special assessments, plus permissible late charges, costs of collection and interest, accruing after the date of the notice.

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

Dated: August 18, 2011



By Shea Watkins, of Nevada Association Services, Inc., as agent for Green Valley South

When Recorded Mail To:  
Nevada Association Services  
TS # N67912  
6224 W. Desert Inn Rd, Suite A  
Las Vegas, NV 89146  
Phone: (702) 804-8885 Toll Free: (888) 627-5544

GVS000089

JA0042



Nevada Association Services  
6224 W. Desert Inn Road, Suite A  
Las Vegas, NV 89146  
Phone: (702) 804-8885  
Fax: (702) 804-8887  
Toll Free: (888) 627-5544

September 12, 2011

Dennis L. Scott  
137 Elegante Way  
Henderson, NV 89074

RE: NAS # N67912  
137 Elegante Way, Henderson, NV, 89074  
Green Valley South / Dennis Scott

Dear Mr. Scott:

As you were previously advised, Nevada Association Services, Inc. ('NAS') has been retained by Green Valley South (the Association) to collect from you the overdue homeowner's assessments you owe the Association. As of the date the lien was prepared, the total amount due, including collection fees and costs is \$818.70 (also called the balance due or debt.) Since you have decided not to reinstate your account, a Notice of Delinquent Assessment Lien was recorded on your property. A copy of the lien is enclosed. The amount stated above does NOT include assessments, late fees, interest, fines, collection fees and costs, and other applicable charges, that have become due since the date the lien was recorded. Those additional amounts must be included when you submit your payment. Therefore, you may wish to contact this office to verify the amount due prior to sending your payment.

Nevada law permits NAS to proceed with the recordation of a Notice of Default and Election to Sell (also called an "NOD") which is the next step in the lien foreclosure process. If you want to resolve this matter before the recordation of the NOD, you must, within 30 days from the date of this letter, pay the balance due by cashier's check or money order payable to NAS. Recording of the NOD will result in additional charges for which you will be responsible. The 30 Day Period referenced in our prior "Initial Letter" still applies. Federal Law grants you 30 Days from the date of receipt of the Initial Letter to dispute the validity of the debt or any portion thereof. Should you fail to dispute, in writing, the validity of the debt or any portion thereof within the 30 Day Period, NAS will assume the debt is valid. If you dispute the debt or any portion thereof in writing, NAS will, to the extent required by law, cease collection efforts until validation of the debt is sent to you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brenda L. Sherwood".

Brenda L. Sherwood  
Nevada Association Services, Inc.  
encl.

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

GVS000090

JA0043

APN # 177-13-214-086  
# N67912

Recorded On: 8/23/2011  
Book/Instr: 0000959 Book 20110823  
County: Clark

### NOTICE OF DELINQUENT ASSESSMENT LIEN

In accordance with Nevada Revised Statutes and the Association's declaration of Covenants Conditions and Restrictions (CC&Rs), recorded on August 13, 2009, as instrument number 0000782 Book 20090813, of the official records of Clark County, Nevada, the Green Valley South has a lien on the following legally described property.

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Dennis L Scott

Mailing address(es):  
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Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Dated: August 18, 2011

*Shea Watkins*

By Shea Watkins, of Nevada Association Services, Inc., as agent for Green Valley South

When Recorded Mail To:  
Nevada Association Services  
TS # N67912  
6224 W. Desert Inn Rd, Suite A  
Las Vegas, NV 89146  
Phone: (702) 804-8885 Toll Free: (888) 627-5544

GVS000091

**JA0044**

## Certified Addresses

Trustees Sale No.: N67912  
HOA: Green Valley South  
Date: 9/9/2011

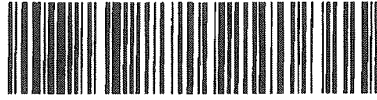
| Address   | Recipient | Selected |
|---|-----------|----------|
| Dennis L Scott<br>137 Elegante Way<br>Henderson, NV 89074 | Hmnr1     | No       |

GVS000092

**JA0045**

NAS

6224 W Dessert Inn Rd  
Las Vegas, NV 89146



9171 9000 0718 5000 2159 61

N67912

Dennis L Scott  
137 Elegante Way  
Henderson, NV 89074

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

GV5000093

**JA0046**



Nevada Association Services  
6224 W. Desert Inn Road, Suite A  
Las Vegas, NV 89146  
Phone: (702) 804-8885  
Fax: (702) 804-8887  
Toll Free: (888) 627-5544

September 12, 2011

Dennis L. Scott  
137 Elegante Way  
Henderson, NV 89074

*RE: NAS #N67912  
137 Elegante Way, Henderson, NV, 89074  
Green Valley South / Dennis Scott*

Dear Mr. Scott:

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Sincerely,

Brenda L. Sherwood  
Nevada Association Services, Inc.  
encl.

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

GVS000094

JA0047

APN # 177-13-214-086  
# N67912

Recorded On: 8/23/2011  
Book/Instr: 0000959 Book 20110823  
County: Clark

### NOTICE OF DELINQUENT ASSESSMENT LIEN

In accordance with Nevada Revised Statutes and the Association's declaration of Covenants Conditions and Restrictions (CC&Rs), recorded on August 13, 2009, as instrument number 0000782 Book 20090813, of the official records of Clark County, Nevada, the Green Valley South has a lien on the following legally described property.

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Dennis L Scott

Mailing address(es):  
137 Elegante Way Henderson, NV 89074

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

Dated: August 18, 2011



By Shea Watkins, of Nevada Association Services, Inc., as agent for Green Valley South

When Recorded Mail To:  
Nevada Association Services  
TS # N67912  
6224 W. Desert Inn Rd, Suite A  
Las Vegas, NV 89146  
Phone: (702) 804-8885 Toll Free: (888) 627-5544

GVS000095

**JA0048**

**EXHIBIT “2”**

**EXHIBIT “2”**

APN # 177-13-214-086  
NAS # N67912  
Lawyers Title of Nevada #  
Property Address: 137 Elegante Way

08606988

Inst #: 201111180002805  
Fees: \$18.00  
N/C Fee: \$0.00  
11/18/2011 02:48:07 PM  
Receipt #: 983191  
Requestor:  
LAWYERS TITLE DEFAULT SERV  
Recorded By: DGI Pgs: 2  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER  
HOMEOWNERS ASSOCIATION LIEN**

**IMPORTANT NOTICE**

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS  
NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT  
IS IN DISPUTE!**

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT  
MAY BE SOLD WITHOUT ANY COURT ACTION and you may have the legal right to bring your account in  
good standing by paying all your past due payments plus permitted costs and expenses within the time permitted  
by law for reinstatement of your account. No sale date may be set until ninety (90) days from the date this notice  
of default was mailed to you. The date this document was mailed to you appears on this notice.

This amount is \$1,819.50 as of November 16, 2011 and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes)  
required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and  
Restrictions. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the  
property or pay other obligations as required by your note and deed of trust or mortgage, or as required under your  
Covenants Conditions and Restrictions, Green Valley South (the Association) may insist that you do so in order to  
reinstate your account in good standing. In addition, the Association may require as a condition to reinstatement  
that you provide reliable written evidence that you paid all senior liens, property taxes and hazard insurance  
premiums.

Upon your request, this office will mail you a written itemization of the entire amount you must pay. You  
may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you  
must pay all amounts in default at the time payment is made. However, you and your Association may mutually  
agree in writing prior to the foreclosure sale to, among other things, 1) provide additional time in which to cure  
the default by transfer of the property or otherwise; 2) establish a schedule of payments in order to cure your  
default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the  
obligation being foreclosed upon or a separate written agreement between you and your Association permits a  
longer period, you have only the legal right to stop the sale of your property by paying the entire amount  
demanded by your Association.

To find out about the amount you must pay, or arrange for payment to stop the foreclosure, or if your  
property is in foreclosure for any other reason, contact: Nevada Association Services, Inc. on behalf of Green  
Valley South, 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146. The phone number is (702) 804-8885 or  
toll free at (888) 627-5544.

If you have any questions, you should contact a lawyer or the Association which maintains the right of  
assessment on your property.

GVS000111

**JA0050**

NAS# N67912

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

**REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT  
TAKE PROMPT ACTION.**

**NOTICE IS HEREBY GIVEN THAT NEVADA ASSOCIATION  
SERVICES, INC.**

is the duly appointed agent under the previously mentioned Notice of Delinquent Assessment Lien, with the owner(s) as reflected on said lien being Dennis L Scott, dated August 18, 2011, and recorded on 8/23/2011 as instrument number 0000959 Book 20110823 in the official records of Clark County, Nevada, executed by Green Valley South, hereby declares that a breach of the obligation for which the Covenants Conditions and Restrictions, recorded on August 13, 2009, as instrument number 0000782 Book 20090813, as security has occurred in that the payments have not been made of homeowner's assessments due from 1/1/2011 and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, trustee's fees and costs, attorney's fees and costs and Association fees and costs.

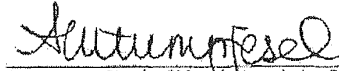
That by reason thereof, the Association has deposited with said agent such documents as the Covenants Conditions and Restrictions and documents evidencing the obligations secured thereby, and declares all sums secured thereby due and payable and elects to cause the property to be sold to satisfy the obligations.

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

Nevada Association Services, Inc., whose address is 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146 is authorized by the association to enforce the lien by sale.

Legal Description: Oakwood AMD, Plat Book 32, Page 61, Lot 33, Block 4 in the County of Clark

Dated: November 16, 2011



By: Autumn Fesel, of Nevada Association Services, Inc.  
on behalf of Green Valley South

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

GVS000112

**JA0051**

**EXHIBIT “3”**

**EXHIBIT “3”**



RECORDING COVER PAGE

Must be typed or printed clearly in black ink only.

APN# 177-13-214-086  
14 digit Assessor's Parcel Number may be obtained at:  
<http://redrock.co.clark.nv.us/assrrealprop/ownr.aspx>

Inst #: 201204230000652  
Fees: \$18.00  
N/C Fee: \$0.00  
C4/23/2012 09:05:14 AM  
Receipt #: 1138918  
Requestor:  
NORTH AMERICAN TITLE COMPAN  
Recorded By: MSH Page: 2  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

TITLE OF DOCUMENT (DO NOT Abbreviate)

NOTICE OF FORECLOSURE SALE

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

Recording requested by:

NORTH AMERICAN TITLE COMPANY

Return to:

Name NORTH AMERICAN TITLE COMPANY

Address 8485 W. SUNSET ROAD #111

City/State/Zip LAS VEGAS, NV 89113

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

An additional recording fee of \$1.00 will apply.

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

P:\Recorder\Frms 12\_2010

APN # 177-13-214-086  
Green Valley South

NAS # N67912

**Accommodation NOTICE OF FORECLOSURE SALE**

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

YOU ARE IN DEFAULT UNDER A DELINQUENT ASSESSMENT LIEN, August 18, 2011. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE IS HEREBY GIVEN THAT on 5/18/2012 at 10:00 am at the front entrance to the Nevada Legal News, 930 So. Fourth Street, Las Vegas, Nevada, under the power of sale pursuant to the terms of those certain covenants conditions and restrictions recorded on August 13, 2009 as instrument number 0000782 Book 20090813 of official records of Clark County, Nevada Association Services, Inc., as duly appointed agent under that certain Delinquent Assessment Lien, recorded on 8/23/2011 as document number 0000959 Book 20110823 of the official records of said county, will sell at public auction to the highest bidder, for lawful money of the United States, all right, title, and interest in the following commonly known property known as: 137 Elegante Way, Henderson, NV 89074. Said property is legally described as: Oakwood AMD, Plat Book 32, Page 61, Lot 33, Block 4, official records of Clark County, Nevada.

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

The undersigned agent disclaims any liability for incorrectness of the street address and other common designations, if any, shown herein. The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, or encumbrances, or obligations to satisfy any secured or unsecured liens. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$2,946.17. Payment must be in cash or a cashier's check drawn on a state or national bank, check drawn on a state or federal savings and loan association, savings association or savings bank and authorized to do business in the State of Nevada. The Notice of Default and Election to Sell the described property was recorded on 11/18/2011 as instrument number 0002805 Book 20111118 in the official records of Clark County.

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

April 18, 2012

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

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

*Misty Blanchard*  
By: Misty Blanchard, Agent for Association and employee of  
Nevada Association Services, Inc.

**EXHIBIT “4”**

**EXHIBIT “4”**

---

**MILES BAUER BORROWER LETTER AFFIDAVIT**

---

State of California     }  
                                      }ss.  
Orange County         }

Affiant being first duly sworn, deposes and says:

1.     I am a paralegal with the law firm of Miles, Bauer, Bergstrom & Winters, LLP (**Miles Bauer**) in Costa Mesa, California. I am authorized to submit this affidavit on behalf of Miles Bauer.

2.     I am over 18 years of age, of sound mind, and capable of making this affidavit.

3.     The information in this affidavit is taken from Miles Bauer's business records. I have personal knowledge of Miles Bauer's procedures for creating these records. They are: (a) made at or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal knowledge; (b) kept in the course of Miles Bauer's regularly conducted business activities; and (c) it is the regular practice of Miles Bauer's to make such records. I have personal knowledge of Miles Bauer's procedures for creating and maintaining these business records. I personally confirmed that the information in this affidavit is accurate by reading the affidavit and attachments, and checking that the information in this affidavit matches Miles Bauer's records available to me.

4.     Bank of America, N.A. (**BANA**) retained Miles Bauer to tender payments to homeowners associations (**HOA**) to satisfy super-priority liens in connection with the following loan:

Loan Number: ████████1277

Borrower(s): Dennis Scott

Property Address: 137 Elegante Way, Henderson, Nevada 89074

5. Miles Bauer maintains records for the loan in connection with tender payments to HOA. As part of my job responsibilities for Miles Bauer, I am familiar with the type of records maintained by Miles Bauer in connection with the loan.

6. Based on Miles Bauer's business records, attached as **Exhibit 1** is a copy of a December 19, 2011 letter from Andrew Pastwick, Esq., an attorney with Miles Bauer, sent via first class mail to Dennis Scott.

FURTHER DECLARANT SAYETH NOT.

Date: 3/10/15

AK KL

Declarant Adam Kendis

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Orange

Subscribed and sworn to (or affirmed) before me on this 10<sup>th</sup> day of March, 2015,

by Adam Kendis, proved to me on the basis of satisfactory evidence to be  
(Name of Signer)

the person who appeared before me.

Signature Amanda Maria Mendoza (Seal)  
(Signature of Notary Public)



# EXHIBIT 1

BANA 000308

**JA0058**

DOUGLAS E. MILES \*  
Also Admitted in California and  
Illinois

RICHARD J. BAUER, JR.\*  
JEREMY T. BERGSTROM

Also Admitted in Arizona  
FRED TIMOTHY WINTERS\*  
KEENAN E. McCLENAHAN\*  
MARK T. DOMEYER\*

Also Admitted in District of  
Columbia & Virginia  
TAMI S. CROSBY\*

L. BRYANT JAQUEZ \*

GINA M. CORENA

WAYNE A. RASH \*

ROCK K. JUNG

VY T. PHAM \*

KRISTA J. NIELSON

HADI R. SEYED-ALI \*

JORY C. GARABEDIAN

THOMAS M. MORLAN

Admitted in California

BRIAN H. TRAN \*

ANNA A. GHAJAR \*

CORI B. JONES \*

STEVEN E. STERN

Admitted in Arizona & Illinois

ANDREW H. PASTWICK

Also Admitted in Arizona and  
California

CATHERINE K. MASON \*

CHRISTINE A. CHUNG \*

HANH T. NGUYEN \*

THOMAS B. SONG \*

S. SHELLY RAISZADEH \*

SHANNON C. WILLIAMS \*

ABTIN SHAKOURI \*

LAWRENCE R. BOIVIN \*



MILES, BAUER, BERGSTROM & WINTERS, LLP  
ATTORNEYS AT LAW SINCE 1985

2200 Paseo Verde Parkway, Suite 250

Henderson, NV 89052

Phone: (702) 369-5960

Fax: (702) 369-4955

\* CALIFORNIA OFFICE  
1231 E. DYER ROAD  
SUITE 100  
SANTA ANA, CA 92705  
PHONE (714) 481-9100  
FACSIMILE (714) 481-9141

December 19, 2011

Dennis Scott  
137 Elegante Way  
Henderson, NV 89074

SENT VIA FIRST CLASS MAIL

Re: *Property Address: 137 Elegante Way, Henderson, NV 89074*  
*MBBW File No. 11-H2202*

Mr. Scott:

This letter is written in response to the attached Notice of Default your HOA caused to be issued and recorded as a result of you allegedly neglecting to timely pay your required HOA assessments on the above described real property. This firm represents the interests of MERS as nominee for Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to these issues. As you know, BANA is the beneficiary/servicer of the first deed of trust loan secured by the property.

NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

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

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

BANA 000309

JA0059

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

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

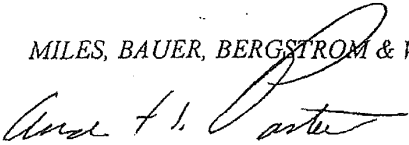
**The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.**

Subsection 2b of NRS 116.3116 clearly provides that an HOA lien "is prior to all other liens and encumbrances on a unit except: a first security interest on the unit..." But such a lien is prior to a first security interest to the extent of the assessments for common expenses which would have become due during the 9 months before institution of an action to enforce the lien.

Please be advised that, in the event you do not immediately bring your HOA account current by paying all sums past due, BANA may advance the sums necessary to protect its lien interest on the property. If BANA does in fact advance said sums, those sums may be added on to the balance you owe on the first position note and deed in trust you executed. BANA may do this per Nevada law and per the express terms of the note and deed of trust you executed. Further, BANA may add the attorney's fees and costs that are being incurred as a result of this matter to your loan. BANA may also do this per Nevada law and per the express terms of the note and deed of trust you executed. Please note that the HOA foreclosure sale may still occur despite any advancement of sums made by BANA in order to protect its lien interest on the property. Thus, we strongly advise that you contact your HOA and/or Nevada Association Services immediately and make the necessary arrangements to bring your HOA account current. If you have already brought your HOA account current with Nevada Association Services, then please disregard this letter.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Andrew Pastwick, Esq.

BANA 000310

JA0060

APN # 177-13-214-086  
NAS # N67912  
Lawyers Title of Nevada.# 08606988  
Property Address: 137 Elegante Way

|                      |                       |
|----------------------|-----------------------|
| DOCUMENT RECORDED ON | 11/18/2011            |
| DOCUMENT #           | 0002805 Book 20111118 |
|                      | Clark COUNTY          |
| DATE MAILED          | 11/28/2011            |

**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER  
HOMEOWNERS ASSOCIATION LIEN**

**IMPORTANT NOTICE**

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS  
NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT  
IS IN DISPUTE!**

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT  
MAY BE SOLD WITHOUT ANY COURT ACTION and you may have the legal right to bring your account in  
good standing by paying all your past due payments plus permitted costs and expenses within the time permitted  
by law for reinstatement of your account. No sale date may be set until ninety (90) days from the date this notice  
of default was mailed to you. The date this document was mailed to you appears on this notice.

This amount is \$1,819.50 as of November 16, 2011 and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes)  
required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and  
Restrictions. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the  
property or pay other obligations as required by your note and deed of trust or mortgage, or as required under your  
Covenants Conditions and Restrictions, Green Valley South (the Association) may insist that you do so in order to  
reinstate your account in good standing. In addition; the Association may require as a condition to reinstatement  
that you provide reliable written evidence that you paid all senior liens, property taxes and hazard insurance  
premiums.

Upon your request, this office will mail you a written itemization of the entire amount you must pay. You  
may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you  
must pay all amounts in default at the time payment is made. However, you and your Association may mutually  
agree in writing prior to the foreclosure sale to, among other things, 1) provide additional time in which to cure  
the default by transfer of the property or otherwise; 2) establish a schedule of payments in order to cure your  
default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the  
obligation being foreclosed upon or a separate written agreement between you and your Association permits a  
longer period, you have only the legal right to stop the sale of your property by paying the entire amount  
demanded by your Association.

To find out about the amount you must pay, or arrange for payment to stop the foreclosure, or if your  
property is in foreclosure for any other reason, contact: Nevada Association Services, Inc. on behalf of Green  
Valley South, 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146. The phone number is (702) 804-8885 or  
toll free at (888) 627-5544.

If you have any questions, you should contact a lawyer or the Association which maintains the right of  
assessment on your property.

BANA 000311

JA0061

NAS # N67912

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

**REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT  
TAKE PROMPT ACTION.**

**NOTICE IS HEREBY GIVEN THAT NEVADA ASSOCIATION  
SERVICES, INC.**

is the duly appointed agent under the previously mentioned Notice of Delinquent Assessment Lien, with the owner(s) as reflected on said lien being Dennis L. Scott, dated August 18, 2011, and recorded on 8/23/2011 as instrument number 0000959 Book 20110823 in the official records of Clark County, Nevada, executed by Green Valley South, hereby declares that a breach of the obligation for which the Covenants Conditions and Restrictions, recorded on August 13, 2009, as instrument number 0000782 Book 20090813, as security has occurred in that the payments have not been made of homeowner's assessments due from 1/1/2011 and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, trustee's fees and costs, attorney's fees and costs and Association fees and costs.

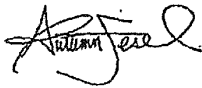
That by reason thereof, the Association has deposited with said agent such documents as the Covenants Conditions and Restrictions and documents evidencing the obligations secured thereby, and declares all sums secured thereby due and payable and elects to cause the property to be sold to satisfy the obligations.

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

Nevada Associations Services, Inc., whose address is 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146 is authorized by the association to enforce the lien by sale.

Legal Description: Oakwood AMD, Plat Book 32, Page 61, Lot 33, Block 4 in the County of Clark

Dated: November 16, 2011



By: Autumn Fesal of Nevada Association Services, Inc.  
on behalf of Green Valley South

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

BANA 000312

JA0062

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**MILES BAUER AFFIDAVIT**

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State of California    }  
                                  }ss.  
Orange County         }

Affiant being first duly sworn, deposes and says:

1.     I am a paralegal with the law firm of Miles, Bauer, Bergstrom & Winters, LLP (**Miles Bauer**) in Costa Mesa, California. I am authorized to submit this affidavit on behalf of Miles Bauer.

2.     I am over 18 years of age, of sound mind, and capable of making this affidavit.

3.     The information in this affidavit is taken from Miles Bauer's business records. I have personal knowledge of Miles Bauer's procedures for creating these records. They are: (a) made at or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal knowledge; (b) kept in the course of Miles Bauer's regularly conducted business activities; and (c) it is the regular practice of Miles Bauer's to make such records. I have personal knowledge of Miles Bauer's procedures for creating and maintaining these business records. I personally confirmed that the information in this affidavit is accurate by reading the affidavit and attachments, and checking that the information in this affidavit matches Miles Bauer's records available to me.

4.     Bank of America, N.A. (**BANA**) retained Miles Bauer to tender payments to homeowners associations (**HOA**) to satisfy super-priority liens in connection with the following loan:

Loan Number: ████████1277

Borrower(s): Dennis Scott

Property Address: 137 Elegante Way, Henderson, Nevada 89074

5. Miles Bauer maintains records for the loan in connection with tender payments to HOA. As part of my job responsibilities for Miles Bauer, I am familiar with the type of records maintained by Miles Bauer in connection with the loan.

6. Based on Miles Bauer's business records, attached as **Exhibit 1** is a copy of a December 19, 2011 letter from Mr. Pastwick sent via first class mail to Green Valley South care of Nevada Association Services, Inc.

7. Based on Miles Bauer's business records, attached as **Exhibit 2** is a copy of a Statement of Account from Nevada Association Services for another property in the Green Valley South homeowner's association which was used to calculate a good-faith payoff estimate for the above-referenced property.

8. Based on Miles Bauer's business records, attached as **Exhibit 3** is a copy of a February 2, 2012 letter from Rock K. Jung, an attorney with Miles Bauer, to Nevada Association Services, Inc. enclosing a check for \$882.00.

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9. Based on Miles Bauer's business records, Nevada Association Services, Inc. refused delivery of the February 2, 2012 letter and enclosed check. A copy of the service receipt from Miles Bauer's business records evidencing Nevada Association Services, Inc.'s refusal is attached as **Exhibit 4**. A copy of the voided check from Miles Bauer's business records is attached as **Exhibit 5**. A copy of a screenshot containing the relevant Miles Bauer case management note confirming the check was returned is attached as **Exhibit 6**.

FURTHER DECLARANT SAYETH NOT.

Date: 3/10/15 AK  
Declarant Adam Kendis

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Orange

Subscribed and sworn to (or affirmed) before me on this 10<sup>th</sup> day of March, 2015,

by Adam Kendis, proved to me on the basis of satisfactory evidence to be  
(Name of Signer)

the person who appeared before me.

Signature Aisha Mai Meh (Seal)  
(Signature of Notary Public)



# **EXHIBIT 1**

BANA 000316

**JA0066**

DOUGLAS E. MILES \*  
Also Admitted in California and  
Illinois

RICHARD J. BAUER, JR. \*  
JEREMY T. BERGSTROM  
Also Admitted in Arizona  
FRED TIMOTHY WINTERS\*  
KEENAN E. McCLENAHAN\*  
MARK T. DOMEYER\*

Also Admitted in District of  
Columbia & Virginia  
TAMI S. CROSBY\*

L. BRYANT JAQUEZ \*

GINA M. CORENA

WAYNE A. RASH \*

ROCK K. JUNG

VY T. PHAM \*

KRISTA J. NIELSON

HADI R. SEYED-ALI \*

JORY C. GARABEDIAN

THOMAS M. MORLAN

Admitted in California

BRIAN H. TRAN \*

ANNA A. GHAJAR \*

CORI B. JONES \*

STEVEN E. STERN

Admitted in Arizona & Illinois

ANDREW H. PASTWICK

Also Admitted in Arizona and  
California

CATHERINE K. MASON \*

CHRISTINE A. CHUNG \*

HANH T. NGUYEN \*

THOMAS B. SONG \*

S. SHELLY RAISZADEH \*

SHANNON C. WILLIAMS \*

ABTIN SHAKOURI \*

LAWRENCE R. BOIVIN \*



MILES, BAUER, BERGSTROM & WINTERS, LLP  
ATTORNEYS AT LAW SINCE 1985

2200 Paseo Verde Parkway, Suite 250  
Henderson, NV 89052  
Phone: (702) 369-5960  
Fax: (702) 369-4955

\* CALIFORNIA OFFICE  
1231 E. DYER ROAD  
SUITE 100  
SANTA ANA, CA 92705  
PHONE (714) 481-9100  
FACSIMILE (714) 481-9141

December 19, 2011

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

*SENT VIA FIRST CLASS MAIL*

Re: *Property Address: 137 Elegante Way, Henderson, NV 89074*  
*MBBW File No. 11-H2202*

Dear Sirs:

This letter is in response to your Notice of Default with regard to the HOA assessments purportedly owed on the above described real property. This firm represents the interests of MERS as nominee for Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to these issues. BANA is the beneficiary/servicer of the first deed of trust loan secured by the property.

As you know, NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

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

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

BANA 000317

JA0067

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

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

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

Subsection 2b of NRS 116.3116 clearly provides that an HOA lien "is prior to all other liens and encumbrances on a unit except: a first security interest on the unit..." But such a lien is prior to a first security interest to the extent of the assessments for common expenses which would have become due during the 9 months before institution of an action to enforce the lien.

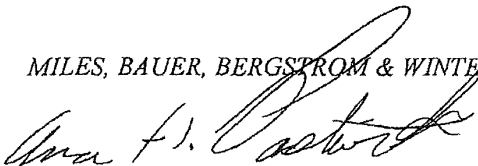
Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated November 16, 2011. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BANA should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

Please let me know what the status of any HOA lien foreclosure sale is, if any. My client does not want these issues to become further exacerbated by a wrongful HOA sale and it is my client's goal and intent to have these issues resolved as soon as possible. Please refrain from taking further action to enforce this HOA lien until my client and the HOA have had an opportunity to speak to attempt to fully resolve all issues.

Thank you for your time and assistance with this matter. I may be reached by phone directly at (702) 942-0468. Please fax the breakdown of the HOA arrears to my attention at (702) 942-0411. I will be in touch as soon as I've reviewed the same with BANA.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Andrew Pastwick, Esq.

BANA 000318

JA0068

# **EXHIBIT 2**

BANA 000319

**JA0069**

**Allen, Lloyd & Gale**

137 Coventry Dr.

**Green Valley South**Account No.: 2400137  
NAS# N 60681

| <b>Attorneys Fees &amp; Collection Costs</b> | <b>Amount</b> | <b>Amount</b> | <b>Amount</b> | <b>Amount</b> | <b>Amount</b> |
|--|---------------|---------------|---------------|---------------|---------------|
| <i>Dates of Delinquency: 01/10-03/11</i>     | Present rate  | Reserve       | Prior rate    | Prior rate    | Prior rate    |
| Balance forward                              | 0.00          | 0.00          | 0.00          | 0.00          | 0.00          |
| No. of Months Subject to Interest            | 0             | 0             | 0             | 0             | 0             |
| Interest due on Balance Forward              | 0.00          | 0.00          | 0.00          | 0.00          | 0.00          |
| Annual Assessment Amount                     | 98.00         | 0.00          | 0.00          | 0.00          | 0.00          |
| No. of Months Delinquent                     | 2             | 0             | 0             | 0             | 0             |
| No. of Months Subject to Interest            | 0             | 0             | 0             | 0             | 0             |
| Total Monthly Assessments due                | 196.00        | 0.00          | 0.00          | 0.00          | 0.00          |
| Late fee amount                              | 10.00         | 0.00          | 0.00          | 0.00          | 0.00          |
| No. of Months Late Fees Incurred             | 13            | 0             | 0             | 0             | 0             |
| Total Late Fees due                          | 130.00        | 0.00          | 0.00          | 0.00          | 0.00          |
| Interest Rate                                | 0.12          | 0.12          | 0.12          | 0.12          | 0.12          |
| Interest due                                 | 0.00          | 0.00          | 0.00          | 0.00          | 0.00          |
| Special Assessment Due                       | 0.00          | 0.00          | 0.00          | 0.00          | 0.00          |
| Special Assessment Late Fee                  | 0.00          | 0.00          | 0.00          | 0.00          | 0.00          |
| Special Assessment Months Late               | 0             | 0             | 0             | 0             | 0             |
| Special Assessment Interest Due              | 0.00          | 0.00          | 0.00          | 0.00          | 0.00          |
| Misc.  | 0.00          | 0.00          | 0.00          | 0.00          | 0.00          |
| Mgmt. Co. Intent to Lien                     | 65.00         | 0.00          | 0.00          | 0.00          | 0.00          |
| Return check charge                          | 0.00          | 0.00          | 0.00          | 0.00          | 0.00          |
| Management Co. Fee                           | 50.00         | 0.00          | 0.00          | 0.00          | 0.00          |
| Demand Letter                                | 135.00        | 0.00          | 0.00          | 0.00          | 0.00          |
| Lien Fees                                    | 325.00        | 0.00          | 0.00          | 0.00          | 0.00          |
| Prepare Lien Release                         | 30.00         | 0.00          | 0.00          | 0.00          | 0.00          |
| Certified Mailing                            | 120.00        | 0.00          | 0.00          | 0.00          | 0.00          |
| Recording Costs                              | 57.00         | 0.00          | 0.00          | 0.00          | 0.00          |
| Pre NOD Ltr                                  | 75.00         | 0.00          | 0.00          | 0.00          | 0.00          |
| Payment Plan Fee                             | 0.00          | 0.00          | 0.00          | 0.00          | 0.00          |
| Breach letters                               | 0.00          | 0.00          | 0.00          | 0.00          | 0.00          |
| Personal check returns                       | 0.00          | 0.00          | 0.00          | 0.00          | 0.00          |
| Escrow demand fee                            | 0.00          | 0.00          | 0.00          | 0.00          | 0.00          |
| <b>Collection Costs on Violations</b>        | <b>0.00</b>   | <b>0.00</b>   | <b>0.00</b>   | <b>0.00</b>   | <b>0.00</b>   |
| Subtotals                                    | \$1,183.00    | \$0.00        | \$0.00        | \$0.00        | \$0.00        |
| <u>Credit</u>                                | <u>Date</u>   |               |               |               |               |
|  |               | (0.00)        |               |               |               |
|  |               | (0.00)        |               |               |               |
|  |               | (0.00)        |               |               |               |
|  |               | (0.00)        |               |               |               |
|  |               | (0.00)        |               |               |               |
|  |               | (0.00)        |               |               |               |
|  |               | (0.00)        |               |               |               |
|  |               | (0.00)        |               |               |               |
|  |               | (0.00)        |               |               |               |
|  |               | (0.00)        |               |               |               |
|  |               | (0.00)        |               |               |               |
| NAS Fees & Costs                             |               | (0.00)        |               |               |               |

**HOA TOTAL****\$1,983.00**

"Nevada Association Services Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained  
Printed: 2/21/2011 will be used for that purpose." Page 1

BANA 000320

**JA0070**

PH

| <u>Foreclosure Fees &amp; Costs</u> | <u>Amount</u> | <u>Attorneys Cre</u>               | <u>Date</u> |
|-------------------------------------|---------------|------------------------------------|-------------|
|                                     |               |                                    | (0.00)      |
| Foreclosure Fee                     | 400.00        |                                    | (0.00)      |
| Title Report                        | 400.00        | <u>Collection Cre</u>              | <u>Date</u> |
| Posting/Publication                 | 0.00          |                                    | (0.00)      |
| Courier                             | 0.00          |                                    | (0.00)      |
| Postponement of Sale                | 0.00          |                                    | (0.00)      |
| Conduct Sale                        | 0.00          |                                    | (0.00)      |
| Prepare/Record Deed                 | 0.00          |                                    | (0.00)      |
| (other)                             | 0.00          |                                    | (0.00)      |
| (other)                             | 0.00          |                                    | (0.00)      |
| (other)                             | 0.00          |                                    | (0.00)      |
|                                     |               |                                    | (0.00)      |
| SUBTOTAL                            | \$800.00      |                                    | (0.00)      |
|                                     |               |                                    | (0.00)      |
|                                     |               |                                    | (0.00)      |
|                                     |               | <u>\$1,983.00</u>                  |             |
| <u>FORECLOSURE TOTAL</u>            |               | <u>Collection Credits SubTotal</u> | \$0.00      |

# **EXHIBIT 3**

BANA 000322

**JA0072**

DOUGLAS E. MILES  
Also Admitted in California &  
Illinois  
JEREMY T. BERGSTROM  
Also Admitted in Arizona  
GINA M. CORENA  
ROCK K. JUNG  
KRISTA J. NIELSON  
JORY C. GARABEDIAN  
THOMAS M. MORLAN  
Admitted in California  
STEVEN E. STERN  
Admitted in Arizona & Illinois  
ANDREW H. PASTWICK  
Also Admitted in Arizona &  
California



MILES, BAUER, BERGSTROM & WINTERS, LLP  
ATTORNEYS AT LAW SINCE 1985

2200 Paseo Verde Pkwy., Suite 250  
Henderson, NV 89052  
Phone: (702) 369-5960  
Fax: (702) 369-4955

CALIFORNIA OFFICE  
1231 E. Dyer Road, Suite 100  
Santa Ana, CA 92705  
Phone: (714) 481-9100  
Fax: (714) 481-9141

RICHARD J. BAUER, JR.  
FRED TIMOTHY WINTERS  
KEENAN E. McCLENAHAN  
MARK T. DOMEYER  
Also Admitted in the District  
of  
Columbia & Virginia  
TAMI S. CROSBY  
L. BRYANT JAQUEZ  
WAYNE A. RASH  
VY T. PHAM  
HADI R. SEYED-ALI  
BRIAN H. TRAN  
ANNA A. GHAJAR  
CORI B. JONES  
CATHERINE K. MASON  
CHRISTINE A. CHUNG  
HANH T. NGUYEN  
S. SHELLY RAISZADEH  
SHANNON C. WILLIAMS  
ABTIN SHAKOURI  
LAWRENCE R. BOIVIN

February 2, 2012

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

Re: *Property Address:* 137 Elegante Way  
LOAN #: [REDACTED] 1277  
MBBW File No. 11-H2202

Dear Sir/Madame:

As you may recall, this firm represents the interests of Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to the issues set forth herein. It is our understanding that Nevada Association Services (NAS) is now unwilling to provide our office with HOA payoff ledgers due to their concern of violating the Fair Debt Collection Practices Act (FDCPA). According to NAS, the FDCPA applies to NAS and how it conducts its business. Thus, if the homeowner is still the title owner and is a consumer as defined under the FDCPA, NAS is prohibited from supplying us payoff information unless BANA has written authorization from the homeowner.

BANA is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

...

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

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees

BANA 000323

JA0073

and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

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

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

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

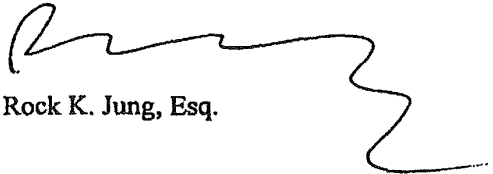
Despite your refusal to provide HOA payoff ledgers, our client still wishes to make a good-faith attempt to fulfill BANA's obligations as the 1st lienholder by tendering to NAS an accurate estimate of the Super Priority Amount. This good-faith estimate is based on prior payoff ledgers provided by NAS to our firm regarding the same HOA in question. Thus, assuming that the HOA assessment amounts haven't changed recently, we will be able to give an accurate estimate of the Super-Priority Amount and tender said amount to NAS. Based on the most recent HOA payoff ledger provided by NAS in regards to this particular HOA, we estimate the Super-Priority Amount to be \$882.00.

Our client has authorized us to make payment to you in the amount of \$882.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to NEVADA ASSOCIATION SERVICES in the sum of \$882.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BANA's financial obligations towards the HOA in regards to the real property located at 137 Elegante Way have now been "paid in full".

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

Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*



Rock K. Jung, Esq.

BANA 000324

JA0074

Initials: SRN

**Date: 1/27/2012    Amount: 882.00**

| Inv. Date | Reference # | Description            | Inv. Amount | Case # | Matter Description | Cost Amount |
|-----------|-------------|------------------------|-------------|--------|--------------------|-------------|
| 1/27/2012 | 137Elegante | To Cure HOA Deficiency | 882.00      |        |                    |             |

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

**Bank of America**  
**1100 N. Green Valley Parkway**  
**Henderson, NV 89074**

16-66/1220

1020

11-H2202

Loan # [REDACTED] 277

13165

Date: 1/27/2012

**Amount \$\*\*\* 882.00**

**Pay \$\*\*\*\*Eight Hundred Eighty-Two & No/100 Dollars**  
**to the order of**

**NEVADA ASSOCIATION SERVICES, INC.**  
6224 W. Desert Inn Rd., Ste. A  
Las Vegas, NV 89146

**Check Void After 90 Days**

**BANA 000325**

№ 131650 № 1222400724: 501006876973№

**JA0075**

# EXHIBIT 4

BANA 000326

JA0076

On this day, February 3, 2012, Nevada Association Services, Inc. received: (1) letters accompanying each of the checks listed below that address the purpose of the tender and the effect of accepting said checks and (2) the following checks for the following addresses:

| Amount         | Address                   | Ref#    | MBBW#    |
|----------------|---------------------------|---------|----------|
| 2,120.10(full) | 9401 Crown Vista Lane     | 9401CVL | 11-H2294 |
| 2,729.14(full) | 9332 Daffodil Sun Ave.    | 53890   | 12-H0062 |
| 882.00         | 137 Elegante Way          | N/A     | 11-H2202 |
| 369.00         | 9100 Little Horse Ave.    | N/A     | 12-H0081 |
| 1,400.00       | 5650 E. Sahara Ave. #1011 | N/A     | 11-H1793 |
| 73.50          | 2804 Mora Ct.             | N/A     | 11-H2062 |
| 2,169.00       | 2316 Martinique Ave.      | N/A     | 11-H2158 |
| 405.00         | 5049 Upper Falls Ct.      | N/A     | 11-H1726 |
| 810.00         | 7737 Wedlock Lane         | N/A     | 12-H0109 |

By signing below you acknowledge and confirm receipt of said checks.

Signature: [Signature]  
An Employee of Nevada Association Services, Inc.

Date 2-6-12

Print: Kia Jaroway  
An Employee of Nevada Association Services, Inc.

Date 2-6-12

RUN #907  
FIRM **MILES, BAUER, BERGSTROM, WINTERS**  
ADDR **2200 PALMO VERDE PKWY. \* STE. #250** 4-0305 • Fax 384-8638  
PH# **702-369-9960** 1118 Fremont St.  
Las Vegas, NV 89101

ATTN: A/E/B DATE: 2/3/12 AM/PM

CASE NAME \_\_\_\_\_ NO \_\_\_\_\_  
DOCUMENTS \_\_\_\_\_ CK# \_\_\_\_\_ \$ \_\_\_\_\_  
REF# 020312 N45 Limit of Liability: \$100.00 per form

☐ Return Copy ☐ Bank ☐ Other

**Please note: checks # 13238 & 13253 are full amount**

☐ NEXT DAY ☐ REGULAR ☐ SPECIAL (4 HRS) ☐ EXPEDITED (2 HRS)

Statute Expires \_\_\_\_\_ Received by \_\_\_\_\_  
Date \_\_\_\_\_ Time \_\_\_\_\_

☐ NOT COMPLETE DUE TO \_\_\_\_\_

May be subject to an additional charge.  
LAST DATE \_\_\_\_\_  
(SPECIFY DATE/TIME)  
RETURN \_\_\_\_\_

☐ MUNI CT ☐ RECORDER ☐ CONSTABLE ☐ SHERIFF ☐ FEDERAL ☐ BANKRUPTCY ☐ SECTRY OF STATE ☐ HEARINGS OFFICER ☐ JUDGE

BAR# 006327

JA0077

# **EXHIBIT 5**

BANA 000328

**JA0078**

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct


11-H2202

Initials: SRN

Payee: NEVADA ASSOCIATION SERVICES,

Check #: 13165

Date: 1/27/2012 Amount: 882.00

| Inv. Date   | Reference # | Description            | Inv. Amount | Case # | Matter Description | Cost Amount |
|---|-------------|------------------------|-------------|--------|--------------------|-------------|
| 1/27/2012   | 137Elegante | To Cure HOA Deficiency | 882.00      |        |                    |             |
|  |             |                        |             |        |                    |             |

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

Bank of America  
1100 N. Green Valley Parkway  
Henderson, NV 89074  
16-66/1220  
1020  
11-H2202  
Loan # 1277

13165

Date: 1/27/2012

Amount \$\*\*\*\* 882.00

Pay \$\*\*\*\*\*Eight Hundred Eighty-Two & No/100 Dollars  
to the order of

Check Void After 90 Days

NEVADA ASSOCIATION SERVICES, INC.  
6224 W. Desert Inn Rd., Ste. A  
Las Vegas, NV 89146

ACCOUNTING

VOIDED

⑈13165⑈ ⑆122400724⑆ 501006876973⑈

Details on back.  
Security Features Included.

BANA 000329

JA0079

# EXHIBIT 6

BANA 000330

**JA0080**

**Matters**

File Edit View Help

Matter ID: 11-H2202 Desc.: Scott, Dennis  
 Client Sort: BANK OF AMERICA, N.A. (CWF) BANA v. Scott HOA

General Notes Billing Contacts Matters Events Inquiry Settlement Civil Contract Info Custom Deed Info New Invoice

Date (all)

1/1/2004 1/28/2015

12/15/2011: [REDACTED]  
 12/15/2011: [REDACTED]  
 12/19/2011: [REDACTED]  
 12/20/2011: [REDACTED]  
 12/27/2011: [REDACTED]  
 12/28/2011: [REDACTED]  
 1/19/2012: [REDACTED]  
 1/20/2012: [REDACTED]  
 1/23/2012: [REDACTED]  
 1/24/2012: [REDACTED]  
 1/24/2012: [REDACTED]  
 1/27/2012: [REDACTED]  
 1/27/2012: [REDACTED]  
 2/3/2012: 2/3 CHECK SENT TO HOA; FU 2/15 SEE IF CHECK WAS  
 2/6/2012: EMF RKJ re: Payoff Funds, 11-H2202, 137 Elegante Way  
 2/15/2012: 2/15 CHECK RETURNED; FU 8/14 MONITOR EX PARTE  
 2/16/2012: [REDACTED]  
 2/16/2012: [REDACTED]  
 3/14/2012: [REDACTED]  
 5/8/2012: [REDACTED]  
 9/20/2012: [REDACTED]  
 9/23/2012: [REDACTED]  
 10/3/2012: [REDACTED]  
 10/4/2012: [REDACTED]  
 1/7/2013: [REDACTED]  
 1/18/2013: [REDACTED]  
 2/22/2013: [REDACTED]  
 3/26/2013: [REDACTED]  
 4/1/2013: [REDACTED]  
 4/12/2013: [REDACTED]  
 4/23/2013: [REDACTED]

Print

BANA 000331

**EXHIBIT “5”**

**EXHIBIT “5”**

State of Nevada  
Declaration of Value

FOR RECORDERS OPTIONAL USE ONLY

Document/Instrument # \_\_\_\_\_

Book: \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

Notes: \_\_\_\_\_

1. Assessor Parcel Number(s)

- a) 177-13-214-086  
b) \_\_\_\_\_  
c) \_\_\_\_\_  
d) \_\_\_\_\_

2. Type of Property:

- a) ☐ Vacant Land b) ☒ Single Fam. Res.  
c) ☐ Condo/Twnhse d) ☐ 2-4 Plex  
e) ☐ Apt. Bldg. f) ☐ Comm'l/Ind'l  
g) ☐ Agricultural h) ☐ Mobile Home  
i) ☐ Other \_\_\_\_\_

3. Total Value/Sales Price of Property:

\$ 3,555.00

Deed in Lieu of Foreclosure Only (value of property)

\$ \_\_\_\_\_

Transfer Tax Value per NRS 375.010, Section 2:

\$ 3,555.00

Real Property Transfer Tax Due:

\$ 20.40

4. If Exemption Claimed:

a. Transfer Tax Exemption, per NRS 375.090, Section: \_\_\_\_\_

b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month.

Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature Misty Blanchard Capacity agent

Signature \_\_\_\_\_ Capacity \_\_\_\_\_

**SELLER (GRANTOR) INFORMATION**

(REQUIRED)

Print Name: Nevada Association Services, Inc.

Address: 6224 W. Desert Inn Road

City: Las Vegas

State: Nevada Zip: 89140

**BUYER (GRANTEE) INFORMATION**

(REQUIRED)

Print Name: Daisey Trust

Address: 900 S. Las Vegas Blvd., Suite 810

City: Las Vegas

State: Nevada Zip: 89101

**COMPANY REQUESTING RECORDING**

(REQUIRED IF NOT THE SELLER OR BUYER)

Print Name: \_\_\_\_\_ Escrow # \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

GVS000218

JA0083

3  
Please mail tax statement and  
when recorded mail to:  
**Daisey Trust**  
900 S. Las Vegas Blvd., Suite 810  
Las Vegas, NV 89101

**Accommodation**

**FORECLOSURE DEED**

APN # 177-13-214-086

Inst #: 201209070001211  
Fees: \$18.00 N/C Fee: \$0.00  
RPTT: \$20.40 Ex: #  
09/07/2012 01:41:18 PM  
Receipt #: 1299270  
Requestor:  
NORTH AMERICAN TITLE  
COMPAN  
Recorded By: KGP Pgs: 3  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

NAS # N67912 7

The undersigned declares:

Nevada Association Services, Inc., herein called agent (for the Green Valley South), was the duly appointed agent under that certain Notice of Delinquent Assessment Lien, recorded August 23, 2011 as instrument number 0000959 Book 20110823, in Clark County. The previous owner as reflected on said lien is Dennis L Scott. Nevada Association Services, Inc. as agent for Green Valley South does hereby grant and convey, but without warranty expressed or implied to: Daisey Trust (herein called grantee), pursuant to NRS 116.31162, 116.31163 and 116.31164, all its right, title and interest in and to that certain property legally described as: Oakwood AMD, Plat Book 32, Page 61, Lot 33, Block 4 Clark County

**AGENT STATES THAT:**

This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Green Valley South governing documents (CC&R's) and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 11/18/2011 as instrument # 0002805 Book 20111118 which was recorded in the office of the recorder of said county. Nevada Association Services, Inc. has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Green Valley South at public auction on 8/31/2012, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale, became the purchaser of said property and paid therefore to said agent the amount bid \$3,555.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: September 7, 2012

Misty Blanchard

By Misty Blanchard, Agent for Association and Employee of Nevada Association Services

GVS000219

**JA0084**

STATE OF NEVADA                     )  
COUNTY OF CLARK                    )

On September 7, 2012, before me, Elissa Hollander, personally appeared Misty Blanchard personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.  
WITNESS my hand and seal.

(Seal)

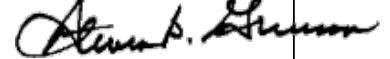
(Signature)



*Elissa Hollander*

GVS000220

JA0085



1 **JOIN**  
2 BRANDON E. WOOD  
3 Nevada State Bar Number 12900  
4 NEVADA ASSOCIATION SERVICES, INC.  
5 6625 S. Valley View Blvd. Suite 300  
6 Las Vegas, NV 89118  
7 Telephone: (702) 804-8885  
8 Facsimile: (702) 804-8887  
9 Email: brandon@nas-inc.com  
10 *Attorney for Defendant Nevada Association*  
11 *Services, Inc.*

12 **DISTRICT COURT FOR THE STATE OF NEVADA**  
13 **IN AND FOR THE COUNTY OF CLARK**

14 DAISEY TRUST, a Nevada trust,

15 Plaintiff,

16 vs.

17 GREEN VALLEY SOUTH OWNERS  
18 ASSOCIATION NO. 1, A Nevada non-profit  
19 corporation; and NEVADA ASSOCIATION  
20 SERVICES, INC., a domestic corporation;

21 Defendants.

CASE NO.: A-19-791254-C

DEPT. NO.: XVIII

**NEVADA ASSOCIATION SERVICES,  
INC.'S JOINDER TO DEFENDANT  
GREEN VALLEY SOUTH OWNERS'  
ASSOCIATION'S MOTION TO DISMISS,  
OR ALTERNATIVELY, MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

22 COMES NOW, NEVADA ASSOCIATION SERVICES, INC. (hereinafter "NAS"), and  
23 hereby submits its Joinder to MOTION TO DISMISS DAISEY TRUST'S Complaint. NAS  
24 incorporates the arguments, points and authorities, and Exhibits set forth by GREEN VALLEY  
25 SOUTH OWNERS' ASSOCIATION as though fully set forth herein.

26 **CONCLUSION**

27 For all the reasons set forth in its Motion, GREEN VALLEY SOUTH OWNERS'  
28 ASSOCIATION'S Motion to Dismiss DAISEY TRUST'S Complaint should be **GRANTED** as to

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GREEN VALLEY SOUTH OWNERS' ASSOCIATION and NAS.

Dated this 18<sup>th</sup> day of October, 2019

By: /s/Brandon E. Wood  
BRANDON E. WOOD  
Nevada State Bar Number 12900  
NEVADA ASSOCIATION SERVICES, INC.  
6625 S. Valley View Blvd. Suite 300  
Las Vegas, NV 89118  
*Attorney for Defendant Nevada Association  
Services, Inc.*

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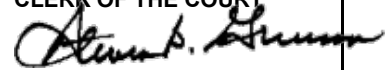
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18<sup>th</sup> day of October, 2019, and pursuant to N.R.C.P. 5(b), I served a true and correct copy of the foregoing *Nevada Association Services, Inc.’s Joinder to Defendant Green Valley South Owners’ Association’s Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment* upon the parties listed below and all parties/counsel set up to receive notice via electronic service in this matter in the following manner:

- ☐ Hand Delivery  
☐ Facsimile Transmission  
☐ U.S. Mail, Postage Pre-Paid  
☒ Served upon opposing counsel via the Court’s electronic service system to the following counsel of record:

|  |   |
|--|---|
| Roger Croteau, Esq.<br><a href="mailto:croteaulaw@croteaulaw.com">croteaulaw@croteaulaw.com</a>                            | Timothy Rhoda, Esq.<br><a href="mailto:tim@croteaulaw.com">tim@croteaulaw.com</a>             |
| Janeen V. Isaacson, Esq.<br>Lipson Neilson<br><a href="mailto:jisaacson@lipsonneilson.com">jisaacson@lipsonneilson.com</a> | Croteau Admin<br><a href="mailto:receptionist@croteaulaw.com">receptionist@croteaulaw.com</a> |

/s/Susan E. Moses  
Employee of Nevada Association Services, Inc.



1 **OMD**  
2 ROGER P. CROTEAU, ESQ.  
3 Nevada Bar No. 4958  
4 ROGER P. CROTEAU & ASSOCIATES, LTD.  
5 2810 W. Charleston Blvd., Ste. 75  
6 Las Vegas, Nevada 89148  
7 (702) 254-7775 (telephone)  
8 (702) 228-7719 (facsimile)  
9 [croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)  
10 *Attorney for Plaintiff*

11 DISTRICT COURT  
12 CLARK COUNTY, NEVADA

|   |   |                         |
|---|---|-------------------------|
| 12 DAISY TRUST, a Nevada trust,           | ) |                         |
| 13 Plaintiff,                             | ) | Case No.: A-19-791254-C |
| 14 vs.                                    | ) | Dept. No.: 18           |
| 15 GREEN VALLEY SOUTH OWNERS              | ) |                         |
| 16 ASSOCIATION NO. 1 and NEVADA           | ) |                         |
| 17 ASSOCIATION SERVICES, INC., a domestic | ) |                         |
| 18 corporation,                           | ) |                         |
| 19 Defendants.                            | ) |                         |

20 **PLAINTIFF'S OPPOSITION TO GREEN VALLEY SOUTH OWNERS**  
21 **ASSOCIATION'S MOTION TO DISMISS, OR ALTERNATIVELY, MOTION FOR**  
22 **PARTIAL SUMMARY JUDGMENT AND NEVADA ASSOCIATION SERVICES, INC.'S**  
23 **JOINDER THERETO**

24 COMES NOW, Plaintiff, DAISY TRUST, by and through its attorneys, ROGER P.  
25 CROTEAU & ASSOCIATES, LTD., and hereby presents its Opposition to Defendant, Green  
26 Valley South Owners Association's Motion to Dismiss (the "*HOA's Motion*"). This Opposition  
27 is made and based upon the attached Memorandum of Points and Authorities, the papers and  
28 pleadings on file herein, and any oral argument that this Honorable Court may entertain at the

1 time of hearing of this matter.

2 DATED this 29<sup>th</sup> day of October, 2019

3 ROGER P. CROTEAU & ASSOCIATES, LTD.

4 /s/ Roger P. Croteau  
5 ROGER P. CROTEAU, ESQ.  
6 Nevada Bar No. 4958  
7 2810 W. Charleston Blvd., Ste. 75  
8 Las Vegas, Nevada 89102  
9 *Attorney for Plaintiff*

10  
11  
12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **INTRODUCTION**

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

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

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

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

11 NRS 116.3116 Liens against units for assessments.

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

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

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

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

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

25 The lien is also prior to all security interests described in paragraph (b) to the  
26 extent of any charges incurred by the association on a unit pursuant to NRS  
116.310312 and to the extent of the assessments for common expenses based on  
27 the periodic budget adopted by the association pursuant to NRS 116.3115 which  
28 would have become due in the absence of acceleration during the 9 months  
immediately preceding institution of an action to enforce the lien, unless federal

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

12 \* \* \*

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

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

21 NRS 116.3116(2)(b) makes a homeowner's association's lien for assessments junior to a  
22 Deed of Trust beneficiary's secured interest in the real property; with one limited exception,  
23 provided for in NRS 116.3116(2)(c), a homeowner's association's lien is senior in priority to a  
24 Deed of Trust beneficiary's secured interest "to the extent of any charges incurred by the  
25 association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for  
26 common expenses based on the periodic budget adopted by the association pursuant to NRS  
27 116.3115 which would have become due in the absence of acceleration during the 9 months  
28 immediately preceding institution of an action to enforce the lien. ..." NRS 116.3116(2)(c). In  
Nevada, when a homeowners association properly forecloses upon a lien containing a super-  
priority lien component, such foreclosure extinguishes a Deed of Trust. If the homeowner's  
association does not properly foreclose on a super-priority homeowner's association lien or the  
super-priority portion is paid before the foreclosure sale, the homeowner's association  
foreclosure sale does not extinguish the Deed of Trust.

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

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

7 Generally, foreclosure trustees in NRS 107 sales have limited duty to the bidders of the  
8 property being foreclosed upon. The body of common law has developed from the precept that  
9 information exists in the public domain to conduct reasonable due diligence under the  
10 circumstances to properly inform a potential bidder, however, that information is not available  
11 under any circumstances to the bidder in a NRS 116 sale.

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

## 20 **STATEMENT OF FACTS**

21 1. On or about June 5, 2008, Dennis L. Scott, an unmarried person ("the *Former Owner*")  
22 purchased real property located at 137 Elegante Way, Henderson, Nevada 89074 (APN  
23 177-13-214-086) (the "*Property*"), and obtained a purchase money loan secured by the  
24 Property from CTX Mortgage Company, LLC, ("*Lender*"), that is evidenced by a deed of  
25 trust between the Former Owner and Lender, recorded against the Property on June 27,  
26 2008, for the loan amount of \$179,188.00 ("*Deed of Trust*"). The Deed of Trust provides  
27 that Mortgage Electronic Registration Services ("*MERS*") is beneficiary, as nominee for  
28 Lender and Lender's successors and assigns. The Deed of Trust was in the amount of

- 1       \$179,188.00, and the Deed of Trust was recorded in the Clark County Recorder's Office  
2       on June 27, 2008. See Complaint ¶12.
- 3   2.     The Former Owner executed a Planned Unit Development Riders along with the Deed of  
4       Trust. See Complaint ¶13.
- 5   3.     On September 26, 2011, MERS, on behalf of Lender, assigned its beneficial interest by  
6       Assignment of Deed of Trust to Bank of America, N.A. ("*BANA*" and/or "*Lender*") and  
7       recorded the document in Clark County Recorder's Office on October 5, 2011. See  
8       Complaint ¶14.
- 9   4.     The Former Owner of the Property failed to pay to HOA all amounts due to pursuant to  
10       HOA's governing documents. See Complaint ¶15.
- 11   5.     Accordingly, on August 23, 2011, Nevada Association Services, Inc. ("*HOA Trustee*"),  
12       on behalf of Green Valley South Owners Association No. 1 ("*HOA*"), recorded a Notice  
13       of Claim of Delinquent Assessment Lien ("*HOA Lien*"). The HOA Lien stated that the  
14       amount due to the HOA was \$818.70 as of August 18, 2011, plus accruing assessments,  
15       interest, late charges, costs, fees and other charges. See Complaint ¶16.
- 16   6.     On November 18, 2011, HOA, through HOA Trustee, recorded a Notice of Default and  
17       Election to Sell ("*NOD*") against the Property. The NOD stated the amount due to the  
18       HOA was \$1,819.50 as of November 16, 2011, plus accruing assessments, interest, costs  
19       and attorney's fees. See Complaint ¶17.
- 20   7.     After the NOD was recorded, on December 19, 2011, BANA, through its counsel, Miles,  
21       Bauer, Bergstom & Winters ("*Miles Bauer*") contacted the HOA Trustee and requested a  
22       ledger identifying the Super Priority Lien Amount, comprising of up to 9 months of  
23       delinquent assessments that were owed to the HOA as of the HOA Lien ("*Super Priority*  
24       *Lien Amount*"). See Complaint ¶18.
- 25   8.     Miles Bauer requested the HOA arrears in an attempt to pay the Super Priority Lien  
26       Amount of the HOA Lien. See Complaint ¶19.
- 27   9.     In an Affidavit of Adam Kendis of Miles Bauer (the "*Affidavit*"), he provided that he  
28       could not locate a response from the HOA and HOA Trustee to the "December 19, 2011,

- 1 Miles Bauer letter to the HOA, care of the HOA Trustee." See Complaint ¶20.
- 2 10. The Affidavit stated that Miles Bauer used a Statement of Account from Nevada  
3 Association Services, Inc., for a different property in the same HOA to determine a good  
4 faith payoff. See Complaint ¶21.
- 5 11. BANA, through Miles Bauer, provided a payment of \$882.00 to the HOA Trustee, which  
6 included payment of up to nine months of delinquent assessments (the "*Attempted*  
7 *Payment*"). See Complaint ¶22.
- 8 12. HOA Trustee, on behalf of the HOA, rejected BANA's Attempted Payment of \$882.00.  
9 See Complaint ¶23.
- 10 13. On April 23, 2012, HOA Trustee, on behalf of the HOA, recorded a Notice of Sale  
11 against the Property ("*NOS*"). The NOS provided that the total amount due the HOA was  
12 \$2,946.17 and set a sale date for the Property of May 18, 2012, at 10:00 A.M., to be held  
13 at Nevada Legal News located at 930 S. Fourth Street, Las Vegas, Nevada. See  
14 Complaint ¶24.
- 15 14. On August 31, 2012, HOA Trustee then proceeded to non-judicial foreclosure sale on the  
16 Property and recorded the HOA Foreclosure Deed on September 7, 2012, which stated  
17 that the HOA Trustee sold the HOA's interest in the Property to the Plaintiff at the  
18 Foreclosure Sale for the highest bid amount of \$3,555.00. See Complaint ¶25.
- 19 15. The Foreclosure Sale created excess proceeds. See Complaint ¶26.
- 20 16. After the Notice of Default was recorded, BANA, the purported holder of the Deed of  
21 Trust recorded against the Property, through its counsel, Miles Bauer, contacted HOA  
22 Trustee and HOA and requested all amounts due the HOA by the Former Owners, upon  
23 information and belief, Miles Bauer requested the sums due to the HOA by the Former  
24 Owners so it could calculate the breakdown of up to nine (9) months of common HOA  
25 assessments in order for BANA to calculate the Super Priority Lien Amount in an  
26 ostensible attempt to determine the amount of the HOA Lien entitled to super priority  
27 over the Deed of Trust. See Complaint ¶27.
- 28 17. In none of the recorded documents, nor in any other notice recorded with the Clark

- 1 County Recorder's Office, did HOA and/or HOA Trustee specify or disclose that any  
2 individual or entity, including but not limited to BANA, had attempted to pay any portion  
3 of the HOA Lien in advance of the HOA Foreclosure Sale. See Complaint ¶28.
- 4 18. Plaintiff appeared at the HOA Foreclosure Sale and presented the prevailing bid in the  
5 amount of \$3,555.00, thereby purchasing the Property for said amount. See Complaint  
6 ¶29.
- 7 19. Neither HOA nor HOA Trustee informed or advised the bidders and potential bidders at  
8 the HOA Foreclosure Sale, either orally or in writing, that any individual or entity had  
9 attempted to pay the Super Priority Lien Amount. See Complaint ¶30.
- 10 20. The debt owed to Lender by the Former Owners of the Property pursuant to the loan  
11 secured by the Deed of Trust significantly exceeded the fair market value of the Property  
12 at the time of the HOA Foreclosure Sale. See Complaint ¶31.
- 13 21. Lender alleges that its Attempted Payment of the Super Priority Lien Amount served to  
14 satisfy and discharge the Super Priority Lien Amount, thereby changing the priority of the  
15 HOA Lien vis a vis the Deed of Trust. See Complaint ¶32.
- 16 22. Lender alleges that as a result of its Attempted Payment of the Super Priority Lien  
17 Amount, the purchaser of the Property at the HOA Foreclosure Sale acquired title to the  
18 Property subject to the Deed of Trust. See Complaint ¶33.
- 19 23. If the bidders and potential bidders at the HOA Foreclosure Sale were aware that an  
20 individual or entity had attempted to pay the Super Priority Lien Amount and/or by means  
21 of the Attempted Payment prior to the HOA Foreclosure Sale and that the Property was  
22 therefore ostensibly being sold subject to the Deed of Trust, the bidders and potential  
23 bidders would not have bid on the Property. See Complaint ¶34.
- 24 24. Had the Property not been sold at the HOA Foreclosure Sale, HOA and HOA Trustee  
25 would not have received payment, interest, fees, collection costs and assessments related  
26 to the Property would have remained unpaid. See Complaint ¶35.
- 27 25. HOA Trustee acted as an agent of HOA. See Complaint ¶36.
- 28 26. HOA is responsible for the actions and inactions of HOA Trustee pursuant to the doctrine

- 1 of respondeat superior and agency. See Complaint ¶37.
- 2 27. HOA and HOA Trustee conspired together to hide material information related to the  
3 Property: the HOA Lien; the Attempted Payment of the Super Priority Lien Amount; the  
4 rejection of such payment or Attempted Payment; and the priority of the HOA Lien vis a  
5 vis the Deed of Trust, from the bidders and potential bidders at the HOA Foreclosure  
6 Sale. See Complaint ¶38.
- 7 28. The information related to any Attempted Payment or payments made by Lender, BANA,  
8 the homeowner or others to the Super Priority Lien Amount was not recorded and would  
9 only be known by BANA, Lender, the HOA and HOA Trustees. See Complaint ¶39.
- 10 29. HOA and HOA Trustee conspired to withhold and hide the aforementioned information  
11 for their own economic gain and to the detriment of the bidders and potential bidders at  
12 the HOA Foreclosure Sale. See Complaint ¶40.
- 13 30. It was Plaintiff's practice and procedure that when it would attend NRS 116 sales, by and  
14 through its Trustee, at all times relevant to this case, the Trustee would attempt to  
15 ascertain whether anyone had attempted to or did tender any payment regarding the  
16 homeowner association's lien, including but not limited to the Attempted Payment. See  
17 Declaration of Eddie Haddad attached hereto as Exhibit A and incorporated herein by  
18 reference (the "*Declaration*")
- 19 31. At all time relevant to this matter, if the Plaintiff had learned of a "tender" either having  
20 been attempted or made, the Plaintiff would not purchase the Property offered in that  
21 HOA Foreclosure Sale. See Exhibit A.
- 22 32. BANA first disclosed the Attempted Payment by BANA/Lender to the HOA Trustee in  
23 BANA's Complaint, filed on February 29, 2016, but not served on the Plaintiff until  
24 March 16, 2016 ("*Discovery*") in the United States District Court Case No. 2:16-cv-  
25 00424 (the "*Case*"). See Complaint ¶41.

### 26 **PROCEDURAL BACKGROUND**

27 In the Case, Plaintiff did not sue the HOA, nor the HOA Trustee. In the Case, Plaintiff  
28 sued BANA for quiet title and declaratory relief. In the Case, Lender brought claims for Quiet

1 Title / Declaratory Judgment against all defendants, Breach of NRS 116.1113 against HOA and  
2 HOA Trustee, Wrongful Foreclosure against HOA and HOA Trustee, and Injunctive Relief  
3 against Plaintiff. See Exhibit B. Plaintiff did not elect to sue the HOA and/or the HOA Trustee in  
4 the Case. None of the allegations set forth in this Complaint would require a compulsory claim  
5 by Plaintiff in the Case. Plaintiff filed this Complaint on March 15, 2019 to preserve its three (3)  
6 year statute of limitations pursuant to NRS 11.190 (a) - (d).

### 7 LEGAL ARGUMENT

#### 8 **A. STATEMENT OF THE LAW**

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

24 Pursuant to N.R.C.P. §56, two substantive requirements must be met before a Court may  
25 grant a motion for summary judgment: (1) there must be no genuine issue as to any material fact;  
26 and, (2) the moving party must be entitled to judgment as a matter of law. *Fyssakis v. Knight*  
27 *Equipment Corp.*, 108 N.v. 212, 826 P.2d 570 (1992). Summary judgment is appropriate under  
28 NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits,

1 if any, that are properly before the court demonstrate that no genuine issue of material fact exists,  
2 and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway*, 121 Nev.  
3 Adv. Op. 73, 121 P.3d 1026 (October, 2005) citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev.  
4 at 713, 57 P.3d at 87 (2003). In deciding whether these requirements have been met, the Court  
5 must first determine, in the light most favorable to the non-moving party “whether issues of  
6 material fact exist, thus precluding judgment by summary proceeding.” *National Union Fire Ins.*  
7 *Co. of Pittsburgh v. Pratt & Whitney Canada, Inc.*, 107 Nev. 535, 815 P.2d 601, 602 (1991).

8 The Nevada Supreme Court has indicated that Summary Judgment is a drastic remedy  
9 and that the trial judges should exercise great care in granting such motions. *Pine v. Leavitt*, 84  
10 Nev. 507, 445 P.2d 942 (1968); *Oliver v. Barrick Goldstrike Mines*, 111 Nev. 1338, 905 P.2d  
11 168 (1995). “Actions for declaratory relief are governed by the same liberal pleading standards  
12 that are applied in other civil actions.” See *Breliant v. Preferred Equities Corp.*, 109 Nev. 842,  
13 846, 858 P.2d 1258, 1260-61 (1993). “The formal sufficiency of a claim is governed by NRCP  
14 8(a), which requires only that the claim, shall contain (1) a short and plain statement of the claim  
15 showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to  
16 which he deems himself entitled.” See *id.* (quoting NRCP 8(a).

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

22 **B. SATICOY’S CLAIMS FOR MISREPRESENTATION AND CONSPIRACY ARE**  
23 **VIABLE CLAIMS AND DO NOT FAIL AS A MATTER OF LAW**

24 The HOA intentionally/negligently made the determination not to disclose the Attempted  
25 Payment despite its actual knowledge to the contrary known only to the HOA, HOA Trustee and  
26 Lender. The Court in *Foster v. Dingwall*, 126 Nev.56, 69 227 P.3d 1042,1052, 2010 LEXIS 5,  
27 26, 126 Nev. Adv. Rep. 6 (2010) provided that the omission of a material fact such as the BANA  
28 Attempted Payment of the HOA Lien may be deemed to be a false representation which the

1 Defendants are bound by the mandates of NRS 116.1113 and NRS 113.130 to disclose to  
2 potential bidders under the obligation and duty of good faith and candor to disclose upon  
3 reasonable inquiry from potential bidders at the HOA Foreclosure Sale and/or the party  
4 conducting the sale with actual knowledge of certain material facts such intentional omission in  
5 not disclosing the Attempted Payment is equivalent to a false representation under the facts of  
6 this case.

7 Saticoy has identified that the HOA, by and through its agent, the HOA Trustee,  
8 intentionally did not disclose the Attempted Payment to Saticoy or the potential bidders at the  
9 HOA Foreclosure Sale. Unlike NRS 107 *et seq.* sales, NRS 116 *et seq.* sales provide for a super  
10 and sub-priority lien portion of the Deed of Trust. Absent of the recording of any notice of  
11 payment of the Super Priority Lien Amount, as is mandated with the NRS 116 amendments in  
12 2015, the only way Saticoy and/or potential bidders at the HOA Foreclosure Sale would know if  
13 any party tendered the Super Priority Lien Amount and/or Attempted Payment is if the HOA  
14 and/or the HOA Trustee informs the bidders of the Attempted Payment. It is clear from the facts  
15 of this case that the HOA Trustee was aware of the Attempted Payment and its rejection by the  
16 HOA Trustee.

17 Since the HOA Trustee is the disclosed agent of the HOA, the HOA is imputed with  
18 knowledge held by the HOA Trustee. See Exhibit C. In the Complaint, Plaintiff sets forth the  
19 duty, breach of that duty, improper purpose, failure to make a statement regarding the Attempted  
20 Payment, the material omission of the Attempted Payment, the breach of the obligation of good  
21 faith and candor, the failure to provide notice pursuant to NRS 113 *et seq.* and the damages  
22 suffered by Saticoy. See Declaration.

23 In this case, the HOA, as principal for the HOA Trustee, are not guilty of a false  
24 representation, but they are guilty of intentionally not disclosing a material fact regarding the  
25 payment of the Attempted Payment concerning the Deed of Trust that they are required to do and  
26 thereby making a material omission of a fact subject to this claim. As Mr. Haddad provided in his  
27 Declaration, he relied upon the non-disclosure of the Attempted Payment to indicate that no  
28 tender had been attempted or accomplished.

1 The HOA and/or the HOA Trustee's actions leading up to and at the HOA Foreclosure  
2 Sale intentionally obstructed Plaintiff's opportunity to conduct its own due diligence regarding  
3 the Property and specifically the priority of the lien being foreclosed upon, and ultimately  
4 affected Plaintiff's decision whether to actually submit a bid on the Property or not. See  
5 Plaintiff's Complaint ¶¶ 28, 30, 31, 32, 34, 35, 36, 38, 39, 40, 41, 43, 44, 45, 47, 48, 49, 50, 51,  
6 52, 56, 58, 59, 60, 62, 63, 64, 65, 66, and 67, See Exhibit C.

7 It is not Saticoy's duty to prove that the HOA Trustee believed it had a duty to disclose  
8 the existence of the Miles Bauer tender or believed that the rejection of the tender/Attempted  
9 Payment had any impact on its statutory right to foreclose on its super-priority lien. It is Saticoy's  
10 claim that the HOA and the HOA Trustee had a duty to the bidding public to disclose  
11 information known to it upon reasonable inquiry, so Saticoy and the other bidders could decide  
12 whether to purchase the Property at the HOA Foreclosure Sale. The HOA and HOA Trustee  
13 intentionally, whether on a mistaken belief or not of the effectiveness of the tender, failed to  
14 disclose the Attempted Payment, so they would not chill the sale of the Property for their own  
15 economic gain.

16 **C. PLAINTIFF'S CIVIL CONSPIRACY CLAIM DOES NOT FAIL AS A**  
17 **MATTER OF LAW**

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

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

25 At a minimum, discovery will be required to develop the foregoing claims alleged by  
26 Saticoy. The State of Nevada is a notice pleading jurisdiction, and Saticoy has alleged facts  
27 sufficient to conduct discovery to ascertain the merits of the claim. To that end, Saticoy requests  
28 NRCP 56(d) relief to conduct discovery in this matter to develop the factual evidence in this

1 case, not from the Case as the focus in this matter is different.

2 Saticoy filed its Complaint in this matter timely. It did so to preserve its claims against  
3 the HOA and the HOA Trustee pursuant to NRS 11.190's three (3) year statute of limitations  
4 11.190 (a) and (d). Given that Saticoy did not allege claims against the HOA and the HOA  
5 Trustee in the Case, it determined it prudent to initiate the current Complaint with the appropriate  
6 NRS 11.190(a)-(d) timeframe.

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

8  
9 The Court should deny the HOA's Motion, because Plaintiff's Complaint adequately  
10 states claims for relief consistent with their obligation of good faith, honesty-in-fact, reasonable  
11 standards of fair dealing and candor pursuant to NRS §116.1113 and NRS 113.130. The HOA  
12 argues that Plaintiff fails to cite to any provision within NRS Chapter 116 that contains an  
13 obligation or duty of good faith to the Purchaser, thus alleging that NRS §116.1113 is not  
14 implicated. However, Plaintiff respectfully disagrees. NRS §116.1113 is not only implicated but  
15 clearly governs the parties' performance. Even if claims under NRS 113.130 are deemed to not  
16 be timely filed, the mandates of NRS 113.130 constitute a breach of the HOA Foreclosure Deed  
17 wherein the HOA Trustee on behalf of itself and its principal, the HOA, represents and  
18 warranties that the HOA Trustee "has complied with all requirements of law including, but not  
19 limited to..." See HOA Motion Exhibit 5.

20 NRS §116.1113 provides, "[e]very contract or duty governed by this chapter imposes an  
21 obligation of good faith in its performance or enforcement." NRS 116.1113 provides that in  
22 "every contract or duty governed by [NRS 116] the actions of the HOA and the HOA Trustee  
23 leading up to and including the HOA Foreclosure Sale provide that a duty of good faith as further  
24 clarified by the comment to Section 1-113 infra regarding the HOA's performance in its  
25 enforcement of the provisions included in NRS Chapter 116 that constitute the foreclosure sale  
26 and selling the Property to a purchaser that will eventually be a member of the HOA. Plaintiff  
27 alleges that the HOA and the HOA Trustee's actions were not conducted in good faith. See  
28 Complaint. Plaintiff further alleges that the HOA and the HOA Trustee intentionally and/or

1 negligently misrepresented the conditions present at the time it conducted the HOA Foreclosure  
2 Sale. See Complaint. Plaintiff further alleges that the HOA and the HOA Trustee failed to  
3 disclose mandated information specifically known to the HOA and the HOA Trustee regarding  
4 assessments and tender/Attempted Payment as mandated by NRS 116.1113 and NRS 113.130.

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

12       Nevada's HOA lien statute, NRS Chapter 116.3116, is modeled after the Uniform  
13 Common Interest Ownership Act of 1982 (hereinafter "UCIOA"), § 3-116, 7 U.L.A., part II  
14 121-24 (2009) (amended 1994, 2008), which Nevada adopted in 1991, see NRS 116.001. The  
15 purpose of the UCIOA is "to make uniform the law with respect to the subject of this chapter  
16 among states enacting it." NRS 116.1109(2). See *Carrington Mortg. Holdings, LLC v. R*  
17 *Ventures VIII, LLC*, 419 P.3d 703, 2018 Nev. LEXIS 47, 134 Nev. Adv. Rep. 46, 2018 WL  
18 3015114 (Nev. 2018).

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

1 Turning the UCOIA with comments from the drafters of the UCOIA; the UCOIA  
2 provides comment to the provision that is exactly NRS 116.1113, that is at issue here:

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

5 **Comment**

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

10 Section 1-113 of the UCOIA became NRS 116.1113 verbatim. It is clear that the authors  
11 of the UCOIA intended the definition of “good faith” to include two (2) standards: (1) honest-in-  
12 fact, and (2) observance of reasonable standards of fair dealing. As other jurisdictions have  
13 addressed these two standards create an obligation of candor has been adopted by other  
14 jurisdictions that have adopted the UCOIA.

15 The Nevada courts should further follow the lead of Delaware in recognizing that the  
16 duty of fair dealing obviously includes the duty of candor. The Delaware courts have concluded  
17 that part of “fair dealing” is the obvious duty of candor.

18 Part of fair dealing is the obvious duty of candor. Moreover, one possessing superior  
19 knowledge may not mislead any stockholder by use of corporate information to which the  
20 latter is not privy. *Lank v. Steiner*, Del. Supr., 43 Del. Ch. 262, 224 A.2d 242, 244 (1966).  
Delaware has long imposed this duty even upon persons who are not corporate officers or  
directors, but who nonetheless are privy to matters of interest or significance to their  
company.

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

23 Part of fair dealing is the obvious duty of candor. *Lynch v. Vickers Energy Corp.*, Del.  
24 Supr., 383 A.2d 278, 281 (Del. 1977) (*Lynch I*). See also, *Weinberger v. Uop*, 457 A.2d 701,  
25 710, 1983 Del. LEXIS 371, \*26 (Del. 1983). The duty of candor is one of the elementary  
26 principles of fair dealing. See *Mills Acquisition Co. v. MacMillan, Inc.*, 559 A.2d 1261, 1989  
27 Del. LEXIS 149, Fed. Sec. L. Rep. (CCH) P94,401 (Del. 1989). See also, *Holten v. Std. Parking*  
28 *Corp.*, 98 F. Supp. 3d 444, 2015 U.S. Dist. LEXIS 39152 (Conn. 2015). Compare

1 *Osowski v. Howard*, 2011 WI App 155, ¶ 17, 337 Wis. 2d 736, 807 N.W.2d 33 (WI App. Ct.  
2 2011) where the Wisconsin Appeals Court noted that the duty of fair dealing is a guarantee by  
3 each party that he or she "will not intentionally and purposely do anything to prevent the other  
4 party from carrying out his or her part of the agreement, or do anything which will have the effect  
5 of destroying or injuring the right of the other party to receive the fruits of the contract." See  
6 *Osowski v. Howard*, 2011 WI App 155, ¶ 17, 337 Wis. 2d 736, 807 N.W.2d 33. See also, *Tang v.*  
7 *C.A.R.S. Prot. Plus, Inc.*, 2007 WI App 134, ¶41, 301 Wis. 2d 752, 734 N.W.2d 169 (quoting  
8 *Metropolitan Ventures, LLC v. GEA Assocs.*, 2006 WI 71, ¶35, 291 Wis. 2d 393, 717 N.W.2d  
9 58).

10 Moreover, the official comments by the drafters of the UCIOA provide important  
11 guidance in construing NRS §116.1113. See *Chase Plaza Condo. Ass'n v. JP Morgan Chase*  
12 *Bank, N.A.*, 98 A.3d 166, 175, 2014 D.C. App. LEXIS 317, \*20-21 (D.C. 2014). See generally,  
13 e.g., *Alvord Inv., LLC v. Zoning Bd. of Appeals*, 282 Conn. 393, 920 A.2d 1000, 2007 Conn.  
14 LEXIS 193; *Cantonbury Heights Condominium Assn., Inc. v. Local Land Development, LLC*,  
15 273 Conn. 724, 739-40, 873 A.2d 898 (2005); *W & D Acquisition, LLC v. First Union National*  
16 *Bank*, 262 Conn. 704, 712-13, 817 A.2d 91 (2003); *Platt v. Aspenwood Condo. Ass'n, Inc.*, 214  
17 P.3d 1060, 1063-64 (Colo. App. 2009) (relying on drafters' comments to UCOIA for guidance in  
18 interpreting state statute modeled on UCOIA; "We accept the intent of the drafters of a uniform  
19 act as the [legislature's] intent when it adopts that uniform act.") (internal quotation marks  
20 omitted); *Hunt Club Condos., Inc. v. Mac-Gray Servs., Inc.*, 2006 WI App 167, 295 Wis. 2d 780,  
21 721 N.W.2d 117, 123-25 (Wis. Ct. App. 2006)(official and published comments are "valid  
22 indicator" of legislature's intent in enacting corresponding statute); *Univ. Commons Riverside*  
23 *Home Owners Ass'n v. Univ. Commons Morgantown, LLC*, 230 W. Va. 589, 741 S.E.2d 613,  
24 2013 W. Va. LEXIS 264 \*16; *Will v. Mill Condo. Owners' Ass'n*, 2004 VT 22, 176 Vt. 380, 848  
25 A.2d 336, 2004 Vt. LEXIS 26 (turned to commentary to interpret state statute modeled on  
26 UCOIA). In the present matter, UCIOA § 1-113 cmt (1982) explicitly imposes a duty of good  
27 faith, which includes the duty of candor, and this Court should rely upon the comment consistent  
28 with the above cited case law.

1           Simply put, the HOA and/or the HOA Trustee could have made a simple announcement  
2 that unequivocally stated that the Property was being sold subject to the Deed of Trust to all  
3 potential bidders present and/or interested in bidding on the Property at the time of the HOA  
4 Foreclosure Sale or even disclose the Attempted Payment. Conversely, the HOA Trustee could  
5 have disclosed that the Super-Priority piece had been satisfied prior to the HOA Foreclosure Sale  
6 by the Attempted Payment or at least provide information to the potential bidders of the HOA  
7 Trustee's rejection of the Attempted Payment, but it did not. Neither the HOA nor the HOA  
8 Trustee did so. The HOA or the HOA Trustee could have provided notice to all potential bidders,  
9 and/or the public at large, in their actions leading up to the HOA Foreclosure Sale, such as  
10 including a phrase concerning the absence of any super-priority portion of the HOA Lien being  
11 foreclosed upon within any and/or all of the notices recorded against the Property and/or  
12 advertising the sale, or it would have announced that fact at the sale. Similarly, neither the HOA  
13 nor the HOA Trustee did so, as that would have had the effect of chilling the sale.

14           At the time of the HOA Foreclosure Sale, only three parties knew of Lender's Attempted  
15 Payment; specifically, the HOA, the HOA Trustee and Lender. Moreover, these same parties  
16 knew of Lender's subsequent attempt to satisfy the super-priority piece of the HOA Lien via the  
17 letter from Miles Bauer to the HOA. This letter was sent directly to the HOA Trustee and in  
18 response to the HOA Trustee's recording of the NOD, in this case. Arguably, the HOA and the  
19 HOA Trustee knew that the Attempted Payment may be deemed to have satisfied the HOA Lien,  
20 which was determined to extinguish any Super Priority Lien Amount piece of the HOA Lien. The  
21 HOA and the HOA Trustee knew that fact and intentionally failed to disclose that material fact to  
22 the bidders at the HOA Foreclosure Sale. Frankly, the HOA and HOA Trustee knew or should  
23 have known that such an omission would drastically affect the outcome of the HOA Foreclosure  
24 Sale. An intentional failure to disclose Lender's Attempted Payment had the effect of causing the  
25 Property to sell at the HOA Foreclosure Sale. Therefore, Plaintiff has alleged that the HOA and  
26 the HOA Trustee conspired together to intentionally withhold information regarding Lender's  
27 Attempted Payment of the HOA Lien that effectively defraud the public and/or potential bidders  
28 concerning the HOA Foreclosure Sale.

1 The purpose underlying NRS 116 is to remove a nonperforming homeowner (meaning a  
2 homeowner not paying his/her HOA dues) from a property and to replace him/her with a  
3 performing homeowner, thereby relieving the homeowners association and its members of the  
4 burden of paying the obligations of the nonperforming individual. To accept the HOA's  
5 contention that it did not intentionally or negligently misrepresent the HOA Foreclosure Sale by  
6 omitting the Attempted Payment by Lender of the HOA Lien, with at a minimum an  
7 announcement, and that it was under no contract or duty to operate under good faith and with  
8 candor to disclose such a material fact when asked by potential bidders as mandated by NRS 116  
9 *et seq* and/or NRS 113 *et seq.*, would serve to emasculate NRS 116's mandate of good faith and  
10 render it completely meaningless and ineffective.

11 Why would any person or entity purchase a property at an HOA foreclosure sale knowing  
12 that he or she would thereafter be stripped of ownership of the property upon foreclosure by a  
13 secured lender? Such a foreclosure could conceivably take place days or weeks after the HOA  
14 foreclosure sale. In the vast majority of cases, the answer to this question is quite simply that he  
15 or she would not. Thus, lacking any market for the sale of real property securing HOA liens, the  
16 homeowners associations and their members would be forced to continue to support those  
17 homeowners who choose not to pay their HOA dues. Indeed, the homeowners association would  
18 not have any reason to even credit bid the HOA lien at the time of sale. If the homeowners  
19 association were to carry out a sale and acquire the subject property for a credit bid, there would  
20 still be no party paying the HOA dues. Furthermore, the homeowners association would  
21 thereafter be required to pay for taxes, insurance and other maintenance related to the property.  
22 The payment of these expenses would constitute a further burden for the homeowners association  
23 and its members that they can ill afford.

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

28 The obligations of good faith under NRS 116.1113 apply to a "Purchaser" at the

1 foreclosure sale. NRS 116.31166(3) provides that title vests in the Purchaser:

2  
3 NRS 116.31166 Foreclosure of liens: Effect of recitals in deed; purchaser not  
4 responsible for proper application of purchase money; title vested in purchaser  
5 without equity or right of redemption.

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

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

9 (b) The elapsing of the 90 days; and

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

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

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

19 Purchaser is defined under NRS 116.3166 as follows:

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

24 The relationship of the HOA Trustee as an agent for the HOA created a new contract at  
25 the HOA Foreclosure Sale for the sale of a "unit" to a "Purchaser" that as a result of its purchase  
26 shall become a member of the HOA.

27 In the foreclosure section of NRS 116.3116 to NRS 116.3117, the term Purchaser refers  
28 to buyers at an HOA Foreclosure Sale in addition to direct sales and as such the obligation of  
good faith operates to encompass a successful bidder. NRS 116.1108 provides for the application  
of general principles of law to the HOA Foreclosure Sale and the Purchaser as stated below:

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

NRS 116.1108 actually cites the enumerated claims and issues raised in the Complaint as

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

6 **1. Saticoy Bay Relied Upon the Recital - the HOA Foreclosure Deed**

7 The HOA Foreclosure Sale was performed pursuant to NRS 116.3116, Plaintiff  
8 reasonably relied upon the recitals included in the HOA Foreclosure Deed that stated that the  
9 foreclosure was in compliance with NRS 116, *et seq.* See *Nationstar Mortg., LLC v. SFR*  
10 *Investments Pool 1, LLC, No. 70653*, 2017 Nev. App. Unpub. LEXIS 229, 2017 WL 1423938, at  
11 \*2 (Nev. App. Apr. 17, 2017) (“And because the recitals were conclusive evidence, the district  
12 court did not err in finding that no genuine issues of material fact remained regarding whether the  
13 foreclosure sale was proper and granting summary judgment in favor of SFR.”). Therefore,  
14 pursuant to *SFR Investments*, NRS 116.3116, and the recorded HOA Foreclosure Deed in favor  
15 of SFR, the foreclosure sale was proper and extinguished the Deed of Trust. *Bank of Am., N.A. v.*  
16 *Sonrisa Homeowners Ass’n*, 2018 U.S. Dist. LEXIS 118720 (July 17, 2018). *Id.*

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

21  
22 A trustee’s deed reciting compliance with the notice provision of NRS 116.31162  
23 through NRS 116.31168 “is conclusive” as to the recitals “against the unit’s  
24 former owner, his or her heirs and assigns, and all other persons.” NRS  
25 116.31166(2). And, “[t]he sale of a unit pursuant to NRS 116.31162, 116.31163  
26 and 116.31164 vests in the purchaser the title of the unit’s owner without equity  
27 or right of redemption.” NRS 116.31166(3).  
28 *Id.* at 411-412. (Emphasis added.) As such, there would have been no reason to question the  
legitimacy of the foreclosure sale based exclusively upon the recorded documents. At foreclosure  
sales conducted pursuant to NRS 116, bidders, potential bidders and buyers do not have access to  
any more information than is recorded. Plaintiff’s reliance on the recitations on the HOA

1 Foreclosure Deed was reasonable and foreseeable. Specifically, the HOA Foreclosure Deed  
2 asserted that the HOA Trustee complied with “all requirements of law.”

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

8 The Plaintiff relied upon the recitals contained within the HOA Foreclosure Deed that  
9 were included in the HOA Foreclosure Deed by the HOA and the HOA Trustee. Under Nevada  
10 law, the HOA foreclosure sale and the resulting foreclosure deed are both presumed valid. NRS  
11 47.250(16)-(18) (stating that disputable presumptions exist “that the law has been obeyed” “that a  
12 trustee or other person, whose duty it was to convey real property to a particular person, has  
13 actually conveyed to that person, when such presumption is necessary to perfect the title of such  
14 person or a successor in interest”; “that private transactions have been fair and regular”; and “that  
15 the ordinary course of business has been followed.”). Accordingly, the Plaintiff possessed a good  
16 faith belief that the HOA and/or the HOA Trustee’s actions taken in the ordinary course of  
17 business had been followed, and that the HOA Foreclosure Sale was fair and regular. Plaintiff has  
18 timely commenced this action against the HOA and HOA Trustee pursuant to NRS §11.190(3)(d)  
19 and NRS 11.190(3)(a). ..

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

26 The 2015 Legislature did revise NRS 116 to codify what the case law has interpreted. For  
27 example, the jurisdictions utilizing the UCOIA have determined that candor is an additional  
28

1 requirement implicitly contained in the good faith mandate of NRS 116.1113. Prior to the  
2 amendments to NRS 116 in 2015, the HOA and the HOA Trustee were required to be truthful in  
3 their contracts and duties and to follow the law as set forth in NRS 116 *et seq.* and NRS 113 *et*  
4 *seq.* The 2015 amendments just made a bright line for the parties to rely upon by mandating that  
5 HOA/HOA Trustee record a substitution of the Super Priority Lien Amount.

6 **E. THE HOA HAS A DUTY TO DISCLOSE THE ATTEMPTED PAYMENT TO THE**  
7 **PURCHASER AT AN HOA FORECLOSURE SALE**

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

16 The disclosure of the Attempted Payment to Saticoy Bay is a material fact that the HOA  
17 and HOA Trust were obligated to disclose to the Plaintiff. As the Supreme Court of Nevada  
18 provided in its recent unpublished decision in *Noonan v. Bayview Loan Servicing, LLC*, 2019  
19 Nev. Unpub. LEXIS 428 p. 2-3, 438 P.3d 335, 2019 WL 1552690 (April 8, 2019, Nevada) as  
20 follows:

21  
22 Finally, the Noonans challenge the district court's summary judgment in favor of  
23 Hampton & Hampton Collections, LLC, on their negligent misrepresentation and  
24 deceptive trade practices claims. Summary judgment was inappropriate on the  
25 negligent misrepresentation claim because Hampton neither made an affirmative  
26 false statement nor omitted a material fact it was bound to disclose. See *Halcrow,*  
27 *Inc. V. Eighth Judicial Dist. Court*, 129 Nev 394, 400, 302 P.2d 1148, 1153 (2013)  
28 (providing the elements for a negligent misrepresentation claim); *Nelson v. Heer*,  
123 Nev. 217, 225, 163 P.3d. 420, 426 (2007) ("[The suppression or omission of  
material fact which a party is bound in good faith to disclose is equivalent to a false  
representation." (internal quotation marks omitted)). Compare NRS  
116.31162(1)(b)(3)(II) (2017) (requiring an HOA to disclosure if tender of the

1 superpriority portion of the lien has been made), *with* NRS 116.31162 (2013)<sup>1</sup> (not  
2 requiring any such disclosure). The Noonans' deceptive trade practices claim fails  
under NRS 598.092(8) for the same reason.

3 In this case, Plaintiff has alleged that it attempted to ascertain whether any tender payment  
4 of any type was made to the HOA and/or HOA Trustee before the HOA Foreclosure Sale, without  
5 any success. The *Noonan* court stated that the "...Hampton neither made an affirmative false  
6 statement nor omitted a material fact it was bound to disclose." *Id.* This decision is based upon a  
7 factual determination of a material fact question; however, the present case facts as presented  
8 preclude dismissal at this point without discovery. The *Noonan* court does not consider the  
9 arguments reviewed and presented herein on NRS 116.1113 and NRS 113.130 and its relevant  
10 analysis.

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

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

23 By its plain text, NRS 111.315 does not apply to Bank of America's tender.  
24 Tendering the superpriority portion of an HOA lien does not create, alienate,  
25 assign, or surrender an interest in land. Rather, it preserves a pre-existing interest,  
26 which does not require recording. See Baxter Dunaway, *Interests and Conveyances*  
27 *Outside Acts—Recordable Interests*, 4 L. of Distressed Real Est. § 40:8 (2018)  
("[D]ocuments which do not create or transfer interests in land are often held to be  
nonrecordable; the records, after all, are not a public bulletin board."). SFR's  
argument that the tender was an instrument affecting real property is unpersuasive.

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28 <sup>1</sup>This was the version of the statute in place at the time of the foreclosure sale.

1 NRS 111.315 pertains to written instruments "setting forth an agreement . . .  
2 whereby any real property may be affected . . . in the manner prescribed in this  
3 chapter . . ." (Emphasis added.) NRS Chapter 111 governs the creation,  
4 alienation, assignment, or surrendering of property interests, and their subsequent  
recording. Bank of America's tender did not bring about any of these actions, and  
therefore did not affect the property as prescribed in NRS Chapter 111.  
Accordingly, NRS 111.315 did not require Bank of America to record its tender.

5 NRS 106.220 provides that "[a]ny instrument by which any mortgage or deed of  
6 trust of, lien upon or interest in real property is subordinated or waived as to  
7 priority, must ... be recorded . . ." The statute further states that "[t]he instrument  
8 is not enforceable under this chapter or chapter 107 of NRS unless and until it is  
9 recorded." HN10 NRS Chapter 106 does not define instrument as used in NRS  
10 106.220, but Black's Law Dictionary defines the term as "[a] written [\*120] legal  
11 document that defines rights, duties, entitlements, or liabilities, such as a statute,  
12 contract, will, promissory note, or share certificate." Instrument, Black's Law  
13 Dictionary (10th ed. 2014). Thus, NRS 106.220 applies when a written legal  
14 document subordinates or waives the priority of a mortgage, deed of trust, lien, or  
15 interest in real property.

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

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

1 **F. AN HOA FORECLOSURE DEED DOES MAKE CERTAIN REPRESENTATIONS**  
2 **REGARDLESS OF THE “WITHOUT WARRANTY” LIMITATION.**

3 Defendant argues that the Property was sold at the HOA Foreclosure Sale “without  
4 warranty,” pursuant to NRS 116.31164(3)(a)...” See HOA’s Motion, page 6, lines 19-26. The  
5 HOA and HOA Trustee have an obligation of good faith, candor and complying with all  
6 applicable law at the time of the HOA Foreclosure Sale which they collectively did not. The HOA  
7 and HOA Trustee cannot intentionally withhold information known only to Lender, the HOA and  
8 HOA Trustee that materially, adversely affects, the Purchasers as defined under NRS 116 and  
9 NRS 113, Saticoy, as to the value and nature of the bifurcated lien status of the Deed of Trust and  
10 the assessments. Of matters not specifically known to the HOA and HOA Trustee at the time of  
11 the HOA Foreclosure Sale that cannot be adduced by a public records review as occurs in NRS  
12 107 foreclosure sales, Plaintiff would concede that Defendants would not be liable. However, in  
13 the instant case, the HOA and HOA Trustee are the actual parties with the information regarding  
14 the Attempted Payment and had an obligation to inform the Plaintiff. This fact alone constitutes  
15 sufficient proof of the HOA, by and through its agent, the HOA Trustee, to disclose the Attempted  
16 Payment to the Plaintiff and failing to comply with all requirements of law.

17 The Defendants have a duty to disclose the Attempted Payment to a Purchaser, as defined  
18 in NRS 116.079, at an HOA Foreclosure Sale pursuant to NRS 116.1113 and NRS 113.130. At  
19 the time and place of the HOA Foreclosure Sale, the HOA, by and through its agent, the HOA  
20 Trustee, enters into a sale governed by a statute, NRS 116, by the function of the auction  
21 conducted by the HOA Trustee. Inherently, the material aspects of the factors affecting the lien  
22 priority of the secured debt that are only known solely to the HOA, HOA Trustee and Lender are  
23 material to the HOA Lien being foreclosed upon and must be disclosed to the HOA Foreclosure  
24 Sale bidders. To infer otherwise, would destroy the statutory scheme of NRS 116 sales.

25 A common argument among all parties to the HOA litigation has been the low prices  
26 adduced at the HOA Foreclosure Sales for the real property sold. Typically, the low sales prices  
27 have been driven by the mountain of litigation that has occurred over the last years seeking to  
28 define the rights and obligations of the various parties. To hold that the HOA does not have a

1 duty to disclose information know only to the HOA and the HOA Trustee that materially affects  
2 the value of what a willing buyer would be willing to pay for the real property offered at auction  
3 that relates directly to the status and priority of the Deed of Trust. Essentially, the Defendants are  
4 alleging that the HOA will sell to the highest cash bidder the real property without any way for the  
5 bidder to know if it will acquire the real property free and clear of the Deed of Trust or subject  
6 thereto. This would effectively forever destroy the HOA foreclosure sale process under NRS  
7 116.3116.

8       As additional proof of the intentional/negligent misrepresentation and its  
9 misrepresentation in the HOA Foreclosure Deed that provides that the HOA and the HOA Trustee  
10 complied with all requirements of law, the HOA and HOA Trustee are obligated to follow the  
11 disclosures mandated by NRS 113 *et seq.* The HOA asserts that NRS 116 governs the foreclosure  
12 and collection efforts of common-interest ownership communities and it does. NRS 113 is not in  
13 any manner generally applicable to NRS 107 foreclosure sales but does have certain provisions  
14 that do apply in NRS 107 foreclosure sales. NRS 113 is not exempted from NRS 116 foreclosure  
15 sales, to the extent that the HOA and the HOA Trustee, as agent for the HOA, have specific  
16 knowledge of the facts required for disclosure. If the legislature intended to exempt NRS 116  
17 sales from the mandates of NRS 113, it could have easily done so, but it did not! Pursuant to NRS  
18 113, *et seq.*, the HOA and the HOA Trustee must disclose the Attempted Payment and/or any  
19 payments made or attempted to be made by Lender, the Former Owners, or any agents of any  
20 other party to the bidders and Plaintiff at the HOA Foreclosure Sale. NRS 113.130 provides as  
21 follows:

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

25       1. Except as otherwise provided in subsection 2:

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

27               (1) The seller shall complete a disclosure form regarding the residential  
28               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.

Emphasis added.

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

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

8 To the extent known to the HOA, and the HOA Trustee, as the agent of the HOA, the  
9 HOA and HOA Trustee must complete and answer the questions posed in the SRPDF in its  
10 entirety, but specifically, Section 9, Common Interest Communities, disclosures (a) - (f), and  
11 Section 11, that provide as follows:

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

- 16 (a) Common Interest Community Declaration and Bylaws  
17 available?
- 18 (b) Any periodic or recurring association fees?
- 19 (c) Any unpaid assessments, fines or liens, and any warnings or  
20 notices that may give rise to an assessment, fine or lien?
- 21 (d) Any litigation, arbitration, or mediation related to property  
22 or  
23 or common areas?
- 24 (e) Any assessments associated with the property (excluding  
25 property tax)?
- 26 (f) Any construction, modification, alterations, or repairs made  
27 without required approval from the appropriate Common  
28 Interest Community board or committee?

...

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

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

Section 11 of the SRPDF relates directly to information known to the HOA and the HOA

1 Trustee that materially affects the value of the Property and defined as a “defect” in NRS  
2 113.100(1), that provides as follows: NRS 113.100(1). In this case, if the Super Priority Lien  
3 Amount is paid, or if the Attempted Payment is rejected, it would have a materially adverse affect  
4 on the overall value of the Property, and therefore, must be disclosed in the SRPDF by the HOA  
5 and the HOA Trustee when the SRPDF is completed and disclosed to the purchaser/Saticoy.

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

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

10 Pursuant to Nevada Real Estate Division’s (“NRED”), Residential Disclosure Guide (the  
11 “Guide”) [attached hereto as Exhibit E], the Guide provides at page 20 that the HOA and HOA  
12 Trustee shall provide the following to the purchaser/Saticoy at the HOA Foreclosure Sale:  
13

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

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

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

- 26 ● written notice of any defects of which the trustee or  
27 beneficiary is aware

28 . . .

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

31 A Buyer may rescind the contract without penalty if he does not  
32 receive a fully and properly completed Seller’s Real Property  
33 Disclosure form. If a Buyer closes a transaction without a completed  
34 form or if a known defect is not disclosed to a Buyer, the Buyer may

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1 be entitled to treble damages, unless the Buyer waives his rights  
2 under NRS 113.150(6).

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

6 The HOA and the HOA Trustee did not provide an SRPDF to the Plaintiff at the HOA  
7 Foreclosure Sale nor did it provide any information orally. The foregoing demonstrates that the  
8 HOA and the HOA Trustee's duty and obligation to disclose the Attempted Payment to the  
9 Purchaser, Saticoy at the HOA Foreclosure Sale. Failure to make the foregoing disclosures is a  
10 breach of duty of good faith and candor and a duty owed by the HOA Trustee under NRS 116, *et*  
11 *seq.* The HOA and HOA Trustee's duty is codified pursuant to NRS 113 *et seq.* and was breached  
12 in this case.

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

17 **G. SATICOY'S CLAIMS FOR SPECIAL DAMAGES WILL BE DETERMINED AT**  
18 **TIME OF TRIAL**

19 The attorney fees and costs allegations as set forth in each cause of action references any  
20 claims that may be able to be adduced from the discovery in this case and/or the CC&R's if the  
21 HOA is successful in its argument under NRS 30.310. Pursuant to NRS 116.4117(6), "the court  
22 may award reasonable attorney's fees to the prevailing party" if the matter is subject to the  
23 CC&R's, which will be a factual determination by the Court.

24 **H. SATICOY'S CLAIMS FOR PUNITIVE DAMAGES ARE NOT PRECLUDED IN**  
25 **THIS CASE**

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

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

1 action for damages or other appropriate relief.

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

6 (a) By the association against:

7 (1) A declarant;

8 (2) A community manager; or

9 (3) A unit's owner.

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

11 (1) The association;

12 (2) A declarant; or

13 (3) Another unit's owner of the association.

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

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

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

21 5. Punitive damages may not be awarded against:

22 (a) The association;

23 (b) The members of the executive board for acts or omissions that occur in  
24 their official capacity as members of the executive board; or

25 (c) The officers of the association for acts or omissions that occur in their  
26 capacity as officers of the association.

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

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

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

Emphasis added.

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

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**CONCLUSION**

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

DATED this 29<sup>th</sup> day of October, 2019.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Roger P. Croteau  
ROGER P. CROTEAU, ESQ.  
Nevada Bar No. 4958  
2810 W. Charleston Blvd., Ste. 75  
Las Vegas, Nevada 89148  
(702) 254-7775  
*Attorney for Plaintiff*

1  
2  
3 **CERTIFICATE OF SERVICE**

4 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee  
5 of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 29th day of October, 2019,  
6 I caused a true and correct copy of the foregoing document to be served on all parties as follows:

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

9 Green Valley South Owners Association No. 1 - Defendant

10 J. William Ebert [bebert@lipsonneilson.com](mailto:bebert@lipsonneilson.com)

11 Janeen Isaacson [Jisaacson@lipsonneilson.com](mailto:Jisaacson@lipsonneilson.com)

12 Susana Nutt [snutt@lipsonneilson.com](mailto:snutt@lipsonneilson.com)

13 Nevada Association Services Inc - Defendant

14 Susan Moses [susanm@nas-inc.com](mailto:susanm@nas-inc.com)

15 Brandon E. Wood [brandon@nas-inc.com](mailto:brandon@nas-inc.com)

16  
17 \_\_\_\_\_ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with  
18 postage thereon fully prepaid, addressed as indicated on service list below in the United  
19 States mail at Las Vegas, Nevada.

20  
21 \_\_\_\_\_ VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated  
22 on the service list below.

23  
24 \_\_\_\_\_ VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this  
25 date to the addressee(s) at the address(es) set forth on the service list below.

26  
27 /s/ Jennifer Lee

28 An employee of ROGER P. CROTEAU &  
ASSOCIATES, LTD

EXHIBIT A

EXHIBIT A

**DECLARATION OF EDDIE HADDAD**

I, Eddie Haddad, being first duly sworn, deposes and says as follows: I am a resident of the State of Nevada. I am the Manager of the Resources Group, LLC, that is the Trustee of the Daisy Trust, that purchased the Property located at 137 Elegante Way, Henderson, Nevada 89074 (APN 177-13-214-086) , at the HOA Foreclosure Sale.

In my capacity as set forth above, I have reviewed the foregoing Plaintiff's Opposition to Green Valley South Owners Association's Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment and Nevada Association Services, Inc.'s Joinder Thereto. Of the facts asserted therein, I know them to be true of my own knowledge or they are true to the best of my knowledge and recollection.

I further provide that it was my practice and procedure, as set forth herein, that when I would attend NRS 116 sales at all times relevant to this case, I would attempt to ascertain whether anyone had attempted to or did tender any payment regarding the homeowner association's lien. If I learned that a "tender" had either been attempted or made, I would not purchase the property offered in that foreclosure sale.

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

Executed this 29<sup>th</sup> day of October, 2019.

/s/ Eddie Haddad  
EDDIE HADDAD

EXHIBIT B

EXHIBIT B

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7 *Attorneys for Plaintiff*

8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

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

13 Plaintiff,

14 vs.

15 GREEN VALLEY SOUTH OWNERS  
ASSOCIATION NO. 1; DAISY TRUST;  
16 NEVADA ASSOCIATION SERVICES, INC.,

17 Defendants.

Case No.: 2:16-cv-00424

**COMPLAINT**

18 Plaintiff Bank of America, N.A. (**BANA**) complains as follows:

19 **PARTIES AND JURISDICTION**

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

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

1           3. Defendant Green Valley South Owners Association No. 1 (**Green Valley**) is, on  
2 information and belief, a Nevada non-profit corporation. BANA is informed and believes and  
3 therefore alleges Green Valley is the purported beneficiary under an alleged homeowners'  
4 association lien recorded August 18, 2011. BANA is informed and believes and therefore alleges  
5 Green Valley foreclosed on the lien on August 31, 2012.

6           4. Defendant, Daisy Trust is, on information and belief, a Nevada trust. After a  
7 reasonable search, BANA cannot determine the citizenship of the trustee or beneficiaries of Daisy  
8 Trust. BANA is informed and believes and therefore alleges Daisy Trust purchased the property at  
9 the HOA foreclosure sale, acquiring title via a foreclosure deed recorded on September 7, 2012.

10           5. Defendant, Nevada Association Services, Inc. (**NAS**) is, on information and belief, a  
11 Nevada corporation. BANA is informed and believes, and therefore alleges NAS conducted the  
12 foreclosure at issue in this case on behalf of Green Valley.

13           6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332 for reasons  
14 stated above. The diversity of citizenship requirement is met as defendants Green Valley, Daisy  
15 Trust, and NAS are, on information and belief and from all publicly available information, not  
16 citizens of North Carolina. *See Carolina Casualty Ins. Co. v. Team Equipment, Inc.*, 741 F.3d 1082  
17 (9th Cir. 2014). The amount in controversy requirement is met as BANA seeks a declaration that its  
18 deed of trust, which secures a loan with a principal balance of \$191,904.43 was not extinguished by  
19 a homeowner's association non-judicial foreclosure sale that is the basis for Daisy Trust's claim to  
20 title to the real property sub judice.

21           7. Venue is proper in this Court under 28 U.S.C. §1391. The property that is the subject  
22 of this action is located at 137 Elegante Way, Henderson, Nevada 89074 (**the property**). Venue is  
23 proper in this court under 28 U.S.C. § 1391(1) and (2) because this action seeks to determine an  
24 interest in property located within Clark County, Nevada and because this lawsuit arises out of a  
25 foreclosure of real property located within Nevada.

26           8. The pre-litigation dispute resolution process set forth in NRS 38.300 *et seq.* is not  
27 applicable to this action and cannot restrict the jurisdiction of this court. To the extent any  
28

1 requirement of the statute is applicable to any portion of the claims asserted herein, that requirement  
2 has been constructively exhausted, and further resort to administrative remedies would be futile  
3 because BANA submitted a demand for mediation to Nevada Real Estate Division (**NRED**) on or  
4 about November 17, 2015, but NRED has failed to schedule the mediation in the time period  
5 required by NRS 38.330(1).

6 **GENERAL ALLEGATIONS**

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

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

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

15 12. NRS 116.3116 makes a homeowners' association lien for assessments junior to a first  
16 deed of trust beneficiary's secured interest in the property, with one limited exception: a  
17 homeowners' association lien is senior to a first deed of trust beneficiary's secured interest "to the  
18 extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the  
19 extent of the assessments for common expenses based on the periodic budget adopted by the  
20 association pursuant to NRS 116.3115 which would have become due in the absence of acceleration  
21 during the 9 months immediately preceding institution of an action to enforce the lien[.]"  
22 NRS 116.3116(2)(c).

23 **The Deed of Trust and Assignment**

24 13. On or about June 5, 2008, Dennis L. Scott (**Scott**) purchased the property by way of a  
25 loan in the amount of \$179,188.00 secured by a deed of trust (the **senior deed of trust**) dated June  
26 23, 2008. A true and correct copy of the senior deed of trust is recorded with the Clark County  
27 Recorder as **Instrument No. 20080627-0002161**. Scott later executed a loan modification  
28

{36513320;3}

1 agreement which increased the principal balance due under and secured by the senior deed of trust to  
2 \$193,847.68. The June 4, 2010 loan modification agreement was recorded on December 29, 2010  
3 and is recorded with the Clark County Recorder as **Instrument No. 20101229-0000207**.

4 14. The note and the senior deed of trust are insured by the Federal Housing  
5 Administration (**FHA**). Pursuant to the FHA insurance, the lender was required to submit a monthly  
6 mortgage insurance payment to the FHA. FHA monthly mortgage insurance premiums were paid by  
7 either Scott or BANA beginning September 5, 2008.

8 15. The senior deed of trust was assigned to BANA via an assignment of deed of trust. A  
9 true and correct copy of the assignment is recorded with the Clark County Recorder as **Instrument**  
10 **No. 20111005-0002140**.

11 The HOA Lien and Foreclosure

12 16. Upon information and belief, Scott failed to pay Green Valley all amounts due to it.  
13 On August 23, 2011, Green Valley, through its agent, NAS, recorded a notice of delinquent  
14 assessment lien. Per the notice, the amount due to the Green Valley was \$818.70 which includes,  
15 late fees, collection fees and interest. A true and correct copy of the notice of lien is recorded with  
16 the Clark County Recorder as **Instrument No. 20110823-0000959**.

17 17. On November 18, 2011, Green Valley, through its agent NAS, recorded a notice of  
18 default and election to sell to satisfy the delinquent assessment lien. The notice states the amount  
19 due to the Green Valley was \$1,819.50, but does not specify whether it includes dues, interest, fees  
20 and collection costs in addition to assessments. A true and correct copy of the notice of default is  
21 recorded with the Clark County Recorder as **Instrument No. 20111118-0002805**. The notice of  
22 default also does not specify the super-priority amount claimed by the Green Valley and fails to  
23 describe the "deficiency in payment" required by NRS 116.31162(1)(b)(1).

24 18. On April 23, 2012, Green Valley, through its agent NAS, recorded a notice of  
25 foreclosure sale. The foreclosure sale was scheduled for May 18, 2012. The notice states the  
26 amount due to the Green Valley was \$2,946.17, which includes the unpaid balance of the obligation  
27 secured by the property to be sold and reasonable estimated costs, expenses and advances. A true  
28

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1 and correct copy of the notice of sale is recorded with the Clark County Recorder as **Instrument**  
2 **No. 20120423-0000652**. The notice of sale does not identify the super-priority amount claimed by  
3 the Green Valley and fails to describe the "deficiency in payment" required by  
4 NRS 116.311635(3)(a).

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

8 20. In none of the recorded documents did Green Valley and/or its agent NAS identify  
9 the amount of the alleged lien that was for late fees, interest, fines/violations or collection fees/costs.

10 21. In none of the recorded documents nor in any notice did Green Valley and/or its agent  
11 NAS specify whether it was foreclosing on the super-priority portion of its lien, if any, or on the sub-  
12 priority portion of its lien.

13 22. In none of the recorded documents nor in any notice did Green Valley and/or its agent  
14 NAS specify the senior deed of trust would be extinguished by the Green Valley foreclosure.

15 23. In none of the recorded documents nor in any notice did Green Valley and/or its agent  
16 NAS identify any way by which the beneficiary under the senior deed of trust could satisfy the  
17 super-priority portion of Green Valley's claimed lien.

18 24. The deficiencies in the notices notwithstanding, on or about February 2, 2012, after  
19 HOA recorded its notice of default, BANA remitted payment to Green Valley, through its agent  
20 NAS, to satisfy the super-priority amount owed to Green Valley.

21 25. On December 19, 2011, BANA requested a ledger from Green Valley, through its  
22 agent NAS, identifying the super-priority amount allegedly owed to Green Valley. Green Valley  
23 and its agent NAS refused to provide a ledger or other information by which the super-priority  
24 amount of the lien could be calculated, claiming to do so would violate the Fair Debt Collection  
25 Practices Act.

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1 foreclosure sale, Daisy Trust claims an interest in the property, and on information and belief, asserts  
2 Daisy Trust owns the property free and clear of the senior deed of trust.

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

5 34. BANA is entitled to a declaration that Green Valley's foreclosure did not extinguish  
6 the senior deed of trust, or alternatively, Green Valley's foreclosure is void.

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

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

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

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

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

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

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

1 c) The super priority lien has no nexus whatsoever to a private agreement  
2 between the HOA and BANA, but, again, is imposed by legislative enactment.

3 d) Nevada and Clark County mandated the creation of Green Valley as a quasi-  
4 governmental entity to perform governmental functions including maintaining the common  
5 open spaces and private streets within the Green Valley community.

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

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

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

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

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

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

24 42. BANA requests that this Court void the HOA foreclosure sale or declare that Daisy  
25 Trust's title was acquired subject to the senior deed of trust because NRS 116's scheme of HOA  
26 super priority foreclosure violates the procedural process clauses of The Fourteenth Amendment of  
27 the United States Constitution and Article 1, Sec. 8, of the Nevada Constitution.

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

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

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

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

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

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

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

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

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

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

48. Chapter 116 of the Nevada Revised Statutes' scheme of non-judicial foreclosure that allows for the foreclosure of a super priority lien stands as an obstacle to the accomplishment and

1 execution of the full purposes and objectives of Congress under the National Housing Act's Single  
2 Family Mortgage Insurance Program and Mutual Mortgage Insurance Fund.

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

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

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

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

15 52. The foreclosure sale did not extinguish the senior deed of trust because BANA  
16 tendered and satisfied the super-priority amount despite Green Valley's and NAS's obstruction of  
17 BANA's efforts to do so and Green Valley and NAS wrongfully rejected the tender. Alternatively,  
18 the HOA sale is void.

19 53. The foreclosure sale did not extinguish the senior deed of trust because the sale was  
20 commercially unreasonable or otherwise failed to comply with the good faith requirement of  
21 NRS 116.1113 in several respects, including, without limitation, the lack of sufficient notice, Green  
22 Valley's and NAS's wrongful rejection of the tender, the sale of the property for a fraction of the loan  
23 balance or actual market value of the property, a foreclosure that was not calculated to promote an  
24 equitable sales prices for the property or to attract proper prospective purchasers, and a foreclosure  
25 sale that was designed and/or intended to result in maximum profit for the Green Valley, its agent  
26 NAS, and Daisy Trust at the sale without regard to the rights and interest of those who have an  
27 interest in the loan and made the purchase of the property possible in the first place. Alternatively,  
28

1 the HOA sale is void.

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

6 55. The foreclosure sale did not extinguish the senior deed of trust because otherwise the  
7 sale would violate BANA's rights to due process, as a result of Green Valley's and NAS's improper  
8 calculation of the super-priority component, its inclusion of charges that are not part of the super-  
9 priority lien under Nevada law, and its rejection of BANA's tender of the super-priority component  
10 of the lien. Alternatively, the HOA sale is void.

11 56. The foreclosure sale did not extinguish the senior deed of trust because Daisy Trust  
12 does not qualify as a bona fide purchaser for value, because it was aware of, or should have been  
13 aware of, the existence of the senior deed of trust, BANA's satisfaction of the super-priority  
14 component of HOA's lien, and the commercial unreasonableness of the HOA sale. Alternatively, the  
15 HOA sale is void.

16 57. BANA is entitled to a declaration, pursuant to 28 U.S.C. § 2201, NRS 30.040, and  
17 NRS 40.010, that the HOA sale did not extinguish the senior deed of trust, or alternatively, the HOA  
18 sale is void.

19 58. BANA was required to retain an attorney to prosecute this action, and is therefore  
20 entitled to collect its reasonable attorneys' fees and costs.

21 **SECOND CAUSE OF ACTION**

22 **(Breach of NRS 116.1113 against Green Valley and NAS)**

23 59. BANA repeats and re-alleges the preceding paragraphs as though fully set forth  
24 herein and incorporates the same by reference.

25 60. NRS § 116.1113 and common law provide that every contract or duty governed by  
26 this chapter imposes an obligation of good faith in its performance or enforcement.

1           61.     Green Valley's recorded CC&Rs contain a mortgage protection clause which  
2 represents that Green Valley's entire lien will be subordinate to the senior deed of trust.

3           62.     NRS Chapter 116 requires Green Valley and its agent NAS to comply with the  
4 obligations of the CC&Rs, including the mortgage protection clause.

5           63.     In making the representation in the CC&Rs that its lien would be subordinate to a  
6 senior deed of trust, Green Valley and its agent NAS undertook a duty to inform lenders and loan  
7 servicers like BANA that its representation regarding the priority of liens in the CC&Rs was false,  
8 and to give BANA reasonable opportunity to protect their interests in the property.

9           64.     Green Valley and its agent NAS also undertook a duty to identify the super-priority  
10 amount to lenders and loan servicers like BANA, to notify it that its security interest was at risk, and  
11 to provide an opportunity to satisfy the super-priority amount to protect its security interest in the  
12 property.

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

19           66.     If it is determined Green Valley's sale extinguished the senior deed of trust  
20 notwithstanding the deficiencies, violations, and improper actions described herein, Green Valley's  
21 and NAS's breach of their obligation of good faith will cause BANA to suffer general and special  
22 damages in the amount equal to the fair market value of the property or the unpaid principal balance  
23 of the loan at issue, plus interest, at the time of the HOA sale, whichever is greater.

24           67.     BANA was required to retain an attorney to prosecute this action, and is therefore  
25 entitled to collect its reasonable attorneys' fees and costs.

26     //

27     //

28     {36513320;3}

**THIRD CAUSE OF ACTION**

**(Wrongful Foreclosure against Green Valley and NAS)**

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

69. To the extent defendants contend or the court concludes HOA's foreclosure sale extinguished the senior deed of trust, the foreclosure was wrongful.

70. Because Green Valley and its agent NAS failed to give adequate notice and an opportunity to cure the deficiency, the foreclosure was wrongful to the extent any defendant contends it extinguished the senior deed of trust.

71. Because BANA tendered the super-priority portion of Green Valley's lien prior to the foreclosure sale, there was no default in the super-priority component of Green Valley's lien at the time of the foreclosure sale and the foreclosure was wrongful to the extent any defendant contends it extinguished the senior deed of trust.

72. Because Green Valley and its agent NAS sold the property for a grossly inadequate amount, compared to the value of the property and amount of outstanding liens defendants contend were extinguished by the foreclosure sale, the foreclosure was wrongful to the extent any defendant contends it extinguished the senior deed of trust.

73. Because Green Valley and its agent NAS violated the representation in the CC&Rs that its lien would be subordinate to a senior deed of trust, the foreclosure was wrongful to the extent any defendant contends it extinguished the senior deed of trust.

74. Because Green Valley and its agent NAS violated the good faith requirements of NRS 116.1113, the foreclosure was wrongful to the extent any defendant contends it extinguished the senior deed of trust.

75. If it is determined Green Valley's foreclosure sale extinguished the senior deed of trust notwithstanding the deficiencies, violations, and improper actions described herein, Green Valley's and NAS's actions will cause BANA to suffer general and special damages in the amount

1 equal to the fair market value of the property or the unpaid principal balance of the loan at issue, plus  
2 interest, at the time of the sale, whichever is greater.

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

5 **FOURTH CAUSE OF ACTION**

6 **(Injunctive Relief against Daisy Trust)**

7 77. BANA repeats and re-alleges the preceding paragraphs as though fully set forth  
8 herein and incorporates the same by reference.

9 78. BANA disputes Daisy Trust's claim it owns the property free and clear of the senior  
10 deed of trust.

11 79. Any sale or transfer of the property by Daisy Trust, prior to a judicial determination  
12 concerning the respective rights and interests of the parties to this case, may be rendered invalid if  
13 the senior deed of trust still encumbers the property in first position and was not extinguished by the  
14 HOA sale.

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

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

20 82. BANA is entitled to a preliminary injunction prohibiting Daisy Trust, or its  
21 successors, assigns, or agents, from conducting any sale, transfer, or encumbrance of the property  
22 that is claimed to be superior to the senior deed of trust or not subject to the senior deed of trust.

23 83. BANA is entitled to a preliminary injunction requiring Daisy Trust to pay all taxes,  
24 insurance and homeowner's association dues during the pendency of this action.

25 **PRAYER FOR RELIEF**

26 BANA requests the Court grant the following relief:  
27  
28

AKERMAN LLP

1160 TOWN CENTER DRIVE, SUITE 330  
LAS VEGAS, NEVADA 89144  
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1           1.       An order declaring that Daisy Trust purchased the property subject to BANA's senior  
2 deed of trust;

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

5           3.       In the alternative, an order requiring Green Valley and NAS to pay BANA all  
6 amounts by which it was damaged as a result of Green Valley's and NAS's wrongful foreclosure  
7 and/or violation of the good faith provisions of NRS § 116.1113;

8           4.       A preliminary injunction prohibiting Daisy Trust, its successors, assigns, or agents  
9 from conducting any sale, transfer, or encumbrance of the property that is claimed to be superior to  
10 the senior deed of trust or not subject to the senior deed of trust;

11          5.       A preliminary injunction requiring Daisy Trust to pay all taxes, insurance, and  
12 homeowner's association dues during the pendency of this action;

13          6.       Reasonable attorneys' fees as special damages and the costs of suit; and

14          7.       For such other and further relief the Court deems proper.

15       DATED this 29<sup>th</sup> day of February, 2016.

16                   **AKERMAN LLP**

17                   /s/ Ariel E. Stern

18                   ARIEL E. STERN, ESQ.

19                   Nevada Bar No. 8276

20                   MATTHEW I. KNEPPER, ESQ.

21                   Nevada Bar No. 12796

22                   1160 Town Center Drive, Suite 330

23                   Las Vegas, Nevada 89144

24                   Attorneys for Plaintiff

1 MICHAEL F. BOHN, ESQ.  
Nevada Bar No.: 1641  
2 [mbohn@bohnlawfirm.com](mailto:mbohn@bohnlawfirm.com)  
LAW OFFICES OF  
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376 E. Warm Springs Rd., Ste. 140  
4 Las Vegas, Nevada 89119  
(702) 642-3113/ (702) 642-9766 FAX  
5  
Attorney for defendant Daisy Trust  
6

7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF NEVADA

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

12 Plaintiff,

13 vs.

14 GREEN VALLEY SOUTH OWNERS  
ASSOCIATION NO. 1; DAISY TRUST;  
15 NEVADA ASSOCIATION SERVICES, INC.,

16 Defendants.

CASE NO.: 2:16-CV-00424

17 DAISY TRUST,

18 Counterclaimant,

19 vs.

20 BANK OF AMERICA, N.A., SUCCESSOR BY  
MERGER TO BAC HOME LOANS SERVICING,  
21 LP, FKA COUNTRYWIDE HOME LOANS  
SERVICING, LP;

22 Counterdefendant.  
23

24 **ANSWER AND COUNTERCLAIM**

25 Defendant Daisy Trust, by and through its attorney, Michael F. Bohn, Esq., answers Plaintiff's  
26 Complaint on file herein as follows:

27 **PARTIES AND JURISDICTION**

28 1. Defendant is without sufficient information or knowledge upon which to admit or deny the

allegations contained in paragraphs 1, 2, 7, and 8 of the complaint, and, upon that basis, denies the same.

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

3. In answering paragraph 6 of the complaint, Defendant denies that the deed of trust was not extinguished by the homeowner's association non-judicial foreclosure sale but is without sufficient information or knowledge to admit the remainder of said paragraph which is therefore denied.

#### **GENERAL ALLEGATIONS**

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

5. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraphs 13, 14, 15, 24, 25, 26, and 27 of the complaint, and upon that basis, denies the same.

6. In answering paragraph 28, defendant is without sufficient information or knowledge to admit or deny that a tender was made which is therefore denied, but admits the remainder of said paragraph.

7. Defendant denies the allegations contained in paragraphs 17, 18, 19, 20, 21, 22, 23, and 29 of the complaint.

#### **FIRST CAUSE OF ACTION**

##### **(Quiet Title/Declaratory Judgment Against All Defendants)**

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

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

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

#### **SECOND CAUSE OF ACTION**

##### **(Breach of NRS 116.1113 against Green Valley and NAS)**

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

12. Defendant is without sufficient information or knowledge to admit or deny the allegations

1 contained in paragraphs 60, 61, 62, 63, 64, 65, 66 and 67 of the complaint, and upon that basis, denies  
2 the same.

3 **THIRD CAUSE OF ACTION**

4 **(Wrongful Foreclosure against Green Valley and NAS)**

5 13. In answering paragraph 68, Defendant repeats and realleges its answers to paragraphs 1  
6 though 67 of the complaint as if fully set forth at length herein.

7 14. Defendant denies the allegations contained in paragraphs 69, 70, 71, 72, 73, and 74 of the  
8 complaint.

9 15. Defendant is without sufficient information or knowledge to admit or deny the allegations  
10 contained in paragraphs 75 and 76 of the complaint, and upon that basis, denies the same.

11 **FOURTH CAUSE OF ACTION**

12 **(Injunctive Relief against Saticoy)**

13 16. In answering paragraph 77, Defendant repeats and realleges its answers to paragraphs 1  
14 though 76 of the complaint as if fully set forth at length herein.

15 17. Defendant denies the allegations contained in paragraphs 78, 79, 80, 81, 82, and 83 of the  
16 complaint.

17 **AFFIRMATIVE DEFENSES**

18 **FIRST AFFIRMATIVE DEFENSE**

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

21 **SECOND AFFIRMATIVE DEFENSE**

22 The plaintiff has failed to mitigate its damages.

23 **THIRD AFFIRMATIVE DEFENSE**

24 Plaintiff is guilty of laches and unclean hands.

25 **FOURTH AFFIRMATIVE DEFENSE**

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

28 /////

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

The plaintiff ratified the alleged acts of this answering defendant.

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

The plaintiff lacks standing to prosecute this action.

EIGHTEENTH AFFIRMATIVE DEFENSE

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

WHEREFORE, defendant prays as follows:

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

COUNTERCLAIM

Defendant/counterclaimant Daisy Trust, by and through its attorney, Michael F. Bohn, Esq. alleges as its counterclaim against plaintiff, Bank of America, N.A. as follows:

1. Defendant/counterclaimant Daisy Trust is the owner of real property situated in Clark County, Nevada commonly known as 137 Elegante Way, Henderson, Nevada, 89074 (APN 177-13-214-086).
2. Daisy Trust obtained title to the property as a result of an HOA foreclosure sale conducted by the Green Valley South Owners Association on August 31, 2012 as evidenced by the foreclosure deed recorded with the Clark County Recorder on September 7, 2012 as Instrument No. 201209070001211.
3. The title held by Daisy Trust arises from the foreclosure of an HOA lien arising from a delinquency in assessments due from the former owner to the HOA pursuant to NRS Chapter 116.
4. Plaintiff/counterdefendant is the purported assigned beneficiary of a deed of trust which was originally recorded as an encumbrance against the subject property on June 27, 2008.

FIRST CLAIM FOR RELIEF

**(Quiet Title)**

5. Daisy Trust repeats the allegations contained in paragraphs 1 through 4 of its counterclaim as if fully set forth at length herein.

6. The deed of trust and any other security interest of plaintiff/counterdefendant in the subject property at issue in this case has been extinguished by reason of the HOA foreclosure sale which occurred as a result of the failure of the former owner of the subject property or the failure of any

1 other interested party, such as plaintiff, to cure the delinquency in assessments due and owing to  
2 Green Valley South Owners Association pursuant to NRS Chapter 116.

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

6 8. Daisy Trust is entitled to an award of attorneys fees and costs.

7 **SECOND CLAIM FOR RELIEF**

8 **(Declaratory Relief)**

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

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

16 11. Daisy Trust is entitled to an award of attorneys fees and costs.

17 WHEREFORE, Daisy Trust prays for Judgment as follows:

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

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

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

24 /////

25 /////

26 /////

27 /////

28 /////

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

2 DATED this 5th day of April 2016.

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

5  
6 By: /s/ /Michael F. Bohn, Esq./  
7 MICHAEL F. BOHN, ESQ.  
8 Nevada Bar No. 1641  
9 376 E. Warm Springs Rd., Ste. 140  
10 Las Vegas, Nevada 891119  
11 Attorney for defendant Daisy Trust  
12

13 **CERTIFICATE OF SERVICE**

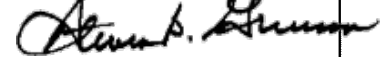
14 I hereby certify that on the 5th day of April, 2016, I electronically transmitted the above  
15 **ANSWER TO COMPLAINT AND COUNTERCLAIM** to the Clerk's Office using the CM/ECF  
16 System for filing and transmittal of a Notice of Electronic Filing to the following counsel of record:  
17

18 Ariel E. Stern, Esq.  
19 Matthew I. Knepper Esq.  
20 Akerman LLP  
21 1160 Town Center Drive, Suite 330  
22 Las Vegas, Nevada 89144  
23 Attorney for plaintiff  
24

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

EXHIBIT C

EXHIBIT C



CASE NO: A-19-791254-C  
Department 8

**COMP**  
ROGER P. CROTEAU, ESQ.  
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TIMOTHY E. RHODA, ESQ.  
Nevada Bar No. 7878  
ROGER P. CROTEAU & ASSOCIATES, LTD.  
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(702) 228-7719 (facsimile)  
[croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)  
*Attorney for Plaintiff*

DISTRICT COURT  
CLARK COUNTY, NEVADA

DAISY TRUST, a Nevada trust,  
Plaintiff,

Case No.:  
Dept. No.:

vs.

GREEN VALLEY SOUTH OWNERS  
ASSOCIATION NO. 1 and NEVADA  
ASSOCIATION SERVICES, INC., a domestic  
corporation;  
Defendants.

**COMPLAINT**

COMES NOW, Plaintiff, Daisy Trust, by and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby complains and alleges against Defendants as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff, Daisy Trust ("*Trust*"), is a Nevada trust, authorized to do business and doing business in the County of Clark, State of Nevada.
2. Daisy Trust is the current owner of real property located at 137 Elegante Way, Henderson, Nevada 89074 (APN 177-13-214-086) (the "*Property*").

3. Daisy Trust acquired title to the Property by Foreclosure Deed dated September 7, 2012, by and through a homeowners association lien foreclosure sale conducted on August 31, 2012 (“*HOA Foreclosure Sale*”), by Nevada Association Services, Inc., a Nevada corporation, authorized to do business and doing business in Clark County, State of Nevada (“*HOA Trustee*”), on behalf of Green Valley South Owners Association No. 1, a Nevada domestic non-profit corporation (“*HOA*”). The HOA Foreclosure Deed was recorded in the Clark County Recorder’s Office on September 7, 2012 (“*HOA Foreclosure Deed*”).
4. Upon information and belief, HOA is a Nevada common interest community association or unit owners’ association as defined in NRS 116.011, is organized and existing under the laws of the State of Nevada, and transacts business in the State of Nevada.
5. Upon information and belief, HOA Trustee is a debt collection agency doing business in the State of Nevada, and is organized and existing under the laws of the State of Nevada.
6. Venue is proper in Clark County, Nevada pursuant to NRS 13.040.
7. The exercise of jurisdiction by this Court over the parties in this civil action is proper pursuant to NRS 14.065.

#### **GENERAL ALLEGATIONS**

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

1 adopted by the association pursuant to NRS 116.3115 which would have become due in the  
2 absence of acceleration during the 9 months immediately preceding institution of an action to  
3 enforce the lien.” NRS 116.3116(2)(c).

4 11. In Nevada, when a homeowners association properly forecloses upon a lien containing a  
5 super-priority lien component, such foreclosure extinguishes a first deed of trust.

6 12. On or about June 5, 2008, Dennis L. Scott, an unmarried man, (“*the Former Owner*”)  
7 purchased the Property and obtained a purchase money loan secured by the Property from  
8 CTX Mortgage Company, LLC, a Delaware corporation (“*Lender*”), that is evidenced by a  
9 deed of trust between the Former Owner and Lender, recorded against the Property on June  
10 27, 2008, for the loan amount of \$179,188.00 (“*Deed of Trust*”). The Deed of Trust provides  
11 that Mortgage Electronic Registration Services (“*MERS*”) is beneficiary, as nominee for  
12 Lender and Lender’s successors and assigns. The Deed of Trust was in the amount of  
13 \$179,188.00, and the Deed of Trust was recorded in the Clark County Recorder’s Office on  
14 June 27, 2008.

15 13. The Former Owner executed Planned Unit Development Riders along with the Deed of  
16 Trust, effective as of June 23, 2008.

17 14. On September 26, 2011, MERS, on behalf of Lender, assigned its beneficial interest by  
18 Assignment of Deed of Trust to Bank of America, N.A. (“*BANA*”) and recorded the  
19 document in Clark County Recorder’s Office on October 5, 2011.

20 **The HOA Lien and Foreclosure**

21 15. Upon information and belief, the Former Owner of the Property failed to pay to HOA all  
22 amounts due to pursuant to HOA’s governing documents.

23 16. Accordingly, on August 23, 2011, HOA Trustee, on behalf of HOA, recorded a Notice of  
24 Delinquent Assessment Lien (“*HOA Lien*”). The HOA Lien stated that the amount due to the  
25 HOA was \$818.70, as of August 18, 2011, plus interest, late charges, costs, fees and other  
26 charges.

27 17. On November 18, 2011, HOA, through HOA Trustee, recorded a Notice of Default and  
28 Election to Sell Under Homeowners Association Lien (“*NOD*”) against the Property. The

- 1 NOD stated the amount due to the HOA was \$1,819.50 as of November 16, 2011. plus  
2 accruing assessments, interest, costs and attorney's fees.
- 3 18. Upon information and belief, after the NOD was recorded, on December 19, 2011, BANA,  
4 through Miles, Bauer, Bergstrom & Winters ("*Miles Bauer*") contacted the HOA Trustee and  
5 requested a ledger identifying the Super-Priority Lien Amount, comprising of up to 9 months  
6 of delinquent assessments that were owed to the HOA as of the HOA Lien ("*Super Priority*  
7 *Lien Amount*").
- 8 19. Upon information and belief, Miles Bauer requested the HOA arrears in an attempt to pay the  
9 Super-Priority Lien Amount of the HOA Lien.
- 10 20. In an Affidavit of Adam Kendis of Miles Bauer, he provided that he could not locate a  
11 response from the HOA and HOA Trustee to the "December 19, 2011, Miles Bauer letter to  
12 the HOA, care of the HOA Trustee."
- 13 21. The Affidavit stated that Miles Bauer used a Statement of Account from Nevada Association  
14 Services, Inc., for a different property in the same HOA to determine a good faith payoff.
- 15 22. On February 2, 2012, BANA, through Miles Bauer, provided a payment of \$882.00 to the  
16 HOA Trustee, which included payment of up to nine months of delinquent assessments (the  
17 "*Attempted Payment*").
- 18 23. HOA Trustee, on behalf of the HOA, rejected BANA's Attempted Payment of \$882.00.
- 19 24. On April 23, 2012, HOA Trustee, on behalf of the HOA, recorded a Notice of Sale against  
20 the Property ("*NOS*"). The NOS provided that the total amount due the HOA was \$2,946.17  
21 and set a sale date for the Property of May 18, 2012, at 10:00 A.M., to be held at Nevada  
22 Legal News, 930 So. Fourth Street, Las Vegas, Nevada.
- 23 25. On August 31, 2012, HOA Trustee then proceeded to non-judicial foreclosure sale on the  
24 Property and recorded the HOA Foreclosure Deed on September 7, 2012, which stated that  
25 the HOA Trustee sold the HOA's interest in the Property to the Plaintiff at the Foreclosure  
26 Sale for the highest bid amount of \$3,555.00.
- 27 26. The Foreclosure Sale created excess proceeds.
- 28

- 1 27. After the Notice of Default was recorded, BANA, the purported holder of the Deed of Trust  
2 recorded against the Property, through its counsel, Miles Bauer, contacted HOA Trustee and  
3 HOA and requested all amounts due the HOA by the Former Owner, upon information and  
4 belief, Miles Bauer requested the sums due to the HOA by the Former Owner so it could  
5 calculate the breakdown of up to nine (9) months of common HOA assessments in order for  
6 BANA to calculate the Super Priority Lien Amount in an ostensible attempt to determine the  
7 amount of the HOA Lien entitled to super-priority over the Deed of Trust.
- 8 28. In none of the recorded documents, nor in any other notice recorded with the Clark County  
9 Recorder's Office, did HOA and/or HOA Trustee specify or disclose that any individual or  
10 entity, including but not limited to BANA, had attempted to pay any portion of the HOA Lien  
11 in advance of the HOA Foreclosure Sale.
- 12 29. Plaintiff appeared at the HOA Foreclosure Sale and presented the prevailing bid in the  
13 amount of \$3,555.00, thereby purchasing the Property for said amount.
- 14 30. Neither HOA nor HOA Trustee informed or advised the bidders and potential bidders at the  
15 HOA Foreclosure Sale, either orally or in writing, that any individual or entity had attempted  
16 to pay the Super-Priority Lien Amount.
- 17 31. Upon information and belief, the debt owed to Lender by the Former Owner of the Property  
18 pursuant to the loan secured by the Deed of Trust significantly exceeded the fair market value  
19 of the Property at the time of the HOA Foreclosure Sale.
- 20 32. Upon information and belief, Lender alleges that its Attempted Payment of the Super-Priority  
21 Lien Amount served to satisfy and discharge the Super-Priority Lien Amount, thereby  
22 changing the priority of the HOA Lien vis a vis the Deed of Trust.
- 23 33. Upon information and belief, Lender alleges that as a result of its Attempted Payment of the  
24 Super-Priority Lien Amount, the purchaser of the Property at the HOA Foreclosure Sale  
25 acquired title to the Property subject to the Deed of Trust.
- 26 34. Upon information and belief, if the bidders and potential bidders at the HOA Foreclosure  
27 Sale were aware that an individual or entity had attempted to pay the Super-Priority Lien  
28 Amount and/or by means of the Attempted Payment prior to the HOA Foreclosure Sale and

- 1 that the Property was therefore ostensibly being sold subject to the Deed of Trust, the bidders  
2 and potential bidders would not have bid on the Property.
- 3 35. Had the Property not been sold at the HOA Foreclosure Sale, HOA and HOA Trustee would  
4 not have received payment, interest, fees, collection costs and assessments related to the  
5 Property would have remained unpaid.
- 6 36. HOA Trustee acted as an agent of HOA.
- 7 37. HOA is responsible for the actions and inactions of HOA Trustee pursuant to the doctrine of  
8 respondeat superior.
- 9 38. HOA and HOA Trustee conspired together to hide material information related to the  
10 Property: the HOA Lien; the Attempted Payment of the Super-Priority Lien Amount; the  
11 rejection of such payment or Attempted Payment; and the priority of the HOA Lien vis a vis  
12 the Deed of Trust, from the bidders and potential bidders at the HOA Foreclosure Sale.
- 13 39. The information related to any Attempted Payment or payments made by Lender, BANA, the  
14 homeowner or others to the Super Priority Lien Amount was not recorded and would only be  
15 known by BANA, Lender, the HOA and HOA Trustees.
- 16 40. Upon information and belief, HOA and HOA Trustee conspired to withhold and hide the  
17 aforementioned information for their own economic gain and to the detriment of the bidders  
18 and potential bidders at the HOA Foreclosure Sale.
- 19 41. BANA first disclosed the Attempted Payment by BANA/Lender to the HOA Trustee in  
20 BANA's Complaint, filed on February 29, 2016, but not served on the Plaintiff until March  
21 16, 2016 ("*Discovery*") in the United States District Court Case No. 2:16-CV-00424 (the  
22 "*Case*").

23 **FIRST CAUSE OF ACTION**

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

25 **Against the HOA and HOA Trustee)**

- 26 42. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 41  
27 hereof as if set forth fully herein.  
28

- 1 43. At no point in time did HOA or HOA Trustee disclose to the bidders and potential bidders at  
2 the HOA Foreclosure Sale the fact that any individual or entity had attempted to pay the  
3 Super-Priority Lien Amount or provided the Attempted Payment.
- 4 44. By rejecting the Attempted Payment of the Super-Priority Lien Amount from Lender and/or  
5 Miles Bauer, HOA Trustee provided itself with the opportunity to perform and profit from  
6 many additional services on behalf of HOA related to the Property and proceedings related to  
7 the HOA Foreclosure Sale.
- 8 45. By rejecting the Attempted Payment of the Super-Priority Lien Amount from Lender and/or  
9 Miles Bauer, HOA received funds in satisfaction of the entire HOA Lien, rather than only the  
10 Super-Priority Lien Amount.
- 11 46. Consequently, HOA and HOA Trustee received substantial benefit as a result of their  
12 rejection of the Attempted Payment of the Super-Priority Lien Amount from Lender and  
13 intentionally failing to disclose that information to the Plaintiff or the other bidders.
- 14 47. Neither HOA nor HOA Trustee recorded any notice nor provided any written or oral  
15 disclosure to the bidders and potential bidders at the HOA Foreclosure Sale regarding any  
16 Attempted Payment of the Super-Priority Lien Amount by Lender or any individual or entity.
- 17 48. HOA and HOA Trustee desired that the bidders and potential bidders at the HOA Foreclosure  
18 Sale believe that the HOA Lien included amounts entitled to super-priority over the Deed of  
19 Trust and that the Deed of Trust would thus be extinguished as a result of the HOA  
20 Foreclosure Sale for their own economic gain.
- 21 49. As a result of their desire that the bidders and potential bidders at the HOA Foreclosure Sale  
22 believe that the HOA Lien included amounts entitled to super-priority over the Deed of Trust  
23 and that the Deed of Trust would thus be extinguished as a result of the HOA Foreclosure  
24 Sale, HOA and HOA Trustee intentionally failed to disclose material information related to  
25 the Attempted Payment of the Super-Priority Lien Amount by Lender and did so for their  
26 own economic gain.
- 27 50. Alternatively, HOA and HOA Trustee were grossly negligent by failing to disclose material  
28 information related to the Attempted Payment of the Super-Priority Lien Amount.

- 1 51. Upon information and belief, if HOA Trustee and/or HOA had disclosed the Attempted  
2 Payment of the Super-Priority Lien Amount to the bidders and potential bidders at the HOA  
3 Foreclosure Sale, such bidders and potential bidders would not have bid upon the Property at  
4 the HOA Foreclosure Sale.
- 5 52. Given the facts of this case now known to Plaintiff, Plaintiff would not have bid on the  
6 Property.
- 7 53. Upon information and belief, if the Property had not been sold at the HOA Foreclosure Sale,  
8 HOA would not have received funds in satisfaction of the HOA Lien.
- 9 54. Upon information and belief, if the Property had not been sold at the HOA Foreclosure Sale,  
10 HOA Trustee would not have received payment for the work that it performed on behalf of  
11 HOA in association with the HOA Foreclosure Sale and related proceedings.
- 12 55. Plaintiff attended the sale as a ready, willing and able buyer without knowledge of the  
13 Attempted Payment.
- 14 56. Plaintiff would not have purchased the Property if it had been informed that any individual or  
15 entity had paid or attempted to pay the Super-Priority Lien Amount in advance of the HOA  
16 Foreclosure Sale.
- 17 57. As a direct result of HOA and HOA Trustee's rejection of the Attempted Payment of the  
18 Super-Priority Lien Amount and their subsequent intentional or grossly negligent failure to  
19 advise the bidders and potential bidders at the HOA Foreclosure Sale of the facts related  
20 thereto, Plaintiff presented the prevailing bid at the HOA Foreclosure Sale and thereby  
21 purchased the Property.
- 22 58. HOA and HOA Trustee each profited from their intentional and/or negligent  
23 misrepresentations and material omissions at the time of the HOA Foreclosure Sale by failing  
24 and refusing to disclose the Attempted Payment of the Super-Priority Lien Amount.
- 25 59. HOA and HOA Trustee materially misrepresented the facts by hiding and failing to advise  
26 bidders and potential bidders at the HOA Foreclosure Sale of information known solely to the  
27 HOA and/or HOA Trustee that was not publicly available which ostensibly changed the  
28 priority of Deed of Trust vis a vis the HOA Lien.

- 1 60. HOA and HOA Trustee solely possessed information related to the Attempted Payment of the  
2 Super-Priority Lien Amount prior to and at the time of the HOA Foreclosure Sale, and  
3 intentionally withheld such information for their own economic gain.
- 4 61. Alternatively, HOA and HOA Trustee were gross negligently when it withheld information  
5 related to the Attempted Payment of the Super-Priority Lien Amount.
- 6 62. Plaintiff reasonably relied upon HOA and HOA Trustee's intentional or grossly negligent  
7 failure to disclose the Attempted Payment of the Super-Priority Lien Amount.
- 8 63. HOA and HOA Trustee intended that bidders and potential bidders at the HOA Foreclosure  
9 Sale would rely on the lack of notice of the Attempted Payment of the Super-Priority Lien  
10 Amount at the time of the HOA Sale and that their failure to disclose such information  
11 promoted the sale of the Property.
- 12 64. HOA and HOA Trustee further intended that their failure of refusal to inform bidders and  
13 potential bidders at the HOA Foreclosure Sale of the Attempted Payment of the Super-  
14 Priority Lien Amount would lead such bidders and potential bidders to believe that the Deed  
15 of Trust was subordinate to the HOA Lien and not being sold subject to the Deed of Trust.
- 16 65. The HOA and the HOA Trustee had a duty to disclose the Attempted Payment of the Super-  
17 Priority Lien Amount.
- 18 66. The HOA and the HOA Trustee breached that duty to disclose the Attempted Payment to  
19 Plaintiff.
- 20 67. As a result of the HOA and HOA Trustee's breach of its duty of care, duty of good faith and  
21 its duty of candor to bidders at the HOA Foreclosure Sale for its own economic gain, Plaintiff  
22 has been economically damaged in many aspects.
- 23 68. If the Property is subject to the Deed of Trust, the funds paid by Plaintiff to purchase,  
24 maintain, operate, litigate various cases and generally manage the Property would be lost  
25 along with the lost opportunity of purchasing other available property offered for sale where a  
26 super priority payment had not been attempted, thereby allowing Plaintiff the opportunity to  
27 purchase a property free and clear of the deed of trust and all other liens.  
28

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

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

## **SECOND CAUSE OF ACTION**

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

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

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

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

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

75. Thereafter, Lender, by and through Miles Bauer attempted to pay 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, rejected the Attempted Payment.

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

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

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

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

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

3 **THIRD CAUSE OF ACTION**

4 **(Conspiracy)**

5 82. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through  
6 81 as if set forth fully herein.

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

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

13 85. Defendants knew or should have known that their actions and omissions would injure the  
14 successful bidder and purchaser of the Property and benefit HOA and HOA Trustee. To  
15 further their conspiracy, upon information and belief, Defendants rejected the Attempted  
16 Payment for the purpose of obtaining more remuneration than they would have otherwise  
17 obtained at a sale of the subpriority portion of the HOA Lien.

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

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

22 **FOURTH CAUSE OF ACTION**

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

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

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

- 1 91. The HOA and HOA Trustee are required to and must provide a Seller's Real Property  
2 Disclosure Form ("*SRPDF*") to the "Purchaser" as defined in NRS 116, et seq., at the time of  
3 the HOA Foreclosure Sale.
- 4 92. NRS 116 et seq. foreclosure sales are not exempt from the mandates of NRS 113 et seq.
- 5 93. The HOA and HOA Trustee must complete and answer the questions posed in the SRPDF in  
6 its entirety, but specifically, Section 9, Common Interest Communities, disclosures (a) - (f),  
7 and Section 11, that provide as follows:
- 8 9. Common Interest Communities: Any "common areas" (facilities  
9 like pools, tennis courts, walkways or other areas co-owned with  
10 others) or a homeowner association which has any authority over the  
11 property?
- 12 (a) Common Interest Community Declaration and Bylaws  
13 available?
- 14 (b) Any periodic or recurring association fees?
- 15 (c) Any unpaid assessments, fines or liens, and any warnings or  
16 notices that may give rise to an assessment, fine or lien?
- 17 (d) Any litigation, arbitration, or mediation related to property or  
18 or common areas?
- 19 (e) Any assessments associated with the property (excluding  
20 property tax)?
- 21 (f) Any construction, modification, alterations, or repairs made  
22 without required approval from the appropriate Common  
23 Interest Community board or committee?
- 24 11. Any other conditions or aspects of the [P]roperty which materially affect  
25 its value or use in an adverse manner? (Emphasis added)
- 26 See SRPDF, Form 547, attached hereto as Exhibit 1.
- 27 94. Section 11 of the SRPDF relates directly to information known to the HOA and the HOA  
28 Trustee that materially affects the value of the Property, and in this case, if the Super Priority  
Lien Amount is paid, or if the Attempted Payment is rejected, it would have a material  
adverse affect on the overall value of the Property, and therefore, must be disclosed in the  
SRPDF by the HOA and the HOA Trustee when the SRPDF is completed and disclosed to  
the purchaser/the Trust.
95. The HOA Responses to Section 9(c) - (e) of the SRPDF would provide notice to the Plaintiff  
of any payments made by BANA or others on the HOA Lien.

96. The HOA Responses to Section 11 of the SRPDF generally deal with the disclosure of the condition of the title to the Property related to the status of the Deed of Trust and Attempted Payment that would only be known by the HOA and the HOA Trustee.

97. Pursuant to Nevada Real Estate Division's ("NRED"), Residential Disclosure Guide (the "Guide"), the Guide provides at page 20 that the HOA and HOA Trustee shall provide even in an NRS 107, et seq. sale, the following to the purchaser/the Trust at the HOA Foreclosure Sale:

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

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

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

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

...

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

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

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

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

///

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

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

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

8 WHEREFORE, Plaintiff prays for relief as follows:

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

15 DATED this \_\_\_\_\_ day of March, 2019.

16 ROGER P. CROTEAU & ASSOCIATES, LTD.

17 /s/ Roger P. Croteau  
18 ROGER P. CROTEAU, ESQ.  
19 Nevada Bar No. 4958  
20 2810 W. Charleston, Ste. 75  
21 Las Vegas, Nevada 89102  
22 (702) 254-7775  
23 *Attorney for Plaintiff*  
24  
25  
26  
27  
28

# 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*).

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

Property address

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

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

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

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

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

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

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

*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

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

Buyer(s) Initials

EXHIBIT D

EXHIBIT D

# SELLER'S REAL PROPERTY DISCLOSURE FORM

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

Date \_\_\_\_\_

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

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

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

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

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

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

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

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

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

*Seller(s) Initials*

*Buyer(s) Initials*

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

Are you aware of any of the following?:

1. Structure:

- (a) Previous or current moisture conditions and/or water damage? ..... ☐ ☐
- (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. .... ☐ ☐

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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

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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 E

EXHIBIT E

**D**UTIES OWED BY A  
NEVADA LICENSEE

**I**MPACT FEES

**S**OIL REPORT

**C**OMMON-INTEREST  
COMMUNITIES

**L**IEN FOR DEFERRED  
TAXES

**O**PEN RANGE

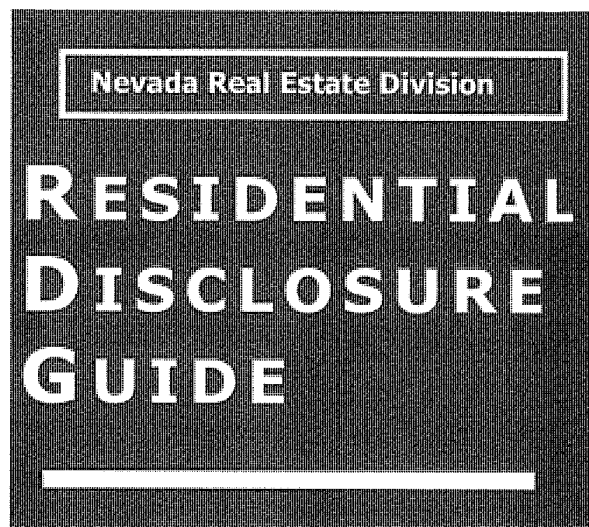
**S**ELLER'S REAL PROPERTY  
DISCLOSURE

**U**SED MOBILE HOMES

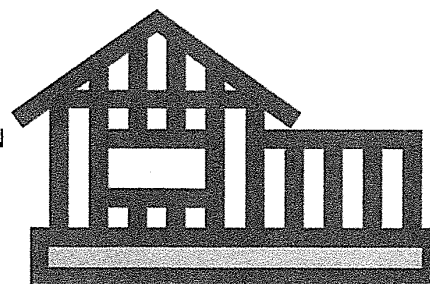
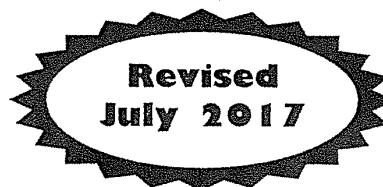
**R**ESIDENTIAL POOL SAFETY  
AND DROWNING PREVENTION

**E**NVIRONMENTAL HAZARDS

**S**EWER 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

InstanetFORMS

# 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>.

Published pursuant to NRS 645.194 by the Nevada Real Estate Division in both electronic and hardcopy formats.

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<http://red.nv.gov/RDG/>

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Email: [realest@red.nv.gov](mailto:realest@red.nv.gov)

InstantForms

# Table of Contents

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## State Disclosures

|   |    |
|---|----|
| Common-Interest Communities and<br>Condominium Hotels.....    | 4  |
| Consent to Act .....  | 8  |
| Construction Defects .....                                    | 9  |
| Duties Owed By a Nevada Real Estate Licensee.....             | 10 |
| Impact Fees.....  | 12 |
| Lien for Deferred Taxes .....                                 | 13 |
| Manufactured Housing—<br>Used Manufactured/Mobile Homes ..... | 14 |
| Manufactured Home Parks .....                                 | 15 |
| Open Range Disclosure .....                                   | 16 |
| Private Transfer Fee Obligation .....                         | 18 |
| Seller's Real Property Disclosure .....                       | 19 |
| Water & Sewer Rates .....                                     | 22 |

## Federal/Local/Miscellaneous Disclosures

|   |    |
|---|----|
| Lead-Based Paint .....                                  | 23 |
| Pool Safety & Drowning Prevention .....                 | 24 |
| Airport Noise.....                                      | 25 |
| Building & Zoning Codes .....                           | 25 |
| Environmental Hazards .....                             | 25 |
| Gaming (Initial Purchaser in New Construction Only) ... | 26 |
| Home Inspections.....                                   | 27 |
| Military Activities .....                               | 27 |
| Licensee Disclosures .....                              | 27 |
| Road Maintenance District .....                         | 28 |
| Soil Report (New Construction Only) .....               | 28 |

|                          |    |
|--------------------------|----|
| Contact Information..... | 29 |
|--------------------------|----|

|                            |    |
|----------------------------|----|
| Acknowledgement Form ..... | 31 |
|----------------------------|----|

## 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]

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#### *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](#)

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## 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).

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*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.

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*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.

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*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.

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*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.

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*For more information:*

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

NRS: [118B.170](#)

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## 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.*

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For more information:

NRS: [111.825-111.880](tel: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).

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## **Seller's Real Property Disclosure**

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### **⇒ 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](#)

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## 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.

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*For more information:*

NRS: 113.060

## Lead-Based Paint

### ⇒ Purpose of Disclosure

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

### ⇒ Who must provide the disclosure?

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

### ⇒ When is it due?

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

### ⇒ Additional Information

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

---

*For more information:*

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

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

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

## **Pool Safety and Drowning Prevention Disclosure**

### **⇒ Purpose of Disclosure**

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

### **⇒ Who must provide the disclosure?**

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

### **⇒ When is it due?**

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

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

### **⇒ Additional Information**

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

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

## Miscellaneous Disclosures

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

### ⇒ **AIRPORT NOISE**

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

### ⇒ **BUILDING & ZONING CODES**

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

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

### ⇒ **ENVIRONMENTAL HAZARDS**

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

- **Radon** ([www.epa.gov/radon](http://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>)

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## 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](http://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](http://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](#).*

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## Miscellaneous Disclosures

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### ⇒ **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.*

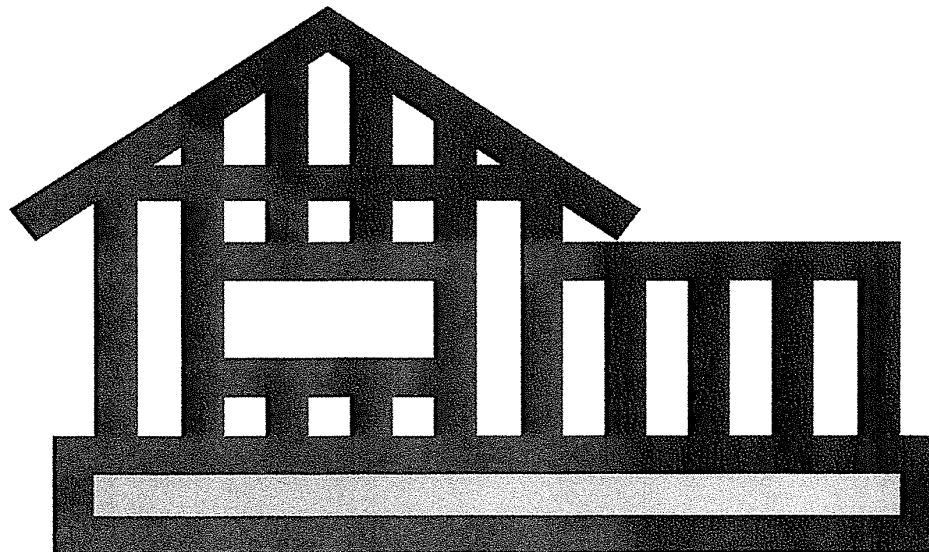
## Contact Information

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

# *Nevada Real Estate Division*

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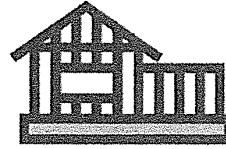
July 2017

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InstantFORMS

**JA0203**

**Nevada Real Estate Division**



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

# **RESIDENTIAL DISCLOSURE GUIDE**

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

DATE \_\_\_\_\_

Christopher Hardin

Client—Print Name

Client—Signature

Client—Print Name

Client—Signature

Make copy of page for additional signatures.

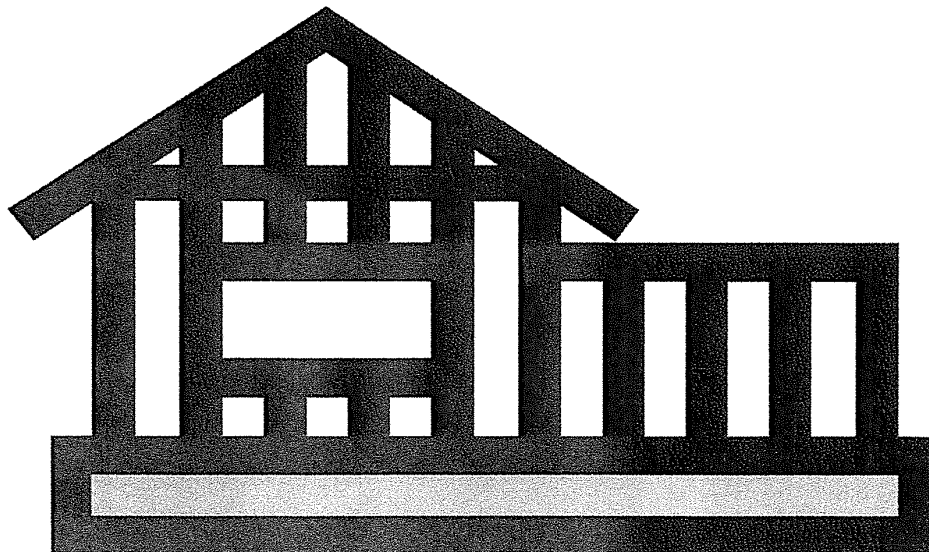
Retain original or copy in each transaction file.

InstantForms

**JA0204**

# *Nevada Real Estate Division*

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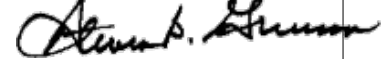


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**JA0205**



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*Attorneys for Defendant,  
Green Valley South Owner's Association*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

DAISEY TRUST, a Nevada trust  
Plaintiff,

vs.

GREEN VALLEY SOUTH OWNERS  
ASSOCIATION NO. 1, a Nevada non-  
profit corporation; and NEVADA  
ASSOCIATION SERVICES, INC., a  
domestic corporation;  
Defendants.

Case No.: A-19-791254-C  
Dept.: XVIII

HEARING REQUESTED

**DEFENDANT GREEN VALLEY SOUTH  
OWNERS' ASSOCIATION'S REPLY TO  
DAISEY TRUST'S OPPOSITION TO  
MOTION TO DISMISS, OR  
ALTERNATIVELY, MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

COMES NOW, Defendant Green Valley South Owners' Association ("Defendant" or "Green Valley") by and through its counsel of record, LIPSON NEILSON P.C., and hereby submits its Reply to Daisey Trust's Opposition to Motion to Dismiss, or alternatively, Motion for Partial Summary Judgment on Plaintiff Daisey Trust's Complaint ("Motion"). This Motion is made and based upon the following Memorandum of Points and Authorities, the papers and pleadings on file, and any oral argument that may be presented in this matter.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This matter arises from a non-judicial foreclosure sale conducted on real property located at 137 Elegante Way in Henderson, Nevada 89074 ("Property"). The sale took place on August 31, 2012, wherein the Property sold to Plaintiff Daisey Trust for \$3,555.00.

At the time of the sale, Bank of America, N.A. ("BANA") held an interest in a Deed of Trust encumbering the Property. Upon receiving a copy of the Notice of Sale recorded by Nevada Association Services, Inc. ("NAS") on behalf of Green Valley, BANA made a conditional tender of the superpriority portion of the delinquent assessment lien. NAS rejected the tender and proceeded with the sale.

Daisey Trust now alleges that Green Valley and NAS acted fraudulently, in violation of NRS 116, and with the intent to commit a conspiracy, by selling the Property without disclosing the existence of BANA's conditional tender. In support of these claims, Daisey Trust offers that Green Valley had either a contractual or statutory obligation to disclose the tender, that the non-warranty foreclosure deed is worthless because it violates NRS 116, and that it would not have purchased the Property had it known the tender existed.

For the following reasons, these arguments are without merit and the Court should dismiss Daisey Trust's complaint or enter partial summary judgment in Green Valley's favor on the Second and Third Causes of Action for Breach of NRS 116 and Conspiracy, as well as Daisey Trust's request for special and punitive damages.

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**II. RESPONSE TO DAISEY TRUST'S STATEMENT OF FACTS**

Daisey Trust's "Statement of Facts" contains many conclusory misstatements.

|   |  |
|---|--|
| 14. On August 31, 2012, HOA Trustee then proceeded to non-judicial foreclosure sale on the Property and recorded the HOA Foreclosure Deed on September 7, 2012, which stated that the HOA Trustee sold the HOA's interest in the Property to Plaintiff at the Foreclosure Sale for the highest bid amount of \$3,55.00.   | Objection. While the HOA agrees with the date of the sale and the price, it disputes the characterization of the language. The Foreclosure Deed specifically indicates that the Property was sold "without warranty expressed or implied" as required by NRS 116.31164(3)(a) as it existed at the time of the sale. See Nev. Rev. Stat. § 116.31164(3)(a) ("Make, execute and, after payment is made, deliver to the purchaser, or his or her successor or assign, <u>a deed without warranty</u> which conveys to the grantee all title of the unit's owner to the unit;"); see also Ex. 5 of the HOA's Motion. |
| 20. The debt owed to Lender by the Former Owners of the Property pursuant to the loan secured by the Deed of Trust significantly exceeded the fair market value of the Property at the time of the HOA Foreclosure Sale.  | Objection. This statement is not a fact but instead is an allegation that calls for a legal conclusion.  |
| 23. If the bidders and potential bidders at the HOA Foreclosure Sale were aware that an individual or entity had attempted to pay the Super Priority Lien Amount and/or by means of the Attempted Payment prior to the HOA Foreclosure Sale and that the Property was therefore ostensibly being sold subject to the Deed of Trust, the bidders and potential bidders would not have bid on the Property. . | Objection. This is a conclusory statement unsupported by any documents or evidence from the underlying action.   |
| 24. Had the Property not been sold at the HOA Foreclosure Sale, HOA and HOA Trustee would not have received payments, interest, fees, collection costs and assessments related to the Property would have remained unpaid.  | Objection. This is a conclusory statement unsupported by any documents or evidence from the underlying action. The statement also calls for speculation and reaches an improper legal conclusion.  |
| 25. HOA Trustee acted as an agent.  | Objection. This statement is not a fact but instead is an allegation that calls for a legal conclusion.  |
| 26. HOA is responsible for the actions and inactions of the HOA Trustee pursuant to the doctrine of respondeat superior and agency.   | Objection. This statement is not a fact but instead is an allegation that calls for a legal conclusion.  |

|   |   |
|---|---|
| 27. HOA and HOA Trustee conspired together to hide material information related to the Property: the HOA Lien; the Attempted Payment of the Super Priority Lien Amount; the rejection of such payment or Attempted Payment; and the priority of the HOA Lien vis a vis the Deed of Trust, from the bidders and potential bidders at the HOA Foreclosure Sale. | Objection. This is a conclusory statement unsupported by any documents or evidence from the underlying action. The statement also calls for speculation and reaches an improper legal conclusion. |
| 29. HOA and HOA Trustee conspired to withhold and hide the aforementioned information for their own economic gain and to the detriment of the bidders and potential bidders at the HOA Foreclosure Sale.  | Objection. This is a conclusory statement unsupported by any documents or evidence from the underlying action. The statement also calls for speculation and reaches an improper legal conclusion. |
| 30. It was Plaintiff's practice and procedure that when it would attend NRS 116 sales, by and through its Trustee, at all times relevant to this case, the Trustee would attempt to ascertain whether anyone had attempted to or did tender any payment regarding the homeowner association's lien, including but not limited to the Attempted Payment.       | Objection. The <i>Declaration</i> in question presents no facts relevant or specific to this Foreclosure Sale which would support any of the alleged claims in this case.                         |
| 31. At all time relevant to this matter, if the Plaintiff had learned of a "tender" either having been attempted or made, the Plaintiff could not purchase the Property offered in that HOA Foreclosure Sale.   | Objection. This a conclusory and speculative statement, not a fact supported by any documents or evidence from the underlying action.   |

Plaintiff's "statement of facts" is in reality a mere regurgitation of the unsupported and unspecific allegations of the Complaint. The circumstances that must be detailed in a complaint alleging fraud include averments as to time, place, identity of the parties involved, and the nature of the fraud or mistake, malice, intent, knowledge and other conditions of the mind of a person may be averred generally. *Brown v. Kellar*, 97 Nev. 582, 636 P.2d 874 (1981). Plaintiff has pled no such facts and the Declaration provided also only makes universal generalizations demonstrating there are no particular facts for this specific sale which would be gained through discovery or proven at trial making a dismissal the only logical outcome.

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1 **III. LEGAL ARGUMENT**

2 **A. Plaintiff's Cause of Action for Intentional/Negligent**  
3 **Misrepresentation.**

4 Plaintiff's Opposition argues that its fraud claim is viable and does not fail as a  
5 matter of law. Specifically, Plaintiff cites to *Foster v. Dingwall*, 126 Nev. 56 (Nev.,2010),  
6 as proof apparent that the HOA's failure to disclose the existence of the bank's tender  
7 gives rise to a claim for fraudulent/negligent misrepresentation. See Opposition, pages  
8 11-12, lines 23-22.

9 *Foster* is not applicable to the facts of this case. *Foster* involved various  
10 conspiracy and fraud claims between a corporation and its directors, and included  
11 intervening misrepresentation claims brought by shareholders. See generally *id.* Its  
12 discussion of intentional misrepresentation, however, was limited to a finding that the  
13 shareholders did not present sufficient evidence to establish a claim. *Id.* at 1052. The  
14 block quote set forth in Plaintiff's opposition does not appear to be a part of the *Foster*  
15 decision at all, nor is there any correlation between *Foster* and the statutory obligations  
16 of an HOA under NRS 116.

17 Plaintiff's Complaint has not "identified" a single fact establishing that the HOA  
18 and its agent intentionally misrepresented the existence of BANA's tender. See  
19 generally *Papasan v. Allain*, 106 S.Ct. 2932, 2944, 478 U.S. 265, 286  
20 (U.S.,1986)("Although for the purposes of this motion to dismiss we must take all the  
21 factual allegations in the complaint as true, we are not bound to accept as true a legal  
22 conclusion couched as a factual allegation.") In fact, the Opposition states that "In this  
23 case, the HOA is not guilty of a false misrepresentation..." See Opposition, page 12,  
24 lines 23-24.

25 There has been no deposition testimony to this effect, nor have any documents  
26 been produced in the prior litigation with respect to this property suggesting that a false  
27 representation was made with knowledge of its false nature and with the intent to induce  
28 Plaintiff's reliance. See generally *Nelson v. Heer*, 123 Nev. 217 (Nev.,2007).

1           Instead, Plaintiff argues that the HOA "...are guilty of intentionally not disclosing  
2 a material fact regarding the payment of the Attempted Payment concerning the Deed  
3 of Trust that they are required to do and thereby making a material omission of a fact  
4 subject to this claim." See Opposition, page 12, lines 24-27. Again, as raised in our  
5 Motion, Plaintiff is presuming a duty to disclose that simply did not exist. Plaintiff's  
6 argument that the existence of the first deed of trust was a "defect" under NRS 113(4)  
7 has no merit based on a plain reading of the statute, and is not supported by case law.  
8 The statute, based on its wording, is clearly referencing construction deficiencies to the  
9 property. A first deed of trust is not a defect, it's a lien on the property. There was no  
10 duty to disclose the lien and conditional tender by the bank as a "defect" under NRS  
11 113(4). This argument is addressed in more detail below.

12           Further, Mr. Haddad's declaration is devoid of any facts specific to this litigation.  
13 See Opposition, *Declaration of Eddie Haddad*. It generally avers to Mr. Haddad's  
14 policies and procedures during an unknown time period, makes no specific statements  
15 regarding the foreclosure sale on this Property or Mr. Haddad's activities leading up to  
16 or during the sale. Plaintiff's arguments should be disregarded accordingly.

17           **B. Plaintiff Fails to Distinguish this Matter from *Collins* or Provide an**  
18           **Affidavit to Support its Request for Rule 56(d) Relief.**

19           Plaintiff's Opposition fails to identify any reason why its conspiracy claim in this  
20 matter is exempt from the broad application of the intra-corporate conspiracy doctrine  
21 as set forth in *Collins v. Union Federal Sav. & Loan Ass'n*, 99 Nev. 284 (Nev., 1983) is  
22 without merit. Instead, Plaintiff argues that the HOA is responsible for NAS' actions  
23 under the doctrine of Respondeat Superior, an argument that only reinforces the fact  
24 that defendants were acting in the roles of principal and agent. See *id.* at 622 (agents of  
25 a corporation cannot conspire with their corporate principal).

26           Plaintiff generally claims that further discovery is necessary and requests 56(d)  
27 relief, but it fails to attach an affidavit indicating what additional discovery is necessary  
28 relative to its conspiracy claim. See Opposition, pages 13-14: 25-1; see also Nev. R.

1 Civ. P. 56(d) (“If a nonmovant shows by affidavit or declaration that, for specified  
2 reasons, it cannot present facts essential to justify its opposition...”) However even a  
3 cursory review of its pleadings evidences that no additional discovery is necessary for  
4 this Court to dismiss the claim.

5 Plaintiff’s Opposition that “HOA and HOA Trustee conspired together to withhold  
6 or hide the aforementioned information for their own economic gain and to the detriment  
7 of the bidders and potential bidders at the HOA Foreclosure Sale.” See page 9, lines  
8 10-12. This statement is included within Plaintiff’s “Statement of Facts” but, like most of  
9 statements in that section, is really an argument with no facts or evidence to support the  
10 assertion. Plaintiff’s Complaint fails to clearly set forth that NAS acted in its individual  
11 capacity, or what economic benefit it received by this course of action. The Complaint’s  
12 conspiracy claim must be dismissed accordingly.

13 **C. The Duty of Good Faith Set Forth in NRS 116.1113 does not Impose**  
14 **Extra-Statutory Duties on the HOA or its Agent.**

15 Plaintiff is correct in that NRS 116.1113 imposes an obligation of good faith on  
16 every contract or duty governed by the chapter. Nev. Rev. Stat. §116.1113. Plaintiff is  
17 also correct in its assertion that a duty of good faith and fair dealing generally means a  
18 party must act with candor. See Opposition, p.14; see also Restatement (Second) of  
19 Contracts, § 205 cmt. (d) (“fair dealing may require more than honesty”)

20 Implicit, however, in the application of these principles to the instant matter is the  
21 fact that NRS 116.1113 does not impose extra-statutory duties on an HOA; it only  
22 governs existing contracts and duties. See generally *PennyMac Corp. v. SFR*  
23 *Investments Pool 1, LLC*, 2018 WL 4413612, at \*3 (Nev., 2018) (unpublished)  
24 (“Accordingly, we are not persuaded that the agent’s failure to undertake the extra-  
25 statutory duty ... amounts to unfairness sufficient to set aside the sale.”)

26 Plaintiff’s complaint has not identified any deficiencies in the HOA’s compliance  
27 with the notice and recording requirements of NRS 116 as they existed at the time of  
28 the sale, nor will it address the fact that the HOA was statutorily prohibited from giving

1 any purchaser at auction a so-called warranty deed. See Nev. Rev. Stat. §  
2 116.31164(3)(a). Plaintiff's numerous opinions on what the HOA or NAS "could have"  
3 done do not create a duty or give rise to a violation of the statute. This is particularly  
4 true when one of the arguments is supported by evidence in the record. See Opposition,  
5 p. 18-19.

6 Plaintiff also argues that the post-2015 amendments to NRS 116 to require  
7 disclosure of bank tenders are merely a "bright line" for parties to rely on, insinuating  
8 that such disclosures were always required under NRS 116, just not in so many words.  
9 To the contrary, in this case, such amendments are clear changes to impose additional  
10 duties, not a clarification of duties that previously existed.

11 In a feeble attempt to make up for a lack of actual facts regarding  
12 misrepresentations or omissions made in connection with this sale, Plaintiff simply asks  
13 "Why would any person or entity purchase a property at an HOA foreclosure sale  
14 knowing that he or she would thereafter be stripped of ownership..." See Opposition, p.  
15 19, lines 11-12. A more accurate question based on the actual facts of this case would  
16 be "Why would a person or entity purchase a property in exchange for a Non-Warranty  
17 Deed?" The answer to that question in this case is because Plaintiff got to buy a house  
18 for \$3,555.00 and has had the ability to lease it out for a profit for the last seven plus  
19 years.

20 Plaintiff's argument that the HOA was required to disclose the existence of the  
21 tender pursuant to NRS 113.130, a statute which governs the disclosure of certain  
22 defects on residential property, as well as services, land uses (open range), and zoning  
23 classifications, is equally misplaced. See Opposition, pages 27-31; see *also* Nev. Rev.  
24 Stat. 113.060, *et. seq.*

25 The bank's pre-sale tender does not fit into any of the disclosure categories  
26 contemplated by NRS 113. See generally *id.* It is not a water or sewage service, nor  
27 does it involve open range liability, zoning classifications, gaming enterprise districts, or  
28 transfer fee obligations. See Nev. Rev. Stat. §§ 113.060 through 113.085. It also does

1 not qualify as the discovery or worsening of a defect subject to disclosure under NRS  
2 113.130.

3 A “defect” is defined as “a condition that materially affects the value or use of  
4 residential property in an adverse manner.” See Nev. Rev. Stat. § NRS 113.100(1). The  
5 key to disclosure under this section is the seller’s realization, perception, and knowledge  
6 of the alleged defect. See *Nelson v. Heer*, 123 Nev. at 224; see also Nev. Rev. Stat.  
7 §113.140(1). A seller is not required to disclose defects of which he is unaware. *Id.*

8 The difficulty of applying these provisions to the instant matter cannot be  
9 understated. There is no authority supporting the argument that NRS 113.130 applies to  
10 disclosure of the potential risks associated with purchasing property at an NRS 116  
11 foreclosure sale. In fact, most if not all cases interpreting NRS 113.130 involve a seller’s  
12 obligation to disclose physical defects in real property.<sup>1</sup>

13 **D. Plaintiff Fails to Address a Single Legal Argument Raised in Support**  
14 **of Dismissal of its Special Damages.**

15 Plaintiff fails to address any of the legal arguments regarding dismissal of its  
16 special damages. Instead, it argues that the issue of attorney’s fees and costs may be  
17 addressed during discovery, and that, perhaps, it could qualify for an award of fees and  
18 costs pursuant to NRS 116.3117. These arguments lack merit.

19 Nevada law requires that special damages be pled with specificity. *Sandy Valley*  
20 *Associates v. Sky Ranch Estates Owners Ass’n*, 35 P.3d 964, 970, 117 Nev. 948, 958  
21 (Nev.,2001). The mere mention of attorney’s fees in the complaint’s general prayer for  
22 relief is insufficient to meet these requirements. *Id.* This is particularly true as Plaintiff’s  
23 claims for fraudulent misrepresentation and conspiracy fail as a matter of law.

24  
25 <sup>1</sup> See e.g. cases involving alleged violations of NRS 113.130: *Laurrance v. Deutsche Bank Nat. Trust Co.*  
26 *ex rel. American Home Mortg. Assets Trust 2006-5*, 2015 WL 5521879, at \*2 (D.Nev.,2015) (failure to  
27 disclose existence of pipelines); *Lo v. Federal Nat. Mortg. Ass’n*, 2015 WL 4662630 (D.Nev.,2015) (failure  
28 to disclose mold); *Webb v. Shull*, 270 P.3d 1266, 1268, 128 Nev. 85, 88 (Nev.,2012) (failure to  
disclose soil defects); *Allstate Ins. Co. v. Burney*, 2009 WL 2834954, at \*1 (D.Nev.,2009) (faulty  
construction and repair of driveway and retaining walls); *Nelson*, 123 Nev. 217 (failure to disclose water  
damage).

1           Moreover, an award of fees and costs under section 116.4117 is a completely  
2 separate issue. NRS 116.4117(6) allows a court to award reasonable attorney's fees to  
3 a prevailing party in a dispute alleging violations of NRS 116 or a community's  
4 governing documents. See Nev. Rev. Stat. § 116.3117. Civil actions under this section  
5 may be initiated by an association against its members, the declarant, or the community  
6 manager. Nev. Rev. Stat. §116.4117(2)(a). Civil actions may also be initiated by unit  
7 owners against the association, the declarant, or another unit owner. Nev. Rev. Stat.  
8 §116.4117(2)(a).

9           It is unclear why Plaintiff believes it could be entitled to attorney's fees under this  
10 provision. All of its claims against the HOA arise from activities which took place prior to  
11 the foreclosure sale, and therefore, before Plaintiff was a unit owner. Thus, even if  
12 Plaintiff were to prevail on its claims, it is unlikely to trigger the attorney fee provisions of  
13 this section.

14           **E. Plaintiff Misinterprets the Plain and Unambiguous Language of NRS**  
15           **116.4117(4).**

16           NRS 116.4117(5) specifically prohibits an award of punitive damages against a  
17 homeowners' association. Nev. Rev. Stat. § 116.4117(5) ("Punitive damages may not  
18 be awarded against: (a) The association ...") There are no exceptions to this statutory  
19 bar. See generally *id.* Notwithstanding this language, Plaintiff argues that NRS  
20 116.4117(4) creates an exception, where punitive damages "may be awarded for a  
21 willful and material failure to comply with any provision of [the] chapter ..." See  
22 Opposition, p. 32.

23           This reading of the statute is in direct contravention of both the plain and  
24 unambiguous language of the statute and the general rules of statutory interpretation.  
25 See generally *Nelson*, 163 P.3d at 425, citing *State, Div. of Ins. v. State Farm Mut.*  
26 *Auto. Ins. Co.*, 995 P.2d 482, 484–85, 116 Nev. 290, 293 (Nev.,2000) ("it is well  
27 established that when " 'the language of a statute is plain and unambiguous, and its  
28 meaning clear and unmistakable, there is no room for construction, and the courts are

1 not permitted to search for its meaning beyond the statute itself.'

2 Subsection (4) does not create a means to award punitive damages on a "case  
3 by case basis." See Opposition, p. 32:26-27. In fact, the first sentence of the subsection  
4 establishes that its provisions have no impact on the prohibition against an award of  
5 punitive damages set forth in subsection (5):

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

9 Nev. Rev. Stat. 116.4117(4) (emphasis added). Plaintiff's attempt to broaden  
10 subsection (4) by ignoring this prefatory language is misguided and impermissible.  
11 There is simply no statutory or judicial authority authorizing a court to award punitive  
12 damages against an association. Plaintiff's request must be dismissed accordingly.

13 **IV. CONCLUSION**

14 Based on the foregoing, the HOA respectfully requests this Court dismiss  
15 Plaintiff's complaint based on the grounds raised in its Motion.

16 DATED this 3<sup>rd</sup> day of December, 2019.

17 LIPSON NEILSON P.C.

18 */s/ Janeen Isaacson*

19 By:

20 J. William Ebert, Esq. (Bar No. 2697)  
Janeen V. Isaacson, Esq. (Bar No. 6429)  
9900 Covington Cross Drive, Suite 120  
21 Las Vegas, Nevada 89144

22 *Attorneys for Defendant,*  
23 *Green Valley South Owners Association*

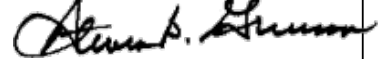
**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and Administrative Order 14-2, on the 3<sup>rd</sup> day of December, 2019, I electronically transmitted the foregoing **DEFENDANT GREEN VALLEY SOUTH OWNERS' ASSOCIATION'S REPLY TO DAISEY TRUST'S OPPOSITION TO MOTION TO DISMISS, OR ALTERNATIVELY, MOTION FOR PARTIAL SUMMARY JUDGMENT** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV& Serve registrants addressed to:

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|--|---|
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*/s/ Renee M. Rittenhouse*

\_\_\_\_\_  
An Employee of LIPSON NEILSON P.C.



1 RTRAN

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 \* \* \* \* \*

5  
6 DAISY TRUST,

7 Plaintiff,

8 vs.

9 GREEN VALLEY SOUTH OWNERS

10 ASSOCIATION NO. 1, NEVADA

11 ASSOCIATION SERVICES, INC.,

12 Defendants.

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CASE NO. A-19-791254-C

DEPT. NO. IX

**Transcript of Proceedings**

13 BEFORE THE HONORABLE CRISTINA D. SILVA, DISTRICT COURT JUDGE

14 **ALL PENDING MOTIONS**

15 TUESDAY, DECEMBER 10, 2019

16 APPEARANCES:

17 For the Plaintiff: ROGER P. CROTEAU, ESQ.

18 For Green Valley: JANEEN ISAACSON, ESQ.

19  
20  
21 RECORDED BY: GINA VILLANI, DISTRICT COURT

22 TRANSCRIBED BY: KRISTEN LUNKWITZ

23 Proceedings recorded by audio-visual recording; transcript  
24 produced by transcription service.

1 TUESDAY, DECEMBER 10, 2019 AT 9:09 A.M.

2

3 THE COURT: Calling case A-19-791254-C, *Daisy*  
4 *Trust versus Green Valley South Owners Association.*

5 MR. CROTEAU: Sorry, Your Honor. That would --  
6 our caption had this as Department 18 for both of us. I --

7 MS. ISAACSON: No. It was Department 8 initially.  
8 Then it became Department 9.

9 MR. CROTEAU: Weird.

10 THE COURT: Perhaps that's where the -- where it  
11 got confused. Okay.

12 MR. CROTEAU: Thank you.

13 THE COURT: No problem. Do you want us to put  
14 your appearances on the record?

15 MR. CROTEAU: Roger Croteau for the Daisy Trust,  
16 Your Honor. Bar number 4958.

17 THE COURT: Okay.

18 MS. ISAACSON: Good morning, Your Honor. Janeen  
19 Isaacson for Green Valley HOA.

20 THE COURT: All right. Thank you. All right. I  
21 have a few questions. So, I'm going to start with the  
22 plaintiff. I have a number of questions, so let's see  
23 here. My first question is: What is the -- what are you  
24 saying is the misrepresentation that the Green Valley South  
25 Homeowners Association made?

1           MR. CROTEAU: These Complaints are drafted against  
2 both the HOA and HOA trustee.

3           THE COURT: Right.

4           MR. CROTEAU: The agent of the HOA is the HOA  
5 trustee. The HOA trustee sold the property at the  
6 foreclosure sale. There were allegations of inquiry and  
7 that's in the Complaint. Inquiries to --

8           THE COURT: The allegation of inquiry being that  
9 Mr. Haddad always asked --

10          MR. CROTEAU: Always inquired.

11          THE COURT: Always inquired.

12          MR. CROTEAU: And attempted to ascertain whether  
13 or not a tender payment was made.

14          THE COURT: Okay.

15          MR. CROTEAU: We've been --

16          THE COURT: So, you're saying the  
17 misrepresentation was that they told him no?

18          MR. CROTEAU: Material omission. They failed --

19          THE COURT: They just didn't tell him anything at  
20 all.

21          MR. CROTEAU: They failed to disclose the fact  
22 that there was. And, pursuant to NRS 116.1113, there's a  
23 good faith obligations, there's a duty of candor, there's a  
24 duty of good faith and fair dealing. In addition to that,  
25 I cite the cases, frankly, Your Honor, *Foster* and so forth,

1 that says a material omission can and, in fact, would be a  
2 misrepresentation if it's material.

3 THE COURT: What about the fact that it -- there  
4 was no warranties on the property?

5 MR. CROTEAU: That's not true either. Basically,  
6 the deed is without warranty as to many issues. But not  
7 things known by the HOA and the HOA trustee. For example,  
8 in the deed, there's a specific language that says they  
9 have complied with all laws. NRS 113 applies to this sale.  
10 NRS 113 would require the HOA and the HOA trustee to  
11 disclose what they know about the property. What they know  
12 about the property is intrinsically the information we were  
13 looking for, which is: What's the status of the HOA  
14 payments, what's the status of the assessments, and whether  
15 or not there's been any payments made. That is on the  
16 SPDRF that I've attached as part of our exhibits.

17 I also attached as part of our exhibits the NRED's  
18 guidance document. At page 20, you'll find that even in  
19 107 sales, even after an exemption pursuant to statute  
20 under 113, for 107 sales only, not 116 sales, they are  
21 still finding there's an obligation for the bank, if they  
22 know something, to disclose what they know. I mean, --

23 THE COURT: Well, that was case law that was  
24 developed after this transaction would have taken place.  
25 Right?

1 MR. CROTEAU: No.

2 MS. ISAACSON: Yes.

3 MR. CROTEAU: No. That's actually incorrect.  
4 NRED's document -- maybe I'm not clear what you're asking.

5 THE COURT: So, providing information about a  
6 tender is something that came up --

7 MR. CROTEAU: It was codified in 2015 if that's  
8 your question. When I say codified, in 2015, the  
9 Legislature made a change and basically forced the HOAs to  
10 now disclose whether a tender payment was made five days  
11 prior to the disclosure sale in a disclosed document that's  
12 recorded.

13 THE COURT: Right.

14 MR. CROTEAU: That's the change.

15 THE COURT: But that wasn't the case and wasn't  
16 the law when this transaction took place. Right?

17 MR. CROTEAU: It -- the form document was not a  
18 requirement. That doesn't mean they didn't have an  
19 obligation to disclose. All that does is put it into a  
20 formal requirement in the statute that they do do that.

21 The issue in our case is -- and I've been in this  
22 space for 10 years. Or, maybe nine at this point. And the  
23 issue here is different. For example, I cite *Noonan* case,  
24 Your Honor, unpublished as it is. What *Noonan* actually  
25 says is that absent inquiry, absent a misrepresentation,

1 you have and can -- and don't have an obligation  
2 affirmatively to say something as the HOA trustee. That's  
3 what *Noonan* says.

4 But the issue in this case is: Is there a  
5 misrepresentation? It's a fact question.

6 THE COURT: All right. I understand that.

7 MR. CROTEAU: And it's a fact question as to  
8 omission. Now, this is a 12(b)(5) motion or, in the  
9 alternative, a summary judgment motion. Under the rules of  
10 this, you have to take the Complaint under 12(b)(5), the  
11 Complaint as fact. If you take the Complaint as fact, the  
12 allegations in the Complaint set up enough so that it's a  
13 fact question.

14 Secondly, it's always a fact question as to  
15 whether or not there was a representation or a  
16 misrepresentation by omission made. So, it shouldn't  
17 withstand summary judgment since there's been absolutely no  
18 discovery.

19 THE COURT: Well, it's going to withstand summary  
20 judgment unless I'm convinced otherwise as to some issues.  
21 I'll tell you, I don't believe there is a basis to maintain  
22 an action for civil conspiracy. I don't believe there  
23 could be a conspiracy between the HOA and the HOA trustee.  
24 I think that there's the intercorporate doctrine that would  
25 apply there, that that wouldn't apply. So, just so for --

1 MR. CROTEAU: Well, they're agents anyway. So, --

2 THE COURT: -- for purposes of this argument, I'm  
3 going to grant the Motion -- and this is -- I'm consistent.  
4 You can ask your colleagues who come before me. I'm  
5 consistent in granting the Motions to Dismiss. And I'm  
6 considering this under a Motion to Dismiss, so a 12(b)(5)  
7 motion, not a Motion for Summary Judgment, for the civil  
8 conspiracy. I don't see how the HOA and the HOA trustee  
9 can conspire with each other. I think it is fatally -- a  
10 fatally flawed argument.

11 So, then, the question is misrepresentation. And,  
12 so, I'm going to turn to -- I'm going to have a question on  
13 punitive damages. So, I'm going to turn to defense counsel  
14 regarding the misrepresentation and how do you overcome the  
15 question of fact at this point?

16 MS. ISAACSON: Your Honor, Janeen Isaacson --

17 THE COURT: Good morning.

18 MS. ISAACSON: -- again, for Green Valley. I  
19 think the important thing to remember here is this  
20 foreclosure sale took place in August of 2012. That was  
21 three years before the Nevada State Legislature enacted a -  
22 - he calls it a codification. I call it a law. He calls  
23 it a clarification. I call it our Legislature imposing a  
24 legal duty.

25 THE COURT: Which was different than it was in

1 2012.

2 MS. ISAACSON: Yes. And it was more than six  
3 years before our Nevada Supreme Court clarified that a bank  
4 could send a conditional tender that didn't include a  
5 dollar or a cent of any of the fees or costs allowable  
6 under NRS 116.

7 THE COURT: That's *SFR*. Right? Yeah.

8 MS. ISAACSON: Yes.

9 THE COURT: Because -- yeah.

10 MS. ISAACSON: Yes. And that that would have  
11 legal significance. Back in August of 2012, you had an  
12 association and its agent that not only didn't have a legal  
13 duty to disclose that information, in good faith they had  
14 no reason to believe there was any legal significance to  
15 the information.

16 THE COURT: But if somebody affirmatively asks,  
17 how is that not a violate -- a potential violation of  
18 acting in good faith and dealing if they affirmatively  
19 withheld that information or affirmatively gave  
20 misinformation?

21 MS. ISAACSON: You know, and that's another  
22 interesting point, Your Honor. And one we're not dealing  
23 with here because there is nothing before you in this  
24 Complaint that says who, what, where, when, and why. You  
25 have a blanket declaration that is in no manner and in no

1 way specific to August of 2012, to my Association, to that  
2 sale. No information. And he would have it. He gave you  
3 a declaration from the person that actually attended the  
4 sale. And the most information that they could put in that  
5 declaration is: Well, around that time we were asking and  
6 I'm sure somebody told me no. He can't tell you. And if  
7 he could have told you, he would have put it in the  
8 declaration.

9           And, absent the specifics, the who, what, when,  
10 where, when, and why, they can't maintain the cause of  
11 action. It requires it. How would the HOA ever defend  
12 against that? Well, who told you that? I don't know.  
13 Well, what did they say? I don't know. Well, where'd they  
14 say it? I don't know. How do you defend against something  
15 like that? You can't. And that is why the Nevada statutes  
16 require specificity for these types of causes of action, so  
17 the people being accused can defend themselves.

18           And I'll -- honestly, Your Honor, absent a time  
19 machine in the breakroom, there is not a set of facts here  
20 that can create the legal duty or the bad faith required  
21 for plaintiff to succeed on this case.

22           I understand that a 12(b)(5) motion is a hybrid  
23 and it should be. It's important because people have a  
24 right to bring their causes of action. But what this boils  
25 down to is this is the next wave of a plague from an owner

1 who didn't win in the first round of plagues. And he's  
2 bringing it against my nonprofit corporation that's made up  
3 of a bunch of homeowners that have already suffered enough  
4 and should not have to be dragged through something that is  
5 going to be proven not to have a legal basis. They've  
6 suffered enough, there is no claim here, and this case  
7 should be dismissed. And there have been multiple cases in  
8 other departments where these matters have been dismissed.

9           Now, I know this is going to go up to appeal and  
10 that's fine. We'll take it up to appeal because we'll win  
11 there, too. But they've suffered enough and there's no  
12 claim.

13           MR. CROTEAU: I appreciate counsel's circular  
14 argument that there's no case. But *Noonan* speaks  
15 otherwise. And, candidly, --

16           THE COURT: Well, *Noonan* was a separate set of  
17 facts, though.

18           MR. CROTEAU: No. Actually, it was almost as  
19 identical type of facts. Actually, the whole issue in  
20 these cases is very simple. And the reason this is coming  
21 up -- and, you know, I think it's kind of, I won't say  
22 circular, but certainly -- before *SFR*, okay, before  
23 September of '14, you never heard about a tender in your  
24 life. And any transaction you ever did in any bank  
25 disclosure, anything, from the HOA or anybody, you never

1 heard about tender. Tender only came up after the banks  
2 lost in *SFR*. However, they were making tenders from '10  
3 and '11, '12, '13, and '14, on an ongoing basis. According  
4 to Rock Jung, they put out 6,000 letters through Miles  
5 Bauer, 3,000 first letters and -- I'm sorry. Six thousand  
6 total letters and 3,000 second letters.

7           So, there is a definite basis on which this was  
8 withheld, this information, and that was part of the whole  
9 problem here. Otherwise, these would have been litigated a  
10 long, long ago. It's not our fault. All these tenders  
11 that came up -- and that's why we assert the discovery  
12 rule, particularly in this case, we didn't even know there  
13 was a tender in this case until 2-29-16. We have no basis  
14 of knowing.

15           For example, who knows about a tender, Your Honor?  
16 If the bank makes the tender, we are not allowed to ask the  
17 bank anything based upon lending laws and credit  
18 information issues. They will not talk to us as a buyer.  
19 The only persons that are available to us as a buyer is the  
20 HOA and the HOA trustee. The other ones solely possessive  
21 of that information -- it's not recorded anywhere, and if  
22 there's inquiry then there is an affirmative  
23 misrepresentation that they lied to you. Look, the statute  
24 doesn't allow them to lie. That's the whole point.

25           THE COURT: I think that the issue is was the

1 proof of the lie or the misrepresentation?

2 MR. CROTEAU: Well, this is a fact question --

3 THE COURT: I think that's the issue.

4 MR. CROTEAU: -- and I'm happy to address that.

5 THE COURT: Right. And I appreciate that. And  
6 that's where the Court is going to have an issue with where  
7 we are today. Let me move on because I have a couple  
8 people waiting.

9 MR. CROTEAU: Sorry.

10 THE COURT: And I want to talk about punitive  
11 damages. I don't see how punitive damages apply in this  
12 matter. But convince me otherwise.

13 MR. CROTEAU: Well, we did -- we had that under  
14 the misrepresentation theory, obviously. And, again, so  
15 counsel's aware --

16 THE COURT: But even if it was a  
17 misrepresentation, it would be different than a fraud.

18 MR. CROTEAU: Exactly. And I want to make that  
19 clear to the Court. When we say a -- well, and here's why  
20 I'm making a --

21 THE COURT: Okay.

22 MR. CROTEAU: I'm trying to identify that a little  
23 bit.

24 THE COURT: Sure.

25 MR. CROTEAU: The misrepresentation, you know,

1 does it rise to the level of a straight fraud? Or is it  
2 simply a misrepresentation and it's intentional? It is  
3 what it was intentional by nature not to disclose it,  
4 number one. And it is, number two, a misrepresentation.

5 THE COURT: But that's acting on the assumption  
6 that they did not disclose it. Right?

7 MR. CROTEAU: Correct. Correct. Correct. Well,  
8 I'm just assuming, you know, these are my facts and so  
9 forth, --

10 THE COURT: Yeah.

11 MR. CROTEAU: -- and that's what we're asserting.  
12 So, we satisfied the requirements of a misrepresentation.  
13 Now, did we allege specific fraud? No. But I do get  
14 punitives under misrepresentation. But, frankly, Your  
15 Honor, it's -- I don't -- it's provided under 116.4117.  
16 And that's all we cite in there is basically the theory for  
17 what the HOA could be responsible for, allegedly. And, no  
18 offense, I've used -- they've used the 116.4117 against me.  
19 So, if you look at it from that perspective, there is  
20 language within that section of the statute that provides  
21 for those damages. Of course, it's up to the Court. And,  
22 of course, it's whether or not the Court feels if it arises  
23 to that level. And it may not. However, it's a pleading  
24 file. I'm pleading my various allegations and that's all.

25 THE COURT: Okay.

1           MR. CROTEAU: And it was in my prayer for relief.  
2 Obviously, if there are special damages in these cases,  
3 there is. I mean, it's the -- the real measure of damage  
4 is we're stuck with a mortgage on the property that  
5 generally exceeds the value of the property. And, having  
6 known that at the time of the sale, my clients wouldn't  
7 have never purchased.

8           My clients were in the camp that developed the law  
9 that turned into *SFR* in 2014. We knew what our position  
10 was in at least 2010 and '11. And they weren't going in  
11 and buying known tenders because we -- we were under the  
12 impression, and we've been espousing this view for nine  
13 years, that we understood that if the HOA paid whatever  
14 that number was of superpriority payment, that the First  
15 Deed of Trust would be an encumbrance on the property. So,  
16 I mean, that's been the generation of all of this.

17           THE COURT: All right. Well, --

18           MS. ISAACSON: Your Honor, just briefly, if I may?

19           THE COURT: Yeah. Briefly.

20           MS. ISAACSON: And I know you have other matters  
21 to get to.

22           Talking about value of the property, it's  
23 interesting because this property is currently on the  
24 market for \$279,900. That's after they've had it for seven  
25 years as an investment property, after buying it in August

1 of 2012 for \$3,555. Even if you wanted to believe that  
2 there might be some scenario of facts that Mr. Haddad's  
3 going to hit his head, wake up from a coma, and suddenly  
4 remember the details of August of 2012, despite the fact  
5 that he's probably bought 1,000 properties in that year.  
6 Even then, let's play this to its logical conclusion. What  
7 are their damages? Seven years with an investment  
8 property, they paid 3,500 or so for, that they're now going  
9 to sell for almost \$300,000.

10 MR. CROTEAU: We had to pay off the first. She  
11 forgets that. And the first basically ate up all the  
12 profit.

13 MS. ISAACSON: Well, --

14 THE COURT: All right. Well, here's the issue.  
15 You all are moving in the areas that were not included into  
16 the moving papers. And that would take it to -- into the  
17 world of summary judgment. I'm not going to do that. I am  
18 going to still consider this a 12(b)(5) motion and look at  
19 the moving papers themselves. I've already granted the  
20 Motion to Dismiss for civil conspiracy. I am going to  
21 grant the request to dismiss a request for punitive  
22 damages. There isn't enough information to say that there  
23 was an intentional misrepresentation, which would rise to  
24 the level of fraud if at best there was a misrepresentation  
25 or potentially a material omission. But I am going to

1 allow the litigation to continue as to that issue,  
2 specifically the misrepresentation. That doesn't mean that  
3 counsel, you know, --

4 MR. CROTEAU: Just for clarity, Your Honor?

5 THE COURT: Yes.

6 MR. CROTEAU: I am -- respectfully, I understand.  
7 So, the first cause of action remains. The second cause of  
8 action is the NRS breach of good faith --

9 THE COURT: Good faith and fair dealing. That's  
10 going to stand.

11 MR. CROTEAU: Okay.

12 THE COURT: Because I think that's a -- that's the  
13 question.

14 MR. CROTEAU: Third action goes away. The fourth  
15 cause of action is NRS 113. It's as simply the same issue  
16 on the statute. And all -- it actually ties to 116.

17 THE COURT: The 113 talks about the breach of the  
18 covenants of --

19 MR. CROTEAU: No.

20 THE COURT: Well, maybe I'm looking at the wrong  
21 one.

22 MR. CROTEAU: No, no, no. No, Your Honor. If I  
23 may? 113 --

24 THE COURT: Which is the 113?

25 MR. CROTEAU: 113 is our statute that talks about

1 disclosures of residential sales of property and how it  
2 relates.

3 MS. ISAACSON: Your Honor, he's talking about the  
4 defect statute, where if a house has a construction defect  
5 --

6 THE COURT: Oh, yeah. That's right. Right.

7 MS. ISAACSON: -- you need to disclose it.

8 THE COURT: Right. Right. Right, right, right.  
9 Yes. Yes.

10 MS. ISAACSON: And he's arguing that a mortgage  
11 somehow represents a defect.

12 THE COURT: Yeah.

13 MS. ISAACSON: Which is --

14 THE COURT: Right. No.

15 MS. ISAACSON: That's not --

16 THE COURT: I'm going to grant the Motion to  
17 Dismiss as to that cause of action as well. Okay. That  
18 doesn't apply in this case.

19 MR. CROTEAU: Well, okay. But I will be citing  
20 that in the 116 section as their obligation to have  
21 complied with all law, which they did not. So, I'm just  
22 letting the Court know that. And, that's fine. But I also  
23 reference that in the 116 section.

24 THE COURT: All right.

25 MR. CROTEAU: Would you like me to prepare?

1 THE COURT: Yes. And confer with opposing  
2 counsel.

3 MR. CROTEAU: Of course. Thank you, Your Honor.

4 THE COURT: All right.

5 MS. ISAACSON: Thank you, Your Honor.

6 THE COURT: All right. I'm going to set this for  
7 30 days just to make sure I get that order.

8 MR. CROTEAU: Yes, Your Honor.

9 THE COURT: I'll put it on my chambers calendar.

10 MS. ISAACSON: And, Your Honor, we have an  
11 arbitration in January. So, I just ask that that be  
12 entered prior.

13 THE COURT: Okay. Do you know what day in  
14 January?

15 MS. ISAACSON: I believe it's the -- no. Wait.  
16 We're continuing everything?

17 MR. CROTEAU: Well, what the -- it's actually  
18 today. But, yeah, we're continuing. I forgot you were  
19 having this.

20 MS. ISAACSON: We don't have a date yet. I  
21 forgot. Sorry.

22 THE COURT: Okay. So, I'll have this on my  
23 chambers calendar early January. So, if we get it before  
24 then, I'll have it signed and we're good to go.

25 MR. CROTEAU: I'll get it then.

1 THE COURT: Okay. Great.  
2 MS. ISAACSON: Thank you.  
3 THE CLERK: On January 6<sup>th</sup>.  
4 THE COURT: January 6<sup>th</sup>.  
5 MS. ISAACSON: I appreciate your time, Your Honor.  
6 MR. CROTEAU: I'm actually getting staff back and,  
7 so, I'll definitely get it done. Thank you very much, Your  
8 Honor.  
9 THE COURT: Thank you.  
10 MR. CROTEAU: Have a nice day.  
11 THE COURT: You, too.  
12  
13 PROCEEDING CONCLUDED AT 9:30 A.M.  
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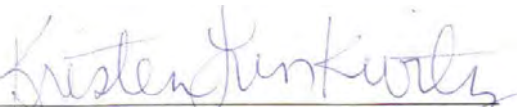
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**CERTIFICATION**

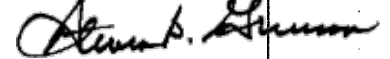
I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

**AFFIRMATION**

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



KRISTEN LUNKWITZ  
INDEPENDENT TRANSCRIBER



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7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 DAISY TRUST, a Nevada trust,

10 Plaintiff,

11 vs.

12 GREEN VALLEY SOUTH OWNERS  
13 ASSOCIATION NO. 1 and NEVADA  
14 ASSOCIATION SERVICES, INC., a domestic  
15 corporation,

16 Defendants.  
17

Case No. A-19-791254-C

Department 189

18 **ORDER GRANTING IN PART DEFENDANT GREEN VALLEY SOUTH**  
19 **HOMEOWNERS ASSOCIATION'S MOTION TO DISMISS**

20  
21 *Defendant Green Valley South Owners Association's Motion to Dismiss or, Alternatively,*  
22 *Motion for Partial Summary Judgment and Nevada Association Services, Inc.'s Joinder to*  
23 *Defendant Green Valley South Owners Association's Motion to Dismiss or, Alternatively, Motion*  
24 *For Partial Summary Judgment* came before the Court on December 10, 2019 at 8:30 a.m. Janeen  
25 V. Isaacson, Esq. appeared on behalf of Defendant Green Valley South Owners Association and  
26 Roger P. Croteau, Esq. appeared on behalf of Plaintiff Daisy Trust.

27 //

28 //

A-19-791254-C

**ORDER**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED for purposes of this Motion, the Court considered this as a Motion to Dismiss and not as a Motion for Summary Judgment, on the civil conspiracy cause of action the COURT ORDERED the Motion to Dismiss GRANTED as to the civil conspiracy cause of action solely.

IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED the COURT ORDERED the Motion to Dismiss DENIED as to the remainder of the allegations and the causes of actions asserted in the Complaint.

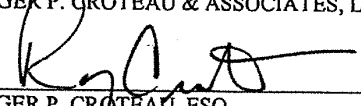
IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED that this matter be set for status check regarding receipt of Order in chambers on January 6, 2020.

DATED this 10<sup>th</sup> day of February, 2020.


  
DISTRICT COURT JUDGE

Submitted by:

February  
Dated: January 3, 2020  
ROGER P. GROTEAU & ASSOCIATES, LTD.

  
ROGER P. GROTEAU, ESQ.  
Nevada Bar No. 4958  
2810 W. Charleston Blvd., Ste. 75  
Las Vegas, Nevada 89102  
(702) 254-7775  
Attorneys for Plaintiff

Approved as to Form and Content

Dated: January 31, 2020  
LIPSON NEILSON P.C. #17621 FOR  
  
WILLIAM EBERT, ESQ.  
Nevada Bar No. 2697  
JANEEN V. ISAACSON, ESQ.  
Nevada Bar No. 6429  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144-7052  
Attorney for Defendant  
Green Valley South Owners Assoc., No. 1

Dated: January \_\_\_, 2020  
NEVADA ASSOCIATION SERVICES, INC.

NO Response  
BRANDON E. WOOD, ESQ.  
Nevada Bar No. 12900  
6625 S. Valley View Blvd., Suite 300  
Las Vegas, Nevada 89118  
Attorney for Defendant  
Nevada Association Services

**IN THE SUPREME COURT OF NEVADA**

DAISY TRUST, A NEVADA TRUST

Supreme Court Case No. 82611

Appellant,

v.

GREEN VALLEY SOUTH OWNERS  
ASSOCIATION NO. 1, A NEVADA  
NON-PROFIT CORPORATION;  
AND NEVADA ASSOCIATION  
SERVICES, A DOMESTIC  
CORPORATION

**JOINT APPENDIX**

**VOLUME 2**

Respondents.

Counsel for Appellant:

Roger P. Croteau, Esq.  
Nevada Bar No. 4958  
ROGER P. CROTEAU & ASSOCIATES, LTD.  
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Tel: (702) 254-7775  
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Email: croteaulaw@croteaulaw.com

## **INDEX OF APPENDIX – CHRONOLOGICAL**

| <b><u>DATE</u></b> | <b><u>DOCUMENT</u></b>   | <b><u>VOLUME</u></b> | <b><u>PAGE</u></b> |
|--------------------|--|----------------------|--------------------|
| 03/15/2019         | Complaint  | 1                    | JA001-18           |
| 03/21/2019         | Affidavit of Service-Nevada Association Services   | 1                    | JA0019             |
| 03/21/2019         | Affidavit of Service-Los Prados Community Association  | 1                    | JA0020             |
| 03/21/2019         | Affidavit of Service-Green Valley South Owners Association No. 1   | 1                    | JA0021             |
| 04/05/2019         | Green Valley South Owners Association No 1's Answer to Plaintiff's Complaint   | 1                    | JA0022-27          |
| 09/20/2019         | Defendant Green Valley South Owners' Association's Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment  | 1                    | JA0028-85          |
| 10/18/2019         | Nevada Association Services, INC.'s Joinder to Defendant Green Valley South Owners' Association's Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment                         | 1                    | JA0086-88          |
| 10/29/2019         | Plaintiff's Opposition to Green Valley South Owners Association's Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment and Nevada Association Services, INC.'s Joinder Thereto | 1                    | JA0089-205         |
| 12/03/2019         | Defendant Green Valley South Owners' Association's Reply to Daisy Trust's Opposition to Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment                                   | 1                    | JA0206-217         |
| 12/10/2019         | Transcript of Proceedings  | 1                    | JA0218-237         |
| 02/07/2020         | Order Granting in Part Defendant Green Valley South Homeowners Association's Motion to Dismiss   | 1                    | JA0238-239         |

|            |  |   |            |
|------------|--|---|------------|
| 02/07/2020 | Notice of Entry of Order   | 2 | JA0240-244 |
| 05/01/2020 | Nevada Association Services, INC.'s Answer to Complaint  | 2 | JA0245-254 |
| 10/25/2020 | Defendant Green Valley South Owners' Association's Renewed Motion to Dismiss, or Alternatively, Motion for Summary Judgment  | 2 | JA0255-294 |
| 10/29/2020 | Nevada Association Services, INC.'s Joinder to Defendant Green Valley South Owners' Association's Renewed Motion to Dismiss, or Alternatively, Motion for Summary Judgment                                 | 2 | JA0295-297 |
| 11/09/2020 | Plaintiff's Opposition to Green Valley South Owners Association's Renewed Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment and Nevada Association Services, INC.'s Joinder Thereto | 2 | JA0298-415 |
| 11/24/2020 | Defendant Green Valley South Owners' Association's Reply to Daisey Trust's Opposition to Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment  | 3 | JA416-566  |
| 12/1/2020  | Transcript of Proceedings  | 3 | JA0567-595 |
| 02/05/2021 | Findings of Fact, Conclusions of Law and Order on Defendant Green Valley South Owner's Association's Motion to Dismiss, or Alternatively Motion for Summary Judgment                                       | 3 | JA0596-612 |
| 02/16/2021 | Notice of Entry of Findings of Fact, Conclusions of Law and Order on Defendant Green Valley South Owner's Association's Motion to Dismiss, or Alternatively Motion for Summary Judgment                    | 3 | JA0613-632 |

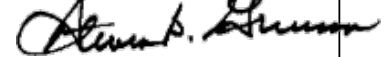
|            |                  |   |            |
|------------|------------------|---|------------|
| 03/09/2021 | Notice of Appeal | 3 | JA0633-635 |
|------------|------------------|---|------------|

### **INDEX OF APPENDIX – ALPHABETICAL**

| <b><u>DATE</u></b> | <b><u>DOCUMENT</u></b>   | <b><u>VOLUME</u></b> | <b><u>PAGE</u></b> |
|--------------------|--|----------------------|--------------------|
| 3/21/2019          | Affidavit of Service-Green Valley South Owners Association No. 1   | 1                    | JA0021             |
| 3/21/2019          | Affidavit of Service-Los Prados Community Association  | 1                    | JA0020             |
| 3/21/2019          | Affidavit of Service-Nevada Association Services   | 1                    | JA0019             |
| 3/15/2019          | Complaint  | 1                    | JA001-18           |
| 9/20/2019          | Defendant Green Valley South Owners' Association's Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment  | 1                    | JA0028-85          |
| 10/25/2020         | Defendant Green Valley South Owners' Association's Renewed Motion to Dismiss, or Alternatively, Motion for Summary Judgment  | 2                    | JA0255-294         |
| 12/3/2019          | Defendant Green Valley South Owners' Association's Reply to Daisey Trust's Opposition to Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment    | 1                    | JA0206-217         |
| 11/24/2020         | Defendant Green Valley South Owners' Association's Reply to Daisey Trust's Opposition to Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment    | 3                    | JA416-566          |
| 2/5/2021           | Findings of Fact, Conclusions of Law and Order on Defendant Green Valley South Owner's Association's Motion to Dismiss, or Alternatively Motion for Summary Judgment | 3                    | JA0596-612         |

|            |  |   |            |
|------------|--|---|------------|
| 4/5/2019   | Green Valley South Owners Association No 1's Answer to Plaintiff's Complaint   | 1 | JA0022-27  |
| 5/1/2020   | Nevada Association Services, INC.'s Answer to Complaint  | 2 | JA0245-254 |
| 10/18/2019 | Nevada Association Services, INC.'s Joinder to Defendant Green Valley South Owners' Association's Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment                         | 1 | JA0086-88  |
| 10/29/2020 | Nevada Association Services, INC.'s Joinder to Defendant Green Valley South Owners' Association's Renewed Motion to Dismiss, or Alternatively, Motion for Summary Judgment                         | 2 | JA0295-297 |
| 3/9/2021   | Notice of Appeal   | 3 | JA0633-635 |
| 2/16/2021  | Notice of Entry of Findings of Fact, Conclusions of Law and Order on Defendant Green Valley South Owner's Association's Motion to Dismiss, or Alternatively Motion for Summary Judgment            | 3 | JA0613-632 |
| 2/7/2020   | Notice of Entry of Order   | 2 | JA0240-244 |
| 2/7/2020   | Order Granting in Part Defendant Green Valley South Homeowners Association's Motion to Dismiss   | 1 | JA0238-239 |
| 10/29/2019 | Plaintiff's Opposition to Green Valley South Owners Association's Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment and Nevada Association Services, INC.'s Joinder Thereto | 1 | JA0089-205 |
| 11/9/2020  | Plaintiff's Opposition to Green Valley South Owners Association's Renewed Motion to Dismiss, or  | 2 | JA0298-415 |

|            |  |   |            |
|------------|--|---|------------|
|            | Alternatively, Motion for Partial Summary Judgment and Nevada Association Services, INC.'s Joinder Thereto |   |            |
| 12/10/2019 | Transcript of Proceedings  | 1 | JA0218-237 |
| 12/1/2020  | Transcript of Proceedings  | 3 | JA0567-595 |



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3 Las Vegas, Nevada 89102  
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4 (702) 228-7719 (facsimile)  
[croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)  
5 *Attorneys for Plaintiff*

6 **DISTRICT COURT**  
7 **CLARK COUNTY, NEVADA**

8 \*\*\*\*\*

9 DAISY TRUST, a Nevada trust,  
10  
Plaintiff,

Case No.: A-19-791254-C  
Department No. 9

11 vs.

12 GREEN VALLEY SOUTH OWNERS  
ASSOCIATION NO. 1 and NEVADA  
13 ASSOCIATION SERVICES, INC., a domestic  
14 corporation,

15 Defendants.

16 **NOTICE OF ENTRY OF ORDER**

17  
18 NOTICE IS HEREBY GIVEN that an *Order Granting in Part Defendant Green Valley*  
19 *South Homeowners Association's Motion to Dismiss* was entered in the above-entitled case on  
20 February 7, 2020. A true and accurate copy is attached.

21 DATED this 7<sup>th</sup> day of February, 2020.

22  
23 ROGER P. CROTEAU & ASSOCIATES, LTD.

24 /s/ Roger P. Croteau

25 ROGER P. CROTEAU, ESQ.  
Nevada Bar No. 4958  
26 2810 West Charleston Blvd., Suite 75  
27 Las Vegas, Nevada 89102  
(702) 254-7775  
28 *Attorney for Plaintiff*

1 **CERTIFICATE OF SERVICE**

2  
3 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee  
4 of ROGER P. CROTEAU & ASSOCIATES, LTD., and that on the 7<sup>th</sup> day of February, 2020, I  
5 caused a true and correct copy of the foregoing document to be served on all parties as follows:

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

8 William Ebert, Esq. [bebert@lipsonneilson.com](mailto:bebert@lipsonneilson.com)

9 Janeen V. Isaacson, Esq. [JIsaacson@lipsonneilson.com](mailto:JIsaacson@lipsonneilson.com)

10 Brandon E. Wood, Esq. [brandon@nas-inc.com](mailto:brandon@nas-inc.com)

11  
12        VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with  
13 postage thereon fully prepaid, addressed as indicated on service list below in the United  
14 States mail at Las Vegas, Nevada.

15        VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated  
16 On the service list below.

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

19 *Anna Gresh*

20 An employee of ROGER P. CROTEAU &  
21 ASSOCIATES, LTD  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT 1

# EXHIBIT 1

*Steven D. Grierson*

ROGER P. CROTEAU & ASSOCIATES, LTD.  
• 2810 West Charleston Blvd, Suite 75 • Las Vegas, Nevada 89102 •  
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

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(702) 228-7719 (facsimile)  
5 croteaulaw@croteaulaw.com  
6 *Attorney for Plaintiff*

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 DAISY TRUST, a Nevada trust,

10 Plaintiff,

11 vs.

12 GREEN VALLEY SOUTH OWNERS  
13 ASSOCIATION NO. 1 and NEVADA  
14 ASSOCIATION SERVICES, INC., a domestic  
15 corporation,

16 Defendants.  
17

Case No. A-19-791254-C

Department 189

18 ORDER GRANTING IN PART DEFENDANT GREEN VALLEY SOUTH  
19 HOMEOWNERS ASSOCIATION'S MOTION TO DISMISS

20  
21 *Defendant Green Valley South Owners Association's Motion to Dismiss or, Alternatively,*  
22 *Motion for Partial Summary Judgment and Nevada Association Services, Inc.'s Joinder to*  
23 *Defendant Green Valley South Owners Association's Motion to Dismiss or, Alternatively, Motion*  
24 *For Partial Summary Judgment* came before the Court on December 10, 2019 at 8:30 a.m. Janeen  
25 V. Isaacson, Esq. appeared on behalf of Defendant Green Valley South Owners Association and  
26 Roger P. Croteau, Esq. appeared on behalf of Plaintiff Daisy Trust.

27 //

28 //

A-19-791254-C

**ORDER**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED for purposes of this Motion, the Court considered this as a Motion to Dismiss and not as a Motion for Summary Judgment, on the civil conspiracy cause of action the COURT ORDERED the Motion to Dismiss GRANTED as to the civil conspiracy cause of action solely.

IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED the COURT ORDERED the Motion to Dismiss DENIED as to the remainder of the allegations and the causes of actions asserted in the Complaint.

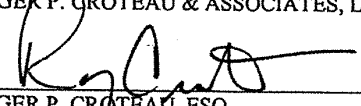
IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED that this matter be set for status check regarding receipt of Order in chambers on January 6, 2020.

DATED this 10<sup>th</sup> day of February, 2020.


  
DISTRICT COURT JUDGE

Submitted by:

February  
Dated: January 3, 2020  
ROGER P. GROTEAU & ASSOCIATES, LTD.

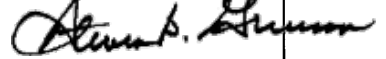
  
ROGER P. GROTEAU, ESQ.  
Nevada Bar No. 4958  
2810 W. Charleston Blvd., Ste. 75  
Las Vegas, Nevada 89102  
(702) 254-7775  
Attorneys for Plaintiff

Approved as to Form and Content

Dated: January 31, 2020  
LIPSON NEILSON P.C. #17621 FOR  
  
WILLIAM EBERT, ESQ.  
Nevada Bar No. 2697  
JANEEN V. ISAACSON, ESQ.  
Nevada Bar No. 6429  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144-7052  
Attorney for Defendant  
Green Valley South Owners Assoc., No. 1

Dated: January \_\_\_, 2020  
NEVADA ASSOCIATION SERVICES, INC.

NO Response  
BRANDON E. WOOD, ESQ.  
Nevada Bar No. 12900  
6625 S. Valley View Blvd., Suite 300  
Las Vegas, Nevada 89118  
Attorney for Defendant  
Nevada Association Services



1 ANS  
2 BRANDON E. WOOD  
3 Nevada State Bar Number 12900  
4 NEVADA ASSOCIATION SERVICES, INC.  
5 6625 S. Valley View Blvd. Suite 300  
6 Las Vegas, NV 89118  
7 Telephone: (702) 804-8885  
8 Facsimile: (702) 804-8887  
9 Email: brandon@nas-inc.com

10 *Attorney for Defendant Nevada Association*  
11 *Services, Inc.*

12 **DISTRICT COURT FOR THE STATE OF NEVADA**

13 **IN AND FOR THE COUNTY OF CLARK**

14 DAISEY TRUST, a Nevada trust,

15 Plaintiff,

16 vs.

17 GREEN VALLEY SOUTH OWNERS  
18 ASSOCIATION NO. 1, A Nevada non-profit  
19 corporation; and NEVADA ASSOCIATION  
20 SERVICES, INC., a domestic corporation;

21 Defendants.

CASE NO.: A-19-791254-C

DEPT. NO.: IX

**NEVADA ASSOCIATION SERVICES,  
INC.'S ANSWER TO COMPLAINT**

22 COMES NOW, Defendant NEVADA ASSOCIATION SERVICES, INC. (hereinafter  
23 "NAS"), by and through its attorneys, and files it's Answer to DAISEY TRUST'S Complaint as  
24 follows:

25 **PARTIES AND JURISDICTION**

26 1. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
27 the allegations in paragraph 1 and therefore must deny the allegation in its entirety.

28 2. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
the allegations in paragraph 2 and therefore must deny the allegation in its entirety.

3. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
the allegations in paragraph 3 and therefore must deny the allegation in its entirety.

1           4.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
2 the allegations in paragraph 4 and therefore must deny the allegation in its entirety.

3           5.     Defendant admits allegations in paragraph 5.

4           6.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
5 the allegations in paragraph 6 and therefore must deny the allegation in its entirety.

6           7.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
7 the allegations in paragraph 7 and therefore must deny the allegation in its entirety.

8                           **GENERAL ALLEGATIONS**

9           8.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
10 the allegations in paragraph 8 and therefore must deny the allegation in its entirety.

11          9.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
12 the allegations in paragraph 9 and therefore must deny the allegation in its entirety.

13          10.    Defendant lacks knowledge or information sufficient to form a belief about the truth of  
14 the allegations in paragraph 10 and therefore must deny the allegation in its entirety.

15          11.    Defendant lacks knowledge or information sufficient to form a belief about the truth of  
16 the allegations in paragraph 11 and therefore must deny the allegation in its entirety.

17          12.    Defendant lacks knowledge or information sufficient to form a belief about the truth of  
18 the allegations in paragraph 12 and therefore must deny the allegation in its entirety.

19          13.    Defendant lacks knowledge or information sufficient to form a belief about the truth of  
20 the allegations in paragraph 13 and therefore must deny the allegation in its entirety.

21          14.    Defendant lacks knowledge or information sufficient to form a belief about the truth of  
22 the allegations in paragraph 14 and therefore must deny the allegation in its entirety.

23                           **THE HOA LIEN AND FORECLOSURE**

24          15.    Defendant lacks knowledge or information sufficient to form a belief about the truth of  
25 the allegations in paragraph 15 and therefore must deny the allegation in its entirety.

26          16.    Defendant admits allegations in paragraph 16.

27          17.    Defendant admits allegations in paragraph 17.

28          18.    Defendant lacks knowledge or information sufficient to form a belief about the truth of

1 the allegations in paragraph 18 and therefore must deny the allegation in its entirety.

2 19. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
3 the allegations in paragraph 19 and therefore must deny the allegation in its entirety.

4 20. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
5 the allegations in paragraph 20 and therefore must deny the allegation in its entirety.

6 21. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
7 the allegations in paragraph 21 and therefore must deny the allegation in its entirety.

8 22. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
9 the allegations in paragraph 22 and therefore must deny the allegation in its entirety.

10 23. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
11 the allegations in paragraph 23 and therefore must deny the allegation in its entirety.

12 24. Defendant admits allegations in paragraph 24.

13 25. Defendant admits allegations in paragraph 25.

14 26. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
15 the allegations in paragraph 26 and therefore must deny the allegation in its entirety.

16 27. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
17 the allegations in paragraph 27 and therefore must deny the allegation in its entirety.

18 28. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
19 the allegations in paragraph 28 and therefore must deny the allegation in its entirety.

20 29. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
21 the allegations in paragraph 29 and therefore must deny the allegation in its entirety.

22 30. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
23 the allegations in paragraph 30 and therefore must deny the allegation in its entirety.

24 31. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
25 the allegations in paragraph 31 and therefore must deny the allegation in its entirety.

26 32. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
27 the allegations in paragraph 32 and therefore must deny the allegation in its entirety.

28

1           33. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
2 the allegations in paragraph 33 and therefore must deny the allegation in its entirety.

3           34. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
4 the allegations in paragraph 34 and therefore must deny the allegation in its entirety.

5           35. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
6 the allegations in paragraph 35 and therefore must deny the allegation in its entirety.

7           36. Defendant admits allegations in paragraph 36.

8           37. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
9 the allegations in paragraph 37 and therefore must deny the allegation in its entirety.

10          38. Defendant denies allegations in paragraph 38.

11          39. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
12 the allegations in paragraph 39 and therefore must deny the allegation in its entirety.

13          40. Defendant denies allegations in paragraph 40.

14          41. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
15 the allegations in paragraph 41 and therefore must deny the allegation in its entirety.

16                                   **FIRST CAUSE OF ACTION**

17          42. NAS adopts and incorporates by reference its responses to the preceding paragraphs of  
18 Plaintiff's complaint as if set forth fully herein.

19          43. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
20 the allegations in paragraph 43 and therefore must deny the allegation in its entirety.

21          44. Defendant denies allegations in paragraph 44.

22          45. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
23 the allegations in paragraph 45 and therefore must deny the allegation in its entirety.

24          46. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
25 the allegations in paragraph 46 and therefore must deny the allegation in its entirety.

26          47. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
27 the allegations in paragraph 47 and therefore must deny the allegation in its entirety.

1           48.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
2 the allegations in paragraph 48 and therefore must deny the allegation in its entirety.

3           49.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
4 the allegations in paragraph 49 and therefore must deny the allegation in its entirety.

5           50.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
6 the allegations in paragraph 50 and therefore must deny the allegation in its entirety.

7           51.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
8 the allegations in paragraph 51 and therefore must deny the allegation in its entirety.

9           52.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
10 the allegations in paragraph 52 and therefore must deny the allegation in its entirety.

11          53.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
12 the allegations in paragraph 53 and therefore must deny the allegation in its entirety.

13          54.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
14 the allegations in paragraph 54 and therefore must deny the allegation in its entirety.

15          55.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
16 the allegations in paragraph 55 and therefore must deny the allegation in its entirety.

17          56.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
18 the allegations in paragraph 56 and therefore must deny the allegation in its entirety.

19          57.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
20 the allegations in paragraph 57 and therefore must deny the allegation in its entirety.

21          58.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
22 the allegations in paragraph 58 and therefore must deny the allegation in its entirety.

23          59.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
24 the allegations in paragraph 59 and therefore must deny the allegation in its entirety.

25          60.     Defendant denies allegations in paragraph 60.

26          61.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
27 the allegations in paragraph 61 and therefore must deny the allegation in its entirety.

28

1           62. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
2 the allegations in paragraph 62 and therefore must deny the allegation in its entirety.

3           63. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
4 the allegations in paragraph 63 and therefore must deny the allegation in its entirety.

5           64. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
6 the allegations in paragraph 64 and therefore must deny the allegation in its entirety.

7           65. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
8 the allegations in paragraph 65 and therefore must deny the allegation in its entirety.

9           66. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
10 the allegations in paragraph 66 and therefore must deny the allegation in its entirety.

11           67. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
12 the allegations in paragraph 67 and therefore must deny the allegation in its entirety.

13           68. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
14 the allegations in paragraph 68 and therefore must deny the allegation in its entirety.

15           69. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
16 the allegations in paragraph 69 and therefore must deny the allegation in its entirety.

17           70. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
18 the allegations in paragraph 70 and therefore must deny the allegation in its entirety.

19                                   **SECOND CAUSE OF ACTION**

20           71. NAS adopts and incorporates by reference its responses to the preceding paragraphs of  
21 Plaintiff's complaint as if set forth fully herein.

22           72. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
23 the allegations in paragraph 72 and therefore must deny the allegation in its entirety.

24           73. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
25 the allegations in paragraph 73 and therefore must deny the allegation in its entirety.

26           74. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
27 the allegations in paragraph 74 and therefore must deny the allegation in its entirety.

75. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 75 and therefore must deny the allegation in its entirety.

76. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 76 and therefore must deny the allegation in its entirety.

77. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 77 and therefore must deny the allegation in its entirety.

78. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 78 and therefore must deny the allegation in its entirety.

79. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 79 and therefore must deny the allegation in its entirety.

80. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 80 and therefore must deny the allegation in its entirety.

81. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 81 and therefore must deny the allegation in its entirety.

### **THIRD CAUSE OF ACTION**

82. NAS adopts and incorporates by reference its responses to the preceding paragraphs of Plaintiff's complaint as if set forth fully herein.

83. On or about February 6, 2020 the Court ordered Defendant Green Valley South Owners Association No. 1's Motion to Dismiss granted as to the civil conspiracy cause of action solely, to which Defendant Nevada Association Services, Inc. filed a Joinder. To the extent a response is required, Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 83 and therefore must deny the allegation in its entirety.

84. On or about February 6, 2020 the Court ordered Defendant Green Valley South Owners Association No. 1's Motion to Dismiss granted as to the civil conspiracy cause of action solely, to which Defendant Nevada Association Services, Inc. filed a Joinder. To the extent a response is required, Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 84 and therefore must deny the allegation in its entirety.

1           85.     On or about February 6, 2020 the Court ordered Defendant Green Valley South Owners  
2 Association No. 1's Motion to Dismiss granted as to the civil conspiracy cause of action solely, to  
3 which Defendant Nevada Association Services, Inc. filed a Joinder. To the extent a response is  
4 required, Defendant lacks knowledge or information sufficient to form a belief about the truth of the  
5 allegations in paragraph 85 and therefore must deny the allegation in its entirety.

6           86.     On or about February 6, 2020 the Court ordered Defendant Green Valley South Owners  
7 Association No. 1's Motion to Dismiss granted as to the civil conspiracy cause of action solely, to  
8 which Defendant Nevada Association Services, Inc. filed a Joinder. To the extent a response is  
9 required, Defendant lacks knowledge or information sufficient to form a belief about the truth of the  
10 allegations in paragraph 86 and therefore must deny the allegation in its entirety.

11           87.     On or about February 6, 2020 the Court ordered Defendant Green Valley South Owners  
12 Association No. 1's Motion to Dismiss granted as to the civil conspiracy cause of action solely, to  
13 which Defendant Nevada Association Services, Inc. filed a Joinder. To the extent a response is  
14 required, Defendant lacks knowledge or information sufficient to form a belief about the truth of the  
15 allegations in paragraph 87 and therefore must deny the allegation in its entirety.

16                           **FOURTH CAUSE OF ACTION**

17           89.     NAS adopts and incorporates by reference its responses to the preceding paragraphs of  
18 Plaintiff's complaint as if set forth fully herein.

19           90.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
20 the allegations in paragraph 90 and therefore must deny the allegation in its entirety.

21           91.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
22 the allegations in paragraph 91 and therefore must deny the allegation in its entirety.

23           92.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
24 the allegations in paragraph 92 and therefore must deny the allegation in its entirety.

25           93.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
26 the allegations in paragraph 93 and therefore must deny the allegation in its entirety.

27           94.     Defendant lacks knowledge or information sufficient to form a belief about the truth of  
28 the allegations in paragraph 94 and therefore must deny the allegation in its entirety.

1           95. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
2 the allegations in paragraph 95 and therefore must deny the allegation in its entirety.

3           96. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
4 the allegations in paragraph 96 and therefore must deny the allegation in its entirety.

5           97. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
6 the allegations in paragraph 97 and therefore must deny the allegation in its entirety.

7           98. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
8 the allegations in paragraph 98 and therefore must deny the allegation in its entirety.

9           99. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
10 the allegations in paragraph 99 and therefore must deny the allegation in its entirety.

11          100. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
12 the allegations in paragraph 100 and therefore must deny the allegation in its entirety.

13          101. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
14 the allegations in paragraph 101 and therefore must deny the allegation in its entirety.

15          102. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
16 the allegations in paragraph 102 and therefore must deny the allegation in its entirety.

17          103. Defendant lacks knowledge or information sufficient to form a belief about the truth of  
18 the allegations in paragraph 103 and therefore must deny the allegation in its entirety.

19          Dated this 1<sup>st</sup> day of May, 2020

20  
21 By: 

22 BRANDON E. WOOD  
23 Nevada State Bar Number 12900  
24 NEVADA ASSOCIATION SERVICES, INC.  
25 6625 S. Valley View Blvd. Suite 300  
26 Las Vegas, NV 89118  
27 *Attorney for Defendant Nevada Association*  
28 *Services, Inc.*

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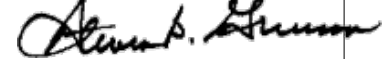
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1<sup>st</sup> day of May, 2020, and pursuant to N.R.C.P. 5(b), I served a true and correct copy of the foregoing *Nevada Association Services, Inc. 's Answer to Complaint* upon the parties listed below and all parties/counsel set up to receive notice via electronic service in this matter in the following manner:

- ☐ Hand Delivery
- ☐ Facsimile Transmission
- ☐ U.S. Mail, Postage Pre-Paid
- ☒ Served upon opposing counsel via the Court's electronic service system to the following counsel of record:

|  |   |
|--|---|
| Roger Croteau, Esq.<br><u>croteaulaw@croteaulaw.com</u>                          | Timothy Rhoda, Esq.<br><u>tim@croteaulaw.com</u>    |
| Janeen V. Isaacson, Esq.<br>Lipson Neilson<br><u>jisaacson@lipsonneilson.com</u> | Croteau Admin<br><u>receptionist@croteaulaw.com</u> |

/s/Susan E. Moses  
Employee of Nevada Association Services, Inc.



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*Attorneys for Defendant,  
Green Valley South Owner's Association*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

DAISY TRUST, a Nevada trust  
Plaintiff,

vs.

GREEN VALLEY SOUTH OWNERS  
ASSOCIATION NO. 1, a Nevada non-  
profit corporation; and NEVADA  
ASSOCIATION SERVICES, INC., a  
domestic corporation;  
Defendants.

Case No.: A-19-791254-C  
Dept.: IX

HEARING REQUESTED

**DEFENDANT GREEN VALLEY SOUTH  
OWNERS' ASSOCIATION'S RENEWED  
MOTION TO DISMISS, OR  
ALTERNATIVELY, MOTION FOR  
SUMMARY JUDGMENT**

COMES NOW, Defendant Green Valley South Owners' Association ("Defendant" or "Green Valley") by and through its counsel of record, LIPSON NEILSON P.C., and hereby submits its Renewed Motion to Dismiss, or alternatively, Motion for Summary Judgment on Plaintiff Daisy Trust's Complaint ("Motion").

Green Valley filed its original Motion to Dismiss on September 20, 2019. That motion was heard by the Court on December 10, 2019. The Court partially granted the Motion as to the Third Cause of Action for Conspiracy and denied the Motion with respect to the remaining causes of action. This Motion is being brought based on additional facts and new case law from the Nevada Supreme Court which support a

1 Dismissal of the remainder of the case.

2 This Motion is made and based upon the following Memorandum of Points and  
3 Authorities, the papers and pleadings on file, and any oral argument that may be  
4 presented in this matter.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. INTRODUCTION**

7 For more than a year, owners have been filing direct actions against Homeowner  
8 Associations across the valley claiming they were owed the full amount of deeds of trust  
9 found by the Courts to remain intact following non-judicial foreclosure sales due to  
10 contingent tenders made by banks prior to the sales. Now the Nevada Supreme Court  
11 has provided guidance in a series of decisions which hold that the Homeowner  
12 Associations and their agents had no duty to proactively disclose attempted super-  
13 priority tenders made by the holders of Deeds of Trust.

14 In this specific case, a non-judicial foreclosure sale was conducted at 137  
15 Elegante Way in Henderson, Nevada 89074 ("the Property") on August 31, 2012. At the  
16 time of the sale, Bank of America, N.A. ("BANA") held a Deed of Trust encumbering the  
17 Property. After receiving the Notice of Sale recorded by Nevada Association Services,  
18 Inc. ("NAS") on behalf of Green Valley, BANA made a conditional tender of the  
19 superpriority portion of the delinquent assessment lien. NAS rejected the tender and  
20 proceeded with the sale. The highest bidder at the sale was Daisy Trust who received a  
21 non-warranty deed in exchange for payment of \$3,555.

22 Daisy Trust filed its Complaint alleging that Green Valley and NAS acted  
23 fraudulently, in violation of NRS 116 and NRS 113, by selling the Property without  
24 disclosing BANA's conditional tender. Daisy Trust further claimed it would not have  
25 purchased the Property had it known the tender existed. Based on recent Supreme  
26 Court cases, these arguments are without merit and the Court should dismiss Daisy  
27 Trust's Complaint.

28 ///

1     **II.     STATEMENT OF UNDISPUTED MATERIAL FACTS**

2             On June 5, 2008, Dennis L. Scott ("Borrower") obtained a loan to purchase the  
3     Property from CTX Mortgage Company, LLC. See Complaint ¶¶ 12. The loan was  
4     secured by a Deed of Trust which was recorded with the Clark County Record's Office  
5     on June 27, 2008. *Id.* The Deed of Trust designated Mortgage Electronic Registration  
6     Services as beneficiary. *Id.* MERS, on behalf of Lender, subsequently assigned its  
7     beneficial interest by Assignment of Deed of Trust to BANA which was recorded on  
8     October 5, 2011. See Complaint ¶¶ 14.

9             The Borrower subsequently defaulted on his homeowners' assessments. See  
10    Complaint ¶ 15. On August 23, 2011, Green Valley, through Nevada Association  
11    Services, Inc. ("NAS"), recorded a notice of delinquent assessment lien. *Id.* ¶ 16. On  
12    November 18, 2011, Green Valley, through NAS, recorded a notice of default and  
13    election to sell. See *Complaint* ¶¶ 17. On or around April 23, 2012, Green Valley,  
14    through NAS, recorded a Notice of Sale. See Complaint ¶ 24.

15            On February 2, 2012, Miles Bauer sent NAS a letter offering to pay \$882 to  
16    discharge Green Valley's super-priority lien on the Property and included a check for  
17    that amount. See Complaint ¶ 22. NAS rejected the offer on Green Valley's behalf. See  
18    *Complaint* ¶¶ 23.

19            Between February 2, 2012 and August 31, 2012, NAS received no inquiries from  
20    potential bidders asking if there had been a tender of the super priority lien with respect  
21    to the Property. See, *NAS Phone Notes*, attached hereto as **Exhibit 1.** (GVS000222).  
22    See also, *Responses to Requests for Admissions by NAS*, attached hereto as **Exhibit**  
23    **2.** See also, *Responses to Requests for Admissions by GVS*, attached hereto as  
24    **Exhibit 3.**

25            On or around August 31, 2012, Green Valley, through NAS, held a non-judicial  
26    foreclose sale with respect to the Property. Eddie Haddad ("Haddad") is the Manager of  
27    the Resources Group, LLC, the Trustee of Daisy Trust. See Complaint ¶ 25 and  
28    *Declaration of Eddie Haddad* ("Declaration"), attached hereto as **Exhibit 4.** (Exhibit A to

1 Opposition filed on October 29, 2019). A representative for Daisy Trust was in  
2 attendance at the foreclosure sale. No inquiries were made at the sale about any  
3 attempted tender of the super priority lien. See Exhibit 2.

4 Both the Complaint and Declaration of Haddad are devoid of any facts regarding  
5 a specific inquiry made about a tender of the super-priority lien at this foreclosure sale  
6 to contradict discovery submitted by NAS and Green Valley confirming no such inquiries  
7 were made prior to or during the sale. Daisy Trust was the winning bid at the sale and a  
8 non-warranty deed was recorded on September 7, 2012. *Id.*

9 **III. RELEVANT PROCEDURAL BACKGROUND**

10 On February 29, 2016, BANA filed a lawsuit against Green Valley, NAS, and  
11 Daisy Trust in the United States District Court, District of Nevada, Case No. 2:16-cv-  
12 00424-JCM-PAL ("Federal Action"). The complaint alleged causes of action for Quiet  
13 Title/Declaratory Relief, Breach of NRS 116.1113, Wrongful Foreclosure, and Injunctive  
14 Relief.

15 Green Valley, Daisy Trust, and BANA filed competing motions for summary  
16 judgment. On February 1, 2019, the district court in the Federal Action issued an order  
17 granting summary judgment in Green Valley's favor on the causes of action of Breach of  
18 NRS 116 and Wrongful Foreclosure.

19 On May 13, 2019, after additional briefing by the parties, the district court in the  
20 Federal Action issued an order granting summary judgment in BANA's favor on its  
21 cause of action for quiet title finding that the deed of trust was not extinguished by the  
22 non-judicial foreclosure sale. An Amended Judgement was entered on the same date  
23 and the case was closed.

24 On March 15, 2019, Daisy Trust filed a Complaint alleging causes of action for  
25 Intentional/Negligent Misrepresentation, Breach of NRS 116, Conspiracy and Breach of  
26 NRS 113. On April 5, 2019, Green Valley filed an Answer to the Complaint.

27 On September 20, 2019, Green Valley filed a Motion to Dismiss, or in the  
28 alternative, Motion for Summary Judgment. Daisy Trust filed an Opposition on October

29, 2019. On February 7, 2020, a Notice of Entry of Order was issued granting the Motion to Dismiss as to Count Three of Conspiracy and denied the Motion to Dismiss as to all remaining claims.

#### **IV. STANDARD OF REVIEW**

##### **A. NRCP 12(b)(5)**

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

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

##### **B. NRCP 56(b)**

“The purpose of summary judgment is to pierce the pleading and to assess the proof in order to see whether there is a genuine need for trial.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Summary judgment is appropriate when pleadings, the discovery and disclosure materials on file, and any affidavits show “there is no genuine disputes as to any material fact and the movant is entitled to judgment as a matter of law.” Nev. R. Civ. P. 56(b); see also *Celotex v. Catrett*, 477

1 U.S. 317, 330 (1986); *Boland v. Nevada Rock & Sand Co.*, 111 Nev. 608, 610, 894 P.2d  
2 988 (1995).

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

10 An issue is only genuine if there is a sufficient evidentiary basis for a reasonable  
11 jury to return a verdict for the nonmoving party. *Anderson*, 477 U.S. at 248 (1986).  
12 Further, a dispute will only preclude the entry of summary judgment if it could affect the  
13 outcome of the suit under governing law. *Id.* “The amount of evidence necessary to  
14 raise a genuine issue of material fact is enough to require a judge or jury to resolve the  
15 parties’ differing versions of the truth at trial.” *Id.* at 249. In evaluating a summary  
16 judgment motion, a court views all facts and draws all inferences in a light most  
17 favorable to the nonmoving party. *Kaiser Cement Corp. v. Fischbach & Moore, Inc.*,  
18 793 F.2d 100, 1103 (9th Cir. 1986). Where one “essential element of a claim for relief is  
19 absent, the facts, disputed or otherwise, as to other elements are rendered immaterial  
20 and summary judgment is proper.” *Bulbman Inc. v. Nevada Bell*, 108 Nev. 105, 111,  
21 825 P.2d at 592 (1992).

22 The Nevada Supreme Court recently took the opportunity to emphasize the  
23 important role of summary judgment in promoting sound judicial economy and reminded  
24 District Courts that “summary judgment can be a valuable tool to discourage protracted  
25 and meritless litigation of factually insufficient claims. In dispensing with frivolous  
26 actions through summary judgment, courts promote the important policy objectives of  
27 sound judicial economy and enhance the judiciary’s capacity to effectively and efficiently  
28 adjudicate legitimate claims.” *Boesiger v. Desert Appraisals, LLC*, 444 P.3d 436, 441

1 (Nev. 2019) (July 3, 2019). In essence, the Nevada Supreme Court in *Boesiger* was  
2 reminding District Courts that it should not be afraid to grant summary judgment when  
3 necessary.

4 It is the non-moving party's burden to "come forward with specific facts showing  
5 that there is a genuine issue for trial." *Id.* at 587; see also *Wood v. Safeway, Inc.*, 121  
6 Nev. 724 (2005), citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d  
7 82 (2002).

8 **V. LEGAL ARGUMENT**

9 **A. Daisy Trust's Claims for Intentional, or Alternatively Negligent**  
10 **Misrepresentation Fail as a Matter of Law.**

11 Plaintiff's claim for misrepresentation can only be established in two ways. The  
12 first would be to provide facts and credible evidence supporting an affirmative statement  
13 that meets the following required elements: (1) a false representation was made by the  
14 defendant; (2) defendant's knowledge or belief that its representation was false or that  
15 defendant has an insufficient basis of information for making the representation; (3)  
16 defendant intended to induce plaintiff to act or refrain from acting upon the  
17 misrepresentation; and (4) damage to the plaintiff as a result of relying on the  
18 misrepresentation. *Barnettler v. Reno Air, Inc.*, 956 P.2d 1382, 1386, 114 Nev. 441,  
19 447 (Nev.,1998); *Blanchard v. Blanchard*, 108 Nev. 908, 839 P.2d 1320 (1992). The  
20 circumstances that must be detailed in a complaint alleging fraud include averments as  
21 to time, place, identity of the parties involved, and the nature of the fraud or mistake,  
22 malice, intent, knowledge and other conditions of the mind of a person may be averred  
23 generally. *Brown v. Kellar*, 97 Nev. 582, 636 P.2d 874 (1981).

24 This case fails with respect to all elements. First, there are no allegations of any  
25 specific false representation made by Green Valley South or NAS in either Daisy Trust's  
26 Complaint or Declaration of Haddad before or during the foreclosure sale to a Daisy  
27 Trust representative. The only affirmative representations made were included in the  
28 Foreclosure Deed which states that the Property was sold "without warranty expressed

1 or implied” as required by NRS 116.31164(3)(a) as it existed at the time of the sale. See  
2 Nev. Rev. Stat. § 116.31164(3)(a)(“Make, execute and, after payment is made, deliver  
3 to the purchaser, or his or her successor or assign, a deed without warranty which  
4 conveys to the grantee all title of the unit’s owner to the unit;”).

5 This second method which is the one relied upon by Plaintiff in its Complaint,  
6 Declaration and other pleadings and discovery has been the allegation that Green  
7 Valley, through NAS, had a duty to disclose the existence of the Miles Bauer tender of  
8 the superpriority lien amount to all bidders prior to the sale. Plaintiff alleges the failure  
9 to disclose the tender represented an omission of material fact that Green Valley South  
10 and NAS had a duty to disclose under NRS 116 and NRS 113. See *Nelson v. Heer*,  
11 123 Nev. 217, 225, 163 P.3d 420, 426 (2007) (“[T]he suppression or omission of a  
12 material fact which a party is bound in good faith to disclose is equivalent to a false  
13 representation.”

14 It is true that NRS 116.1113 imposes a duty of good faith in the performance of  
15 every contract or duty governed by the statute. Nev. Rev. Stat. § 116.1113. However,  
16 the only “duties” owed Daisy Trust are outlined in sections 116.3116 through  
17 116.31168. Green Valley complied with these duties by complying with all notice and  
18 recording requirements set forth in NRS 116 as it existed at the time of the sale.  
19 Granemore was not required to disclose the existence of a pre-sale tender of the  
20 superpriority portion of the lien.

21 The 2015 Legislature substantially revised NRS 116, see 2015 Nev. Stat., Ch.  
22 266. Under the current version of the statute, an HOA is required to record satisfaction  
23 of the superpriority lien at least 5 days before the date of sale. See Nev. Rev. Stat. §  
24 116.31164(2). The current version of the statute, however, is not controlling here. The  
25 version that applies is the version that was in effect at the time of the events giving rise  
26 to this action. The Nevada Supreme Court has agreed with this analysis. See *Noonan*  
27 *v. Bayview Loan Servicing, LLC*, 2019 Nev. Unpub. LEXIS 428, 438 P.3d 335, 2019 WL  
28

1 1552690, citing: “*See Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 394, 400,  
2 302 P.3d 1148, 1153 (2013) (providing the elements for a negligent misrepresentation  
3 claim, one of which is “supply[ing] false information” (internal quotation marks omitted));  
4 *See also A Oro, LLC v. Ditech Financial LLC*, 2019 WL 913129, 434 P.3d 929 (Nev.  
5 2019) (unpublished).  
6

7 On October 16, 2020, the Nevada Supreme Court came out with five decisions in  
8 similar cases where the owners alleged such a duty on the part of the HOA and its  
9 agent. In each of those cases, the Court stated “In particular, appellant’s claims for  
10 misrepresentation and breach of NRS 116.1113 fail because respondents had no duty  
11 to proactively disclose whether a superpriority tender had been made.” In a footnote, the  
12 Court further clarified that there were no allegations of any specific inquiry at the  
13 particular foreclosure sale. The Court also compared the language in pre-2015 NRS  
14 116.31162 with NRS 116.31162(1)(b)(3)(II) (2017) (requiring an HOA to disclose if  
15 tender of the superpriority portion of the lien has been made) noting that only the later  
16 version of the statute contains this requirement. *See Saticoy Bay, LLC, Series 11339*  
17 *Colinward, A Nevada Limited Liability Company vs. Travata and Montage at Summerlin*  
18 *Centre Homeowners Association, et. al.* (Case No. 80162) (2020); *See Saticoy Bay,*  
19 *LLC, Series 3123 Inlet Bay vs. Genevieve Court Homeowners Association, et. al.* (Case  
20 No. 80135) (2020); *See Saticoy Bay, LLC, Series 8320 Bermuda Beach, A Nevada*  
21 *Limited Liability Company vs. South Shores Community Homeowners Association, et.*  
22 *al.* (Case No. 80165) (2020); *See Saticoy Bay, LLC, Series 6408 Hillside Brook, A*  
23 *Nevada Limited Liability Company vs. Mountain Gate Homeowners Association, et. al.*  
24 (Case No. 80134) (2020); *See Saticoy Bay, LLC, Series 8920 El Diablo, A Nevada*  
25 *Limited Liability Company vs. Silverstone Ranch Homeowners Association, et. al.* (Case  
26 No. 80039) (2020).

27 ///

28 ///

**B. Daisy Trust's Claim for Breach of NRS 116.1113 Must Be Dismissed Because Green Valley, through NAS, complied with the Requirements of NRS 116 as They Existed at the Time of the Sale.**

Daisy Trust alleges that Green Valley breached its duty of good faith under NRS 116.1113 by failing to disclose the existence of the Miles Bauer tender. See Complaint ¶¶ 71 – 81. It is true that NRS 116.1113 imposes a duty of good faith in the performance of every contract or duty governed by the statute. Nev. Rev. Stat. § 116.1113. However, the only “duties” owed to Daisy Trust are outlined in sections 116.3116 through 116.31168. Green Valley complied with these duties by complying with all notice and recording requirements set forth in NRS 116 as it existed at the time of the sale. Green Valley was not required to disclose the existence of a pre-sale tender of the superpriority portion of the lien.

As discussed above, the Nevada Supreme Court has clearly set forth that Homeowner's Associations and their agents had no duty to proactively disclose whether a tender had been made under statute. The Court also compared the language in pre-2015 NRS 116.31162 with NRS 116.31162(1)(b)(3)(II) (2017) (requiring an HOA to disclose if tender of the superpriority portion of the lien has been made) noting that only the later version of the statute contains this requirement. See *Saticoy Bay, LLC, Series 11339 Colinward, A Nevada Limited Liability Company vs. Travata and Montage at Summerlin Centre Homeowners Association, et. al.* (Case No. 80162) (2020); See *Saticoy Bay, LLC, Series 3123 Inlet Bay vs. Genevieve Court Homeowners Association, et. al.* (Case No. 80135) (2020); See *Saticoy Bay, LLC, Series 8320 Bermuda Beach, A Nevada Limited Liability Company vs. South Shores Community Homeowners Association, et. al.* (Case No. 80165) (2020); See *Saticoy Bay, LLC, Series 6408 Hillside Brook, A Nevada Limited Liability Company vs. Mountain Gate Homeowners Association, et. al.* (Case No. 80134) (2020); See *Saticoy Bay, LLC, Series 8920 El Diablo, A Nevada Limited Liability Company vs. Silverstone Ranch Homeowners Association, et. al.* (Case No. 80039) (2020).

1 Further, Green Valley's agent was specifically prohibited from giving any  
2 purchaser at auction a so-called warranty deed. The only type of deed it could give to  
3 any purchaser was one made "without warranty" pursuant to NRS 116.31164(3)(a)  
4 ("Make, execute, and, after payment is made, deliver to the purchaser, or his or her  
5 successor or assign, a deed without warranty, which conveys to the grantee all title of  
6 the unit's owner to the unit.")

7 **C. Daisy Trust's Claim for Breach of NRS Chapter 113 Fails.**

8 Plaintiff claims that Green Valley South was required to disclose the existence of  
9 the tender pursuant to NRS 113, a statute which governs the disclosures of certain  
10 defects on residential property, as well as services, land uses (open range), and zoning  
11 classifications. Plaintiff argues that the tender represented a defect in the title that  
12 should have been disclosed prior to sale.

13 The bank's pre-sale tender does not fit into any of the disclosure categories  
14 contemplated by NRS 113. See generally *id.* It is not a water or sewage service, nor  
15 does it involve open range liability, zoning classifications, gaming enterprise districts, or  
16 transfer fee obligations. See Nev. Rev. Stat. §§ 113.060 through 113.085. It is also does  
17 not qualify as the discovery or worsening of a defect subject to disclosure under NRS  
18 113.130.  
19

20 A "defect" is defined as "a condition that materially affects the value or use of  
21 residential property in an adverse manner." See Nev. Rev. Stat. § NRS 113.100(1).  
22 The key to disclosure under this section is the seller's realization, perception, and  
23 knowledge of the alleged defect. See *Nelson v. Heer*, 123 Nev. at 224; see also Nev.  
24 Rev. Stat. §113.140(1). A seller is not required to disclose defects of which he is  
25 unaware. *Id.*  
26  
27  
28

1 Furthermore, nowhere in either NRS 113 or NRS 116 do the statutes suggest the  
2 Seller's Real Property Disclosure Form ("SRPDF") should be supplied in NRS 116  
3 foreclosure sales. Plaintiff further alleges that the "Residential Disclosure Guide (the  
4 "Guide") suggests Defendants should supply the SRPDF. However, the actual Guide  
5 does not ever refer to the HOA or HOA Agent as possible sellers for which the SRPDF  
6 might apply or refer to a HOA foreclosure sale, or suggest the SRPDF applies to NRS  
7 116 Foreclosure Sales.  
8

9 The Guide suggests to protect oneself from a faulty SRPDF in buying a home,  
10 "[t]he Buyer is advised to obtain an independent inspection performed by a properly  
11 licensed home inspector." NRS 116 foreclosure properties are not open for inspection  
12 prior to sale, and NRS 116 foreclosure homes may be occupied, for which the buyer  
13 assumes the responsibility.  
14

15 The Nevada Supreme Court clearly agrees with this analysis. "Similarly, and  
16 assuming without deciding that NRS Chapter 113 applies to NRS Chapter 116 sales,  
17 NRS 113.130 requires a seller to disclose "defect[s]," not superpriority tenders. NRS  
18 113.100 defines "Defect" as "a condition that materially affects the value or use of  
19 residential property in an adverse manner." To the extent that a deed of trust counsel  
20 conceivably constitutes a "condition," we note that the subject property technically has  
21 the same "value" regardless of whether it is encumbered by the deed of trust. In a  
22 footnote, the Court further stated "Nor are we persuaded that the Seller's Real Property  
23 Disclosure Form would require disclosure of a superpriority tender." See *Saticoy*  
24 *Bay, LLC, Series 3123 Inlet Bay vs. Genevieve Court Homeowners Association, et. al.*  
25 (Case No. 80135) (2020), page 2.  
26  
27  
28

1 Further, even if NRS 113 did apply to this sale, NRS 113.150(4) provides a 1 or  
2 2 year statute of limitations, stating: “[a]n action to enforce the provisions of this  
3 subsection must be commenced not later than 1 year after the purchaser discovers or  
4 reasonably should have discovered the defect or 2 years after the conveyance of the  
5 property to the purchaser, whichever occurs later.” Here, Daisy Trust first learned of  
6 attempted tender on or about May 13, 2016 when the bank submitted their initial  
7 disclosures. See **Exhibit 5. Plaintiff Bank of America, N.A.’s Initial Disclosure of**  
8 *Witnesses and Documents Pursuant to FRCP 26.1*. Thus, the statute of limitations for  
9 an NRS 113 claim would have run at latest May 13, 2018. Plaintiff filed the Complaint  
10 here on August 16, 2019, after the statute of limitations provided within NRS 113

11  
12 **VI. CONCLUSION**

13 Based on the foregoing, Defendant Green Valley respectfully requests this Court  
14 dismiss Daisy Trust’s claims with prejudice. The complaint does not support a claim  
15 upon which relief can be granted and there is no set of facts that can be pled which  
16 would support the allegations against the Green Valley based on the existing statutes  
17 and case law at the time of the sale.

18 DATED this 24<sup>th</sup> day of October, 2020.

19 LIPSON NEILSON P.C.

20 */s/ Janeen Isaacson*

21 By:

22 J. William Ebert, Esq. (Bar No. 2697)  
23 Janeen V. Isaacson, Esq. (Bar No. 6429)  
24 9900 Covington Cross Drive, Suite 120  
25 Las Vegas, Nevada 89144

26 *Attorneys for Defendant,*  
27 *Green Valley South Owners Association*  
28

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and Administrative Order 14-2, on the 24<sup>th</sup> day of October, 2020, I electronically transmitted the foregoing **DEFENDANT GREEN VALLEY SOUTH OWNERS' ASSOCIATION'S RENEWED MOTION TO DISMISS, OR ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV& Serve registrants addressed to:

Roger P. Croteau, Esq.  
ROGER P. CROTEAU & ASSOCIATES,  
LTD.  
2810 W. Charleston Blvd., Suite 75  
Las Vegas, NV 89148  
[croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)  
  
*Attorneys for Plaintiff,  
Daisy Trust*

Brandon D. Wood, Esq.  
NEVADA ASSOCIATION SERVICES INC.  
6625 S. Valley View Blvd., Suite 300  
Las Vegas, Nevada 89118  
*Attorneys for Nevada Association  
Services, Inc.*

*/s/ Renee M. Rittenhouse*

\_\_\_\_\_  
An Employee of LIPSON NEILSON P.C.

**EXHIBIT “1”**

**EXHIBIT “1”**



## Phone Notes

Nevada Association Services, Inc.  
6224 W. Desert Inn Road, Suite A  
Las Vegas, NV 89146  
Phone (702) 804-8885  
Fax (702) 804-8887  
Toll Free (888) 627-5544

**Dennis Scott**

Green Valley South  
N67912

137 Elegante Way

30417

### Special Note:

sold to 3rd party deed sent to record 9/5/2012 mb

\*\*\*7/12/12 Rcvd autho to speak with Marian Miller-Curcuru, Earlene Johnson, Sydney Jorde, Julie Sorrels, we also have autho to speak with Nicole Capabianco, Nancy Lobeck & Tracy Stowell of Titor Title(in file)\*\*\*KJ

| Date       | By         | Note   |
|------------|------------|--|
| 09/09/2011 | yerskine   | Phone Note: HO called and said that he wants a letter of what he owes. I told him that Megan will help him, can he hold for a moment? He said no, I do not want to talk to someone else, I want a letter of what I owe sent to me. I told him that I ...       |
| 09/09/2011 | yerskine   | ... understand, I need for him to hold for a moment and I will see if she is available. Megan was at lunch and I told the HO that he can leave her a VM msg and she will call him back. He then said, here we go again, I am getting the run-around. I ...     |
| 09/09/2011 | yerskine   | ... told him that I am trying to help him and he said he just wants to know what he owes and he is tired of getting the run-around. I asked him who he spoke with in our office and he then said, just put me to Megan's VM and we can say good bye. I ...     |
| 09/09/2011 | yerskine   | ... told him thank you and transferred the call to Megan's VM. This man was not very nice.   |
| 09/12/2011 | malexander | Phone Note: Wow this ho is extremely RUDE! I asked him if he would like me to e-mail or fax him a copy of his breakdown he said that he went to Taylor mgmt and they told him that he can pick up a letter from them tomorrow with the amount owed. I told ... |
| 09/12/2011 | malexander | ... him that it doesnt work that way and he asked me to mail him a copy. I told him that it would go out in the mail today.  |
| 09/26/2011 | cjarrard   | Phone Note: Ho called for Megan. She was not available, he will call back later.   |
| 09/26/2011 | malexander | Phone Note: Spoke with the ho he said that right now he is not working he is collecting unemployment and he will be faxing in a pp request to Shanel and also requesting for any of the fees to be reduced.  |
| 10/24/2011 | kjacoway   | Phone Note: Ho left a message on the general vm, transferred to Carly  |
| 10/24/2011 | cjarrard   | Phone Note: Rcvd message from HO. He did not leave a phone number.   |
| 05/30/2012 | kjacoway   | Phone Note: Ho called, transferred to vm per Elissa  |
| 05/30/2012 | ehollander | Phone Note: returned call to HO - 581-1930 - miranda read - He is trying to do a short sale on his property and he just started the process is and is just about ready to open escrow. I advised him that once his escrow is opened he can have his title ...  |
| 05/30/2012 | ehollander | ... company request a payoff demand and we will give them about 30 days to pay the account and if they need an extension than they request an updated payoff demand. He will touch base with his title company and his realtor but he just wanted to let ...   |
| 05/30/2012 | ehollander | ... us know. He thanked me, call ended.  |
| 07/09/2012 | mbianchard | Phone Note: returned call to Stephanie and let her know that he is trying to short sell the property. I told her that there are 2 postponements remaining. I do not see the harm in a postpone to see if it goes through. she is going to let Elke know ...    |
| 07/09/2012 | mbianchard | ... and get back to me.  |
| 07/10/2012 | mbianchard | Phone Note: called Dennis 581-1930 miranda read. advised him that the HOA will allow a postponement if he can pay something towards his assessments. he said that is the problem I had to move in with family and have been out of work for 8 months ...       |
| 07/10/2012 | mbianchard | ... now. I told him that I would let the HOA know.   |
| 08/28/2012 | mbianchard | Phone Note: called Dennis at 581-1930 miranda read. I advised him that the HOA is going to foreclose. he said I am trying to get an approval on the short sale. I told him I would let the Association know but cannot guarantee anything.                     |
| 08/29/2012 | mbianchard | Phone Note: called 581-1930 miranda read. I advised Dennis that the HOA is going to foreclose he said nice scam you have going on. I told him that he knew he was in collections it is not a secret. He said I told you don't have a job. I told ...           |
| 08/29/2012 | mbianchard | ... him I was just giving him a courtesy call to let him know that outcome of the postponement.  |
| 09/07/2012 | jgerber    | Phone Note: paid in full w. cc - property sold to 3rd party at HOA sale.   |

GVS000222

JA0270

**EXHIBIT “2”**

**EXHIBIT “2”**

1 BRANDON E. WOOD  
Nevada State Bar Number 12900  
2 NEVADA ASSOCIATION SERVICES, INC.  
6625 S. Valley View Blvd. Suite 300  
3 Las Vegas, NV 89118  
Telephone: (702) 804-8885  
4 Facsimile: (702) 804-8887  
Email: brandon@nas-inc.com  
5 *Attorney for Defendant Nevada Association*  
6 *Services, Inc.*

7 **DISTRICT COURT FOR THE STATE OF NEVADA**  
8 **IN AND FOR THE COUNTY OF CLARK**  
9

10 DAISY TRUST, a Nevada trust,

11 Plaintiff,

12 vs.

13 GREEN VALLEY SOUTH OWNERS  
ASSOCIATION NO. 1, A Nevada non-profit  
14 corporation; and NEVADA ASSOCIATION  
SERVICES, INC., a domestic corporation;

15 Defendants.  
16

CASE NO.: A-19-791254-C

DEPT. NO.: IX

**DEFENDANT NEVADA ASSOCIATION  
SERVICES, INC.'S RESPONSES TO  
PLAINTIFF'S FIRST SET OF REQUESTS  
FOR ADMISSIONS**

17  
18 Defendant NEVADA ASSOCIATION SERVICES, INC.'S Responses to Plaintiff's First Set  
19 of Requests for Admissions.

20 **PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

21 The responses (the "Responses") herein of the Defendant are subject to the following general  
22 objections (the "General Objections"). The General Objections may be specifically referred to in the  
23 Responses for the purpose of clarity. The failure to specifically incorporate a General Objection  
24 should not be construed as a waiver of the General Objections.

25 1. Nothing herein shall be construed as an admission or waiver by the Defendant of: (a)  
26 its rights respecting admissibility, competency, relevance, privilege, materiality, and authenticity of  
27 any information provided in the Responses, any documents identifies herein, or the subject matter  
28 thereof; (b) its objection due to vagueness, ambiguity, or undue burden; and (c) its rights to object to

1 the use of any information provided in the Responses, any documents identified there, or the subject  
2 matter contained in the Responses during a subsequent proceeding, including the trial of this or any  
3 other action.

4 2. The Responses are made solely for the purposes of, and in relation to this litigation.

5 3. The Defendant has not completed: (a) its investigation of facts, witnesses, or documents  
6 relating to this case (b) discovery to this action, (c) its analysis of available data, and (d) its preparation  
7 of trial. Thus, although a good faith effort has been made to supply pertinent information where the  
8 same has been requested, it is not possible in some instances for unqualified Responses to be made to  
9 these discovery requests. Further, the Responses are necessarily made without prejudice to the  
10 Defendant's right to produce evidence of subsequently discovered facts, witnesses, or documents, as  
11 well as any new theories or contentions that the Defendant might adopt. The Responses are further  
12 given without prejudice to the Defendant's right to provide information concerning facts, witnesses,  
13 or documents omitted by the Responses are a result of oversight, inadvertence, good faith error, or  
14 mistake. The Defendant has responded to the Interrogatories based on information that is presently  
15 available to it and to the best of its knowledge to date. The Responses may include hearsay and other  
16 forms of evidence that may be neither reliable nor admissible.

### 17 **GENERAL OBJECTIONS**

18 1. Respondent objects to the Requests for Admissions to the extent they require disclosure  
19 or production of information in a manner inconsistent with or exceeding the scope of the Nevada Rules  
20 of Civil Procedure.

21 2. Respondent objects to the Requests for Admissions to the extent the information sought  
22 is obtainable from another source that is more convenient, less burdensome, or less expensive.

23 3. Respondent objects to the Requests for Admissions to the extent they call for disclosure  
24 of information subject to the attorney-client privilege, work product privilege, joint defense or  
25 prosecution privilege, investigative privilege, and other exemptions from discovery.

26 4. Respondent objects to the Requests for Admissions to the extent the burden of expense  
27 of complying with such requests outweighs its likely benefit.

28 5. Respondent objects to the Requests for Admissions to the extent they are propounded

1 for the purpose of harassment or annoyance.

2 6. Respondent objects to the Requests for Admissions to the extent that they require  
3 Respondent to produce documents in the possession, custody, or control of another.

4 7. Respondent objects to the Requests for Admissions to the extent that they assume facts  
5 or legal conclusions not yet adjudicated.

6 Without waiving its General Objections, Defendant responds to the Requests for Admissions  
7 as follows:

8 **RESPONSES TO REQUESTS FOR ADMISSIONS**

9 **REQUEST FOR ADMISSION NO. 1**

10 Admit you knew about the Attempted Payment prior to the HOA Foreclosure Sale.

11 Response to Request for Admission No. 1

12 Deny.

13 **REQUEST FOR ADMISSION NO. 2**

14 Admit that prior to the HOA Foreclosure Sale, Plaintiff or its representative(s), including but  
15 not limited to, Eddie Haddad, asked you about payments made regarding the Property.

16 Response to Request for Admission No. 2

17 Deny.

18 **REQUEST FOR ADMISSION NO. 3**

19 Admit that prior to the HOA Foreclosure Sale, Plaintiff or its representative(s), including, but  
20 not limited to Eddie Haddad, asked you about payments made regarding the lien being foreclosed on  
21 by the HOA.

22 Response to Request for Admission No. 3

23 Deny.

24 **REQUEST FOR ADMISSION NO. 4**

25 Admit that prior to the HOA Foreclosure Sale you did not inform Plaintiff or its  
26 representative(s), including, but not limited to Eddie Haddad, about the Attempted Payment.

27 Response to Request for Admission No. 4

28 Admit.

1 **REQUEST FOR ADMISSION NO. 5**

2 Admit that prior to the HOA Foreclosure Sale you did not inform Plaintiff or its  
3 representative(s), including, but not limited to, Eddie Haddad, about the Attempted Payment, despite  
4 inquiry about the same.

5 Response to Request for Admission No. 5

6 Deny.

7 **REQUEST FOR ADMISSION NO. 6**

8 Admit you did not inform Plaintiff or its representative(s), including, but not limited to, Eddie  
9 Haddad, about the Attempted Payment with the intent of inducing Plaintiff's reliance.

10 Response to Request for Admission No. 6

11 Deny.

12 **REQUEST FOR ADMISSION NO. 7**

13 Admit Plaintiff has suffered damages from its reliance on your failure to inform Plaintiff about  
14 the Attempted Payment.

15 Response to Request for Admission No. 7

16 Deny.

17 **REQUEST FOR ADMISSION NO. 8**

18 Admit NRS 116.1113 required you to disclose the Attempted Payment to Plaintiff prior to the  
19 HOA Foreclosure Sale.

20 Response to Request for Admission No. 8

21 Deny.

22 **REQUEST FOR ADMISSION NO. 9**

23 Admit NRS 113.130 required you to disclose the Attempted Payment to Plaintiff prior to the  
24 HOA Foreclosure Sale.

25 Response to Request for Admission No. 9

26 Deny.

27 **REQUEST FOR ADMISSION NO. 10**

28 Admit NRS 113.130 does not exclude foreclosure sales under NRS Chapter 116 from Section

1 113.130's disclosure requirements.

2 Response to Request for Admission No. 10

3 Deny.

4 **REQUEST FOR ADMISSION NO. 11**

5 Admit you did not provide Plaintiff or its representative(s), including, but not limited to, Eddie  
6 Haddad, a Seller's Real Property Disclosure Form prior to the HOA Foreclosure Sale.

7 Response to Request for Admission No. 11

8 Objection, vague and ambiguous as to the term "Seller's Real Property Disclosure  
9 Form". Notwithstanding the objection, NAS admits that it did provide a "Seller's Real Property  
10 Disclosure Form" to Plaintiff or its representative, including but not limited to Eddie Haddad, prior to  
11 the HOA Foreclosure Sale.

12 Dated this 4<sup>th</sup> day of August, 2020

13  
14 By: /s/Brandon E. Wood  
15 BRANDON E. WOOD  
16 Nevada State Bar Number 12900  
17 NEVADA ASSOCIATION SERVICES, INC.  
18 6625 S. Valley View Blvd. Suite 300  
19 Las Vegas, NV 89118  
20 *Attorney for Defendant Nevada Association*  
21 *Services, Inc.*  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4<sup>th</sup> day of August, 2020, and pursuant to N.R.C.P. 5(b), I served a true and correct copy of the foregoing ***Defendant Nevada Association Services, Inc.'s Responses to Plaintiff's First Set of Requests for Admissions*** upon the parties listed below and all parties/counsel set up to receive notice via electronic service in this matter in the following manner:

- ☐ Hand Delivery  
☐ Facsimile Transmission  
☐ U.S. Mail, Postage Pre-Paid  
☒ Served upon opposing counsel via the Court's electronic service system to the following counsel of record:

|  |  |
|--|--|
| Roger Croteau, Esq.<br>Roger P. Croteau & Associates, Ltd.<br><a href="mailto:croteaulaw@croteaulaw.com">croteaulaw@croteaulaw.com</a> | Chet Glover, Esq.<br>Roger P. Croteau & Associates, Ltd.<br><a href="mailto:chet@croteaulaw.com">chet@croteaulaw.com</a>             |
| Janeen V. Isaacson, Esq.<br>Lipson Neilson<br><a href="mailto:jisaacson@lipsonneilson.com">jisaacson@lipsonneilson.com</a>             | Croteau Admin<br>Roger P. Croteau & Associates, Ltd.<br><a href="mailto:receptionist@croteaulaw.com">receptionist@croteaulaw.com</a> |
| J. William Ebert<br><a href="mailto:bebert@lipsonneilson.com">bebert@lipsonneilson.com</a>   | Susana Nutt<br><a href="mailto:snutt@lipsonneilson.com">snutt@lipsonneilson.com</a>  |
| Renee Rittenhouse<br><a href="mailto:rrittenhouse@lipsonneilson.com">rrittenhouse@lipsonneilson.com</a>                                |  |

/s/Susan E. Moses  
Employee of Nevada Association Services, Inc.

**EXHIBIT “3”**

**EXHIBIT “3”**

**Lipson Neilson P.C.**  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500 FAX: (702) 382-1512

LIPSON NEILSON P.C.  
J. WILLIAM EBERT, ESQ.  
Nevada Bar No. 2697  
JANEEN V. ISAACSON, ESQ.  
Nevada Bar No. 6429  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500 - Telephone  
(702) 382-1512 - Facsimile  
[bebert@lipsonneilson.com](mailto:bebert@lipsonneilson.com)  
[jisaacson@lipsonneilson.com](mailto:jisaacson@lipsonneilson.com)

*Attorneys for Defendant,  
Green Valley South Owner's Association*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

DAISY TRUST, a Nevada trust  
Plaintiff,

vs.

GREEN VALLEY SOUTH OWNERS  
ASSOCIATION NO. 1, a Nevada non-  
profit corporation; and NEVADA  
ASSOCIATION SERVICES, INC., a  
domestic corporation;

Defendants.

Case No.: A-19-791254-C  
Dept.: XVIII

**GREEN VALLEY SOUTH OWNERS  
ASSOCIATION NO. 1'S RESPONSES  
TO PLAINTIFF'S FIRST SET OF  
REQUESTS FOR ADMISSIONS**

TO: Daisy Trust, Plaintiff

TO: Roger P. Croteau, Esq., and Chet Glover, Esq., Attorneys for Plaintiff

Defendant Green Valley South Owners Association No. 1 ("GVS" or "HOA"), by  
and through its attorneys, Lipson Neilson, P.C., hereby makes the following responses  
to Plaintiff Daisy Trust's ("Daisy") First Set of Requests for Admission pursuant to  
N.R.C.P. 36 as follows:

\\

\\

**PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

Defendant's investigation and development of all facts and circumstances relating to this action is ongoing. These responses and objections are made without prejudice to, and are not a waiver of, Defendant's right to rely on other facts or documents at trial.

By making the accompanying responses and objections to Plaintiff's requests for documents, Defendant does not waive, and hereby expressly reserves, its right to assert any and all objections as to the admissibility of such responses into evidence in this action, or in any other proceedings, on any and all grounds including, but not limited to, competency, relevancy, materiality, authenticity and privilege. Further, Defendant makes the responses and objections herein without in any way implying that it considers the requests and responses to be relevant or material to the subject matter of this action.

Defendant retains their right to submit evidence of any subsequently discovered facts, information, or documents should such become known. These responses are made in a good faith effort to supply such information as presently known to Defendant, after reasonable investigation. Defendant reserves its right under the Nevada Rules of Civil Procedure to further supplement or alter any answer set forth herein and to use such additional information at trial.

**RESPONSES**

**REQUEST FOR ADMISSION NO. 1:**

Admit that you knew about the attempted payment prior to the HOA Foreclosure Sale.

**RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

Objection. Defendant objects to this Request for Admission to the extent it is vague and ambiguous, lacks foundation, assumes facts not in evidence and relies on hearsay. Without waiving said objections, Defendant responds as follows: Deny.

\\

**REQUEST FOR ADMISSION NO. 2:**

Admit that prior to the HOA Foreclosure Sale, Plaintiff or its representative(s), including, but not limited to, Eddie Haddad, asked you about payments made regarding the Property.

**RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

Objection. Defendant objects to this Request for Admission to the extent it is compound, vague and ambiguous, overbroad, lacks foundation, assumes facts not in evidence and relies on hearsay. Without waiving said objections, Defendant responds as follows: Deny.

**REQUEST FOR ADMISSION NO. 3:**

Admit that prior to the HOA Foreclosure Sale, Plaintiff or its representative(s), including, but not limited to, Eddie Haddad, asked you about payments made regarding the lien being foreclosed on by the HOA.

**RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

Objection. Defendant objects to this Request for Admission to the extent it is compound, vague and ambiguous, overbroad, lacks foundation, assumes facts not in evidence and relies on hearsay. Without waiving said objections, Defendant responds as follows: Deny.

**REQUEST FOR ADMISSION NO. 4:**

Admit that prior to the HOA Foreclosure Sale you did not inform Plaintiff or its representative(s), including but not limited to, Eddie Haddad, about the Attempted Payment.

**RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

Objection. Defendant objects to this Request for Admission to the extent it is compound, vague and ambiguous, overbroad, lacks foundation, assumes facts not in evidence and relies on hearsay. Without waiving said objections, Defendant responds as follows: Defendant outsourced collection and foreclosure activities and therefore relied on the collection company's expertise. Defendant admits it did not communicate

1 with Plaintiff or its representatives prior to the foreclosure sale conducted through NAS.

2 **REQUEST FOR ADMISSION NO. 5:**

3 Admit that prior to the HOA Foreclosure Sale you did not inform Plaintiff or its  
4 representative(s), including, but not limited to, Eddie Haddad, about the Attempted  
5 Payment, despite inquiry about the same.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 5**

7 Objection. Defendant objects to this Request for Admission to the extent it is  
8 compound, vague and ambiguous, overbroad, lacks foundation, assumes facts not in  
9 evidence and relies on hearsay. Without waiving said objections, Defendant responds  
10 as follows: Deny.

11 **REQUEST FOR ADMISSION NO. 6:**

12 Admit you did not inform Plaintiff or its representative(s), including, but not limited  
13 to, Eddie Haddad, about the attempted payment with the intent of inducing Plaintiff's  
14 reliance.

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

16 Objection. Defendant objects to this Request for Admission to the extent it is  
17 compound, vague and ambiguous, overbroad, lacks foundation, and relies on hearsay.  
18 This request also contains an improper assumption and calls for a legal conclusion.  
19 Without waiving said objections, Defendant responds as follows: Deny.

20 **REQUEST FOR ADMISSION NO. 7:**

21 Admit Plaintiff has suffered damages from its reliance on your failure to inform  
22 Plaintiff about the attempted payment.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

24 Objection. Defendant objects to this Request for Admission to the extent it is  
25 compound, vague and ambiguous, overbroad, lacks foundation, and relies on hearsay.  
26 This request also contains an improper assumption and calls for a legal conclusion.  
27 Without waiving said objections, Defendant responds as follows: Deny.

28 \\\

**REQUEST FOR ADMISSION NO. 8:**

Admit NRS 116.1113 required you to disclose the Attempted Payment to Plaintiff prior to the HOA Foreclosure Sale.

**RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

Objection. Defendant objects to this Request for Admission to the extent it is compound, vague and ambiguous, overbroad, lacks foundation, and relies on hearsay. This request also contains an improper assumption and calls for a legal conclusion. Without waiving said objections, Defendant responds as follows: Deny.

**REQUEST FOR ADMISSION NO. 9:**

Admit NRS 113.130 required you to disclose the Attempted Payment to Plaintiff prior to the HOA Foreclosure Sale.

**RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

Objection. Defendant objects to this Request for Admission to the extent it is compound, vague and ambiguous, overbroad, lacks foundation, and relies on hearsay. This request also contains an improper assumption and calls for a legal conclusion. Without waiving said objections, Defendant responds as follows: Deny.

**REQUEST FOR ADMISSION NO. 10:**

Admit NRS 113.130 does not exclude foreclosure sales under NRS Chapter 116 from Section 113.130's disclosure requirements.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

Objection. Defendant objects to this Request for Admission to the extent it is compound, vague and ambiguous, overbroad, lacks foundation, and relies on hearsay. This request also contains an improper assumption and calls for a legal conclusion. Without waiving said objections, Defendant responds as follows: Deny.

**REQUEST FOR PRODUCTION NO. 11:**

Admit you did not provide Plaintiff or its representative(s), including but not limited to, Eddie Haddad, a Seller's Real Property Disclosure Form prior to the HOA Foreclosure Sale.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

Objection. Defendant objects to this Request for Admission to the extent it is compound, vague and ambiguous as to the term "Seller's Real Property Disclosure Form", overbroad, lacks foundation, and relies on hearsay. This request also contains an improper assumption and calls for a legal conclusion. Without waiving the objections, Defendant responds as follows: Defendant outsourced collection and foreclosure activities and therefore relied on the collection company's expertise. Defendant is aware that Plaintiff was provided a non-warranty deed pursuant to the requirements of NRS 116. Deny remainder of request.

DATED this 17<sup>th</sup> day of August, 2020.

LIPSON NEILSON P.C.

*/s/ Janeen Isaacson*

By:

\_\_\_\_\_  
J. William Ebert, Esq. (Bar No. 2697)  
Janeen V. Isaacson, Esq. (Bar No. 6429)  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144

*Attorneys for Defendant,  
Green Valley South Owners Association*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and Administrative Order 14-2, on the 17<sup>th</sup> day of August, 2020, I electronically transmitted the foregoing **GREEN VALLEY SOUTH OWNES ASSOCIATION NO. 1'S RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSIONS** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV& Serve registrants addressed to:

|   |  |
|---|--|
| Roger P. Croteau, Esq.<br>Chet Glover, Esq.<br>ROGER P. CROTEAU & ASSOCIATES,<br>LTD.<br>2810 W. Charleston Blvd., Suite 75<br>Las Vegas, NV 89148<br><a href="mailto:croteaulaw@croteaulaw.com">croteaulaw@croteaulaw.com</a><br><br><i>Attorneys for Plaintiff,<br/>Daisy Trust</i> |  |
|---|--|

*/s/ Renee M. Rittenhouse*

\_\_\_\_\_  
An Employee of LIPSON NEILSON P.C.

**EXHIBIT “4”**

**EXHIBIT “4”**

**DECLARATION OF EDDIE HADDAD**

I, Eddie Haddad, being first duly sworn, deposes and says as follows: I am a resident of the State of Nevada. I am the Manager of the Resources Group, LLC, that is the Trustee of the Daisy Trust, that purchased the Property located at 137 Elegante Way, Henderson, Nevada 89074 (APN 177-13-214-086) , at the HOA Foreclosure Sale.

In my capacity as set forth above, I have reviewed the foregoing Plaintiff's Opposition to Green Valley South Owners Association's Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment and Nevada Association Services, Inc.'s Joinder Thereto. Of the facts asserted therein, I know them to be true of my own knowledge or they are true to the best of my knowledge and recollection.

I further provide that it was my practice and procedure, as set forth herein, that when I would attend NRS 116 sales at all times relevant to this case, I would attempt to ascertain whether anyone had attempted to or did tender any payment regarding the homeowner association's lien. If I learned that a "tender" had either been attempted or made, I would not purchase the property offered in that foreclosure sale.

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

Executed this 29<sup>th</sup> day of October, 2019.

/s/ Eddie Haddad  
EDDIE HADDAD

**EXHIBIT “5”**

**EXHIBIT “5”**

1 ARIEL E. STERN, ESQ.  
Nevada Bar No. 8276  
2 WILLIAM S. HABDAS, ESQ.  
Nevada Bar No.13138  
3 AKERMAN LLP  
1160 Town Center Drive, Suite 330  
4 Las Vegas, NV 89144  
Telephone: (702) 634-5000  
5 Facsimile: (702) 380-8572  
Email: ariel.stern@akerman.com  
6 Email: william.habdas@akerman.com  
7 *Attorneys for Plaintiff*

8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF NEVADA

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

12 Plaintiff,

13 vs.

14 GREEN VALLEY SOUTH OWNERS  
15 ASSOCIATION NO. 1; DAISY TRUST;  
NEVADA ASSOCIATION SERVICES, INC.,

16 Defendants.  
17

Case No.: 2:16-cv-00424-MMD-PAL

**PLAINTIFF BANK OF AMERICA, N.A.'S  
INITIAL DISCLOSURE OF WITNESSES  
AND DOCUMENTS PURSUANT TO FRCP  
26.1**

18  
19 Plaintiff Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a  
20 Countrywide Home Loans Servicing, LP (BANA), by and through its attorneys of the law firm of  
21 Akerman LLP, make this Initial Disclosure of documents and witnesses pursuant to Rule 26 of the  
22 Federal Rules of Civil Procedure.

23 **A. LIST OF WITNESSES**

24 The following persons are known or reasonably believed to have knowledge of facts relevant  
25 to the allegations of any pleading filed by any party to this action, including persons having  
26 knowledge of rebuttal or impeachment evidence. BANA discloses the following list of witnesses,  
27 specifically reserving the right to supplement this initial disclosure to add the names of persons who  
28

1 may have relevant information, including expert witnesses, if subsequent information and  
2 investigation so warrant.

- 3 1. Person(s) Most Knowledgeable for BANA.  
4 c/o Ariel E. Stern, Esq. and/or William S. Habdas, Esq.  
5 AKERMAN LLP  
6 1160 Town Center Drive, Suite 330  
7 Las Vegas, Nevada 89144  
8 Telephone: (702) 634-5000

9 Person(s) Most Knowledgeable for BANA is/are expected to testify regarding facts and  
10 circumstances surrounding the claims asserted in the pleadings surrounding the real property subject  
11 to this lawsuit.

- 12 2. Person(s) Most Knowledgeable for Daisy Trust  
13 c/o Michael F. Bohn, Esq.  
14 LAW OFFICES OF MICHAEL F. BOHN  
15 376 East Warm Springs Rd., Ste. #140  
16 Las Vegas, NV 89119  
17 Telephone: (702) 642-3113

18 Person(s) Most Knowledgeable for Daisy Trust is/are expected to testify regarding facts and  
19 circumstances surrounding the claims asserted in the pleadings surrounding the real property subject  
20 to this lawsuit.

- 21 3. Person(s) Most Knowledgeable for Nevada Association Services, Inc.  
22 c/o Christopher V. Yergensen,  
23 NEVADA ASSOCIATION SERVICES, INC.  
24 6224 West Desert Inn Road  
25 Las Vegas, NV 89146  
26 Telephone: (702) 804-8885

27 Person(s) Most Knowledgeable for Nevada Association Services, Inc. is/are expected to  
28 testify regarding facts and circumstances surrounding the claims asserted in the pleadings  
surrounding the real property subject to this lawsuit.

4. Person(s) Most Knowledgeable for Green Valley South Owners Association No. 1  
c/o Kaleb D. Anderson Esq., Siria L. Gutierrez, Esq., and/or Joseph P. Garin, Esq.  
LIPSON NEILSON COLE SELTZER & GARIN  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
Telephone: (702) 382-1500

1 Person(s) Most Knowledgeable for Green Valley South Owners Association No. 1 is/are  
2 expected to testify regarding facts and circumstances surrounding the claims asserted in the  
3 pleadings surrounding the real property subject to this lawsuit.

- 4 5. Person(s) Most Knowledgeable for Hampton & Hampton Collections, LLC  
5 c/o, Jay Hampton, Esq. and/or Miles Hampton, Esq.  
6 HAMPTON & HAMPTON, P.C.  
7 880 Seven Hills Drive, Ste. #200  
Henderson, Nevada 89052  
Telephone (702) 736-1820

8 Person(s) Most Knowledgeable for Hampton & Hampton Collections, LLC is/are expected to  
9 testify regarding facts and circumstances surrounding the claims asserted in the pleadings  
10 surrounding the real property subject to this lawsuit.

- 11 6. David Stone, Executive at Nevada Association Services, Inc.  
12 c/o Chris Yergensen, Esq.  
13 6224 West Desert Inn Road  
14 Las Vegas, Nevada 89146

15 This witness is expected to testify regarding facts and circumstances surrounding the claims  
16 asserted in the pleadings surrounding the real property subject to this lawsuit.

- 17 7. Dennis L. Scott  
18 Address Currently Unknown

19 This witness is expected to testify regarding relevant facts and information relating to  
20 BANA's lien on the subject property, as well as the efforts of the homeowners' association to  
21 foreclose on the property, to the extent known to the witnesses.

- 22 8. Person(s) Most Knowledgeable for Miles, Bauer, Bergstrom & Winters, LLP  
23 1231 E. Dyer Road, Suite 100  
24 Santa Ana, California 92705

25 The Person(s) Most Knowledgeable for Miles, Bauer, Bergstrom & Winters, LLP is/are  
26 expected to testify regarding facts and circumstances surrounding the claims asserted in the  
27 pleadings surrounding the real property subject to this lawsuit.  
28

1 BANA reserves the right to call any person listed by any other parties to testify and the trial  
2 of this action, and further reserves the right to supplement this list of witnesses as additional persons  
3 become known to BANA.

4 **B. LIST OF DOCUMENTS**

5 BANA discloses the following documents contained within the range of bates stamp numbers  
6 BANA – 000001 through BANA – 000333. Redacted portions of these documents contain  
7 information such as dates of birth, banking information, and social security numbers. The redacted  
8 portions of the screenshots attached to the Miles, Bauer, Bergstrom & Winters, LLP affidavits  
9 contain attorney-client privileged information.

| <b><u>BATES NUMBER</u></b>  | <b><u>DOCUMENT</u></b>  |
|---|---|
| BANA 000001 – BANA 000236   | Recorded Property Documents for APN# 177-13-214-086   |
| BANA 000237 – BANA 000270   | Declaration of Covenants and Restrictions of Green Valley South Owners Association No. 1  |
| BANA 000271 – BANA 000305   | First Statutorily Mandated Amendment to the Declaration of Covenants, Conditions, & Restrictions of Green Valley South Owners Association No. 1   |
| BANA 000306 – BANA 000331   | Miles, Bauer, Bergstrom & Winters, LLP correspondence with affidavits   |
| BANA 000332 – BANA 000333   | NAS Press Release dated November 19, 2010   |
| Available for inspection and copying upon delivery of transcript to Akerman LLP | Deposition of David Stone taken on April 11, 2016 in <i>Bank of America, N.A. v. One Queensridge Place Homeowner's Association, Inc.</i> , U.S. District Court for the District of Nevada Case No. 13-cv-1221-GMN-NJK |

20 BANA specifically reserves the right to supplement this initial disclosure to add relevant  
21 documents, if subsequent information and investigation so warrants. BANA also includes any  
22 documents in the disclosures of other parties to this action.

23 **C. COMPUTATION OF DAMAGES.**

24 BANA's damages are the unpaid balance of the home loan. BANA claims attorneys' fees and  
25 costs as an element of damages. BANA reserves the right to amend this disclosure.

1 **D. INSURANCE AGREEMENTS.**

2 BANA is not aware of any insurance agreements at this time, and reserves the right to  
3 supplement this disclosure to add relevant information, if subsequent information and investigation  
4 so warrant.

5 DATED this 13<sup>th</sup> day of May, 2016.

6 **AKERMAN LLP**

7 /s/ William S. Habdas

8 ARIEL E. STERN, ESQ.

9 Nevada Bar No. 8276

10 WILLIAM S. HABDAS, ESQ.

11 Nevada Bar No. 13138

12 AKERMAN LLP

13 1160 Town Center Drive, Suite 330

14 Las Vegas, Nevada 89144

15 Telephone: (702) 634-5000

16 Facsimile: (702) 380-8572

17 Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 13<sup>th</sup> day of May, 2016 and pursuant to FRCP 5, I served via U.S. Mail the foregoing **PLAINTIFF BANK OF AMERICA'S INITIAL DISCLOSURE OF WITNESSES AND DOCUMENTS PURSUANT TO FRCP 26.1** to all parties of record, including the following:

Jay Hampton, Esq. and/or Miles Hampton, Esq.  
HAMPTON & HAMPTON, P.C.  
880 Seven Hills Drive, Ste. #200  
Henderson, Nevada 89052

Christopher V. Yergensen, Esq.  
NEVADA ASSOCIATION SERVICES, INC.  
6224 West Desert Inn Road  
Las Vegas, NV 89146

*Attorneys for Hampton & Hampton Collections, LLC*

*Attorneys for Nevada Association Services, Inc.*

Kaleb D. Anderson Esq.  
Siria L. Gutierrez, Esq.  
Joseph P. Garin, Esq.  
LIPSON NEILSON COLE SELTZER & GARIN  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144

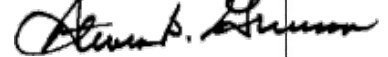
*Attorneys for Green Valley South Owners Association No. 1*

Michael F. Bohn, Esq.  
Law Offices of Michael F. Bohn  
376 East Warm Springs Rd., Ste. #140  
Las Vegas, NV 89119

*Attorney for Daisy Trust*

/s/ Tracey Wayne

An employee of AKERMAN LLP



1 **JOIN**  
2 BRANDON E. WOOD  
3 Nevada State Bar Number 12900  
4 NEVADA ASSOCIATION SERVICES, INC.  
5 6625 S. Valley View Blvd. Suite 300  
6 Las Vegas, NV 89118  
7 Telephone: (702) 804-8885  
8 Facsimile: (702) 804-8887  
9 Email: brandon@nas-inc.com

10 *Attorney for Defendant Nevada Association*  
11 *Services, Inc.*

12 **DISTRICT COURT FOR THE STATE OF NEVADA**  
13 **IN AND FOR THE COUNTY OF CLARK**

14 DAISEY TRUST, a Nevada trust,

15 Plaintiff,

16 vs.

17 GREEN VALLEY SOUTH OWNERS  
18 ASSOCIATION NO. 1, A Nevada non-profit  
19 corporation; and NEVADA ASSOCIATION  
20 SERVICES, INC., a domestic corporation;

21 Defendants.

CASE NO.: A-19-791254-C

DEPT. NO.: IX

**NEVADA ASSOCIATION SERVICES,  
INC.'S JOINDER TO DEFENDANT  
GREEN VALLEY SOUTH OWNERS'  
ASSOCIATION'S RENEWED MOTION  
TO DISMISS, OR ALTERNATIVELY,  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT**

22 COMES NOW, NEVADA ASSOCIATION SERVICES, INC. (hereinafter "NAS"), and  
23 hereby submits its Joinder to MOTION TO DISMISS DAISEY TRUST'S Complaint. NAS  
24 incorporates the arguments, points and authorities, and Exhibits set forth by GREEN VALLEY  
25 SOUTH OWNERS' ASSOCIATION as though fully set forth herein.

26 **CONCLUSION**

27 For all the reasons set forth in its Motion, GREEN VALLEY SOUTH OWNERS'  
28 ASSOCIATION'S Motion to Dismiss DAISEY TRUST'S Complaint should be **GRANTED** as to

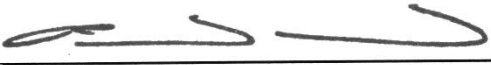
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GREEN VALLEY SOUTH OWNERS' ASSOCIATION and NAS.

Dated this 28<sup>th</sup> day of October, 2020.

By:   
BRANDON E. WOOD  
Nevada State Bar Number 12900  
NEVADA ASSOCIATION SERVICES, INC.  
6625 S. Valley View Blvd. Suite 300  
Las Vegas, NV 89118  
*Attorney for Defendant Nevada Association  
Services, Inc.*

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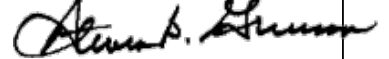
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28<sup>th</sup> day of October, 2020, and pursuant to N.R.C.P. 5(b), I served a true and correct copy of the foregoing *Nevada Association Services, Inc.’s Joinder to Defendant Green Valley South Owners’ Association’s Renewed Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment* upon the parties listed below and all parties/counsel set up to receive notice via electronic service in this matter in the following manner:

- ☐ Hand Delivery
- ☐ Facsimile Transmission
- ☐ U.S. Mail, Postage Pre-Paid
- ☒ Served upon opposing counsel via the Court’s electronic service system to the following counsel of record:

|  |   |
|--|---|
| Roger Croteau, Esq.<br><a href="mailto:croteaulaw@croteaulaw.com">croteaulaw@croteaulaw.com</a>                            | Croteau Admin<br><a href="mailto:receptionist@croteaulaw.com">receptionist@croteaulaw.com</a> |
| Janeen V. Isaacson, Esq.<br>Lipson Neilson<br><a href="mailto:jisaacson@lipsonneilson.com">jisaacson@lipsonneilson.com</a> |   |

/s/Susan E. Moses  
Employee of Nevada Association Services, Inc.



OPPS

ROGER P. CROTEAU, ESQ.  
Nevada Bar No. 4958  
RAYMOND JEREZA, ESQ.  
Nevada Bar No. 11823  
ROGER P. CROTEAU & ASSOCIATES, LTD  
2810 W. Charleston Blvd., Ste. 75  
Las Vegas, Nevada 89102  
(702) 254-7775  
(702) 228-7719 (facsimile)  
croteaulaw@croteaulaw.com  
ray@croteaulaw.com  
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

DAISY TRUST, a Nevada trust,  
  
Plaintiff,

vs.

GREEN VALLEY SOUTH OWNERS  
ASSOCIATION NO. 1 and NEVADA  
ASSOCIATION SERVICES, INC., a  
domestic corporation,  
  
Defendants.

Case No: A-19-791254-C  
Dept No: 9

**PLAINTIFF'S OPPOSITION TO  
GREEN VALLEY SOUTH OWNERS  
ASSOCIATION'S RENEWED MOTION  
TO DISMISS, OR ALTERNATIVELY,  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT AND NEVADA  
ASSOCIATION SERVICES, INC.'S  
JOINDER THERETO**

COMES NOW, Plaintiff, DAISY TRUST, by and through its attorneys, ROGER P.  
CROTEAU & ASSOCIATES, LTD., and hereby presents its Opposition to Green Valley South  
Owners Association's Renewed Motion to Dismiss (the "*HOA's Motion*") and Nevada  
Association Services, Inc.'s Joinder (the "*HOA Trustee's Motion*"). This Opposition is

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

5 DATED this 9<sup>th</sup> day of November, 2020.

6  
7 ROGER P. CROTEAU & ASSOCIATES, LTD.

8  
9 /s/ Raymond Jereza

10 Roger P. Croteau, Esq.  
11 Nevada Bar No. 4958  
12 Raymond Jereza, Esq.  
13 Nevada Bar No. 11823  
14 2810 W. Charleston Blvd., Ste. 75  
15 Las Vegas, Nevada 89102  
16 Attorneys for Plaintiff

## 17 MEMORANDUM OF POINTS AND AUTHORITIES

### 18 I. INTRODUCTION

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

1 may impose a lien against the real property which it governs, and thereafter foreclose upon that  
2 real property subject to the CC&Rs in a non-judicial foreclosure sale.

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

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

14        NRS 116.3116 Liens against units for assessments.

15        1. The association has a lien on a unit for any construction penalty that is imposed  
16 against the unit's owner pursuant to NRS 116.310305, any assessment levied  
17 against that unit or any fines imposed against the unit's owner from the time the  
18 construction penalty, assessment or fine becomes due. Unless the declaration  
19 otherwise provides, any penalties, fees, charges, late charges, fines and interest  
20 charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS  
21 116.3102 are enforceable as assessments under this section. If an assessment is  
22 payable in installments, the full amount of the assessment is a lien from the time  
23 the first installment thereof becomes due.

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

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

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

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

1 The lien is also prior to all security interests described in paragraph (b) to the  
2 extent of any charges incurred by the association on a unit pursuant to NRS  
3 116.310312 and to the extent of the assessments for common expenses based on  
4 the periodic budget adopted by the association pursuant to NRS 116.3115 which  
5 would have become due in the absence of acceleration during the 9 months  
6 immediately preceding institution of an action to enforce the lien, unless federal  
7 regulations adopted by the Federal Home Loan Mortgage Corporation or the  
8 Federal National Mortgage Association require a shorter period of priority for the  
9 lien. If federal regulations adopted by the Federal Home Loan Mortgage  
10 Corporation or the Federal National Mortgage Association require a shorter  
11 period of priority for the lien, the period during which the lien is prior to all  
12 security interests described in paragraph (b) must be determined in accordance  
13 with those federal regulations, except that notwithstanding the provisions of the  
14 federal regulations, the period of priority for the lien must not be less than the 6  
15 months immediately preceding institution of an action to enforce the lien. This  
16 subsection does not affect the priority of mechanics' or materialmen's liens, or the  
17 priority of liens for other assessments made by the association.

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

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

26 NRS 116.3116(2)(b) makes a homeowner's association's lien for assessments junior to a  
27 Deed of Trust beneficiary's secured interest in the real property; with one limited exception,  
28 provided for in NRS 116.3116(2)(c), a homeowner's association's lien is senior in priority to a  
Deed of Trust beneficiary's secured interest "to the extent of any charges incurred by the  
association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for  
common expenses based on the periodic budget adopted by the association pursuant to NRS  
116.3115 which would have become due in the absence of acceleration during the 9 months  
immediately preceding institution of an action to enforce the lien. ..." NRS 116.3116(2)(c). In  
Nevada, when a homeowners association properly forecloses upon a lien containing a  
superpriority lien component, such foreclosure extinguishes a Deed of Trust. If the homeowner's  
association does not properly foreclose on a super-priority homeowner's association lien or the

1 super-priority portion is paid before the foreclosure sale, the homeowner's association foreclosure  
2 sale does not extinguish the Deed of Trust.

3 The facts as alleged in this Complaint create an issue of first impression in the State of  
4 Nevada. As the court is aware, the statutory foreclosure scheme of NRS 116.3116 and related  
5 sections creates unique bifurcated priority liens related to the Deed of Trust. Under NRS 107, non-  
6 judicial foreclosure sales where the bidders at NRS 107 sales have available public information  
7 regarding the priority of the deed of trust being foreclosed, the priority of the Deed of Trust at the  
8 homeowner's association foreclosure sale cannot be determined by a bidder at the homeowner's  
9 association foreclosure sale from a review of public information, record searches, title reports or  
10 other means commonly and regularly relied upon by bidders in NRS 107 sales.

11 Generally, foreclosure trustees in NRS 107 sales have limited duty to the bidders of the  
12 property being foreclosed upon. The body of common law has developed from the precept that  
13 information exists in the public domain to conduct reasonable due diligence under the  
14 circumstances to properly inform a potential bidder, however, that information is not available  
15 under any circumstances to the bidder in a NRS 116 sale.

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

## 24 II. STATEMENT OF FACTS

- 25 1. On or about June 5, 2008, Dennis L. Scott, an unmarried person ("the Former Owner")  
26 purchased real property located at 137 Elegante Way, Henderson, Nevada 89074 (APN 177-  
27 13-214-086) (the "*Property*"), and obtained a purchase money loan secured by the Property  
28

1 from CTX Mortgage Company, LLC, (“*Lender*”), that is evidenced by a deed of trust between  
2 the Former Owner and Lender, recorded against the Property on June 27, 2008, for the loan  
3 amount of \$179,188.00 (“*Deed of Trust*”). The Deed of Trust provides that Mortgage  
4 Electronic Registration Services (“*MERS*”) is beneficiary, as nominee for Lender and Lender's  
5 successors and assigns. The Deed of Trust was in the amount of \$179,188.00, and the Deed of  
6 Trust was recorded in the Clark County Recorder's Office on June 27, 2008. See Complaint  
7 ¶12.

8 2. The Former Owner executed a Planned Unit Development Riders along with the Deed of  
9 Trust. See Complaint ¶13.

10 3. On September 26, 2011, MERS, on behalf of Lender, assigned its beneficial interest by  
11 Assignment of Deed of Trust to Bank of America, N.A. (“*BANA*” and/or “*Lender*”) and  
12 recorded the document in Clark County Recorder's Office on October 5, 2011. See Complaint  
13 ¶14.

14 4. The Former Owner of the Property failed to pay to HOA all amounts due to pursuant to  
15 HOA’s governing documents. See Complaint ¶15.

16 5. Accordingly, on August 23, 2011, Nevada Association Services, Inc. (“*HOA Trustee*”), on  
17 behalf of Green Valley South Owners Association No. 1 (“*HOA*”), recorded a Notice of Claim  
18 of Delinquent Assessment Lien (“*HOA Lien*”). The HOA Lien stated that the amount due to  
19 the HOA was \$818.70 as of August 18, 2011, plus accruing assessments, interest, late charges,  
20 costs, fees and other charges. See Complaint ¶16.

21 6. On November 18, 2011, HOA, through HOA Trustee, recorded a Notice of Default and  
22 Election to Sell (“*NOD*”) against the Property. The NOD stated the amount due to the HOA  
23 was \$1,819.50 as of November 16, 2011, plus accruing assessments, interest, costs and  
24 attorney’s fees. See Complaint ¶17.

25 7. After the NOD was recorded, on December 19, 2011, BANA, through its counsel, Miles,  
26 Bauer, Bergstrom & Winters (“*Miles Bauer*”) contacted the HOA Trustee and requested a  
27 ledger identifying the Super Priority Lien Amount, comprising of up to 9 months of delinquent  
28

assessments that were owed to the HOA as of the HOA Lien (“*Super Priority Lien Amount*”).

See Complaint ¶18.

8. Miles Bauer requested the HOA arrears in an attempt to pay the Super Priority Lien Amount of the HOA Lien. See Complaint ¶19.

9. In an Affidavit of Adam Kendis of Miles Bauer (the “*Affidavit*”), he provided that he could not locate a response from the HOA and HOA Trustee to the “December 19, 2011, Miles Bauer letter to the HOA, care of the HOA Trustee.” See Complaint ¶20.

10. The Affidavit stated that Miles Bauer used a Statement of Account from Nevada Association Services, Inc., for a different property in the same HOA to determine a good faith payoff. See Complaint ¶21.

11. BANA, through Miles Bauer, provided a payment of \$882.00 to the HOA Trustee, which included payment of up to nine months of delinquent assessments (the “*Attempted Payment*”). See Complaint ¶22.

12. HOA Trustee, on behalf of the HOA, rejected BANA’s Attempted Payment of \$882.00. See Complaint ¶23.

13. On April 23, 2012, HOA Trustee, on behalf of the HOA, recorded a Notice of Sale against the Property (“*NOS*”). The NOS provided that the total amount due the HOA was \$2,946.17 and set a sale date for the Property of May 18, 2012, at 10:00 A.M., to be held at Nevada Legal News located at 930 S. Fourth Street, Las Vegas, Nevada. See Complaint ¶24.

14. On August 31, 2012, HOA Trustee then proceeded to non-judicial foreclosure sale on the Property and recorded the HOA Foreclosure Deed on September 7, 2012, which stated that the HOA Trustee sold the HOA’s interest in the Property to the Plaintiff at the Foreclosure Sale for the highest bid amount of \$3,555.00. See Complaint ¶25.

15. The Foreclosure Sale created excess proceeds. See Complaint ¶26.

16. After the Notice of Default was recorded, BANA, the purported holder of the Deed of Trust recorded against the Property, through its counsel, Miles Bauer, contacted HOA Trustee and HOA and requested all amounts due the HOA by the Former Owners, upon information and

1 belief, Miles Bauer requested the sums due to the HOA by the Former Owners so it could  
2 calculate the breakdown of up to nine (9) months of common HOA assessments in order for  
3 BANA to calculate the Super Priority Lien Amount in an ostensible attempt to determine the  
4 amount of the HOA Lien entitled to super priority over the Deed of Trust. See Complaint ¶27.

5 17. In none of the recorded documents, nor in any other notice recorded with the Clark County  
6 Recorder's Office, did HOA and/or HOA Trustee specify or disclose that any individual or  
7 entity, including but not limited to BANA, had attempted to pay any portion of the HOA Lien  
8 in advance of the HOA Foreclosure Sale. See Complaint ¶28.

9 18. Plaintiff appeared at the HOA Foreclosure Sale and presented the prevailing bid in the amount  
10 of \$3,555.00, thereby purchasing the Property for said amount. See Complaint ¶29.

11 19. Neither HOA nor HOA Trustee informed or advised the bidders and potential bidders at the  
12 HOA Foreclosure Sale, either orally or in writing, that any individual or entity had attempted  
13 to pay the Super Priority Lien Amount. See Complaint ¶30.

14 20. The debt owed to Lender by the Former Owners of the Property pursuant to the loan secured  
15 by the Deed of Trust significantly exceeded the fair market value of the Property at the time of  
16 the HOA Foreclosure Sale. See Complaint ¶31.

17 21. Lender alleges that its Attempted Payment of the Super Priority Lien Amount served to satisfy  
18 and discharge the Super Priority Lien Amount, thereby changing the priority of the HOA Lien  
19 vis a vis the Deed of Trust. See Complaint ¶32.

20 22. Lender alleges that as a result of its Attempted Payment of the Super Priority Lien Amount,  
21 the purchaser of the Property at the HOA Foreclosure Sale acquired title to the Property  
22 subject to the Deed of Trust. See Complaint ¶33.

23 23. If the bidders and potential bidders at the HOA Foreclosure Sale were aware that an individual  
24 or entity had attempted to pay the Super Priority Lien Amount and/or by means of the  
25 Attempted Payment prior to the HOA Foreclosure Sale and that the Property was therefore  
26 ostensibly being sold subject to the Deed of Trust, the bidders and potential bidders would not  
27 have bid on the Property. See Complaint ¶34.

- 1 24. Had the Property not been sold at the HOA Foreclosure Sale, HOA and HOA Trustee would  
2 not have received payment, interest, fees, collection costs and assessments related to the  
3 Property would have remained unpaid. See Complaint ¶35.
- 4 25. HOA Trustee acted as an agent of HOA. See Complaint ¶36.
- 5 26. HOA is responsible for the actions and inactions of HOA Trustee pursuant to the doctrine of  
6 respondeat superior and agency. See Complaint ¶37.
- 7 27. HOA and HOA Trustee hid material information related to the Property: the HOA Lien; the  
8 Attempted Payment of the Super Priority Lien Amount; the rejection of such payment or  
9 Attempted Payment; and the priority of the HOA Lien vis a vis the Deed of Trust, from the  
10 bidders and potential bidders at the HOA Foreclosure Sale. See Complaint ¶38.
- 11 28. The information related to any Attempted Payment or payments made by Lender, BANA, the  
12 homeowner or others to the Super Priority Lien Amount was not recorded and would only be  
13 known by BANA, Lender, the HOA and HOA Trustees. See Complaint ¶39.
- 14 29. HOA and HOA Trustee withheld and hid the aforementioned information for their own  
15 economic gain and to the detriment of the bidders and potential bidders at the HOA  
16 Foreclosure Sale. See Complaint ¶40.
- 17 30. It was Plaintiff's practice and procedure that when it would attend NRS 116 sales, by and  
18 through its Trustee, at all times relevant to this case, the Trustee would attempt to ascertain  
19 whether anyone had attempted to or did tender any payment regarding the homeowner  
20 association's lien, including but not limited to the Attempted Payment. See Declaration of  
21 Eddie Haddad attached hereto as Exhibit A and incorporated herein by reference (the  
22 "*Declaration*").
- 23 31. At all times relevant to this matter, if the Plaintiff had learned of a "tender" either having been  
24 attempted or made, the Plaintiff would not purchase the Property offered in that HOA  
25 Foreclosure Sale. See Exhibit A.
- 26 32. BANA first disclosed the Attempted Payment by BANA/Lender to the HOA Trustee in  
27 BANA's Complaint, filed on February 29, 2016, but not served on the Plaintiff until March 16,  
28

1 2016 (“*Discovery*”) in the United States District Court Case No. 2:16-cv-00424 (the “*Case*”).

2 See Complaint ¶41.

### 3 III. PROCEDURAL BACKGROUND

4 In the Case, Plaintiff did not sue the HOA, nor the HOA Trustee. In the Case, Plaintiff  
5 sued BANA for quiet title and declaratory relief. In the Case, Lender brought claims for Quiet  
6 Title / Declaratory Judgment against all defendants, Breach of NRS 116.1113 against HOA and  
7 HOA Trustee, Wrongful Foreclosure against HOA and HOA Trustee, and Injunctive Relief  
8 against Plaintiff. See Exhibit B. Plaintiff did not elect to sue the HOA and/or the HOA Trustee in  
9 the Case. None of the allegations set forth in this Complaint would require a compulsory claim by  
10 Plaintiff in the Case. Plaintiff filed this Complaint on March 15, 2019 to preserve its three (3) year  
11 statute of limitations pursuant to NRS 11.190 (a)-(d).

### 12 IV. LEGAL ARGUMENT

#### 13 A. Statement of the Law

14 A complaint should not be dismissed for insufficiency, for failure to state a cause of action,  
15 unless it appears to a certainty that the Plaintiff is entitled to no relief under any set of facts which  
16 could be proven in support of the claim. *Zalk-Josephs Co. V. Wells Cargo, Inc.*, 81 Nev. 163, 400  
17 P.2d 621 (1965). On a motion to dismiss for failure to state a claim for relief, the trial court, and the  
18 Supreme Court must draw every fair intendment in favor of the plaintiff. *Merluzzi v. Larson*, 96 Nev.  
19 409, 610 P.2d 739 (1980), overruled on the other grounds, 106 Nev. 568, 796 P.2d 592 (1990).  
20 When tested by a subdivision (b)(5) motion to dismiss for failure to state a claim upon which relief  
21 can be granted the allegations of the complaint must be accepted as true. *Hynds Plumbing & Heating*  
22 *Co. V. Clark County School District*, 94 Nev. 776, 587 P.2d 131 (1978). A trial court may dismiss  
23 a complaint **only if it appears to a certainty that a plaintiff can prove no set of facts which**  
24 **would entitle him to relief**; all allegations pled must be accepted as true. *Bergmann v. Boyce*, 109  
25 Nev. 670, 856 P.2d 560 (1993) (Emphasis added). In the event that a motion asserting NRCP  
26 12(b)(5) presents matters outside the pleading which are not excluded by the court, the motion shall  
27 be treated as one for summary judgment and disposed of as provided in NRCP 56. See NRCP 12(b).  
28

1 Pursuant to N.R.C.P. 56, two substantive requirements must be met before a Court may grant  
2 a motion for summary judgment: (1) there must be no genuine issue as to any material fact; and, (2)  
3 the moving party must be entitled to judgment as a matter of law. *Fyssakis v. Knight Equipment*  
4 *Corp.*, 108 Nev. 212, 826 P.2d 570 (1992). Summary judgment is appropriate under NRCP 56 when  
5 the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are  
6 properly before the court demonstrate that no genuine issue of material fact exists, and the moving  
7 party is entitled to judgment as a matter of law. *Wood v. Safeway*, 121 Nev. Adv. Op. 73, 121 P.3d  
8 1026 (October, 2005) citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. at 713, 57 P.3d at 87  
9 (2003). In deciding whether these requirements have been met, the Court must first determine, in  
10 the light most favorable to the non-moving party “whether issues of material fact exist, thus  
11 precluding judgment by summary proceeding.” *National Union Fire Ins. Co. of Pittsburgh v. Pratt*  
12 *& Whitney Canada, Inc.*, 107 Nev. 535, 815 P.2d 601, 602 (1991).

13 The Nevada Supreme Court has indicated that Summary Judgment is a drastic remedy and  
14 that the trial judges should exercise great care in granting such motions. *Pine v. Leavitt*, 84 Nev.  
15 507, 445 P.2d 942 (1968); *Oliver v. Barrick Goldstrike Mines*, 111 Nev. 1338, 905 P.2d 168 (1995).  
16 “Actions for declaratory relief are governed by the same liberal pleading standards that are applied  
17 in other civil actions.” See *Brelant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258,  
18 1260-61 (1993). “The formal sufficiency of a claim is governed by NRCP 8(a), which requires only  
19 that the claim, shall contain (1) a short and plain statement of the claim showing that the pleader is  
20 entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled.”  
21 See id. (quoting NRCP 8(a)).

22 Based upon the facts asserted in Plaintiff’s Complaint, which must be taken as true, the  
23 Court should deny the HOA’s Motion and the HOA Trustee’s Joinder. Further, should the Court  
24 conclude that the HOA’s Motion should be evaluated as a Motion for Summary Judgment or Partial  
25 Summary Judgment, the Court should also deny the HOA’s Motion as genuine issues of material  
26 fact remain and Defendants are not entitled to judgment as a matter of law.

27 **B. Saticoy’s claim for misrepresentation does not fail as a matter of law**  
28

1           The HOA intentionally/negligently made the determination not to disclose the Attempted  
2 Payment despite its actual knowledge to the contrary known only to the HOA, HOA Trustee and  
3 Lender. The Court in *Foster v. Dingwall*, 126 Nev.56, 69 227 P.3d 1042,1052, 2010 LEXIS 5, 26,  
4 126 Nev. Adv. Rep. 6 (2010) provided that the omission of a material fact such as the BANA  
5 Attempted Payment of the HOA Lien may be deemed to be a false representation which the  
6 Defendants are bound by the mandates of NRS 116.1113 and NRS 113.130 to disclose to potential  
7 bidders under the obligation and duty of good faith and candor to disclose upon reasonable inquiry  
8 from potential bidders at the HOA Foreclosure Sale and/or the party conducting the sale with actual  
9 knowledge of certain material facts such intentional omission in not disclosing the Attempted  
10 Payment is equivalent to a false representation under the facts of this case.

11           Saticoy has identified that the HOA, by and through its agent, the HOA Trustee, intentionally  
12 did not disclose the Attempted Payment to Saticoy or the potential bidders at the HOA Foreclosure  
13 Sale. Unlike NRS 107 *et seq.* sales, NRS 116 *et seq.* sales provide for a super and sub-priority lien  
14 portion of the Deed of Trust. Absent of the recording of any notice of payment of the Super Priority  
15 Lien Amount, as is mandated with the NRS 116 amendments in 2015, the only way Saticoy and/or  
16 potential bidders at the HOA Foreclosure Sale would know if any party tendered the Super Priority  
17 Lien Amount and/or Attempted Payment is if the HOA and/or the HOA Trustee informs the bidders  
18 of the Attempted Payment. It is clear from the facts of this case that the HOA Trustee was aware of  
19 the Attempted Payment and its rejection by the HOA Trustee.

20           Since the HOA Trustee is the disclosed agent of the HOA, the HOA is imputed with  
21 knowledge held by the HOA Trustee. See Exhibit C. In the Complaint, Plaintiff sets forth the duty,  
22 breach of that duty, improper purpose, failure to make a statement regarding the Attempted Payment,  
23 the material omission of the Attempted Payment, the breach of the obligation of good faith and  
24 candor, the failure to provide notice pursuant to NRS 113 *et seq.* and the damages suffered by  
25 Saticoy. See Declaration.

26           In this case, the HOA, as principal for the HOA Trustee, are not guilty of a false  
27 representation, but they are guilty of intentionally not disclosing a material fact regarding the  
28

1 payment of the Attempted Payment concerning the Deed of Trust that they are required to do and  
2 thereby making a material omission of a fact subject to this claim. As Mr. Haddad provided in his  
3 Declaration, he relied upon the non-disclosure of the Attempted Payment to indicate that no tender  
4 had been attempted or accomplished.

5 The HOA and/or the HOA Trustee's actions leading up to and at the HOA Foreclosure Sale  
6 intentionally obstructed Plaintiff's opportunity to conduct its own due diligence regarding the  
7 Property and specifically the priority of the lien being foreclosed upon, and ultimately affected  
8 Plaintiff's decision whether to actually submit a bid on the Property or not. See Plaintiff's Complaint  
9 ¶¶ 28, 30, 31, 32, 34, 35, 36, 38, 39, 40, 41, 43, 44, 45, 47, 48, 49, 50, 51, 52, 56, 58, 59, 60, 62,  
10 63, 64, 65, 66, and 67. See Exhibit C.

11 It is not Saticoy's duty to prove that the HOA Trustee believed it had a duty to disclose the  
12 existence of the Miles Bauer tender or believed that the rejection of the tender/Attempted Payment  
13 had any impact on its statutory right to foreclose on its super-priority lien. It is Saticoy's claim that  
14 the HOA and the HOA Trustee had a duty to the bidding public to disclose information known to it  
15 upon reasonable inquiry, so Saticoy and the other bidders could decide whether to purchase the  
16 Property at the HOA Foreclosure Sale. The HOA and HOA Trustee intentionally, whether on a  
17 mistaken belief or not of the effectiveness of the tender, failed to disclose the Attempted Payment,  
18 so they would not chill the sale of the Property for their own economic gain.

19 Furthermore, it was Saticoy's practice and procedure that when it would attend NRS 116  
20 sales, by and through its Trustee, at all times relevant to this case, the Trustee would attempt to  
21 ascertain whether anyone had attempted to or did tender any payment regarding the homeowner  
22 association's lien. See Declaration.

23 Saticoy presented the facts and argument that it sought to ascertain whether a tender had  
24 occurred, or been attempted, as this information would play a prominent role in determining whether  
25 Saticoy, through Mr. Haddad, would purchase an interest in any given property. Thus, Saticoy did  
26 not rely solely upon the recitals in the foreclosure deed, as set forth in the unpublished orders cited  
27 by the HOA. See *Saticoy Bay, LLC, Series 11339 Colinward, A Nevada Limited Liability Company*  
28

1 vs. *Travata and Montage at Summerlin Centre Homeowners Association, et. al.* (Case No. 80162)  
2 (2020); See *Saticoy Bay, LLC, Series 3123 Inlet Bay vs. Genevieve Court Homeowners Association,*  
3 *et. al.* (Case No. 80135) (2020); See *Saticoy Bay, LLC, Series 8320 Bermuda Beach, A Nevada*  
4 *Limited Liability Company vs. South Shores Community Homeowners Association, et. al.* (Case No.  
5 80165) (2020); See *Saticoy Bay, LLC, Series 6408 Hillside Brook, A Nevada Limited Liability*  
6 *Company vs. Mountain Gate Homeowners Association, et. al.* (Case No. 80134) (2020); See *Saticoy*  
7 *Bay, LLC, Series 8920 El Diablo, A Nevada Limited Liability Company vs. Silverstone Ranch*  
8 *Homeowners Association, et. al.* (Case No. 80039) (2020). The basis for this factual scenario where  
9 Saticoy inquired as to the status of a “tender” is set forth in the complaint by the reference to  
10 Saticoy’s receipt of information from the HOA and HOA Trustee “either **orally** or in writing,”  
11 (emphasis added) showing that Saticoy had not solely “relied upon the (written) recitals in the  
12 foreclosure deed” as considered by the unpublished orders. Saticoy elaborated on his allegation of  
13 verbal inquiry in Saticoy’s complaint, wherein Mr. Haddad, as the Trustee for Saticoy, would  
14 “attempt to ascertain whether anyone had attempted to or did tender any payment.” Mr. Haddad’s  
15 affirmative efforts indicate that some steps were taken to obtain information regarding the sale via  
16 verbal communication. Thus, it is likely that Mr. Haddad inquired of any “tender” at the time of the  
17 HOA Sale. This factual scenario, wherein Mr. Haddad verbally inquired as to the status of a “tender”  
18 in the matter, and a resulting response (or lack thereof) from the HOA or HOA Trustee that did not  
19 disclose the “tender” by the holder of the First Deed of Trust, would result in a violation of NRS  
20 113 and “supply[ing] false information” pursuant to *Halcrow, Inc. v. Eighth Judicial Dist. Court,*  
21 129 Nev. 294, 400, 302 P.3d 1148, 1153 (2013), or making “a false representation” pursuant to  
22 *Nelson v. Heer*, 123 Nev. 217, 225 (2007).

23 **C. Defendants failed to conduct their obligations in good faith under NRS 116.1113**

24 The Court should deny the HOA’s Motion, because Plaintiff’s Complaint adequately states  
25 claims for relief consistent with their obligation of good faith, honesty-in-fact, reasonable standards  
26 of fair dealing and candor pursuant to NRS 116.1113 and NRS 113.130. The HOA argues that  
27 Plaintiff fails to cite to any provision within NRS Chapter 116 that contains an obligation or duty of  
28

1 good faith to the Purchaser, thus alleging that NRS §116.1113 is not implicated. However, Plaintiff  
2 respectfully disagrees. NRS 116.1113 is not only implicated but clearly governs the parties'  
3 performance. Even if claims under NRS 113.130 are deemed to not be timely filed, the mandates of  
4 NRS 113.130 constitute a breach of the HOA Foreclosure Deed wherein the HOA Trustee on behalf  
5 of itself and its principal, the HOA, represents and warranties that the HOA Trustee "has complied  
6 with all requirements of law including, but not limited to..." See HOA Motion Exhibit 5.

7 NRS 116.1113 provides, "[e]very contract or duty governed by this chapter imposes an  
8 obligation of good faith in its performance or enforcement." NRS 116.1113 provides that in "every  
9 contract or duty governed by [NRS 116] the actions of the HOA and the HOA Trustee leading up  
10 to and including the HOA Foreclosure Sale provide that a duty of good faith as further clarified by  
11 the comment to Section 1-113 infra regarding the HOA's performance in its enforcement of the  
12 provisions included in NRS Chapter 116 that constitute the foreclosure sale and selling the Property  
13 to a purchaser that will eventually be a member of the HOA. Plaintiff alleges that the HOA and the  
14 HOA Trustee's actions were not conducted in good faith. See Complaint. Plaintiff further alleges  
15 that the HOA and the HOA Trustee intentionally and/or negligently misrepresented the conditions  
16 present at the time it conducted the HOA Foreclosure Sale. See Complaint. Plaintiff further alleges  
17 that the HOA and the HOA Trustee failed to disclose mandated information specifically known to  
18 the HOA and the HOA Trustee regarding assessments and tender/Attempted Payment as mandated  
19 by NRS 116.1113 and NRS 113.130.

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

1 Nevada's HOA lien statute, NRS Chapter 116.3116, is modeled after the Uniform Common  
2 Interest Ownership Act of 1982 (hereinafter "UCIOA"), § 3-116, 7 U.L.A., part II 121-24 (2009)  
3 (amended 1994, 2008), which Nevada adopted in 1991, see NRS 116.001. The purpose of the  
4 UCIOA is "to make uniform the law with respect to the subject of this chapter among states enacting  
5 it." NRS 116.1109(2). See *Carrington Mortg. Holdings, LLC v. R Ventures VIII, LLC*, 419 P.3d 703,  
6 2018 Nev. LEXIS 47, 134 Nev. Adv. Rep. 46, 2018 WL 3015114 (Nev. 2018).

7 In *Carrington Mortg. Holdings, LLC*, 419 P.3d at 705, the Nevada Supreme Court made  
8 clear that it would turn to case law from other jurisdictions to support its conclusions interpreting  
9 the UCIOA. The Nevada courts should follow the lead set by Minnesota in holding that the UCIOA  
10 imposed the duty of fair dealing which encompasses the duty of candor. For example, the Minnesota  
11 Appeals Court stated that, under the Minnesota Common Interest Ownership Act, which is likewise  
12 modeled after the UCIOA just as Nevada's NRS 116 *et seq.* good faith "means observance of two  
13 standards: 'honesty in fact', and observance of reasonable standards of fair dealing." *Horodenski v.*  
14 *Lyndale Green Townhome Ass'n, Inc.*, 804 N.W.2d 366, 373 (Minn. App. 2011) (quoting UCIOA,  
15 1982, § 1-113 & cmt.). See *Dean v. CMPJ Enters., LLC*, 2018 Minn. App. Unpub. LEXIS 642,  
16 2018 WL 3614146 (Minn. App. 2018).

17 Turning the UCIOA with comments from the drafters of the UCIOA; the UCIOA provides  
18 comment to the provision that is exactly NRS 116.1113, that is at issue here:

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

21 **Comment**

22 This section sets forth a basic principle running throughout this Act: in transactions  
23 involving common interest communities, good faith is required in the performance  
24 and enforcement of all agreements and duties. Good faith, as used in this Act,  
25 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 Transfers Act, and Sections 2-103(i)(b) and 7-404 of the Uniform  
Commercial Code.

26 Section 1-113 of the UCIOA became NRS 116.1113 verbatim. It is clear that the authors of  
27 the UCIOA intended the definition of "good faith" to include two (2) standards: (1) honest-in-fact,  
28

1 and (2) observance of reasonable standards of fair dealing. As other jurisdictions have addressed  
2 these two standards create an obligation of candor has been adopted by other jurisdictions that have  
3 adopted the UCOIA.

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

7 Part of fair dealing is the obvious duty of candor. Moreover, one possessing  
8 superior knowledge may not mislead any stockholder by use of corporate  
9 information to which the latter is not privy. *Lank v. Steiner*, Del. Supr., 43 Del. Ch.  
10 262, 224 A.2d 242, 244 (1966). Delaware has long imposed this duty even upon  
persons who are not corporate officers or directors, but who nonetheless are privy  
to matters of interest or significance to their company.

11 See *Weinberger v. Uop*, 457 A.2d 701, (Del. 1983); see also, *Brophy v. Cities Service Co.*, Del. Ch.,  
12 31 Del. Ch. 241, 70 A.2d 5, 7 (Del. 1949).

13 Part of fair dealing is the obvious duty of candor. *Lynch v. Vickers Energy Corp.*, Del. Supr.,  
14 383 A.2d 278, 281 (Del. 1977) (*Lynch I*). See also, *Weinberger v. Uop*, 457 A.2d 701, 710, 1983  
15 Del. LEXIS 371, \*26 (Del. 1983). The duty of candor is one of the elementary principles of fair  
16 dealing. See *Mills Acquisition Co. v. MacMillan, Inc.*, 559 A.2d 1261, 1989 Del. LEXIS 149, Fed.  
17 Sec. L. Rep. (CCH) P94,401 (Del. 1989). See also, *Holten v. Std. Parking Corp.*, 98 F. Supp. 3d  
18 444, 2015 U.S. Dist. LEXIS 39152 (Conn. 2015). Compare *Osowski v. Howard*, 2011 WI App 155,  
19 ¶ 17, 337 Wis. 2d 736, 807 N.W.2d 33 (WI App. Ct. 2011) where the Wisconsin Appeals Court  
20 noted that the duty of fair dealing is a guarantee by each party that he or she "will not intentionally  
21 and purposely do anything to prevent the other party from carrying out his or her part of the  
22 agreement, or do anything which will have the effect of destroying or injuring the right of the other  
23 party to receive the fruits of the contract." See *Osowski v. Howard*, 2011 WI App 155, ¶ 17, 337  
24 Wis. 2d 736, 807 N.W.2d 33. See also, *Tang v. C.A.R.S. Prot. Plus, Inc.*, 2007 WI App 134, ¶41,  
25 301 Wis. 2d 752, 734 N.W.2d 169 (quoting *Metropolitan Ventures, LLC v. GEA Assocs.*, 2006 WI  
26 71, ¶35, 291 Wis. 2d 393, 717 N.W.2d 58).

1           Moreover, the official comments by the drafters of the UCIOA provide important guidance  
2 in construing NRS §116.1113. See *Chase Plaza Condo. Ass'n v. JP Morgan Chase Bank, N.A.*, 98  
3 A.3d 166, 175, 2014 D.C. App. LEXIS 317, \*20-21 (D.C. 2014). See generally, e.g., *Alvord Inv.,*  
4 *LLC v. Zoning Bd. of Appeals*, 282 Conn. 393, 920 A.2d 1000, 2007 Conn. LEXIS 193;  
5 *Cantonbury Heights Condominium Assn., Inc. v. Local Land Development, LLC*, 273 Conn. 724,  
6 739-40, 873 A.2d 898 (2005); *W & D Acquisition, LLC v. First Union National Bank*, 262 Conn.  
7 704, 712-13, 817 A.2d 91 (2003); *Platt v. Aspenwood Condo. Ass'n, Inc.*, 214 P.3d 1060, 1063-64  
8 (Colo. App. 2009) (relying on drafters' comments to UCOIA for guidance in interpreting state  
9 statute modeled on UCOIA; "We accept the intent of the drafters of a uniform act as the  
10 [legislature's] intent when it adopts that uniform act.") (internal quotation marks omitted); *Hunt*  
11 *Club Condos., Inc. v. Mac-Gray Servs., Inc.*, 2006 WI App 167, 295 Wis. 2d 780, 721 N.W.2d  
12 117, 123-25 (Wis. Ct. App. 2006)(official and published comments are "valid indicator" of  
13 legislature's intent in enacting corresponding statute); *Univ. Commons Riverside Home Owners*  
14 *Ass'n v. Univ. Commons Morgantown, LLC*, 230 W. Va. 589, 741 S.E.2d 613, 2013 W. Va.  
15 LEXIS 264 \*16; *Will v. Mill Condo. Owners' Ass'n*, 2004 VT 22, 176 Vt. 380, 848 A.2d 336, 2004  
16 Vt. LEXIS 26 (turned to commentary to interpret state statute modeled on UCOIA). In the present  
17 matter, UCIOA § 1-113 cmt (1982) explicitly imposes a duty of good faith, which includes the  
18 duty of candor, and this Court should rely upon the comment consistent with the above cited case  
19 law.

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

6 At the time of the HOA Foreclosure Sale, only three parties knew of Lender's Attempted  
7 Payment; specifically, the HOA, the HOA Trustee and Lender. Moreover, these same parties knew  
8 of Lender's subsequent attempt to satisfy the super-priority piece of the HOA Lien via the letter  
9 from Miles Bauer to the HOA. This letter was sent directly to the HOA Trustee and in response to  
10 the HOA Trustee's recording of the NOD, in this case. Arguably, the HOA and the HOA Trustee  
11 knew that the Attempted Payment may be deemed to have satisfied the HOA Lien, which was  
12 determined to extinguish any Super Priority Lien Amount piece of the HOA Lien. The HOA and  
13 the HOA Trustee knew that fact and intentionally failed to disclose that material fact to the bidders  
14 at the HOA Foreclosure Sale. Frankly, the HOA and HOA Trustee knew or should have known  
15 that such an omission would drastically affect the outcome of the HOA Foreclosure Sale. An  
16 intentional failure to disclose Lender's Attempted Payment had the effect of causing the Property  
17 to sell at the HOA Foreclosure Sale. Therefore, Plaintiff has alleged that the HOA and the HOA  
18 Trustee intentionally withhold information regarding Lender's Attempted Payment of the HOA  
19 Lien that effectively defraud the public and/or potential bidders concerning the HOA Foreclosure  
20 Sale.

21 The purpose underlying NRS 116 is to remove a nonperforming homeowner (meaning a  
22 homeowner not paying his/her HOA dues) from a property and to replace him/her with a  
23 performing homeowner, thereby relieving the homeowners association and its members of the  
24 burden of paying the obligations of the nonperforming individual. To accept the HOA's contention  
25 that it did not intentionally or negligently misrepresent the HOA Foreclosure Sale by omitting the  
26 Attempted Payment by Lender of the HOA Lien, with at a minimum an announcement, and that it  
27 was under no contract or duty to operate under good faith and with candor to disclose such a  
28

1 material fact when asked by potential bidders as mandated by NRS 116 *et seq* and/or NRS 113 *et*  
2 *seq.*, would serve to emasculate NRS 116's mandate of good faith and render it completely  
3 meaningless and ineffective.

4       Why would any person or entity purchase a property at an HOA foreclosure sale knowing  
5 that he or she would thereafter be stripped of ownership of the property upon foreclosure by a  
6 secured lender? Such a foreclosure could conceivably take place days or weeks after the HOA  
7 foreclosure sale. In the vast majority of cases, the answer to this question is quite simply that he or  
8 she would not. Thus, lacking any market for the sale of real property securing HOA liens, the  
9 homeowners associations and their members would be forced to continue to support those  
10 homeowners who choose not to pay their HOA dues. Indeed, the homeowners association would  
11 not have any reason to even credit bid the HOA lien at the time of sale. If the homeowners  
12 association were to carry out a sale and acquire the subject property for a credit bid, there would  
13 still be no party paying the HOA dues. Furthermore, the homeowners association would thereafter  
14 be required to pay for taxes, insurance and other maintenance related to the property. The payment  
15 of these expenses would constitute a further burden for the homeowners association and its  
16 members that they can ill afford.

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

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

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

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

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

28       (b) The elapsing of the 90 days; and

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

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

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

(Emphasis added).

Purchaser is defined under NRS 116.3166 as follows:

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

The relationship of the HOA Trustee as an agent for the HOA created a new contract at the HOA Foreclosure Sale for the sale of a "unit" to a "Purchaser" that as a result of its purchase shall become a member of the HOA.

In the foreclosure section of NRS 116.3116 to NRS 116.3117, the term Purchaser refers to buyers at an HOA Foreclosure Sale in addition to direct sales and as such the obligation of good faith operates to encompass a successful bidder. NRS 116.1108 provides for the application of general principles of law to the HOA Foreclosure Sale and the Purchaser as stated below:

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

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

1                   **a. Saticoy Bay Relied Upon the Recital - the HOA Foreclosure Deed**

2           The HOA Foreclosure Sale was performed pursuant to NRS 116.3116, Plaintiff reasonably  
3 relied upon the recitals included in the HOA Foreclosure Deed that stated that the foreclosure was  
4 in compliance with NRS 116, *et seq.* See *Nationstar Mortg., LLC v. SFR Investments Pool 1, LLC*,  
5 *No. 70653*, 2017 Nev. App. Unpub. LEXIS 229, 2017 WL 1423938, at \*2 (Nev. App. Apr. 17,  
6 2017) ("And because the recitals were conclusive evidence, the district court did not err in finding  
7 that no genuine issues of material fact remained regarding whether the foreclosure sale was proper  
8 and granting summary judgment in favor of SFR."). Therefore, pursuant to *SFR Investments*, NRS  
9 116.3116, and the recorded HOA Foreclosure Deed in favor of SFR, the foreclosure sale was proper  
10 and extinguished the Deed of Trust. *Bank of Am., N.A. v. Sonrisa Homeowners Ass'n*, 2018 U.S.  
11 Dist. LEXIS 118720 (July 17, 2018). *Id.*

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

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

20 *Id.* at 411-412. (Emphasis added.) As such, there would have been no reason to question the  
21 legitimacy of the foreclosure sale based exclusively upon the recorded documents. At foreclosure  
22 sales conducted pursuant to NRS 116, bidders, potential bidders and buyers do not have access to  
23 any more information than is recorded. Plaintiff's reliance on the recitations on the HOA  
24 Foreclosure Deed was reasonable and foreseeable. Specifically, the HOA Foreclosure Deed  
25 asserted that the HOA Trustee complied with "all requirements of law."

26           However, Defendant's lack of good faith and candor in conducting the HOA Foreclosure  
27 Sale was not immediately evident. It was concealed. It was only upon receipt of the Case on the  
28

1 Discovery, as asserted in the Complaint, that Plaintiff discovered the facts giving rise to its  
2 Complaint. Accordingly, application of the discovery rule tolls the statute of limitations and  
3 Plaintiff's claims are filed timely and are not time barred.

4 The Plaintiff relied upon the recitals contained within the HOA Foreclosure Deed that were  
5 included in the HOA Foreclosure Deed by the HOA and the HOA Trustee. Under Nevada law, the  
6 HOA foreclosure sale and the resulting foreclosure deed are both presumed valid. NRS 47.250(16)-  
7 (18) (stating that disputable presumptions exist "that the law has been obeyed" "that a trustee or  
8 other person, whose duty it was to convey real property to a particular person, has actually conveyed  
9 to that person, when such presumption is necessary to perfect the title of such person or a successor  
10 in interest"; "that private transactions have been fair and regular"; and "that the ordinary course of  
11 business has been followed."). Accordingly, the Plaintiff possessed a good faith belief that the HOA  
12 and/or the HOA Trustee's actions taken in the ordinary course of business had been followed, and  
13 that the HOA Foreclosure Sale was fair and regular. Plaintiff has timely commenced this action  
14 against the HOA and HOA Trustee pursuant to NRS §11.190(3)(d) and NRS 11.190(3)(a).

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

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

**D. The HOA has a duty to disclose the attempted payment to the purchaser at an HOA foreclosure sale.**

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

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

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

In this case, Plaintiff has alleged that it attempted to ascertain whether any tender payment of any type was made to the HOA and/or HOA Trustee before the HOA Foreclosure Sale, without any success. The *Noonan* court stated that the "...Hampton neither made an affirmative false statement nor omitted a material fact it was bound to disclose." *Id.* This decision is based upon a factual

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<sup>1</sup>This was the version of the statute in place at the time of the foreclosure sale.

1 determination of a material fact question; however, the present case facts as presented preclude  
2 dismissal at this point without discovery. The *Noonan* court does not consider the arguments  
3 reviewed and presented herein on NRS 116.1113 and NRS 113.130 and its relevant analysis.

4 In *Bank of America, N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113; 2018 Nev. LEXIS 73;  
5 134 Nev. Adv. Rep. 72 (2018), the Nevada Supreme Court determined that a tendering bank has no  
6 obligation to disclose but that is not the case with the HOA and the HOA Trustee. In *Bank of*  
7 *America, N.A.*, the Court addressed the issue of whether the bank, the party making the tender, had  
8 a duty to record a partial reconveyance or other recorded document to be placed in the chain of title  
9 to the property of its secured lien to acknowledge the tender by the bank. *Id.* The Court opined as  
10 follows:

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

19 By its plain text, NRS 111.315 does not apply to Bank of America's tender.  
20 Tendering the superpriority portion of an HOA lien does not create, alienate, assign,  
21 or surrender an interest in land. Rather, it preserves a pre-existing interest, which  
22 does not require recording. See Baxter Dunaway, *Interests and Conveyances*  
23 *Outside Acts—Recordable Interests*, 4 L. of Distressed Real Est. § 40:8 (2018)  
24 ("[D]ocuments which do not create or transfer interests in land are often held to be  
25 nonrecordable; the records, after all, are not a public bulletin board."). SFR's  
26 argument that the tender was an instrument affecting real property is unpersuasive.

27 NRS 111.315 pertains to written instruments "setting forth an agreement . . .  
28 whereby any real property may be affected . . . in the manner prescribed in this  
chapter . . . ." Emphasis added.) NRS Chapter 111 governs the creation, alienation,  
assignment, or surrendering of property interests, and their subsequent recording.  
Bank of America's tender did not bring about any of these actions, and therefore  
did not affect the property as prescribed in NRS Chapter 111. Accordingly, NRS  
111.315 did not require Bank of America to record its tender.

NRS 106.220 provides that "[a]ny instrument by which any mortgage or deed of  
trust of, lien upon or interest in real property is subordinated or waived as to  
priority, must . . . be recorded . . . ." The statute further states that "[t]he instrument  
is not enforceable under this chapter or chapter 107 of NRS unless and until it is  
recorded." HN10 NRS Chapter 106 does not define instrument as used in NRS  
106.220, but Black's Law Dictionary defines the term as "[a] written [\*120] legal

document that defines rights, duties, entitlements, or liabilities, such as a statute, contract, will, promissory note, or share certificate." Instrument, Black's Law Dictionary (10th ed. 2014). Thus, NRS 106.220 applies when a written legal document subordinates or waives the priority of a mortgage, deed of trust, lien, or interest in real property.

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

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

**E. An HOA foreclosure deed does make certain representations regardless of the "without warranty" limitation.**

Defendant argues that the Property was sold at the HOA Foreclosure Sale "without warranty," pursuant to NRS 116.31164(3)(a)..." See HOA's Motion, page 6, lines 19-26. The HOA and HOA Trustee have an obligation of good faith, candor and complying with all applicable law

1 at the time of the HOA Foreclosure Sale which they collectively did not. The HOA and HOA  
2 Trustee cannot intentionally withhold information known only to Lender, the HOA and HOA  
3 Trustee that materially, adversely affects, the Purchasers as defined under NRS 116 and NRS 113,  
4 Saticoy, as to the value and nature of the bifurcated lien status of the Deed of Trust and the  
5 assessments. Of matters not specifically known to the HOA and HOA Trustee at the time of the  
6 HOA Foreclosure Sale that cannot be adduced by a public records review as occurs in NRS 107  
7 foreclosure sales, Plaintiff would concede that Defendants would not be liable. However, in the  
8 instant case, the HOA and HOA Trustee are the actual parties with the information regarding the  
9 Attempted Payment and had an obligation to inform the Plaintiff. This fact alone constitutes  
10 sufficient proof of the HOA, by and through its agent, the HOA Trustee, to disclose the Attempted  
11 Payment to the Plaintiff and failing to comply with all requirements of law.

12 The Defendants have a duty to disclose the Attempted Payment to a Purchaser, as defined  
13 in NRS 116.079, at an HOA Foreclosure Sale pursuant to NRS 116.1113 and NRS 113.130. At the  
14 time and place of the HOA Foreclosure Sale, the HOA, by and through its agent, the HOA Trustee,  
15 enters into a sale governed by a statute, NRS 116, by the function of the auction conducted by the  
16 HOA Trustee. Inherently, the material aspects of the factors affecting the lien priority of the secured  
17 debt that are only known solely to the HOA, HOA Trustee and Lender are material to the HOA  
18 Lien being foreclosed upon and must be disclosed to the HOA Foreclosure Sale bidders. To infer  
19 otherwise, would destroy the statutory scheme of NRS 116 sales.

20 A common argument among all parties to the HOA litigation has been the low prices  
21 adduced at the HOA Foreclosure Sales for the real property sold. Typically, the low sales prices  
22 have been driven by the mountain of litigation that has occurred over the last years seeking to  
23 define the rights and obligations of the various parties. To hold that the HOA does not have a duty  
24 to disclose information know only to the HOA and the HOA Trustee that materially affects the  
25 value of what a willing buyer would be willing to pay for the real property offered at auction that  
26 relates directly to the status and priority of the Deed of Trust. Essentially, the Defendants are  
27 alleging that the HOA will sell to the highest cash bidder the real property without any way for the  
28

1 bidder to know if it will acquire the real property free and clear of the Deed of Trust or subject  
2 thereto. This would effectively forever destroy the HOA foreclosure sale process under NRS  
3 116.3116.

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

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

19 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.

Emphasis added.

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

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

To the extent known to the HOA, and the HOA Trustee, as the agent of the HOA, the HOA and HOA Trustee must complete and answer the questions posed in the SRPDF in its

entirety, but specifically, Section 9, Common Interest Communities, disclosures (a) - (f), and Section 11, that provide as follows:

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

(a) Common Interest Community Declaration and Bylaws available?

(b) Any periodic or recurring association fees?

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

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

(e) Any assessments associated with the property (excluding property taxes)?

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

...

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

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

Section 11 of the SRPDF relates directly to information known to the HOA and the HOA Trustee that materially affects the value of the Property and defined as a “defect” in NRS 113.100(1), that provides as follows: NRS 113.100(1). In this case, if the Super Priority Lien Amount is paid, or if the Attempted Payment is rejected, it would have a materially adverse affect on the overall value of the Property, and therefore, must be disclosed in the SRPDF by the HOA and the HOA Trustee when the SRPDF is completed and disclosed to the purchaser/Saticoy.

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

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

Pursuant to Nevada Real Estate Division’s (“NRED”), Residential Disclosure Guide (the “Guide”) [attached hereto as Exhibit E], the Guide provides at page 20 that the HOA and HOA Trustee shall provide the following to the purchaser/Saticoy at the HOA Foreclosure Sale:

The content of the disclosure is based on what the seller is aware of at the time. If, after completion of the disclosure form, the seller discovers a new defect or notices that a previously disclosed condition has worsened, the seller must inform

1 the purchaser, in writing, as soon as practicable after discovery of the condition,  
2 or before conveyance of the property.

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

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

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

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

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

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

19 The HOA and the HOA Trustee did not provide an SRPDF to the Plaintiff at the HOA  
20 Foreclosure Sale nor did it provide any information orally. The foregoing demonstrates that the  
21 HOA and the HOA Trustee's duty and obligation to disclose the Attempted Payment to the  
22 Purchaser, Saticoy at the HOA Foreclosure Sale. Failure to make the foregoing disclosures is a  
23 breach of duty of good faith and candor and a duty owed by the HOA Trustee under NRS 116, *et*  
24 *seq.* The HOA and HOA Trustee's duty is codified pursuant to NRS 113 *et seq.* and was breached  
25 in this case.

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

Furthermore, while the unpublished orders set forth that the Property would still have the  
same "value" regardless of whether it is encumbered by the First Deed of Trust, Saticoy believes

1 this misapprehends the facts, as set forth by the complaint and the record in this matter. Saticoy  
2 alleges that as “used in NRS 113, the term ‘Defect’ means a condition that materially affects the  
3 value or use of the residential property in an adverse manner.” NRS 113.100. While Saticoy  
4 contends that the “value” of the Property is impacted by it remaining encumbered by the First  
5 Deed of Trust, Saticoy did not abandon the remainder of the NRS 113 claim, namely, that the  
6 “use” of the residential property could be impacted, which in turn could affect the “value.”  
7 Thus, while the unpublished orders note that the “value” of the Property technically remains the  
8 same whether encumbered or not, to the extent that it differs from a construction defect or other  
9 physical impairment that could decrease the value by a fixed amount for repairs of same, it fails to  
10 account for the entirety of the definition of “Defect” set forth in NRS 113.100. If the First Deed of  
11 Trust remains an encumbrance on the Property, Saticoy, or any other buyer, cannot know 1) when  
12 the First Deed of Trust will be foreclosed and the junior interest eliminated, 2) the price to avert  
13 foreclosure under the First Deed of Trust (i.e. what the principal, interest, escrow, fees etc.. are  
14 under the First Deed of Trust), and 3) the use during that time period (i.e. short-term rental, long-  
15 term rental, sale, etc...). Thus, while the value of the Property as a *res* may remain unchanged by  
16 an encumbrance, NRS 113 sets forth “value or use” which implies a more extensive definition  
17 then merely the value of the Property as a collection of boards, pipes, and wires.

18 **F. Saticoy’s claim for special damages will be determined at the time of trial**

19 The attorney fees and costs allegations as set forth in each cause of action references any  
20 claims that may be able to be adduced from the discovery in this case and/or the CC&R’s if the  
21 HOA is successful in its argument under NRS 30.310. Pursuant to NRS 116.4117(6), “the court  
22 may award reasonable attorney’s fees to the prevailing party” if the matter is subject to the  
23 CC&R’s, which will be a factual determination by the Court.

24 **G. Saticoy’s claims for punitive damages are not precluded in this case**

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

- 27 1. Subject to the requirements set forth in subsection 2, if a declarant, community  
28 manager or any other person subject to this chapter fails to comply with any of its  
provisions or any provision of the declaration or bylaws, any person or class of

persons suffering actual damages from the failure to comply may bring a civil action for damages or other appropriate relief.

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

(a) By the association against:

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

(b) By a unit's owner against:

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

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

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

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

5. Punitive damages may not be awarded against:

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

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

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

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

Emphasis added.

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

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1 IV. CONCLUSION

2 Based upon the foregoing, the Opposition should be sustained and the HOA's Motion and  
3 HOA Trustee's Joinder should be denied.

4 DATED this 9<sup>th</sup> day of November, 2020.

5  
6 ROGER P. CROTEAU & ASSOCIATES, LTD.

7 /s/ Raymond Jereza

8 Roger P. Croteau, Esq.  
9 Nevada Bar No. 4958  
10 Raymond Jereza, Esq.  
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**CERTIFICATE OF SERVICE**

I hereby certify that on November 9th, 2020, a true copy of the foregoing was served via electronic means on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, pursuant to EDCR 8.05(a).

/s/ Joe Koehle

An employee of  
ROGER P. CROTEAU & ASSOCIATES, LTD.

EXHIBIT A

EXHIBIT A

**DECLARATION OF EDDIE HADDAD**

I, Eddie Haddad, being first duly sworn, deposes and says as follows: I am a resident of the State of Nevada. I am the Manager of the Resources Group, LLC, that is the Trustee of the Daisy Trust, that purchased the Property located at 137 Elegante Way, Henderson, Nevada 89074 (APN 177-13-214-086) , at the HOA Foreclosure Sale.

In my capacity as set forth above, I have reviewed the foregoing Plaintiff's Opposition to Green Valley South Owners Association's Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment and Nevada Association Services, Inc.'s Joinder Thereto. Of the facts asserted therein, I know them to be true of my own knowledge or they are true to the best of my knowledge and recollection.

I further provide that it was my practice and procedure, as set forth herein, that when I would attend NRS 116 sales at all times relevant to this case, I would attempt to ascertain whether anyone had attempted to or did tender any payment regarding the homeowner association's lien. If I learned that a "tender" had either been attempted or made, I would not purchase the property offered in that foreclosure sale.

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

Executed this 29<sup>th</sup> day of October, 2019.

/s/ Eddie Haddad  
EDDIE HADDAD

**EXHIBIT B**

**EXHIBIT B**

1 ARIEL E. STERN, ESQ.  
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2 MATTHEW I. KNEPPER, ESQ.  
Nevada Bar No. 12796  
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7 *Attorneys for Plaintiff*

8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

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

13 Plaintiff,

14 vs.

15 GREEN VALLEY SOUTH OWNERS  
ASSOCIATION NO. 1; DAISY TRUST;  
16 NEVADA ASSOCIATION SERVICES, INC.,

17 Defendants.

Case No.: 2:16-cv-00424

**COMPLAINT**

18 Plaintiff Bank of America, N.A. (**BANA**) complains as follows:

19 **PARTIES AND JURISDICTION**

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

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

1           3. Defendant Green Valley South Owners Association No. 1 (**Green Valley**) is, on  
2 information and belief, a Nevada non-profit corporation. BANA is informed and believes and  
3 therefore alleges Green Valley is the purported beneficiary under an alleged homeowners'  
4 association lien recorded August 18, 2011. BANA is informed and believes and therefore alleges  
5 Green Valley foreclosed on the lien on August 31, 2012.

6           4. Defendant, Daisy Trust is, on information and belief, a Nevada trust. After a  
7 reasonable search, BANA cannot determine the citizenship of the trustee or beneficiaries of Daisy  
8 Trust. BANA is informed and believes and therefore alleges Daisy Trust purchased the property at  
9 the HOA foreclosure sale, acquiring title via a foreclosure deed recorded on September 7, 2012.

10           5. Defendant, Nevada Association Services, Inc. (**NAS**) is, on information and belief, a  
11 Nevada corporation. BANA is informed and believes, and therefore alleges NAS conducted the  
12 foreclosure at issue in this case on behalf of Green Valley.

13           6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332 for reasons  
14 stated above. The diversity of citizenship requirement is met as defendants Green Valley, Daisy  
15 Trust, and NAS are, on information and belief and from all publicly available information, not  
16 citizens of North Carolina. *See Carolina Casualty Ins. Co. v. Team Equipment, Inc.*, 741 F.3d 1082  
17 (9th Cir. 2014). The amount in controversy requirement is met as BANA seeks a declaration that its  
18 deed of trust, which secures a loan with a principal balance of \$191,904.43 was not extinguished by  
19 a homeowner's association non-judicial foreclosure sale that is the basis for Daisy Trust's claim to  
20 title to the real property sub judice.

21           7. Venue is proper in this Court under 28 U.S.C. §1391. The property that is the subject  
22 of this action is located at 137 Elegante Way, Henderson, Nevada 89074 (**the property**). Venue is  
23 proper in this court under 28 U.S.C. § 1391(1) and (2) because this action seeks to determine an  
24 interest in property located within Clark County, Nevada and because this lawsuit arises out of a  
25 foreclosure of real property located within Nevada.

26           8. The pre-litigation dispute resolution process set forth in NRS 38.300 *et seq.* is not  
27 applicable to this action and cannot restrict the jurisdiction of this court. To the extent any  
28

1 requirement of the statute is applicable to any portion of the claims asserted herein, that requirement  
2 has been constructively exhausted, and further resort to administrative remedies would be futile  
3 because BANA submitted a demand for mediation to Nevada Real Estate Division (**NRED**) on or  
4 about November 17, 2015, but NRED has failed to schedule the mediation in the time period  
5 required by NRS 38.330(1).

6 **GENERAL ALLEGATIONS**

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

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

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

15 12. NRS 116.3116 makes a homeowners' association lien for assessments junior to a first  
16 deed of trust beneficiary's secured interest in the property, with one limited exception: a  
17 homeowners' association lien is senior to a first deed of trust beneficiary's secured interest "to the  
18 extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the  
19 extent of the assessments for common expenses based on the periodic budget adopted by the  
20 association pursuant to NRS 116.3115 which would have become due in the absence of acceleration  
21 during the 9 months immediately preceding institution of an action to enforce the lien[.]"  
22 NRS 116.3116(2)(c).

23 **The Deed of Trust and Assignment**

24 13. On or about June 5, 2008, Dennis L. Scott (**Scott**) purchased the property by way of a  
25 loan in the amount of \$179,188.00 secured by a deed of trust (the **senior deed of trust**) dated June  
26 23, 2008. A true and correct copy of the senior deed of trust is recorded with the Clark County  
27 Recorder as **Instrument No. 20080627-0002161**. Scott later executed a loan modification  
28

1 agreement which increased the principal balance due under and secured by the senior deed of trust to  
2 \$193,847.68. The June 4, 2010 loan modification agreement was recorded on December 29, 2010  
3 and is recorded with the Clark County Recorder as **Instrument No. 20101229-0000207**.

4 14. The note and the senior deed of trust are insured by the Federal Housing  
5 Administration (**FHA**). Pursuant to the FHA insurance, the lender was required to submit a monthly  
6 mortgage insurance payment to the FHA. FHA monthly mortgage insurance premiums were paid by  
7 either Scott or BANA beginning September 5, 2008.

8 15. The senior deed of trust was assigned to BANA via an assignment of deed of trust. A  
9 true and correct copy of the assignment is recorded with the Clark County Recorder as **Instrument**  
10 **No. 20111005-0002140**.

11 The HOA Lien and Foreclosure

12 16. Upon information and belief, Scott failed to pay Green Valley all amounts due to it.  
13 On August 23, 2011, Green Valley, through its agent, NAS, recorded a notice of delinquent  
14 assessment lien. Per the notice, the amount due to the Green Valley was \$818.70 which includes,  
15 late fees, collection fees and interest. A true and correct copy of the notice of lien is recorded with  
16 the Clark County Recorder as **Instrument No. 20110823-0000959**.

17 17. On November 18, 2011, Green Valley, through its agent NAS, recorded a notice of  
18 default and election to sell to satisfy the delinquent assessment lien. The notice states the amount  
19 due to the Green Valley was \$1,819.50, but does not specify whether it includes dues, interest, fees  
20 and collection costs in addition to assessments. A true and correct copy of the notice of default is  
21 recorded with the Clark County Recorder as **Instrument No. 20111118-0002805**. The notice of  
22 default also does not specify the super-priority amount claimed by the Green Valley and fails to  
23 describe the "deficiency in payment" required by NRS 116.31162(1)(b)(1).

24 18. On April 23, 2012, Green Valley, through its agent NAS, recorded a notice of  
25 foreclosure sale. The foreclosure sale was scheduled for May 18, 2012. The notice states the  
26 amount due to the Green Valley was \$2,946.17, which includes the unpaid balance of the obligation  
27 secured by the property to be sold and reasonable estimated costs, expenses and advances. A true  
28

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1 and correct copy of the notice of sale is recorded with the Clark County Recorder as **Instrument**  
2 **No. 20120423-0000652**. The notice of sale does not identify the super-priority amount claimed by  
3 the Green Valley and fails to describe the "deficiency in payment" required by  
4 NRS 116.311635(3)(a).

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

8 20. In none of the recorded documents did Green Valley and/or its agent NAS identify  
9 the amount of the alleged lien that was for late fees, interest, fines/violations or collection fees/costs.

10 21. In none of the recorded documents nor in any notice did Green Valley and/or its agent  
11 NAS specify whether it was foreclosing on the super-priority portion of its lien, if any, or on the sub-  
12 priority portion of its lien.

13 22. In none of the recorded documents nor in any notice did Green Valley and/or its agent  
14 NAS specify the senior deed of trust would be extinguished by the Green Valley foreclosure.

15 23. In none of the recorded documents nor in any notice did Green Valley and/or its agent  
16 NAS identify any way by which the beneficiary under the senior deed of trust could satisfy the  
17 super-priority portion of Green Valley's claimed lien.

18 24. The deficiencies in the notices notwithstanding, on or about February 2, 2012, after  
19 HOA recorded its notice of default, BANA remitted payment to Green Valley, through its agent  
20 NAS, to satisfy the super-priority amount owed to Green Valley.

21 25. On December 19, 2011, BANA requested a ledger from Green Valley, through its  
22 agent NAS, identifying the super-priority amount allegedly owed to Green Valley. Green Valley  
23 and its agent NAS refused to provide a ledger or other information by which the super-priority  
24 amount of the lien could be calculated, claiming to do so would violate the Fair Debt Collection  
25 Practices Act.



1 foreclosure sale, Daisy Trust claims an interest in the property, and on information and belief, asserts  
2 Daisy Trust owns the property free and clear of the senior deed of trust.

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

5 34. BANA is entitled to a declaration that Green Valley's foreclosure did not extinguish  
6 the senior deed of trust, or alternatively, Green Valley's foreclosure is void.

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

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

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

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

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

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

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

1 c) The super priority lien has no nexus whatsoever to a private agreement  
2 between the HOA and BANA, but, again, is imposed by legislative enactment.

3 d) Nevada and Clark County mandated the creation of Green Valley as a quasi-  
4 governmental entity to perform governmental functions including maintaining the common  
5 open spaces and private streets within the Green Valley community.

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

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

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

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

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

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

24 42. BANA requests that this Court void the HOA foreclosure sale or declare that Daisy  
25 Trust's title was acquired subject to the senior deed of trust because NRS 116's scheme of HOA  
26 super priority foreclosure violates the procedural process clauses of The Fourteenth Amendment of  
27 the United States Constitution and Article 1, Sec. 8, of the Nevada Constitution.

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

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

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

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

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

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

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

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

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

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

48. Chapter 116 of the Nevada Revised Statutes' scheme of non-judicial foreclosure that allows for the foreclosure of a super priority lien stands as an obstacle to the accomplishment and

1 execution of the full purposes and objectives of Congress under the National Housing Act's Single  
2 Family Mortgage Insurance Program and Mutual Mortgage Insurance Fund.

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

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

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

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

15 52. The foreclosure sale did not extinguish the senior deed of trust because BANA  
16 tendered and satisfied the super-priority amount despite Green Valley's and NAS's obstruction of  
17 BANA's efforts to do so and Green Valley and NAS wrongfully rejected the tender. Alternatively,  
18 the HOA sale is void.

19 53. The foreclosure sale did not extinguish the senior deed of trust because the sale was  
20 commercially unreasonable or otherwise failed to comply with the good faith requirement of  
21 NRS 116.1113 in several respects, including, without limitation, the lack of sufficient notice, Green  
22 Valley's and NAS's wrongful rejection of the tender, the sale of the property for a fraction of the loan  
23 balance or actual market value of the property, a foreclosure that was not calculated to promote an  
24 equitable sales prices for the property or to attract proper prospective purchasers, and a foreclosure  
25 sale that was designed and/or intended to result in maximum profit for the Green Valley, its agent  
26 NAS, and Daisy Trust at the sale without regard to the rights and interest of those who have an  
27 interest in the loan and made the purchase of the property possible in the first place. Alternatively,  
28

1 the HOA sale is void.

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

6 55. The foreclosure sale did not extinguish the senior deed of trust because otherwise the  
7 sale would violate BANA's rights to due process, as a result of Green Valley's and NAS's improper  
8 calculation of the super-priority component, its inclusion of charges that are not part of the super-  
9 priority lien under Nevada law, and its rejection of BANA's tender of the super-priority component  
10 of the lien. Alternatively, the HOA sale is void.

11 56. The foreclosure sale did not extinguish the senior deed of trust because Daisy Trust  
12 does not qualify as a bona fide purchaser for value, because it was aware of, or should have been  
13 aware of, the existence of the senior deed of trust, BANA's satisfaction of the super-priority  
14 component of HOA's lien, and the commercial unreasonableness of the HOA sale. Alternatively, the  
15 HOA sale is void.

16 57. BANA is entitled to a declaration, pursuant to 28 U.S.C. § 2201, NRS 30.040, and  
17 NRS 40.010, that the HOA sale did not extinguish the senior deed of trust, or alternatively, the HOA  
18 sale is void.

19 58. BANA was required to retain an attorney to prosecute this action, and is therefore  
20 entitled to collect its reasonable attorneys' fees and costs.

21 **SECOND CAUSE OF ACTION**

22 **(Breach of NRS 116.1113 against Green Valley and NAS)**

23 59. BANA repeats and re-alleges the preceding paragraphs as though fully set forth  
24 herein and incorporates the same by reference.

25 60. NRS § 116.1113 and common law provide that every contract or duty governed by  
26 this chapter imposes an obligation of good faith in its performance or enforcement.

1           61.     Green Valley's recorded CC&Rs contain a mortgage protection clause which  
2 represents that Green Valley's entire lien will be subordinate to the senior deed of trust.

3           62.     NRS Chapter 116 requires Green Valley and its agent NAS to comply with the  
4 obligations of the CC&Rs, including the mortgage protection clause.

5           63.     In making the representation in the CC&Rs that its lien would be subordinate to a  
6 senior deed of trust, Green Valley and its agent NAS undertook a duty to inform lenders and loan  
7 servicers like BANA that its representation regarding the priority of liens in the CC&Rs was false,  
8 and to give BANA reasonable opportunity to protect their interests in the property.

9           64.     Green Valley and its agent NAS also undertook a duty to identify the super-priority  
10 amount to lenders and loan servicers like BANA, to notify it that its security interest was at risk, and  
11 to provide an opportunity to satisfy the super-priority amount to protect its security interest in the  
12 property.

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

19           66.     If it is determined Green Valley's sale extinguished the senior deed of trust  
20 notwithstanding the deficiencies, violations, and improper actions described herein, Green Valley's  
21 and NAS's breach of their obligation of good faith will cause BANA to suffer general and special  
22 damages in the amount equal to the fair market value of the property or the unpaid principal balance  
23 of the loan at issue, plus interest, at the time of the HOA sale, whichever is greater.

24           67.     BANA was required to retain an attorney to prosecute this action, and is therefore  
25 entitled to collect its reasonable attorneys' fees and costs.

26     //

27     //

28     {36513320;3}

**THIRD CAUSE OF ACTION**

**(Wrongful Foreclosure against Green Valley and NAS)**

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

69. To the extent defendants contend or the court concludes HOA's foreclosure sale extinguished the senior deed of trust, the foreclosure was wrongful.

70. Because Green Valley and its agent NAS failed to give adequate notice and an opportunity to cure the deficiency, the foreclosure was wrongful to the extent any defendant contends it extinguished the senior deed of trust.

71. Because BANA tendered the super-priority portion of Green Valley's lien prior to the foreclosure sale, there was no default in the super-priority component of Green Valley's lien at the time of the foreclosure sale and the foreclosure was wrongful to the extent any defendant contends it extinguished the senior deed of trust.

72. Because Green Valley and its agent NAS sold the property for a grossly inadequate amount, compared to the value of the property and amount of outstanding liens defendants contend were extinguished by the foreclosure sale, the foreclosure was wrongful to the extent any defendant contends it extinguished the senior deed of trust.

73. Because Green Valley and its agent NAS violated the representation in the CC&Rs that its lien would be subordinate to a senior deed of trust, the foreclosure was wrongful to the extent any defendant contends it extinguished the senior deed of trust.

74. Because Green Valley and its agent NAS violated the good faith requirements of NRS 116.1113, the foreclosure was wrongful to the extent any defendant contends it extinguished the senior deed of trust.

75. If it is determined Green Valley's foreclosure sale extinguished the senior deed of trust notwithstanding the deficiencies, violations, and improper actions described herein, Green Valley's and NAS's actions will cause BANA to suffer general and special damages in the amount

1 equal to the fair market value of the property or the unpaid principal balance of the loan at issue, plus  
2 interest, at the time of the sale, whichever is greater.

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

5 **FOURTH CAUSE OF ACTION**

6 **(Injunctive Relief against Daisy Trust)**

7 77. BANA repeats and re-alleges the preceding paragraphs as though fully set forth  
8 herein and incorporates the same by reference.

9 78. BANA disputes Daisy Trust's claim it owns the property free and clear of the senior  
10 deed of trust.

11 79. Any sale or transfer of the property by Daisy Trust, prior to a judicial determination  
12 concerning the respective rights and interests of the parties to this case, may be rendered invalid if  
13 the senior deed of trust still encumbers the property in first position and was not extinguished by the  
14 HOA sale.

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

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

20 82. BANA is entitled to a preliminary injunction prohibiting Daisy Trust, or its  
21 successors, assigns, or agents, from conducting any sale, transfer, or encumbrance of the property  
22 that is claimed to be superior to the senior deed of trust or not subject to the senior deed of trust.

23 83. BANA is entitled to a preliminary injunction requiring Daisy Trust to pay all taxes,  
24 insurance and homeowner's association dues during the pendency of this action.

25 **PRAYER FOR RELIEF**

26 BANA requests the Court grant the following relief:  
27  
28

AKERMAN LLP

1160 TOWN CENTER DRIVE, SUITE 330  
LAS VEGAS, NEVADA 89144  
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1. An order declaring that Daisy Trust purchased the property subject to BANA's senior deed of trust;

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

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

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

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

6. Reasonable attorneys' fees as special damages and the costs of suit; and

7. For such other and further relief the Court deems proper.

DATED this 29<sup>th</sup> day of February, 2016.

**AKERMAN LLP**

/s/ Ariel E. Stern

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

MATTHEW I. KNEPPER, ESQ.

Nevada Bar No. 12796

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(702) 642-3113/ (702) 642-9766 FAX  
5  
Attorney for defendant Daisy Trust  
6

7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF NEVADA

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

12 Plaintiff,

13 vs.

14 GREEN VALLEY SOUTH OWNERS  
ASSOCIATION NO. 1; DAISY TRUST;  
15 NEVADA ASSOCIATION SERVICES, INC.,

16 Defendants.

CASE NO.: 2:16-CV-00424

17 DAISY TRUST,

18 Counterclaimant,

19 vs.

20 BANK OF AMERICA, N.A., SUCCESSOR BY  
21 MERGER TO BAC HOME LOANS SERVICING,  
LP, FKA COUNTRYWIDE HOME LOANS  
SERVICING, LP;

22 Counterdefendant.  
23

24 **ANSWER AND COUNTERCLAIM**

25 Defendant Daisy Trust, by and through its attorney, Michael F. Bohn, Esq., answers Plaintiff's  
26 Complaint on file herein as follows:

27 **PARTIES AND JURISDICTION**

28 1. Defendant is without sufficient information or knowledge upon which to admit or deny the

allegations contained in paragraphs 1, 2, 7, and 8 of the complaint, and, upon that basis, denies the same.

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

3. In answering paragraph 6 of the complaint, Defendant denies that the deed of trust was not extinguished by the homeowner's association non-judicial foreclosure sale but is without sufficient information or knowledge to admit the remainder of said paragraph which is therefore denied.

#### **GENERAL ALLEGATIONS**

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

5. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraphs 13, 14, 15, 24, 25, 26, and 27 of the complaint, and upon that basis, denies the same.

6. In answering paragraph 28, defendant is without sufficient information or knowledge to admit or deny that a tender was made which is therefore denied, but admits the remainder of said paragraph.

7. Defendant denies the allegations contained in paragraphs 17, 18, 19, 20, 21, 22, 23, and 29 of the complaint.

#### **FIRST CAUSE OF ACTION**

##### **(Quiet Title/Declaratory Judgment Against All Defendants)**

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

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

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

#### **SECOND CAUSE OF ACTION**

##### **(Breach of NRS 116.1113 against Green Valley and NAS)**

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

12. Defendant is without sufficient information or knowledge to admit or deny the allegations

1 contained in paragraphs 60, 61, 62, 63, 64, 65, 66 and 67 of the complaint, and upon that basis, denies  
2 the same.

3 **THIRD CAUSE OF ACTION**

4 **(Wrongful Foreclosure against Green Valley and NAS)**

5 13. In answering paragraph 68, Defendant repeats and realleges its answers to paragraphs 1  
6 though 67 of the complaint as if fully set forth at length herein.

7 14. Defendant denies the allegations contained in paragraphs 69, 70, 71, 72, 73, and 74 of the  
8 complaint.

9 15. Defendant is without sufficient information or knowledge to admit or deny the allegations  
10 contained in paragraphs 75 and 76 of the complaint, and upon that basis, denies the same.

11 **FOURTH CAUSE OF ACTION**

12 **(Injunctive Relief against Saticoy)**

13 16. In answering paragraph 77, Defendant repeats and realleges its answers to paragraphs 1  
14 though 76 of the complaint as if fully set forth at length herein.

15 17. Defendant denies the allegations contained in paragraphs 78, 79, 80, 81, 82, and 83 of the  
16 complaint.

17 **AFFIRMATIVE DEFENSES**

18 **FIRST AFFIRMATIVE DEFENSE**

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

21 **SECOND AFFIRMATIVE DEFENSE**

22 The plaintiff has failed to mitigate its damages.

23 **THIRD AFFIRMATIVE DEFENSE**

24 Plaintiff is guilty of laches and unclean hands.

25 **FOURTH AFFIRMATIVE DEFENSE**

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

28 /////

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

The plaintiff ratified the alleged acts of this answering defendant.

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

The plaintiff lacks standing to prosecute this action.

EIGHTEENTH AFFIRMATIVE DEFENSE

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

WHEREFORE, defendant prays as follows:

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

COUNTERCLAIM

Defendant/counterclaimant Daisy Trust, by and through its attorney, Michael F. Bohn, Esq. alleges as its counterclaim against plaintiff, Bank of America, N.A. as follows:

1. Defendant/counterclaimant Daisy Trust is the owner of real property situated in Clark County, Nevada commonly known as 137 Elegante Way, Henderson, Nevada, 89074 (APN 177-13-214-086).
2. Daisy Trust obtained title to the property as a result of an HOA foreclosure sale conducted by the Green Valley South Owners Association on August 31, 2012 as evidenced by the foreclosure deed recorded with the Clark County Recorder on September 7, 2012 as Instrument No. 201209070001211.
3. The title held by Daisy Trust arises from the foreclosure of an HOA lien arising from a delinquency in assessments due from the former owner to the HOA pursuant to NRS Chapter 116.
4. Plaintiff/counterdefendant is the purported assigned beneficiary of a deed of trust which was originally recorded as an encumbrance against the subject property on June 27, 2008.

FIRST CLAIM FOR RELIEF

**(Quiet Title)**

5. Daisy Trust repeats the allegations contained in paragraphs 1 through 4 of its counterclaim as if fully set forth at length herein.

6. The deed of trust and any other security interest of plaintiff/counterdefendant in the subject property at issue in this case has been extinguished by reason of the HOA foreclosure sale which occurred as a result of the failure of the former owner of the subject property or the failure of any

1 other interested party, such as plaintiff, to cure the delinquency in assessments due and owing to  
2 Green Valley South Owners Association pursuant to NRS Chapter 116.

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

6 8. Daisy Trust is entitled to an award of attorneys fees and costs.

7 **SECOND CLAIM FOR RELIEF**

8 **(Declaratory Relief)**

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

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

16 11. Daisy Trust is entitled to an award of attorneys fees and costs.

17 WHEREFORE, Daisy Trust prays for Judgment as follows:

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

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

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

24 /////

25 /////

26 /////

27 /////

28 /////

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

2 DATED this 5th day of April 2016.

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

5  
6 By: /s/ /Michael F. Bohn, Esq./  
7 MICHAEL F. BOHN, ESQ.  
8 Nevada Bar No. 1641  
9 376 E. Warm Springs Rd., Ste. 140  
10 Las Vegas, Nevada 891119  
11 Attorney for defendant Daisy Trust  
12

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that on the 5th day of April, 2016, I electronically transmitted the above  
15 **ANSWER TO COMPLAINT AND COUNTERCLAIM** to the Clerk's Office using the CM/ECF  
16 System for filing and transmittal of a Notice of Electronic Filing to the following counsel of record:  
17

18 Ariel E. Stern, Esq.  
19 Matthew I. Knepper Esq.  
20 Akerman LLP  
21 1160 Town Center Drive, Suite 330  
22 Las Vegas, Nevada 89144  
23 Attorney for plaintiff  
24

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

EXHIBIT C

EXHIBIT C

1 **COMP**  
2 ROGER P. CROTEAU, ESQ.  
3 Nevada Bar No. 4958  
4 TIMOTHY E. RHODA, ESQ.  
5 Nevada Bar No. 7878  
6 ROGER P. CROTEAU & ASSOCIATES, LTD.  
7 2810 W. Charleston Blvd., Ste. 75  
8 Las Vegas, Nevada 89148  
9 (702) 254-7775 (telephone)  
10 (702) 228-7719 (facsimile)  
11 [croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)  
12 *Attorney for Plaintiff*

DISTRICT COURT  
CLARK COUNTY, NEVADA

DAISY TRUST, a Nevada trust,  
Plaintiff,

vs.

GREEN VALLEY SOUTH OWNERS  
ASSOCIATION NO. 1 and NEVADA  
ASSOCIATION SERVICES, INC., a domestic  
corporation;  
Defendants.

Case No.:  
Dept. No.:

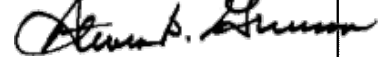
**COMPLAINT**

COMES NOW, Plaintiff, Daisy Trust, by and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby complains and alleges against Defendants as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff, Daisy Trust ("*Trust*"), is a Nevada trust, authorized to do business and doing business in the County of Clark, State of Nevada.
2. Daisy Trust is the current owner of real property located at 137 Elegante Way, Henderson, Nevada 89074 (APN 177-13-214-086) (the "*Property*").

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Steven D. Grierson  
CLERK OF THE COURT



CASE NO: A-19-791254-C  
Department 8

3. Daisy Trust acquired title to the Property by Foreclosure Deed dated September 7, 2012, by and through a homeowners association lien foreclosure sale conducted on August 31, 2012 (“*HOA Foreclosure Sale*”), by Nevada Association Services, Inc., a Nevada corporation, authorized to do business and doing business in Clark County, State of Nevada (“*HOA Trustee*”), on behalf of Green Valley South Owners Association No. 1, a Nevada domestic non-profit corporation (“*HOA*”). The HOA Foreclosure Deed was recorded in the Clark County Recorder’s Office on September 7, 2012 (“*HOA Foreclosure Deed*”).
4. Upon information and belief, HOA is a Nevada common interest community association or unit owners’ association as defined in NRS 116.011, is organized and existing under the laws of the State of Nevada, and transacts business in the State of Nevada.
5. Upon information and belief, HOA Trustee is a debt collection agency doing business in the State of Nevada, and is organized and existing under the laws of the State of Nevada.
6. Venue is proper in Clark County, Nevada pursuant to NRS 13.040.
7. The exercise of jurisdiction by this Court over the parties in this civil action is proper pursuant to NRS 14.065.

#### GENERAL ALLEGATIONS

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

1 adopted by the association pursuant to NRS 116.3115 which would have become due in the  
2 absence of acceleration during the 9 months immediately preceding institution of an action to  
3 enforce the lien.” NRS 116.3116(2)(c).

4 11. In Nevada, when a homeowners association properly forecloses upon a lien containing a  
5 super-priority lien component, such foreclosure extinguishes a first deed of trust.

6 12. On or about June 5, 2008, Dennis L. Scott, an unmarried man, (“*the Former Owner*”)  
7 purchased the Property and obtained a purchase money loan secured by the Property from  
8 CTX Mortgage Company, LLC, a Delaware corporation (“*Lender*”), that is evidenced by a  
9 deed of trust between the Former Owner and Lender, recorded against the Property on June  
10 27, 2008, for the loan amount of \$179,188.00 (“*Deed of Trust*”). The Deed of Trust provides  
11 that Mortgage Electronic Registration Services (“*MERS*”) is beneficiary, as nominee for  
12 Lender and Lender’s successors and assigns. The Deed of Trust was in the amount of  
13 \$179,188.00, and the Deed of Trust was recorded in the Clark County Recorder’s Office on  
14 June 27, 2008.

15 13. The Former Owner executed Planned Unit Development Riders along with the Deed of  
16 Trust, effective as of June 23, 2008.

17 14. On September 26, 2011, MERS, on behalf of Lender, assigned its beneficial interest by  
18 Assignment of Deed of Trust to Bank of America, N.A. (“*BANA*”) and recorded the  
19 document in Clark County Recorder’s Office on October 5, 2011.

20 **The HOA Lien and Foreclosure**

21 15. Upon information and belief, the Former Owner of the Property failed to pay to HOA all  
22 amounts due to pursuant to HOA’s governing documents.

23 16. Accordingly, on August 23, 2011, HOA Trustee, on behalf of HOA, recorded a Notice of  
24 Delinquent Assessment Lien (“*HOA Lien*”). The HOA Lien stated that the amount due to the  
25 HOA was \$818.70, as of August 18, 2011, plus interest, late charges, costs, fees and other  
26 charges.

27 17. On November 18, 2011, HOA, through HOA Trustee, recorded a Notice of Default and  
28 Election to Sell Under Homeowners Association Lien (“*NOD*”) against the Property. The

- 1 NOD stated the amount due to the HOA was \$1,819.50 as of November 16, 2011. plus  
2 accruing assessments, interest, costs and attorney's fees.
- 3 18. Upon information and belief, after the NOD was recorded, on December 19, 2011, BANA,  
4 through Miles, Bauer, Bergstrom & Winters ("*Miles Bauer*") contacted the HOA Trustee and  
5 requested a ledger identifying the Super-Priority Lien Amount, comprising of up to 9 months  
6 of delinquent assessments that were owed to the HOA as of the HOA Lien ("*Super Priority*  
7 *Lien Amount*").
- 8 19. Upon information and belief, Miles Bauer requested the HOA arrears in an attempt to pay the  
9 Super-Priority Lien Amount of the HOA Lien.
- 10 20. In an Affidavit of Adam Kendis of Miles Bauer, he provided that he could not locate a  
11 response from the HOA and HOA Trustee to the "December 19, 2011, Miles Bauer letter to  
12 the HOA, care of the HOA Trustee."
- 13 21. The Affidavit stated that Miles Bauer used a Statement of Account from Nevada Association  
14 Services, Inc., for a different property in the same HOA to determine a good faith payoff.
- 15 22. On February 2, 2012, BANA, through Miles Bauer, provided a payment of \$882.00 to the  
16 HOA Trustee, which included payment of up to nine months of delinquent assessments (the  
17 "*Attempted Payment*").
- 18 23. HOA Trustee, on behalf of the HOA, rejected BANA's Attempted Payment of \$882.00.
- 19 24. On April 23, 2012, HOA Trustee, on behalf of the HOA, recorded a Notice of Sale against  
20 the Property ("*NOS*"). The NOS provided that the total amount due the HOA was \$2,946.17  
21 and set a sale date for the Property of May 18, 2012, at 10:00 A.M., to be held at Nevada  
22 Legal News, 930 So. Fourth Street, Las Vegas, Nevada.
- 23 25. On August 31, 2012, HOA Trustee then proceeded to non-judicial foreclosure sale on the  
24 Property and recorded the HOA Foreclosure Deed on September 7, 2012, which stated that  
25 the HOA Trustee sold the HOA's interest in the Property to the Plaintiff at the Foreclosure  
26 Sale for the highest bid amount of \$3,555.00.
- 27 26. The Foreclosure Sale created excess proceeds.
- 28

- 1 27. After the Notice of Default was recorded, BANA, the purported holder of the Deed of Trust  
2 recorded against the Property, through its counsel, Miles Bauer, contacted HOA Trustee and  
3 HOA and requested all amounts due the HOA by the Former Owner, upon information and  
4 belief, Miles Bauer requested the sums due to the HOA by the Former Owner so it could  
5 calculate the breakdown of up to nine (9) months of common HOA assessments in order for  
6 BANA to calculate the Super Priority Lien Amount in an ostensible attempt to determine the  
7 amount of the HOA Lien entitled to super-priority over the Deed of Trust.
- 8 28. In none of the recorded documents, nor in any other notice recorded with the Clark County  
9 Recorder's Office, did HOA and/or HOA Trustee specify or disclose that any individual or  
10 entity, including but not limited to BANA, had attempted to pay any portion of the HOA Lien  
11 in advance of the HOA Foreclosure Sale.
- 12 29. Plaintiff appeared at the HOA Foreclosure Sale and presented the prevailing bid in the  
13 amount of \$3,555.00, thereby purchasing the Property for said amount.
- 14 30. Neither HOA nor HOA Trustee informed or advised the bidders and potential bidders at the  
15 HOA Foreclosure Sale, either orally or in writing, that any individual or entity had attempted  
16 to pay the Super-Priority Lien Amount.
- 17 31. Upon information and belief, the debt owed to Lender by the Former Owner of the Property  
18 pursuant to the loan secured by the Deed of Trust significantly exceeded the fair market value  
19 of the Property at the time of the HOA Foreclosure Sale.
- 20 32. Upon information and belief, Lender alleges that its Attempted Payment of the Super-Priority  
21 Lien Amount served to satisfy and discharge the Super-Priority Lien Amount, thereby  
22 changing the priority of the HOA Lien vis a vis the Deed of Trust.
- 23 33. Upon information and belief, Lender alleges that as a result of its Attempted Payment of the  
24 Super-Priority Lien Amount, the purchaser of the Property at the HOA Foreclosure Sale  
25 acquired title to the Property subject to the Deed of Trust.
- 26 34. Upon information and belief, if the bidders and potential bidders at the HOA Foreclosure  
27 Sale were aware that an individual or entity had attempted to pay the Super-Priority Lien  
28 Amount and/or by means of the Attempted Payment prior to the HOA Foreclosure Sale and

- 1 that the Property was therefore ostensibly being sold subject to the Deed of Trust, the bidders  
2 and potential bidders would not have bid on the Property.
- 3 35. Had the Property not been sold at the HOA Foreclosure Sale, HOA and HOA Trustee would  
4 not have received payment, interest, fees, collection costs and assessments related to the  
5 Property would have remained unpaid.
- 6 36. HOA Trustee acted as an agent of HOA.
- 7 37. HOA is responsible for the actions and inactions of HOA Trustee pursuant to the doctrine of  
8 respondeat superior.
- 9 38. HOA and HOA Trustee conspired together to hide material information related to the  
10 Property: the HOA Lien; the Attempted Payment of the Super-Priority Lien Amount; the  
11 rejection of such payment or Attempted Payment; and the priority of the HOA Lien vis a vis  
12 the Deed of Trust, from the bidders and potential bidders at the HOA Foreclosure Sale.
- 13 39. The information related to any Attempted Payment or payments made by Lender, BANA, the  
14 homeowner or others to the Super Priority Lien Amount was not recorded and would only be  
15 known by BANA, Lender, the HOA and HOA Trustees.
- 16 40. Upon information and belief, HOA and HOA Trustee conspired to withhold and hide the  
17 aforementioned information for their own economic gain and to the detriment of the bidders  
18 and potential bidders at the HOA Foreclosure Sale.
- 19 41. BANA first disclosed the Attempted Payment by BANA/Lender to the HOA Trustee in  
20 BANA's Complaint, filed on February 29, 2016, but not served on the Plaintiff until March  
21 16, 2016 ("*Discovery*") in the United States District Court Case No. 2:16-CV-00424 (the  
22 "*Case*").

23 **FIRST CAUSE OF ACTION**

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

25 **Against the HOA and HOA Trustee)**

- 26 42. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 41  
27 hereof as if set forth fully herein.  
28

- 1 43. At no point in time did HOA or HOA Trustee disclose to the bidders and potential bidders at  
2 the HOA Foreclosure Sale the fact that any individual or entity had attempted to pay the  
3 Super-Priority Lien Amount or provided the Attempted Payment.
- 4 44. By rejecting the Attempted Payment of the Super-Priority Lien Amount from Lender and/or  
5 Miles Bauer, HOA Trustee provided itself with the opportunity to perform and profit from  
6 many additional services on behalf of HOA related to the Property and proceedings related to  
7 the HOA Foreclosure Sale.
- 8 45. By rejecting the Attempted Payment of the Super-Priority Lien Amount from Lender and/or  
9 Miles Bauer, HOA received funds in satisfaction of the entire HOA Lien, rather than only the  
10 Super-Priority Lien Amount.
- 11 46. Consequently, HOA and HOA Trustee received substantial benefit as a result of their  
12 rejection of the Attempted Payment of the Super-Priority Lien Amount from Lender and  
13 intentionally failing to disclose that information to the Plaintiff or the other bidders.
- 14 47. Neither HOA nor HOA Trustee recorded any notice nor provided any written or oral  
15 disclosure to the bidders and potential bidders at the HOA Foreclosure Sale regarding any  
16 Attempted Payment of the Super-Priority Lien Amount by Lender or any individual or entity.
- 17 48. HOA and HOA Trustee desired that the bidders and potential bidders at the HOA Foreclosure  
18 Sale believe that the HOA Lien included amounts entitled to super-priority over the Deed of  
19 Trust and that the Deed of Trust would thus be extinguished as a result of the HOA  
20 Foreclosure Sale for their own economic gain.
- 21 49. As a result of their desire that the bidders and potential bidders at the HOA Foreclosure Sale  
22 believe that the HOA Lien included amounts entitled to super-priority over the Deed of Trust  
23 and that the Deed of Trust would thus be extinguished as a result of the HOA Foreclosure  
24 Sale, HOA and HOA Trustee intentionally failed to disclose material information related to  
25 the Attempted Payment of the Super-Priority Lien Amount by Lender and did so for their  
26 own economic gain.
- 27 50. Alternatively, HOA and HOA Trustee were grossly negligent by failing to disclose material  
28 information related to the Attempted Payment of the Super-Priority Lien Amount.

- 1 51. Upon information and belief, if HOA Trustee and/or HOA had disclosed the Attempted  
2 Payment of the Super-Priority Lien Amount to the bidders and potential bidders at the HOA  
3 Foreclosure Sale, such bidders and potential bidders would not have bid upon the Property at  
4 the HOA Foreclosure Sale.
- 5 52. Given the facts of this case now known to Plaintiff, Plaintiff would not have bid on the  
6 Property.
- 7 53. Upon information and belief, if the Property had not been sold at the HOA Foreclosure Sale,  
8 HOA would not have received funds in satisfaction of the HOA Lien.
- 9 54. Upon information and belief, if the Property had not been sold at the HOA Foreclosure Sale,  
10 HOA Trustee would not have received payment for the work that it performed on behalf of  
11 HOA in association with the HOA Foreclosure Sale and related proceedings.
- 12 55. Plaintiff attended the sale as a ready, willing and able buyer without knowledge of the  
13 Attempted Payment.
- 14 56. Plaintiff would not have purchased the Property if it had been informed that any individual or  
15 entity had paid or attempted to pay the Super-Priority Lien Amount in advance of the HOA  
16 Foreclosure Sale.
- 17 57. As a direct result of HOA and HOA Trustee's rejection of the Attempted Payment of the  
18 Super-Priority Lien Amount and their subsequent intentional or grossly negligent failure to  
19 advise the bidders and potential bidders at the HOA Foreclosure Sale of the facts related  
20 thereto, Plaintiff presented the prevailing bid at the HOA Foreclosure Sale and thereby  
21 purchased the Property.
- 22 58. HOA and HOA Trustee each profited from their intentional and/or negligent  
23 misrepresentations and material omissions at the time of the HOA Foreclosure Sale by failing  
24 and refusing to disclose the Attempted Payment of the Super-Priority Lien Amount.
- 25 59. HOA and HOA Trustee materially misrepresented the facts by hiding and failing to advise  
26 bidders and potential bidders at the HOA Foreclosure Sale of information known solely to the  
27 HOA and/or HOA Trustee that was not publicly available which ostensibly changed the  
28 priority of Deed of Trust vis a vis the HOA Lien.

- 1 60. HOA and HOA Trustee solely possessed information related to the Attempted Payment of the  
2 Super-Priority Lien Amount prior to and at the time of the HOA Foreclosure Sale, and  
3 intentionally withheld such information for their own economic gain.
- 4 61. Alternatively, HOA and HOA Trustee were gross negligently when it withheld information  
5 related to the Attempted Payment of the Super-Priority Lien Amount.
- 6 62. Plaintiff reasonably relied upon HOA and HOA Trustee's intentional or grossly negligent  
7 failure to disclose the Attempted Payment of the Super-Priority Lien Amount.
- 8 63. HOA and HOA Trustee intended that bidders and potential bidders at the HOA Foreclosure  
9 Sale would rely on the lack of notice of the Attempted Payment of the Super-Priority Lien  
10 Amount at the time of the HOA Sale and that their failure to disclose such information  
11 promoted the sale of the Property.
- 12 64. HOA and HOA Trustee further intended that their failure of refusal to inform bidders and  
13 potential bidders at the HOA Foreclosure Sale of the Attempted Payment of the Super-  
14 Priority Lien Amount would lead such bidders and potential bidders to believe that the Deed  
15 of Trust was subordinate to the HOA Lien and not being sold subject to the Deed of Trust.
- 16 65. The HOA and the HOA Trustee had a duty to disclose the Attempted Payment of the Super-  
17 Priority Lien Amount.
- 18 66. The HOA and the HOA Trustee breached that duty to disclose the Attempted Payment to  
19 Plaintiff.
- 20 67. As a result of the HOA and HOA Trustee's breach of its duty of care, duty of good faith and  
21 its duty of candor to bidders at the HOA Foreclosure Sale for its own economic gain, Plaintiff  
22 has been economically damaged in many aspects.
- 23 68. If the Property is subject to the Deed of Trust, the funds paid by Plaintiff to purchase,  
24 maintain, operate, litigate various cases and generally manage the Property would be lost  
25 along with the lost opportunity of purchasing other available property offered for sale where a  
26 super priority payment had not been attempted, thereby allowing Plaintiff the opportunity to  
27 purchase a property free and clear of the deed of trust and all other liens.  
28

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

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

## **SECOND CAUSE OF ACTION**

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

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

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

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

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

75. Thereafter, Lender, by and through Miles Bauer attempted to pay 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, rejected the Attempted Payment.

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

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

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

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

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

3 **THIRD CAUSE OF ACTION**

4 **(Conspiracy)**

5 82. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through  
6 81 as if set forth fully herein.

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

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

13 85. Defendants knew or should have known that their actions and omissions would injure the  
14 successful bidder and purchaser of the Property and benefit HOA and HOA Trustee. To  
15 further their conspiracy, upon information and belief, Defendants rejected the Attempted  
16 Payment for the purpose of obtaining more remuneration than they would have otherwise  
17 obtained at a sale of the subpriority portion of the HOA Lien.

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

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

22 **FOURTH CAUSE OF ACTION**

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

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

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

- 1 91. The HOA and HOA Trustee are required to and must provide a Seller's Real Property  
2 Disclosure Form ("*SRPDF*") to the "Purchaser" as defined in NRS 116, et seq., at the time of  
3 the HOA Foreclosure Sale.
- 4 92. NRS 116 et seq. foreclosure sales are not exempt from the mandates of NRS 113 et seq.
- 5 93. The HOA and HOA Trustee must complete and answer the questions posed in the SRPDF in  
6 its entirety, but specifically, Section 9, Common Interest Communities, disclosures (a) - (f),  
7 and Section 11, that provide as follows:
- 8 9. Common Interest Communities: Any "common areas" (facilities  
9 like pools, tennis courts, walkways or other areas co-owned with  
10 others) or a homeowner association which has any authority over the  
11 property?
- 12 (a) Common Interest Community Declaration and Bylaws  
13 available?
- 14 (b) Any periodic or recurring association fees?
- 15 (c) Any unpaid assessments, fines or liens, and any warnings or  
16 notices that may give rise to an assessment, fine or lien?
- 17 (d) Any litigation, arbitration, or mediation related to property or  
18 or common areas?
- 19 (e) Any assessments associated with the property (excluding  
20 property tax)?
- 21 (f) Any construction, modification, alterations, or repairs made  
22 without required approval from the appropriate Common  
23 Interest Community board or committee?
- 24 11. Any other conditions or aspects of the [P]roperty which materially affect  
25 its value or use in an adverse manner? (Emphasis added)
- 26 See SRPDF, Form 547, attached hereto as Exhibit 1.
- 27 94. Section 11 of the SRPDF relates directly to information known to the HOA and the HOA  
28 Trustee that materially affects the value of the Property, and in this case, if the Super Priority  
Lien Amount is paid, or if the Attempted Payment is rejected, it would have a material  
adverse affect on the overall value of the Property, and therefore, must be disclosed in the  
SRPDF by the HOA and the HOA Trustee when the SRPDF is completed and disclosed to  
the purchaser/the Trust.
95. The HOA Responses to Section 9(c) - (e) of the SRPDF would provide notice to the Plaintiff  
of any payments made by BANA or others on the HOA Lien.

96. The HOA Responses to Section 11 of the SRPDF generally deal with the disclosure of the condition of the title to the Property related to the status of the Deed of Trust and Attempted Payment that would only be known by the HOA and the HOA Trustee.

97. Pursuant to Nevada Real Estate Division's ("NRED"), Residential Disclosure Guide (the "Guide"), the Guide provides at page 20 that the HOA and HOA Trustee shall provide even in an NRS 107, et seq. sale, the following to the purchaser/the Trust at the HOA Foreclosure Sale:

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

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

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

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

...

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

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

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

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

///

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

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

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 \_\_\_\_\_ day of March, 2019.

ROGER P. CROTEAU & ASSOCIATES, LTD.

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

# EXHIBIT 1

## SELLER'S REAL PROPERTY DISCLOSURE FORM

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

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

Property address

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

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

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

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

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

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

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

*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

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

Buyer(s) Initials

EXHIBIT D

EXHIBIT D

# SELLER'S REAL PROPERTY DISCLOSURE FORM

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

Date \_\_\_\_\_

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

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

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

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

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

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

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

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

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

*Seller(s) Initials*

*Buyer(s) Initials*

**JA0378**

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 E

EXHIBIT E

**D**UTIES OWED BY A  
NEVADA LICENSEE

**I**MPACT FEES

**S**OIL REPORT

**C**OMMON-INTEREST  
COMMUNITIES

**L**IEN FOR DEFERRED  
TAXES

**O**PEN RANGE

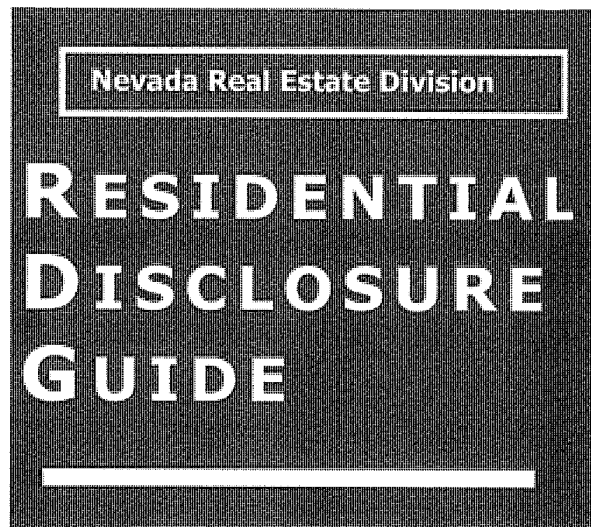
**S**ELLER'S REAL PROPERTY  
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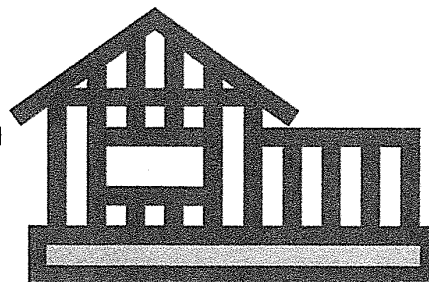
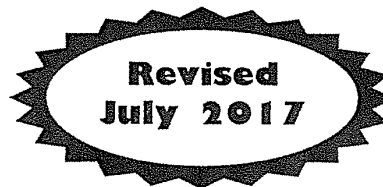
**R**ESIDENTIAL POOL SAFETY  
AND DROWNING PREVENTION

**E**NVIRONMENTAL HAZARDS

**S**EWER 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

InstanetFORMS

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# 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>.

Published pursuant to NRS 645.194 by the Nevada Real Estate Division in both electronic and hardcopy formats.

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<http://red.nv.gov/RDG/>

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InstantForms

# Table of Contents

---

## State Disclosures

|   |    |
|---|----|
| Common-Interest Communities and<br>Condominium Hotels.....    | 4  |
| Consent to Act .....  | 8  |
| Construction Defects .....                                    | 9  |
| Duties Owed By a Nevada Real Estate Licensee.....             | 10 |
| Impact Fees.....  | 12 |
| Lien for Deferred Taxes .....                                 | 13 |
| Manufactured Housing—<br>Used Manufactured/Mobile Homes ..... | 14 |
| Manufactured Home Parks .....                                 | 15 |
| Open Range Disclosure .....                                   | 16 |
| Private Transfer Fee Obligation .....                         | 18 |
| Seller's Real Property Disclosure .....                       | 19 |
| Water & Sewer Rates .....                                     | 22 |

## Federal/Local/Miscellaneous Disclosures

|   |    |
|---|----|
| Lead-Based Paint .....                                  | 23 |
| Pool Safety & Drowning Prevention .....                 | 24 |
| Airport Noise.....                                      | 25 |
| Building & Zoning Codes .....                           | 25 |
| Environmental Hazards .....                             | 25 |
| Gaming (Initial Purchaser in New Construction Only) ... | 26 |
| Home Inspections.....                                   | 27 |
| Military Activities .....                               | 27 |
| Licensee Disclosures .....                              | 27 |
| Road Maintenance District .....                         | 28 |
| Soil Report (New Construction Only) .....               | 28 |

|                          |    |
|--------------------------|----|
| Contact Information..... | 29 |
|--------------------------|----|

|                            |    |
|----------------------------|----|
| Acknowledgement Form ..... | 31 |
|----------------------------|----|

## 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]

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#### *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.

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*For more information:*

Form: [Consent to Act](#)

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

NRS: [645.252-254](#)

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## 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).

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*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.

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*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.

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*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.

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*For more information:*

NRS: 361A.290

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## **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.

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*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.

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*For more information:*

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

NRS: [118B.170](#)

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## 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.

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*For more information:*

Form: [Open Range Disclosure](#)

Website: <http://red.nv.gov/uploadedFiles/rednvgov/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.*

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For more information:

NRS: [111.825-111.880](tel: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).

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## **Seller's Real Property Disclosure**

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### **⇒ 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.

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*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.

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*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.

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*For more information:*

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

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

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

## **Pool Safety and Drowning Prevention Disclosure**

### **⇒ Purpose of Disclosure**

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

### **⇒ Who must provide the disclosure?**

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

### **⇒ When is it due?**

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

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

### **⇒ Additional Information**

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

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

## Miscellaneous Disclosures

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

### ⇒ **AIRPORT NOISE**

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

### ⇒ **BUILDING & ZONING CODES**

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

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

### ⇒ **ENVIRONMENTAL HAZARDS**

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

- **Radon** ([www.epa.gov/radon](http://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>)

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## Miscellaneous Disclosures

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- **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](http://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](http://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](#).*

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## Miscellaneous Disclosures

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### ⇒ **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.*

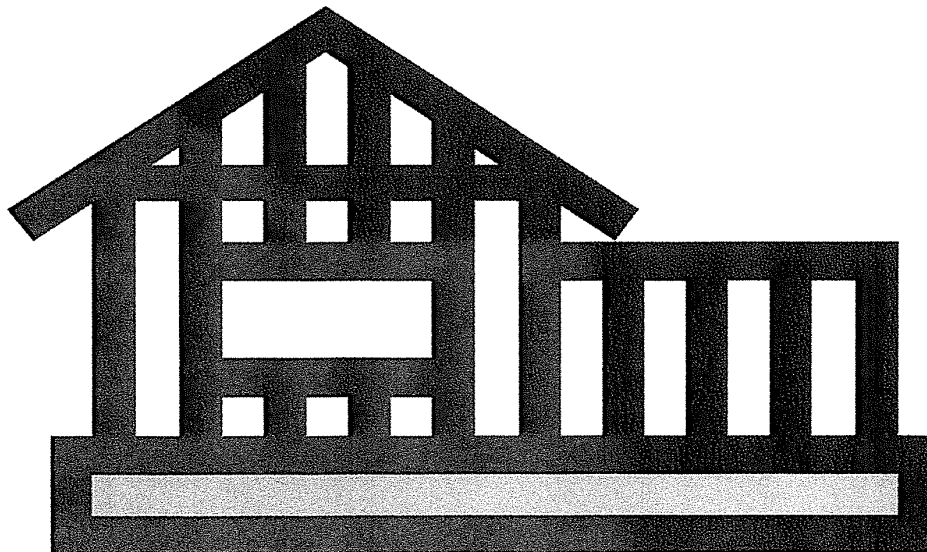
## Contact Information

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

# *Nevada Real Estate Division*

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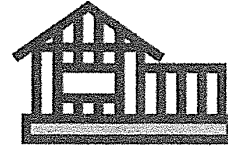
July 2017

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InstanetFORMS

**JA0413**

**Nevada Real Estate Division**



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

# **RESIDENTIAL DISCLOSURE GUIDE**

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

DATE \_\_\_\_\_

Christopher Hardin

Client—Print Name

Client—Signature

Client—Print Name

Client—Signature

Make copy of page for additional signatures.

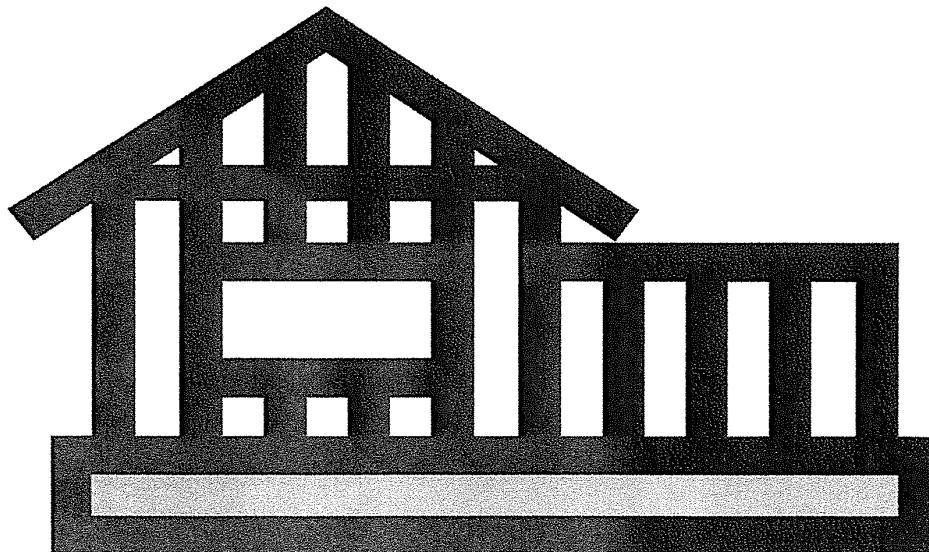
Retain original or copy in each transaction file.

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**JA0414**

# *Nevada Real Estate Division*

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July 2017

622

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**JA0415**

**IN THE SUPREME COURT OF NEVADA**

DAISY TRUST, A NEVADA TRUST

Supreme Court Case No. 82611

Appellant,

v.

GREEN VALLEY SOUTH OWNERS  
ASSOCIATION NO. 1, A NEVADA  
NON-PROFIT CORPORATION;  
AND NEVADA ASSOCIATION  
SERVICES, A DOMESTIC  
CORPORATION

**JOINT APPENDIX**

**VOLUME 3**

Respondents.

Counsel for Appellant:

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Fax: (702) 228-7719  
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**INDEX OF APPENDIX – CHRONOLOGICAL**

| <b><u>DATE</u></b> | <b><u>DOCUMENT</u></b>   | <b><u>VOLUME</u></b> | <b><u>PAGE</u></b> |
|--------------------|--|----------------------|--------------------|
| 03/15/2019         | Complaint  | 1                    | JA001-18           |
| 03/21/2019         | Affidavit of Service-Nevada Association Services   | 1                    | JA0019             |
| 03/21/2019         | Affidavit of Service-Los Prados Community Association  | 1                    | JA0020             |
| 03/21/2019         | Affidavit of Service-Green Valley South Owners Association No. 1   | 1                    | JA0021             |
| 04/05/2019         | Green Valley South Owners Association No 1's Answer to Plaintiff's Complaint   | 1                    | JA0022-27          |
| 09/20/2019         | Defendant Green Valley South Owners' Association's Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment  | 1                    | JA0028-85          |
| 10/18/2019         | Nevada Association Services, INC.'s Joinder to Defendant Green Valley South Owners' Association's Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment                         | 1                    | JA0086-88          |
| 10/29/2019         | Plaintiff's Opposition to Green Valley South Owners Association's Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment and Nevada Association Services, INC.'s Joinder Thereto | 1                    | JA0089-205         |
| 12/03/2019         | Defendant Green Valley South Owners' Association's Reply to Daisy Trust's Opposition to Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment                                   | 1                    | JA0206-217         |
| 12/10/2019         | Transcript of Proceedings  | 1                    | JA0218-237         |
| 02/07/2020         | Order Granting in Part Defendant Green Valley South Homeowners Association's Motion to Dismiss   | 1                    | JA0238-239         |

|            |  |   |            |
|------------|--|---|------------|
| 02/07/2020 | Notice of Entry of Order   | 2 | JA0240-244 |
| 05/01/2020 | Nevada Association Services, INC.'s Answer to Complaint  | 2 | JA0245-254 |
| 10/25/2020 | Defendant Green Valley South Owners' Association's Renewed Motion to Dismiss, or Alternatively, Motion for Summary Judgment  | 2 | JA0255-294 |
| 10/29/2020 | Nevada Association Services, INC.'s Joinder to Defendant Green Valley South Owners' Association's Renewed Motion to Dismiss, or Alternatively, Motion for Summary Judgment                                 | 2 | JA0295-297 |
| 11/09/2020 | Plaintiff's Opposition to Green Valley South Owners Association's Renewed Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment and Nevada Association Services, INC.'s Joinder Thereto | 2 | JA0298-415 |
| 11/24/2020 | Defendant Green Valley South Owners' Association's Reply to Daisey Trust's Opposition to Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment  | 3 | JA416-566  |
| 12/1/2020  | Transcript of Proceedings  | 3 | JA0567-595 |
| 02/05/2021 | Findings of Fact, Conclusions of Law and Order on Defendant Green Valley South Owner's Association's Motion to Dismiss, or Alternatively Motion for Summary Judgment                                       | 3 | JA0596-612 |
| 02/16/2021 | Notice of Entry of Findings of Fact, Conclusions of Law and Order on Defendant Green Valley South Owner's Association's Motion to Dismiss, or Alternatively Motion for Summary Judgment                    | 3 | JA0613-632 |

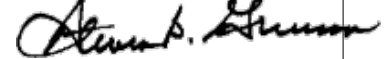
|            |                  |   |            |
|------------|------------------|---|------------|
| 03/09/2021 | Notice of Appeal | 3 | JA0633-635 |
|------------|------------------|---|------------|

### **INDEX OF APPENDIX – ALPHABETICAL**

| <b><u>DATE</u></b> | <b><u>DOCUMENT</u></b>   | <b><u>VOLUME</u></b> | <b><u>PAGE</u></b> |
|--------------------|--|----------------------|--------------------|
| 3/21/2019          | Affidavit of Service-Green Valley South Owners Association No. 1   | 1                    | JA0021             |
| 3/21/2019          | Affidavit of Service-Los Prados Community Association  | 1                    | JA0020             |
| 3/21/2019          | Affidavit of Service-Nevada Association Services   | 1                    | JA0019             |
| 3/15/2019          | Complaint  | 1                    | JA001-18           |
| 9/20/2019          | Defendant Green Valley South Owners' Association's Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment  | 1                    | JA0028-85          |
| 10/25/2020         | Defendant Green Valley South Owners' Association's Renewed Motion to Dismiss, or Alternatively, Motion for Summary Judgment  | 2                    | JA0255-294         |
| 12/3/2019          | Defendant Green Valley South Owners' Association's Reply to Daisey Trust's Opposition to Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment    | 1                    | JA0206-217         |
| 11/24/2020         | Defendant Green Valley South Owners' Association's Reply to Daisey Trust's Opposition to Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment    | 3                    | JA416-566          |
| 2/5/2021           | Findings of Fact, Conclusions of Law and Order on Defendant Green Valley South Owner's Association's Motion to Dismiss, or Alternatively Motion for Summary Judgment | 3                    | JA0596-612         |

|            |  |   |            |
|------------|--|---|------------|
| 4/5/2019   | Green Valley South Owners Association No 1's Answer to Plaintiff's Complaint   | 1 | JA0022-27  |
| 5/1/2020   | Nevada Association Services, INC.'s Answer to Complaint  | 2 | JA0245-254 |
| 10/18/2019 | Nevada Association Services, INC.'s Joinder to Defendant Green Valley South Owners' Association's Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment                         | 1 | JA0086-88  |
| 10/29/2020 | Nevada Association Services, INC.'s Joinder to Defendant Green Valley South Owners' Association's Renewed Motion to Dismiss, or Alternatively, Motion for Summary Judgment                         | 2 | JA0295-297 |
| 3/9/2021   | Notice of Appeal   | 3 | JA0633-635 |
| 2/16/2021  | Notice of Entry of Findings of Fact, Conclusions of Law and Order on Defendant Green Valley South Owner's Association's Motion to Dismiss, or Alternatively Motion for Summary Judgment            | 3 | JA0613-632 |
| 2/7/2020   | Notice of Entry of Order   | 2 | JA0240-244 |
| 2/7/2020   | Order Granting in Part Defendant Green Valley South Homeowners Association's Motion to Dismiss   | 1 | JA0238-239 |
| 10/29/2019 | Plaintiff's Opposition to Green Valley South Owners Association's Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment and Nevada Association Services, INC.'s Joinder Thereto | 1 | JA0089-205 |
| 11/9/2020  | Plaintiff's Opposition to Green Valley South Owners Association's Renewed Motion to Dismiss, or  | 2 | JA0298-415 |

|            |  |   |            |
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|            | Alternatively, Motion for Partial Summary Judgment and Nevada Association Services, INC.'s Joinder Thereto |   |            |
| 12/10/2019 | Transcript of Proceedings  | 1 | JA0218-237 |
| 12/1/2020  | Transcript of Proceedings  | 3 | JA0567-595 |



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*Attorneys for Defendant,  
Green Valley South Owner's Association*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

DAISEY TRUST, a Nevada trust  
Plaintiff,

vs.

GREEN VALLEY SOUTH OWNERS  
ASSOCIATION NO. 1, a Nevada non-  
profit corporation; and NEVADA  
ASSOCIATION SERVICES, INC., a  
domestic corporation;  
Defendants.

Case No.: A-19-791254-C  
Dept.: XVIII

HEARING REQUESTED

**DEFENDANT GREEN VALLEY SOUTH  
OWNERS' ASSOCIATION'S REPLY TO  
DAISEY TRUST'S OPPOSITION TO  
MOTION TO DISMISS, OR  
ALTERNATIVELY, MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

COMES NOW, Defendant Green Valley South Owners' Association ("Defendant" or "Green Valley") by and through its counsel of record, LIPSON NEILSON P.C., and hereby submits its Reply to Daisey Trust's Opposition to Motion to Dismiss, or alternatively, Motion for Partial Summary Judgment on Plaintiff Daisey Trust's Complaint ("Motion"). This Motion is made and based upon the following Memorandum of Points and Authorities, the papers and pleadings on file, and any oral argument that may be presented in this matter.

///

///

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This matter arises from a non-judicial foreclosure sale conducted on real property located at 137 Elegante Way in Henderson, Nevada 89074 ("Property"). The sale took place on August 31, 2012, wherein the Property sold to Plaintiff Daisey Trust for \$3,555.00.

At the time of the sale, Bank of America, N.A. ("BANA") held an interest in a Deed of Trust encumbering the Property. Upon receiving a copy of the Notice of Sale recorded by Nevada Association Services, Inc. ("NAS") on behalf of Green Valley, BANA made a conditional tender of the superpriority portion of the delinquent assessment lien. NAS rejected the tender and proceeded with the sale.

Daisey Trust maintains that Green Valley and NAS acted fraudulently, in violation of NRS 116, and with the intent to commit a conspiracy, by selling the Property without disclosing the existence of BANA's conditional tender. In support of these claims, Daisey Trust continues to argue that Green Valley had either a contractual or statutory obligation to disclose the tender when the Nevada Supreme Court has repeatedly rejected those arguments through a series of opinions issued over the last few months with respect to dismissals issued by district courts with almost identical facts.

The Plaintiff's arguments are without merit and the Court should dismiss Daisey Trust's complaint in its entirety.

**II. RESPONSE TO DAISEY TRUST'S STATEMENT OF FACTS**

Daisey Trust's "Statement of Facts" contains many conclusory misstatements.

14. On August 31, 2012, HOA Trustee then proceeded to non-judicial foreclosure sale on the Property and recorded the HOA Foreclosure Deed on September 7, 2012, which stated that the HOA Trustee sold the HOA's interest in the Property to Plaintiff at the Foreclosure Sale for the highest bid amount of \$3,555.00.

Objection. While the HOA agrees with the date of the sale and the price, it disputes the characterization of the language. The Foreclosure Deed specifically indicates that the Property was sold "without warranty expressed or implied" as required by NRS 116.31164(3)(a) as it existed at the time of the sale. See Nev. Rev. Stat. § 116.31164(3)(a) ("Make, execute and, after

|    |   |  |
|----|---|--|
| 1  |   | payment is made, deliver to the purchaser, or his or her successor or assign, <u><b>a deed without warranty</b></u> which conveys to the grantee all title of the unit's owner to the unit;"); see also Ex. 5 of the HOA's Motion. |
| 2  |   |  |
| 3  |   |  |
| 4  | 20. The debt owed to Lender by the Former Owners of the Property pursuant to the loan secured by the Deed of Trust significantly exceeded the fair market value of the Property at the time of the HOA Foreclosure Sale.  | Objection. This statement is not a fact but instead is an allegation that calls for a legal conclusion.  |
| 5  |   |  |
| 6  |   |  |
| 7  |   |  |
| 8  | 23. If the bidders and potential bidders at the HOA Foreclosure Sale were aware that an individual or entity had attempted to pay the Super Priority Lien Amount and/or by means of the Attempted Payment prior to the HOA Foreclosure Sale and that the Property was therefore ostensibly being sold subject to the Deed of Trust, the bidders and potential bidders would not have bid on the Property. . | Objection. This is a conclusory statement unsupported by any documents or evidence from the underlying action.   |
| 9  |   |  |
| 10 |   |  |
| 11 |   |  |
| 12 |   |  |
| 13 | 24. Had the Property not been sold at the HOA Foreclosure Sale, HOA and HOA Trustee would not have received payments, interest, fees, collection costs and assessments related to the Property would have remained unpaid.  | Objection. This is a conclusory statement unsupported by any documents or evidence from the underlying action. The statement also calls for speculation and reaches an improper legal conclusion.                                  |
| 14 |   |  |
| 15 |   |  |
| 16 |   |  |
| 17 |   |  |
| 18 | 27. HOA and HOA Trustee conspired together to hide material information related to the Property: the HOA Lien; the Attempted Payment of the Super Priority Lien Amount; the rejection of such payment or Attempted Payment; and the priority of the HOA Lien vis a vis the Deed of Trust, from the bidders and potential bidders at the HOA Foreclosure Sale.   | Objection. This is a conclusory statement unsupported by any documents or evidence from the underlying action. The statement also calls for speculation and reaches an improper legal conclusion.                                  |
| 19 |   |  |
| 20 |   |  |
| 21 |   |  |
| 22 |   |  |
| 23 | 29. HOA and HOA Trustee conspired to withhold and hide the aforementioned information for their own economic gain and to the detriment of the bidders and potential bidders at the HOA Foreclosure Sale.  | Objection. This is a conclusory statement unsupported by any documents or evidence from the underlying action. The statement also calls for speculation and reaches an improper legal conclusion.                                  |
| 24 |   |  |
| 25 |   |  |
| 26 | 30. It was Plaintiff's practice and procedure that when it would attend NRS 116 sales, by and through its Trustee, at all times relevant to this case, the Trustee  | Objection. The <i>Declaration</i> in question presents no facts relevant or specific to this Foreclosure Sale which would support any of the alleged claims in this case.  |
| 27 |   |  |
| 28 |   |  |

would attempt to ascertain whether anyone had attempted to or did tender any payment regarding the homeowner association's lien, including but not limited to the Attempted Payment.

31. At all times relevant to this matter, if the Plaintiff had learned of a "tender" either having been attempted or made, the Plaintiff could not purchase the Property offered in that HOA Foreclosure Sale.

Objection. This a conclusory and speculative statement, not a fact supported by any documents or evidence from the underlying action.

Plaintiff's "statement of facts" is in reality a mere regurgitation of the unsupported and unspecific allegations of the Complaint. The circumstances that must be detailed in a complaint alleging fraud include averments as to time, place, identity of the parties involved, and the nature of the fraud or mistake, malice, intent, knowledge and other conditions of the mind of a person may be averred generally. *Brown v. Kellar*, 97 Nev. 582, 636 P.2d 874 (1981). Plaintiff has pled no such facts and the Declaration provided also only makes universal generalizations demonstrating there are no particular facts for this specific sale which would be gained through discovery or proven at trial making a dismissal the only logical outcome.

### **III. LEGAL ARGUMENT**

#### **A. The Nevada Supreme Court Upheld Dismissal of Misrepresentation Claims Based on the Exact Same Declaration by Haddad.**

Nevada Rules of Appellate Procedure 36(3) states in part that "A party may cite for its persuasive value, if any, an unpublished disposition issued by the Supreme Court on or after January 1, 2016...." While Plaintiff's counsel is correct that the decision is not binding, it can be considered by the Court. Our Motion cites to five such unpublished cases all issued by the Nevada Supreme Court on October 16, 2020 because they are each stunningly similar to the facts of the instant action. See *Saticoy Bay, LLC, Series 11339 Colinward, A Nevada Limited Liability Company vs. Travata and Montage at Summerlin Centre Homeowners Association, et. al.* (Case No. 80162) (October 16, 2020) *Unpublished Disposition*; See *Saticoy Bay, LLC, Series 3123 Inlet Bay vs. Genevieve Court Homeowners Association, et. al.* (Case No. 80135) (October

1 16, 2020) *unpublished disposition*; See *Saticoy Bay, LLC, Series 8320 Bermuda Beach,*  
2 *A Nevada Limited Liability Company vs. South Shores Community Homeowners*  
3 *Association, et. al.* (Case No. 80165) (October 16, 2020) *Unpublished Disposition*; See  
4 *Saticoy Bay, LLC, Series 6408 Hillside Brook, A Nevada Limited Liability Company vs.*  
5 *Mountain Gate Homeowners Association, et. al.* (Case No. 80134) (October 16, 2020)  
6 *Unpublished Disposition*; See *Saticoy Bay, LLC, Series 8920 El Diablo, A Nevada*  
7 *Limited Liability Company vs. Silverstone Ranch Homeowners Association, et. al.* (Case  
8 No. 80039) (October 16, 2020) *Unpublished Disposition*.

9 Specifically, in the case of *Saticoy Bay, LLC, Series 11339 Colinward, A Nevada*  
10 *Limited Liability Company vs. Travata and Montage at Summerlin Centre Homeowners*  
11 *Association, et. al.* (Case No. 80162) (October 16, 2020) ("*Colinward*"), the Nevada  
12 Supreme Court affirmed the district court's dismissal of Plaintiff Saticoy Bay's complaint  
13 in its entirety stating that the Complaint and accompanying Declaration of Eddie Haddad  
14 were not sufficient to allege a claim upon which relief could be granted. More  
15 specifically, the Court stated "In particular, appellant's claims for misrepresentation and  
16 breach of NRS 116.1113 fail because respondents had no duty to proactively disclose  
17 whether a superpriority tender had been made."

18 This case is incredibly persuasive and should be considered by the Court  
19 because the evidence presented by Saticoy Bay in *Collinward* is practically the identical  
20 evidence provided in this case. Attached hereto is a copy of Plaintiff's *Opposition to*  
21 *Travata and Montage at Summerlin Centre Homeowners Association's Motion to*  
22 *Dismiss* filed on June 7, 2019. **See Exhibit 1.** The Complaint allegations as to the  
23 claim of Misrepresentation are very almost identical to those brought in the instant  
24 action. The Declaration of Eddie Haddad *is* the exact declaration utilized in *Collinward*.  
25 (See *Exhibit 1, Exhibit 1*). In the appeal, Saticoy Bay argued that the Complaint  
26 allegations combined with the scope of the Declaration raised viable claims for  
27 misrepresentation upon which relief could be granted. The Court disagreed.

28

1 Following the issuance of the October 16, 2020 opinion in *Collinward* and after  
2 the filing of this Motion, Saticoy Bay filed a Petition for Rehearing claiming that the  
3 Declaration of Haddad was sufficient to support a claim of misrepresentation against the  
4 Defendants. A copy of the *Petition for Rehearing* is attached hereto. **See Exhibit 2.**  
5 On November 23, 2020, the Nevada Supreme Court issued an Order Denying Petition  
6 for Rehearing, a copy of which is attached hereto. **See Exhibit 3.**

7 Mr. Haddad's declaration is devoid of any facts specific to this litigation. See  
8 Opposition, *Declaration of Eddie Haddad*. It generally avers to Mr. Haddad's policies  
9 and procedures during an unknown time period, makes no specific statements  
10 regarding the foreclosure sale on this Property or Mr. Haddad's activities leading up to  
11 or during the sale. As the Court can see, the Nevada Supreme Court agrees with  
12 Defendants that the vague, unspecific and unsupported allegations by Plaintiff do not  
13 support a claim upon which relief can be granted.

14 Plaintiff's Opposition also continues to rely *Foster v. Dingwall*, 126 Nev. 56  
15 (Nev.,2010), as proof apparent that the HOA's failure to disclose the existence of the  
16 bank's tender gives rise to a claim for fraudulent/negligent misrepresentation. See  
17 Opposition, pages 12-14, lines 1-22. *Foster* is not applicable to the facts of this case.  
18 *Foster* involved various conspiracy and fraud claims between a corporation and its  
19 directors, and included intervening misrepresentation claims brought by shareholders.  
20 See generally *id.* Its discussion of intentional misrepresentation, however, was limited to  
21 a finding that the shareholders did not present sufficient evidence to establish a claim.  
22 *Id.* at 1052. The block quote set forth in Plaintiff's opposition does not appear to be a  
23 part of the *Foster* decision at all, nor is there any correlation between *Foster* and the  
24 statutory obligations of an HOA under NRS 116.

25 Plaintiff's Complaint has not "identified" a single fact establishing that the HOA  
26 and its agent intentionally misrepresented the existence of BANA's tender. See  
27 generally *Papasan v. Allain*, 106 S.Ct. 2932, 2944, 478 U.S. 265, 286  
28 (U.S.,1986)("Although for the purposes of this motion to dismiss we must take all the

1 factual allegations in the complaint as true, we are not bound to accept as true a legal  
2 conclusion couched as a factual allegation.”) In fact, the Opposition states that “In this  
3 case, the HOA is not guilty of a false misrepresentation...” See Opposition, page 12,  
4 lines 26-27.

5 There has been no deposition testimony to this effect, nor have any documents  
6 been produced in the prior litigation with respect to this property suggesting that a false  
7 representation was made with knowledge of its false nature and with the intent to induce  
8 Plaintiff’s reliance. See generally *Nelson v. Heer*, 123 Nev. 217 (Nev.,2007).

9 Instead, Plaintiff argues that the HOA “...are guilty of intentionally not disclosing  
10 a material fact regarding the payment of the Attempted Payment concerning the Deed  
11 of Trust that they are required to do and thereby making a material omission of a fact  
12 subject to this claim.” See Opposition, page 12-13, lines 27-2. Again, as raised in our  
13 Motion, Plaintiff is presuming a duty to disclose that simply did not exist. Plaintiff’s  
14 argument that the existence of the first deed of trust was a “defect” under NRS 113(4)  
15 has no merit based on a plain reading of the statute, and is not supported by case law.  
16 The statute, based on its wording, is clearly referencing construction deficiencies to the  
17 property. A first deed of trust is not a defect, it’s a lien on the property. There was no  
18 duty to disclose the lien and conditional tender by the bank as a “defect” under NRS  
19 113(4). This argument is addressed in more detail below. The Nevada Supreme Court  
20 agrees and dismissed a similar Saticoy argument stating that NRS 113 was not  
21 applicable to tenders. See *Saticoy Bay, LLC, Series 3123 Inlet Bay vs. Genevieve*  
22 *Court Homeowners Association, et. al.* (Case No. 80135) (October 16, 2020), page 2.  
23 *Unpublished disposition.*

26 ///

27 ///

**B. The Nevada Supreme Court Has Definitively Rejected Plaintiff's Arguments with Respect to NRS 116 and NRS 113.**

Daisy Trust alleges that Green Valley breached its duty of good faith under NRS 116.1113 by failing to disclose the existence of the Miles Bauer tender. See Complaint ¶¶ 71 – 81. It is true that NRS 116.1113 imposes a duty of good faith in the performance of every contract or duty governed by the statute. Nev. Rev. Stat. § 116.1113. However, the only “duties” owed to Daisy Trust are outlined in sections 116.3116 through 116.31168. Green Valley complied with these duties by complying with all notice and recording requirements set forth in NRS 116 as it existed at the time of the sale. Green Valley was not required to disclose the existence of a pre-sale tender of the superpriority portion of the lien.

As discussed above, the Nevada Supreme Court has clearly set forth that Homeowner's Associations and their agents had no duty to proactively disclose whether a tender had been made under statute. The Court also compared the language in pre-2015 NRS 116.31162 with NRS 116.31162(1)(b)(3)(II) (2017) (requiring an HOA to disclose if tender of the superpriority portion of the lien has been made) noting that only the later version of the statute contains this requirement. While not mandatory, these cases are almost identical to the instant action and the same reasoning would arguably apply should the Nevada Supreme Court evaluate a dismissal by this Court. See *Saticoy Bay, LLC, Series 11339 Colinward, A Nevada Limited Liability Company vs. Travata and Montage at Summerlin Centre Homeowners Association, et. al.* (Case No. 80162) (October 16, 2020) *Unpublished Disposition*; See *Saticoy Bay, LLC, Series 3123 Inlet Bay vs. Genevieve Court Homeowners Association, et. al.* (Case No. 80135) (October 16, 2020) *unpublished disposition*; See *Saticoy Bay, LLC, Series 8320 Bermuda Beach, A Nevada Limited Liability Company vs. South Shores Community Homeowners Association, et. al.* (Case No. 80165) (October 16, 2020) *Unpublished Disposition*; See *Saticoy Bay, LLC, Series 6408 Hillside Brook, A Nevada Limited Liability Company vs. Mountain Gate Homeowners Association, et. al.* (Case No.

1 80134) (October 16, 2020) *Unpublished Disposition*; See *Saticoy Bay, LLC, Series 8920*  
2 *El Diablo, A Nevada Limited Liability Company vs. Silverstone Ranch Homeowners*  
3 *Association, et. al.* (Case No. 80039) (October 16, 2020) *Unpublished Disposition*.

4 Plaintiff also claims that Green Valley South was required to disclose the  
5 existence of the tender pursuant to NRS 113, a statute which governs the disclosures of  
6 certain defects on residential property, as well as services, land uses (open range), and  
7 zoning classifications. Plaintiff argues that the tender represented a defect in the title  
8 that should have been disclosed prior to sale.  
9

10 The bank's pre-sale tender does not fit into any of the disclosure categories  
11 contemplated by NRS 113. See generally *id.* It is not a water or sewage service, nor  
12 does it involve open range liability, zoning classifications, gaming enterprise districts, or  
13 transfer fee obligations. See Nev. Rev. Stat. §§ 113.060 through 113.085. It also does  
14 not qualify as the discovery or worsening of a defect subject to disclosure under NRS  
15 113.130.

16 A "defect" is defined as "a condition that materially affects the value or use of  
17 residential property in an adverse manner." See Nev. Rev. Stat. § NRS 113.100(1).  
18 The key to disclosure under this section is the seller's realization, perception, and  
19 knowledge of the alleged defect. See *Nelson v. Heer*, 123 Nev. at 224; see also Nev.  
20 Rev. Stat. §113.140(1). A seller is not required to disclose defects of which he is  
21 unaware. *Id.*  
22

23 Furthermore, nowhere in either NRS 113 or NRS 116 do the statutes suggest the  
24 Seller's Real Property Disclosure Form ("SRPDF") should be supplied in NRS 116  
25 foreclosure sales. Plaintiff further alleges that the "Residential Disclosure Guide (the  
26 "Guide") suggests Defendants should supply the SRPDF. However, the actual Guide  
27  
28

1 does not ever refer to the HOA or HOA Agent as possible sellers for which the SRPDF  
2 might apply or refer to a HOA foreclosure sale, or suggest the SRPDF applies to NRS  
3 116 Foreclosure Sales.

4         The Guide suggests to protect oneself from a faulty SRPDF in buying a home,  
5 “[t]he Buyer is advised to obtain an independent inspection performed by a properly  
6 licensed home inspector.” NRS 116 foreclosure properties are not open for inspection  
7 prior to sale, and NRS 116 foreclosure homes may be occupied, for which the buyer  
8 assumes the responsibility.

10         The Nevada Supreme Court clearly agrees with this analysis. “Similarly, and  
11 assuming without deciding that NRS Chapter 113 applies to NRS Chapter 116 sales,  
12 NRS 113.130 requires a seller to disclose “defect[s],” not superpriority tenders. NRS  
13 113.100 defines “Defect” as “a condition that materially affects the value or use of  
14 residential property in an adverse manner.” To the extent that a deed of trust counsel  
15 conceivably constitutes a “condition,” we note that the subject property technically has  
16 the same “value” regardless of whether it is encumbered by the deed of trust. In a  
17 footnote, the Court further stated “Nor are we persuaded that the Seller’s Real Property  
18 Disclosure Form would require disclosure of a superpriority tender.” *See See Saticoy*  
19 *Bay, LLC, Series 3123 Inlet Bay vs. Genevieve Court Homeowners Association, et. al.*  
20 (Case No. 80135) (October 16, 2020) (Unpublished), page 2.

23 ///

24 ///

25 ///

26 ///

27 ///

1 **IV. CONCLUSION**

2 Based on the foregoing, the HOA respectfully requests this Court dismiss  
3 Plaintiff's complaint based on the grounds raised in its Motion. Plaintiff's Opposition  
4 raises no new arguments and cannot refute that the series of unpublished cases,  
5 especially *Colinward*, are practically identical to this case and would allow dismissal of  
6 all claims.

7 DATED this 24th day of November, 2020.

8 LIPSON NEILSON P.C.

9 */s/ Janeen Isaacson*

10 By:

11 J. William Ebert, Esq. (Bar No. 2697)  
12 Janeen V. Isaacson, Esq. (Bar No. 6429)  
13 9900 Covington Cross Drive, Suite 120  
14 Las Vegas, Nevada 89144

15 *Attorneys for Defendant,*  
16 *Green Valley South Owners Association*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and Administrative Order 14-2, on the 24<sup>th</sup> day of November, 2020, I electronically transmitted the foregoing **DEFENDANT GREEN VALLEY SOUTH OWNERS' ASSOCIATION'S REPLY TO DAISEY TRUST'S OPPOSITION TO MOTION TO DISMISS, OR ALTERNATIVELY, MOTION FOR PARTIAL SUMMARY JUDGMENT** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV& Serve registrants addressed to:

Roger P. Croteau, Esq.  
Timothy E. Rhoda, Esq.  
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*Attorneys for Plaintiff,  
Daisy Trust*

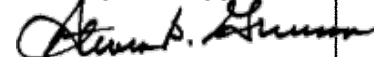
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Inc.*

*/s/ Renee M. Rittenhouse*

\_\_\_\_\_  
An Employee of LIPSON NEILSON P.C.

**EXHIBIT “1”**

**EXHIBIT “1”**



1 **OPP**  
2 ROGER P. CROTEAU, ESQ.  
3 Nevada Bar No. 4958  
4 ROGER P. CROTEAU & ASSOCIATES, LTD.  
5 2810 W. Charleston Blvd., Ste. 75  
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7 (702) 254-7775 (telephone)  
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10 ***Attorney for Plaintiff***

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DISTRICT COURT  
CLARK COUNTY, NEVADA

10 SATICOY BAY LLC SERIES 11339 )  
11 COLINWARD, a Nevada limited liability )  
12 company, )  
13 Plaintiff, )  
14 vs. )  
15 TRAVATA AND MONTAGE AT )  
16 SUMMERLIN CENTRE HOMEOWNERS' )  
17 ASSOCIATION, a domestic non-profit )  
18 corporation and NEVADA ASSOCIATION )  
19 SERVICES, INC., a domestic corporation; )  
20 Defendants. )

Case No.: A-19-790433-C  
Dept. No. 18

PLAINTIFF'S OPPOSITION TO  
TRAVATA AND MONTAGE AT  
SUMMERLIN CENTRE  
HOMEOWNERS' ASSOCIATION'S  
MOTION TO DISMISS

**OPPOSITION TO MOTION TO DISMISS**

21 COMES NOW, Plaintiff, SATICOY BAY LLC SERIES 11339 COLINWARD, by and  
22 through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby presents its  
23 Opposition to Defendant, Travata and Montage at Summerlin Centre Homeowners'  
24 Association's Motion to Dismiss ("*the HOA's Motion*"). This Opposition is made and based  
25 upon the attached Memorandum of Points and Authorities, the papers and pleadings on file  
26 herein, and any oral argument that this Honorable Court may entertain at the time of hearing of  
27 this matter.  
28

DATED this 2<sup>nd</sup> day of June, 2019

ROGER P. CROTEAU & ASSOCIATES, LTD.

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

**MEMORANDUM OF POINTS AND AUTHORITIES**

**INTRODUCTION**

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

Though non-judicial foreclosure sales in the State of Nevada are generally governed by NRS 107 et seq.; however, the legislature in 1991 enacted NRS 116, as amended, to specifically address the special needs of homeowners' associations to enforce their liens against real property owners in the common-interest community to ensure the survival of the homeowner's

1 association. Pursuant to NRS 116, certain unique modifications to the general statutory scheme  
2 of NRS 107 were enacted by the legislature. It is the unique features of NRS 116 et seq. that  
3 prompted Plaintiff's Complaint; specifically, the bifurcation of the Deed of Trust priority into  
4 two pieces creating two very different legal and economic implications: (1) super-priority and  
5 (2) sub-priority of the Deed of Trust secured by the real property.

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

8 NRS 116.3116 Liens against units for assessments.

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

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

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

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

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

The lien is also prior to all security interests described in paragraph (b) to the  
extent of any charges incurred by the association on a unit pursuant to NRS  
116.310312 and to the extent of the assessments for common expenses based on  
the periodic budget adopted by the association pursuant to NRS 116.3115 which  
would have become due in the absence of acceleration during the 9 months  
immediately preceding institution of an action to enforce the lien, unless federal  
regulations adopted by the Federal Home Loan Mortgage Corporation or the  
Federal National Mortgage Association require a shorter period of priority for the  
lien. If federal regulations adopted by the Federal Home Loan Mortgage  
Corporation or the Federal National Mortgage Association require a shorter period  
of priority for the lien, the period during which the lien is prior to all security  
interests described in paragraph (b) must be determined in accordance with those  
federal regulations, except that notwithstanding the provisions of the federal

1 regulations, the period of priority for the lien must not be less than the 6 months  
2 immediately preceding institution of an action to enforce the lien. This subsection  
3 does not affect the priority of mechanics' or materialmen's liens, or the priority of  
4 liens for other assessments made by the association.

\* \* \*

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

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

14 NRS 116.3116(2)(b) makes a homeowner's association's lien for assessments junior to a  
15 Deed of Trust beneficiary's secured interest in the real property; with one limited exception,  
16 provided for in NRS 116.3116(2)(c), a homeowner's association's lien is senior in priority to a  
17 Deed of Trust beneficiary's secured interest "to the extent of any charges incurred by the  
18 association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for  
19 common expenses based on the periodic budget adopted by the association pursuant to NRS  
20 116.3115 which would have become due in the absence of acceleration during the 9 months  
21 immediately preceding institution of an action to enforce the lien. ..." NRS 116.3116(2)(c). In  
22 Nevada, when a homeowners association properly forecloses upon a lien containing a super-  
23 priority lien component, such foreclosure extinguishes a Deed of Trust. If the homeowner's  
24 association does not properly foreclose on a super-priority homeowner's association lien or the  
25 super-priority portion is paid before the foreclosure sale, the homeowner's association  
26 foreclosure sale does not extinguish the Deed of Trust.

27 The facts as alleged in this Complaint create an issue of first impression in the State of  
28 Nevada. As the court is aware, the statutory foreclosure scheme of NRS 116.3116 and related  
sections creates unique bifurcated priority liens related to the Deed of Trust. Under NRS 107,  
non-judicial foreclosure sales where the bidders at NRS 107 sales have available public  
information regarding the priority of the deed of trust being foreclosed, the priority of the Deed

1 of Trust at the homeowner's association foreclosure sale cannot be determined by a bidder at the  
2 homeowner's association foreclosure sale from a review of public information, record searches,  
3 title reports or other means commonly and regularly relied upon by bidders in NRS 107 sales.

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

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

#### 17 STATEMENT OF FACTS

- 18 1. Plaintiff, Saticoy Bay, LLC, Series 11339 Colinward ("*Saticoy Bay*"), is a Nevada series  
19 limited liability company, authorized to do business and doing business in the County of  
20 Clark, State of Nevada. *Complaint* ¶1.
- 21 2. Saticoy Bay is the current owner of real property located at 11339 Colinward Avenue, Las  
22 Vegas, Nevada 89135 (APN 164-02-713-040) (the "*Property*"). *Complaint* ¶2
- 23 3. Saticoy Bay acquired title to the Property by Foreclosure Deed dated March 31, 2014, by  
24 and through a homeowners association lien foreclosure sale conducted on March 28, 2014  
25 ("*HOA Foreclosure Sale*"), by Nevada Association Services, a domestic corporation,  
26 authorized to do business and doing business in Clark County, State of Nevada ("*HOA*  
27 *Trustee*"), on behalf of Travata and Montage at Summerlin Centre Homeowners'  
28 Association, a Common Interest Community ("*HOA*"). The HOA Foreclosure Deed was

- 1 recorded in the Clark County Recorder's Office on March 28, 2014 ("*HOA Foreclosure*  
2 *Deed*"). *Complaint* ¶3
- 3 4. HOA is a Nevada common interest community association or unit owners' association as  
4 defined in NRS 116.011, is organized and existing under the laws of the State of Nevada,  
5 and transacts business in the State of Nevada. *Complaint* ¶4
- 6 5. HOA Trustee is a debt collection agency doing business in the State of Nevada, and is  
7 organized and existing under the laws of the State of Nevada. *Complaint* ¶5
- 8 6. Under Nevada law, homeowner's associations have the right to charge property owners  
9 residing within the community assessments to cover the homeowner's associations'  
10 expenses for maintaining or improving the community, among other things. *Complaint* ¶8
- 11 7. When the assessments are not paid, the homeowner's association may impose a lien  
12 against real property which it governs and thereafter foreclose on such lien. *Complaint* ¶9
- 13 8. NRS 116.3116 makes a homeowner's association's lien for assessments junior to a first  
14 deed of trust beneficiary's secured interest in the property, with one limited exception; a  
15 homeowner's association's lien is senior to a deed of trust beneficiary's secured interest  
16 "to the extent of any charges incurred by the association on a unit pursuant to NRS  
17 116.310312 and to the extent of the assessments for common expenses based on the  
18 periodic budget adopted by the association pursuant to NRS 116.3115 which would have  
19 become due in the absence of acceleration during the 9 months immediately preceding  
20 institution of an action to enforce the lien." NRS 116.3116(2)(c). *Complaint* ¶10
- 21 9. On or about September 19, 2008, Arthur Keith, Jr. acquired title to the Property by Grant,  
22 Bargain, Sale Deed recorded on September 19, 2008, in the Clark County Recorder's  
23 Office, State of Nevada. *Complaint* ¶11
- 24 10. In Nevada, when a homeowners association properly forecloses upon a lien containing a  
25 super-priority lien component, such foreclosure extinguishes a first deed of trust.  
26 *Complaint* ¶12
- 27 11. On or about September 29, 2010, Arthur Keith Jr., an unmarried man, ("*the Former*  
28 *Owner*") refinanced the Property and obtained a loan secured by the Property from Sierra

Pacific Mortgage Company, Inc. (“*Lender*”), that is evidenced by a deed of trust between the Former Owner and Lender, recorded against the Property on September 29, 2010, for the loan amount of \$329,493.00 (“*Deed of Trust*”). The Deed of Trust provides that Mortgage Electronic Registration Services (“*MERS*”) is beneficiary, as nominee for Lender and Lender’s successors and assigns. The Deed of Trust was in the amount of \$329,493.00, and the Deed of Trust was recorded in the Clark County Recorder’s Office on September 29, 2010. *Complaint ¶13*

12. The Former Owner executed Planned Unit Development Riders along with the Deed of Trust, effective as of September 3, 2010. *Complaint ¶14*

13. On November 29, 2011, MERS, on behalf of Lender, assigned its beneficial interest by Assignment of Deed of Trust to Bank of America, N.A. (“*BANA*”) and recorded the document in Clark County Recorder’s Office on December 1, 2011. *Complaint ¶15*

14. The Former Owner of the Property failed to pay to HOA all amounts due to pursuant to HOA’s governing documents. *Complaint ¶16*

15. Accordingly, on July 19, 2013, HOA Trustee, on behalf of HOA, recorded a Notice of Delinquent Assessment Lien (“*HOA Lien*”). The HOA Lien stated that the amount due to the HOA was \$1,680.22, as of July 13, 2013, plus continuing assessments, accruing interest, late charges, costs, attorney/s fees, and other charges. *Complaint ¶17*

16. On September 23, 2013, HOA, through HOA Trustee, recorded a Notice of Default and Election to Sell Homeowner’s Association Lien (“*NOD*”) against the Property. The NOD stated the amount due to the HOA was \$2,506.10 as of September 19, 2013. plus accruing assessments, interest, costs, attorney’s fees, and other charges. *Complaint ¶18*

17. After the NOD was recorded, on October 29, 2013, BANA, through Miles, Bauer, Bergstom & Winters (“*Miles Bauer*”) contacted the HOA Trustee and requested a ledger identifying the Super-Priority Lien Amount, comprising of up to 9 months of delinquent assessments immediately prior to the filing of the HOA Lien that were owed to the HOA (“*Super Priority Lien Amount*”). *Complaint ¶19*

- 1 18. Upon information and belief, Miles Bauer requested the HOA arrears in an attempt to pay  
2 the Super-Priority Lien Amount of the HOA Lien. *Complaint ¶20*
- 3 19. In an Affidavit of Adam Kendis of Miles Bauer, Mr. Kendis testified that he could not  
4 locate a response from the HOA and/or HOA Trustee and used “a copy of a Statement of  
5 Account previously provided by Nevada Association Services, Inc. for the HOA, with  
6 respect to a different property, used to determine a good-faith payoff estimate.”  
7 *Complaint ¶21*
- 8 20. On November 22, 2013, BANA, through Miles Bauer, provided a payment of \$594.00 to  
9 the HOA Trustee, which included payment of up to nine months of delinquent  
10 assessments (the “*Attempted Payment*”). *Complaint ¶22*
- 11 21. HOA Trustee, on behalf of the HOA, rejected BANA’s Attempted Payment of \$594.00.  
12 *Complaint ¶23*
- 13 22. This Property was a member of two associations, and the Former Owner was delinquent  
14 with each. *Complaint ¶24*
- 15 23. On November 20, 2013, Nevada Association Services (“*Master Trustee*”), on behalf of  
16 the Westpark Community Association (“*Master HOA*”) recorded a Lien for Delinquent  
17 Assessments in the amount of \$1,027.44 (the “*Master Lien*”). *Complaint ¶25*
- 18 24. On January 10, 2014, Master Trustee, on behalf of the Master HOA, recorded a Notice of  
19 Default and Election to Sell Under Homeowner’s Association Lien (“*Master NOD*”)  
20 against the Property. The Master NOD stated the amount due to the HOA was \$1,880,10  
21 as of January 9, 2014, plus continuing assessments, late fees, collection fees, interest, and  
22 other charges. *Complaint ¶26*
- 23 25. Upon information and belief, after the Master NOD was recorded, on January 30, 2014,  
24 BANA, through Miles Bauer, contacted the Master Trustee and Master HOA via U.S.  
25 Mail and requested adequate proof of the super priority amount of assessments by  
26 providing a breakdown of up to nine (9) months of common HOA assessments due at the  
27 recording of the Master HOA Lien in order for BANA to calculate the Super Priority Lien  
28 Amount in an ostensible attempt to determine the amount the HOA Lien entitled to

1 Super-Priority lien amount (*"Master Super-Priority Lien Amount"*). *Complaint ¶27*  
2 26. Upon information and belief, after the Master NOD was recorded on January 20, 2014,  
3 BANA, through Miles Bauer, contacted the Master HOA Trustee and requested the HOA  
4 arrears in an attempt to pay the Super-Priority Lien Amount of the Master HOA Lien.  
5 *Complaint ¶28*  
6 27. In response to BANA's request sent to the Master Trustee requesting a ledger identifying  
7 the Master Super-Priority Lien Amount, the Master Trustee provided a Statement of  
8 Account that provided a full payoff amount of \$1,930.54. *Complaint ¶29*  
9 28. On February 20, 2014, BANA, through Miles Bauer, provided a payment of \$171.00 to  
10 the Master Trustee, which included payment of nine months of delinquent assessments  
11 comprising the Master Super-Priority Lien Amount of the Master Lien (the *"Master*  
12 *Attempted Payment"*). *Complaint ¶30*  
13 29. Master Trustee, on behalf of the Master HOA, rejected BANA's Master Attempted  
14 Payment of \$171.00. *Complaint ¶31*  
15 30. On February 4, 2014, HOA Trustee, on behalf of the HOA, recorded a Notice of  
16 Foreclosure Sale against the Property (*"NOS"*). The NOS provided that the total amount  
17 due the HOA was \$3,603.22 and set a sale date for the Property of February 28, 2014, at  
18 10:00 A.M., to be held at Nevada Association Services. *Complaint ¶32*  
19 31. The Master HOA, by and through Master Trustee did not file nor record any Notice of  
20 Foreclosure Sale against the Property. *Complaint ¶33*  
21 32. On March 28, 2014, HOA Trustee then proceeded to non-judicial foreclosure sale on the  
22 Property and recorded the HOA Foreclosure Deed on March 31, 2014, which stated that  
23 the HOA Trustee sold the HOA's interest in the Property to the Plaintiff at the HOA  
24 Foreclosure Sale for the highest bid amount of \$12,100.00. *Complaint ¶34*  
25 33. The Foreclosure Sale created excess proceeds. *Complaint ¶35*  
26 34. After the NOD was recorded, BANA, the purported holder of the Deed of Trust recorded  
27 against the Property, through its counsel, Miles Bauer, contacted HOA Trustee and HOA  
28 and requested all amounts due the HOA by the Former Owner, upon information and

1 belief, Miles Bauer requested the sums due to the HOA by the Former Owners so it could  
2 calculate the breakdown of nine (9) months of common HOA assessments in order for  
3 BANA to calculate the Super Priority Lien Amount in an ostensible attempt to determine  
4 the amount of the HOA Lien entitled to super-priority over the Deed of Trust. *Complaint*  
5 ¶36

6 35. In none of the recorded documents, nor in any other notice recorded with the Clark  
7 County Recorder's Office, did HOA, Master HOA, Master Trustee and/or HOA Trustee  
8 specify or disclose that any individual or entity, including but not limited to BANA, had  
9 attempted to pay any portion of the HOA Lien in advance of the HOA Foreclosure Sale.

10 36. Plaintiff appeared at the HOA Foreclosure Sale and presented the prevailing bid in the  
11 amount of \$12,100.00, thereby purchasing the Property for said amount. *Complaint* ¶38

12 37. Neither HOA, Master HOA, Master Trustee, nor HOA Trustee informed or advised the  
13 bidders and potential bidders at the HOA Foreclosure Sale, either orally or in writing, that  
14 any individual or entity had attempted to pay the Super-Priority Lien Amount and/or the  
15 Master Super Priority Lien Amount. *Complaint* ¶39

16 38. Upon information and belief, the debt owed to Lender by the Former Owner of the  
17 Property pursuant to the loan secured by the Deed of Trust significantly exceeded the fair  
18 market value of the Property at the time of the HOA Foreclosure Sale. *Complaint* ¶40

19 39. Lender alleges that its Attempted Payment and the Master Attempted Payment of the  
20 Super-Priority Lien Amount and/or the Master Super Priority Lien Amount served to  
21 satisfy and discharge the Super-Priority Lien Amount, thereby changing the priority of the  
22 HOA Lien vis a vis the Deed of Trust. *Complaint* ¶41

23 40. Lender alleges that as a result of its Attempted Payment of the Super-Priority Lien  
24 Amount, the purchaser of the Property at the HOA Foreclosure Sale acquired title to the  
25 Property subject to the Deed of Trust. *Complaint* ¶41

26 41. If the bidders and potential bidders at the HOA Foreclosure Sale were aware that an  
27 individual or entity had attempted to pay the Super-Priority Lien Amount and/or by  
28 means of the Attempted Payment prior to the HOA Foreclosure Sale and/or the Master

1 Super Priority Lien Amount and/or the Master Attempted Payment and that the Property  
2 was therefore ostensibly being sold subject to the Deed of Trust, the bidders and potential  
3 bidders would not have bid on the Property. *Complaint ¶43*

4 42. Had the Property not been sold at the HOA Foreclosure Sale, HOA and HOA Trustee  
5 would not have received payment, interest, fees, collection costs and assessments related  
6 to the Property would have remained unpaid. *Complaint ¶44*

7 43. HOA Trustee acted as an agent of HOA. *Complaint ¶45*

8 44. Master Trustee acted as an agent for the Master HOA. *Complaint ¶46*

9 45. Master HOA and the HOA are respectively responsible for the actions and inactions of  
10 HOA Trustee and Master Trustee pursuant to the doctrine of respondeat superior.  
11 *Complaint ¶47*

12 46. The HOA Trustee and the Master Trustee are the same entity. *Complaint ¶48*

13 47. Defendants conspired together to hide material information related to the Property: the  
14 HOA Lien; the Attempted Payment of the Super-Priority Lien Amount; the rejection of  
15 such payment or Attempted Payment; and the priority of the HOA Lien vis a vis the Deed  
16 of Trust, from the bidders and potential bidders at the HOA Foreclosure Sale. *Complaint*  
17 *¶49*

18 48. Defendants conspired together to hide material information related to the Property: the  
19 Master HOA Lien; the Master Attempted Payment of the Super-Priority Lien Amount;  
20 the rejection of such payment or Master Attempted Payment; and the priority of the  
21 Master HOA Lien vis a vis the Deed of Trust, from the bidders and potential bidders at  
22 the HOA Foreclosure Sale. *Complaint ¶50*

23 49. The information related to the Attempted Payment, Master Attempted Payment or  
24 payments made by Lender, BANA, the homeowner or others to the Super Priority Lien  
25 Amount was not recorded and would only be known by BANA, Lender, the HOA, Master  
26 HOA, HOA Trustee, and Master Trustee. *Complaint ¶51*

27 50. The Defendants conspired to withhold and hide the aforementioned information for their  
28 own economic gain and to the detriment of the bidders and potential bidders at the HOA

1 Foreclosure Sale. *Complaint* ¶52

2 51. BANA first disclosed the Attempted Payment by BANA/Lender to the HOA Trustee in  
3 BANA's Complaint filed against Plaintiff and the HOA on March 4, 2016, and later  
4 served on the Plaintiff. ("*Discovery*") in the United States District Court for the District  
5 of Nevada, Civil Action No. 2:16-cv-00473 (the "*Case*"). *Complaint* ¶53, See Exhibit 1.

6 **PROCEDURAL BACKGROUND**

7 In the Case, BANA sued the HOA, the HOA Trustee, and Saticoy Bay. In the Case,  
8 Lender brought claims for Quiet Title / Declaratory Judgment against all defendants, Breach of  
9 NRS 116.1113 against the HOA and HOA Trustee, Wrongful Foreclosure against the HOA and  
10 HOA Trustee, and Injunctive Relief against Saticoy Bay. See Exhibit 1. Saticoy did not elect to  
11 sue the HOA and/or the HOA Trustee in the Case. None of the allegations set forth in this  
12 Complaint would require a compulsory claim by Saticoy in the Case. Saticoy filed this  
13 Complaint on March 4, 2019 to preserve its three (3) year statute of limitations pursuant to NRS  
14 11.190 (a) - (d).

15 **LEGAL ARGUMENT**

16 **A. STATEMENT OF THE LAW**

17 A complaint should not be dismissed for insufficiency, for failure to state a cause of  
18 action, unless it appears to a certainty that the Plaintiff is entitled to no relief under any set of  
19 facts which could be proven in support of the claim. *Zalk-Josephs Co. V. Wells Cargo, Inc.*, 81  
20 Nev. 163,400 P.2d 621 (1965). On a motion to dismiss for failure to state a claim for relief, the  
21 trial court, and the Supreme Court must draw every fair intendment in favor of the plaintiff.  
22 *Merluzi v. Larson*, 96 Nev. 409, 610 P.2d 739 (1980), overruled on the other grounds, 106 Nev.  
23 568, 796 P.2d 592 (1990). When tested by a subdivision (b)(5) motion to dismiss for failure to  
24 state a claim upon which relief can be granted the allegations of the complaint must be accepted  
25 as true. *Hynds Plumbing & Heating Co. V. Clark County School District*, 94 Nev. 776, 587 P.2d  
26 131 (1978). A trial court may dismiss a complaint **only if it appears to a certainty that a**  
27 **plaintiff can prove no set of facts which would entitle him to relief**; all allegations pled must  
28 be accepted as true. *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993) (Emphasis added).

1 In the event that a motion asserting N.R.C.P. §12(b)(5) presents matters outside the pleading  
2 which are not excluded by the court, the motion shall be treated as one for summary judgment  
3 and disposed of as provided in N.R.C.P. §56. See N.R.C.P. §12(b).

4 Pursuant to N.R.C.P. §56, two substantive requirements must be met before a Court may  
5 grant a motion for summary judgment: (1) there must be no genuine issue as to any material fact;  
6 and, (2) the moving party must be entitled to judgment as a matter of law. *Fyssakis v. Knight*  
7 *Equipment Corp.*, 108 N.v. 212, 826 P.2d 570 (1992). Summary judgment is appropriate under  
8 NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits,  
9 if any, that are properly before the court demonstrate that no genuine issue of material fact exists,  
10 and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway*, 121 NEV.  
11 Adv. Op. 73, 121 P.3d 1026 (October, 2005) citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev.  
12 at 713, 57 P.3d at 87 (2003). In deciding whether these requirements have been met, the Court  
13 must first determine, in the light most favorable to the non-moving party “whether issues of  
14 material fact exist, thus precluding judgment by summary proceeding.” *National Union Fire Ins.*  
15 *Co. of Pittsburgh v. Pratt & Whitney Canada, Inc.*, 107 Nev. 535, 815 P.2d 601, 602 (1991).

16 The Nevada Supreme Court has indicated that Summary Judgment is a drastic remedy  
17 and that the trial judges should exercise great care in granting such motions. *Pine v. Leavitt*, 84  
18 Nev. 507, 445 P.2d 942 (1968); *Oliver v. Barrick Goldstrike Mines*, 111 Nev. 1338, 905 P.2d  
19 168 (1995). “Actions for declaratory relief are governed by the same liberal pleading standards  
20 that are applied in other civil actions.” See *Breliant v. Preferred Equities Corp.*, 109 Nev. 842,  
21 846, 858 P.2d 1258, 1260-61 (1993). “The formal sufficiency of a claim is governed by NRCP  
22 8(a), which requires only that the claim, shall contain (1) a short and plain statement of the claim  
23 showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to  
24 which he deems himself entitled.’ See *id.* (quoting NRCP 8(a).

25 Based upon the facts asserted in Plaintiff’s Complaint, which must be taken as true, the  
26 Court should deny the HOA’s Motion. Further, should the Court conclude that the HOA’s  
27 Motion should be evaluated as a Motion for Summary Judgment or Partial Summary Judgment,  
28 the Court should also deny the HOA’s Motion as genuine issues of material fact remain and

1 Defendants are not entitled to judgment as a matter of law.

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

4 Saticoy's allegations in the Complaint relate to matters up to and including Saticoy's  
5 purchase of the Property at the HOA Foreclosure Sale. Saticoy's allegations as pled in the  
6 Complaint include three (3) causes of action: (1) Intentional, or alternatively, Negligent  
7 Misrepresentation; (2) NRS 116.1113 Breach of Duty of Good Faith and Candor; and (3) Civil  
8 Conspiracy among the HOA and the HOA Trustee. These allegations do not implicate the  
9 mediation provisions of NRS 38.310. The provisions of NRS 38.310 provides as follows:

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

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

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

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

22 NRS 38.300 provides that:

23 1. "Assessments" means:

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

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

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

...

1 Contrary to the HOA's allegations that the Court lacks subject matter jurisdiction, NRS  
2 38.310 is not applicable to the instant litigation and does not divest the Court of jurisdiction in  
3 this case. The Court does not need to even review the CC&Rs to adjudicate the claims in this  
4 case, it must look to NRS 116 *et seq.* and NRS 113 *et seq.* to interpret the statute and the  
5 common law. In the thousands of cases brought during the period when the courts have toiled  
6 with interpreting NRS 116, Plaintiff is unaware of any previous assertion of NRS 38.300 *et seq.*  
7 as a bar or even as needing a mandated premediation before filing a civil action.

8 The HOA cites *McKnight Family, LLP v. Adept Mgmt.*, 310 P.3d 555, 129 Nev. 610  
9 (Nev. 2013), as controlling in this case. The *McKnight* holding was based upon a lien for  
10 delinquent assessments that allegedly were improperly calculated and wrongfully asserted by the  
11 HOA and did require interpretation of the CC&R's since it was a dispute "under NRS 116 after a  
12 dispute over allegedly unpaid assessments." *Id* at 557. In *McKnight*, the Court noted that "an  
13 action is exempt from the NRS 38.310 requirements if the action relates to an individual's right  
14 to possess his or her property." *Id* at 558. *McKnight* citing *Hamm v. Arrowcreek Homeowner's*  
15 *Assn*, 124 Nev. 290, 183 P.3d 895(2008), stated that in *Hamm* the Court "determined that a threat  
16 of foreclosure constitutes a danger of irreparable harm because the land is unique." *McKnight* at  
17 558 (quoting *Hamm* at 297).

18 In *McKnight*, the claims all emanated from the failure of the unit owner to pay  
19 assessments and the HOA's subsequent foreclosure of the Property against a  
20 homeowner/member of the HOA. The negligence claims in *McKnight* concerned the payments  
21 Mr. McKnight made to the HOA. *Id* at 558. Mr. McKnight's breach of contract claims related to  
22 the obligations and duties set forth in the HOA's CC&Rs. *Id*. Mr. McKnight and HOA are parties  
23 to the CC&R's and do have a contractual relationship. The allegations of this Complaint do not  
24 sound in breach of contract as the alleged misconduct occurred during the sale, pursuant to  
25 violations of statutes. Mr. McKnight also brought a wrongful foreclosure action based upon the  
26 dispute regarding unpaid assessments, but that claim was based upon the HOA's failure to adhere  
27 with the provisions of the CC&Rs, and in that circumstance would be governed by NRS 38.310.  
28 For all matters raised in this Complaint, Saticoy was not a party to the CC&Rs until the HOA

1 Foreclosure Sale was completed. The Compliant does not seek damages from its involvement  
2 and governed by the CC&Rs, but to matters leading up to and including the HOA Foreclosure  
3 Sale.

4 The Court is asked in this case to interpret NRS 116.1113 and NRS 113.130 and their  
5 related sections along with common law to determine if the HOA Trustee, as agent for the HOA,  
6 had a duty to third-party bidders to disclose any "tender" of the Super-Priority Lien Amount  
7 and/or Attempted Payment to the HOA Trustee and/or the HOA or provide the mandated  
8 disclosures under NRS 113.130 that would obligate the HOA and HOA Trustee to disclose  
9 relevant information. NRS 38.310 is not implicated in the allegations of this Complaint. Also of  
10 note, NRS 38.310 is simply not applicable to the allegations against the HOA Trustee.

11 **C. SATICOY'S CLAIMS FOR MISREPRESENTATION AND CONSPIRACY ARE**  
12 **VIABLE CLAIMS AND DO NOT FAIL AS A MATTER OF LAW**

13 The HOA intentionally/negligently made the determination not to disclose the Attempted  
14 Payment despite its actual knowledge to the contrary known only to the HOA, HOA Trustee and  
15 BANA. In *Foster v. Dingwall*, 126 Nev.56, 69 227 P.3d 1042,1052, 2010 LEXIS 5, 26, 126 Nev.  
16 Adv. Rep. 6 (2010), the court defined that elements of intentional misrepresentation as:

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

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

The Court in *Foster* provided that the omission of a material fact such as the BANA  
Attempted Payment of the HOA Lien may be deemed to be a false representation which the  
Defendants are bound by the mandates of NRS 116.1113 and NRS 113.130 to disclose to  
potential bidders under the obligation and duty of good faith and candor to disclose upon

1 reasonable inquiry from potential bidders at the HOA Foreclosure Sale and/or the party  
2 conducting the sale with actual knowledge of certain material facts such intentional omission in  
3 not disclosing the Attempted Payment is equivalent to a false representation under the facts of  
4 this case.

5 Saticoy has identified that the HOA, by and through its agent, the HOA Trustee,  
6 intentionally did not disclose the Attempted Payment to Saticoy or the potential bidders at the  
7 HOA Foreclosure Sale. Unlike NRS 107 *et seq.* sales, NRS 116 *et seq.* sales provide for a super  
8 and sub-priority lien portion of the Deed of Trust. Absent of the recording of any notice of  
9 payment of the Super-Priority Lien Amount, as is mandated with the NRS 116 amendments in  
10 2015, the only way Saticoy and/or potential bidders at the HOA Foreclosure Sale would know if  
11 any party tendered the Super-Priority Lien Amount and/or Attempted Payment is if the HOA  
12 and/or the HOA Trustee informs the bidders of the Attempted Payment. It is clear from the facts  
13 of this case that the HOA Trustee was aware of the Attempted Payment and its rejection by the  
14 HOA Trustee.

15 Since the HOA Trustee is the disclosed agent of the HOA, the HOA is imputed with  
16 knowledge held by the HOA Trustee. The specific allegations that the HOA alleges were not  
17 asserted by Saticoy appear in the Complaint at ¶11, 20, 21, 22, 23, 24, 27, 28, 30, 32, 33, 34, 35,  
18 36, 37, 38, 39, 40, 41, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 56, 57, 58, 59, 60, 61, 62, 63,  
19 65, 66, 83 84, and 85. See Exhibit 2. In the foregoing allegations, Plaintiff sets forth the duty,  
20 breach of that duty, improper purpose, failure to make a statement regarding the Attempted  
21 Payment, the material omission of the Attempted Payment, the breach of the obligation of good  
22 faith and candor, the failure to provide notice pursuant to NRS 113 *et seq.* and the damages  
23 suffered by Saticoy. See Declaration of Ilyad Haddad (the “*Declaration*”).

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

1           The HOA and/or the HOA Trustee's actions leading up to and at the HOA Foreclosure  
2 Sale intentionally obstructed Plaintiff's opportunity to conduct its own due diligence regarding  
3 the Property and specifically the priority of the lien being foreclosed upon, and ultimately  
4 affected Plaintiff's decision whether to actually submit a bid on the Property or not. See  
5 Plaintiff's Complaint ¶¶ 28, 30, 31, 32, 34, 35, 36, 38, 39, 40, 41, 43, 44, 45, 47, 48, 49, 50, 51,  
6 52, 56, 58, 59, 60, 62, 63, 64, 65, 66, and 67, See Exhibit 2. Had Plaintiff known that it was  
7 purchasing the Property subject to the Deed of Trust, Plaintiff would have never submitted a bid  
8 in the first place, thus avoiding this entire controversy. See Declaration. Plaintiff's Complaint  
9 adequately pleads this fact and such fact must be taken as true in evaluating HOA's Motion.

10           In the present case, at the time of the Foreclosure Sale, the HOA and HOA Trustee knew  
11 that BANA had made the Attempted Payment of the HOA Lien but did not inform the bidders.  
12 Neither the HOA nor the HOA Trustee ever disclosed that BANA had in fact made the  
13 Attempted Payment of the HOA Lien. Plaintiff's Complaint adequately pleads this fact as set  
14 forth herein.

15           At the time the Case was begun, Plaintiff believed that the Foreclosure Sale was  
16 conducted properly pursuant to the Recitals in the Foreclosure Deed and that the Deed of Trust  
17 was extinguished. The Plaintiff could not have discovered on its own whether or not the Property  
18 was being sold subject to the Deed of Trust without first commencing a quiet title action against  
19 BANA, conducting discovery, and finally having BANA disclose the tender. As Mr. Haddad  
20 stated in his Declaration, he would attempt to inquire and ask if any sums had been paid or  
21 offered to satisfy the Super-Priority piece.

22           It is not Saticoy's duty to prove that the HOA Trustee believed it had a duty to disclose  
23 the existence of the Miles Bauer tender or believed that the rejection of the tender had any impact  
24 on its statutory right to foreclose on its super-priority lien. It is Saticoy's claim that the HOA and  
25 the HOA Trustee had a duty to the bidding public to disclose information known to it, so Saticoy  
26 and the other bidders could decide whether to purchase the Property at the HOA Foreclosure  
27 Sale. The HOA and HOA Trustee intentionally, whether on a mistaken belief or not of the  
28 effectiveness of the tender, failed to disclose the Attempted Payment, so they would not chill the

1 sale of the Property for their own economic gain.

2 Defendant argues that the Property was sold at the HOA Foreclosure Sale “without  
3 warranty,” pursuant to NRS 116.31164(3)(a)...” See HOA’s Motion, page 11, lines 1-4. The  
4 HOA and HOA Trustee have an obligation of good faith, candor and complying with all  
5 applicable law at the time of the HOA Foreclosure Sale which they collectively did not. The  
6 HOA Foreclosure Deed provides that “... Nevada Association Services, Inc. has complied with  
7 all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of  
8 the [HOA Lien] and [NOD] and the posting and publication of the [NOS].” See HOA’s Motion,  
9 Exhibit 7. It is Plaintiff’s contention that the HOA and HOA Trustee, as outlined in this HOA  
10 Foreclosure Deed, that the HOA and HOA Trustee did not comply with all “requirements of  
11 law.” The HOA and HOA Trustee cannot intentionally withhold information known only to  
12 BANA, the HOA and HOA Trustee that materially, adversely affects, the Purchasers as defined  
13 under NRS 116 and NRS 113, Saticoy, as to the value and nature of the bifurcated lien status of  
14 the Deed of Trust. Of matters not specifically known to the HOA and HOA Trustee at the time of  
15 the HOA Foreclosure Sale that cannot be adduced by a public records review as occurs in NRS  
16 107 foreclosure sales, Plaintiff would concede that Defendant would not be liable. However, in  
17 the instant case, the HOA and HOA Trustee are the actual parties with the information regarding  
18 the Attempted Payment and had an obligation to inform the Plaintiff. This fact alone constitutes  
19 sufficient proof of the HOA, by and through its agent, the HOA Trustee, to disclose the  
20 Attempted Payment.

21 The Defendants have a duty to disclose the Attempted Payment to a Purchaser, as defined  
22 in NRS 116.079, at an HOA Foreclosure Sale pursuant to NRS 116.1113. At the time and place  
23 of the HOA Foreclosure Sale, the HOA, by and through its agent, the HOA Trustee, enters into a  
24 sale governed by a statute, NRS 116, by the function of the auction conducted by the HOA  
25 Trustee. Inherently, the material aspects of the factors affecting the lien priority of the secured  
26 debt that are only known solely to the HOA, HOA Trustee and BANA are material to the HOA  
27 Lien being foreclosed upon and must be disclosed to the HOA Foreclosure Sale bidders. To infer  
28 otherwise, would destroy the statutory scheme of NRS 116 sales. A common argument among

1 all parties to the HOA litigation has been the low prices adduced at the HOA Foreclosure Sales  
2 for the real property sold. Typically, the low sales prices have been driven by the mountain of  
3 litigation that has occurred over the last eight years seeking to define the rights and obligations of  
4 the various parties. To hold that the HOA does not have a duty to disclose information know  
5 only to the HOA and the HOA Trustee that materially affects the value of what a willing buyer  
6 would be willing to pay for the real property offered at auction that relates directly to the status  
7 and priority of the Deed of Trust. Essentially, the Defendants are alleging that the HOA will sell  
8 to the highest cash bidder the real property without any way for the bidder to know if it will  
9 acquire the real property free and clear of the Deed of Trust or subject thereto. This would  
10 effectively forever destroy the HOA Foreclosure Sale process under NRS 116.3116.

11 As additional proof of the intentional/negligent misrepresentation, the HOA and HOA  
12 Trustee are obligated to follow the disclosures mandated by NRS 113 *et seq.* The HOA asserts  
13 that NRS 116 governs the foreclosure and collection efforts of common-interest ownership  
14 communities and it does. NRS 113 is not generally applicable to NRS 107 foreclosure sales but  
15 does have certain provisions that do apply in NRS 107 foreclosure sales. NRS 113 is not  
16 exempted from NRS 116 foreclosure sales, to the extent that the HOA and the HOA Trustee, as  
17 agent for the HOA, have specific knowledge of the facts required for disclosure. Pursuant to NRS  
18 113, *et seq.*, the HOA and the HOA Trustee must disclose the Attempted Payment and/or any  
19 payments made or attempted to be made by BANA, the Former Owners, or any agents of any  
20 other party to the bidders and Plaintiff at the HOA Foreclosure Sale. NRS 113.130 provides as  
21 follows:

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

24 1. Except as otherwise provided in subsection 2:

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

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

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

27 (b) If, after service of the completed disclosure form but before conveyance of the  
28 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

1 or discovers that a defect identified on the completed disclosure form has become  
2 worse than was indicated on the form, the seller or the seller's agent shall inform  
3 the purchaser or the purchaser's agent of that fact, in writing, as soon as  
4 practicable after the discovery of that fact but in no event later than the  
5 conveyance of the property to the purchaser. If the seller does not agree to repair  
6 or replace the defect, the purchaser may:

- 7 (1) Rescind the agreement to purchase the property; or  
8 (2) Close escrow and accept the property with the defect as revealed by  
9 the seller or the seller's agent without further recourse.

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

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

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

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

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

20 3. A purchaser of residential property may not waive any of the requirements of  
21 subsection 1. A seller of residential property may not require a purchaser to waive any of  
22 the requirements of subsection 1 as a condition of sale or for any other purpose.

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

28 (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.

Emphasis added.

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

The HOA and HOA Trustee are required to and must provide a Seller's Real Property  
Disclosure Form ("SRPDF") [attached hereto as Exhibit 3] to the "Purchaser" as defined in NRS  
116, et seq., at the time of the HOA Foreclosure Sale; however, if it is deemed to be exempted, it  
still must provide information known to it. NRS 116 et seq. foreclosure sales are not exempt

1 from the mandates of NRS 113 et seq.

2 To the extent known to the HOA, and the HOA Trustee, as the agent of the HOA, the  
3 HOA and HOA Trustee must complete and answer the questions posed in the SRPDF in its  
4 entirety, but specifically, Section 9, Common Interest Communities, disclosures (a) - (f), and  
5 Section 11, that provide as follows:

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

- 10 (a) Common Interest Community Declaration and Bylaws  
11 available?  
12 (b) Any periodic or recurring association fees?  
13 (c) Any unpaid assessments, fines or liens, and any warnings or  
14 notices that may give rise to an assessment, fine or lien?  
15 (d) Any litigation, arbitration, or mediation related to property  
16 or  
17 or common areas?  
18 (e) Any assessments associated with the property (excluding  
19 property tax)?  
20 (f) Any construction, modification, alterations, or repairs made  
21 without required approval from the appropriate Common  
22 Interest Community board or committee?

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

25 See SRPDF, Form 547, attached hereto as Exhibit 3.

26 Section 11 of the SRPDF relates directly to information known to the HOA and the HOA  
27 Trustee that materially affects the value of the Property and defined as a "defect" in NRS  
28 113.100(1), that provides as follows: NRS 113.100(1). In this case, if the Super Priority Lien  
Amount is paid, or if the Attempted Payment is rejected, it would have a materially adverse  
affect on the overall value of the Property, and therefore, must be disclosed in the SRPDF by the  
HOA and the HOA Trustee when the SRPDF is completed and disclosed to the  
purchaser/Saticoy.

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

Section 11 of the SRPDF generally deals with the disclosure of the condition of the title

1 to the Property that would only be known by the HOA and the HOA Trustee.

2 Pursuant to Nevada Real Estate Division's ("NRED"), Residential Disclosure Guide (the  
3 "Guide") [attached hereto as Exhibit 4], the Guide provides at page 20 that the HOA and HOA  
4 Trustee shall provide the following to the purchaser/Saticoy at the HOA Foreclosure Sale:

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

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

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

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

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

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

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

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

1 breached in this case.

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

6 **D. PLAINTIFF'S CIVIL CONSPIRACY CLAIM DOES NOT FAIL AS A**  
7 **MATTER OF LAW**

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

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

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

20 Saticoy filed its Complaint in this matter timely. It did so to preserve its claims against  
21 the HOA and the HOA Trustee pursuant to NRS 11.190's three (3) year statute of limitations  
22 11.190 (a) and (d). Since the filing of this Complaint, the Case court has obtained full briefing  
23 from Lender, Saticoy Bay, HOA and HOA Trustee, on Motions for Summary Judgment. The  
24 Case has been remanded to the District court as set forth in the HOA's Motion. Given that  
25 Saticoy did not allege claims against the HOA and the HOA Trustee in the Case, it determined it  
26 prudent to initiate the current Complaint with the appropriate NRS 11.190(a)-(d) timeframe.

1 **B. PLAINTIFF'S CLAIMS AGAINST THE HOA AND HOA TRUSTEE ARE NOT**  
2 **TIME BARRED.**

3 The Plaintiff has asserted three (3) causes of action: (1) Intentional, or Alternatively  
4 Negligent Misrepresentation; (2) NRS 116.1113 breach of duty of good faith, and (3) civil  
5 conspiracy among the HOA and the HOA Trustee. NRS 11.190(3)(d) governs Plaintiff's claim  
6 for "intentional, or alternatively negligent misrepresentation" and provides for a three (3) year  
7 statute of limitation for "an action for relief on the ground of fraud or mistake, but the cause of  
8 action in such a case shall be deemed to accrue upon the discovery by the aggrieved party of the  
9 facts constituting the fraud or mistake." As outlined in detail herein, the Plaintiff discovered the  
10 intentional misrepresentation on Discovery from the Case. By computation, the NRS  
11 11.190(3)(d) statute of limitation in this matter would expire after March 4, 2019. Specifically,  
12 NRS 11.10(3)(d) provides specific language for the "discovery rule" that is applicable in this  
13 case.

14 Turning to breach of good faith claim under NRS 116.1113, Plaintiff argues that the  
15 discovery rule should apply to this cause of action due to the conduct of the Defendants in this  
16 case. Pursuant to NRS 11.190(3)(a), a three (3) year statute of limitation applies to "an action  
17 upon a liability created by statute, other than a penalty or forfeiture." Clearly, the obligation of  
18 "good faith" under NRS 116.1113, is a duty founded upon a statute that provides that "[e]very  
19 contract or duty governed by this chapter imposes an obligation of good faith in the performance  
20 or enforcement." Plaintiff asserts that the Defendants owed a duty of good faith in the  
21 performance of its duties and during the foreclosure sale process. In this case, the Plaintiff could  
22 not have learned of the Defendants breach of their duty of good faith in time to file its claim not  
23 due to Plaintiff's negligence or failure of due diligence, but because of Defendants' intentional  
24 failure to disclose facts of the tender to Plaintiff. There is good cause under the facts of this case  
25 to apply the discovery rule to the statute of limitations founded upon a statute in NRS  
26 11.190(3)(a).

27 Plaintiff's Motion is an accurate statement of the law if the Plaintiff were contesting the  
28 conduct of the sale or aspects of the sale that were reviewable or determinable and not concealed;

1 however, the facts of this case demonstrate that the breach of good faith is premised on the  
2 Defendants' intentional failure to disclose facts that have caused injury to Plaintiff. Specifically,  
3 as Mr. Haddad provided in his Declaration, he would not have bid nor purchased the Property at  
4 the Foreclosure Sale had he been aware of a tender of the HOA Lien by BANA. Plaintiff suffered  
5 economic harm as a result of the Defendants' misrepresentation to Plaintiff. The Plaintiff was  
6 damaged as a result of the Plaintiff's purchase of the Property subject to the First Deed of Trust  
7 that at the time of the Foreclosure Sale exceeded the fair market value of the Property.

8 The Court should deny the Defendant's Motion to Dismiss, because Plaintiff's claims  
9 against the HOA and/or HOA Trustee are not barred by the statute of limitations based upon the  
10 facts of this Complaint. The HOA argues that Plaintiff's claims against it and/or the HOA  
11 Trustee expired three years from the recording of the Foreclosure Deed pursuant to the statute of  
12 limitations contained within NRS §11.190(3)(a). The HOA Trustee foreclosure sale occurred on  
13 March 28, 2014 and the HOA Foreclosure Deed was recorded on March 31, 2014. In support of  
14 its argument, HOA argues that Plaintiff's claims originate at the latest from the recording of the  
15 Foreclosure Deed on June 30, 2014. In *Nationstar Mort. LLC v. Amber Hills II Homeowners*  
16 *Assn.*, 2016 WL 1298108 at 5 (D. Nev. Marc. 31, 2016). First, the Court should dispense with  
17 Defendant's misplaced reliance upon *Nationstar Mort. LLC*. In *Nationstar Mort. LLC*, the court  
18 calculated time from the date of the HOA foreclosure as the date of the actions giving rise to the  
19 claims.

20 *In re Nationstar Mortg. LLC*, Nationstar Mortgage, LLC ("*Nationstar*") was the party-in-  
21 interest, and alleged that Amber Hills' foreclosure sale was wrongful, because the HOA failed to  
22 give proper notice, the prior lender attempted to tender the superpriority amount but was  
23 rebuffed, and Amber Hills violated NRS §116.3111's requirement of good faith. *Id.* In that case,  
24 the Court appropriately concluded that the three year statute pursuant to NRS §11.190(3)(a)  
25 applied from the date of the foreclosure sale, because Nationstar's claim was essentially for  
26 damages based on liability created by a statute. *Id.* Nationstar, or the prior lender, had  
27 purportedly received notice of Amber Hills' intention to foreclose, and *had attempted to tender*  
28 *the super-priority amount*. *Id.* Nationstar, or the prior lender, had an opportunity to protect its

1 interest in the property at issue prior to the foreclosure sale, and failed to adequately do so. *Id.*  
2 Nationstar's claims of wrongful foreclosure are vastly different than Plaintiff's claims in the  
3 instant matter, which are not subject to the three year statute of limitations pursuant to NRS  
4 §11.190(3)(a).

5 In the present case, Plaintiff is the third-party purchaser from the HOA Foreclosure Sale,  
6 not the lender as in *Nationstar Mort. LLC*. See *Id.* The HOA and/or the HOA Trustee's actions  
7 leading up to and at the HOA Foreclosure Sale intentionally obstructed Plaintiff's opportunity to  
8 conduct its own due diligence regarding the Property and specifically the priority of the lien  
9 being foreclosed upon, and ultimately affected Plaintiff's decision whether to actually submit a  
10 bid on the Property or not. See Plaintiff's Complaint ¶¶ 34, 51 and 52. Had Plaintiff known that  
11 it was purchasing the Property subject to BANA's Deed of Trust, Plaintiff would have never  
12 submitted a bid in the first place, thus avoiding this entire controversy. See Declaration.  
13 Plaintiff's Complaint adequately pleads this fact at ¶¶ 34, 51 and 52 and such fact must be taken  
14 as true in evaluating Defendant's Motion to Dismiss.

15 Next, the Court should deny the Defendant's Motion to Dismiss, because the discovery  
16 rule tolls the statute of limitations upon these facts. In the present case, at the time of the  
17 Foreclosure Sale, the HOA and HOA Trustee knew that BANA had tendered the HOA Lien but  
18 did not inform the bidders. Neither the HOA nor the HOA Trustee ever disclosed that BANA had  
19 in fact tendered the HOA Lien and/or Attempted Payment. Plaintiff's Complaint adequately  
20 pleads this fact at ¶ 29, 33, 37-40, 42, 46, 48-50, 56-61, 75, and 81.

21 At the time the Case was begun, Plaintiff then for the first time believed that the  
22 Foreclosure Sale was conducted properly pursuant to the Recitals in the Foreclosure Deed and  
23 that the Deed of Trust was extinguished. The Plaintiff could not have discovered on its own  
24 whether or not the Property was being sold subject to Lender's Deed of Trust without first  
25 commencing a quiet title action against Lender, conducting discovery, and finally having Lender  
26 disclose the tender after the SFR Investments decision by the Nevada Supreme Court. As  
27 Plaintiff stated in his Declaration, he would inquire and ask if any sums had been paid or offered  
28 to satisfy the Super-Priority piece.

1           Given the Discovery in the Case, Plaintiff then believed that it had claims against the  
2 HOA and/or the HOA Trustee; and it initiated the instant case within the statute of limitations  
3 pursuant to NRS §11.190(3)(d), specifically governing “an action for relief on the ground of  
4 fraud or mistake, but the cause of action in such a case shall be deemed to accrue upon the  
5 discovery by the aggrieved party of the facts constituting the fraud or mistake.” (Emphasis  
6 added.). Thus, the discovery rule is applicable to the present facts.

7           The general rule concerning statutes of limitation is that a cause of action accrues  
8 when the wrong occurs and a party sustains injuries for which relief could be  
9 sought. An exception to the general rule has been recognized by this court and  
10 many others in the form of the so-called "discovery rule." Under the discovery  
11 rule, the statutory period of limitations is tolled until the injured party discovers or  
12 reasonably should have discovered facts supporting a cause of action.  
13 *Petersen v. Bruen*, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990) (citations omitted). Nevada has  
14 adopted the discovery rule, and thus time limits generally "do not commence and the cause of  
15 action does not 'accrue' until the aggrieved party knew, or reasonably should have known, of the  
16 facts giving rise to the damage or injury." *G & H Assocs. v. Ernest W. Hahn, Inc.*, 113 Nev. 265,  
17 934 P.2d 229, 233 (Nev. 1997).

18           In the present case, the date from which Plaintiff discovered the HOA and/or HOA  
19 Trustee's concealment of BANA's tender is the operable date, because Plaintiff had no way of  
20 knowing of this tender/Attempted Payment. See Plaintiff's Complaint ¶ 37-40. The HOA and/or  
21 HOA Trustee possessed the actual knowledge and information regarding BANA's tender of the  
22 HOA Lien. See Plaintiff's Complaint ¶ 25.

23           In the Case, Plaintiff brought a claim for quiet title against Lender. In the Case, Plaintiff  
24 brought no claims against the HOA and/or the HOA Trustee, because at the time of the filing of  
25 the Case, Plaintiff had no knowledge of any wrongful acts by the HOA and/or the HOA Trustee.

26           At the time Lender first disclosed any proof of a tender of the HOA Lien on March 17,  
27 2016, the Case had just begun without any discovery or proof. BANA, the HOA and the HOA  
28 Trustee knew of BANA's tender of the HOA Lien. No other parties had any knowledge of a  
BANA tender until March 27, 2016. In *TMX, Inc. v. Volk*, 2015 Nev. App. Unpub. LEXIS 404 at  
pages 1-2, 2015 WL 5176619 (August 31, 2015), ruled that:

1 Actions for fraud and misrepresentation have a three-year statute of limitations.  
2 NRS 11.190(3)(d). The date on which a statute of limitations accrues is normally  
3 **a question of fact**, and the district court may determine that date as a matter of  
4 law only when the uncontroverted evidence irrefutably demonstrates the accrual  
5 date. *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 251-54, 277 P.3d at 458,  
6 462-63 (2012). Non-compliance with a statute of limitations is a non-  
7 jurisdictional, affirmative defense, see, e.g., *Dozier v. State*, 124 Nev. 125, 129,  
8 178 P.3d 149, 152 (2008), **and the party asserting an affirmative defense bears**  
9 **the burden of proof**. See *Nev. Ass'n Servs. v. Eighth Judicial Dist. Court of Nev.*,  
10 130 Nev. , , 338 P.3d 1250, 1254 (2014). **As judging the validity of an**  
11 **affirmative defense "often requires consideration of facts outside of the**  
12 **complaint[,] "an affirmative defense generally does not provide grounds for a**  
13 **court to grant a motion to dismiss.** *Kelly-Brown v. Winfrey*, 717 F.3d 295, 308  
14 (2d Cir. 2013); see also *In re CityCenter Constr. & Lien. Master Litig.*, 129 Nev. ,  
15 n.3, 310 P.3d 574, 579 n.3 (2013) (noting courts generally do not consider matters  
16 outside the pleading in determining a motion to dismiss); *Lubin v. Kunin*, 117  
17 Nev. 107, 116, 17 P.3d 422, 428 (2001) (noting defenses generally should not be  
18 considered on a motion to dismiss).

19 "The general rule concerning statutes of limitation is that a cause of action accrues  
20 when the wrong occurs and a party sustains injuries for which relief could be  
21 sought." *Petersen v. Bruen*, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990). But, the  
22 Nevada Supreme Court has provided an exception to the general rule, referred to  
23 as the discovery rule, under which "the statutory period of limitations is tolled  
24 until the injured party discovers or reasonably should have discovered facts  
25 supporting a cause of action." *Id.* The discovery rule generally applies where the  
26 statute of limitations does not specify when a cause of action accrues. *Bemis v.*  
27 *Estate of Bemis*, 114 Nev. 1021, 1025 n.1, 967 P.2d 437, 440 n.1 (1998). Because  
28 NRS 11.190(1)(b) is silent as to when accrual occurs and NRS 11.190(3)(d)  
expressly incorporates the discovery rule, the discovery rule applies to both of  
Mallory's claims. Thus, we first consider when Mallory discovered or reasonably  
should have discovered the harm.  
(Emphasis added.)

As the court provided in *TMX, Inc.*, "the discovery rule generally applies where the statute  
of limitations does not specify when a cause of action accrues," and the *TMX, Inc.*, Court cited  
NRS 11.190(1)(b) as being "silent as to when accrual occurs." *Id.* NRS 11.190(1)(b) provides  
that "an action upon a contract, obligation or liability founded upon an instrument in writing . . .  
"and when compared with NRS 11.190(3)(a) it is clear that NRS 11.190(3)(a) is similarly silent  
as to when accrual of the action occurs; therefore, the general rule is that the discovery rule  
would apply to claims premised upon NRS 11.190(3)(a) in the Complaint.

Defendants assert that Plaintiff's claim for intentional or negligent misrepresentation  
must be dismissed as a matter of law citing NRCP 12(b)(6). In *Foster v. Dingwall*, 126 Nev.56,  
69 227 P.3d 1042,1052, 2010 LEXIS 5, 26, 126 Nev. Adv. Rep. 6 (2010), the court defined that  
elements of intentional misrepresentation as:

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

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

14 The Court in *Foster* provided that the omission of a material fact such as the BANA  
15 tender of the HOA Lien as deemed to be a false representation which the Defendants are bound  
16 by the mandates of NRS 116.1113 to disclose to potential bidders is a good faith obligation to  
17 disclose upon reasonable inquiry from potential bidders at the HOA Foreclosure Sale and such  
18 intentional omission is equivalent to a false representation under the facts of this case.  
19 Additionally, NRS 11.190(a) governs claims related to actions based upon a statute and for the  
20 reasons stated in *TMX, Inc.* accrue from the Discovery.

21 **E. DEFENDANTS FAILED TO CONDUCT THEIR OBLIGATIONS IN GOOD**  
22 **FAITH UNDER NRS 116.1113.**

23 The Court should deny the HOA's Motion, because Plaintiff's Complaint adequately  
24 states claims for relief consistent with their obligation of good faith and candor pursuant to NRS  
25 §116.1113 and NRS 113.130. The HOA argues that Plaintiff fails to cite to any provision within  
26 NRS Chapter 116 that contains an obligation or duty of good faith to the Purchaser, thus alleging  
27 that NRS §116.1113 is not implicated. However, Plaintiff respectfully disagrees. NRS §116.1113  
28 is not only implicated but clearly governs the parties' performance. Even if claims under NRS  
113.130 are deemed to not be timely filed, the mandates of NRS 113.130 constitute a breach of  
the HOA Foreclosure Deed referencing compliance with the law.

NRS §116.1113 provides, "[e]very contract or duty governed by this chapter imposes an  
obligation of good faith in its performance or enforcement." NRS 116.1113 provides that in  
"every contract or duty governed by [NRS 116] the actions of the HOA and the HOA Trustee

1 leading up to and including the HOA Foreclosure Sale provide that a duty of good faith regarding  
2 the HOA's performance in its enforcement of the provisions included in NRS Chapter 116  
3 constitute the foreclosure sale and selling the Property to a purchaser that will eventually be a  
4 member of the HOA. Plaintiff alleges that the HOA and the HOA Trustee's actions were not  
5 conducted in good faith. See Complaint. Plaintiff further alleges that the HOA and the HOA  
6 Trustee intentionally and/or negligently misrepresented the conditions present at the time it  
7 conducted the HOA Foreclosure Sale. See Complaint.

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

15         Nevada's HOA lien statute, NRS Chapter 116.3116, is modeled after the Uniform  
16 Common Interest Ownership Act of 1982 (hereinafter "*UCOIA*"), § 3-116, 7 U.L.A., part II  
17 121-24 (2009) (amended 1994, 2008), which Nevada adopted in 1991, see NRS 116.001. The  
18 purpose of the UCIOA is "to make uniform the law with respect to the subject of this chapter  
19 among states enacting it." NRS 116.1109(2). See *Carrington Mortg. Holdings, LLC v. R*  
20 *Ventures VIII, LLC*, 419 P.3d 703, 2018 Nev. LEXIS 47, 134 Nev. Adv. Rep. 46, 2018 WL  
21 3015114 (Nev. 2018).

22         In *Carrington Mortg. Holdings, LLC*, 419 P.3d at 705, the Nevada Supreme Court made  
23 clear that it would turn to case law from other jurisdictions to support its conclusions interpreting  
24 the UCOIA. The Nevada courts should follow the lead set by Minnesota in holding that the  
25 UCOIA imposed the duty of fair dealing which encompasses the duty of candor. For example,  
26 the Minnesota Appeals Court stated that, under the Minnesota Common Interest Ownership Act,  
27 which is likewise modeled after the UCOIA just as Nevada's NRS 116 et seq. good faith "means  
28 observance of two standards: 'honesty in fact', and observance of reasonable standards of fair

1 dealing." *Horodenski v. Lyndale Green Townhome Ass'n, Inc.*, 804 N.W.2d 366, 373 (Minn.  
2 App. 2011) (quoting UCOIA, 1982, § 1-113 & cmt.). See *Dean v. CMPJ Enters., LLC*, 2018  
3 Minn. App. Unpub. LEXIS 642, 2018 WL 3614146 (Minn. App. 2018).

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

7 Part of fair dealing is the obvious duty of candor. Moreover, one possessing superior  
8 knowledge may not mislead any stockholder by use of corporate information to which the  
9 latter is not privy. *Lank v. Steiner*, Del. Supr., 43 Del. Ch. 262, 224 A.2d 242, 244 (1966).  
10 Delaware has long imposed this duty even upon persons who are not corporate officers or  
11 directors, but who nonetheless are privy to matters of interest or significance to their  
12 company.

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

15 Part of fair dealing is the obvious duty of candor. *Lynch v. Vickers Energy Corp.*, Del.  
16 Supr., 383 A.2d 278, 281 (Del. 1977) (*Lynch I*). See also, *Weinberger v. Uop*, 457 A.2d 701,  
17 710, 1983 Del. LEXIS 371, \*26 (Del. 1983). The duty of candor is one of the elementary  
18 principles of fair dealing. See *Mills Acquisition Co. v. MacMillan, Inc.*, 559 A.2d 1261, 1989  
19 Del. LEXIS 149, Fed. Sec. L. Rep. (CCH) P94,401 (Del. 1989). See also, *Holten v. Std. Parking*  
20 *Corp.*, 98 F. Supp. 3d 444, 2015 U.S. Dist. LEXIS 39152 (Conn. 2015). Compare  
21 *Osowski v. Howard*, 2011 WI App 155, ¶ 17, 337 Wis. 2d 736, 807 N.W.2d 33 (WI App. Ct.  
22 2011) where the Wisconsin Appeals Court noted that the duty of fair dealing is a guarantee by  
23 each party that he or she "will not intentionally and purposely do anything to prevent the other  
24 party from carrying out his or her part of the agreement, or do anything which will have the effect  
25 of destroying or injuring the right of the other party to receive the fruits of the contract." See  
26 *Osowski v. Howard*, 2011 WI App 155, ¶ 17, 337 Wis. 2d 736, 807 N.W.2d 33. See also, *Tang v.*  
27 *C.A.R.S. Prot. Plus, Inc.*, 2007 WI App 134, ¶41, 301 Wis. 2d 752, 734 N.W.2d 169 (quoting  
28 *Metropolitan Ventures, LLC v. GEA Assocs.*, 2006 WI 71, ¶35, 291 Wis. 2d 393, 717 N.W.2d

1 58).

2 Moreover, the official comments by the drafters of the UCIOA provide important  
3 guidance in construing NRS §116.1113. See *Chase Plaza Condo. Ass'n v. JP Morgan Chase*  
4 *Bank, N.A.*, 98 A.3d 166, 175, 2014 D.C. App. LEXIS 317, \*20-21 (D.C. 2014). See generally,  
5 e.g., *Alvord Inv., LLC v. Zoning Bd. of Appeals*, 282 Conn. 393, 920 A.2d 1000, 2007 Conn.  
6 LEXIS 193; *Cantonbury Heights Condominium Assn., Inc. v. Local Land Development, LLC*,  
7 273 Conn. 724, 739-40, 873 A.2d 898 (2005); *W & D Acquisition, LLC v. First Union National*  
8 *Bank*, 262 Conn. 704, 712-13, 817 A.2d 91 (2003); *Platt v. Aspenwood Condo. Ass'n, Inc.*, 214  
9 P.3d 1060, 1063-64 (Colo. App. 2009) (relying on drafters' comments to UCOIA for guidance in  
10 interpreting state statute modeled on UCOIA; "We accept the intent of the drafters of a uniform  
11 act as the [legislature's] intent when it adopts that uniform act.") (internal quotation marks  
12 omitted); *Hunt Club Condos., Inc. v. Mac-Gray Servs., Inc.*, 2006 WI App 167, 295 Wis. 2d 780,  
13 721 N.W.2d 117, 123-25 (Wis. Ct. App. 2006)(official and published comments are "valid  
14 indicator" of legislature's intent in enacting corresponding statute); *Univ. Commons Riverside*  
15 *Home Owners Ass'n v. Univ. Commons Morgantown, LLC*, 230 W. Va. 589, 741 S.E.2d 613,  
16 2013 W. Va. LEXIS 264 \*16; *Will v. Mill Condo. Owners' Ass'n*, 2004 VT 22, 176 Vt. 380, 848  
17 A.2d 336, 2004 Vt. LEXIS 26 (turned to commentary to interpret state statute modeled on  
18 UCOIA). In the present matter, UCIOA § 1-113 cmt (1982) explicitly imposes a duty of good  
19 faith, which includes the duty of candor, and this Court should rely upon the comment consistent  
20 with the above cited case law.

21 Simply put, the HOA and/or the HOA Trustee could have made a simple announcement  
22 that unequivocally stated that the Property was being sold subject to the Deed of Trust to all  
23 potential bidders present and/or interested in bidding on the Property at the time of the HOA  
24 Foreclosure Sale or even disclose the Attempted Payment. Conversely, the HOA Trustee could  
25 have disclosed that the Super-Priority piece had been satisfied prior to the HOA Foreclosure Sale  
26 by the Attempted Payment or at least provide information to the potential bidders of the HOA  
27 Trustee's rejection of the Attempted Payment, but it did not. Neither the HOA nor the HOA  
28 Trustee did so. The HOA or the HOA Trustee could have provided notice to all potential bidders,

1 and/or the public at large, in their actions leading up to the HOA Foreclosure Sale, such as  
2 including a phrase concerning the absence of any super-priority portion of the HOA Lien being  
3 foreclosed upon within any and/or all of the notices recorded against the Property and/or  
4 advertising the sale, or it would have announced that fact at the sale. Similarly, neither the HOA  
5 nor the HOA Trustee did so, as that would have had the effect of chilling the sale.

6 At the time of the HOA Foreclosure Sale, only three parties knew of BANA's Attempted  
7 Payment; specifically, the HOA, the HOA Trustee and BANA. Moreover, these same parties  
8 knew of BANA's subsequent attempt to satisfy the super-priority piece of the HOA Lien via the  
9 letter from Miles Bauer to the HOA. This letter was sent directly to the HOA Trustee and in  
10 response to the HOA's recording of the NOD, in this case. Arguably, the HOA and the HOA  
11 Trustee knew that the Attempted Payment may be deemed to have satisfied the HOA Lien, which  
12 was determined to extinguish any Super-Priority Lien Amount piece of the HOA Lien. The HOA  
13 and the HOA Trustee knew that fact and intentionally failed to disclose that material fact to the  
14 bidders at the HOA Foreclosure Sale. Frankly, the HOA and HOA Trustee knew or should have  
15 known that such an omission would drastically affect the outcome of the HOA Foreclosure Sale.  
16 An intentional failure to disclose BANA's Attempted Payment had the effect of causing the  
17 Property to sell at the HOA Foreclosure Sale. Therefore, Plaintiff has alleged that the HOA and  
18 the HOA Trustee conspired together to intentionally withhold information regarding BANA's  
19 Attempted Payment of the HOA Lien that effectively defraud the public and/or potential bidders  
20 concerning the HOA Foreclosure Sale.

21 The purpose underlying NRS 116 is to remove a nonperforming homeowner (meaning a  
22 homeowner not paying his/her HOA dues) from a property and to replace him/her with a  
23 performing homeowner, thereby relieving the homeowners association and its members of the  
24 burden of paying the obligations of the nonperforming individual. To accept the HOA's  
25 contention that it did not intentionally or negligently misrepresent the HOA Foreclosure Sale by  
26 omitting the Attempted Payment by BANA of the HOA Lien, as at a minimum an  
27 announcement, and that it was under no contract or duty to operate under good faith and with  
28 candor to disclose such a material fact when asked by potential bidders as mandated by NRS 116

et seq and/or NRS 113 *et seq.*, would serve to emasculate NRS 116's mandate of good faith and render it completely meaningless and ineffective. Why would any person or entity purchase a property at an HOA foreclosure sale knowing that he or she would thereafter be stripped of ownership of the property upon foreclosure by a secured lender? Such a foreclosure could conceivably take place days or weeks after the HOA foreclosure sale. In the vast majority of cases, the answer to this question is quite simply that he or she would not. Thus, lacking any market for the sale of real property securing HOA liens, the homeowners associations and their members would be forced to continue to support those homeowners who choose not to pay their HOA dues. Indeed, the homeowners association would not have any reason to even credit bid the HOA lien at the time of sale. If the homeowners association were to carry out a sale and acquire the subject property for a credit bid, there would still be no party paying the HOA dues. Furthermore, the homeowners association would thereafter be required to pay for taxes, insurance and other maintenance related to the property. The payment of these expenses would constitute a further burden for the homeowners association and its members that they can ill afford.

The HOA and/or HOA Trustee are obligated, pursuant to NRS 116.1113, to conduct the sale in good faith. NRS 116.1113 provides that, "[e]very contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement." The plain language of the statute does not limit the good faith obligation to those in contractual privity. The HOA and/or HOA Trustee are not given authority to conceal material facts from potential bidders in their efforts to sell the real property to reap the sale proceeds to fund their foreclosure expenses.

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

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

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

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

1 (b) The elapsing of the 90 days; and  
2 (c) The giving of notice of sale,  
3 are conclusive proof of the matters recited.

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

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

11 Purchaser is defined under NRS 116.3166 as follows:

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

16 The relationship of the HOA Trustee as an agent for the HOA created a new contract at  
17 the HOA Foreclosure Sale for the sale of a "unit" to a "Purchaser" that as a result of its purchase  
18 shall become a member of the HOA.

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

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

NRS 116.1108 actually cites the issues raised in the Complaint as "supplemental general  
principles of law applicable" to NRS 116 et seq. The concepts of "law and equity," "law of real

1 property,” “principal and agent,” “fraud, misrepresentation,” “mistake” are all at the basis of the  
2 claims asserted in the Complaint. Additionally, Saticoy incorporates the arguments regarding  
3 NRS 113 *et seq.* disclosures as further violations by the HOA and HOA Trustee of their good  
4 faith and candor obligations.

5         Additionally, because this was a foreclosure sale pursuant to NRS 116.3116, Plaintiff  
6 reasonably relied upon the recitals included in the Foreclosure Deed that stated that the  
7 foreclosure was in compliance with NRS 116, *et seq.* See *Nationstar Mortg., LLC v. SFR*  
8 *Investments Pool 1, LLC*, No. 70653, 2017 Nev. App. Unpub. LEXIS 229, 2017 WL 1423938, at  
9 \*2 (Nev. App. Apr. 17, 2017) (“And because the recitals were conclusive evidence, the district  
10 court did not err in finding that no genuine issues of material fact remained regarding whether the  
11 foreclosure sale was proper and granting summary judgment in favor of SFR.”). Therefore,  
12 pursuant to *SFR Investments*, NRS 116.3116, and the recorded Foreclosure Deed in favor of  
13 SFR, the foreclosure sale was proper and extinguished the Deed of Trust. *Bank of Am., N.A. v.*  
14 *Sonrisa Homeowners Ass’n*, 2018 U.S. Dist. LEXIS 118720 (July 17, 2018). *Id.*

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

19         A trustee’s deed reciting compliance with the notice provision of NRS 116.31162  
20 through NRS 116.31168 “is conclusive” as to the recitals “against the unit’s  
21 former owner, his or her heirs and assigns, and all other persons.” NRS  
22 116.31166(2). And, “[t]he sale of a unit pursuant to NRS 116.31162, 11631163  
and 116.31164 vests in the purchaser the title of the unit’s owner without equity  
or right of redemption.” NRS 116.31166(3).

23 *Id.* at 411-412. (Emphasis added.) As such, there would have been no reason to question the  
24 legitimacy of the foreclosure sale based exclusively upon the recorded documents. At foreclosure  
25 sales conducted pursuant to NRS 116, bidders, potential bidders and buyers do not have access to  
26 any more information than is recorded. Plaintiff’s reliance on the recitations on the Foreclosure  
27 Deed was reasonable and foreseeable. Specifically, the HOA Foreclosure Deed asserted that the  
28

1 HOA Trustee complied with “all requirements of law.”

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

7       The Plaintiff relied upon the recitals contained within the Foreclosure Deed recorded on  
8 June 30, 2014. Under Nevada law, the HOA foreclosure sale and the resulting foreclosure deed  
9 are both presumed valid. NRS 47.250(16)-(18) (stating that disputable presumptions exist “that  
10 the law has been obeyed” “that a trustee or other person, whose duty it was to convey real  
11 property to a particular person, has actually conveyed to that person, when such presumption is  
12 necessary to perfect the title of such person or a successor in interest”; “that private transactions  
13 have been fair and regular”; and “that the ordinary course of business has been followed.”).  
14 Accordingly, the Plaintiff possessed a good faith belief that the HOA and/or the HOA Trustee’s  
15 actions taken in the ordinary course of business had been followed, and that the HOA  
16 Foreclosure Sale was fair and regular. Plaintiff has timely commenced this action against the  
17 HOA and HOA Trustee pursuant to NRS §11.190(3)(d) and NRS 11.190(3)(a).

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

24       Neither the HOA nor the HOA Trustee ever disclosed that BANA had in fact provided  
25 the Attempted Payment of the HOA Lien to the HOA Trustee. As a result, the Plaintiff could not  
26 have discovered on its own whether or not the Property was being sold subject to the Deed of  
27 Trust without either first commencing a quiet title action against Lender or having the Lender file  
28

1 suit. Plaintiff now believes that it has claims against the HOA and/or the HOA Trustee; and  
2 therefore has initiated the instant case within the statute of limitations pursuant to NRS  
3 §11.190(3)(d) and NRS 11.190(3)(a), respectively, specifically governing “an action for relief on  
4 the ground of fraud or mistake, but the cause of action in such a case shall be deemed to accrue  
5 upon the discovery by the aggrieved party of the facts constituting the fraud or mistake and in  
6 the absence of limiting time set forth in the statute.” (Emphasis added.) As set forth herein supra,  
7 the limitations et forth in NRS 11.10(3) is premised on violation of statute is also three (3) years  
8 from the date of discovery.

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

16 **F. SATICOY BAY’S CLAIMS AGAINST THE DEFENDANT’S ARE RIPE AND**  
17 **MUST BE PRESERVED**

18 As set forth in this Opposition to the HOA’s Motion, Saticoy Bay waited to have a  
19 complete adjudication on the Case, yet the 9<sup>th</sup> Circuit Court of Appeals remanded the Case and  
20 the prior order of the Court. Again, Saticoy Bay had no claims in the Case against the HOA or  
21 the HOA Trustee. Regardless of the outcome of the Case, the actions or inactions of the HOA  
22 and HOA Trustee have caused Saticoy Bay damages. The mere fact that it has had to endure the  
23 Case and its related expense was triggered by HOA and HOA Trustee’s failure to disclose the  
24 Attempted Payment. If Saticoy Bay prevails in the Case, it still can maintain the elements of the  
25 allegations of this Complaint and demonstrate economic damages. Based upon the foregoing, the  
26 complaint is ripe and if the Court wishes to wait for the Case decision on the merits, Saticoy Bay  
27 respectfully requests the Court stay this case. To dismiss this Complaint would cause the loss of  
28

1 all of the allegations based upon statute of limitations grounds.

2 **G. SATICOY'S CLAIMS FOR SPECIAL DAMAGES WILL BE DETERMINED AT**  
3 **TIME OF TRIAL**

4 The attorney fees and costs allegations as set forth in each cause of action references any  
5 claims that may be able to be adduced from the discovery in this case and/or the CC&R's if the  
6 HOA is successful in its argument under NRS 30.310. Pursuant to NRS 116.4117(6), "the court  
7 may award reasonable attorney's fees to the prevailing party" if the matter is subject to the  
8 CC&R's.  
9

10 **H. SATICOY'S CLAIMS FOR PUNITIVE DAMAGES ARE NOT PRECLUDED IN**  
11 **THIS CASE**

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

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

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

23 (a) By the association against:

- 24 (1) A declarant;  
25 (2) A community manager; or  
26 (3) A unit's owner.

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

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

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

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

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

4 5. Punitive damages may not be awarded against:

- 5 (a) The association;  
6 (b) The members of the executive board for acts or omissions that occur in  
7 their official capacity as members of the executive board; or  
8 (c) The officers of the association for acts or omissions that occur in their  
9 capacity as officers of the association.

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

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

13 8. The provisions of this section do not prohibit the Commission from taking  
14 any disciplinary action against a member of an executive board pursuant to NRS  
15 116.745 to 116.795, inclusive.

16 Emphasis added.

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

19 **I. THE COURT SHOULD DENY THE MOTION BECAUSE IT IS A MOTION FOR**  
20 **SUMMARY JUDGMENT AND GENUINE ISSUES OF MATERIAL FACT**  
21 **REMAIN**

22 It is readily apparent that the Plaintiff has stated valid claims for relief, alleging each  
23 element required in support of its claims for relief. The parties admittedly interpret the law  
24 differently. However, the fact that the Defendant has incorrectly interpreted the law does not  
25 justify dismissal.

26 The HOA's Motion is focused nearly solely upon the interpretation of the NRS 116. The  
27 Defendant asserts that its interpretation is correct and that the Complaint must thus fail. As such,  
28 the Defendant is arguing that it is entitled to judgment as a matter of law.

It is Defendant's concealment of BANA's purported tender by way of the Attempted  
Payment of the HOA Lien which gives rise to Plaintiff's claims and its patent failure to provide

1 NRS 113 notices. Defendant cannot conceal material facts and then turn around and complain  
2 that Plaintiff did not plead those hidden facts sooner. NRS 113 requires the HOA and HOA  
3 Trustee to disclose facts known to them, and they did not. As such, the Court should deny the  
4 HOA's Motion.

5  
6 **CONCLUSION**

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

11 DATED this 2nd day of June, 2019.

12 ROGER P. CROTEAU & ASSOCIATES, LTD.

13 /s/ Roger P. Croteau  
14 ROGER P. CROTEAU, ESQ.

15 Nevada Bar No. 4958

16 2810 W. Charleston Blvd., Ste. 75

17 Las Vegas, Nevada 89148

18 (702) 254-7775

19 *Attorney for Plaintiff*  
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**CERTIFICATE OF SERVICE**

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 7<sup>th</sup> day of June, 2019, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

- X VIA ELECTRONIC SERVICE: through the Eighth Judicial District Court's Odyssey e-file and serve system.
- \_\_\_\_\_ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.
- \_\_\_\_\_ VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.
- \_\_\_\_\_ VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Mindy B. Keck  
An employee of ROGER P. CROTEAU &  
ASSOCIATES, LTD

**DECLARATION OF EDDIE HADDAD**

I, Eddie Haddad, being first duly sworn, deposes and says as follows: I am a resident of the State of Nevada. I am the Manager of the Resources Group, LLC, that is the Trustee for Bay Harbor Trust, as Manager for Saticoy Bay, LLC, Series 11339 Colinward ("Saticoy Bay"), that is a series limited liability company organized under NRS 86 et seq., with a series member of Saticoy Bay, LLC Series 11339 Colinward. Saticoy purchased the Property at the HOA Foreclosure Sale. The foregoing structure is for legal and estate planning purposes. In my capacity as set forth above, I have reviewed the foregoing Opposition to Defendant's Motion to Dismiss. Of the facts asserted therein, I know them to be true of my own knowledge or they are true to the best of my knowledge and recollection.

I further provide that it was my practice and procedure, as set forth herein, that when I would attend NRS 116 sales at all times relevant to this case, I would attempt to ascertain whether anyone had attempted to or did tender any payment regarding the homeowner association's lien. If I learned that a "tender" had either been attempted or made, I would not purchase the property offered in that foreclosure sale.

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

Executed this 7th day of June, 2019.

/s/ *Eddie Haddad*  
EDDIE HADDAD

# EXHIBIT 1

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7 *Attorneys for Plaintiff*

8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF NEVADA  
10

11 BANK OF AMERICA, N.A.,

Case No.: 2:16 cv 473

12 Plaintiff,

13 vs.

COMPLAINT

14 TRAVATA AND MONTAGE AT  
SUMMERLIN CENTRE HOMEOWNERS'  
15 ASSOCIATION; SATICOY BAY LLC SERIES  
11339 COLINWARD; AND NEVADA  
16 ASSOCIATION SERVICES, INC.,

17 Defendants.

18 Plaintiff Bank of America, N.A. (BANA) complains as follows:

19 PARTIES AND JURISDICTION

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

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

28 {32859701;5}

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1           3. Defendant Travata and Montage at Summerlin Centre Homeowners' Association  
2 (Travata is, on information and belief, a Nevada non-profit corporation. BANA is informed and  
3 believes and therefore alleges Travata is the purported beneficiary under an alleged homeowners'  
4 association lien recorded July 19, 2013. BANA is informed and believes and therefore alleges  
5 Travata foreclosed on the lien on March 28, 2014.

6           4. Defendant Saticoy Bay LLC Series 11339 Colinward (Saticoy Bay) is, on  
7 information and belief, a Nevada limited liability company. After a reasonable search, BANA  
8 cannot determine the citizenship of the members of Saticoy Bay. BANA is informed and believes  
9 and therefore alleges Saticoy Bay purchased the property at the HOA foreclosure sale, acquiring title  
10 via a foreclosure deed recorded March 31, 2014.

11           5. Defendant Nevada Association Services, Inc. (NAS) is, on information and belief, a  
12 Nevada corporation. BANA is informed and believes and therefore alleges NAS conducted the  
13 foreclosure at issue in this case on behalf of Travata.

14           6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332 for reasons  
15 stated above. The diversity of citizenship requirement is met. *See Carolina Casualty Ins. Co. v.*  
16 *Team Equipment, Inc.*, 741 F.3d 1082 (9th Cir. 2014). Defendants, Travata, Saticoy Bay, and NAS  
17 are not citizens of the state of North Carolina. The amount in controversy requirement is met.  
18 BANA seeks a declaration that its deed of trust, which secures a loan with a principal balance that  
19 exceeds \$325,444.06, was not extinguished by a homeowners' association non-judicial foreclosure  
20 sale that is the basis for Saticoy Bay's claim to title to the real property sub judice.

21           7. Venue is proper in this Court under 28 U.S.C. §1391. The property that is the subject  
22 of this action is located at 11339 Colinward Avenue, Las Vegas, Nevada 89135 (the **property**).  
23 Venue is proper in this Court under 28 U.S.C. § 1391(1) and (2) because this action seeks to  
24 determine an interest in property located within Clark County, Nevada and because this lawsuit  
25 arises out of a foreclosure of real property located within Nevada.

26           8. The pre-litigation dispute resolution process set forth in NRS 38.300 *et seq.* is not  
27 applicable to this action and cannot restrict the jurisdiction of this court. To the extent any  
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{32859701;5}

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1 requirement of the statute is applicable to any portion of the claims asserted herein, that requirement  
2 has been constructively exhausted and further resort to administrative remedies would be futile  
3 because BANA submitted a demand for mediation to Nevada Real Estate Division (NRED) on or  
4 about November 5, 2015, but NRED has failed to schedule the mediation in the time period required  
5 by NRS 38.330(1).

6 **GENERAL ALLEGATIONS**

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

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

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

15 12. NRS 116.3116 makes a homeowners' association lien for assessments junior to a first  
16 deed of trust beneficiary's secured interest in the property, with one limited exception: a  
17 homeowners' association lien is senior to a first deed of trust beneficiary's secured interest "to the  
18 extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the  
19 extent of the assessments for common expenses based on the periodic budget adopted by the  
20 association pursuant to NRS 116.3115 which would have become due in the absence of acceleration  
21 during the 9 months immediately preceding institution of an action to enforce the lien[.]"  
22 NRS 116.3116(2)(c).

23 **The Deed of Trust and Assignment**

24 13. On or about September 15, 2008, Arthur Keith, Jr. (**Keith**) purchased the property.  
25 Keith later refinanced the property by way of a loan in the amount of \$329,493.00 evidenced by a  
26 note and secured by a deed of trust (the **senior deed of trust**) recorded September 29, 2010. A true  
27 and correct copy of the senior deed of trust is recorded with the Clark County Recorder as  
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{32859701;5}

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1 **Instrument No. 20100929-0003835.**

2 14. The note and the senior deed of trust are insured by the Federal Housing  
3 Administration (FHA). Pursuant to the FHA insurance, the lender was required to submit a monthly  
4 mortgage insurance payment to the FHA. FHA monthly mortgage insurance premiums were paid by  
5 either Keith or BANA since November 4, 2010.

6 15. The senior deed of trust was assigned to BANA via an assignment of deed of trust. A  
7 true and correct copy of the assignment is recorded with the Clark County Recorder as **Instrument**  
8 **No. 20111201-0001325.**

9 The HOA Lien and Foreclosure

10 16. Upon information and belief, Keith failed to pay Travata all amounts due to it. On  
11 July 19, 2013, Travata, through its agent NAS, recorded a notice of delinquent assessment lien. Per  
12 the notice, the amount due to Travata was \$1,680.22, which includes late fees, collection fees, and  
13 interest in the amount of \$834.22. A true and correct copy of the notice of lien is recorded with the  
14 Clark County Recorder as **Instrument No. 20130719-0000297.**

15 17. On September 23, 2013, Travata, through its agent NAS, recorded a notice of default  
16 and election to sell to satisfy the delinquent assessment lien. The notice states the amount due to  
17 Travata was \$2,506.10 as of September 19, 2013, but does not specify whether it includes dues,  
18 interest, fees and collection costs in addition to assessments. A true and correct copy of the notice of  
19 default is recorded with the Clark County Recorder as **Instrument No. 20130923-0003962.** The  
20 notice of default also does not specify the super-priority amount claimed by Travata and fails to  
21 describe the "deficiency in payment" required by NRS 116.31162(1)(b)(1).

22 18. On February 4, 2014, Travata, through its agent NAS, recorded a notice of  
23 foreclosure sale. The foreclosure sale was scheduled for February 28, 2014. The notice states the  
24 amount due to Travata was \$3,603.22, which includes "the total amount of the unpaid balance of the  
25 obligation secured by the property . . . and reasonable estimated costs, expenses and advances." A  
26 true and correct copy of the notice of foreclosure sale is recorded with the Clark County Recorder as  
27 **Instrument No. 20140204-0001399.** The notice of sale does not identify the super-priority amount  
28

{32859701;5}

JA0478

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1 claimed by Travata and fails to describe the "deficiency in payment" required by NRS  
2 116.311635(3)(a).

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

6 20. In none of the recorded documents did Travata and/or its agent NAS identify the  
7 amount of the alleged lien that was for late fees, interest, fines/violations, or collection fees/costs.

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

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

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

16 24. The deficiencies notwithstanding, on or about November 22, 2013, after Travata and  
17 had recorded a notice of default, BANA remitted payment to Travata to satisfy the super-priority  
18 amount owed to Travata.

19 25. On October 29, 2013, BANA requested a ledger from Travata, through its agent  
20 NAS, identifying the super-priority amount allegedly owed Travata. Travata, through its agent  
21 NAS, refused to identify the super-priority amount.

22 26. BANA and its counsel were forced to attempt to calculate the super-priority amount  
23 claimed by Travata by reference to a ledger previously provided by Travata through its agent NAS,  
24 with respect to a different property.

25 27. Based on the quarterly assessment amount identified in the ledger, BANA accurately  
26 calculated the super-priority amount as \$594.00, the sum of nine-months of common assessments as  
27 identified in Travata's ledger, and tendered that amount to Travata on November 22, 2013. A true  
28

{32859701;5}

JA0479

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1 and correct copy of Travata's ledger and BANA's tender letter are attached as **Exhibit 1**. Travata  
2 and NAS refused BANA's tender.

3 28. Despite the tender, Travata foreclosed on the property on or about March 28, 2014. A  
4 foreclosure deed in favor of Saticoy Bay was recorded March 31, 2014. A true and correct copy of  
5 the foreclosure deed is recorded with the Clark County Recorder as **Instrument No. 20140331-**  
6 **0002279**.

7 29. Upon information and belief, NAS wrote in the foreclosure deed that the sale price at  
8 the March 28, 2014 foreclosure sale was \$12,100. Travata's sale of the property to Saticoy Bay for  
9 less than 4% of the value of the unpaid principal balance on the senior deed of trust, and, on  
10 information and belief, for a similarly diminutive percentage of the property's fair market value, is  
11 commercially unreasonable and not in good faith as required by NRS 116.1113.

12 30. Upon information and belief, because Travata's alleged lien was less than the amount  
13 Saticoy Bay paid at Travata's foreclosure sale, the foreclosure sale resulted in excess proceeds.

14 Keith's Bankruptcy

15 31. Keith filed a petition for bankruptcy under Chapter 7 of the Bankruptcy Code on or  
16 about January 4, 2013, Case No. 6:13-bk-00101.

17 32. Keith received a discharge in bankruptcy on April 9, 2013.

18 33. On May 7, 2014, the bankruptcy court entered an Order Approving Chapter 7  
19 Account, Discharging Trustee, Canceling Bond and Closing Estate and closed the bankruptcy case.

20 **FIRST CAUSE OF ACTION**

21 **(Quiet Title/Declaratory Judgment Against All Defendants)**

22 34. BANA repeats and re-alleges the preceding paragraphs as though fully set forth  
23 herein and incorporates the same by reference.

24 35. Pursuant to 28 U.S.C. § 2201 and NRS 30.040, *et seq.*, this Court is empowered to  
25 declare the rights of parties and other legal relations of parties regarding the property at issue.

26 36. An actual controversy has arisen between BANA and defendants regarding the  
27 property. The senior deed of trust is a first secured interest on the property. As a result of the March  
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{32859701;5}

JA0480

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1 28, 2014 HOA foreclosure sale, Saticoy Bay claims an interest in the property, and on information  
2 and belief, asserts Saticoy Bay owns the property free and clear of the senior deed of trust.

3 37. BANA's FHA insured interest in the senior deed of trust encumbering the property  
4 constitutes an interest in real property.

5 38. BANA is entitled to a declaration that Travata's foreclosure did not extinguish the  
6 senior deed of trust, or, alternatively, Travata's foreclosure is void.

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

8 39. BANA asserts that Chapter 116 of the Nevada Revised Statutes' scheme of HOA  
9 super priority non-judicial foreclosure violates the BANA's procedural due process rights under the  
10 state and federal constitutions.

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

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

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

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

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

27  
28 {32859701;5}

JA0481

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1 c) The super priority lien has no nexus whatsoever to a private agreement  
2 between Travata and BANA, but, again, is imposed by legislative enactment.

3 d) Nevada and Clark County mandated the creation of Travata as a quasi-  
4 governmental entity to perform governmental functions including maintaining the common  
5 open spaces and private streets within the Travata community.

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

9 44. On its face, Nevada's scheme of non-judicial HOA super priority foreclosure lacks  
10 any pre-deprivation notice requirements or post deprivation redemption options that are necessary  
11 components of due process:

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

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

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

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

24 46. BANA requests that this Court void the HOA foreclosure sale or declare that Saticoy  
25 Bay's title was acquired subject to the senior deed of trust because NRS Chapter 116's scheme of  
26 HOA super priority foreclosure violates the procedural process clauses of The Fourteenth  
27 Amendment of the United States Constitution and Article 1, Sec. 8, of the Nevada Constitution.  
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{32859701;5}

JA0482

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

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

48. The senior deed of trust is insured pursuant to Single Family Mortgage Insurance Program.

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

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

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

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

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

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

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

52. Chapter 116 of the Nevada Revised Statutes' scheme of non-judicial foreclosure that allows for the foreclosure of a super priority lien stands as an obstacle to the accomplishment and

{32859701;5}

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1 execution of the full purposes and objectives of Congress under the National Housing Act's Single  
2 Family Mortgage Insurance Program and Mutual Mortgage Insurance Fund.

3 53. NRS Chapter 116 must yield to the federally insured senior deed of trust under the  
4 Supremacy Clause.

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

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

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

15 56. The foreclosure sale did not extinguish the senior deed of trust because BANA  
16 tendered and satisfied the super-priority amount and Travata and NAS wrongfully rejected the  
17 tender. Alternatively, the foreclosure sale is void.

18 57. The foreclosure sale did not extinguish the senior deed of trust because the sale was  
19 commercially unreasonable or otherwise failed to comply with the good faith requirement of NRS  
20 116.1113 in several respects, including, without limitation: the lack of sufficient notice, Travata's  
21 wrongful rejection of the tender, the sale of the property for a fraction of the loan balance or actual  
22 market value of the property, a foreclosure that was not calculated to promote an equitable sales  
23 price for the property or to attract proper prospective purchasers, and a foreclosure sale that was  
24 designed and/or intended to result in maximum profit for Travata, its agent NAS, and Saticoy Bay at  
25 the sale without regard to the rights and interest of those who have an interest in the loan and made  
26 the purchase of the property possible in the first place. Alternatively, the foreclosure sale is void.

27 58. The foreclosure sale did not extinguish the senior deed of trust because otherwise the  
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{32859701;5}

JA0484

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1 sale would violate BANA's rights to due process, as a result of Travata's and NAS's failure to  
2 provide sufficient notice of the super-priority component of its lien, the manner and method to  
3 satisfy it, and the consequences for failing to do so. Alternatively, the foreclosure sale is void.

4 59. The foreclosure sale did not extinguish the senior deed of trust because otherwise the  
5 sale would violate BANA's rights to due process, as a result of Travata's and NAS's improper  
6 calculation of the super-priority component, its inclusion of charges that are not part of the super-  
7 priority lien under Nevada law, and its rejection of BANA's tender of the super-priority component  
8 of the lien. Alternatively, the foreclosure sale is void.

9 60. The foreclosure sale did not extinguish the senior deed of trust because Saticoy Bay  
10 does not qualify as a bona fide purchaser for value, because it was aware of, or should have been  
11 aware of, the existence of the senior deed of trust, BANA's satisfaction of the super-priority  
12 component of HOA's lien, and the commercial unreasonableness of the HOA sale. Alternatively, the  
13 foreclosure sale is void.

14 The HOA Foreclosure Sale Violates 11 U.S.C. § 362(a)

15 61. A bankruptcy petition operates as a stay against, *inter alia*, any act to obtain  
16 possession of property of the estate or of property from the estate or to exercise control over property  
17 of the estate; any act to create, perfect, or enforce any lien against property of the estate; any act to  
18 create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a  
19 claim that arose before the commencement of the case. 11 U.S.C. § 362(a).

20 62. Actions that violate the stay imposed by section 362 are void. *In re Schwartz*,  
21 954 F.2d 569 (9th Cir. 1992).

22 63. The property was property of Keith pre-petition and property of his estate post-  
23 petition.

24 64. Travata and its agent NAS's recording of the notice of delinquent assessment lien, the  
25 notice of default and election to sell under homeowners association lien, and the notice of  
26 foreclosure sale and its foreclosure sale of the property constitute actions to perfect and enforce  
27 Travata's claimed lien, and are void.

28 {32859701;5}

JA0485

1 65. Because Travata and its agent NAS' actions violated the automatic stay, those actions  
2 were void, and the HOA sale did not fully comply with NRS 116.31162 and did not extinguish the  
3 senior deed of trust.

4 66. BANA is entitled to a declaration, pursuant to 28 U.S.C. § 2201 and NRS 40.010, that  
5 the HOA sale did not extinguish the senior deed of trust.

6 67. BANA was required to retain an attorney to prosecute this action, and is therefore  
7 entitled to collect its reasonable attorneys' fees and costs.

8 **SECOND CAUSE OF ACTION**

9 **(Breach of NRS 116.1113 Against Travata and NAS)**

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

12 69. NRS 116.1113 and common law provide that every contract or duty governed by this  
13 chapter imposes an obligation of good faith in its performance or enforcement.

14 70. Travata and NAS undertook a duty to identify the super-priority amount to lenders  
15 and loan servicers like BANA, to notify BANA that BANA's security interest was at risk, and to  
16 provide an opportunity to satisfy the super-priority amount to protect BANA's security interest in the  
17 property.

18 71. Travata and its agent NAS breached their duties of good faith by not identifying the  
19 super-priority amount of Travata's lien for BANA, by not notifying BANA that BANA's security  
20 interest was at risk, by rejecting BANA's attempt to tender the super-priority amount, and by  
21 obstructing BANA's ability to protect its security interest in the property.

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

27  
28 {32839701;5}

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JA0486

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

**THIRD CAUSE OF ACTION**

**(Wrongful Foreclosure Against Travata and NAS)**

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

75. To the extent defendants contend or the court concludes Travata's foreclosure sale extinguished the senior deed of trust, the foreclosure was wrongful.

76. Because Travata and its agent NAS failed to give adequate notice and an opportunity to cure the deficiency, the foreclosure was wrongful to the extent any defendant contends it extinguished the senior deed of trust.

77. Because BANA satisfied the super-priority portion of Travata's lien prior to the foreclosure sale, there was no default in the super-priority component of Travata's lien at the time of the foreclosure sale and the foreclosure was wrongful to the extent any defendant contends it extinguished the senior deed of trust.

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

79. Because Travata and its agent NAS violated the good faith requirements of NRS 116.1113, the foreclosure was wrongful to the extent any defendant contends it extinguished the senior deed of trust.

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

{32859701;5}

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JA0487

1 81. BANA was required to retain an attorney to prosecute this action, and is therefore  
2 entitled to collect its reasonable attorneys' fees and costs.

3 **FOURTH CAUSE OF ACTION**

4 **(Injunctive Relief against Saticoy Bay)**

5 82. BANA repeats and re-alleges the preceding paragraphs as though fully set forth  
6 herein and incorporates the same by reference.

7 83. BANA disputes Saticoy Bay's claim it owns the property free and clear of the senior  
8 deed of trust.

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

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

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

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

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

23 **PRAYER FOR RELIEF**

24 BANA requests the Court grant the following relief:

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

27  
28 {32859701;5}

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

3           3.     In the alternative, an order requiring Travata to pay BANA all amounts by which it  
4 was damaged as a result of Travata's and its agent NAS' wrongful foreclosure and/or violation of the  
5 good faith provisions of NRS 116.1113;

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

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

11           6.     Reasonable attorneys' fees as special damages and the costs of suit; and

12           7.     For such other and further relief the Court deems proper.

13           DATED March 4, 2016.

14                           **AKERMAN LLP**

15                           /s/ Ariel E. Stern

16                           Ariel E. Stern, Esq.  
17                           Nevada Bar No. 8276  
18                           Miles N. Clark, Esq.  
19                           Nevada Bar No. 13848  
20                           1160 Town Center Drive, Suite 330  
21                           Las Vegas, Nevada 89144

22                           *Attorneys for Plaintiff*

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27  
28 {32859701;5}

JA0489

# **EXHIBIT 1**

# **EXHIBIT 1**

13-4/258 (est.) NAS

Seeley, Dennis  
11357 Colliard AveTravata and Montage at Summerlin Centre, A Common Interest Commu  
Account No.: 30993

| Assignments, Late Fees, Interest,<br>Attorneys Fees, & Collection Costs | Amount<br>(Quarterly)<br>Present Date | Amount<br>(CURRENT)<br>NAS FEES | Amount<br>(TOTAL)<br>NAS COSTS |
|---|---------------------------------------|---------------------------------|--------------------------------|
| Dates of Delinquency:<br>01/01/2010-10/21/2011                          | 01/20/10<br>10/21/2011                | 01/2010<br>10/21/2011           | 01/2010<br>10/21/2011          |
| Balance Forward   | 70.00                                 | 0.00                            | 0.00                           |
| Assessment Amount   | 198.00                                | 0.00                            | 0.00                           |
| No. of Periods Delinquent   | 7                                     | 0                               | 0                              |
| Total Assessments Due   | 1386.00                               | 0.00                            | 0.00                           |
| Late fee amount   | 10.00                                 | 0.00                            | 0.00                           |
| No. of Periods Late Fees Incurred                                       | 18                                    | 0                               | 0                              |
| Total Late Fees Due   | 180.00                                | 0.00                            | 0.00                           |
| Interest Due  | 0.00                                  | 0.00                            | 0.00                           |
| Mgmt Lien to Lien   | 50.00                                 | 0.00                            | 0.00                           |
| Misc: Adv Assessments   | 0.00                                  | 0.00                            | 0.00                           |
| Management Co: Fees Admin Fee   | 145.00                                | 0.00                            | 0.00                           |
| Management Company (2)  | 0.00                                  | 0.00                            | 0.00                           |
| Demand Letter   | 0.00                                  | 155.00                          | 0.00                           |
| Notice of Delinquent Assessment   | 0.00                                  | 325.00                          | 0.00                           |
| Lien/Violations Lien  |                                       |                                 |                                |
| Release of Notice of Delinquent   | 0.00                                  | 30.00                           | 0.00                           |
| Assessment Lien/Violations Lien   |                                       |                                 |                                |
| Mailing   | 0.00                                  | 68.00                           | 82.45                          |
| Recording Costs   | 0.00                                  | 0.00                            | 73.00                          |
| Notice to Notice of Default   | 0.00                                  | 75.00                           | 0.00                           |
| Payment Plan Fee  | 0.00                                  | 0.00                            | 0.00                           |
| Payment Plan Breach Letters   | 0.00                                  | 0.00                            | 0.00                           |
| Escrow Demand Fee   | 0.00                                  | 150.00                          | 0.00                           |
| Notice of Default fees  | 0.00                                  | 400.00                          | 0.00                           |
| Title Report  | 0.00                                  | 0.00                            | 100.00                         |
| Notice of Sale Fee  | 0.00                                  | 250.00                          | 0.00                           |
| Posting & Publication Cost  | 0.00                                  | 0.00                            | 571.67                         |
| Courier   | 0.00                                  | 0.00                            | 0.00                           |
| Postponement of Sale  | 0.00                                  | 75.00                           | 0.00                           |
| Conduct Foreclosure Sale  | 0.00                                  | 0.00                            | 0.00                           |
| Prepare Record Deed   | 0.00                                  | 0.00                            | 0.00                           |
| <b>Subtotals</b>  | <b>\$1831.00</b>                      | <b>\$1808.00</b>                | <b>\$1426.12</b>               |

| Credit           | Date      |               |
|------------------|-----------|---------------|
| Payments to NAS  | 8/17/2011 | (624.00)      |
| (to HOA)         |           | (0.00)        |
|                  |           | (0.00)        |
|                  |           | (0.00)        |
|                  |           | (0.00)        |
|                  |           | (0.00)        |
| Interest         |           | (0.00)        |
| Late charges     |           | (0.00)        |
| Management Co    |           | (0.00)        |
| NAS Fees         |           | (0.00)        |
| NAS Costs        |           | (0.00)        |
| <b>HOA TOTAL</b> |           | <b>411.12</b> |

# 198 (quarterly) x 3 = \$594.00

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November 22, 2013

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

Re: *Property Address:* 11339 Colinward Avenue  
LOAN #: 224104565  
*MBBW File No.* 13-H1258

Dear Sir/Madame:

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

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

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

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

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

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

JA0492

The association has a lien on a unit for:

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

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

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

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

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

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

Despite your current refusal to provide HOA payoff ledgers, without first paying a fee of \$150.00, our client still wishes to make a good-faith attempt to fulfill BANA's obligations as the 1st lienholder by tendering to NAS an accurate estimate of the Super-Priority Amount. This good-faith estimate is based on prior payoff ledgers provided by NAS to our firm regarding the same HOA in question. Based on the most recent HOA payoff ledger provided by NAS in regards to this particular HOA, we estimate 9 months of common HOA assessments to be \$594.00.

Thus, enclosed you will find a cashier's check made out to NEVADA ASSOCIATION SERVICES in the sum of \$594.00. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BANA's Super-Priority Amount obligations towards the HOA in regards to the real property located at 11339 Colliard Avenue have now been "paid in full".

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

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

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP

  
Rock K. Jung, Esq.

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct  
 Payee: NEVADA ASSOCIATION SERVICES, Initials: NEG  
 13-H1258 Date: 11/19/2013 Amount: 594.00  
 Check #: 20796

| Inv. Date  | Reference # | Description | Inv. Amount | Case # | Matter Description | Cost Amount |
|------------|-------------|-------------|-------------|--------|--------------------|-------------|
| 11/19/2013 | 11339       | HOA Fees    | 594.00      |        |                    |             |

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

Bank of America  
 1100 N. Green Valley Parkway  
 Henderson, NV 89074  
 1-888-220-1020  
 13-H1258  
 Loan # [REDACTED]

20796  
 Date: 11/19/2013  
 Amount: \$ 594.00  
 Check Void After 90 Days

Pay \$ Five Hundred Ninety-Four & No/100 Dollars  
 to the order of  
 NEVADA ASSOCIATION SERVICES, INC.  
 6224 W. Desert Inn Rd., Ste. A  
 Las Vegas, NV 89146

Security Features Included  
 Perforation Mark

JA0494

AKERMAN LLP

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6 [miles.clark@akerman.com](mailto:miles.clark@akerman.com)

7 *Attorneys for Plaintiff*

8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 BANK OF AMERICA, N.A.,

Case No.: 2:16 cv 473

11 Plaintiff,

12 vs.

**BANK OF AMERICA, N.A.'S  
CERTIFICATE OF INTERESTED  
PARTIES**

13 TRAVATA AND MONTAGE AT SUMMERLIN  
CENTRE HOMEOWNERS' ASSOCIATION;  
14 SATICOY BAY LLC SERIES 11339  
COLINWARD; AND NEVADA ASSOCIATION  
15 SERVICES, INC.,

16 Defendants.

17  
18 Pursuant to Local Rule 7.1-1 of the United States District Court Rules, the undersigned,  
19 counsel of record for plaintiff Bank of America, N.A. certifies that that, in addition to the parties  
20 named in this case, the following may have an interest in the outcome of this case.

21  
22 Bank of America, N.A. has the following parent corporation(s) and publicly held  
23 corporation(s) that own 10% or more of its stock: Bank of America Corporation. By way of further  
24 explanation, Bank of America, N.A. is a wholly-owned subsidiary of BANA Holding Corp., which is a  
25 wholly owned subsidiary of BAC North America Holding Company, which is a wholly owned  
26  
27  
28

1 subsidiary of NB Holdings Corp., which is a wholly owned subsidiary of Bank of America  
2 Corporation.

3 These representations are made to enable judges of the Court to evaluate possible  
4 disqualification or recusal.

5  
6 DATED this 4<sup>th</sup> day of March, 2016.

7 AKERMAN LLP

8 /s/ Ariel E. Stern

9 Ariel E. Stern, Esq.  
10 Nevada Bar No. 8276  
11 Miles N. Clark, Esq.  
12 Nevada Bar No. 13848  
13 1160 Town Center Drive, Suite 330  
14 Las Vegas, Nevada 89144

15 *Attorneys for Plaintiff*  
16  
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6 [miles.clark@akerman.com](mailto:miles.clark@akerman.com)

7 *Attorneys for Plaintiff*

8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF NEVADA

10 BANK OF AMERICA, N.A.,

Case No.: 2:16 cv 473

11 Plaintiff,

12 vs.

NOTICE OF LIS PENDENS

13 TRAVATA AND MONTAGE AT SUMMERLIN  
CENTRE HOMEOWNERS' ASSOCIATION;  
14 SATICOY BAY LLC SERIES 11339  
COLINWARD; AND NEVADA ASSOCIATION  
15 SERVICES, INC.,

16 Defendants.

17 NOTICE OF LIS PENDENS

18 NOTICE IS HEREBY GIVEN that a Complaint for declaratory and injunctive relief was filed  
19 by plaintiff Bank of America, N.A., on or about March 4, 2016 against defendants Travata and  
20 Montage at Summerlin Centre Homeowners' Association, Nevada Association Services, Inc. and  
21 Saticoy Bay LLC Series 11339 Colinward.  
22

23 ...

24 ...

25 ...

26 ...

27 ...

28 {34531421;2}

1 The action is now pending in the above-entitled court and affects title of the real property  
2 legally described as:

3  
4 **PARCEL I:**

5 **Lot 40, of SUMMERLIN VILLAGE 19, Enclave 2 Lot 3, as shown by map thereof on file**  
6 **in Book 127 of Plats, Page 4, in the Office of the County Recorder of Clark County,**  
7 **Nevada.**

8 and more particularly identified in the official records of the Clark County Recorder as Assessor's  
9 Parcel Number: **164-02-713-040.**

10 DATED this 4<sup>th</sup> day of March, 2016.

11 **AKERMAN LLP**

12 /s/ Ariel E. Stern

13 Ariel E. Stern, Esq.

14 Nevada Bar No. 8276

15 Miles N. Clark, Esq.

16 Nevada Bar No. 13848

17 1160 Town Center Drive, Suite 330

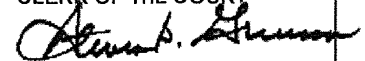
18 Las Vegas, Nevada 89144

19 *Attorneys for Plaintiff*

AKERMAN LLP

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# EXHIBIT 2



CASE NO: A-19-790433-C  
Department 18

1 **COMP**  
2 ROGER P. CROTEAU, ESQ.  
3 Nevada Bar No. 4958  
4 TIMOTHY E. RHODA, ESQ.  
5 Nevada Bar No. 7878  
6 ROGER P. CROTEAU & ASSOCIATES, LTD.  
7 2810 W. Charleston Blvd., Ste. 75  
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9 (702) 254-7775 (telephone)  
10 (702) 228-7719 (facsimile)  
11 [croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)  
12 *Attorney for Plaintiff*

DISTRICT COURT  
CLARK COUNTY, NEVADA

11 SATICOY BAY LLC SERIES 11339  
12 COLINWARD, a Nevada limited liability  
13 company,

13 Plaintiff,

14 vs.

15 TRAVATA AND MONTAGE AT  
16 SUMMERLIN CENTRE HOMEOWNERS'  
17 ASSOCIATION, a domestic non-profit  
18 corporation and NEVADA ASSOCIATION  
19 SERVICES, INC., a domestic corporation;

18 Defendants.

Case No.:  
Dept. No.:

20 **COMPLAINT**

21 COMES NOW, Plaintiff, Saticoy Bay, LLC, Series 11339 Colinward, by and through its  
22 attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby complains and alleges  
23 against Defendants as follows:

24 **PARTIES AND JURISDICTION**

25 1. Plaintiff, Saticoy Bay, LLC, Series 11339 Colinward ("*Saticoy Bay*"), is a Nevada series  
26 limited liability company, authorized to do business and doing business in the County of  
27 Clark, State of Nevada.  
28

- 1 2. Saticoy Bay is the current owner of real property located at 11339 Colinward Avenue, Las
- 2 Vegas, Nevada 89135 (APN 164-02-713-040) (the "*Property*").
- 3 3. Saticoy Bay acquired title to the Property by Foreclosure Deed dated March 31, 2014, by and
- 4 through a homeowners association lien foreclosure sale conducted on March 28, 2014 ("*HOA*
- 5 *Foreclosure Sale*"), by Nevada Association Services, a domestic corporation, authorized to
- 6 do business and doing business in Clark County, State of Nevada ("*HOA Trustee*"), on behalf
- 7 of Travata and Montage at Summerlin Centre Homeowners' Association, a Common Interest
- 8 Community ("*HOA*"). The HOA Foreclosure Deed was recorded in the Clark County
- 9 Recorder's Office on March 28, 2014 ("*HOA Foreclosure Deed*").
- 10 4. Upon information and belief, HOA is a Nevada common interest community association or
- 11 unit owners' association as defined in NRS 116.011, is organized and existing under the laws
- 12 of the State of Nevada, and transacts business in the State of Nevada.
- 13 5. Upon information and belief, HOA Trustee is a debt collection agency doing business in the
- 14 State of Nevada, and is organized and existing under the laws of the State of Nevada.
- 15 6. Venue is proper in Clark County, Nevada pursuant to NRS 13.040.
- 16 7. The exercise of jurisdiction by this Court over the parties in this civil action is proper
- 17 pursuant to NRS 14.065.

#### GENERAL ALLEGATIONS

- 18
- 19 8. Under Nevada law, homeowner's associations have the right to charge property owners
- 20 residing within the community assessments to cover the homeowner's associations' expenses
- 21 for maintaining or improving the community, among other things.
- 22 9. When the assessments are not paid, the homeowner's association may impose a lien against
- 23 real property which it governs and thereafter foreclose on such lien.
- 24 10. NRS 116.3116 makes a homeowner's association's lien for assessments junior to a first deed
- 25 of trust beneficiary's secured interest in the property, with one limited exception; a
- 26 homeowner's association's lien is senior to a deed of trust beneficiary's secured interest "to
- 27 the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312
- 28 and to the extent of the assessments for common expenses based on the periodic budget

1 adopted by the association pursuant to NRS 116.3115 which would have become due in the  
2 absence of acceleration during the 9 months immediately preceding institution of an action to  
3 enforce the lien.” NRS 116.3116(2)(c).

4 11. On or about September 19, 2008, Arthur Keith, Jr. acquired title to the Property by Grant,  
5 Bargain, Sale Deed recorded on September 19, 2008, in the Clark County Recorder’s Office,  
6 State of Nevada.

7 12. In Nevada, when a homeowners association properly forecloses upon a lien containing a  
8 super-priority lien component, such foreclosure extinguishes a first deed of trust.

9 13. On or about September 29, 2010, Arthur Keith Jr., an unmarried man, (“*the Former Owner*”)  
10 refinanced the Property and obtained a loan secured by the Property from Sierra Pacific  
11 Mortgage Company, Inc. (“*Lender*”), that is evidenced by a deed of trust between the Former  
12 Owner and Lender, recorded against the Property on September 29, 2010, for the loan  
13 amount of \$329,493.00 (“*Deed of Trust*”). The Deed of Trust provides that Mortgage  
14 Electronic Registration Services (“*MERS*”) is beneficiary, as nominee for Lender and  
15 Lender’s successors and assigns. The Deed of Trust was in the amount of \$329,493.00, and  
16 the Deed of Trust was recorded in the Clark County Recorder’s Office on September 29,  
17 2010.

18 14. The Former Owner executed Planned Unit Development Riders along with the Deed of  
19 Trust, effective as of September 3, 2010.

20 15. On November 29, 2011, MERS, on behalf of Lender, assigned its beneficial interest by  
21 Assignment of Deed of Trust to Bank of America, N.A. (“*BANA*”) and recorded the  
22 document in Clark County Recorder’s Office on December 1, 2011.

23 **The HOA Lien and Foreclosure**

24 16. Upon information and belief, the Former Owner of the Property failed to pay to HOA all  
25 amounts due to pursuant to HOA’s governing documents.

26 17. Accordingly, on July 19, 2013, HOA Trustee, on behalf of HOA, recorded a Notice of  
27 Delinquent Assessment Lien (“*HOA Lien*”). The HOA Lien stated that the amount due to the  
28

- 1 HOA was \$1,680.22, as of July 13, 2013, plus continuing assessments, accruing interest, late  
2 charges, costs, attorney/s fees, and other charges.
- 3 18. On September 23, 2013, HOA, through HOA Trustee, recorded a Notice of Default and  
4 Election to Sell Homeowner's Association Lien ("NOD") against the Property. The NOD  
5 stated the amount due to the HOA was \$2,506.10 as of September 19, 2013, plus accruing  
6 assessments, interest, costs, attorney's fees, and other charges.
- 7 19. Upon information and belief, after the NOD was recorded, on October 29, 2013, BANA,  
8 through Miles, Bauer, Bergstrom & Winters ("*Miles Bauer*") contacted the HOA Trustee and  
9 requested a ledger identifying the Super-Priority Lien Amount, comprising of up to 9 months  
10 of delinquent assessments immediately prior to the filing of the HOA Lien that were owed to  
11 the HOA ("*Super Priority Lien Amount*").
- 12 20. Upon information and belief, Miles Bauer requested the HOA arrears in an attempt to pay the  
13 Super-Priority Lien Amount of the HOA Lien.
- 14 21. In an Affidavit of Adam Kendis of Miles Bauer, Mr. Kendis testified that he could not locate  
15 a response from the HOA and/or HOA Trustee and used "a copy of a Statement of Account  
16 previously provided by Nevada Association Services, Inc. for the Travata and Montage at  
17 Summerlin Centre, A Common Interest Community ("the *HOA*"), with respect to a different  
18 property, used to determine a good-faith payoff estimate."
- 19 22. On November 22, 2013, BANA, through Miles Bauer, provided a payment of \$594.00 to the  
20 HOA Trustee, which included payment of up to nine months of delinquent assessments (the  
21 "*Attempted Payment*").
- 22 23. HOA Trustee, on behalf of the HOA, rejected BANA's Attempted Payment of \$594.00.
- 23 24. This Property was a member of two associations, and the Former Owner was delinquent with  
24 each.
- 25 25. On November 20, 2013, Nevada Association Services ("*Master Trustee*"), on behalf of the  
26 Westpark Community Association ("*Master HOA*") recorded a Lien for Delinquent  
27 Assessments in the amount of \$1,027.44 (the "*Master Lien*").
- 28 26. On January 10, 2014, Master Trustee, on behalf of the Master HOA, recorded a Notice of

1 Default and Election to Sell Under Homeowner's Association Lien ("*Master NOD*") against  
2 the Property. The Master NOD stated the amount due to the HOA was \$1,880.10 as of  
3 January 9, 2014, plus continuing assessments, late fees, collection fees, interest, and other  
4 charges.

5 27. Upon information and belief, after the Master NOD was recorded, on January 30, 2014,  
6 BANA, through Miles Bauer, contacted the Master Trustee and Master HOA via U.S. Mail  
7 and requested adequate proof of the super priority amount of assessments by providing a  
8 breakdown of up to nine (9) months of common HOA assessments due at the recording of the  
9 Master HOA Lien in order for BANA to calculate the Super Priority Lien Amount in an  
10 ostensible attempt to determine the amount the HOA Lien entitled to Super-Priority lien  
11 amount ("*Master Super-Priority Lien Amount*").

12 28. Upon information and belief, after the Master NOD was recorded on January 20, 2014,  
13 BANA, through Miles Bauer, contacted the Master HOA Trustee and requested the HOA  
14 arrears in an attempt to pay the Super-Priority Lien Amount of the Master HOA Lien.

15 29. In response to BANA's request sent to the Master Trustee requesting a ledger identifying the  
16 Master Super-Priority Lien Amount, the Master Trustee provided a Statement of Account  
17 that provided a full payoff amount of \$1,930.54.

18 30. On February 20, 2014, BANA, through Miles Bauer, provided a payment of \$171.00 to the  
19 Master Trustee, which included payment of nine months of delinquent assessments  
20 comprising the Master Super-Priority Lien Amount of the Master Lien (the "*Master*  
21 *Attempted Payment*").

22 31. Master Trustee, on behalf of the Master HOA, rejected BANA's Master Attempted Payment  
23 of \$171.00.

24 32. On February 4, 2014, HOA Trustee, on behalf of the HOA, recorded a Notice of Foreclosure  
25 Sale against the Property ("*NOS*"). The NOS provided that the total amount due the HOA  
26 was \$3,603.22 and set a sale date for the Property of February 28, 2014, at 10:00 A.M., to be  
27 held at Nevada Association Services.  
28

- 1 33. The Master HOA, by and through Master Trustee did not file nor record any Notice of  
2 Foreclosure Sale against the Property.
- 3 34. On March 28, 2014, HOA Trustee then proceeded to non-judicial foreclosure sale on the  
4 Property and recorded the HOA Foreclosure Deed on March 31, 2014, which stated that the  
5 HOA Trustee sold the HOA's interest in the Property to the Plaintiff at the HOA Foreclosure  
6 Sale for the highest bid amount of \$12,100.00.
- 7 35. The Foreclosure Sale created excess proceeds.
- 8 36. After the NOD was recorded, BANA, the purported holder of the Deed of Trust recorded  
9 against the Property, through its counsel, Miles Bauer, contacted HOA Trustee and HOA and  
10 requested all amounts due the HOA by the Former Owner, upon information and belief,  
11 Miles Bauer requested the sums due to the HOA by the Former Owners so it could calculate  
12 the breakdown of nine (9) months of common HOA assessments in order for BANA to  
13 calculate the Super Priority Lien Amount in an ostensible attempt to determine the amount of  
14 the HOA Lien entitled to super-priority over the Deed of Trust.
- 15 37. In none of the recorded documents, nor in any other notice recorded with the Clark County  
16 Recorder's Office, did HOA, Master HOA, Master Trustee and/or HOA Trustee specify or  
17 disclose that any individual or entity, including but not limited to BANA, had attempted to  
18 pay any portion of the HOA Lien in advance of the HOA Foreclosure Sale.
- 19 38. Plaintiff appeared at the HOA Foreclosure Sale and presented the prevailing bid in the  
20 amount of \$10,100.00, thereby purchasing the Property for said amount.
- 21 39. Neither HOA, Master HOA, Master Trustee, nor HOA Trustee informed or advised the  
22 bidders and potential bidders at the HOA Foreclosure Sale, either orally or in writing, that  
23 any individual or entity had attempted to pay the Super-Priority Lien Amount and/or the  
24 Master Super Priority Lien Amount.
- 25 40. Upon information and belief, the debt owed to Lender by the Former Owner of the Property  
26 pursuant to the loan secured by the Deed of Trust significantly exceeded the fair market value  
27 of the Property at the time of the HOA Foreclosure Sale.
- 28

- 1 41. Upon information and belief, Lender alleges that its Attempted Payment and the Master  
2 Attempted Payment of the Super-Priority Lien Amount and/or the Master Super Priority Lien  
3 Amount served to satisfy and discharge the Super-Priority Lien Amount, thereby changing  
4 the priority of the HOA Lien vis a vis the Deed of Trust.
- 5 42. Upon information and belief, Lender alleges that as a result of its Attempted Payment of the  
6 Super-Priority Lien Amount, the purchaser of the Property at the HOA Foreclosure Sale  
7 acquired title to the Property subject to the Deed of Trust.
- 8 43. Upon information and belief, if the bidders and potential bidders at the HOA Foreclosure  
9 Sale were aware that an individual or entity had attempted to pay the Super-Priority Lien  
10 Amount and/or by means of the Attempted Payment prior to the HOA Foreclosure Sale  
11 and/or the Master Super Priority Lien Amount and/or the Master Attempted Payment and that  
12 the Property was therefore ostensibly being sold subject to the Deed of Trust, the bidders and  
13 potential bidders would not have bid on the Property.
- 14 44. Had the Property not been sold at the HOA Foreclosure Sale, HOA and HOA Trustee would  
15 not have received payment, interest, fees, collection costs and assessments related to the  
16 Property would have remained unpaid.
- 17 45. HOA Trustee acted as an agent of HOA.
- 18 46. Master Trustee acted as an agent for the Master HOA.
- 19 47. Master HOA and the HOA are respectively responsible for the actions and inactions of HOA  
20 Trustee and Master Trustee pursuant to the doctrine of respondeat superior.
- 21 48. The HOA Trustee and the Master Trustee are the same entity.
- 22 49. Defendants conspired together to hide material information related to the Property: the HOA  
23 Lien; the Attempted Payment of the Super-Priority Lien Amount; the rejection of such  
24 payment or Attempted Payment; and the priority of the HOA Lien vis a vis the Deed of Trust,  
25 from the bidders and potential bidders at the HOA Foreclosure Sale.
- 26 50. Defendants conspired together to hide material information related to the Property: the  
27 Master HOA Lien; the Master Attempted Payment of the Super-Priority Lien Amount; the  
28 rejection of such payment or Master Attempted Payment; and the priority of the Master HOA

1 Lien vis a vis the Deed of Trust, from the bidders and potential bidders at the HOA  
2 Foreclosure Sale.

3 51. The information related to the Attempted Payment, Master Attempted Payment or payments  
4 made by Lender, BANA, the homeowner or others to the Super Priority Lien Amount was  
5 not recorded and would only be known by BANA, Lender, the HOA, Master HOA, HOA  
6 Trustee, and Master Trustee.

7 52. Upon information and belief, the Defendants conspired to withhold and hide the  
8 aforementioned information for their own economic gain and to the detriment of the bidders  
9 and potential bidders at the HOA Foreclosure Sale.

10 53. BANA first disclosed the Attempted Payment by BANA/Lender to the HOA Trustee in  
11 BANA's Complaint filed against Plaintiff and the HOA on March 4, 2016, and later served  
12 on the Plaintiff. ("*Discovery*") in the United States District Court for the District of Nevada,  
13 Civil Action No. 2:16-cv-00473 (the "*Case*").

14 **FIRST CAUSE OF ACTION**

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

16 **Against the HOA and HOA Trustee)**

17 54. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 53  
18 hereof as if set forth fully herein.

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

22 56. By rejecting the Attempted Payment of the Super-Priority Lien Amount from Lender and/or  
23 Miles Bauer, HOA Trustee provided itself with the opportunity to perform and profit from  
24 many additional services on behalf of HOA related to the Property and proceedings related to  
25 the HOA Foreclosure Sale.

26 57. By rejecting the Attempted Payment of the Super-Priority Lien Amount from Lender and/or  
27 Miles Bauer, HOA received funds in satisfaction of the entire HOA Lien, rather than only the  
28 Super-Priority Lien Amount.

- 1 58. Consequently, HOA and HOA Trustee received substantial benefit as a result of their  
2 rejection of the Attempted Payment of the Super-Priority Lien Amount from Lender and  
3 intentionally failing to disclose that information to the Plaintiff or the other bidders.
- 4 59. Neither HOA nor HOA Trustee recorded any notice nor provided any written or oral  
5 disclosure to the bidders and potential bidders at the HOA Foreclosure Sale regarding any  
6 Attempted Payment of the Super-Priority Lien Amount by Lender or any individual or entity.
- 7 60. HOA and HOA Trustee desired that the bidders and potential bidders at the HOA Foreclosure  
8 Sale believe that the HOA Lien included amounts entitled to super-priority over the Deed of  
9 Trust and that the Deed of Trust would thus be extinguished as a result of the HOA  
10 Foreclosure Sale for their own economic gain.
- 11 61. As a result of their desire that the bidders and potential bidders at the HOA Foreclosure Sale  
12 believe that the HOA Lien included amounts entitled to super-priority over the Deed of Trust  
13 and that the Deed of Trust would thus be extinguished as a result of the HOA Foreclosure  
14 Sale, HOA and HOA Trustee intentionally failed to disclose material information related to  
15 the Attempted Payment of the Super-Priority Lien Amount by Lender and did so for their  
16 own economic gain.
- 17 62. Alternatively, HOA and HOA Trustee were grossly negligent by failing to disclose material  
18 information related to the Attempted Payment of the Super-Priority Lien Amount.
- 19 63. Upon information and belief, if HOA Trustee and/or HOA had disclosed the Attempted  
20 Payment of the Super-Priority Lien Amount to the bidders and potential bidders at the HOA  
21 Foreclosure Sale, such bidders and potential bidders would not have bid upon the Property at  
22 the HOA Foreclosure Sale.
- 23 64. Given the facts of this case now known to Plaintiff, Plaintiff would not have bid on the  
24 Property.
- 25 65. Upon information and belief, if the Property had not been sold at the HOA Foreclosure Sale,  
26 HOA would not have received funds in satisfaction of the HOA Lien.
- 27 ///
- 28 ///

- 1 66. Upon information and belief, if the Property had not been sold at the HOA Foreclosure Sale,  
2 HOA Trustee would not have received payment for the work that it performed on behalf of  
3 HOA in association with the HOA Foreclosure Sale and related proceedings.
- 4 67. Plaintiff attended the sale as a ready, willing and able buyer without knowledge of the  
5 Attempted Payment.
- 6 68. Plaintiff would not have purchased the Property if it had been informed that any individual or  
7 entity had paid or attempted to pay the Super-Priority Lien Amount in advance of the HOA  
8 Foreclosure Sale.
- 9 69. As a direct result of HOA and HOA Trustee's rejection of the Attempted Payment of the  
10 Super-Priority Lien Amount and their subsequent intentional or grossly negligent failure to  
11 advise the bidders and potential bidders at the HOA Foreclosure Sale of the facts related  
12 thereto, Plaintiff presented the prevailing bid at the HOA Foreclosure Sale and thereby  
13 purchased the Property.
- 14 70. HOA and HOA Trustee each profited from their intentional and/or negligent  
15 misrepresentations and material omissions at the time of the HOA Foreclosure Sale by failing  
16 and refusing to disclose the Attempted Payment of the Super-Priority Lien Amount.
- 17 71. HOA and HOA Trustee materially misrepresented the facts by hiding and failing to advise  
18 bidders and potential bidders at the HOA Foreclosure Sale of information known solely to the  
19 HOA and/or HOA Trustee that was not publicly available which ostensibly changed the  
20 priority of Deed of Trust vis a vis the HOA Lien.
- 21 72. HOA and HOA Trustee solely possessed information related to the Attempted Payment of the  
22 Super-Priority Lien Amount prior to and at the time of the HOA Foreclosure Sale, and  
23 intentionally withheld such information for their own economic gain.
- 24 73. Alternatively, HOA and HOA Trustee were gross negligently when it withheld information  
25 related to the Attempted Payment of the Super-Priority Lien Amount.
- 26 74. Plaintiff reasonably relied upon HOA and HOA Trustee's intentional or grossly negligent  
27 failure to disclose the Attempted Payment of the Super-Priority Lien Amount.
- 28

- 1 75. HOA and HOA Trustee intended that bidders and potential bidders at the HOA Foreclosure  
2 Sale would rely on the lack of notice of the Attempted Payment of the Super-Priority Lien  
3 Amount at the time of the HOA Sale and that their failure to disclose such information  
4 promoted the sale of the Property.
- 5 76. HOA and HOA Trustee further intended that their failure of refusal to inform bidders and  
6 potential bidders at the HOA Foreclosure Sale of the Attempted Payment of the Super-  
7 Priority Lien Amount would lead such bidders and potential bidders to believe that the Deed  
8 of Trust was subordinate to the HOA Lien and not being sold subject to the Deed of Trust.
- 9 77. The HOA and the HOA Trustee had a duty to disclose the Attempted Payment of the Super-  
10 Priority Lien Amount.
- 11 78. The HOA and the HOA Trustee breached that duty to disclose the Attempted Payment to  
12 Plaintiff.
- 13 79. As a result of the HOA and HOA Trustee's breach of its duty of care, duty of good faith and  
14 candor to bidders at the HOA Foreclosure Sale for its own economic gain, Plaintiff has been  
15 economically damaged in many aspects.
- 16 80. If the Property is subject to the Deed of Trust, the funds paid by Plaintiff to purchase,  
17 maintain, operate, litigate various cases and generally manage the Property would be lost  
18 along with the lost opportunity of purchasing other available property offered for sale where a  
19 super priority payment had not been attempted, thereby allowing Plaintiff the opportunity to  
20 purchase a property free and clear of the deed of trust and all other liens.
- 21 81. As a direct and proximate result of the actions of the Defendants, it has become necessary for  
22 Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.
- 23 82. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil  
24 Procedure as further facts become known.

25 **SECOND CAUSE OF ACTION**

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

- 27 83. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 82  
28 as if set forth fully herein.

- 1 84. NRS 116.1113 provides that every contract or duty governed by NRS 116, et seq., Nevada's  
2 version of the Common-Interest Ownership Uniform Act, must be performed in good faith in  
3 its performance or enforcement.
- 4 85. A duty of good faith includes within that term a duty of candor in its dealings.
- 5 86. Prior to the HOA Foreclosure Sale of the Property, Lender purports to have obtained  
6 evidence detailing Super-Priority Lien Amount.
- 7 87. Thereafter, Lender, by and through Miles Bauer attempted to pay the Super-Priority Lien  
8 Amount to HOA or HOA Trustee by the Attempted Payment.
- 9 88. Upon information and belief, HOA Trustee, acting on behalf of HOA, rejected the Attempted  
10 Payment.
- 11 89. HOA and HOA Trustee's rejection of the Attempted Payment and subsequent failure and  
12 refusal to inform the bidders and potential bidders at the HOA Foreclosure Sale served to  
13 breach their duty of good faith, fair dealings and candor pursuant to NRS 116, et seq. to  
14 Plaintiff.
- 15 90. HOA and the HOA Trustee owed a duty of good faith and candor to Plaintiff.
- 16 91. By virtue of its actions and inactions, HOA and HOA Trustee substantially benefitted to the  
17 detriment of the Plaintiff.
- 18 92. As a direct and proximate result of the actions of the Defendants, it has become necessary for  
19 Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.
- 20 93. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil  
21 Procedure as further facts become known.

22 **THIRD CAUSE OF ACTION**

23 **(Conspiracy)**

- 24 94. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through  
25 93 as if set forth fully herein.
- 26 95. HOA and HOA Trustee knew or should have known of BANA's Attempted Payment of the  
27 Super-Priority Lien Amount.
- 28

- 1 96. Upon information and belief, acting together, Defendants reached an implicit or express  
2 agreement amongst themselves whereby they agreed to withhold the information concerning  
3 the Attempted Payment of the Super-Priority Lien Amount from bidders and potential  
4 bidders at the HOA Foreclosure Sale.
- 5 97. Defendants knew or should have known that their actions and omissions would injure the  
6 successful bidder and purchaser of the Property and benefit HOA and HOA Trustee. To  
7 further their conspiracy, upon information and belief, Defendants rejected the Attempted  
8 Payment for the purpose of obtaining more remuneration than they would have otherwise  
9 obtained at a sale of the subpriority portion of the HOA Lien.
- 10 98. As a direct and proximate result of the actions of the Defendants, it has become necessary for  
11 Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.
- 12 99. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil  
13 Procedure as further facts become known.

14 WHEREFORE, Plaintiff prays for relief as follows:

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

21 DATED this 4<sup>th</sup> day of March, 2019.

22 ROGER P. CROTEAU & ASSOCIATES, LTD.

23 /s/ Roger P. Croteau  
24 ROGER P. CROTEAU, ESQ.  
25 Nevada Bar No. 4958  
26 2810 W. Charleston, Ste. 75  
27 Las Vegas, Nevada 89102  
28 (702) 254-7775  
Attorney for Plaintiff

# EXHIBIT 3

# 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><br><input type="checkbox"/> | <u>NO</u><br><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:

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

**JA0514**

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

Are you aware of any of the following?:

1. Structure:

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

2. Land / Foundation:

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

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

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

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

6. Environmental:

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

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

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

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

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

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

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

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

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

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

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

15. Solar panels: Are any installed on the property? ..... ☐ ☐  
If yes, are the solar panels: Owned ☐ Leased ☐ or Financed ☐

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

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

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

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

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

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

*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 4

**D**UTIES OWED BY A  
NEVADA LICENSEE

**I**MPACT FEES

**S**OIL REPORT

**C**OMMON-INTEREST  
COMMUNITIES

**L**IEN FOR DEFERRED  
TAXES

**O**PEN RANGE

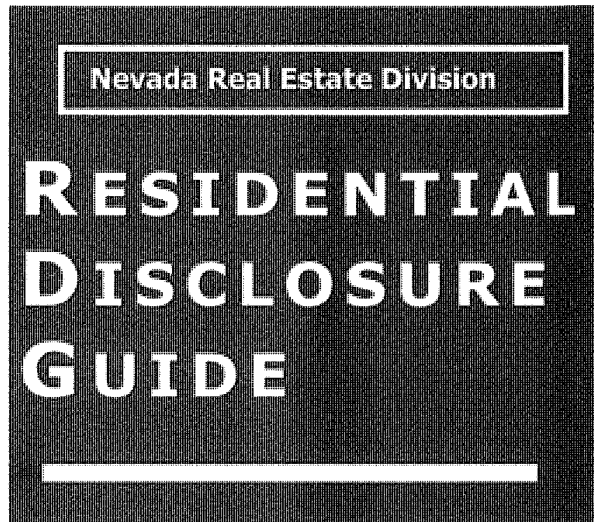
**S**ELLER'S REAL PROPERTY  
DISCLOSURE

**U**SED MOBILE HOMES

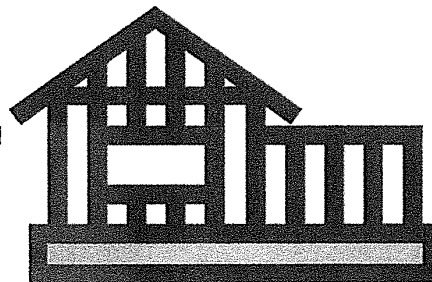
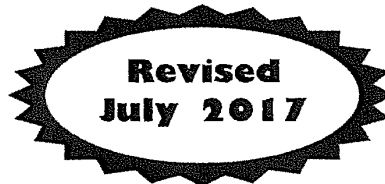
**R**ESIDENTIAL POOL SAFETY  
AND DROWNING PREVENTION

**E**NVIRONMENTAL HAZARDS

**S**EWER 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

InstantFORIAS

JA0520

# Introduction

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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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<http://red.nv.gov/RDG/>

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# Table of Contents

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## State Disclosures

|   |    |
|---|----|
| Common-Interest Communities and<br>Condominium Hotels.....    | 4  |
| Consent to Act .....  | 8  |
| Construction Defects .....                                    | 9  |
| Duties Owed By a Nevada Real Estate Licensee.....             | 10 |
| Impact Fees.....  | 12 |
| Lien for Deferred Taxes .....                                 | 13 |
| Manufactured Housing—<br>Used Manufactured/Mobile Homes ..... | 14 |
| Manufactured Home Parks .....                                 | 15 |
| Open Range Disclosure .....                                   | 16 |
| Private Transfer Fee Obligation .....                         | 18 |
| Seller's Real Property Disclosure .....                       | 19 |
| Water & Sewer Rates .....                                     | 22 |

## Federal/Local/Miscellaneous Disclosures

|   |    |
|---|----|
| Lead-Based Paint .....                                  | 23 |
| Pool Safety & Drowning Prevention .....                 | 24 |
| Airport Noise.....                                      | 25 |
| Building & Zoning Codes .....                           | 25 |
| Environmental Hazards .....                             | 25 |
| Gaming (Initial Purchaser in New Construction Only) ... | 26 |
| Home Inspections.....                                   | 27 |
| Military Activities .....                               | 27 |
| Licensee Disclosures .....                              | 27 |
| Road Maintenance District .....                         | 28 |
| Soil Report (New Construction Only) .....               | 28 |

|                          |    |
|--------------------------|----|
| Contact Information..... | 29 |
|--------------------------|----|

|                            |    |
|----------------------------|----|
| Acknowledgement Form ..... | 31 |
|----------------------------|----|

## **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/rednv.gov/Content/Forms/584.pdf>  
or <http://red.nv.gov/uploadedFiles/rednv.gov/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.

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*For more information:*

Form: Consent to Act

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

NRS: 645.252-254

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## 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/rednv.gov/Content/Forms/525.pdf>

NRS: [645.193](#); [645.252-645.254](#)

## Impact Fees

### ⇒ Purpose of Disclosure

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

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

### ⇒ Who must provide the disclosure?

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

### ⇒ When is it due?

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

### ⇒ Additional Information

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

---

*For more information:*

NRS: 278B.320

## Lien for Deferred Taxes

### ⇒ Purpose of Disclosure

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

### ⇒ Who must provide the disclosure?

The seller must notify the buyer of the lien.

### ⇒ When is it due?

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

### ⇒ Additional Information

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

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*For more information:*

NRS: 361A.290

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State 13

InstanetFORMS

JA0532

## **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](#)

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## 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/rednvgov/Content/Forms/551.pdf>

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

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State 17

InstantFORMS

JA0536

## 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.

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*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](http://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](http://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](http://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.

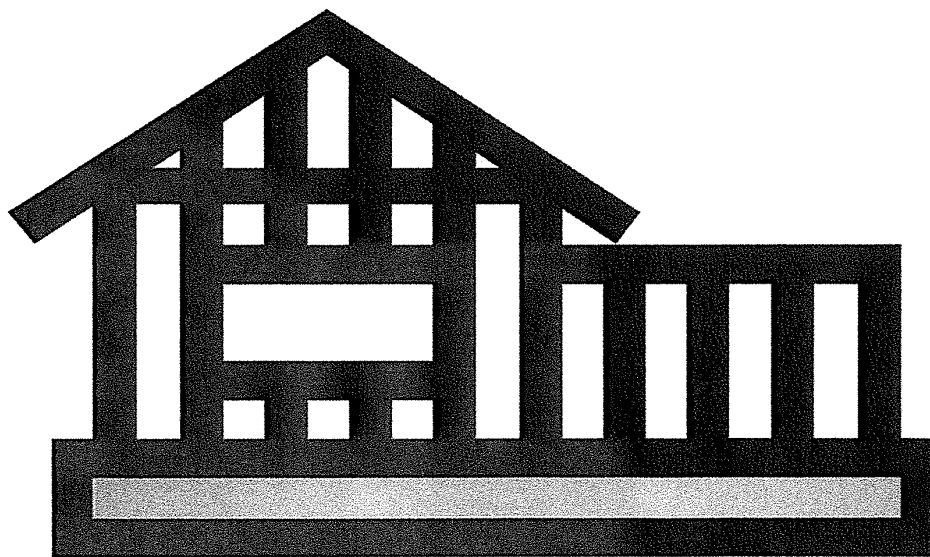
*For more information, see: NRS 113.135.*

## Contact Information

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

# *Nevada Real Estate Division*

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July 2017

622

InstanetFORMS

**JA0549**

**Nevada Real Estate Division**



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

# **RESIDENTIAL DISCLOSURE GUIDE**

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

DATE \_\_\_\_\_

Christopher Hardin

Client—Print Name

Client—Signature

Client—Print Name

Client—Signature

Make copy of page for additional signatures.

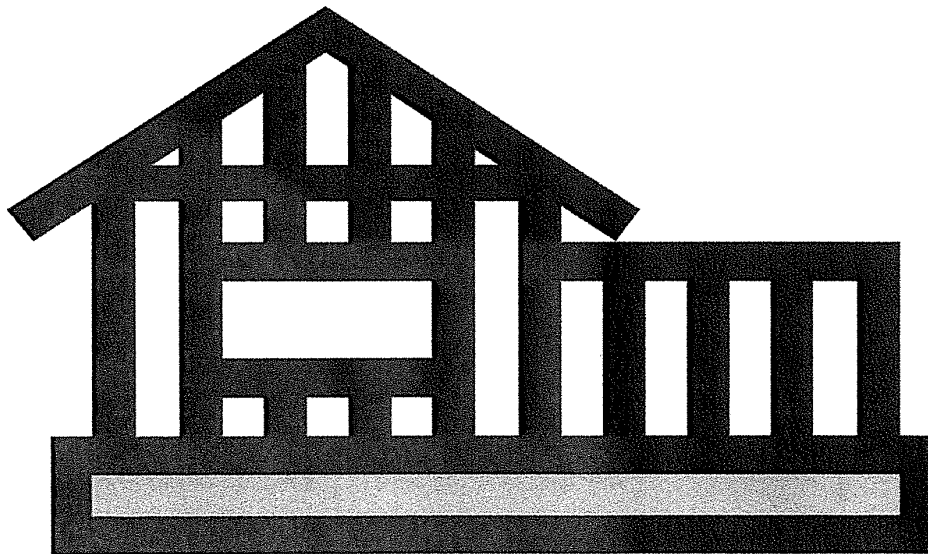
Retain original or copy in each transaction file.

InstantFORMS

**JA0550**

# *Nevada Real Estate Division*

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July 2017

622

InstanetFORMS

**JA0551**

**EXHIBIT “2”**

**EXHIBIT “2”**

**IN THE SUPREME COURT OF NEVADA**

SATICOY BAY, LLC, SERIES 11339  
COLINWARD, A NEVADA  
LIMITED LIABILITY COMPANY,

Appellant,

vs.

TRAVATA AND MONTAGE AT  
SUMMERLIN CENTRE  
HOMEOWNERS' ASSOCIATION, A  
NEVADA NON-PROFIT  
CORPORATION; AND NEVADA  
ASSOCIATION SERVICES, INC., A  
NEVADA CORPORATION,

Respondents.

Supreme Court Case No. 80162

Electronically Filed  
Nov 03 2020 03:13 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT'S PETITION FOR  
REHEARING**

Counsel for Appellant:

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## **I. TABLE OF CONTENTS**

|       |  |     |
|-------|--|-----|
| I.    | TABLE OF CONTENTS .....  | ii  |
| II.   | TABLE OF AUTHORITIES .....   | iii |
| III.  | PETITION FOR REHEARING .....   | 1   |
| IV.   | FACTUAL BACKGROUND.....  | 1   |
| V.    | LEGAL STANDARD .....   | 2   |
| VI.   | LEGAL ARGUMENT .....   | 2   |
|       | A. THE STANDARD OF REVIEW FOR MOTIONS TO DISMISS IS<br>RIGOROUS, ACCEPTING PLAINTIFF’S ALLEGATIONS AS<br>TRUE..... | 3   |
|       | B. THE RECORD CLARIFIES THAT SATICOY DID NOT RELY<br>SOLEY UPON THE RECITALS IN THE FORECLOSURE DEED..             | 4   |
| VII.  | CONCLUSION.....  | 6   |
| VIII. | ATTORNEY’S CERTIFICATE OF COMPLIANCE .....   | 7   |

## II. TABLE OF AUTHORITIES

### Cases

|  |         |
|--|---------|
| <i>Buzz Stew, LLC v. City of N. Las Vegas</i> , 124 Nev. 224, 181 P.3d 670 (2008).       | 1, 3, 4 |
| <i>Crucil v. Carson City</i> , 95 Nev. 583 (1979).....                                   | 3       |
| <i>Halcrow, Inc. v. Eighth Judicial Dist. Court</i> , 129 Nev. 294, 302 P.3d 1148 (2013) | 6       |
| <i>Nelson v. Heer</i> , 123 Nev. 217 (2007) .....  | 6       |
| <i>Pack v. LaTourette</i> , 128 Nev. 264 (2012).....                                     | 3       |
| <i>Shoen v. SAC Holding Corp.</i> , 122 Nev. 621 (2006) .....                            | 3       |

### Statutes

|                   |        |
|-------------------|--------|
| NRS 113.100 ..... | passim |
|-------------------|--------|

### Rules

|                                |   |
|--------------------------------|---|
| Nev. R. App. P. 40(c)(2) ..... | 2 |
| NRCP 8(a) .....                | 3 |

### **III. PETITION FOR REHEARING**

This Court should grant rehearing and reconsider its Order of Affirmance (“Panel Order”) of the district court’s dismissal of Appellant Saticoy Bay LLC Series 11339 Colinward’s (Saticoy”) complaint. While the Court sets forth in footnote 2 that Saticoy’s complaint “contains no allegations that such an inquiry [whether a superpriority tender had been made] in this case,” this factual issue is addressed within the record by Mr. Haddad’s declaration regarding the inquiries he made on Saticoy’s behalf prior to purchasing an interest in real property. As this Court premised the Panel Order on the finding that “respondents had no duty to proactively disclose whether a superpriority tender had been made,” the possibility that Saticoy had made such inquiry, and a response was either not provided or misrepresented the facts, results in a “set of facts, which, if true, would entitle [the plaintiff] to relief.” *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008).

Thus, based on the below issues pertaining to the Order of Affirmance, rehearing is appropriate.

### **IV. FACTUAL BACKGROUND**

This is an HOA super priority case concerning real property located 11339 Colinward Avenue, Las Vegas, Nevada 89135 (APN: 164-02-713-040) (the

“Property”). *See* JA2. The Property was encumbered by a deed of trust recorded on September 29, 2010, listing Mortgage Electronic Registration Services, Inc. (“MERS”) as the beneficiary; the deed of trust was latter assigned to Bank of America, N.A., on November 29, 2011 (the “First Deed of Trust”). *See* JA3. Saticoy appeared at a public auction on March 28, 2014 and, through Mr. Eddie Haddad, purchased the Property (“HOA Sale”). *See* JA6.

## **V. LEGAL STANDARD**

The Court may consider rehearing a matter pursuant to Nev. R. App. P. 40(c)(2) in the following circumstances:

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

## **VI. LEGAL ARGUMENT**

The Court’s conclusions in the Panel Order incorrectly affirmed the district court’s findings on the basis that there was no duty by the respondents, Travata and Montage at Summerlin Centre Homeowners’ Association (the “HOA”) and Nevada Association Services, Inc.,(the “HOA Trustee”) to “proactively disclose

whether a superpriority tender had been made.” However, as set forth in the Declaration of Mr. Haddad, his practice and procedure when attending auction held pursuant to NRS Chapter 116 was to “ask or attempt to ascertain” whether such a “tender” had been attempted, and not purchase a property if this were the case. JA137. Thus, as set forth in the record, there was a “set of facts, which, if true, would entitle [the plaintiff] to relief.” *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

These issues, and the resulting conclusions regarding Saticoy’s related claims as premised upon NRS 116, warrant rehearing of this matter.

**A. THE STANDARD OF REVIEW FOR MOTIONS TO DISMISS IS RIGOROUS, ACCEPTING PLAINTIFF’S ALLEGATIONS AS TRUE**

This Court reviews *de novo* an order granting a motion to dismiss for failure to state a claim, applying a rigorous standard, accepting the plaintiff’s factual allegations as true and drawing every intendment in favor of the non-moving party. *Pack v. LaTourette*, 128 Nev. 264, 268 (2012). In asserting a claim in the complaint, the plaintiff only needs to state “a short and plain statement of the claim showing that the pleader is entitled to relief.” NRCP 8(a). A pleading is sufficient so long as the pleading gives fair notice of the nature and basis of the claim. *Crucil v. Carson City*, 95 Nev. 583, 585 (1979). Based upon *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 635 (2006), the Court must accept the nonmoving

party's factual allegations and true and draw every fair factual inference from there. As stated in the Panel Order, dismissal is only appropriate if "it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

**B. THE RECORD CLARIFIES THAT SATICOY DID NOT RELY SOLEY UPON THE RECITALS IN THE FORECLOSURE DEED**

In the complaint in this matter, Saticoy stated that "[n]either HOA nor HOA Trustee informed or advised the bidders and potential bidders at the HOA Foreclosure Sale, either orally or in writing, that any individual or entity had attempted to pay the Super-Priority Lien Amount." JA6. During the briefing of the motion to dismiss before the district court, Saticoy elaborated on the process by which it would determine whether to purchase an interest in a particular property, with Mr. Haddad stating in his declaration ("Declaration") that:

I would attempt to ascertain whether anyone had attempted to or did tender any payment regarding the homeowner association's lien. If I learned that a "tender" had either been attempted or made, I would not purchase the property offered in that foreclosure sale. I would and did rely on whatever recital and/or announcements that were made at the HOA Foreclosure Sale. I also relied on the HOA Foreclosure Deed...

JA137.

On appeal, Saticoy presented the facts and argument that it sought to ascertain whether a tender had occurred, or been attempted, as this information would play a prominent role in determining whether Saticoy, through Mr. Haddad, would purchase an interest in any given property. *See* Opening Brief pages 11, 14-16.

Thus, as set forth in the complaint, the briefing of the motion to dismiss, and in the appeal, Saticoy did not rely solely upon the recitals in the foreclosure deed, as set forth in the Panel Order. The basis for this factual scenario where Saticoy inquired as to the status of a “tender” is set forth in the complaint by the reference to Saticoy’s receipt of information from the HOA and HOA Trustee “either orally or in writing,” (emphasis added) showing that Saticoy had not solely “relied upon the (written) recitals in the foreclosure deed” as considered by the Panel Order. Saticoy elaborated on his allegation of verbal inquiry in Saticoy’s opposition to the motion to dismiss, wherein Mr. Haddad stated in the Declaration that he would “attempt to ascertain whether anyone had attempted to or did tender any payment.” Mr. Haddad’s affirmative efforts indicate that some steps were taken to obtain information regarding the sale via verbal communication. Thus, it is likely that Mr. Haddad inquired of any effort to “tender” at the time of the HOA Sale. This factual scenario, wherein Mr. Haddad verbally inquired as to the status of a “tender” in the

matter, and a resulting response (or lack thereof) from the HOA or HOA Trustee that did not disclose the “tender” by the holder of the First Deed of Trust, would result in a violation of NRS 113 and “supply[ing] false information” pursuant to *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 294, 400, 302 P.3d 1148, 1153 (2013), or making “a false representation” pursuant to *Nelson v. Heer*, 123 Nev. 217, 225 (2007). Likewise, such an action would be unlawful, such that Saticoy’s civil conspiracy claim should not be dismissed.

## **VII. CONCLUSION**

Based upon the foregoing, the district court committed reversible error in multiple ways. Saticoy respectfully requests that this Honorable Court grant rehearing, and reverse the decision below.

Dated this November 3, 2020.  
ROGER P. CROTEAU & ASSOCIATES, LTD.  
/s/ Roger P. Croteau  
Roger P. Croteau, Esq.  
Nevada Bar No. 4958  
2810 W. Charleston Blvd., Ste. 75  
Las Vegas, Nevada 89102  
Attorneys for Appellant

# **VIII. ATTORNEY’S CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6), because:

[a.] This brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 365 in Times New Roman font size 14.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 40(b)(3) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is

[a.] Proportionately spaced, has a typeface of 14 points or more, and contains 1,288 words; or

[b.] does not exceed 10 pages.

...

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

Dated this November 3, 2020.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Roger P. Croteau

Roger P. Croteau, Esq.

Nevada Bar No. 4958

2810 W. Charleston Blvd., Ste. 75

Las Vegas, Nevada 89102

Attorneys for Appellant

## **CERTIFICATE OF SERVICE**

In accordance with NRAP 25, I hereby certify that on November 3, 2020, I caused a copy of **Appellant's Petition for Rehearing** to be filed and served electronically via the Court's E-Flex System to the following:

J. William Ebert  
Janeen v. Isaacson  
Lipson Neilson P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
Attorneys for Defendant/Respondent  
Travata and Montage at Summerlin Centre Homeowners' Association

Brandon Wood  
Nevada Association Services, Inc.  
6625 S. Valley View Blvd., Suite 300  
Las Vegas, Nevada 89118  
Attorneys for Defendant/Respondent  
Nevada Association Services, Inc.

/s/ Joe Koehle  
An employee of ROGER P. CROTEAU  
& ASSOCIATES, LTD.

**EXHIBIT “3”**

**EXHIBIT “3”**

IN THE SUPREME COURT OF THE STATE OF NEVADA

SATICOY BAY, LLC, SERIES 11339  
COLINWARD, A NEVADA LIMITED  
LIABILITY COMPANY,  
Appellant,  
vs.  
TRAVATA AND MONTAGE AT  
SUMMERLIN CENTRE  
HOMEOWNERS' ASSOCIATION, A  
NEVADA NON-PROFIT  
CORPORATION; AND NEVADA  
ASSOCIATION SERVICES, INC., A  
NEVADA CORPORATION,  
Respondents.

No. 80162

FILED


NOV 23 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

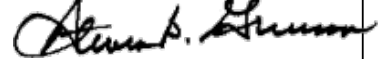
It is so ORDERED.

 J.  
Gibbons

 J.  
Stiglich

 J.  
Silver

cc: Hon. Mary Kay Holthus, District Judge  
Roger P. Croteau & Associates, Ltd.  
Brandon E. Wood  
Lipson Neilson P.C.  
Eighth District Court Clerk



1 RTRAN

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 \* \* \* \* \*

5  
6 DAISY TRUST,

7 Plaintiff,

8 vs.

9 GREEN VALLEY SOUTH OWNERS  
10 ASSOCIATION NO. 1, NEVADA  
11 ASSOCIATION SERVICES, INC.,

12 Defendants.

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CASE NO. A-19-791254-C

DEPT. NO. IX

**Transcript of Proceedings**

BEFORE THE HONORABLE CRISTINA D. SILVA, DISTRICT COURT JUDGE

**ALL PENDING MOTIONS**

TUESDAY, DECEMBER 1, 2020

APPEARANCES [ALL VIA VIDEO CONFERENCE]:

For the Plaintiff: ROGER P. CROTEAU, ESQ.

For Green Valley: JANEEN ISAACSON, ESQ.

For NAS: BRANDON E. WOOD, ESQ.

RECORDED BY: GINA VILLANI, DISTRICT COURT

TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording; transcript  
produced by transcription service.

1 TUESDAY, DECEMBER 1, 2020 AT 9:54 A.M.

2

3 THE CLERK: *Daisy Trust versus Green Valley South.*

4 THE COURT: All right. A-19-791254-C, *Daisy Trust*  
5 *versus Green Valley South Owners Association.*

6 MR. CROTEAU: Good morning, Your Honor. Roger  
7 Croteau for Daisy Trust.

8 THE COURT: Good morning. Is anyone here on  
9 behalf of Nevada Association Services or Green Valley South  
10 --

11 MR. WOOD: Good morning, Your Honor. Brandon Wood  
12 on behalf of Nevada Association Services.

13 THE COURT: Good morning. And is anyone present  
14 on behalf of Green Valley South? No. Okay. All right.  
15 We are -- well, we need Green Valley South here to hear the  
16 Motion. Has anyone had any contact with anyone from Green  
17 Valley South Owners Association?

18 MR. CROTEAU: Roger Croteau, Your Honor, --

19 MR. WOOD: It's Brandon -- oh, go ahead, Mr.  
20 Croteau.

21 MR. CROTEAU: I'm sorry. Roger Croteau, Your  
22 Honor. And the answer is no.

23 THE COURT: All right.

24 MR. WOOD: Your Honor, Brandon Wood on behalf of  
25 Nevada Association Services. My office has reached out to

1 Ms. Isaacson from Lipson Neilson and I am currently  
2 awaiting the response. It says that -- my e-mail just said  
3 that she will -- my office spoke with her and she was on  
4 the call. But I'm not sure as to why she's not appearing  
5 at this time.

6 THE COURT: Let's just double check something.

7 [Pause in proceedings]

8 [Colloquy at the bench]

9 THE COURT: Janeen Isaacson. Okay. I see she's  
10 chatting. For some reason we can't hear you, Ms. Isaacson.  
11 Perhaps you want to disconnect and reconnect? All right.  
12 She is -- Ms. Isaacson is signed on but, for some reason,  
13 we can't hear her. So, I'm going to pass this for a moment  
14 and, then, we'll come back to it. Hopefully she can  
15 disconnect and reconnect and we can go from there.

16 MR. WOOD: Thanks, Your Honor. I have another  
17 9:30. I appreciate that.

18 THE COURT: You bet. Sorry about that.

19 MR. WOOD: No worries.

20 [Case trailed at 9:56 a.m.]

21 [Hearing resumed at 10:24 a.m.]

22 THE COURT: Calling page 5, A-19-791254-C, *Daisy*  
23 *Trust versus Green Valley South Owners Association*.

24 MS. ISAACSON: Yes, Your Honor. Janeen -- Janeen  
25 Isaacson for Green Valley. I apologize for the technical

1 difficulties.

2 THE COURT: That's okay. That's the theme of  
3 2020. And, Mr. Croteau, are you there? And Mr. Wood?

4 MR. WOODS: Yeah. Can you hear me? Mr. Woods  
5 here.

6 THE COURT: I can. All right. And good -- good  
7 morning again to both of you. All right.

8 We are here for Green Valley South Owners  
9 Association Renewed Motion to Dismiss or Alternative Motion  
10 for Summary Judgment and Nevada Association Services'  
11 Joinder thereto. It's a threshold matter. I'm going to  
12 note that I am considering this as a Motion for Summary  
13 Judgment. There were exhibits attached and, therefore, it  
14 would go beyond the four corners of the Complaint. And,  
15 so, I am considering this as a Motion for Summary Judgment  
16 and applying that standard.

17 I'm going to start with counsel for defendant.  
18 This is your Motion. Is there anything you would like to  
19 add outside the written pleadings?

20 MS. ISAACSON: No, Your Honor. I think it's  
21 pretty clear, the Supreme Court has spoken. And while I  
22 understand that it's a series of unpublished cases, you're  
23 not required but are allowed to consider their, you know,  
24 conclusions as persuasive. And they're identical. I --  
25 they're -- you know, as you can see from the exhibits, it's

1 the identical case before you. And the Court has  
2 determined that plaintiff's arguments are invalid. And  
3 they, you know, have no basis in law or fact. And we  
4 believe our Motion should be granted. Thank you.

5 THE COURT: All right. Thank you.

6 And, counsel for Nevada Association Services, do  
7 you want to add anything, just --

8 MR. WOOD: No. We believe that the arguments are  
9 well plead in the pleadings and we will rest on those as  
10 well.

11 THE COURT: All right. Then let me turn to  
12 counsel for plaintiff. Anything you would like to add  
13 outside the written pleadings?

14 MR. CROTEAU: Well, yes, Your Honor, actually. A  
15 couple things.

16 First off, we have done a Motion for  
17 Reconsideration on those decisions. We have also done a  
18 motion -- or, will be doing, if it hasn't been done  
19 already, a Motion for Review. The issues in these cases  
20 were -- and, candidly, these are done as Motions to  
21 Dismiss, not Motions for Summary Judgment. And the  
22 allegations were probably -- this is -- these are earlier  
23 in the cases, and the allegations were not developed in  
24 terms of the Complaint. And that's really what they are  
25 relying upon.

1           This particular case, it's a Motion for Summary  
2 Judgment, is a fact question. We're down to the Noonan  
3 issues. We're down to whether or not in this case there  
4 was inquiry made and what effort was done in that inquiry  
5 and what response was received in that inquiry. That is  
6 the issue. Discovery is open in this case pursuant to the  
7 current stipulation on file until May of '21.

8           I would submit to you that dismissing the case at  
9 this stage would belie the argument that it's a summary  
10 judgment motion. I mean, you'd have to find, really, as a  
11 matter of law at this point, because there's so much  
12 discovery that could and will be done in terms of doing a  
13 deposition. I'd make a proffer that Mr. Haddad would  
14 testify that he had called and inquired if the sale was  
15 going to go forward and additionally inquired as to whether  
16 or not any sums had been paid. And that really is the crux  
17 of the issue. And he's made it clear in the Complaint as  
18 it was -- as it's stated, is that had he been told there  
19 was a tender of any sort, he would not have paid -- or, not  
20 have bought the property. I mean, that's kind of the  
21 issue.

22           So, the fundamental issue is, you know, there's  
23 obligations that are bound. I think the unpublished  
24 decision, and the series of them that came out all on the  
25 same day, were all based upon the same analysis. And I

1 don't believe that the Court properly looked at the 113  
2 argument. That's up for en banc review. I think the law  
3 is kind of clear there. It does apply. The question is  
4 whether or not it's a timely pursuit is a different issue.  
5 Because, as the misrep goes, it goes to the same fact that  
6 the Deed of Trust itself -- I'm sorry. The foreclosure  
7 deed is inaccurate from the standpoint that they tell us  
8 they complied with all law. If NRS 113, even though the  
9 timing for it may have been expired, it still was a  
10 violation of the procedural law that could form the basis  
11 of part of the misrepresentation argument and part of the  
12 misrepresentation in the deed of -- in the foreclosure  
13 deed.

14           So, I think there are a number of issues that  
15 carry this case forward. And I don't believe this is even  
16 a final -- obviously, they're unpublished decisions. But,  
17 I believe that a review en banc may change that. And I  
18 think that at that point in time it may -- it may provide  
19 for more guidance to the Court.

20           I think that Your Honor is correct we're past the  
21 Motion for Dismissal page. And, as a Motion for Summary  
22 Judgment argument, you can find that there's no material of  
23 fact issues and it's a matter of law that it gets dismissed  
24 because facts are available to be ascertained through May  
25 of '21. I would respectfully request that this case not be

1 dismissed on that basis. And let them renew the Motion  
2 after the appropriate depositions are conducted so that we  
3 finally have a decision that can go to the Supreme Court  
4 that's not based upon pleadings that are incomplete in  
5 terms of what the state of the case is. I have no  
6 deposition testimony to offer you as to what the HOA  
7 trustee said or didn't say to my client. So, we would need  
8 to develop that. And I respectfully request the  
9 opportunity to do that in the time.

10 THE COURT: So, let me ask you --

11 MR. CROTEAU: So, I think this Motion is somewhat  
12 --

13 THE COURT: Let me ask you this question. A  
14 couple questions, actually. First, as to the third cause  
15 of action, you're alleging a conspiracy. And it sets forth  
16 a conspiracy between the HOA and the HOA trustee. Correct?

17 MR. CROTEAU: It does, Your Honor. And, candidly,  
18 I'm being honest with the Court, obviously we put up all of  
19 our claims that we -- you know, we were going to make,  
20 arguably. And, if there's agency found, I don't think a  
21 conspiracy is necessary from that perspective. And we do  
22 believe it's an agency relationship. But we always have to  
23 plead everything that's available to us just in case. And  
24 I say that to you -- I don't want to insult the Court,  
25 clearly. If I -- I understand the Court's concern and my

1 questions. But I did that in the event that somehow they  
2 were to say there's no agency between the HOA and the HOA  
3 trustee, or the HOA's not responsible for its agent,  
4 because it's the principal that does the foreclosure. So,  
5 that's why that claim is there.

6 THE COURT: All right. Well, as to the third  
7 cause of action, I am going to grant this Motion. You  
8 cannot conspire with yourself. And that is essentially  
9 what the allegations in the third cause of action are, the  
10 HOA conspired with itself in the form of its HOA trustee.  
11 That would be improper and fails as a matter of law.

12 I want to move to the second cause of action and  
13 the first cause of action. And perhaps you can clarify.  
14 And I understand you are trying to cross your T's and dot  
15 your I's when you're filing a Complaint. That's not lost  
16 on me. But it appears that both are alleging essentially a  
17 fraud or a mistake. Is that correct?

18 MR. CROTEAU: I don't think fraud is per se. It's  
19 -- you know, under the case law, I mean, you have a fraud  
20 and, then, you have a misrepresentation. And, arguably,  
21 the misrepresentation can be intentional or negligent. It  
22 provides a three-year statute of limitations. What it  
23 relies upon are the elements of what that misrepresentation  
24 is. Did a misrepresentation occur either by omission, that  
25 the *Foster* case talks about omission. Right? And that's

1 what we're arguing. We're not saying that, in this  
2 particular case, someone told me no payment was made.  
3 We're saying either that is the case, depending on the  
4 nature of the facts of the case -- and I'm just doing this  
5 generically. But we're saying that an omission to state  
6 that a tender payment was made is the fundamental issue.  
7 It was relied upon reasonably by my clients in whereas it  
8 should have been known to the provider of the information  
9 whether or not a payment was or was not tendered. And,  
10 then, in return for that, we have damages, the simple  
11 elemental argument.

12           The real question is, under *Noonan*, -- *Noonan* is  
13 very -- speaks definitively saying -- and I'm not going to  
14 argue with this, *Noonan* says that absent inquiry of any  
15 sort, the HOA and the HOA trustee have no obligation to  
16 disclose whether a payment's been made. And assume that to  
17 be correct. When these cases started, that wasn't -- that  
18 law wasn't available. But, since it came forward, we also  
19 understand that that's fine because what it does set up for  
20 us is it does lay out, actually, the foundation for the  
21 misrep argument. If we made some inquiry, and that's the  
22 fact question, what was the inquiry, second fact question,  
23 what was the level of that inquiry, third fact question,  
24 and what was the response? And was there reasonable  
25 reliance? So, those are the fact issues, all right, for a

1 trier of fact.

2           Depositions do need to be done in that. That was  
3 stated in our stipulation to continue discovery that was  
4 recently filed and accepted and put a Notice of Entry onto  
5 the Court. And that's fundamentally the issue.

6           Now, we go to a deposition and there was no --  
7 it's determined there's no inquiry or what, that's a  
8 Court's determination as to whether or not either someone's  
9 more credible than somebody else, or there's some, you  
10 know, fact pattern that suggests that, that that's up to  
11 the Court to decide. That's not before the Court yet  
12 because discovery is still open. And that is ultimately  
13 the issue as it relates to the misrep argument.

14           The second analysis on the misrep is, as I pointed  
15 out earlier, the deed -- the foreclosure deed, where they  
16 say they complied with all law. Pursuant to 113, we  
17 believe they did not. And I think that's relatively clear.  
18 And I think that's the second issue. So, that answers, I  
19 think, the first cause of action argument.

20           The second cause of action argument, NRS 116.1113,  
21 under --

22           THE COURT: That's the fourth cause of action. I  
23 haven't gotten there yet. Though --

24           MR. CROTEAU: Sorry.

25           THE COURT: That's okay. I -- candidly, I am not

1 convinced that there is a violation of NRS 113. I think  
2 that your interpretation is overbroad and doesn't encompass  
3 what is set forth in NRS 113. So, if you want to point me  
4 to something outside the pleadings that tells me I'm wrong,  
5 I'm happy to listen to that, as I have read the briefing.  
6 But I don't -- I don't see it.

7 MR. CROTEAU: Well, and, Your Honor, I'm somewhat  
8 limited to what I do have in the briefing at this point.  
9 But, if you take a look at -- well, in *SFR*, in the *SFR*  
10 decision, they cite *Carrington Mortgage Holding, LLC,*  
11 *versus R Ventures VIII*. And, in that citation in the *SFR*  
12 decision of September of 2014, what they said was we're  
13 going to look at the legislative history of the Uniform  
14 Act. And that's the fundamental issue here because the  
15 Uniform Act's obligations of good faith aren't exactly good  
16 faith, they're more than that.

17 And you can find that -- and, again, I know you've  
18 read the pleadings and I know I'm being redundant,  
19 certainly. But, page 16, line 19, the UCOIA says Section  
20 1113, which is adopted as our 116.113, verbatim says:

21 Every contracted duty goverened by this act  
22 imposes an obligation of good faith in its performance  
23 or enforcement.

24 That is somewhat of an innocuous statement, as you  
25 can imagine, but what it does tell us is that in the

1 comment section it says:

2           This section sets forth basic principles running  
3 throughout this act. In transactions involving common  
4 interest communities, good faith is required in the  
5 performance and enforcement of all agreements and  
6 duties.

7           So, in my opinion, the duty is the foreclosure  
8 sale.

9           Good faith is used in this act means observance of  
10 two standards.

11           And here's the important point. It takes good  
12 faith to a different level. It says, the two standards are  
13 -- and they use this in quotations: Honesty and fact. So,  
14 if I asked you a question, did it sell -- I mean, did we --  
15 did you get a payment, yes or no? The honesty and fact is  
16 yes or no. It's just that simple.

17           And observing of reasonable standards of fair  
18 dealing, again, if I make an inquiry, I should be given a  
19 response. Noonan speaks to that issue in terms of there's  
20 no duty unless a duty is put on the HOA trustee or the HOA.  
21 That duty becomes an inquiry being made by a potential  
22 purchaser. A purchaser is an identified party as it  
23 relates to NRS 116. And you can find that at 116.079. And  
24 a purchaser is somebody who buys the property. So, I think  
25 that we really want to look at the law and really do a

1 legal analysis. There is teeth to this.

2           And if we also look at NRS 116.1108, 1108 adopts  
3 all of our common law theories. And it even adopts the  
4 misrepresentation arguments and even adopts the  
5 misrepresentation causes of action, potentially, all right,  
6 to be part of 116 as supplemental law. But, again, with  
7 the comment, it continues:

8           While the term is not defined, the term is derived  
9 from and used in the same manner as in Section 1201 of  
10 the Uniform Simplification of Land Transfers Act.

11           And so forth. But that's what forms the basis of  
12 these claims. They're not baseless, wild, shotgun claims.  
13 They are based on the fact that there is nobody that does  
14 these -- that was involved at these times, okay, that knew  
15 of any tender, other than the tendering party -- and 99  
16 percent of the time it's the bank, the HOA trustee, and the  
17 HOA. There is no place to obtain this information  
18 whatsoever.

19           So, if they concealed it or if they didn't  
20 disclose it upon inquiry, there is nowhere, no place in the  
21 world where my client would be able to find that out. The  
22 bank has absolutely no duty to tell because they are not a  
23 party to this transaction whatsoever. You know, the only  
24 parties that have duties to the HOA and HOA trustee.

25           THE COURT: All right. So, we're really

1 regurgitating the entire Motion at this point. So, --

2 MR. CROTEAU: I --

3 THE COURT: -- is there anything else you want to  
4 add?

5 MR. CROTEAU: Just that I don't think it should  
6 get dismissed. I think it should be given an opportunity  
7 for discovery so we can vet --

8 THE COURT: All right. And, so, let me ask you a  
9 question about that. Because what it appears that the only  
10 reliance that we have for the other two causes of action,  
11 the -- essentially, the misrepresentation actions, --

12 MR. CROTEAU: Right.

13 THE COURT: -- is the affidavit of Mr. Haddad  
14 saying that he always asked. And --

15 MR. CROTEAU: Right.

16 THE COURT: Now, is it your -- I'm assuming it's  
17 your position that that affidavit alone is sufficient to  
18 overcome summary judgment. Is that correct?

19 MR. CROTEAU: Well, that affidavit sets forth a --  
20 and I could do a more definitive affidavit, clearly. But  
21 that affidavit sets forth the facts as he made inquiry in  
22 all of his transactions. The proffer would be -- and, if  
23 Your Honor were inclined, and I know this is an oral  
24 motion. It should have been in the Motion presented to the  
25 Court. But there'd be some 56(d) discovery that at least

1 we take the deposition of the HOA trustee and endeavor to  
2 find out whether or not they have any record of calls and  
3 so forth regarding Mr. Haddad's inquiry. And, then, allow  
4 that to be supplemented to this Motion if the Court would  
5 grant me, say, 45 days to get that accomplished.

6 But I think that would be enough to -- I mean,  
7 that's essentially what we need to do. If we were going to  
8 do discovery, the real focus of the discovery, Your Honor,  
9 candidly, is going to be the HOA file -- I'm sorry. The  
10 HOA trustee file. We're not saying that my client called  
11 the HOA because he would not have necessarily done that.  
12 He would have called the HOA trustee. However, the HOA  
13 trustee has the obligations to set forth with the HOA. But  
14 it would have been the HOA trustee that contacted the bank  
15 or HOA. So, respectfully, I'd ask the opportunity to at  
16 least conduct that limited amount of discovery. And, then,  
17 either supplement this Motion or not, as it relates.

18 THE COURT: All right. Well, that's -- and that's  
19 certainly an issue. I don't allow for oral motions of that  
20 sort without allowing the other party to respond as it  
21 would deprive them an opportunity to put in writing their  
22 position.

23 But let me turn to counsel for Green Valley. And  
24 I want to address -- I want you to address for me Mr.  
25 Haddad's affidavit and the fact as to where we are in the

1 process of this litigation and whether or not summary  
2 judgment is -- would be appropriate. I am concerned that I  
3 would be pulling the proverbial trigger early in light of  
4 the fact that discovery is not closed, as much as I'm also  
5 concerned that the affidavit itself is insufficient. So,  
6 address that concern for me, please.

7 MS. ISAACSON: Yes, Your Honor.

8 With respect to the misrepresentation argument,  
9 what Mr. Haddad's affidavit states is it was his custom and  
10 practice to ask. It doesn't say he always asked. It says  
11 that it was his custom and practice. Plaintiff's case,  
12 essentially in the Complaint, the affidavit, all relied on  
13 the notion that this was a case of omission, that the HOA  
14 and its agent had some kind of duty, disclosed under NRS  
15 116 and NRS 113, the fact that a tender had been made. The  
16 cases that have recently come out from the Nevada Supreme  
17 Court are incredibly clear on this point. All five of  
18 those decisions say straightforward that prior to 2017 an  
19 HOA and its agent did not have a duty to disclose that  
20 information. So, the breach by omission is gone.

21 The *Genevieve* case says clearly that NRS 113 --  
22 under NRS 113 analysis, although they didn't -- you know,  
23 go into the analysis of whether the statute applied, they  
24 did an analysis basically stating that a defect is  
25 something that decreases the value of the property itself.

1 This lien doesn't decrease the value of the property. It's  
2 just a lien attached to the property. And what the Court  
3 said is, is that a tender would not be applicable under  
4 this analysis, either on the disclosure forms or in the  
5 definition of a defect. And they ruled it didn't, it was  
6 inapplicable.

7           Then you look into the only case they have left,  
8 which is an affirmative misrepresentation. Whether it's  
9 negligent or fraudulent, for an affirmative  
10 misrepresentation you have to state who made it, what was  
11 said, when it was said, and argue that you relied on it.  
12 Mr. Haddad's affidavit doesn't state that. And I  
13 understand plaintiff's counsel is talking about phone logs  
14 for NAS. Those have been produced in this case more --  
15 almost a year ago. They were part of the arbitration  
16 process. They were a part of, you know, when we were doing  
17 discovery before we waived that. They've been there  
18 forever. And we can certainly supplement that for you,  
19 Your Honor. But Haddad's name is not on that call log.

20           And there's no -- and what he would have to do for  
21 this case to succeed is he would have to wake up one  
22 morning and suddenly remember that right -- in 2012, on the  
23 day of the foreclosure hearing, he suddenly remembers  
24 talking to so-and-so at this time, this is what they said,  
25 this is what I said. And nobody's done that because he

1 doesn't have that information. If he had it, it would have  
2 been in the Complaint, it would have been in an affidavit,  
3 it would have been in a supplemental affidavit. There is  
4 no such specificity. And, absent that, there's no  
5 misrepresentation. A case can't be made. And this case  
6 would be sufficient for dismissal under the summary  
7 judgment rule because he's not going to be able to get  
8 there.

9           And, then, as far as the remaining causes of  
10 action, I would point out to Your Honor that in a prior  
11 Motion to Dismiss, conspiracy has been dismissed already.  
12 So, in going forward, we would not need to address that  
13 particular issue.

14           THE COURT: That's correct. I thought I had  
15 addressed that --

16           MS. ISAACSON: We're --

17           THE COURT: But I sometimes see these so often  
18 they start to run together. So, I apologize.

19           MS. ISAACSON: Yeah.

20           THE COURT: I thought I addressed that previously  
21 and, clearly, I had. So, thank you for reminding me of  
22 that.

23           MS. ISAACSON: Yeah. And you did, Your Honor,  
24 very clearly. So, that's all taken care of. And I'm happy  
25 to address any other points you have.

1           THE COURT: All right. So, just the last question  
2 I have, --

3           MS. ISAACSON: Yes.

4           THE COURT: -- I need to -- you to address for me  
5 is, is I understand it's your position that they would  
6 never be able to prove the necessity that's set forth under  
7 Rule 9 of the who, what, where, when, how, if you will.  
8 But is it still too premature for me to make that decision  
9 in light of the fact that discovery is not closed?

10          MS. ISAACSON: Your Honor, normally I would agree  
11 with you. I understand that -- and I'm not disputing that  
12 everyone deserves a chance to prove their case. But, my  
13 point here is, no matter how you look at it and if you  
14 listen -- you know, Mr. Croteau is arguing back and forth.  
15 He's still arguing like there's some sort of obligation to  
16 disclose and there wasn't one. And, because you're dealing  
17 with misrepresentations, it requires a certain  
18 particularity in what you have to show. You -- just to  
19 even maintain the lawsuit, absent any specific information  
20 in the Complaint and/or the affidavit or the information  
21 they've disclosed, which is nothing, in order to even  
22 defend it, we need to know who he talked to, we need to  
23 know when he talked to them, we need to know what was said  
24 so we can defend against this misrepresentation.

25          Because he doesn't -- I mean, he's not even

1 telling you who -- you know, whether it was someone from  
2 the HOA, whether it was someone from NAS. And, absent that  
3 basic information for this type of cause of action, how do  
4 we even defend it? Or, we'd be operating in a vacuum with  
5 no ability to even really know what to do, or who to  
6 depose, or how to go about defending this because we have  
7 literally zero information.

8           Now, if you dismiss the case and they want to re-  
9 bring it somehow, I mean, I suppose we could do that. But  
10 bottom line is they have not alleged any fact at all. I'm  
11 not saying they have to allege them all, I'm not saying  
12 they have to be soothsayers and say every little thing  
13 they're going to say, but they have to say something and  
14 they've said nothing. And they have nothing. And I don't  
15 think time is going to change that. And if that were the  
16 standard, every defendant would have to pay out, you know,  
17 tens of thousands of dollars in every single case on a wild  
18 goose chase. And that's not what I think the Nevada  
19 statutes require.

20           I just -- they've got nothing. And, absent, you  
21 know, some information -- and I don't know if you want to  
22 just -- I don't know where you want to go from here. But I  
23 just don't think they have it. And I would point out, in  
24 *Travada* [phonetic], it's the exact same affidavit that they  
25 -- the Supreme Court looked at. And they said you have no

1 case.

2 THE COURT: Yeah. All right.

3 MS. ISAACSON: So, I mean, exact, word for word,  
4 punctuation, everything. And I -- at this point, I think  
5 dismissal is the way to go.

6 THE COURT: All right. Thank you.

7 MR. CROTEAU: Your Honor, if I --

8 THE COURT: And let me go -- let me let Mr.  
9 Croteau go ahead and respond briefly.

10 MR. CROTEAU: All right. There is no refiling of  
11 the case if it's dismissed. The statute of limitations is  
12 expired. And, I mean, this is a discovery rule case. We  
13 have cited to the discovery rule in the Complaint. Counsel  
14 is not correct. I think I've already told you, we're not  
15 alleging that the HOA actually was the inquiry party. And  
16 we're saying that they're sued because they are the  
17 principal of the agent. The agent is the HOA trustee.

18 The proffer I make to you and can supplement it in  
19 an affidavit is that Mr. Haddad would contact the HOA prior  
20 to the foreclosure -- the HOA trustee, prior to the  
21 foreclosure sale. He'd want to know if the property was  
22 going forward, he'd want to know if there was an opening  
23 bid, and he'd want to know if anybody made any payments.  
24 So, that was his inquiry protocol. If our affidavit  
25 doesn't identify it to the level of specificity that

1 counsel alleges it needs to, I'm happy to amend it to  
2 include that.

3           But the discovery that needs to take place really  
4 isn't a wide field, shotgun discovery. And counsel's  
5 correct, we do have the underlying disclosures in this  
6 case. However, as the Court's aware, it still needs to be  
7 disclosed in the District Court case as a separately  
8 disclosed document, which we've done. But we do need a  
9 deposition in that area. We do need a 30(b)(6) of a person  
10 or persons knowledgeable over there as to how the practice  
11 and procedure worked. This is a thing that -- you know,  
12 that many parties have done and Mr. Haddad did habitually.  
13 And it's, even from a logical business perspective as to  
14 whether or not he was buying X number of houses a day, he  
15 needs to know what's available just to have the cash needs.  
16 So, that was something that occurred.

17           Secondarily, the 113 argument is really not a  
18 nullity. And, again, it's not a final decision as of yet.  
19 We do have it going for at least a request for en banc.  
20 And the form that would be the documentation that's  
21 required would absolutely sit forth and ask what the  
22 situation is with the association fees and, you know, what  
23 the exact payments are, what they're not, in terms of  
24 whether they're delinquent and so forth.

25           The argument then becomes -- and, frankly, I think

1 the Supreme Court took a left hand turn on doing valuation.  
2 Because, when you look at the definition of defect, it  
3 doesn't say the defect of the property per se, it says  
4 something that impairs in value. A Deed of Trust clearly  
5 impairs value if that's something that you are looking to  
6 purchase a property from.

7           And, in our cases, we're not saying that the  
8 current case law says they had a duty of obligation to  
9 disclose, absent inquiry. We're not saying that. We're  
10 saying they have a duty to disclose with inquiry. I think  
11 that's been very clear. I mean, the Complaint was drafted  
12 in alternative fashion, again, because a lot of this case  
13 law hadn't been developed yet. But that is the issue. And  
14 the issue is, we put forth the fact that he did make  
15 inquiry. And we put that forth in our pleadings.

16           I do think it's premature. I don't think it's  
17 going to cost a great deal of additional funds to vet the  
18 issue. And if they want to file a renewed motion or even  
19 if the Court wants to give me some opportunity to develop  
20 that and supplement these pleadings, I'm fine with that,  
21 too. I don't see that it's a great deal of discovery to  
22 accommodate that final issue. If they choose to take Mr.  
23 Haddad's deposition, that's fine. But I frankly need  
24 somebody with a 30(b)(6) at the HOA trustee to vet, if you  
25 will, the finality of this point.

1           And, again, we're not alleging fraud in its blood  
2 nature, we're alleging misrepresentation through omission  
3 primarily. Now, I mean, that's the nature of it. I think  
4 the 113 argument is much broader. I think the 116.113  
5 argument is broader and needs to be developed better and,  
6 in terms of presenting to the Court better, in terms of  
7 what's out there. So, -- but, none of the cases that were  
8 dealt with by the Court, wherever -- at any stage of  
9 discovery, ever. So, that's another problem. So, in any  
10 event, I mean, that's the crux of the arguments.

11           THE COURT: Okay. All right. And, so, I  
12 appreciate -- I appreciate that. I appreciate the briefing  
13 from both parties and the argument here in court. I am  
14 going to grant the Motion for Summary Judgment. I -- as  
15 the parties know, a party moving for summary judgment bears  
16 the initial burden of production to show the absence of a  
17 genuine issue of material fact. And once that moving party  
18 has met their burden, which I find they have, the party  
19 opposing the summary judgment assumes the burden of  
20 production to show the existence of a genuine issue of  
21 material fact. And I don't have that before me.

22           I understand and recognize and certainly I was --  
23 I'm concerned, as I put here on the record today, that  
24 discovery hasn't closed. But, at the same time, the  
25 information before the Court doesn't meet that required

1 burden of production. Certainly, there could have been a  
2 Motion for Rule 56 Discovery. There could have been a  
3 Motion to Extend or some other alternative to seek the  
4 information you're gathering -- you want to gather. I'll  
5 also note, sometimes it's difficult to prove a negative. I  
6 don't know if that's what happening here. But that  
7 certainly can be a challenge.

8           Without more, I am going to grant this Motion for  
9 Summary Judgment. I do not believe that NRS 113 applies  
10 the way that plaintiff would like it to, in order to have a  
11 cause of action. I think the plain reading of 113 is  
12 separate and apart from the facts underlying this or  
13 similar cases that is questions of the procedure pre  
14 foreclosure sale, and issues with the HOA, and any  
15 superpriority or liens, or -- and/or assessments associated  
16 with that potential sale.

17           As to the negligent misrepresentation and the  
18 other cause of action, let me just -- I agree that there  
19 isn't enough information regarding the who, what, where,  
20 when, and how those misrepresentations were made. And I  
21 would argue -- I would -- I would note that generally that  
22 goes to specific allegations of fraud. But, given the  
23 arguments set forth in the Complaint, it appears that that  
24 is essentially what was being put forth. And the breach of  
25 good -- the breach of duty of good faith against the HOA

1 and HOA trustee would require more than: I asked -- I  
2 usually asked and I was told no. I would need to know who  
3 you asked, when you asked, how you asked. And, without  
4 anything more, and, in light of the fact that at the time  
5 this sale took place that wasn't the law, I would  
6 definitely need more to be convinced that we -- this case  
7 and this action should proceed.

8           So, I am going to grant the Motion for Summary  
9 Judgment for the reasons set forth in Defendants' Motion.  
10 I would ask defendant to draft a findings of fact and  
11 conclusions of law for me to review in the next 30 days.  
12 And please send it Mr. Croteau for review prior to sending  
13 it to chambers.

14           I'm going to put this on calendar for Tuesday,  
15 December 29<sup>th</sup> at 9 o'clock in the morning. If I have  
16 reviewed those findings of fact and conclusions of law, I  
17 will take that off calendar -- if I have reviewed it and  
18 signed it, I will take it off calendar.

19           Any questions from either party?

20           MR. CROTEAU: No, Your Honor.

21           MS. ISAACSON: No, Your Honor. Thank you.

22           THE COURT: All right. I thank you both very  
23 much. Stay well and stay healthy.

24           MR. CROTEAU: Thank you.

25           MS. ISAACSON: You as well, Your Honor. Thank

1 you.

2 THE COURT: Thank you.

3

4 PROCEEDING CONCLUDED AT 10:58 A.M.

5 \* \* \* \* \*

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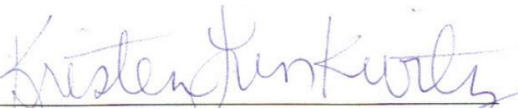
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**CERTIFICATION**

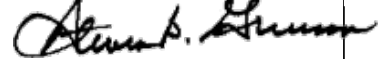
I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

**AFFIRMATION**

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



KRISTEN LUNKWITZ  
INDEPENDENT TRANSCRIBER



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14  
15 DISTRICT COURT  
16 CLARK COUNTY, NEVADA  
17

18 DAISEY TRUST, a Nevada trust

19 Plaintiff,

20 vs.

21 GREEN VALLEY SOUTH OWNERS  
22 ASSOCIATION NO. 1, a Nevada non-  
23 profit corporation; and NEVADA  
24 ASSOCIATION SERVICES, INC., a  
25 domestic corporation;

26 Defendants.  
27

Case No.: A-19-791254-C  
Dept.: ~~XXXX~~ 23

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER ON DEFENDANT  
GREEN VALLEY SOUTH OWNER'S  
ASSOCIATION'S MOTION TO DISMISS,  
OR ALTERNATIVELY MOTION FOR  
SUMMARY JUDGMENT

28 On October 25, 2020, Defendant Green Valley South Association ("Green Valley"  
or the "HOA") filed its Motion to Dismiss, Or Alternatively Motion for Summary Judgment  
("Motion"). On October 29, 2020, Defendant Nevada Association Services, Inc. ("NAS"  
or "Trustee") filed its Joinder to Green Valley's Motion. On November 9, 2020, Plaintiff  
Daisey Trust ("Daisey Trust") filed its Opposition to the Motion. On November 24, 2020,  
Defendant Green Valley filed its Reply in Support of the Motion.

The Motion was heard on December 1, 2020 at 9:00 a.m. in the above captioned  
matter. Attorney Janeen V. Isaacson on behalf of Green Valley, attorney Brandon E.  
Wood on behalf of NAS, and attorney Roger Croteau appeared on behalf of Daisey Trust

1 participated by CourtCall conferencing and/or telephonic conference call.

2 The Court having reviewed the papers and pleadings, and having heard oral  
3 argument, issues the following findings of fact, conclusions of law and order:

4 **FINDINGS OF FACT**

5 1. On June 5, 2008, Dennis L. Scott ("Borrower") obtained a loan to  
6 purchase the real property located at 137 Elegante Way, Henderson, Nevada 89074  
7 ("Property").

8 2. The property was subject to the HOA's Covenants, Conditions and  
9 Restrictions "CC&Rs".

10 3. Sometime after purchasing the Property, Borrowers defaulted on their  
11 homeowners' assessments.

12 4. On August 23, 2011, the HOA, through NAS recorded a notice of  
13 delinquent assessment lien.

14 5. On November 18, 2011, the HOA, through its Trustee, recorded a notice  
15 of default and election to sell.

16 6. On February 2, 2012, Miles Bauer sent NAS a letter offering to pay \$882  
17 to discharge Green Valley's superpriority lien on the Property and included a check for  
18 that amount.

19 7. NAS rejected the offer on Green Valley's behalf.

20 8. Between February 2, 2012 and August 31, 2012, NAS' phone log  
21 indicates that it received no telephone inquiries from potential bidders asking if there  
22 had been a tender of the super priority lien with respect to the Property [GVS000222].

23 9. On April 23, 2012, the HOA, through its Trustee, recorded a notice of  
24 foreclosure sale.

25 10. On August 31, 2012, the HOA, through NAS, foreclosed on the Property  
26 and sold the Property to Daisey Trust for \$3,555.

27 11. A foreclosure deed in favor Plaintiff Daisey Trust was recorded on  
28 September 7, 2012.

12. On February 29, 2016, Bank of America, N.A., Successor By Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing (:"BANA") filed a Complaint against the HOA, NAS, and Daisey Trust, in the United States District Court, District of Nevada with case number 2:16-cv-00424-JCM-PAL (the "Federal Action").

13. The Federal Action found the Property was sold subject to the deed of trust.

14. On March 15, 2019, Daisey Trust filed the instant lawsuit against Green Valley and NAS alleging causes of action for Intentional/Negligent Misrepresentation, Breach of NRS 116, Conspiracy, and Violation of NRS 113.

15. Daisey Trust argues the instant case is separate and distinct from the prior federal case involving the same property. Specifically, the gravamen of its argument is the Defendants cannot misrepresent tender or attempted tender if asked or omit material facts regarding tender or attempted tender.

16. In his declaration attached to the opposition, manager Eddie Haddad (“Haddad”) states that had he known that there was a tender or attempted tender on the property, he would not have placed a bid on the property. His claim is general in nature and the declaration fails to assert any specific representations made or questions asked with respect to the Property. Furthermore, NAS’ call log demonstrates that Defendants were not contacted ahead of the foreclosure sale, which contradicts his declaration in the instant case.

17. Haddad does not allege that Defendants made any active misrepresentation; rather, he alleges only that Defendants were guilty of "material omission of the tender and/or attempted payment of the superpriority lien amount", upon inquiry, by Haddad.

## CONCLUSIONS OF LAW

1. “The purpose of summary judgment is to pierce the pleading and to assess the proof in order to see whether there is a genuine need for trial.” *Matsushita*

1 *Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Summary judgment  
2 is appropriate when pleadings, the discovery and disclosure materials on file, and any  
3 affidavits show "there is no genuine disputes as to any material fact and the movant is  
4 entitled to judgment as a matter of law." Nev. R. Civ. P. 56(b); see also *Celotex v.*  
5 *Catrett*, 477 U.S. 317, 330 (1986); *Boland v. Nevada Rock & Sand Co.*, 111 Nev. 608,  
6 610, 894 P.2d 988 (1995).

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

14 3. An issue is only genuine if there is a sufficient evidentiary basis for a  
15 reasonable jury to return a verdict for the nonmoving party. *Anderson*, 477 U.S. at 248  
16 (1986). Further, a dispute will only preclude the entry of summary judgment if it could  
17 affect the outcome of the suit under governing law. *Id.* "The amount of evidence  
18 necessary to raise a genuine issue of material fact is enough to require a judge or jury  
19 to resolve the parties' differing versions of the truth at trial." *Id.* at 249. In evaluating a  
20 summary judgment motion, a court views all facts and draws all inferences in a light  
21 most favorable to the nonmoving party. *Kaiser Cement Corp. v. Fischbach & Moore,*  
22 *Inc.*, 793 F.2d 100, 1103 (9th Cir. 1986). Where one "essential element of a claim for  
23 relief is absent, the facts, disputed or otherwise, as to other elements are rendered  
24 immaterial and summary judgment is proper." *Bulbman Inc. v. Nevada Bell*, 108 Nev.  
25 105, 111, 825 P.2d at 592 (1992).

26 4. A party may move for summary judgment at any time and must be granted  
27 if the pleadings and affidavits show that there is no genuine issue as to any material fact  
28

1 and that the moving party is entitled to a judgment as a matter of law. *Villescas v. CAN,*  
2 *Insurance Co.*, 109 Nev. 1075 (1993).

3 5. "As a general rule, the court may not consider matters outside the  
4 pleading being attacked." *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858  
5 P.2d 1258, 1261 (1993). "However, the court may take into account matters of public  
6 record, orders, items present in the record of the case, and any exhibits attached to the  
7 complaint when ruling on a motion to dismiss for failure to state a claim upon which  
8 relief can be granted." *Id.*

10 6. NRCP 56(c)(1) provides, in pertinent part, "The judgment sought shall be  
11 rendered forthwith if the pleadings, depositions, answers to interrogatories, and  
12 admissions on file, together with the affidavits, if any, show that there is no genuine  
13 issue as to any material fact and that the moving party is entitled to a judgment as a  
14 matter of law." However, subsection (c)(2) further states that a party may object that the  
15 material cited to support or dispute a fact cannot be presented in "a form that would be  
16 admissible in evidence."

18 7. Summary judgment is "appropriate when the pleadings, depositions,  
19 answers to interrogatories, admissions, and affidavits, if any, that are properly before  
20 the court demonstrate that no genuine issue of material fact exists, and the moving  
21 party is entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724,  
22 731, 121 P.3d 1026 (2005). A factual dispute is genuine, and therefore summary  
23 judgment is inappropriate, when the evidence is such that a rational trier of fact could  
24 return a verdict for the nonmoving party. *Id.*

26 8. All pleadings and proof must be construed in a light most favorable to the  
27 non-moving party, however, the non-moving party must do more than simply show that  
28

1 there is some metaphysical doubt as to the operative facts in order to avoid summary  
2 judgment being entered in the moving party's favor. The nonmoving party must, by  
3 affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine  
4 issue for trial or have summary judgment entered against him. The nonmoving party "is  
5 not entitled to build a case on the gossamer threads of whimsy, speculation, and  
6 conjecture." *Id.* (quoting *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713-14  
7 (2002)).  
8

9 9. A party cannot defeat summary judgment by contradicting itself. See  
10 *Aldabe v. Adams*, 81 Nev. 280, 284–85, 402 P.2d 34, 36–37 (1965) (refusing to credit  
11 sworn statement made in opposition to summary judgment that was in direct conflict  
12 with an earlier statement of the same party).  
13

14 10. Under the new NRCP 56(d), which is similar to old subsection (f), if the  
15 moving party fails to properly support facts necessary, the court may deny the motion or  
16 stay the motion to allow the parties to conduct discovery.  
17

18 11. The Court FINDS because the motion involves evidence outside of the  
19 complaint, the motion must be treated as a motion for summary judgment.  
20

#### 21 **Intentional/Negligent Misrepresentation**

22 12. Haddad does not allege that Defendants made any active  
23 misrepresentation; rather, he alleges only that Defendants were guilty of "material  
24 omission of the tender and/or attempted payment of the superpriority lien amount", upon  
25 inquiry, by Haddad. However, under NRS 116.3116 at the time, Defendants do not  
26 have a duty to disclose tender. See *Noonan v. Bayview Loan Servicing, LLC*, 2019  
27 Nev. Unpub. LEXIS 428, 438 P.3d 335, 2019 WL 1552690, citing: "See *Halcrow, Inc. v.*  
28 *Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153 (2013) (providing

1 the elements for a negligent misrepresentation claim); *Nelson v. Heer*, 123 Nev. 217,  
2 225, 163 P.3d 420, 426 (2007) ("[T]he suppression or omission of a material fact which  
3 a party is bound in good faith to disclose is equivalent to a false representation."  
4 (internal quotation marks omitted)). Compare NRS 116.31162(1)(b)(3)(II) (2017)  
5 (requiring an HOA to disclose if tender of the superpriority portion of the lien has been  
6 made), with NRS 116.31162 (2013) (not requiring any such disclosure)." See also *A*  
7 *Oro, LLC v. Ditech Financial LLC*, 2019 WL 913129, 434 P.3d 929 (Nev. 2019)  
8 (unpublished). See *Saticoy Bay, LLC, Series 11339 Colinward, A Nevada Limited*  
9 *Liability Company vs. Travata and Montage at Summerlin Centre Homeowners*  
10 *Association, et. al.* (Case No. 80162) (October 16, 2020) *Unpublished Disposition*; See  
11 *Saticoy Bay, LLC, Series 3123 Inlet Bay vs. Genevieve Court Homeowners Association,*  
12 *et. al.* (Case No. 80135) (October 16, 2020) *unpublished disposition*; See *Saticoy Bay,*  
13 *LLC, Series 8320 Bermuda Beach, A Nevada Limited Liability Company vs. South*  
14 *Shores Community Homeowners Association, et. al.* (Case No. 80165) (October 16,  
15 2020) *Unpublished Disposition*; See *Saticoy Bay, LLC, Series 6408 Hillside Brook, A*  
16 *Nevada Limited Liability Company vs. Mountain Gate Homeowners Association, et. al.*  
17 (Case No. 80134) (October 16, 2020) *Unpublished Disposition*; See *Saticoy Bay, LLC,*  
18 *Series 8920 El Diablo, A Nevada Limited Liability Company vs. Silverstone Ranch*  
19 *Homeowners Association, et. al.* (Case No. 80039) (October 16, 2020) *Unpublished*  
20 *Disposition.*

21  
22  
23  
24 13. Although the HOA or HOA agent does not have to disclose tender under  
25 the statute, as a misrepresentation claim the HOA or HOA Agent could have taken  
26 actions which created the duty to disclose tender. However, Haddad relies on the  
27 omission during bidding at the sale. Even though discovery had not concluded, there  
28

1 appears to be no genuine issue of material fact. Haddad's declaration, which attempts  
2 to raise genuine issues of material fact appears to be based "on the gossamer threads  
3 of whimsy, speculation, and conjecture". See *Wood v. Safeway, Inc.* Additionally, NAS'  
4 call log demonstrate that Haddad did not contact them prior to sale to inquire as to any  
5 tender.  
6

7 14. Plaintiff fails to allege what evidence, if any, can be obtained in discovery  
8 to raise genuine issues of material fact. Thus, NRCP 56(d) relief is not appropriate.  
9 Thus, Plaintiff cannot show that there is any genuine issue of material fact and thus,  
10 Defendants are entitled to summary judgment as a matter of law.  
11

#### 12 **Breach of NRS 116**

13 15. For similar reasons Defendants are entitled to summary judgment on the  
14 Breach of NRS 116 claim. To establish a claim for misrepresentation, the plaintiff  
15 carries the burden of proving each of the following elements: (1) a false representation  
16 was made by the defendant; (2) defendant's knowledge or belief that its representation  
17 was false or that defendant has an insufficient basis of information for making the  
18 representation; (3) defendant intended to induce plaintiff to act or refrain from acting  
19 upon the misrepresentation; and (4) damage to the plaintiff as a result of relying on the  
20 misrepresentation. *Barmettler v. Reno Air, Inc.*, 956 P.2d 1382, 1386, 114 Nev. 441,  
21 447 (Nev.,1998). The HOA or HOA's Agent are not required to announce tender at the  
22 HOA foreclosure sale. See *Noonan (Comparing NRS 116.31162(1)(b)(3)(II) (2017),*  
23 *with NRS 116.31162 (2013))*, and see *A Oro*. See *Saticoy Bay, LLC, Series 11339*  
24 *Colinward, A Nevada Limited Liability Company vs. Travata and Montage at Summerlin*  
25 *Centre Homeowners Association, et. al.* (Case No. 80162) (October 16, 2020)  
26 *Unpublished Disposition*; See *Saticoy Bay, LLC, Series 3123 Inlet Bay vs. Genevieve*  
27  
28

1 *Court Homeowners Association, et. al.* (Case No. 80135) (October 16, 2020)  
2 *unpublished disposition; See Saticoy Bay, LLC, Series 8320 Bermuda Beach, A Nevada*  
3 *Limited Liability Company vs. South Shores Community Homeowners Association, et.*  
4 *al.* (Case No. 80165) (October 16, 2020) *Unpublished Disposition; See Saticoy Bay,*  
5 *LLC, Series 6408 Hillside Brook, A Nevada Limited Liability Company vs. Mountain*  
6 *Gate Homeowners Association, et. al.* (Case No. 80134) (October 16, 2020)  
7 *Unpublished Disposition; See Saticoy Bay, LLC, Series 8920 El Diablo, A Nevada*  
8 *Limited Liability Company vs. Silverstone Ranch Homeowners Association, et. al.* (Case  
9 No. 80039) (October 16, 2020) *Unpublished Disposition.* Further, neither Green Valley  
10 or NAS made any misrepresentations to Plaintiff or otherwise violate any duties to  
11 Plaintiff in conducting the sale.  
12

13  
14 16. NRS 116.1113 imposes a duty of good faith in the performance of every  
15 contract or duty governed by the statute. Nev. Rev. Stat. § 116.1113. The HOA  
16 complied with these duties by complying with all notice and recording requirements set  
17 forth in NRS 116 as it existed at the time of the sale. The HOA was not required to  
18 disclose the existence of a pre-sale tender of the superpriority portion of the lien.  
19 Further, it was specifically prohibited from giving any purchaser at auction a so-called  
20 warranty deed. The only type of deed it could give to any purchaser was one made  
21 "without warranty" pursuant to NRS 116.31164(3)(a).  
22

### 23 **Violation of NRS 113**

24 17. Defendants are entitled to summary judgment on Plaintiff's claim for  
25 violation of NRS 113. Plaintiff asserts in its Complaint that the HOA or HOA Agent  
26 needed to complete a Seller's Real Property Disclosure Form ("SRPDF").  
27  
28

1           18. The bank's pre-sale tender does not fit into any of the disclosure  
2 categories contemplated by NRS 113. See generally *id.* It is not a water or sewage  
3 service, nor does it involve open range liability, zoning classifications, gaming enterprise  
4 districts, or transfer fee obligations. See Nev. Rev. Stat. §§ 113.060 through 113.085. It  
5 also does not qualify as the discovery or worsening of a defect subject to disclosure  
6 under NRS 113.130.  
7

8           19. A "defect" is defined as "a condition that materially affects the value or use  
9 of residential property in an adverse manner." See Nev. Rev. Stat. § NRS 113.100(1).  
10 The key to disclosure under this section is the seller's realization, perception, and  
11 knowledge of the alleged defect. See *Nelson v. Heer*, 123 Nev. at 224; see also Nev.  
12 Rev. Stat. §113.140(1). A seller is not required to disclose defects of which he is  
13 unaware. *Id.*  
14

15           20. Furthermore, nowhere in either NRS 113 or NRS 116 do the statutes  
16 suggest the Seller's Real Property Disclosure Form ("SRPDF") should be supplied in  
17 NRS 116 foreclosure sales. Plaintiff further alleges that the "Residential Disclosure  
18 Guide (the "Guide") suggests Defendants should supply the SRPDF. However, the  
19 actual Guide does not ever refer to the HOA or HOA Agent as possible sellers for which  
20 the SRPDF might apply or refer to a HOA foreclosure sale, or suggest the SRPDF  
21 applies to NRS 116 Foreclosure Sales.  
22

23           25. The Guide suggests to protect oneself from a faulty SRPDF in buying a  
24 home, "[t]he Buyer is advised to obtain an independent inspection performed by a  
25 properly licensed home inspector." NRS 116 foreclosure properties are not open for  
26 inspection prior to sale, and NRS 116 foreclosure homes may be occupied, for which  
27 the buyer assumes the responsibility.  
28

Lipson Neilson P.C.  
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Las Vegas, Nevada 89144  
(702) 382-1500 FAX: (702) 382-1512

26. A recent unpublished decision from the Nevada Supreme Court appears to support that NRS 113.130 <sup>does not</sup> requires a seller to disclose superpriority tenders ~~or that the Seller's Real Property Disclosure Form would require disclosure of a superpriority tender.~~ See *Saticoy Bay, LLC, Series 3123 Inlet Bay vs. Genevieve Court Homeowners Association, et. al.* (Case No. 80135) (October 16, 2020) (Unpublished).

### ORDER

The Court GRANTS Defendant's Motion for Summary Judgment and Joinder thereto.

Dated this 5th February & day of ~~January~~, 2021.

  
HONORABLE MARY KAY HOLTHUS  
HONORABLE JASMIN LILLY-SPILLS

Submitted by:

LIPSON NEILSON P.C.

/s/ Janeen V. Isaacson

Janeen V. Isaacson, Esq. (Bar No. 6429)  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144

*Attorneys for Defendant  
Green Valley Ranch South Owner's  
Association*

Approved as to form and Content

ROGER P. CROTEAU & ASSOCATES

/s/ Roger P. Croteau

Roger P. Croteau, Esq. (Bar No. 4958)  
2810 W. Charleston Blvd., Suite 75  
Las Vegas, Nevada 89102  
*Attorneys for Plaintiff, Daisy Trust*

Approved as to form and content

NEVADA ASSOCIATION SERVICES,  
INC.

/s/ Brandon E. Wood

Brandon E. Wood, Esq.  
6625 S. Valley View Blvd., Suite 300  
Las Vegas, Nevada 89118  
*Attorneys for Nevada Association  
Services, Inc.*

**Renee Rittenhouse**

---

**From:** Chris Benner <chris@croteaulaw.com>  
**Sent:** Wednesday, January 27, 2021 1:39 PM  
**To:** Janeen Isaacson  
**Cc:** Renee Rittenhouse  
**Subject:** RE: MSJorder\_NAS REVISED (002)

Agreed, Brandon's changes look fine.

**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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---

**From:** Janeen Isaacson <JIsaacson@lipsonneilson.com>  
**Sent:** Wednesday, January 27, 2021 1:37 PM  
**To:** Chris Benner <chris@croteaulaw.com>  
**Cc:** Renee Rittenhouse <RRittenhouse@lipsonneilson.com>  
**Subject:** MSJorder\_NAS REVISED (002)

Brandon had a few changes. I forgot he joined so he has to be added. His changes do not impact yours. If issue, let me know. Otherwise sending to Court with Brandon's changes.

## Renee Rittenhouse

---

**From:** Janeen Isaacson  
**Sent:** Wednesday, January 27, 2021 1:29 PM  
**To:** Renee Rittenhouse  
**Subject:** FW: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)  
**Attachments:** MSJorder\_NAS REVISED.DOC

---

**From:** Brandon Wood <brandon@nas-inc.com>  
**Sent:** Wednesday, January 27, 2021 1:24 PM  
**To:** Janeen Isaacson <JIsaacson@lipsonneilson.com>  
**Cc:** Susan Moses <susanm@nas-inc.com>  
**Subject:** [MACRO WARNING] FW: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Janeen,

Please see attached. Susan informed me you could not open the attachment. Let me know if you have any questions.

*\*\*Due to the recent Nevada State Government directive, all visitors will be required to wear mask to enter our office front lobby. Our office is open during normal business hours Monday – Thursday 9-5, Friday 9-4:30 and closed for lunch from 12-1 daily. There is a drop-box available in front of our office during normal business hours and lunch. Should you want to meet with any team member to discuss your account please contact our office to make an appointment. Appointments are required.\*\**

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



PERSONAL AND CONFIDENTIAL: Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose. This message originates from Nevada Association Services, Inc. This message and any file(s) or attachment(s) transmitted with it are confidential, intended only for the named recipient, and may contain information that is a trade secret, proprietary, or is otherwise protected against unauthorized use or disclosure. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. Personal messages express only the view of the sender and are not attributable to Nevada Association Services, Inc.

---

**From:** Brandon Wood  
**Sent:** Friday, January 22, 2021 2:11 PM

To: Janeen Isaacson <JIsaacson@lipsonneilson.com>

Subject: RE: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Janeen,

Please find NAS' minor revisions. Please let me know if acceptable.

*\*\*Due to the recent Nevada State Government directive, all visitors will be required to wear mask to enter our office front lobby. Our office is open during normal business hours Monday – Thursday 9-5, Friday 9-4:30 and closed for lunch from 12-1 daily. There is a drop-box available in front of our office during normal business hours and lunch. Should you want to meet with any team member to discuss your account please contact our office to make an appointment. Appointments are required.\*\**

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



PERSONAL AND CONFIDENTIAL: Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose. This message originates from Nevada Association Services, Inc. This message and any file(s) or attachment(s) transmitted with it are confidential, intended only for the named recipient, and may contain information that is a trade secret, proprietary, or is otherwise protected against unauthorized use or disclosure. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. Personal messages express only the view of the sender and are not attributable to Nevada Association Services, Inc.

From: Janeen Isaacson [mailto:JIsaacson@lipsonneilson.com]

Sent: Friday, January 22, 2021 12:58 PM

To: Roger Croteau <rcroteau@croteaulaw.com>; 'Chris Benner' <chris@croteaulaw.com>; croteaulaw@croteaulaw.com; Brandon Wood <brandon@nas-inc.com>; Susan Moses <susanm@nas-inc.com>

Cc: Renee Rittenhouse <RRittenhouse@lipsonneilson.com>

Subject: FW: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Everyone,

Can both Plaintiff and NAS send an email affirmatively approving the revised Order and agreeing to affix your signature. We will send to the Court for signature.

Sincerely,

**Lipson|Neilson**

Janeen V. Isaacson, Esq.  
Lipson Neilson P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144-7052  
(702) 382-1500  
(702) 382-1512 (fax)  
E-Mail: [jisaacson@lipsonneilson.com](mailto:jisaacson@lipsonneilson.com)  
Website: [www.lipsonneilson.com](http://www.lipsonneilson.com)

**OFFICES IN NEVADA, COLORADO, ARIZONA & MICHIGAN**

\*\*\*\*\*

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**From:** Renee Rittenhouse <[RRittenhouse@lipsonneilson.com](mailto:RRittenhouse@lipsonneilson.com)>  
**Sent:** Friday, January 22, 2021 12:01 PM  
**To:** Janeen Isaacson <[jisaacson@lipsonneilson.com](mailto:jisaacson@lipsonneilson.com)>  
**Subject:** RE: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Please see attached order with the addition of counsel for NAS.

Thank you,

**From:** Janeen Isaacson <[jisaacson@lipsonneilson.com](mailto:jisaacson@lipsonneilson.com)>  
**Sent:** Thursday, January 21, 2021 12:15 PM  
**To:** Renee Rittenhouse <[RRittenhouse@lipsonneilson.com](mailto:RRittenhouse@lipsonneilson.com)>  
**Cc:** Susan Moses <[susanm@nas-inc.com](mailto:susanm@nas-inc.com)>  
**Subject:** FW: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Renee, can you take our approved draft from Roger, add NAS to it so they can sign it for approval as well. Then submit it as instructed to the Court. Thanks.

**From:** Roberson, Anise <[Dept23LC@clarkcountycourts.us](mailto:Dept23LC@clarkcountycourts.us)>  
**Sent:** Thursday, January 21, 2021 12:09 PM  
**To:** Renee Rittenhouse <[RRittenhouse@lipsonneilson.com](mailto:RRittenhouse@lipsonneilson.com)>  
**Cc:** Anderson, Glenn <[Dept18LC@clarkcountycourts.us](mailto:Dept18LC@clarkcountycourts.us)>; Janeen Isaacson <[jisaacson@lipsonneilson.com](mailto:jisaacson@lipsonneilson.com)>; [rcroteau@croteaulaw.com](mailto:rcroteau@croteaulaw.com)  
**Subject:** RE: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Good afternoon,

Thank you for submitting the Findings of Fact, Conclusions of Law and Order on Green Valley South's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment.

All documents submitted for Judge Lilly-Spells' signature should be sent to [DC23Inbox@clarkcountycourts.us](mailto:DC23Inbox@clarkcountycourts.us) for proper review and signature; please resubmit and we will review and get it signed.

Thank you again,

Anise Roberson  
Law Clerk to the Honorable Jasmin Lilly-Spells  
Eighth Judicial District Court Dept. 23  
Telephone: 702-671-0585  
Fax: 702-671-0589  
Email: [Dept23lc@clarkcountycourts.us](mailto:Dept23lc@clarkcountycourts.us)

**PLEASE NOTE:**

- The [DC23Inbox@clarkcountycourts.us](mailto:DC23Inbox@clarkcountycourts.us) email is to be used **ONLY** for the purpose of submitting documents for Judge Lilly-Spells' signature.
- All documents submitted must be attached in both Word and .pdf format, with an email from counsel approving the use of their electronic signature.
- The email subject line must contain the full case number, filing event code, and the name of the document (i.e. "A-20-123456-C – ORDR – Smith v. Doe")

*If you need to email Department 23 regarding a calendar issue, or any matter other than submitting a document for Judge Lilly-Spells' signature, your email must be sent to [BoyerD@clarkcountycourts.us](mailto:BoyerD@clarkcountycourts.us) and [Dept23LC@clarkcountycourts.us](mailto:Dept23LC@clarkcountycourts.us).*

---

**From:** Renee Rittenhouse [<mailto:RRittenhouse@lipsonneilson.com>]  
**Sent:** Monday, January 18, 2021 11:44 AM  
**To:** Roberson, Anise  
**Cc:** Anderson, Glenn; Janeen Isaacson; [rcroteau@croteaulaw.com](mailto:rcroteau@croteaulaw.com)  
**Subject:** Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

To all:

On behalf of Janeen Isaacson, please find attached the Findings of Fact, Conclusions of Law and Order on Green Valley South's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment with reference to the above-captioned matter.

Also, please confirm that the Order to Show Cause Hearing originally set for Tuesday, January 19, 2021 at 9:00 a.m. has been moved to Thursday, January 28, 2021 at 3:00 a.m.

Should you have any questions, please feel free to contact Ms. Isaacson directly.

Thank you,

LAW OFFICES

# Lipson | Neilson

*Attorneys and Counselors at Law*

***Renee M. Rittenhouse***

***Paralegal***

***Lipson Neilson***

***9900 Covington Cross Drive, Suite 120***

***Las Vegas, NV 89144***

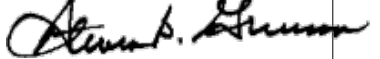
***(702) 382-1500***

***(702) 382-1512 (fax)***

***E-Mail: [rrittenhouse@lipsonneilson.com](mailto:rrittenhouse@lipsonneilson.com)***

***Website: [www.lipsonneilson.com](http://www.lipsonneilson.com)***

***OFFICES IN NEVADA, MICHIGAN, ARIZONA & COLORADO***



LIPSON NEILSON P.C.  
J. WILLIAM EBERT, ESQ.  
Nevada Bar No. 2697  
JANEEN V. ISAACSON, ESQ.  
Nevada Bar No. 6429  
9900 Covington Cross Drive, Suite 120  
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(702) 382-1500 - Telephone  
(702) 382-1512 - Facsimile  
[bebert@lipsonneilson.com](mailto:bebert@lipsonneilson.com)  
[jisaacson@lipsonneilson.com](mailto:jisaacson@lipsonneilson.com)

*Attorneys for Defendant,  
Green Valley South Owner's Association*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

DAISEY TRUST, a Nevada trust  
Plaintiff,

vs.

GREEN VALLEY SOUTH OWNERS  
ASSOCIATION NO. 1, a Nevada non-  
profit corporation; and NEVADA  
ASSOCIATION SERVICES, INC., a  
domestic corporation;

Defendants.

Case No.: A-19-791254-C  
Dept.: XVIII

**NOTICE OF ENTRY OF FINDINGS OF  
FACT, CONCLUSIONS OF LAW AND  
ORDER ON DEFENDANT GREEN  
VALLEY SOUTH OWNERS  
ASSOCIATION'S MOTION TO DISMISS  
OR ALTERNATIVELY MOTION FOR  
SUMMARY JUDGMENT**

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1 PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law and Order  
2 on Defendant Green Valley South Owners Association's Motion to Dismiss, or  
3 Alternatively Motion for Summary Judgement was filed with the court this 5<sup>th</sup> day of  
4 February, 2021, a copy of which is attached.

5 DATED this 16<sup>th</sup> day of February 2021.

6 LIPSON NEILSON P.C.

7 */s/ Janeen Isaacson*

8 By: \_\_\_\_\_  
9 J. William Ebert, Esq. (Bar No. 2697)  
10 Janeen V. Isaacson, Esq. (Bar No. 6429)  
11 9900 Covington Cross Drive, Suite 120  
12 Las Vegas, Nevada 89144

13 *Attorneys for Defendant,*  
14 *Green Valley South Owners Association*

15  
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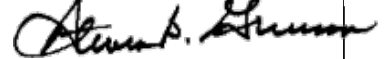
**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and Administrative Order 14-2, on the 16<sup>th</sup> day of February, 2021, I electronically transmitted the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON DEFENDANT GREEN VALLEY SOUTH OWNERS ASSOCIATION'S MOTION TO DISMISS OR ALTERNATIVELY MOTION FOR SUMMARY JUDGMENT** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV& Serve registrants addressed to:

|   |   |
|---|---|
| Brandon D. Wood, Esq.<br>NEVADA ASSOCIATION SERVICES,<br>INC.<br>6625 S. Valley View Blvd., Suite 300<br>Las Vegas, Nevada 89118<br><i>Attorney for Nevada Association Services,<br/>Inc.</i> | Roger P. Croteau, Esq.<br>Timothy E. Rhoda, Esq.<br>ROGER P. CROTEAU & ASSOCIATES,<br>LTD.<br>2810 W. Charleston Blvd., Suite 75<br>Las Vegas, NV 89148<br><i>Attorneys for Plaintiff Daisy Trust</i> |
|---|---|

*/s/ Renee M. Rittenhouse*

\_\_\_\_\_  
An Employee of LIPSON NEILSON P.C.



1 LIPSON NEILSON P.C.  
2 J. WILLIAM EBERT, ESQ.  
3 Nevada Bar No. 2697  
4 JANEEN V. ISAACSON, ESQ.  
5 Nevada Bar No. 6429  
6 9900 Covington Cross Drive, Suite 120  
7 Las Vegas, Nevada 89144  
8 (702) 382-1500 - Telephone  
9 (702) 382-1512 - Facsimile  
10 [bebert@lipsonneilson.com](mailto:bebert@lipsonneilson.com)  
11 [isaacson@lipsonneilson.com](mailto:isaacson@lipsonneilson.com)

12 *Attorneys for Defendant,*  
13 *Green Valley South Owner's Association*

14  
15 DISTRICT COURT  
16 CLARK COUNTY, NEVADA  
17

18 DAISEY TRUST, a Nevada trust

19 Plaintiff,

20 vs.

21 GREEN VALLEY SOUTH OWNERS  
22 ASSOCIATION NO. 1, a Nevada non-  
23 profit corporation; and NEVADA  
24 ASSOCIATION SERVICES, INC., a  
25 domestic corporation;

26 Defendants.  
27

Case No.: A-19-791254-C  
Dept.: ~~XXXX~~ 23

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER ON DEFENDANT  
GREEN VALLEY SOUTH OWNER'S  
ASSOCIATION'S MOTION TO DISMISS,  
OR ALTERNATIVELY MOTION FOR  
SUMMARY JUDGMENT

28 On October 25, 2020, Defendant Green Valley South Association ("Green Valley"  
or the "HOA") filed its Motion to Dismiss, Or Alternatively Motion for Summary Judgment  
("Motion"). On October 29, 2020, Defendant Nevada Association Services, Inc. ("NAS"  
or "Trustee") filed its Joinder to Green Valley's Motion. On November 9, 2020, Plaintiff  
Daisey Trust ("Daisey Trust") filed its Opposition to the Motion. On November 24, 2020,  
Defendant Green Valley filed its Reply in Support of the Motion.

The Motion was heard on December 1, 2020 at 9:00 a.m. in the above captioned  
matter. Attorney Janeen V. Isaacson on behalf of Green Valley, attorney Brandon E.  
Wood on behalf of NAS, and attorney Roger Croteau appeared on behalf of Daisey Trust

Lipson Neilson P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500 FAX: (702) 382-1512

1 participated by CourtCall conferencing and/or telephonic conference call.

2 The Court having reviewed the papers and pleadings, and having heard oral  
3 argument, issues the following findings of fact, conclusions of law and order:

4 **FINDINGS OF FACT**

5 1. On June 5, 2008, Dennis L. Scott ("Borrower") obtained a loan to  
6 purchase the real property located at 137 Elegante Way, Henderson, Nevada 89074  
7 ("Property").

8 2. The property was subject to the HOA's Covenants, Conditions and  
9 Restrictions "CC&Rs".

10 3. Sometime after purchasing the Property, Borrowers defaulted on their  
11 homeowners' assessments.

12 4. On August 23, 2011, the HOA, through NAS recorded a notice of  
13 delinquent assessment lien.

14 5. On November 18, 2011, the HOA, through its Trustee, recorded a notice  
15 of default and election to sell.

16 6. On February 2, 2012, Miles Bauer sent NAS a letter offering to pay \$882  
17 to discharge Green Valley's superpriority lien on the Property and included a check for  
18 that amount.

19 7. NAS rejected the offer on Green Valley's behalf.

20 8. Between February 2, 2012 and August 31, 2012, NAS' phone log  
21 indicates that it received no telephone inquiries from potential bidders asking if there  
22 had been a tender of the super priority lien with respect to the Property [GVS000222].

23 9. On April 23, 2012, the HOA, through its Trustee, recorded a notice of  
24 foreclosure sale.

25 10. On August 31, 2012, the HOA, through NAS, foreclosed on the Property  
26 and sold the Property to Daisey Trust for \$3,555.

27 11. A foreclosure deed in favor Plaintiff Daisey Trust was recorded on  
28 September 7, 2012.



1 *Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Summary judgment  
2 is appropriate when pleadings, the discovery and disclosure materials on file, and any  
3 affidavits show "there is no genuine disputes as to any material fact and the movant is  
4 entitled to judgment as a matter of law." Nev. R. Civ. P. 56(b); see also *Celotex v.*  
5 *Catrett*, 477 U.S. 317, 330 (1986); *Boland v. Nevada Rock & Sand Co.*, 111 Nev. 608,  
6 610, 894 P.2d 988 (1995).

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

14 3. An issue is only genuine if there is a sufficient evidentiary basis for a  
15 reasonable jury to return a verdict for the nonmoving party. *Anderson*, 477 U.S. at 248  
16 (1986). Further, a dispute will only preclude the entry of summary judgment if it could  
17 affect the outcome of the suit under governing law. *Id.* "The amount of evidence  
18 necessary to raise a genuine issue of material fact is enough to require a judge or jury  
19 to resolve the parties' differing versions of the truth at trial." *Id.* at 249. In evaluating a  
20 summary judgment motion, a court views all facts and draws all inferences in a light  
21 most favorable to the nonmoving party. *Kaiser Cement Corp. v. Fischbach & Moore,*  
22 *Inc.*, 793 F.2d 100, 1103 (9th Cir. 1986). Where one "essential element of a claim for  
23 relief is absent, the facts, disputed or otherwise, as to other elements are rendered  
24 immaterial and summary judgment is proper." *Bulbman Inc. v. Nevada Bell*, 108 Nev.  
25 105, 111, 825 P.2d at 592 (1992).

26 4. A party may move for summary judgment at any time and must be granted  
27 if the pleadings and affidavits show that there is no genuine issue as to any material fact  
28

1 and that the moving party is entitled to a judgment as a matter of law. *Villescas v. CAN,*  
2 *Insurance Co.*, 109 Nev. 1075 (1993).

3 5. "As a general rule, the court may not consider matters outside the  
4 pleading being attacked." *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858  
5 P.2d 1258, 1261 (1993). "However, the court may take into account matters of public  
6 record, orders, items present in the record of the case, and any exhibits attached to the  
7 complaint when ruling on a motion to dismiss for failure to state a claim upon which  
8 relief can be granted." *Id.*

10 6. NRCP 56(c)(1) provides, in pertinent part, "The judgment sought shall be  
11 rendered forthwith if the pleadings, depositions, answers to interrogatories, and  
12 admissions on file, together with the affidavits, if any, show that there is no genuine  
13 issue as to any material fact and that the moving party is entitled to a judgment as a  
14 matter of law." However, subsection (c)(2) further states that a party may object that the  
15 material cited to support or dispute a fact cannot be presented in "a form that would be  
16 admissible in evidence."

18 7. Summary judgment is "appropriate when the pleadings, depositions,  
19 answers to interrogatories, admissions, and affidavits, if any, that are properly before  
20 the court demonstrate that no genuine issue of material fact exists, and the moving  
21 party is entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724,  
22 731, 121 P.3d 1026 (2005). A factual dispute is genuine, and therefore summary  
23 judgment is inappropriate, when the evidence is such that a rational trier of fact could  
24 return a verdict for the nonmoving party. *Id.*

26 8. All pleadings and proof must be construed in a light most favorable to the  
27 non-moving party, however, the non-moving party must do more than simply show that  
28

1 there is some metaphysical doubt as to the operative facts in order to avoid summary  
2 judgment being entered in the moving party's favor. The nonmoving party must, by  
3 affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine  
4 issue for trial or have summary judgment entered against him. The nonmoving party "is  
5 not entitled to build a case on the gossamer threads of whimsy, speculation, and  
6 conjecture." *Id.* (quoting *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713-14  
7 (2002)).  
8

9 9. A party cannot defeat summary judgment by contradicting itself. See  
10 *Aldabe v. Adams*, 81 Nev. 280, 284–85, 402 P.2d 34, 36–37 (1965) (refusing to credit  
11 sworn statement made in opposition to summary judgment that was in direct conflict  
12 with an earlier statement of the same party).  
13

14 10. Under the new NRCP 56(d), which is similar to old subsection (f), if the  
15 moving party fails to properly support facts necessary, the court may deny the motion or  
16 stay the motion to allow the parties to conduct discovery.  
17

18 11. The Court FINDS because the motion involves evidence outside of the  
19 complaint, the motion must be treated as a motion for summary judgment.  
20

#### 21 **Intentional/Negligent Misrepresentation**

22 12. Haddad does not allege that Defendants made any active  
23 misrepresentation; rather, he alleges only that Defendants were guilty of "material  
24 omission of the tender and/or attempted payment of the superpriority lien amount", upon  
25 inquiry, by Haddad. However, under NRS 116.3116 at the time, Defendants do not  
26 have a duty to disclose tender. See *Noonan v. Bayview Loan Servicing, LLC*, 2019  
27 Nev. Unpub. LEXIS 428, 438 P.3d 335, 2019 WL 1552690, citing: "*See Halcrow, Inc. v.*  
28 *Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153 (2013) (providing

1 the elements for a negligent misrepresentation claim); *Nelson v. Heer*, 123 Nev. 217,  
2 225, 163 P.3d 420, 426 (2007) ("[T]he suppression or omission of a material fact which  
3 a party is bound in good faith to disclose is equivalent to a false representation."  
4 (internal quotation marks omitted)). Compare NRS 116.31162(1)(b)(3)(II) (2017)  
5 (requiring an HOA to disclose if tender of the superpriority portion of the lien has been  
6 made), with NRS 116.31162 (2013) (not requiring any such disclosure)." See also *A*  
7 *Oro, LLC v. Ditech Financial LLC*, 2019 WL 913129, 434 P.3d 929 (Nev. 2019)  
8 (unpublished). See *Saticoy Bay, LLC, Series 11339 Colinward, A Nevada Limited*  
9 *Liability Company vs. Travata and Montage at Summerlin Centre Homeowners*  
10 *Association, et. al.* (Case No. 80162) (October 16, 2020) *Unpublished Disposition*; See  
11 *Saticoy Bay, LLC, Series 3123 Inlet Bay vs. Genevieve Court Homeowners Association,*  
12 *et. al.* (Case No. 80135) (October 16, 2020) *unpublished disposition*; See *Saticoy Bay,*  
13 *LLC, Series 8320 Bermuda Beach, A Nevada Limited Liability Company vs. South*  
14 *Shores Community Homeowners Association, et. al.* (Case No. 80165) (October 16,  
15 2020) *Unpublished Disposition*; See *Saticoy Bay, LLC, Series 6408 Hillside Brook, A*  
16 *Nevada Limited Liability Company vs. Mountain Gate Homeowners Association, et. al.*  
17 (Case No. 80134) (October 16, 2020) *Unpublished Disposition*; See *Saticoy Bay, LLC,*  
18 *Series 8920 El Diablo, A Nevada Limited Liability Company vs. Silverstone Ranch*  
19 *Homeowners Association, et. al.* (Case No. 80039) (October 16, 2020) *Unpublished*  
20 *Disposition.*

21  
22  
23  
24 13. Although the HOA or HOA agent does not have to disclose tender under  
25 the statute, as a misrepresentation claim the HOA or HOA Agent could have taken  
26 actions which created the duty to disclose tender. However, Haddad relies on the  
27 omission during bidding at the sale. Even though discovery had not concluded, there  
28

1 appears to be no genuine issue of material fact. Haddad's declaration, which attempts  
2 to raise genuine issues of material fact appears to be based "on the gossamer threads  
3 of whimsy, speculation, and conjecture". See *Wood v. Safeway, Inc.* Additionally, NAS'  
4 call log demonstrate that Haddad did not contact them prior to sale to inquire as to any  
5 tender.  
6

7 14. Plaintiff fails to allege what evidence, if any, can be obtained in discovery  
8 to raise genuine issues of material fact. Thus, NRCP 56(d) relief is not appropriate.  
9 Thus, Plaintiff cannot show that there is any genuine issue of material fact and thus,  
10 Defendants are entitled to summary judgment as a matter of law.  
11

#### 12 **Breach of NRS 116**

13 15. For similar reasons Defendants are entitled to summary judgment on the  
14 Breach of NRS 116 claim. To establish a claim for misrepresentation, the plaintiff  
15 carries the burden of proving each of the following elements: (1) a false representation  
16 was made by the defendant; (2) defendant's knowledge or belief that its representation  
17 was false or that defendant has an insufficient basis of information for making the  
18 representation; (3) defendant intended to induce plaintiff to act or refrain from acting  
19 upon the misrepresentation; and (4) damage to the plaintiff as a result of relying on the  
20 misrepresentation. *Barmettler v. Reno Air, Inc.*, 956 P.2d 1382, 1386, 114 Nev. 441,  
21 447 (Nev.,1998). The HOA or HOA's Agent are not required to announce tender at the  
22 HOA foreclosure sale. See *Noonan (Comparing NRS 116.31162(1)(b)(3)(II) (2017),*  
23 *with NRS 116.31162 (2013))*, and see *A Oro*. See *Saticoy Bay, LLC, Series 11339*  
24 *Colinward, A Nevada Limited Liability Company vs. Travata and Montage at Summerlin*  
25 *Centre Homeowners Association, et. al.* (Case No. 80162) (October 16, 2020)  
26 *Unpublished Disposition*; See *Saticoy Bay, LLC, Series 3123 Inlet Bay vs. Genevieve*  
27  
28

1 *Court Homeowners Association, et. al.* (Case No. 80135) (October 16, 2020)  
2 *unpublished disposition; See Saticoy Bay, LLC, Series 8320 Bermuda Beach, A Nevada*  
3 *Limited Liability Company vs. South Shores Community Homeowners Association, et.*  
4 *al.* (Case No. 80165) (October 16, 2020) *Unpublished Disposition; See Saticoy Bay,*  
5 *LLC, Series 6408 Hillside Brook, A Nevada Limited Liability Company vs. Mountain*  
6 *Gate Homeowners Association, et. al.* (Case No. 80134) (October 16, 2020)  
7 *Unpublished Disposition; See Saticoy Bay, LLC, Series 8920 El Diablo, A Nevada*  
8 *Limited Liability Company vs. Silverstone Ranch Homeowners Association, et. al.* (Case  
9 No. 80039) (October 16, 2020) *Unpublished Disposition.* Further, neither Green Valley  
10 or NAS made any misrepresentations to Plaintiff or otherwise violate any duties to  
11 Plaintiff in conducting the sale.

12  
13  
14 16. NRS 116.1113 imposes a duty of good faith in the performance of every  
15 contract or duty governed by the statute. Nev. Rev. Stat. § 116.1113. The HOA  
16 complied with these duties by complying with all notice and recording requirements set  
17 forth in NRS 116 as it existed at the time of the sale. The HOA was not required to  
18 disclose the existence of a pre-sale tender of the superpriority portion of the lien.  
19 Further, it was specifically prohibited from giving any purchaser at auction a so-called  
20 warranty deed. The only type of deed it could give to any purchaser was one made  
21 "without warranty" pursuant to NRS 116.31164(3)(a).

#### 22 **Violation of NRS 113**

23  
24 17. Defendants are entitled to summary judgment on Plaintiff's claim for  
25 violation of NRS 113. Plaintiff asserts in its Complaint that the HOA or HOA Agent  
26 needed to complete a Seller's Real Property Disclosure Form ("SRPDF").  
27  
28

1           18. The bank's pre-sale tender does not fit into any of the disclosure  
2 categories contemplated by NRS 113. See generally *id.* It is not a water or sewage  
3 service, nor does it involve open range liability, zoning classifications, gaming enterprise  
4 districts, or transfer fee obligations. See Nev. Rev. Stat. §§ 113.060 through 113.085. It  
5 also does not qualify as the discovery or worsening of a defect subject to disclosure  
6 under NRS 113.130.  
7

8           19. A "defect" is defined as "a condition that materially affects the value or use  
9 of residential property in an adverse manner." See Nev. Rev. Stat. § NRS 113.100(1).  
10 The key to disclosure under this section is the seller's realization, perception, and  
11 knowledge of the alleged defect. See *Nelson v. Heer*, 123 Nev. at 224; see also Nev.  
12 Rev. Stat. §113.140(1). A seller is not required to disclose defects of which he is  
13 unaware. *Id.*  
14

15           20. Furthermore, nowhere in either NRS 113 or NRS 116 do the statutes  
16 suggest the Seller's Real Property Disclosure Form ("SRPDF") should be supplied in  
17 NRS 116 foreclosure sales. Plaintiff further alleges that the "Residential Disclosure  
18 Guide (the "Guide") suggests Defendants should supply the SRPDF. However, the  
19 actual Guide does not ever refer to the HOA or HOA Agent as possible sellers for which  
20 the SRPDF might apply or refer to a HOA foreclosure sale, or suggest the SRPDF  
21 applies to NRS 116 Foreclosure Sales.  
22

23           25. The Guide suggests to protect oneself from a faulty SRPDF in buying a  
24 home, "[t]he Buyer is advised to obtain an independent inspection performed by a  
25 properly licensed home inspector." NRS 116 foreclosure properties are not open for  
26 inspection prior to sale, and NRS 116 foreclosure homes may be occupied, for which  
27 the buyer assumes the responsibility.  
28


Lipson Neilson P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500 FAX: (702) 382-1512

26. A recent unpublished decision from the Nevada Supreme Court appears to support that NRS 113.130 <sup>does not</sup> requires a seller to disclose superpriority tenders ~~or that the Seller's Real Property Disclosure Form would require disclosure of a superpriority tender.~~ See *Saticoy Bay, LLC, Series 3123 Inlet Bay vs. Genevieve Court Homeowners Association, et. al.* (Case No. 80135) (October 16, 2020) (Unpublished).

### ORDER

The Court GRANTS Defendant's Motion for Summary Judgment and Joinder thereto.

Dated this 5th February & day of ~~January~~, 2021.

  
HONORABLE MARY KAY HOLTHUS  
HONORABLE JASMIN LILLY-SPILLS

Submitted by:

LIPSON NEILSON P.C.

/s/ Janeen V. Isaacson

Janeen V. Isaacson, Esq. (Bar No. 6429)  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144

*Attorneys for Defendant  
Green Valley Ranch South Owner's  
Association*

Approved as to form and Content

ROGER P. CROTEAU & ASSOCATES

/s/ Roger P. Croteau

Roger P. Croteau, Esq. (Bar No. 4958)  
2810 W. Charleston Blvd., Suite 75  
Las Vegas, Nevada 89102  
*Attorneys for Plaintiff, Daisy Trust*

Approved as to form and content

NEVADA ASSOCIATION SERVICES,  
INC.

/s/ Brandon E. Wood

Brandon E. Wood, Esq.  
6625 S. Valley View Blvd., Suite 300  
Las Vegas, Nevada 89118  
*Attorneys for Nevada Association  
Services, Inc.*

**Renee Rittenhouse**

---

**From:** Chris Benner <chris@croteaulaw.com>  
**Sent:** Wednesday, January 27, 2021 1:39 PM  
**To:** Janeen Isaacson  
**Cc:** Renee Rittenhouse  
**Subject:** RE: MSJorder\_NAS REVISED (002)

Agreed, Brandon's changes look fine.

**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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---

**From:** Janeen Isaacson <JIsaacson@lipsonneilson.com>  
**Sent:** Wednesday, January 27, 2021 1:37 PM  
**To:** Chris Benner <chris@croteaulaw.com>  
**Cc:** Renee Rittenhouse <RRittenhouse@lipsonneilson.com>  
**Subject:** MSJorder\_NAS REVISED (002)

Brandon had a few changes. I forgot he joined so he has to be added. His changes do not impact yours. If issue, let me know. Otherwise sending to Court with Brandon's changes.

## Renee Rittenhouse

---

**From:** Janeen Isaacson  
**Sent:** Wednesday, January 27, 2021 1:29 PM  
**To:** Renee Rittenhouse  
**Subject:** FW: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)  
**Attachments:** MSJorder\_NAS REVISED.DOC

---

**From:** Brandon Wood <brandon@nas-inc.com>  
**Sent:** Wednesday, January 27, 2021 1:24 PM  
**To:** Janeen Isaacson <JIsaacson@lipsonneilson.com>  
**Cc:** Susan Moses <susanm@nas-inc.com>  
**Subject:** [MACRO WARNING] FW: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Janeen,

Please see attached. Susan informed me you could not open the attachment. Let me know if you have any questions.

*\*\*Due to the recent Nevada State Government directive, all visitors will be required to wear mask to enter our office front lobby. Our office is open during normal business hours Monday – Thursday 9-5, Friday 9-4:30 and closed for lunch from 12-1 daily. There is a drop-box available in front of our office during normal business hours and lunch. Should you want to meet with any team member to discuss your account please contact our office to make an appointment. Appointments are required.\*\**

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



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---

**From:** Brandon Wood  
**Sent:** Friday, January 22, 2021 2:11 PM

To: Janeen Isaacson <JIsaacson@lipsonneilson.com>

Subject: RE: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Janeen,

Please find NAS' minor revisions. Please let me know if acceptable.

*\*\*Due to the recent Nevada State Government directive, all visitors will be required to wear mask to enter our office front lobby. Our office is open during normal business hours Monday – Thursday 9-5, Friday 9-4:30 and closed for lunch from 12-1 daily. There is a drop-box available in front of our office during normal business hours and lunch. Should you want to meet with any team member to discuss your account please contact our office to make an appointment. Appointments are required.\*\**

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



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From: Janeen Isaacson [mailto:JIsaacson@lipsonneilson.com]

Sent: Friday, January 22, 2021 12:58 PM

To: Roger Croteau <rcroteau@croteaulaw.com>; 'Chris Benner' <chris@croteaulaw.com>; croteaulaw@croteaulaw.com; Brandon Wood <brandon@nas-inc.com>; Susan Moses <susanm@nas-inc.com>

Cc: Renee Rittenhouse <RRittenhouse@lipsonneilson.com>

Subject: FW: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Everyone,

Can both Plaintiff and NAS send an email affirmatively approving the revised Order and agreeing to affix your signature. We will send to the Court for signature.

Sincerely,

**Lipson|Neilson**

Janeen V. Isaacson, Esq.  
Lipson Neilson P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144-7052  
(702) 382-1500  
(702) 382-1512 (fax)  
E-Mail: [jisaacson@lipsonneilson.com](mailto:jisaacson@lipsonneilson.com)  
Website: [www.lipsonneilson.com](http://www.lipsonneilson.com)

**OFFICES IN NEVADA, COLORADO, ARIZONA & MICHIGAN**

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**From:** Renee Rittenhouse <[RRittenhouse@lipsonneilson.com](mailto:RRittenhouse@lipsonneilson.com)>  
**Sent:** Friday, January 22, 2021 12:01 PM  
**To:** Janeen Isaacson <[jisaacson@lipsonneilson.com](mailto:jisaacson@lipsonneilson.com)>  
**Subject:** RE: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Please see attached order with the addition of counsel for NAS.

Thank you,

**From:** Janeen Isaacson <[jisaacson@lipsonneilson.com](mailto:jisaacson@lipsonneilson.com)>  
**Sent:** Thursday, January 21, 2021 12:15 PM  
**To:** Renee Rittenhouse <[RRittenhouse@lipsonneilson.com](mailto:RRittenhouse@lipsonneilson.com)>  
**Cc:** Susan Moses <[susanm@nas-inc.com](mailto:susanm@nas-inc.com)>  
**Subject:** FW: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Renee, can you take our approved draft from Roger, add NAS to it so they can sign it for approval as well. Then submit it as instructed to the Court. Thanks.

**From:** Roberson, Anise <[Dept23LC@clarkcountycourts.us](mailto:Dept23LC@clarkcountycourts.us)>  
**Sent:** Thursday, January 21, 2021 12:09 PM  
**To:** Renee Rittenhouse <[RRittenhouse@lipsonneilson.com](mailto:RRittenhouse@lipsonneilson.com)>  
**Cc:** Anderson, Glenn <[Dept18LC@clarkcountycourts.us](mailto:Dept18LC@clarkcountycourts.us)>; Janeen Isaacson <[jisaacson@lipsonneilson.com](mailto:jisaacson@lipsonneilson.com)>; [rcroteau@croteaulaw.com](mailto:rcroteau@croteaulaw.com)  
**Subject:** RE: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Good afternoon,

Thank you for submitting the Findings of Fact, Conclusions of Law and Order on Green Valley South's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment.

All documents submitted for Judge Lilly-Spells' signature should be sent to [DC23Inbox@clarkcountycourts.us](mailto:DC23Inbox@clarkcountycourts.us) for proper review and signature; please resubmit and we will review and get it signed.

Thank you again,

Anise Roberson  
Law Clerk to the Honorable Jasmin Lilly-Spells  
Eighth Judicial District Court Dept. 23  
Telephone: 702-671-0585  
Fax: 702-671-0589  
Email: [Dept23lc@clarkcountycourts.us](mailto:Dept23lc@clarkcountycourts.us)

**PLEASE NOTE:**

- The [DC23Inbox@clarkcountycourts.us](mailto:DC23Inbox@clarkcountycourts.us) email is to be used **ONLY** for the purpose of submitting documents for Judge Lilly-Spells' signature.
- All documents submitted must be attached in both Word and .pdf format, with an email from counsel approving the use of their electronic signature.
- The email subject line must contain the full case number, filing event code, and the name of the document (i.e. "A-20-123456-C – ORDR – Smith v. Doe")

*If you need to email Department 23 regarding a calendar issue, or any matter other than submitting a document for Judge Lilly-Spells' signature, your email must be sent to [BoyerD@clarkcountycourts.us](mailto:BoyerD@clarkcountycourts.us) and [Dept23LC@clarkcountycourts.us](mailto:Dept23LC@clarkcountycourts.us).*

---

**From:** Renee Rittenhouse [<mailto:RRittenhouse@lipsonneilson.com>]  
**Sent:** Monday, January 18, 2021 11:44 AM  
**To:** Roberson, Anise  
**Cc:** Anderson, Glenn; Janeen Isaacson; [rcroteau@croteaulaw.com](mailto:rcroteau@croteaulaw.com)  
**Subject:** Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

To all:

On behalf of Janeen Isaacson, please find attached the Findings of Fact, Conclusions of Law and Order on Green Valley South's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment with reference to the above-captioned matter.

Also, please confirm that the Order to Show Cause Hearing originally set for Tuesday, January 19, 2021 at 9:00 a.m. has been moved to Thursday, January 28, 2021 at 3:00 a.m.

Should you have any questions, please feel free to contact Ms. Isaacson directly.

Thank you,

LAW OFFICES

# Lipson | Neilson

*Attorneys and Counselors at Law*

***Renee M. Rittenhouse***

***Paralegal***

***Lipson Neilson***

***9900 Covington Cross Drive, Suite 120***

***Las Vegas, NV 89144***

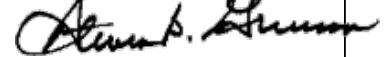
***(702) 382-1500***

***(702) 382-1512 (fax)***

***E-Mail: [rrittenhouse@lipsonneilson.com](mailto:rrittenhouse@lipsonneilson.com)***

***Website: [www.lipsonneilson.com](http://www.lipsonneilson.com)***

***OFFICES IN NEVADA, MICHIGAN, ARIZONA & COLORADO***



1 **NOAS**  
2 ROGER P. CROTEAU, ESQ.  
3 Nevada Bar No. 4958  
4 CHRISTOPHER L. BENNER, ESQ.  
5 Nevada Bar No. 8963  
6 ROGER P. CROTEAU & ASSOCIATES, LTD  
7 2810 W. Charleston Blvd., Ste. 75  
8 Las Vegas, Nevada 89102  
9 (702) 254-7775  
10 (702) 228-7719 (facsimile)  
11 croteaulaw@croteaulaw.com  
12 chris@croteaulaw.com  
13 Attorneys for Plaintiff Daisy Trust

9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 DAISY TRUST, a Nevada trust,  
12  
13 Plaintiff,

14 vs.

15 GREEN VALLEY SOUTH OWNERS  
16 ASSOCIATION NO. 1 and NEVADA  
17 ASSOCIATION SERVICES, INC., a  
18 domestic corporation,

19 Defendants.

Case No: A-19-791254-C  
Dept No: 23

**NOTICE OF APPEAL**

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

ROGER P. CROTEAU & ASSOCIATES, LTD.  
• 2810 West Charleston Blvd, Suite 75 • Las Vegas, Nevada 89102 •  
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

1 NOTICE IS HEREBY GIVEN that Plaintiff DAISY TRUST, by and through its attorneys,  
2 Roger P. Croteau & Associates, Ltd., hereby appeals to the Supreme Court of Nevada the Findings  
3 of Fact, Conclusions of Law and Order on Defendant Green Valley South Owner's Association's  
4 Motion to Dismiss, or Alternatively, Motion for Summary Judgment, Nevada Association Services  
5 Joinder thereto, and all rulings and interlocutory orders giving rise to or made appealable by the  
6 final judgment.  
7

8 Dated March 9, 2021.

9 ROGER P. CROTEAU & ASSOCIATES, LTD.

10 /s/ Christopher L. Benner

11 Roger P. Croteau, Esq.

12 Nevada Bar No. 4958

13 Christopher L. Benner, Esq.

14 Nevada Bar No. 8963

15 2810 W. Charleston Blvd., Suite 75

16 Las Vegas, Nevada 89102

17 Plaintiff Daisy Trust  
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ROGER P. CROTEAU & ASSOCIATES, LTD.  
• 2810 West Charleston Blvd, Suite 75 • Las Vegas, Nevada 89102 •  
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

**CERTIFICATE OF SERVICE**

I hereby certify that on March 9, 2021, I served the foregoing document on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, by electronic service in accordance with the mandatory electronic service requirements of Administrative Order 14-1 and the Nevada Electronic Filing and Conversion Rules.

/s/ Joe Koehle

An employee of ROGER P. CROTEAU & ASSOCIATES, LTD.